

ORDINANCE NO. 2800

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL MONTE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AMENDING CHAPTER 8.59 (VACANT BUILDING SECURITY AND MAINTENANCE) AND CHAPTER 8.60 (FORECLOSURE OF RESIDENTIAL PROPERTY REGISTRATION) OF THE EL MONTE MUNICIPAL CODE, INCLUDING AMENDMENTS TO SECTIONS 8.59.092A AND 8.60.092A TO EXTEND BY AN ADDITIONAL THREE YEARS THE AUTOMATIC SUNSET CLAUSE APPLICABLE TO EL MONTE MUNICIPAL CODE CHAPTERS 8.59 AND 8.60, RESPECTIVELY

WHEREAS, the City Council of the City of El Monte (the "City"), has previously adopted Ordinance No. 2730 which was amended by City Council Ordinance No. 2755, entitled:

"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL MONTE, CALIFORNIA AMENDING CHAPTER 8.59 (VACANT BUILDING SECURITY AND MAINTENANCE) AND CHAPTER 8.60 (FORECLOSURE OF RESIDENTIAL PROPERTY REGISTRATION) OF THE EL MONTE MUNICIPAL CODE, INCLUDING AMENDMENTS TO SECTIONS 8.59.092A AND 8.60.092A TO EXTEND BY AN ADDITIONAL TWO YEARS THE AUTOMATIC SUNSET CLAUSE APPLICABLE TO EL MONTE MUNICIPAL CODE CHAPTERS 8.59 AND MAINTENANCE AND 8.60, RESPECTIVELY"; and

WHEREAS, since the time of adoption of City Ordinance No. 2730, as amended by City Ordinance No. 2755, the California housing market and the California economy in general, have shown only marginal improvement since the inception of the 2008 national economic downturn; and

WHEREAS, this prolonged downturn, aggravated by very high rates of unemployment especially within the City, continues to keep the number of foreclosed properties in El Monte at a high level, in comparison to prior years, as households headed by unemployed adults struggle to pay for housing costs and other expenses; and

WHEREAS, through the enactment of El Monte Municipal Code Chapter 8.59 and El Monte Municipal Code Chapter 8.60, the City implemented two (2) new programs intended mitigate the adverse impacts which the large number of vacant properties and properties in the foreclosure process have imposed on the community; and

WHEREAS, El Monte Municipal Code ("EMMC") Section 8.59.092.A and EMMC Section 8.60.092.A, each provide that the vacant property and foreclosure registration programs initiated under City Ordinance No. 2730, as amended by City Ordinance No.

2755, will expire upon the fourth (4th) anniversary following the adoption of City Ordinance No. 2730, unless extended by subsequent City Council Ordinance; and

WHEREAS, the City Council has found and determined that it is necessary and appropriate to further extend the term of EMMC Chapter 8.59 (Vacant Building Security and Maintenance) and EMMC Chapter 8.60 (Foreclosure of Residential Property Registration), and make certain other modifications to EMMC Chapter 8.60 to better eliminate and prevent the spread of blight associated with the extensive number of properties involved in the foreclosure process and to better integrate the implementation of the City's property resale inspection program, under EMMC Section 17.16.040, in light of the extensive and pervasive effects of the on-going high rate of property foreclosure activity which continues to be associated with a prolonged general economic downturn.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL MONTE DOES HEREBY FIND AND ORDAIN AS FOLLOWS:

SECTION 1. The information set forth in the recital paragraphs of this Ordinance are true and correct.

SECTION 2. The City Council finds as follows:

A. When the owner of a vacant building fails to actively maintain and manage the building, the building can become a major cause of blight in both residential and nonresidential neighborhoods. Vacant buildings that are boarded, substandard or unkept properties, and long-term vacancies discourage economic development and regard appreciation of property values.

B. It is a responsibility of property ownership to prevent the condition of unoccupied property from becoming a burden to the neighborhood and community and a threat to the public health, safety, or welfare.

