

1 (Published in the Topeka Metro News _____)
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3
4 ORDINANCE NO. _____
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6 AN ORDINANCE introduced by City Manager Brent Trout creating a new Chapter
7 8.65 of the Topeka Municipal Code requiring registration of vacant
8 properties and properties that are the subject of mortgage
9 foreclosure proceedings.
10

11 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

12 Section 1. That the Code of the City of Topeka, Kansas, is hereby amended
13 by adding a section to be numbered 8.65.010, which said section reads as follows:

14 **Purpose and intent.**

15 It is the purpose and intent of the governing body to establish a process to
16 address the deterioration, crime, and decline in value of properties located in
17 neighborhoods caused by properties with ~~defaulted~~ mortgages ~~in foreclosure~~ and to
18 identify, regulate, limit and reduce the number of these properties. The governing body
19 finds that ~~owner~~-occupied structures are generally better maintained when compared to
20 vacant structures. ~~Chronically v~~vacant ~~and unutilized~~ structures or structures owned by
21 individuals who are economically strained and unable to meet their mortgage
22 obligations are often not properly or diligently maintained, which contribute to blight,
23 lower property values, and have a negative impact on ~~social perception of the~~
24 residential areas where they are located. It is the governing body's further intent to
25 establish a registration program as a mechanism to help protect neighborhoods from
26 becoming blighted through the lack of adequate maintenance of properties that are in
27 ~~default~~foreclosure or are ~~chronically vacant and unutilized.~~

28 Section 2. That the Code of the City of Topeka, Kansas, is hereby amended

29 by adding a section to be numbered 8.65.020, which said section reads as follows:

30 **Definitions.**

31 The following words, terms, and phrases, when used in this chapter, shall have
32 the meanings ascribed to them in this section, except where the context clearly
33 indicates a different meaning.

34 “Default” shall mean that the mortgagor has not complied with the terms of the
35 mortgage on the property, or the promissory note, or other evidence of the debt,
36 referred to in the mortgage.

37 “Director” shall mean the director of neighborhood relations or the director’s
38 designee.

39 “Enforcement officer” shall mean any law enforcement officer, building official,
40 zoning inspector, code enforcement officer, fire inspector, building inspector, or other
41 person authorized by the City to enforce any applicable ordinance.

42 “Foreclosure or foreclosure action” shall mean the legal process by which a
43 mortgagee, or other lien holder, terminates or attempts to terminate a property owner’s
44 equitable right of redemption to obtain legal and equitable title to the real property
45 pledged as security for a debt or the real property subject to the lien. The legal process
46 is not concluded until the property obtained by the mortgagee, lien holder, or designee,
47 by certificate of title, or any other means, is sold to a bona fide purchaser in an arm’s
48 length transaction to satisfy the debt or lien.

49 “Governmental entities” shall mean any federal agency, city, county, school
50 district or other taxing subdivision.

51 “Mortgagee” shall mean the creditor, including but not limited to, trustees;

52 mortgage servicing companies; lenders in a mortgage agreement; any agent, servant,
53 or employee of the creditor; any successor in interest; or any assignee of the creditor's
54 rights, interests or obligations under the mortgage agreement; or any other person or
55 entity with the legal right to foreclose on the real property, excluding governmental
56 entities.

57 "Owner" shall mean every person, entity, or mortgagee, who alone or severally
58 with others, has legal or equitable title to any real property; has legal care, charge, or
59 control of any such property; is in possession or control of any such property; and/or is
60 vested with possession or control of any such property, excluding governmental entities.

61 A property manager shall not be considered the owner. In the absence of substantial
62 evidence to the contrary, records of the Shawnee County Clerk's Office, Registrar of
63 Deeds, certified copies of court records or judgments of any court, copies of lease
64 agreements, contracts for deed, mortgages, tax records, rental agreements and other
65 financial documents related to the property shall be conclusive evidence of the
66 ownership of the property.

67 "Property manager" shall mean any party designated by the owner as
68 responsible for inspecting, maintaining and securing the property as required in this
69 chapter.

70 "Real property" shall mean any residential or commercial land and/or buildings,
71 leasehold improvements and anything affixed to the land, or portion thereof identified by
72 a property parcel identification number, located in the City limits.

73 "Registrable property" shall mean:

74 (a) Any real property located in the City, whether vacant or occupied,

75 that meets any of the following conditions:

76 (1) Encumbered by a mortgage in default;

77 (2) ~~Is subject to~~The property is the subject of a foreclosure
78 action filed by the mortgagee or trustee;

79 (32) ~~Has been the subject of a foreclosure action by a mortgagee~~
80 ~~or trustee and a~~ judgment of foreclosure has been entered;

81 (43) ~~Has been the subject of a~~ foreclosure sale has occurred
82 ~~and where the title was~~ transferred to the beneficiary of a mortgagee
83 ~~involved in the foreclosure;~~ or

84 (54) ~~Any properties~~The property has been transferred to a
85 mortgagee under a deed in lieu of foreclosure/sale.

