

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 mortgages in foreclosure and to identify,
18 regulate, limit and reduce the number of these properties. The governing body finds that
19 occupied structures are generally better maintained when compared to vacant
20 structures. Chronically 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 the residential areas where they
24 are located. It is the governing body's further intent to establish a registration program
25 as a mechanism to help protect neighborhoods from becoming blighted through the lack
26 of adequate maintenance of properties that are in foreclosure or are chronically vacant
27 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)

77 The property is the subject of a foreclosure action filed by
78 the mortgagee;

79 (2) A judgment of foreclosure has been entered;

80 (3) A foreclosure sale has occurred and title transferred to the
81 beneficiary of a mortgagee; or

82 (4) The property has been transferred to a mortgagee under a
83 deed in lieu of foreclosure/sale.

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

88 (b) Any property that is vacant for more than one hundred eighty (180)
89 days.

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

93 “Renovation activities” shall mean actions that demonstrate that property is being
94 repaired, remodeled, or rehabilitated. Such activities shall include, but not be limited to,
95 painting, roofing, wallpapering, tiling, carpeting, installing cabinets/counter tops,
96 installing heating/cooling systems, and repairs to any part of the structure including, but
97 not limited to, the foundation, windows, doors, siding, and porches.

98 “Semi-annual registration” shall mean six (6) months from the date of the first
99 action that requires registration, as determined by the director, and every subsequent
100 six (6) months. The date of the initial registration may be different than the date of the
101 first action that required registration. ”Utility” shall mean any utility and/or service that is
102 essential for a building to be habitable and/or perform a service necessary to comply
103 with all City ordinances. This includes, but is not limited to, electrical, gas, water, and
104 sewer.

105 “Vacant” shall mean any building or structure intended for residential or
106 commercial use which does not appear to be occupied or in use by the owner or tenant
107 on a permanent, non-transient basis. Evidence that a property is “vacant” shall include
108 any condition that on its own, or combined with other conditions present, would lead a
109 reasonable person to believe that the property has not been occupied or in use for at
110 least one hundred eighty (180) days. Such conditions may include, but are not limited
111 to: overgrown and/or dead vegetation; past due utility notices and/or disconnected
112 utilities; accumulation of trash junk or debris; abandoned vehicles, auto parts and/or
113 materials; the absence of furnishings and/or personal items consistent with habitation or
114 occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation
115 of newspapers, circulars, flyers and/or mail; statements by neighbors, passers-by,
116 delivery agents or government agents; and/or the presence of boards over doors,
117 windows or other openings.

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

120 **Establishment of a registry.**

121 The director shall establish a registry cataloging each registrable property
122 containing the information required by this chapter.

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

125 **Registration of Property Subject to Mortgage Foreclosure.**

126 (a) Within ten (10) days of the date that the property becomes registrable, the
127 mortgagee shall:

128 (1) Register the real property and indicate whether the property is
129 vacant; and

130 (2) If the property is vacant, the mortgagee shall designate in writing a
131 property manager to inspect, maintain and secure the real property. A separate
132 registration will be required for each registrable property.

133 (b) Initial registration pursuant to this section shall contain at a minimum the
134 name of the mortgagee, the mailing address of the mortgagee, e-mail address,
135 telephone number and name of the property manager and the manager's mailing
136 address, e-mail address, and telephone number.

137 (c) At the time of initial registration each registrant shall pay a non-refundable
138 semi-annual registration fee to be determined by the director, with the approval of the
139 city manager, in an amount not to exceed five hundred dollars (\$500) for each
140 registrable property. Subsequent semi-annual registrations of registrable properties and
141 fees in that amount shall be due within ten (10) days of the expiration of the previous
142 registration.

143 (d) If the mortgage and/or servicing on a property is sold or transferred, the

144 new mortgagee is subject to all the terms of this chapter. Within ten (10) days of the
145 transfer, the new mortgagee shall register the property or update the existing
146 registration. The previous mortgagee(s) will not be released from the responsibility of
147 paying all previous unpaid fees, fines, and penalties accrued during that mortgagee's
148 involvement with the property.

149 (e) If the mortgagee sells or transfers the registrable property in a non-arm's
150 length transaction to a related entity or person, the transferee is subject to all the terms
151 of this chapter. Within ten (10) days of the transfer, the transferee shall register the
152 property or update the existing registration. Any and all previous unpaid fees, fines, and
153 penalties, regardless of who the mortgagee was at the time registration was required,
154 including but not limited to unregistered periods during the foreclosure process, are the
155 responsibility of the transferee and are due and payable with the updated registration.
156 The previous mortgagee will not be released from the responsibility of paying all
157 previous unpaid fees, fines, and penalties accrued during that mortgagee's involvement
158 with the property.