C. One vacant building in a neighborhood that is not actively monitored by the owner for maintenance and appropriate security can be the core and cause of spreading blight.

D. Owners of multiple buildings, either concurrently or serially, that are vacant and a blight to the community are a significant problem in the City. Owners of multiple buildings who fail to correct deficiencies and blighted conditions contribute to the decline of neighborhoods to a greater extent than owners who own only one building. It is in the interest of the welfare of neighborhoods that owners of multiple properties who fail to maintain properties and vacant and blighted buildings be subject to imposition of higher administrative penalties in order to encourage these owners to correct violations of EMMC Chapter 8.59 and/or EMMC Chapter 8.60, in a prompt manner.

E. Efforts to further increase the rate of compliance by lenders in foreclosure, and their agents, with the mortgage foreclosure registration program set forth in Chapter 8.60, will materially assist the City to allocate scarce community resources as appropriate, to best protect and preserve neighborhoods and individual properties which are affected by the foreclosure crisis.

F. Extension of the sunset provisions of EMMC Chapter 8.59 and 8.60 by an *additional three (3) years is in the furtherance of the police power of the City to protect the health, safety and welfare of the public.* The public health, safety and welfare will be protected by the continuation of the programs established under EMMC Chapters 8.59 and 8.60 due to the prolonged nature of the downturn in the California housing market and the resulting large inventory of properties which are subject to loan foreclosure proceedings and vacant properties that remain in the City of El Monte. Without the legal tools provided under EMMC Chapters 8.59 and 8.60, the City would not be able to address a number of problems and potential dangers to the community associated with the large inventory of properties which are subject to loan foreclosure proceedings and

unoccupied residential and other structures in the City which are the result of the exercise on a vast scale of the mortgage lien foreclosure remedies of lenders, many of whom have encountered both internal and external institutional barriers in managing their businesses in light of the scale on the on-going mortgage foreclosure problem or the inability of homeowners or other property owners to pay their lenders in a timely fashion and also maintain their property. Accordingly, the City Council hereby finds and determines that the modifications and amendments to EMMC Chapter 8.59 and Chapter 8.60, as set forth in the following sections of this Ordinance are necessary and reasonable response to the ongoing adverse economic conditions that continues to plague the State of California and the City of El Monte.

SECTION 3. EMMC Section 8.59.092 is hereby amended to read as follows:

"8.59.092 Sunset.

- A. Subject to the provisions of Section 8.59.092B, this chapter of the El Monte Municipal Code shall be of no further force or effect on the seventh (7th) anniversary following the September 2, 2008 adoption date of City Council Urgency Ordinance No. 2730 which initially added this Chapter to El Monte Municipal Code, unless prior to that date, the City Council enacts a separate ordinance which either repeals this Section 8.59.092, or amends this Section 8.59.092 to further extend the effectiveness of this chapter to a new date."

SECTION 4. The term "agent" is hereby added to EMMC Section 8.60.020, to read as follows:

"Agent" means and refers to a trustee, a mortgage servicer and any other person authorized to act on behalf of a beneficiary with respect to a mortgage loan account, or real property which is pledged to the beneficiary as security to a mortgage loan, and for the purposes of this chapter, the term "agent" includes any person authorized to act on behalf of a beneficiary who has completed a foreclosure of property from and after the time such beneficiary has acquired title to the property which was formerly secured by a deed of trust in favor of such beneficiary when the agent is undertaking any work or responsibility for the former beneficiary with respect to the ownership, maintenance, use or other disposition of such property, including any affiliate of such a beneficiary which acquires title to such property either, at the time of foreclosure (or recordation of a deed in lieu of foreclosure."

SECTION 5. The term "mortgage servicer" is hereby added to EMMC Section 8.60.020 to read as follows:

"Mortgage servicer" or "servicer" means a person or entity responsible for the day-to-day management of a real estate or mortgage loan account, including collecting and crediting periodic loan payments, managing any escrow account, or enforcing mortgage loan terms, either as the holder of the loan note or on behalf of the holder of the loan note."

