

**ORDINANCE NO.0007-2023**

**AN ORDINANCE OF THE CITY OF MCFARLAND ADDING  
CHAPTER 15.40 OF THE MCFARLAND MUNICIPAL  
CODE RELATING TO ABANDONED PREMISES**

**Section 1. Recitals**

**WHEREAS**, the City of McFarland (the "City") has the authority under Article XI, Section 7 of the California Constitution, to enact regulations for the public peace, morals, and welfare of the City; and

**WHEREAS**, on December 8<sup>th</sup>, 2022 the City Council adopted Ordinance No. 0011-2022 adopting the uniform building codes and

**WHEREAS**, the adoption of the uniform building codes included adoption of the International Property Maintenance Code and

**WHEREAS**, the Municipal Code contains provisions for the enforcement and abatement of hazardous buildings; and

**WHEREAS**, the City can compel the maintenance of buildings and premises in compliance with the Uniform Codes; and

**WHEREAS**, the City has the authority to establish policies and processes, consistent with the Uniform Code, to address property maintenance, including the abandonment of buildings.

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

**Section 2. Chapter 15.20 is hereby added to the McFarland Municipal Code to read as follows:**

**CHAPTER 15.0 ABANDONED PROPERTIES**

**15.20.010 Intent.**

It is the purpose and intent of the City Council, through the adoption of this chapter, to enact an "abandoned and vacant property registration ordinance" as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties and properties that are vacant and to strengthen the ability of the local jurisdiction to control the public nuisances created by these properties. Nothing in this chapter shall be interpreted to allow or encourage circumvention of the foreclosure statutes of the state of California.

**15.20.020 Definitions.**

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

"Abandoned" means a property that is vacant/abandoned for a period of at least thirty (30) consecutive days, and is not currently being offered for sale, rent or lease by the owner/responsible party as evidenced by the absence of a sign posted on the subject property advertising the property for sale, rent, or lease with contact information and current phone number and/or the absence of an active listing in an approved electronic database accessible to the public. "Abandoned" also means properties where the current owner of record has provided notice to the beneficiary that they no longer have an interest in the property and/or will no longer be making the outstanding payments on the mortgage, or which also meet at least one (1) of the following conditions:

1. Is open and unsecure;
2. Is damaged by fire, flood, weather, or vandalism to an extent which prohibits safe human occupancy, unless they have an active building permit for the repair or demolition;

3. Is occupied by squatters or person(s) who do not have a legal right to reside on the property and/or is the site of loitering or vagrancy;
4. Is under notice and order for being in violation of City ordinances;
5. Has been secured or boarded up for at least thirty (30) days;
6. Has utilities disconnected or not in use;
7. Is under a condemnation notice or legal order to vacate;
8. Is structurally unsound; or
9. Is a potential hazard or danger to persons or properties.

Properties that may not be required to register with the City code compliance division are properties currently being offered for sale, rent, or lease as evidenced by a sign posted on the subject property advertising the property for sale, rent, or lease with contact information and current phone number and/or an active listing in an electronic database accessible to the public.

"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 or written instrument which provides that title to property shall be transferred or conveyed from one (1) 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.

"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.

"Days" means consecutive 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 wherein legal title in real property is transferred to a trustee, which holds it as security for a loan (debt) between a borrower and lender. The borrower is referred to as the trustor, while the lender is referred to as the beneficiary of the deed of trust. This definition applies to any and all subsequent deeds of trust, i.e.; second deed of trust, third deed of trust, etc.

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

"Distressed" means a property that is vacant/abandoned for a period of at least thirty (30) days, that is under a current notice of trustee's sale or that has been the subject of a foreclosure sale by the trustee or has been conveyed to the beneficiary/trustee via a deed in lieu of foreclosure. A distressed property also means one that is under a foreclosure order or is advertised for sale by its mortgagee. It almost always refers to a property that is damaged or in poor physical condition due to the owner's precarious financial situation.

