

ORDINANCE NO. 2013-02

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EASTVALE,
CALIFORNIA, ADDING CHAPTER 8.08 TO TITLE 8 OF THE EASTVALE
MUNICIPAL CODE ESTABLISHING THE REGISTRATION OF
RESIDENTIAL PROPERTY IN FORECLOSURE PROGRAM**

THE CITY COUNCIL OF THE CITY OF EASTVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and declares as follows:

1. The California housing market has shown marginal improvement since the start of the 2008 national economic downturn and the related housing market breakdown; and

2. This prolonged downturn, aggravated by high rates of unemployment in all areas of Riverside County continues to keep the number of foreclosed properties, or properties with mortgages in default, ("distressed properties") high as unemployed homeowners struggle to make monthly mortgage payments; and

3. Such properties are frequently acquired by or have liens held by banks, financial institutions and large real estate conglomerates that have little or no connection to the communities in which they own property; and

4. Many of these properties subject to or threatened with the foreclosure process are vacated or abandoned prior to the conclusion of the foreclosure process. Such vacant or abandoned properties may sit empty for months or years awaiting the final foreclosure sale. Extended vacancy or abandonment often results in the creation of multiple violations of City building and City codes; thus creating a public nuisance. As the parties holding the mortgage on such properties are often large financial institutions located out of state, enforcement of City code violations poses an immense challenge; and

5. City code violations include, and may in the foreseeable future include among other things multiple violations, unoccupied properties susceptible to vandalism and/or open structures rendering them unsafe and dangerous, are full of litter and trash, unlocked houses, overgrown grass and bushes, and unsecured swimming pools that are not only a threat to children but become breeding grounds for infectious insects such as mosquitoes; and

6. There have been approximately 342 Notice of Defaults filed in the City of Eastvale in the first six months of 2012, and an approximate total of 702 Notice of Defaults recorded in 2011; and

7. There have been approximately 132 Notice of Trustee's Sale recorded in the City of Eastvale in the first six months of 2012, and an approximate total of 260 Notice of Trustee's Sale recorded in calendar year 2011; and

8. There have been an approximate total of 45 Properties that Sold back to the Bank at Trustees Sale in the first six months of 2012, and an approximate total of 192 in 2011; and

9. There have been an approximate total of 63 properties that have sold to a third party at a Trustee's Auction Sale in the first six months of 2012, and an approximate total of 115 that sold to a third party at Trustee's Sale Auction in 2011; and

10. The number of recordings of Notice of Defaults within the City of Eastvale seems to have held steady in the last 18 months with an average of 55-58 per month; and

11. Through the adoption of this Chapter, the City will implement a new program designed to prevent and address the adverse impacts the numbers of distressed properties have the potential to create.

SECTION 2. CHAPTER 8.08 IS ADDED TO THE EASTVALE MUNICIPAL CODE TO READ AS FOLLOWS:

"REGISTRATION OF RESIDENTIAL PROPERTY IN FORECLOSURE

Sections:

8.08.010 - Purpose/scope.

8.08.020 - Definitions.

8.08.030 - Registration.

8.08.040 - Maintenance requirements.

8.08.045 - Security requirements.

8.08.046 - Administrative memorandum with a beneficiary.

8.08.047 - Notice by beneficiary to City of disposition of registered property.

8.08.048 - Re-registration of property subject to this Chapter.

8.08.049 - Additional authority.

8.08.060 - Fees.

8.08.061 – Additional Fees.

8.08.070 - Enforcement.

8.08.071 - Fine for failure to timely register a property with the City.

8.08.072 - Prohibition against passing on costs, fees and fines to a trustor, subsequent purchaser or transferee

8.08.073 - Special provisions where property is encumbered with the security interests of multiple beneficiaries.

8.08.080 - Violation/penalty.

8.08.081 – Unlawful Auction Sale by Trustee/Penalty.

8.08.082 – Unlawful Participation by Trustee in Short Pay Agreement.

8.08.090 - Severability.

8.08.010 - Purpose/scope.

It is the purpose and intent of the Eastvale City Council, through the adoption of this Chapter, to establish a Registration of Residential Property in Foreclosure Program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned or unoccupied residential properties, including residential properties which are subject to foreclosure proceedings and residential properties which are being held by a beneficiary following the completion of a foreclosure proceeding, pending sale by the beneficiary or pending lease by the beneficiary and occupancy of the unoccupied residential structure.

8.08.020 - Definitions.

For the purposes of this Chapter, certain words and phrases used in this Chapter are defined as follows:

"Abandoned" means any property that is vacant and is under a current notice of default and/or notice of trustee's sale, and/or any property which has been the subject of a foreclosure sale trustee sale or judicially authorized sale where the title was retained by the beneficiary under its deed of trust upon the conclusion of the foreclosure and any property transferred by the trustor under a deed in lieu of foreclosure/sale to either the beneficiary, the trustee or to any authorized entity as approved by the beneficiary.

