

ORDINANCE NO. 1402-2008

CITY COUNCIL, CITY OF SOUTH SAN FRANCISCO, STATE OF CALIFORNIA

AN ORDINANCE AMENDING CHAPTER 8.54 OF THE SOUTH SAN FRANCISCO MUNICIPAL CODE BY ADDING ARTICLE VI, REGULATING ABANDONED AND DISTRESSED RESIDENTIAL PROPERTIES WITHIN THE CITY AND ESTABLISHING A REGISTRATION PROGRAM

WHEREAS, pursuant to the police power granted to the City of South San Francisco ("City") under the California Constitution, the City may adopt rules and regulations to serve and protect the health, safety and welfare of the public; and

WHEREAS, the current estimates indicate that about 1,203 residential properties in the City are currently in various stages of foreclosures; and

WHEREAS, abandoned and distressed residential properties pose risk to the public peace, safety and welfare of the City's residents in that the lack of security and maintenance of such properties result in detrimental effects on the community including the creation of blighted residential neighborhoods, contribution to lower property values, discouragement of potential buyers from purchasing homes adjacent to or in the neighborhood of abandoned and distressed residences, endangerment of children unprotected from unsecured pools and other attractive nuisances, and endangerment of neighborhood safety as affected by the resulting squatting, vandalism, burglaries and other crimes; and

WHEREAS, the City Council has a substantial interest in protecting its citizens and protecting the aesthetic attractiveness of the City and that the adoption of the abandoned and distressed residential property registration program is necessary to protect its residents from detrimental effects posing risks to the public peace, safety and welfare; and

WHEREAS, pursuant to the City's police powers endowed by Article XI, Section 7 of the California Constitution, as well as under the South San Francisco Municipal Code and other provisions of California law, including, but not limited to California Government Code Section 38771, the City Council has the authority to declare action and activities that constitute a public nuisance; and

WHEREAS, pursuant to California Civil Code Section 2929.3, the City is authorized to impose a civil penalty in the amount not to exceed \$1,000.00 per day for failure to maintain and secure a foreclosed property, following a notice required by Section 2929.3; and

WHEREAS, the City Council finds that the City will incur additional costs in administering and implementing the abandoned and distressed residential properties registration program and that it is in the best interests of the public for the City to recover said costs through imposition of a registration fee.

NOW, THEREFORE, the City Council of the City of South San Francisco DOES HEREBY ORDAIN as follows:

SECTION 1. **Article VI.**, entitled "Abandoned and Distressed Residential Properties Registration" is hereby added to Chapter 8.54 of the City of South San Francisco Municipal Code to read in its entirety as follows:

"Chapter 8.54, Article VI. ABANDONED AND DISTRESSED
RESIDENTIAL PROPERTIES REGISTRATION

8.54.400 Purpose and findings.

It is the purpose and intent of the city council through the adoption of this chapter, to establish an abandoned and distressed residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties and to establish uniform and reasonable regulations to prevent immediate risk and detrimental effects associated with abandoned and distressed properties.

The city council finds that:

- (a) Abandoned and distressed residential properties pose risk to the public peace, health and safety of citizens in that the detrimental effects from the lack of security and maintenance of abandoned and distressed residential properties endanger children unprotected from unsecured pools and other attractive nuisances, lead to neighborhood decline, contribute to lower property values, discourage potential buyers from purchasing a home adjacent to or in the neighborhoods with abandoned and distressed residences, and further endanger neighborhoods affected by the resulting squatting, vandalism, burglaries and other crimes.
- (b) The city will incur additional costs in administering and implementing the abandoned and distressed residential properties registration program and that it is in the best interests of the public for the city to recover said costs through imposition of a registration fee.

8.54.405 Definitions.

The following terms and phrases, whenever used in this chapter, shall be construed as defined in this section:

- (1) "Abandoned property" means a residential property that is vacant and is under a current Notice of Default and/or Notice of Trustee's Sale, pending Tax Assessor's Lien Sale, or a residential property that has been the subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure, or a residential property transferred under a deed in lieu of foreclosure/sale.
- (2) "Accessible property" means an abandoned property, and any structure or building on the abandoned property, that is accessible through a compromised, breached or broken gate, fence,

wall, window, door, and similar entry points and/or is unsecured in such way as to allow access to interior space by unauthorized person or trespasser.