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

"Evidence of vacancy" means any condition visible from the exterior that on its own, or combined with other conditions present would lead a reasonable person to believe that the property is not legally occupied. Such conditions include, but are not limited to, open and/or unsecured structures; overgrown and/or dead vegetation, dry brush, and/or weeds; accumulation of newspapers, circulars, flyers, and/or mail (except those by federal, state, or local law); past due utility notices and/or disconnected utilities; accumulation of trash, junk, and/or debris; discarded personal items including, but not limited to, furniture, clothing, large and small appliances; the absence of window coverings such as curtains, blinds and/or shutters; the condition of or absence of furnishings and/or personal items consistent with residential habitation; and statements by neighbors, passersby, previous owners or tenants, delivery agents, government employees, or others that the property is vacant.

"Foreclosure" means a specific legal process in which a lender attempts to recover the balance of a loan from a borrower who as stopped making payments to the lender by forcing the sale of the asset used as the collateral for the loan to satisfy the debt if the trustor (borrower) defaults.

"Inspection" means a physical investigation at a property to obtain evidence of occupancy or vacancy and/or to verify compliance with this chapter and any other applicable ordinances, codes or laws. Although interior inspections may be allowed, they are not required by this chapter.

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

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

"Property manager/real estate owned (REO) section/department" means the individual, entity, group, section, department, or the designee of a beneficiary that is responsible for inspecting, securing, and maintaining abandoned and REO property.

"Residential and commercial property" means any improved or unimproved real property, or portion thereof, situated in the unincorporated areas of the City of McFarland, designed or permitted to be used for dwelling and/or business purposes, and shall include all buildings and structures located on such 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.

"Responsible party" means either: (1) the owner of a vacant/abandoned parcel of real property; or (2) the holder or owner of the mortgage, deed of trust, or similar instrument encumbering real property ("mortgagee") during any time when an owner of real property is in default under the terms of that mortgage, deed of trust, or similar instrument; or (3) both the owner and the mortgagee.

"Securing" means such measures as may be directed by the director of community development department or his/her designee so that the property is continuously maintained so as not to be accessible to unauthorized persons, including, but not limited to, the repairing of fences and walls, chaining/padlocking of gates, and the repair or boarding of doors, windows, and/or other openings. Boarding shall be completed to a minimum of the current department of housing and urban development (HUD) securing standards at the time the boarding is completed or required. Locking includes measures that require a key, keycard, special tools, or special knowledge to open or gain access. The boards shall be painted to color match the structure.

"Substitution of beneficiary of deed of trust" means an instrument that transfers the beneficial interest under a deed of trust from one (1) 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" property means any property, including any buildings and/or structure thereon that is not legally occupied.

**15.20.030 Responsible parties for compliance.**

- A. The responsible party, as defined in this chapter, shall comply with all provisions of this chapter, including, but not limited to, maintenance of real property for which they are responsible in accordance with the provisions of this chapter, and in accordance with all other applicable provisions of the local, state, and federal law.
- B. In all instances, the responsibility of a mortgagee to comply with this chapter shall be and remain in effect from the date that the mortgagee gives the owner notice of a default under the terms of the mortgage, or when the owner has provided notice to the mortgagee that they are releasing their interest in the property to the mortgagee, whichever first occurs, until such time as the subject property is sold or transferred to a new owner or until any foreclosure action is dismissed.

**15.20.040 Recordation of transfer of loan/deed of trust/substitution of beneficiary of deed of trust.**

Within thirty (30) days of the purchase and/or transfer of a loan/deed of trust secured by property, the new beneficiary/trustee shall record with the Kern County Recorder's Office or a database approved by the County such as mortgage electronic registration systems (MERS), a substitution of beneficiary of deed of trust, or similar document, that lists the name of the corporation, entity and/or individual, and the mailing address and contact telephone number of the new beneficiary/trustee responsible for receiving payments associated with the loan/deed of trust.