"Accessible property" means a property that is accessible through a compromised/breached gate, fence, wall, etc.

"Accessible structure" means a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

"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 acquire title to such property either, at the time of foreclosure (or recordation of a deed in lieu of foreclosure).

"Agreement" means any agreement or written instrument which provides that title to residential property shall be transferred or conveyed from one owner to another owner after the sale, trade, transfer or exchange.

"Assignment of rents" means an instrument that transfers the beneficial interest under a deed of trust from one lender/entity to another.

"Beneficiary" means a lender under a promissory note to pay money secured by a deed of trust on property. The word "beneficiary" as used in this Chapter means and includes any assignee or successor to such beneficiary, whether such assignee or successor acquires its interest in the beneficiary's promissory note either before a notice of default is recorded on the property securing the obligation payable to the beneficiary or after a notice of default is recorded. In the event that a property may provide security for the loan or obligation of more than one beneficiary, the beneficiary who causes its notice of default to be recorded shall be responsible for registering the property as set forth in this Chapter 8.08.

"Buyer" means any person, co-partnership, association, corporation, or fiduciary who agrees to transfer anything of value in consideration for property described in an agreement of sale, as defined in this subsection.

"City" means the City of Eastvale.

"Dangerous building" means any building/structure that is in violation of any condition referenced in the City Building Code.

"Days" means consecutive calendar days.

"Deed in lieu of foreclosure/sale" means an instrument that transfers ownership of a property from the trustor to the holder of a deed of trust upon consent of the beneficiary of the deed of trust.

"Deed of trust" means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan. This definition applies to any and all subsequent deeds of trust, i.e., second trust deed, third trust deed, etc.

"Default" means the failure to fulfill a contractual obligation, monetary or conditional.

"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.

"Distressed" means a property that is under a current notice of default and/or notice of trustee's sale or has been foreclosed upon by the trustee or has been conveyed to the beneficiary/trustee via a deed in lieu of foreclosure/sale.

"Evidence of vacancy" means any objective set of facts or conditions that on its own or combined with other objective facts and conditions present would lead a reasonable person to believe that the property is vacant. Such conditions include, but are not limited to, overgrown and/or dead vegetation, accumulation of newspapers, circulars, flyers and/or mail, past due utility notices and/or disconnected utilities, accumulation of trash, junk and/or debris, the absence of window coverings such as curtains, blinds and/or shutters, the absence of furnishings and/or personal items consistent with residential habitation.

"Foreclosure" means the process by which a property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the trustor (borrower) defaults.

"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.

"Notice of default" means a recorded notice that states that a default has occurred under a deed of trust and that the beneficiary intends to proceed with a trustee's sale.

"Owner" means any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property.

"Owner of record" means the person having recorded title to the property at any given point in time the record is provided by the Riverside County Recorder's Office.

"Property" means any residential, zoned or occupied real property or portion thereof, situated in the City and includes the buildings or structures located on such property, regardless of condition.

"Residential building" means any improved real property, or portion thereof, situated in the City, designed or permitted to be used for dwelling purposes, and shall include the buildings and structures located on such improved real property. This includes any real property being offered for sale, trade, transfer, or exchange as "residential" whether or not it is legally permitted and/or zoned for such use.

"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/padlocking of gates, the repair or boarding of door, window and/or other openings.

"Trustee" means the person, firm or corporation holding a deed of trust on a property.

"Trustor" means a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.

"Vacant" means a building/structure that is not legally occupied.

8.08.030 - Registration.

- A. Prior to recording a notice of default on a property located in the City of Eastvale which is subject to a deed of trust, the beneficiary, or its agent, shall conduct a default inspection of the property. 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 when the trustor and/or the occupant's permission 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 on 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 8.08.040; 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.

- B. The beneficiary, or its agent shall register the property with the Code Enforcement Officer or the City Manager or her/his designee, on forms provided by the City 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 April 12, 2013, and where since that date, such notice of default has not either been rescinded superseded, or the beneficiary has not sold the property to a third party pursuant to a trustee's sale, then in such event, the beneficiary or its agent shall register the property with the Code Enforcement Officer or the City Manager or his/her designee, on forms provided by the City by no later than April 30, 2013. The provisions of this Section 8.08.030.C., are intended to apply to all property where: (i) a foreclosure proceeding may have been initiated prior to the effective date of this Chapter; (ii) the pre-April 12, 2013 notice of default has not been either rescinded or superseded; and (iii) the beneficiary has not completed the exercise of its remedy identified under such pre-April 12, 2013 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.