(3) “Agreement of sale” 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.

(4) “Beneficiary” means a lender under a note secured by a deed of trust. Beneficiary shall also include lender's authorized agent, property management company or property manager.

(5) “Buyer” means any person, partnership, co-partnership, association, corporation, fiduciary or any entity that agrees to transfer anything of value in consideration for property described in the agreement of sale, as defined in this chapter.

(6) “Days” means consecutive calendar days.

(7) “Deed of trust” means an instrument, describing the real property and by which title to real property is transferred to a third party trustee as security for repayment of a real property loan or an obligation. (This type of instrument is used in California instead of mortgage.) This definition applies to any and all subsequent deeds of trust, including but not limited to second trust deed, third trust deed, etc.

(8) “Deed in lieu of foreclosure/sale” means a recorded document 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.

(9) “Default” means the failure to fulfill a contractual obligation, whether monetary or conditional.

(10) “Distressed property” means a residential property that is occupied by a person(s) having the right to use or having right of possession of the property and under a current Notice of Default and/or Notice of Trustee's Sale or pending Tax Assessor's Lien Sale or has been foreclosed upon by the trustee or has been conveyed to the beneficiary or trustee via Deed In Lieu of Foreclosure/Sale.

(11) “Evidence of vacancy” means any condition that on its own, or combined with other 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, statements, based on observations, by neighbors, passersby, delivery agents, government employees that the property is vacant.

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

- (13) "Landscape" includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Landscape does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastics sheeting, mulch, indoor-outdoor carpet or any similar material.
- (14) "Landscape maintenance" includes, but is not limited to, regular watering, irrigation, cutting, pruning, mowing and removal of all trimmings of required landscape.
- (15) "Local" means within 40 road/driving miles distance of the abandoned or distressed property.
- (16) "Neighborhood standard" means those conditions that are present on a simple majority of properties within a 300-foot radius of a distressed or abandoned property. The abandoned or distressed 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.
- (17) "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.
- (18) "Out-of-area" means in excess of 40 road/driving miles distance of the subject property.
- (19) "Owner" means any person, partnership, co-partnership, association, corporation, fiduciary or any other legal entity having a legal or equitable title or any interest in the property.
- (20) "Owner of record" means the person, partnership, co-partnership, association, corporation, fiduciary or any other legal entity having recorded title to real property at any given point in time the record is provided by the San Mateo County Recorder's Office.
- (21) "Residential property" means any improved real property, or portion thereof, situated in the city, designed, built or permitted to be used for dwelling purposes, specifically including 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 or zoned for such use.
- (22) "Secured" means treated with such measures as may be directed by the fire chief or his or her designee that assist in rendering the abandoned property inaccessible to unauthorized persons, squatters, trespassers, including, but not limited to, the closure, locking, pad-locking, chaining, repair and/or boarding of fence(s), wall(s), gate(s), window(s), door(s) (walk-through, sliding and/or garage), and/or other openings of such size that may allow a child access to the interior of the accessible property. In case of broken windows, secured requires replacement of the window using a clear material such as glass or plexiglass. Boarding of doors or other areas shall be completed to a minimum of the current United States Department of Housing and Urban Development (HUD) securing standards at the time the boarding is completed or required, and shall additionally require painting the boards with an exterior grade paint that matches the color of the accessible property.

(23) "Trustee" means the person, partnership, co-partnership, association, corporation, or fiduciary holding a deed of trust on a property. Trustee shall include any authorized agent, property management company or property manager of a trustee.

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

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

8.54.410 Inspection, Registration and Fees.

(1) Inspection and Registration. Any beneficiary or trustee, who holds a deed of trust on a property located within the city, shall perform an inspection of the property that is the security for the deed of trust, upon default by the trustor and prior to recording a notice of default with the San Mateo County Recorder's Office.

(a) If the property is found to be vacant or shows evidence of vacancy, it is, by this chapter, deemed abandoned and the beneficiary or trustee shall, within ten (10) days of the inspection or the date of vacancy, whichever is earliest, register the property with the code enforcement division of the fire department on forms provided by the city.