SECTION 6. The term "default inspection" as appears in EMMC Section 8.60.020, is hereby amended to read as follows:

"Default inspection" means a physical inspection of the exterior areas of the property conducted by the beneficiary or its agent following the occurrence of a breach or event of default by the trustor under a deed of trust. When practicable, each default inspection shall be conducted upon prior reasonable notice and consent of the trustor and/or the occupant of the property. In instances where the trustor and/or the occupant cannot reasonably be obtained despite due and diligent inquiry by the beneficiary, or where the trustor or the occupant may expressly refuse to give the

beneficiary consent to a default inspection, the beneficiary or its agent shall conduct the default inspection of the exterior areas of the property which may be viewed from the adjacent public right-of-way or from adjacent property or which the owner or occupant of such adjacent property has consented to entry onto such adjacent property by the beneficiary for the purpose of conducting a default inspection of the adjoining property. The beneficiary, or its agent, shall maintain a written record of the time and date of each default inspection and shall identify the individual who conducted the default inspection. The written record of each default inspection shall at a minimum indicate whether, at the time of the default inspection, the property was: (1) occupied or vacant, and if vacant, set forth facts to support the evidence of vacancy; (2) in compliance with the general maintenance and monitoring standard set forth in Section 8.60.040; and (3) if security appliances have been installed on the property by either the trustor, the beneficiary or its agent, or by another entity the default inspection report shall indicate whether the installed security appliances are intact and in good and serviceable condition. A default inspection report shall contain such other property-specific information as the Chief Building Official or the City Manager or his/her designee may direct in writing to the beneficiary."

SECTION 7. The term "securing" as appears in EMMC Section 8.60.020, is hereby amended to read as follows:

"Securing" means such measures as may be directed by the Chief Building Official or the City Manager or his/her designee that assist in rendering the property inaccessible to unauthorized persons, including but not limited to the installation or repair of fences and walls, chaining/roadlocking of gates, the repair or boarding of door, window and/or other openings. In the case of residential buildings the boarding of doors, windows and/or other openings shall be installed in accordance with the HUD Mortgagee Letter 2007-03, dated January 25, 2007 or such successor written standard as may hereafter be approved from time-to-time by Resolution of the City Council."

SECTION 8. The text of EMMC Section 8.60.030 is hereby amended to read as follows:

"8.60.030 Registration.

- A. Prior to recording a notice of default on a property located in the City of El Monte which is subject to a deed of trust, the beneficiary, or its agent, shall conduct a default inspection of the property.
- B. The beneficiary, or its agent shall register the property with the Chief Building Official or the City Manager or his/her designee, on forms provided by the City of El Monte within ten (10) days from the date a notice of default is recorded on the property.
- C. For all property for which a notice of default has been recorded before July 31, 2010, and where since that date, such notice of default has not either been rescinded or *superceded, modified or amended by a subsequent notice of default* recorded on or after July 31, 2010, then in such event, the beneficiary or its agent shall register the property with the City Building Official or the City Manager or his/her designee, on forms provided by the City by no later than September 30, 2012. The provisions of this Section 8.60.030.C., are intended to apply to all property where: (i) a foreclosure proceeding may have been initiated prior to the adoption of City of El Monte

Ordinance No. 2755; (ii) the pre-July 31, 2010 notice of default has not been either rescinded or superceded, modified or amended by a separate notice of default recorded on or after July 31, 2010; and (iii) the beneficiary has not completed the exercise of its remedy identified under such pre-July 31, 2010 notice of default, for whatever reason, including without limitation one or more trial mortgage loan modification attempts by the trustor or borrower, loan forbearance by the beneficiary, beneficiary foreclosure moratorium or the effect of the pendency of bankruptcy proceedings of the trustor for which relief from stay has not been obtained from the bankruptcy court by the beneficiary."