**15.20.050 Registration and inspection of abandoned real property or real property at risk of abandonment.**

Any owner of property, responsible party, beneficiary, or their designee, of property located within the City who has abandoned that real property or who intends to abandon the real property shall register the property with the City within thirty (30) calendar days of such action. Responsible party for such property shall also perform an inspection of the property that is the security for the deed of trust, upon default by the trustor, within thirty (30) days of the property becoming vacant/abandoned. If the property is found to be vacant or shows evidence of vacancy, it is deemed abandoned and the responsible party/beneficiary shall, within thirty (30) days of the inspection, register the property as provided below.

Registration may be accomplished by either of the following methods:

- A. By completing and returning to the Community Development Department a City-provided registration form with required fee; or
- B. By registering with a City-approved database that contains the information set out below and which service the City may readily access at no cost.

Nothing in this section shall prohibit the use of both methods of registration.

From time to time, the City may approve an acceptable national database(s) which shall be identified in writing and which shall be posted on the community development department's website.

If the property is occupied but remains in default, it shall be inspected by the responsible party/beneficiary/owner, or their designee, monthly until (1) the trustor or another party remedies the default; or (2) it is deemed abandoned. The responsible party/beneficiary/owner or their designee shall, within ten (10) days of that inspection, register the property as described above.

The registration shall contain the name of the beneficiary/responsible party/owner, the direct street/office mailing address of the responsible party/beneficiary/owner (no P.O. boxes), a direct contact name and telephone number for the responsible party/beneficiary/owner in addition the name, address and telephone number of at least one (1) of the following parties who is responsible for inspecting, securing and maintaining the property; the property management company, field service provider, and the property preservation or real estate owned (REO) section/department.

In the case of hard copy registration under subsection (A) of this section, an initial registration fee shall accompany the registration form. The registration shall be maintained with current information for as long as the registered property remains subject to this chapter. Any changes to the information required on the registration shall be reported to the director of community development department or his/her designee in writing within ten (10) days of the change. The City is not responsible to verify the accuracy of the information provided.

This section shall also apply to property that has been the subject of a foreclosure where the title was transferred to the beneficiary of a deed of trust involved in the foreclosure and any property transferred under a deed in lieu of foreclosure.

Property subject to this chapter shall remain under the registration requirement, security, and maintenance standards of this section as long as the property remains abandoned.

It is the obligation of the responsible party/beneficiary/owner to inform the City of any pending action or changes of status in such actions, such as a bankruptcy, other court or administrative action that would prohibit the responsible party/beneficiary/owner from taking any of the actions required by this chapter.

#### **15.20.060 Registration fees.**

The annual fee for registering an abandoned residential property shall be five hundred dollars (\$500.00). Registration fees will not be prorated. Renewal is due every twelve (12) months, on the original registration date.

#### **15.20.070 Maintenance requirements.**

The exterior of the property shall be, in comparison to the neighborhood standard, 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.

The 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.

Insofar as there is existing or previously existing landscaping, all visible front, side, and rear yard landscaping shall be maintained to the neighborhood standard at the time registration was required. If no landscaping previously existed at the property in front, side, and rear yards, installation is not required under this chapter.

Maintenance shall include, but not be limited to, items such as the following: watering, cutting and mowing of landscaping, removal of yard waste and debris, exterior painting, glass replacement repairs to a building or other structure, or other acts reasonably necessary to maintain acceptable cosmetic appearance of the property, including any building or structure on the property, and to maintain the structural integrity of any building or structure on the property.

Landscape includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges, trees or similar plantings, decorative rock or bark, or artificial turf/sod designed specifically for residential installation.

Pools and spas shall be maintained so the water remains free and clear of pollutants and debris or 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.

Adherence to this section does not relieve the beneficiary/responsible party/owner of any obligations set forth in any liability or compliance with any other rules and regulations which may apply to the property.