(b) If the property is occupied but remains in default, it shall be deemed distressed, and it shall be inspected by the beneficiary or trustee, on monthly basis until either (1) the trustor or another party remedies the default; or (2) it is found to be vacant or shows evidence of vacancy, at which time it is deemed abandoned, and the trustee shall, within ten (10) days of that inspection or the date of vacancy, register the property with the code enforcement department on forms provided by the city.

(2) Contents of Registration. The registration required under this chapter shall contain: 1) the name of the beneficiary/trustee (co-partnership, partnership, association, fiduciary, corporation, any legal entity or an individual); 2) the direct street/office mailing address of the beneficiary/trustee, excluding P.O. boxes; 3) a direct contact name and phone number for the beneficiary/trustee; and 4) in the case of a corporation or out-of-area beneficiary/trustee, the local property management company responsible for the security, maintenance and marketing of the property. Any change of the information in the registration required under this paragraph shall be reported within ten (10) days of the change.

(3) Registration Fee. The fee for registering an abandoned residential property shall be set by resolution of the city council. An annual registration fee shall accompany the registration form. The abandoned residential properties registration fee will be used to finance the cost of inspection, administering and enforcement under this chapter. The fee and registration shall be valid for the calendar year, or remaining portion of the calendar year, in which the registration was initially required. Subsequent registrations are due January 1st of each year and must be received no later than January 31st of the year due. Properties subject to this chapter shall remain under the annual registration requirement, security and maintenance standards of this chapter as long as the properties remain vacant.

(4) Out-of-area Trustee/Beneficiary. An out-of-area beneficiary or trustee shall retain a local management property, which shall inspect the property as required by this chapter to determine whether the abandoned property is in compliance with the requirements of this chapter.

(5) If any beneficiary or trustee fails to register the residential property, as required by this chapter, the city may register the residential property and impose the annual registration fee. Notice shall be served either personally or by first class mail as follows: a) to beneficiary or trustee, prior to completion of foreclosure or deed in lieu of foreclosure/sale transaction or b) to owner or owner of record after completion of foreclosure or deed in lieu of foreclosure sale transaction, as the address appears on the last equalized assessment roll or as known to the code enforcement department. The notice shall provide the amount due for the registration fee, shall state that the property has not been registered as required by this chapter and shall constitute enrollment in the city's abandoned residences registration program. The city may collect any unpaid registration fee by use of any method authorized by law.

8.54.415 Maintenance Requirements.

Abandoned property shall be maintained in a manner comparable to the neighborhood standard. At minimum:

- (1) Abandoned property shall be maintained so as to be kept free of evidence of vacancy;
- (2) Abandoned property shall be maintained free of weeds, dry brush, dead vegetation, trash, junk, debris and excessive foliage growth that diminishes the value of surrounding properties;
- (3) Abandoned property shall be maintained free of mosquito larvae from growing in standing water;
- (4) Abandoned property shall be maintained free of any 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 appearance that the property is abandoned;
- (5) Abandoned 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, following a notice from the city pursuant to Section 8.54.100 of this code or California Civil Code Section 2929.3, whichever appropriate.
- (6) Pools and spas shall either (a) be kept in working order so the water remains clear and free of pollutants and debris; or (b) drained and kept dry. In either case, properties with pools and/or spas must comply with the minimum security fencing requirements of the State of California.
- (7) All plumbing fixture traps in an abandoned property shall be filled with vegetable oil to prevent sewer gases from entering.

(8) All doorways, windows and other openings into abandoned property shall be secured from public access. Abandoned property may not be boarded up or have broken windows or broken windows secured with wood or other materials which are left in a state of partial construction.

Adherence to this section does not relieve the beneficiary/trustee or owner of any obligations set forth in any local, state or federal laws or any covenants, conditions and restrictions and/or homeowners' association rules and regulations which may apply to the property.

8.54.420 Security Requirements.

Any abandoned property shall be secured, as defined in this chapter. In addition, the abandoned property shall be secured in a manner that would prevent trespassers, squatters or unauthorized persons from entering and/or remaining on the property.

8.54.425 Signage Requirements.

Any abandoned property shall be posted with the name and twenty-four (24)-hour contact phone number of the trustee/beneficiary or a local property management company that must be retained by an out-of-area beneficiary/trustee. 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." The posting shall be placed on the interior of a window facing the street to the front of the abandoned 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; 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.

