

**ORDINANCE NO. 11-005**

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE ADDING CHAPTER 11.101 TO THE PACIFIC GROVE MUNICIPAL CODE TO REQUIRE REGISTRATION OF ABANDONED PROPERTIES WITHIN THE CITY**

**WHEREAS**, due to the current economic environment, the number of foreclosures has risen within the City of Pacific Grove; and

**WHEREAS**, the existence of abandoned properties compromises the public peace, health and safety, and quality of life for Pacific Grove residents, and

**WHEREAS**, comprehensive registration of abandoned properties will help to preserve the character of the City and the quality of life for City residents, and

**WHEREAS**, the City Council enacts this ordinance to establish a registration program for abandoned properties within the City as a means to protect residential neighborhoods from blight, and to ensure adequate maintenance and security of abandoned properties; and

**WHEREAS**, in the review of this matter, the City has followed those guidelines adopted by the State of California and published in the California Administrative Code, Title 14, Section 15000, et seq. The City has determined this Ordinance is categorically exempt under CEQA Guideline Section 15301 Existing Facilities (Class 1).

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

**SECTION 2.** The following Chapter 11.101, ABANDONED PROPERTY REGISTRATION, shall be added to the Pacific Grove Municipal Code:

**11.101.010 Purpose and Scope**

Through enactment of this chapter, the City establishes an abandoned property registration program to protect neighborhoods and commercial districts from becoming Blighted through the lack of adequate maintenance and security of abandoned properties.

This chapter shall apply to all vacant properties in the City of Pacific Grove that have come within the ownership or control of a Trustee or Beneficiary as a result of the Default of the borrower and/or Foreclosure process. This chapter shall also apply to properties where the Deed of Trust was transferred to the Beneficiary of a Deed of Trust involved in a Foreclosure and any properties transferred under a deed in lieu of Foreclosure/sale.

Nothing in this chapter shall be interpreted to allow or encourage circumvention of any state or federal Foreclosure statute.

#### 11.101.020 Definitions

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

“Abandoned” means a property that is vacant and either: 1) under a current Notice of Default or Notice of Trustee’s sale and is not currently being offered for sale, rent or lease by the owner (currently being offered for sale, rent or lease is evidenced by a sign posted on the subject property advertising the property for sale, rent or lease with contact information and current phone number or an active listing), 2) has been the subject of a Foreclosure sale where the title was retained by the Beneficiary involved in the Foreclosure, whether or not the property is being marketed for sale, rent or lease or 3) has been transferred under a deed in lieu of Foreclosure, whether or not the property is being marketed for sale, rent or lease.

“Accessible” means a property or structure that unauthorized persons may gain access or entry to through a compromised/breached/unsecured gate, door, fence, wall, window, or other point of entry.

“Agreement” means any agreement, contract 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.

“Beneficiary” means a lender or other entity under a note secured by a Deed of Trust.

***“Blight” or “Blighted” means a property or structure that is in a state of deterioration, decay, or neglect.***

“Buyer” means any person, co-partnership, association, corporation, or fiduciary that agrees to transfer anything of value in consideration for property described in an agreement of sale.

“City Manager” means the City Manager of the City of Pacific Grove.

“Code Compliance Officer” means the Code Compliance Officer of Pacific Grove, or other person designated as such by the City Manager.

“Days” means calendar days.

“Deed in lieu of foreclosure” means a recorded document that transfers 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 or agreement 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, including a second trust deed, third trust deed, or similar document.

“Default” means the failure to fulfill a contractual monetary or conditional obligation.

“Evidence of occupancy” means conditions visible from the exterior that, on their own or combined with other conditions present, would lead a reasonable person to believe that the property is legally occupied and taken as a whole rebut any Evidence of Vacancy. Such conditions include, but are not limited to, secured/locked structures; active utility services; the absence of overgrown or dead vegetation; the absence of an accumulated newspapers, circulars, flyers or mail; the absence of a accumulated trash, junk or debris; the presence of window coverings such as curtains, blinds or shutters; the presence of furnishings or personal items consistent with habitation or commercial use; statements by neighbors, passersby, delivery agents, or government employees that the property is legally occupied; or actual contact with occupants.