8.08.040 - 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 current HUD securing standards, or such other standard as may hereafter be ordered in writing by the Code Enforcement Officer, 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 8.08.040.A, for so long a period of time as the beneficiary may own such property.

- C. Nothing in this Section 8.08.040 shall be deemed to prevent the City of Eastvale, 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 8.08.040.A, or to appoint a receiver or take other action for property acquired by the beneficiary under Section 8.08.040.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 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 are expressly declared to be cumulative with all other remedies available to the City under applicable law.

8.08.045 - Security requirements.

Properties which are abandoned or vacant shall be maintained by the beneficiary in a secure manner so as not to be accessible to unauthorized persons. In general, the security of abandoned or vacant property by the beneficiary shall comply with current HUD standards, or such other standard as may hereafter be ordered in writing addressed to the beneficiary by the Code Enforcement Officer, Chief Building Official or City Manager.

If the property is owned by a corporation and/or out-of-area beneficiary/trustee/owner, a local property management company shall be contracted to perform weekly inspections to verify that the requirements of this section, and any other applicable law, are being satisfied.

The property shall be posted with name and address of the beneficiary and shall include a twenty-four (24) hour contact phone number of the local property management

company. The posting shall be no less than eighteen (18) inches by twenty-four (24) inches and shall be of a font that is legible from a distance of forty-five (45) feet and shall contain along with the name and twenty-four (24) hour contact number the words "THIS PROPERTY MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL. [X] OR CALL THE CITY OF EASTVALE AT (951) 361-0900." The posting shall be placed on the interior of a window facing the street to the front of the property so it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so it is visible from the street or, if no such area exists, on a stake of sufficient size to support the posting in a location that is visible from the street to the front of the property but not readily accessible to vandals. Exterior posting must be constructed of and printed with weather resistant materials.

The local property management company shall make available to the City upon request written confirmation that the property has been inspected not less frequently than once per week to confirm that the property is in compliance with the requirements of this Chapter.

8.08.046 - Administrative memorandum with a beneficiary.

Upon prior written application in a form approved by the City Manager, or designee, a beneficiary or a trustee or agent on behalf of one or more beneficiaries, may enter into a memorandum of agreement with the City for administration of the provisions of this Chapter 8.08 to one or more properties which are either owned by such beneficiary (or represented group of such beneficiaries) or for which the beneficiary has caused to be recorded a notice of default. Such a memorandum shall have a duration of not more than twelve (12) months, unless renewed or extended by the beneficiary and the City and shall contain other provisions reasonably acceptable to the City Manager, or designee. Each such memorandum of agreement shall reference this Section 8.08.046, and shall be subject to the approval by the City Manager, or designee.

8.08.047 - Notice by beneficiary to City of disposition of registered property.

- A. Within ten (10) days following the release of a notice of default and the reinstatement of the loan of the trustor, the beneficiary or its agent shall give the City written notice of such release and reinstatement.
- B. Within ten (10) days following the sale, transfer or other conveyance to a third person of a property registered with the City under this Chapter 8.08, the beneficiary or its agent, shall give the City written notice of such sale, transfer or other conveyance together with current contact information for such bona fide purchaser/successor-in-interest to the beneficiary in such property.

8.08.048 - Re-registration of property subject to this Chapter.

The beneficiary or its agent shall annually renew a registration of each property which the beneficiary has previously registered with the City under this Chapter, and in which such beneficiary retains either an equitable or legal interest as of the first anniversary of the registration of such property with the City. The beneficiary or its agent shall re-register the property on forms provided by the City.

8.08.049 - Additional Authority.

In addition to the enforcement remedies established in the City Municipal Code, the Code Enforcement Officer, Chief Building Official or his or her designee shall have the authority to require the beneficiary/trustee/owner and/or owner of record of any property subject to this Chapter to implement additional maintenance and/or security measures including but not limited to securing any/all door, window or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard or other measures as may be reasonably required to abate and correct the decline of the property.

8.08.060 - Fees.

Fees and charges for the administration of the regulatory program established by this Chapter 8.08 shall be set by resolution of the City Council including without limitation the fee for registering with the City a property for which a notice of default has been recorded, the separate fee for registering with the City a property which either the beneficiary or the City has found to be vacant or abandoned, and all property inspection fees conducted by the City.

8.08.061 - 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 8.08, 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.

8.08.070 - Enforcement.

A violation of this Chapter may be enforced by any means authorized by the Eastvale Municipal Code.

8.08.071 - Fine for Failure to Timely Register a property with the City.