8.54.430 Declaration of Public Nuisance.

Pursuant to the city's police powers authorized in Article XI, Section 7 of the California Constitution, as well as under the South San Francisco Municipal Code and other provisions of California law, including, but not limited to, California Government Code Section 38771, the city council hereby declares that violation of this article, including but not limited to the maintenance and security requirements of this article, shall constitute a public nuisance.

8.54.435 Additional authority.

In addition to any other remedies authorized by this code and/or any other enforcement remedies permitted under the law, the code enforcement department shall have the authority to require the beneficiary/trustee/owner and/or owner of record of any property affected by this section to implement additional maintenance and/or security measures including but not limited to securing any and all door(s), window(s) 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 arrest the decline of the property.

8.54.440 Notice of and Civil Penalty.

Pursuant to California Civil Code Section 2929.3, the city may impose a civil penalty in the amount not to exceed \$1,000.00 per day for failure to maintain and secure the abandoned property, as required by this chapter, subject to the following requirements:

(1) Notice. Prior to imposing a civil penalty pursuant to this section, the city shall first give notice of the violations of the maintenance and security requirements of this chapter. The notice shall include a description of the conditions that gave rise to the violation(s), advise the owner of city's intent to assess a civil fine if an action to correct the violation(s) is not commenced within a period of not less than fourteen (14) days and completed within a period of not less than 30 days. The notice shall be mailed to the address provided in the deed of trust or other instrument specified in California Government Code Section 27321.5 (a), or if none, to the return address provided on the deed or other instrument.

(2) The city shall impose the civil penalty pursuant to this section if actions necessary to address the violation(s) at the abandoned property are not commenced within a period of not less than fourteen (14) days and completed within a period of not less than thirty (30) days, from the date of mailing of the notice required by this section. The civil penalty imposed by this section shall stay in effect until January 1, 2013, the expiration date of Section 2929.3 of California Civil Code, unless extended by the state legislature.

8.54.445 Violation/Penalty.

Violations of this article 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, public nuisance abatement and/or administrative enforcement pursuant to article IV and article V of this chapter.

8.54.450 Enforcement.

In addition to article V of this chapter, violations of this article may be enforced in any combination as permitted by any other enforcement and legal remedies available to the city under the law. However, in no event shall the city impose a civil fine pursuant to other sections of chapter 8.54 of this code together with administrative citations or fines authorized by this article.

8.54.455 Administrative Hearing/Appeal.

Any person aggrieved by any of the requirements of this article shall have an opportunity to present all relevant evidence, objections or protests, insofar as such opportunity is permitted under sections 8.54.100 through 8.54.120 of this code. Any person aggrieved by the imposition

of a civil penalty pursuant to this chapter, may appeal the penalty pursuant to sections 8.54.100 through 8.54.120.

SECTION 2. SEVERABILITY

In the event any section or portion of this Ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections and portions hereof shall remain in full force and effect.

SECTION 3. PUBLICATION AND EFFECTIVE DATE

Pursuant to the provisions of Government Code Section 36933, a Summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk's Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting. This Ordinance shall become effective thirty (30) days from and after its adoption.

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Introduced and adopted at a regular meeting of the City Council of the City of South San Francisco, held the 12th day of November, 2008.

Adopted as an Ordinance of the City of South Francisco at a regular meeting of the City Council held the 10th day of December, 2008 by the following vote:

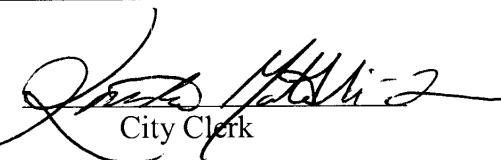
AYES: Councilmembers Pedro Gonzalez, Richard A. Garbarino, and Kevin Mullin,

Vice Mayor Mark Addiego and Mayor Karyl Matsumoto

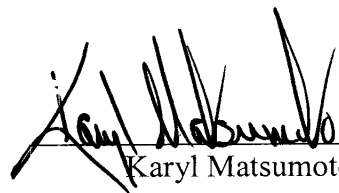
NOES: None

ABSTAIN: None

ABSENT: None

ATTEST: 
City Clerk

As Mayor of the City of South San Francisco, I do hereby approve the foregoing Ordinance this 10th day of December, 2008.


Karyl Matsumoto, Mayor