“Evidence of vacancy” means conditions visible from the exterior that on their own or combined with other conditions present would lead a reasonable person to believe that the property is vacant, and taken as a whole rebut any evidence of occupancy. Such conditions include, but are not limited to, overgrown or dead vegetation; accumulated newspapers, circulars, flyers or mail; past due utility notices or disconnected utilities; accumulated trash, junk or debris; the absence of window coverings such as curtains, blinds or shutters; the absence of furnishings or personal items consistent with habitation or commercial use; and statements by neighbors, passersby, delivery agents, or government employees that the property is vacant.

“Field service provider” means an individual, entity or organization that is responsible for inspecting, securing, and maintaining abandoned property.

“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.

“Inspection” means a physical investigation at a property to obtain evidence of occupancy or Evidence of Vacancy or to verify compliance with this chapter and any other applicable code or law. Although interior inspections may be allowed under a Deed of Trust, they are not required by this chapter.

“Neighborhood standard” means those conditions that are present on a simple majority of properties within a 300-foot radius of the subject property. A property that is the subject of a neighborhood standard comparison, or any other abandoned property within the 300-foot radius, shall not be counted toward the simple majority.

“Notice of default” means a recorded notice 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.

“Property” means any unimproved or improved real property or portion thereof, situated in the city and includes the buildings or structures located on the property regardless of condition.

“Property preservation/real estate owned (REO) section/department” means the entity, group, section, department or the designee of a Beneficiary that is responsible for inspecting, securing and maintaining abandoned and REO property.

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

“Responsible party” means the Beneficiary that is pursuing Foreclosure of a property subject to this chapter secured by a mortgage, Deed of Trust or similar instrument or a property that has been acquired by the beneficial interest at Trustee’s sale.

“Securing” means such measures as may be directed by the City Manager, Code Compliance Officer or their designee so that the property is not accessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining or padlocking of gates, the repair or boarding of door, window or other openings. Boarding shall be completed to a minimum of the current federal Department of Urban Development (HUD) securing standards at the time the boarding is completed or required. Locking includes measures that require a key, keycard, tool or special knowledge to open or gain access.

“Substitution of beneficiary of deed of trust” means an instrument that transfers the beneficial interest under a Deed of Trust from one Beneficiary to another.

“Trustee” is the person, firm, entity, or corporation holding a Deed of Trust secured by the property.

“Trustor” is 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 or structure that is not legally occupied or that shows Evidence of Vacancy.

#### 11.101.030 Registration

(a) Registration of property. Each Abandoned property shall be registered pursuant to this Chapter. Any Trustee holding a Deed of Trust to a Property located within the City of Pacific Grove shall inspect the Property that is the security for the Deed of Trust, upon

Default by the Trustor, within ten days of recording a Notice of Default with the Monterey County Recorder's Office. If the Property is found to be Vacant or shows Evidence of Vacancy, it is deemed Abandoned under this Chapter and shall be registered, within ten days of the inspection. If the Trustee fails to do so, the Beneficiary and Responsible Party shall each be required to ensure that the Property is so registered.

If the Property is occupied at the time of inspection, it shall be inspected at least once each 30 days until the Default is remedied by the Trustor, or the Property becomes Vacant or shows Evidence of Vacancy, at which time it shall be registered within ten days.

(b) Registration process. Registration shall be made in writing to the City of Pacific Grove Code Compliance Officer. The Trustee, Beneficiary or Responsible Party shall provide the following:

(1) The name, address, and direct contact name and phone number for the Trustee, Beneficiary and Responsible Party.

(2) If applicable, the name, address and phone number of any property management company, Field Service Provider, property preservation or real estate owned (REO) department responsible for inspecting, securing, and maintaining the Property.

(3) The name, address and telephone number of all known lien holders and/or individuals with ownership interest or other legal interest in the Property.

(4) If no Trustee, Beneficiary, or Responsible Party resides within the County of Monterey, the name, address and telephone number of a person residing within the County of Monterey who the Trustee, Beneficiary, and Responsible Party designate as the local Responsible Party for the purposes of notification in the event of an emergency affecting public health, safety, or welfare and for purposes of service of process or any notices associated with registration of the Property,

(5) An express authorization allowing City Employees to enter the Property for the purpose of ensuring compliance with this chapter.

(c) Post office box addresses shall not be used for registration purposes.

(d) The Trustee, Beneficiary and Responsible Party shall each have an ongoing duty to update the City as to all known lien holders and/or individuals with ownership interest or other legal interest in the Property,

(e) Duration of registration. Registration of Property shall be valid for one year from the date of registration. The Trustee, Beneficiary, or Responsible Party shall renew the registration annually prior to the expiration of the current registration. Property subject to this chapter shall remain under the registration requirement and the security and maintenance standards of this Chapter as long as the Property remains Abandoned.