86 The designation of a “~~default/foreclosure~~” property as “registrable” shall remain in
87 place until such time as the property is sold to a bona fide purchaser in an arm’s length
88 transaction or the foreclosure action has been dismissed and any default on the
89 mortgage has been cured.

90 (b) Any property that is vacant for more than ~~thirty (30)~~ one hundred
91 eighty (180) days.

92 “Registry” shall mean a web-based electronic database of searchable real
93 property records, used by the City to allow mortgagees and owners the opportunity to
94 register properties and pay applicable fees as required in this chapter.

95 “Renovation activities” shall mean actions that demonstrate that property is being
96 repaired, remodeled, or rehabilitated. Such activities shall include, but not be limited to,
97 painting, roofing, wallpapering, tiling, carpeting, installing cabinets/counter tops,

98 installing heating/cooling systems, and repairs to any part of the structure including, but
99 not limited to, the foundation, windows, doors, siding, and porches.

100 “Semi-annual registration” shall mean six (6) months from the date of the first
101 action that requires registration, as determined by the director, and every subsequent
102 six (6) months. The date of the initial registration may be different than the date of the
103 first action that required registration.

104 “Utility” shall mean any utility and/or service that is essential for a building to be
105 habitable and/or perform a service necessary to comply with all City ordinances. This
106 includes, but is not limited to, electrical, gas, water, and sewer.

107 “Vacant” shall mean any building or structure intended for residential or
108 commercial use which ~~is not does not appear to be currently~~ occupied or in use by: ~~(1) a~~
109 ~~person who resides on the property as~~ the owner or tenant on a permanent, non-
110 ~~transient basis; or (2) by a person or entity that is operating a business. There will be a~~
111 ~~presumption that a building or structure is vacant if there is no evidence of utility usage~~
112 ~~within the past 60 days or there are boards over windows, doors, or other openings.~~
113 Evidence that a property is “vacant” shall include any condition that on its own, or
114 combined with other conditions present, would lead a reasonable person to believe that
115 the property has not been occupied or in use for at least one hundred eighty (180) days.
116 Such conditions may include, but are not limited to: overgrown and/or dead vegetation;
117 past due utility notices and/or disconnected utilities; accumulation of trash junk or
118 debris; abandoned vehicles, auto parts and/or materials; the absence of furnishings
119 and/or personal items consistent with habitation or occupancy; the presence of an
120 unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers

121 and/or mail; statements by neighbors, passers-by, delivery agents or government
122 agents; and/or the presence of boards over doors, windows or other openings.

123 Section 3. That the Code of the City of Topeka, Kansas, is hereby amended
124 by adding a section to be numbered 8.65.030, which said section reads as follows:

125 **Establishment of a registry.**

126 The director shall establish a registry cataloging each registrable property ~~within~~
127 ~~the City~~ containing the information required by this chapter.

128 Section 4. That the Code of the City of Topeka, Kansas, is hereby amended
129 by adding a section to be numbered 8.65.040, which said section reads as follows:

130 **~~Inspection and r~~Registration of ~~defaulted mortgage~~ Property Subject to**
131 **Mortgage Foreclosure.**

132 ~~(a) — Any mortgagee who holds a mortgage on real property located within the~~
133 ~~City shall perform an inspection of the property in default or prior to the issuance of a~~
134 ~~notice of default.~~

135 ~~(b) — Property inspected pursuant to subsection (a) that remains in default shall~~
136 ~~be inspected every thirty (30) days by the mortgagee or mortgagee's designee. If an~~
137 ~~inspection shows a change in the property's occupancy status the mortgagee shall,~~
138 ~~within ten (10) days of that inspection, update the occupancy status of the property~~
139 ~~registration.~~

140 ~~(ca) Within ten (10) days of the date that any mortgagee declares its mortgage~~
141 ~~to be in default the property becomes registrable, the mortgagee shall:~~

142 (1) Register the real property and indicate whether the property is
143 vacant; and

144 (2) If the property is vacant, the mortgagee shall designate in writing a
145 property manager to inspect, maintain and secure the real property~~subject to the~~
146 ~~mortgage in default or defaulted~~. A separate registration will be required for each
147 ~~defaulted-registrable~~ property.

148 ~~(db)~~ Initial registration pursuant to this section shall contain at a minimum the
149 name of the mortgagee, the mailing address of the mortgagee, e-mail address,
150 telephone number and name of the property manager and the manager's mailing
151 address, e-mail address, and telephone number.