SECTION 9. Chapter 8.60 of the EMMC is hereby amended to add a new Section 8.60.031 which reads as follows:

"8.60.031 Duration of Regulation Under this Chapter.

The beneficiary and its agents shall be deemed exempt from further compliance with the regulations of this Chapter with respect to a property for which a notice of default has been recorded, upon the earlier of the following times:

1. Provided that the beneficiary is not then in violation of this Chapter with respect to the particular property, the date on which the beneficiary or its agent gives the City of El Monte the written notice described in Section 8.60.043.A for the particular property.
2. Provided that the beneficiary is not then in violation of this Chapter with respect to the particular property, the date on which the beneficiary or its agent gives the City of El Monte the written notice described in Section 8.60.043.B for the particular property."

SECTION 10. The text of EMMC Section 8.59.040 is hereby amended to read as follows:

"8.60.040 Maintenance requirements.

- A. Properties which are abandoned or vacant shall be in comparison to the neighborhood standard, maintained and kept free of weeds, dry brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including but not limited to furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned. Such property shall be maintained free of graffiti, tagging or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior of the structure. In general, the maintenance of abandoned or vacant property shall comply with the standards set forth in Section 8.59.040 and HUD Mortgagee Letter 2007-03, dated January 25, 2007, or

such other standard as may hereafter be ordered in writing by the Chief Building Official or the City Manager. Adherence to the maintenance and monitoring standard set forth in this section does not relieve the beneficiary/trustee or property owner of any obligations set forth in any covenants, conditions and restrictions and/or homeowners' association rules and regulations which may apply to the property.

- B. Each property which is acquired by a beneficiary following the recordation of a notice of default, whether acquired by such beneficiary by foreclosure, deed in lieu of foreclosure, judgment of foreclosure, or in any other manner, shall be maintained by the beneficiary in accordance with the general standard set forth in Section 8.60.040.A, for so long a period of time as the beneficiary may own such property.
- C. Nothing in this Section 8.60.040 shall be deemed to prevent the City of El Monte, upon appropriate written application to the Superior Court, from seeking appointment of a receiver for property under applicable law, to provide appropriate preservation, maintenance, security or abatement of adverse conditions on property which is abandoned or vacant under Section 8.60.040.A, or to appoint a receiver or take other action for property acquired by the beneficiary under Section 8.60.040.B, but which thereafter is not being maintained under the standards set forth in this Chapter. The remedies available to the City under this Chapter 8.60 to respond to adverse property maintenance conditions on properties where foreclosure proceedings have been initiated by a beneficiary or to respond to adverse property maintenance conditions on properties where a beneficiary has completed the exercise of its remedies following the recordation of a notice of default under this Chapter 8.60 are expressly declared to be cumulative with all other remedies available to the City under applicable law."

SECTION 11. The text of CMMC Section 8.60.046 is hereby amended to add a new subsection D to Section 8.60.046 which reads as follows:

D. Property Inspection Report For Short Sales/Short Pay Agreements

1. As used in this subsection D of Section 8.60.046 the words "short-pay agreement:" mean an agreement in writing in which the beneficiary agrees to release its lien on a property in return for payment of an amount less than the secured obligation affecting the property. As also used in this subsection D of Section 8.60.046, the words "short-pay demand statement:" means a written statement issued subsequent to *and conditioned on the existence of a short-pay agreement that is prepared in response to a written demand made by a trustor or an authorized agent of such trustor, whereby a beneficiary sets forth an amount less than the outstanding debt, together with any other terms and conditions under which the beneficiary will execute and deliver a reconveyance of the deed of trust securing the note that is the subject of the short-pay demand statement.*