(f) Posting. Within 48 hours of being placed on the registration list, the Property shall be posted with a sign indicating the name and 24-hour telephone number for the Trustee/Beneficiary or property maintenance company responsible for the maintenance

and security of the Property. The sign shall be similar in size and appearance to those signs generally used by property alarm companies in order to communicate to the public that the Property is alarmed. The sign shall read substantially as follows: "This property is managed by [     ]. To report problems or concerns call [     ]." The sign shall be visible from the street and shall be located at the front of the Property. The sign shall be placed on the interior of a window, or placed on a stake in the front yard within 6 feet of the main structure. Exterior posting shall be constructed on and printed with weather resistant material.

#### 11.101.40      Maintenance requirements

***Within 10 days of registering a Property***, the Trustee, Beneficiary, and Responsible Party shall each ensure that each Property registered pursuant to this chapter complies with the following:

- (a) Landscape Maintenance. All yards and landscaping shall be maintained at or above the Neighborhood Standard by watering, cutting, pruning, and mowing all lawns and vegetation. The Property shall be kept free of weeds, dry bush, and dead vegetation,
- (b) Structure Maintenance. All structures shall be maintained at or above the Neighborhood Standard and kept free of broken windows, damaged screens, missing roof tiles, damaged doors, and the like.
- (c) Trash and Debris. The exterior of the Property shall be kept free of trash, junk, debris, building materials, newspapers, circulars, flyers, phone books, notices (except those required by federal, state or local law), discarded personal items (including but not limited to furniture, clothing, large and small appliances, toys, printed materials), and any other items that give the appearance that the Property is Abandoned or not being adequately maintained. Trash and debris shall be removed from the Property within 7 days of placement on the Property or within 48 hours of notification.
- (d) Graffiti. The Property shall be kept free of graffiti. Graffiti shall be removed from the Property within 48 hours of placement on the Property.
- (e) Standing water. Any swimming pool, spa, pond, or other water feature shall be properly maintained and kept in working order so the water remains clear, free of pollutants and debris, and does not become a breeding place for mosquitoes and other insects. Any pool, spa, or water feature not maintained in this manner shall be drained and kept dry.
- (f) Fencing. The Property shall comply with the minimum security fencing requirements of the State of California.

#### 11.101.050      Security requirements

***Within 10 days of registering a Property***, the Trustee, Beneficiary, and Responsible Party Each shall each ensure that each property registered pursuant to this chapter is secured against unauthorized entry. This includes, but is not limited to, locking all doors, windows, and gates that would allow access to the interior of the structure or onto the lot

where the Property is located. Boarding of doors and windows will be allowed only if they may not be secured by other means.

#### 11.101.060 Fees

A fee to register an Abandoned residential property shall be set by resolution on the City Master Fee Schedule. The fee shall be payable upon registration.

#### 11.101.070 Enforcement

Notwithstanding any other remedies available by law, violation of this chapter shall be enforced, and penalties may be assessed, pursuant to the provisions of Chapter 1.19 of the Pacific Grove Municipal Code.

#### 11.101.080 Violations; Abatement

Violations of this chapter shall be treated as a strict liability offense regardless of intent. Abatement may also occur pursuant to the provisions of Chapter 1.16 of the Pacific Grove Municipal Code.

SECTION 3. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 4. This ordinance shall become effective on the thirtieth (30<sup>th</sup>) day following passage and adoption hereof.

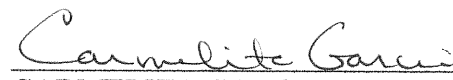
PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE  
this 6th day of April, 2011, by the following vote:

AYES: Mayor Garcia, Councilmembers Kampe, Huitt, Miller, Cuneo, Fischer and Cohen

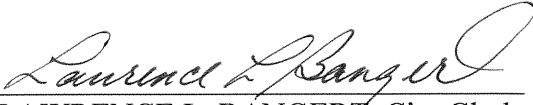
NOES: None

ABSENT: None

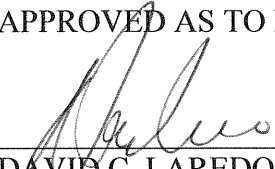
APPROVED:

  
CARMELITA GARCIA, Mayor

ATTEST:

  
\_\_\_\_\_  
LAWRENCE L. BANGERT, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DAVID C. LAREDO, City Attorney