159 (f) Properties subject to this section shall remain subject to the semi-annual
160 registration requirement, the security, and maintenance standards of this section as
161 long as the property remains registrable.

162 (g) Failure of the mortgagee and/or owner to properly register, pay the
163 registration fees, or to modify the registration to reflect a change of circumstances as
164 required by this ordinance is a violation of this chapter and shall be subject to a civil
165 penalty of not to exceed \$250 for each violation. Each property shall constitute a
166 separate offense. A citation may be issued every thirty (30) days by the director until a

167 registration statement, payment of the registration fees, amendment, or other statement
168 required by this chapter is filed.

169 (h) If the civil penalties are not paid within thirty days from the payment date
170 or, if appealed pursuant to Chapter 2.145 TMC, thirty (30) days from the final decision of
171 the hearing officer, the obligation shall constitute a lien upon the real property and shall
172 be assessed as a special assessment against the property that is the subject of the
173 requirement. The city clerk shall certify the unpaid portion of the penalty to the county
174 clerk who shall collect the assessment at the same time as ad valorem property taxes.

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

177 **Registration of Vacant Property**

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

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

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

187 (c) If the owner resides outside a sixty (60) mile radius of the City limits, the
188 owner shall appoint an agent who resides within the City limits. The owner shall provide
189 the agent's full name, property management company name (if applicable), e-mail

190 address (if applicable), telephone number and mailing address.

191 (d) At the time of initial registration each registrant shall pay a non-refundable
192 semi-annual registration fee to be determined by the director, with the approval of the
193 city manager, in an amount not to exceed five hundred dollars (\$500) for each vacant
194 property. Subsequent semi-annual registrations of vacant properties and fees in that
195 amount are due within ten (10) days of the expiration of the previous registration. (e)

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

201 (f) Properties subject to this section shall remain subject to the semi-annual
202 registration requirement, the security, and maintenance standards of this section as
203 long as the property is vacant.

204 (g) Properties registered as a result of this section are not required to be
205 registered again under TMC 8.65.040.

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

212 (i) If the civil penalties are not paid within thirty days from the payment date

213 or, if appealed pursuant to Chapter 2.145 TMC, thirty (30) days from the final decision of
214 the hearing officer, the obligation shall constitute a lien upon the real property and shall
215 be assessed as a special assessment against the property that is the subject of the
216 requirement. The city clerk shall certify the unpaid portion of the penalty to the county
217 clerk who shall collect the assessment at the same time as ad valorem property taxes.

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

220 **Maintenance requirements.**

221 Each mortgagee of a registrable property and each owner of a vacant property
222 shall maintain the properties subject to this chapter in accordance with the property
223 maintenance code adopted in the Topeka Municipal Code section 8.60.010 and all other
224 codes adopted by the City.

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

227 **Security requirements.**

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

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

236 (c) If a property is registrable, a property manager shall be designated by the
237 mortgagee and/or owner to perform the work necessary to bring the property into
238 compliance with section 8.65.060 and the property manager must perform regular
239 inspections to verify compliance with the requirements of this chapter and any other
240 applicable laws.

241 (d) When a property subject to this chapter becomes vacant, it shall be
242 posted with the name and twenty-four (24) hour contact telephone number of the
243 property manager. The property manager shall be available to be contacted by City staff
244 Monday through Friday between 9:00 a.m. and 5:00 p.m., legal holidays excepted. The
245 sign - which shall be at least 3” by 5” - shall be placed on the front door. The property
246 manager shall ensure that the sign is made or covered with weather-resistant materials.
247 The sign shall contain the following language with supporting information:

248 THIS PROPERTY IS MANAGED BY _____.

249 .

250 THE PROPERTY MANAGER CAN BE CONTACTED BY TELEPHONE AT

251 _____ OR BY EMAIL

252 AT _____.

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

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

258 Section 9. This ordinance shall supersede all ordinances, resolutions or rules,

259 or portions thereof, which are in conflict with the provisions of this ordinance.

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

263 PASSED AND APPROVED by the City Council on _____.

264 CITY OF TOPEKA, KANSAS

265 _____
266
267
268
269 Michelle De La Isla, Mayor

270 ATTEST:
271
272
273 _____
274 Brenda Younger, City Clerk