152 ~~(ec)~~ At the time of initial registration each registrant shall pay a non-refundable
153 semi-annual registration fee to be determined by the director, with the approval of the
154 city manager, in an amount not to exceed five hundred dollars (\$500) for each ~~defaulted~~
155 ~~registrable~~ property. Subsequent semi-annual registrations of ~~defaulted-registrable~~
156 properties and fees in that amount shall be due within ten (10) days of the expiration of
157 the previous registration.

158 ~~(fd)~~ If the ~~defaulted~~ mortgage and/or servicing on a property is sold or
159 transferred, the new mortgagee is subject to all the terms of this chapter. Within ten (10)
160 days of the transfer, the new mortgagee shall register the property or update the
161 existing registration. The previous mortgagee(s) will not be released from the
162 responsibility of paying all previous unpaid fees, fines, and penalties accrued during that
163 mortgagee's involvement with the ~~defaulted~~ property.

164 ~~(ge)~~ If the mortgagee sells or transfers the ~~defaulted-registrable~~ property in a
165 non-arm's length transaction to a related entity or person, the transferee is subject to all
166 the terms of this chapter. Within ten (10) days of the transfer, the transferee shall

167 register the property or update the existing registration. Any and all previous unpaid
168 fees, fines, and penalties, regardless of who the mortgagee was at the time registration
169 was required, including but not limited to unregistered periods during the foreclosure
170 process, are the responsibility of the transferee and are due and payable with the
171 updated registration. The previous mortgagee will not be released from the
172 responsibility of paying all previous unpaid fees, fines, and penalties accrued during that
173 mortgagee's involvement with the ~~defaulted~~ property.

174 ~~(h) This section shall also apply to properties that have been the subject of a~~
175 ~~foreclosure sale where title is transferred to the mortgagee as well as any properties~~
176 ~~transferred to the mortgagee under a deed in lieu of foreclosure or by any other legal~~
177 ~~means.~~

178 (if) Properties subject to this section shall remain subject to the semi-annual
179 registration requirement, ~~and the inspection,~~ security, and maintenance standards of
180 this section as long as the property remains ~~in default~~registrable.

181 (ig) Failure of the mortgagee and/or owner to properly register, ~~pay the~~
182 registration fees, or to modify the registration to reflect a change of circumstances as
183 required by this ordinance is a violation of this chapter and shall be subject to a civil
184 penalty of ~~not to exceed~~ \$250 for each violation. Each property shall constitute a
185 separate offense. A citation may be issued every thirty (30) days by the director until a
186 registration statement, ~~payment of the registration fees,~~ amendment, or other statement
187 required by this chapter is filed.

188 (kh) If the civil penalties are not paid within thirty days from the payment date
189 or, if appealed pursuant to Chapter 2.145 TMC, thirty (30) days from the final decision of

190 the hearing officer, the obligation shall constitute a lien upon the real property and shall
191 be assessed as a special assessment against the property that is the subject of the
192 requirement. The city clerk shall certify the unpaid portion of the penalty to the county
193 clerk who shall collect the assessment at the same time as ad valorem property taxes.

194 Section 5. That the Code of the City of Topeka, Kansas, is hereby amended
195 by adding a section to be numbered 8.65.050, which said section reads as follows:

196 **Vacant property; Inspection and rRegistration of Vacant Property**

197 (a) (1) Any owner of vacant property located within the City shall register the
198 real property within ten (10) days after the property becomes vacant, or within ten (10)
199 days after assuming ownership of the property, whichever is later.

200 (2) An owner of vacant property shall not be required to register the real
201 property if the owner is performing renovation activities.

202 (b) Initial registration pursuant to this section shall contain at a minimum the
203 name of the owner, the mailing address of the owner, e-mail address, and telephone
204 number of the owner, and if applicable, the name and telephone number of the property
205 manager and the manager's address, e-mail address, and telephone number.

206 (c) If the owner resides outside a sixty (60) mile radius of the City limits, the
207 owner shall appoint an agent who resides within the City limits. The owner shall provide
208 the agent's full name, property management company name (if applicable), e-mail
209 address (if applicable), telephone number and mailing address.

210 (ed) At the time of initial registration each registrant shall pay a non-refundable
211 semi-annual registration fee to be determined by the director, with the approval of the
212 city manager, in an amount not to exceed five hundred dollars (\$500) for each vacant

213 property. Subsequent semi-annual registrations of vacant properties and fees in that
214 amount are due within ten (10) days of the expiration of the previous registration.

215 (de) If the property is sold or transferred, the new owner is subject to all the
216 terms of this chapter. Within ten (10) days of the transfer, the new owner shall register
217 the vacant property or update the existing registration. The previous owner(s) will not be
218 released from the responsibility of paying all previous unpaid fees, fines, and penalties
219 accrued during that owner's involvement with the vacant property.