2. All property which is proposed to be transferred, sold or otherwise conveyed by a trustor to a third party bona fide purchaser following the recordation of a notice of default and the issuance by the beneficiary (or its agent) of a short-pay demand statement, shall prior to the completion of such transfer, sale or other conveyance, be subject to compliance with the provisions of El Monte Municipal Code Section 17.16.040. The beneficiary, and each of its agents who cause to be recorded the reconveyance of the deed of trust securing the note that is subject to the short-pay agreement, shall each be responsible for obtaining compliance with El Monte Municipal Code Section 17.16.040, in the event that the bona fide purchaser may fail to provide the City with an acceptable surety for such compliance prior to the recordation of the reconveyance of the deed of trust described in the short-pay demand statement."

SECTION 12. The text of EMMC Section 8.60.046 is hereby further amended to add a new subsection E which reads as follows:

"E. Property Inspection Report for Property Sold By Foreclosure Trustee at Auction.

- E. For the purpose of compliance with provisions of El Monte Municipal Code Section 17.16.040, in the case of property sold at auction to a bona fide purchaser pursuant to the powers conferred on a trustee by a deed of trust following the recordation of a notice of default, the beneficiary under such deed of trust, and each of its agents shall be presumed to be the parties who are responsible for the completion of all needed corrections identified in the property inspection report, as provided in El Monte Municipal Code Section 17.16.040, unless: (i) at least one (1) business day prior to the recordation of the trustee's deed conveying such property to the bona fide purchaser following the completion of the foreclosure sale, the trustee provides a copy of the text of El Monte Code Chapter 8.60 and El Monte Municipal Code Section 17.16.040 to such bona fide purchaser; and (ii) the trustee provides written notice to the Chief Building Official or the City Manager or his/her designee of the full name, address and telephone or email contact information of such bona fide purchaser within ten (10) business days following the recordation of the trustee's deed under (i), above. As used in this Section 8.60.046.E, the words "business day" means and refers to any day of the week on which the Office of the Registrar-Recorder of Los Angeles County accepts delivery of documents and instruments from the general public for recordation in the official land records of Los Angeles County."

SECTION 13. A new Section 8.60.061 is hereby added to EMMC Chapter 8.60 which reads as follows:

***8.60.061: Additional Fees Where Property Serves as Security for Multiple Liens.**

In some instances, property may be subject to the recordation of multiple notices of default by different beneficiaries or other lienholders. The

City may establish fees and charges for the administration of the regulatory program established by this Chapter 8.60, which shall be applicable to the recordation of multiple notices of default by different beneficiaries or other lienholders, and such fees shall be set by resolution of the City Council."

SECTION 14. EMMC Section 8.60.071 is hereby amended to add a new subsection C and subsection D thereto which read as follows:

C. Notwithstanding any other provision of this Chapter or Chapter 1.18 or Chapter 1.19 to the contrary, the City may impose a fine on an agent of a beneficiary for its failure to timely register a property with the City under this Chapter 8.60 or to give timely notice to the City of the disposition of the registered property under Section 8.60.048.A and/or B, in the following amounts:

1. Two Hundred Fifty Dollars (\$250.00) for the first violation in the twelve (12) months preceding the date of such violation;
2. Five Hundred Dollars (\$500.00) for the second violation in the twelve (12) months preceding the date of such violation;
3. One Thousand Dollars (\$1,000) for the third and each subsequent violation in the twelve (12) months preceding the date of such violation.

D. The special fine amount provisions of Section 8.60.071.C shall be applicable to citations issued on or after September 1, 2012 by the City under Chapter 1.18 or Chapter 1.19 of the Code to an agent of a beneficiary for a violation of this Chapter 8.60."

SECTION 15. A new Section 8.60.081 is hereby added to EMMC Chapter 8.60, which reads as follows:

8.60.081. Unlawful Auction Sale by Trustee/Penalty.

A. It is unlawful for a trustee to sell a property at auction pursuant to the powers conferred on such trustee by a deed of trust to a bona fide purchaser following the recordation of a notice of default, unless the property sold at auction pursuant to the powers conferred on such trustee by the deed of trust in favor of the beneficiary has been registered with the City as set forth under Section 8.50.030 by the beneficiary or its agent for at least thirty (30) days prior to date on which the notice of sale for such property has been recorded which sets the initial time and date of the auction.