- A. Notwithstanding any other provision of this Chapter or Chapter 1.01 or Chapter 1.16 to the contrary, the City may impose a fine on a beneficiary for its failure to timely register a property with the City under this Chapter in the following amounts:
1. Two hundred fifty dollars (\$250.00) for the first violation in the twelve (12) months from the date of such violation;
 2. Five hundred dollars (\$500.00) for the second violation in the twelve (12) months from the date of such violation;
 3. One thousand dollars (\$1,000.00) for the third and each subsequent violation in the twelve (12) months from the date of such violation.
- B. The special fine amount provisions of this Section 8.08.071 shall be applicable to citations issued on or after April 12, 2013 by the City to a beneficiary for a violation of this Chapter 8.08.
- C. Notwithstanding any other provision of this Chapter or Chapter 1.01 or Chapter 1.16 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 8.08 or to give timely notice to the City of the disposition of the registered property under Section 8.08.048.A and/or B, in the following amounts:
1. Two Hundred Fifty Dollars (\$250.00) for the first violation in the twelve (12) months from the date of such violation;
 2. Five Hundred Dollars (\$500.00) for the second violation in the twelve (12) months from the date of such violation;
 3. One Thousand Dollars (\$1,000) for the third and each subsequent violation in the twelve (12) months from the date of such violation.
- D. The special fine amount provisions of Section 8.08.071.C shall be applicable to citations issued on or after April 12, 2013 by the City to an agent of a beneficiary for a violation of this Chapter.

8.08.072 – Prohibition against passing on costs, fees and fines to a trustor, subsequent purchaser or transferee.

It shall be unlawful for any trustee, beneficiary or agent of a beneficiary to pass on any costs, fees or fines imposed under any provisions of this Chapter to any trustor, subsequent bona fide purchaser or transferee of a property, either as a condition of sale or transfer, or included as a cost or fee in escrow.

8.08.073 - Special provisions where property is encumbered with the security interests of multiple beneficiaries.

- A. In the event that a property is encumbered by the security interests of more than one beneficiary at the time when a notice of default is recorded, the beneficiary who causes a notice of default for its security interest to be recorded shall be responsible for registering the property with the City as provided in Section 8.08.030 and 8.08.049.
- B. Upon the recordation of a notice of default on a property by any beneficiary, regardless of the security lien interest priority of such beneficiary in the property in relation to the priority of the security interests of the other beneficiaries in the same property, the City, in its discretion may elect to enforce the provisions of this Chapter against one or more beneficiaries who have not separately recorded a notice of default against the property.

8.08.080 - Violation/penalty.

Violations of this Chapter shall be treated as a strict liability offense regardless of intent. Any person, firm and/or corporation that violates any portion of this Chapter shall be subject to prosecution under this Chapter 8.08, Chapter 1.01 and/or administrative enforcement under the Eastvale Municipal Code.

8.08.081 - 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 8.08.030 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 8.08.081 shall be subject to prosecution under this Chapter, Section 1.01 as a misdemeanor, and/or administration enforcement under the Eastvale Municipal Code.

8.08.082 - 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 8.08.046A, 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 8.08.030 by the beneficiary or its agent.
- B. A violation of subsection A of this Section 8.08.082 shall be subject to prosecution under this Chapter, Section 1.01 as a misdemeanor, and/or administration enforcement under Eastvale Municipal Code.

8.08.090 - Severability.

If any provision, section, paragraph, sentence or word of this Chapter is determined or declared invalid by any final court action in a court of competent jurisdiction or if the application of any provision, section, paragraph, sentence or word of this Chapter is inapplicable to a specific situation by reason of any preemptive state or federal legislation or regulation, the remaining provisions, sections, paragraphs, sentences or words of this Chapter shall remain in full force and effect.

SECTION 3. CEQA Exemption.

The adoption of this Ordinance and the implementation of the regulatory programs of this Ordinance do not require further review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301, in view of the fact that the regulatory programs are hereby enacted, apply to existing structures and buildings and are intended to provide for continuous and appropriate maintenance and protection of such structures and buildings for so long as the structures and buildings may remain unoccupied or vacant.

SECTION 4. The provisions of this Ordinance are intended to and do supersede any provisions of the ordinance of the County of Riverside which cover the same matters as in this Ordinance and which are in effect pursuant to Ordinance No. 2010-1 of the City and as extended by the City Council on January 26, 2011.

SECTION 5. EFFECTIVE DATE: This Ordinance shall become effective 30 days from the date of its adoption.

PASSED, APPROVED AND ADOPTED this ___ day of _____ 2013, by the following vote as follows:

Ayes:

Noes:

Absent:

Abstain:

Ike Bootsma, Mayor

Attest:

Ariel Berry, Assistant City Clerk

Approved as to form:

John E. Cavanaugh, City Attorney