220 (ef) Properties subject to this section shall remain subject to the semi-annual
221 registration requirement, ~~and the inspection,~~ security, and maintenance standards of
222 this section as long as the property is vacant.

223 (fg) Properties registered as a result of this section are not required to be
224 registered again under TMC 8.65.040.

225 (gh) Failure of the owner to properly register, ~~pay registration fees,~~ or to modify
226 the registration to reflect a change of circumstances as required by this ordinance is a
227 violation of this chapter and shall be subject to a civil penalty of ~~not to exceed~~ \$250 for
228 each violation. Each property shall constitute a separate offense. A citation may be
229 issued every thirty (30) days by the director until a registration statement, ~~payment of~~
230 registration fees, amendment, or other statement required by this chapter is filed.

231 (hi) If the civil penalties are not paid within thirty days from the payment date
232 or, if appealed pursuant to Chapter 2.145 TMC, thirty (30) days from the final decision of
233 the hearing officer, the obligation shall constitute a lien upon the real property and shall
234 be assessed as a special assessment against the property that is the subject of the
235 requirement. The city clerk shall certify the unpaid portion of the penalty to the county

236 clerk who shall collect the assessment at the same time as ad valorem property taxes.

237 Section 6. That the Code of the City of Topeka, Kansas, is hereby amended
238 by adding a section to be numbered 8.65.060, which said section reads as follows:

239 **Maintenance requirements.**

240 Each mortgagee of a ~~registrable~~ property ~~in default~~ and each owner of a vacant
241 property shall maintain the properties subject to this chapter in accordance with the
242 property maintenance code adopted in the Topeka Municipal Code section 8.60.010
243 and all other codes adopted by the City.

244 Section 7. That the Code of the City of Topeka, Kansas, is hereby amended
245 by adding a section to be numbered 8.65.070, which said section reads as follows:

246 **Security requirements.**

247 (a) Properties subject to this chapter shall be maintained by the owner or
248 mortgagee in a secure manner so as not to be accessible to unauthorized persons.

249 (b) A “secure manner” shall include, but not be limited to, the closure and
250 locking of windows, doors, gates and other openings of such size that may allow a child
251 to access the interior of the property or structure. Broken windows, doors, gates, and
252 other openings of such size that may allow a child to access the interior of the property
253 or structure must be repaired. Broken windows shall be secured by re-glazing of the
254 window.

255 (c) If a property is registrable, ~~and the property has become vacant or~~
256 ~~blighted~~, a property manager shall be designated by the mortgagee and/or owner to
257 perform the work necessary to bring the property into compliance with section 8.65.060
258 and the property manager must perform regular inspections to verify compliance with

259 the requirements of this chapter and any other applicable laws.

260 (d) When a property subject to this chapter becomes vacant, it shall be
261 posted with the name and twenty-four (24) hour contact telephone number of the
262 property manager. The property manager shall be available to be contacted by City staff
263 Monday through Friday between 9:00 a.m. and 5:00 p.m., legal holidays excepted. The
264 sign - which shall be at least 3" by 5" - shall be placed in a window facing the street and
265 shall be visible from the street on the front door. The property manager shall ensure that
266 the sign is made or covered with weather-resistant materials. The posting shall be no
267 less than eighteen (18) inches by twenty-four (24) inches and shall be of a font that is
268 legible from a distance of forty five (45) feet. The posting sign shall contain the following
269 language with supporting information:

270 THIS PROPERTY IS MANAGED BY _____.
271 ~~AND IS INSPECTED ON A REGULAR BASIS.~~
272 THE PROPERTY MANAGER CAN BE CONTACTED BY TELEPHONE AT _____
273 OR BY EMAIL _____
274 AT _____.

275 ~~(e) — The posting shall be placed on the interior of a window facing the street to~~
276 ~~the front of the property so that it is visible from the street, or secured to the exterior of~~
277 ~~the building/structure facing the street to the front of the property so that it is visible from~~
278 ~~the street or if no such area exists, on a stake of sufficient size to support the posting in~~
279 ~~a location that is at all times visible from the street to the front of the property but not~~
280 ~~readily accessible to vandals. Exterior posting shall be constructed of and printed with~~
281 ~~weather-resistant materials.~~

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(fe) Failure of the mortgagee and/or owner to properly inspect and secure a property subject to this chapter, and post and maintain the signage noted in this section, is unlawful and punishable in accordance with TMC 1.10.070.

Section 8. This ordinance shall take effect on January 1, 2020, after its approval and publication in the official City newspaper.

Section 9. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 10. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council on _____.

CITY OF TOPEKA, KANSAS

Michelle De La Isla, Mayor

ATTEST:

Brenda Younger, City Clerk