B. A violation of subsection A of this Section 8.60.081 shall be subject to prosecution under Section 1.24.010 as a misdemeanor, and/or administrative enforcement under Chapter 1.18 or Chapter 1.19."

SECTION 16. A new Section 8.60.081 is hereby added to EMMC Chapter 8.60, which reads as follows:

"8.60.082 Unlawful Participation by Trustee in Short Pay Agreement/Short Sale/Penalty

- A. It is unlawful for a trustee to release and reconvey a deed of trust following the issuance of a short pay demand statement, as this term is defined in Section 8.60.046A, pursuant to the powers conferred on such trustee by a deed of trust following the recordation of a notice of default, unless the property which is the subject of the short pay demand statement has been registered with the City as set forth under Section 8.60.030 by the beneficiary or its agent.
- B. A violation of subsection A of this Section 8.60.082 shall be subject to prosecution under Section 1.24.010 as a misdemeanor, and/or administration enforcement under Chapter 1.18 or Chapter 1.19."

SECTION 17. EMMC Section 8.60.092 is hereby amended to read as follows:

"8.60.92 **Sunset.**

- A. Subject to the provisions of Section 8.60.092B, this chapter of the El Monte Municipal Code shall be of no further force or effect on the seventh (7th) anniversary following the September 2, 2008 adoption date of City Council Urgency Ordinance No. 2730 which initially added this Chapter to the El Monte Municipal Code, unless prior to that date, the City Council enacts a separate ordinance which either repeals this Section 8.60.092, or amends this Section 8.60.092 to further extend the effectiveness of this Chapter to a new date.
3. Notwithstanding the provisions of subsection A of this section, in any case where enforcement of the provisions of this chapter have been commenced by the City prior to the fourth (4th) anniversary after the date of adoption of the ordinance of the city adding this Chapter, as evidenced by a notice of violation or a citation issued by the City under this Chapter, then in each such case, all of the provisions of this Chapter shall remain in full force and effect with respect to the final disposition by the City of such notice of violation or citation."

SECTION 18. Any provision of the El Monte Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby suspended or modified to the extent necessary to affect the provisions of this Ordinance and shall remain suspended for the duration of this Ordinance or until repealed outright by way of a permanent ordinance.

SECTION 19. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 20. The Mayor shall sign and the City Clerk shall attest to the

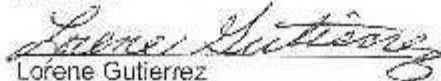
passage of this Ordinance. The City Clerk shall cause the same to be published in the manner and within the time period prescribed by law.

PASSED, APPROVED AND ADOPTED THIS 31st day of July, 2012.



Andre Quintero
Mayor of the City of El Monte

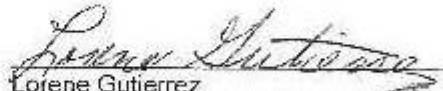
ATTEST:


Lorene Gutierrez
City Clerk of the City of El Monte

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF EL MONTE)

I, Lorene Gutierrez, City Clerk of the City of El Monte, do hereby certify that the above and foregoing Ordinance No. 2800 was passed, approved, and adopted by the City Council of the City of El Monte, signed by the Mayor and attested by the City Clerk at a meeting of said City held on the 31st day of July, 2012 and that said Ordinance was adopted by the following votes to wit:

- AYES: Mayor Quintero, Mayor Pro-Tem Gomez, Councilwoman Macias, Councilman Patel
- NOES: None
- ABSTAIN: Councilwoman Martinez
- ABSENT: None



Lorene Gutierrez
City Clerk of the City of El Monte