**15.20.080 Security requirements.**

The beneficiary/responsible party/owner shall secure and maintain properties subject to this chapter so as not to be accessible to unauthorized persons.

Secure manner includes, but is not limited to, the closing and locking of windows, doors (walk-through, sliding, and garage), gates, and any other openings of such size that may allow access to enclosed areas of the property or to buildings and structures on the property. Walls and fences surrounding the property or any portion of the property shall be maintained in good repair. Broken windows or other openings shall be secured by reglazing or boarding to prevent unlawful entry. Locking includes measures that require a key, keycard, special tools, or special knowledge to open or gain access.

The beneficiary/responsible party/owner or their designee shall perform at least monthly inspections to verify that the requirements of this chapter are being met.

If the beneficiary/responsible party/owner does not have property preservation or real estate owned section/department or performs the service themselves, a field service provider or property manager shall be contracted to perform the inspection to verify that the requirements of this chapter, and any other applicable laws, are being met.

The property shall be posted with name and twenty-four-hour toll-free contact phone number of the beneficiary/responsible party/owner or property preservation, real estate owned section/department, field service provider, or property manager. The posting shall be no less than eight and one-half (8½) inches by eleven (11) inches and shall contain, along with the name and twenty-four-hour toll free contact number, the words "THIS PROPERTY MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL" or similar wording. The posting shall be placed on the front of the property so that 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, it shall be posted 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, or contained in, weather-resistant materials.

The property preservation/real estate owned section/department, field service provider, property manager, or their designee shall inspect the property on a monthly basis, to determine if the property is in compliance with the requirements of this chapter and any needed repairs shall promptly be made within seven (7) days.

**15.20.090 Additional authority.**

In addition to the enforcement remedies established in Chapters 8, 10 and 17 of the City of McFarland Municipal Code, the City Manager, or his/her designee, shall have the authority to require the beneficiary/responsible party/owner of any property affected by this section to implement additional maintenance and/or security measures including, but not limited to, securing any/all doors, windows, or other openings, 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.

**15.20.100 Enforcement.**

The City Manager or his/her designated representative, are directed and empowered to investigate and enforce the provisions of this chapter. They are authorized to inspect any property where a violation of this chapter is alleged to exist. They may take code enforcement actions in accordance with Chapters 8, 10, 17 and other appropriate chapters of the City's Municipal Code or other laws and regulations as necessary to protect the public health and safety.

**15.20.110 Appeals.**

Any person aggrieved by any of the requirements of this chapter may appeal insofar as such appeal is allowed under Chapter 8.20.100.

**15.20.120 Enforcement, violations and penalties.**

- A. Misdemeanor. Any person, firm, corporation, owner of the land, or possessor who violates or who causes, permits, or allows a violation of any provision of this title is guilty of a misdemeanor and is subject to penalties and procedures as described in Chapter 1.12.010 of the Municipal Code, and upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the City jail for not exceeding six (6) months, or by both such fine and imprisonment. Each day the violation of this title continues shall be considered a separate offense.
- B. Administrative Penalties. In addition to the other provisions contained in this chapter, property owners of any property in violation of the provisions of this title are subject to the regulations pertaining to the imposition and collection of administrative penalties as provided for in Chapter 18 of the Municipal Code.
- C. Abatement Proceeding (Modified). Any property, building, or structure maintained contrary to the provisions of this chapter is declared to be unlawful and a public nuisance, and the City Manager or his/her designated representative shall commence action or proceedings for the abatement and removal and/or enjoinder thereof in the manner provided by this Municipal Code or may take such other steps such as apply to such court or courts as may have jurisdiction to grant relief as will abate the public nuisance by boarding up unsecure property, cleaning of property, or demolition of the structure, as necessary.
- D. Recovery of Costs. This section establishes procedures for the recovery of costs incurred by the City in the enforcement process and/or for the abatement of conditions defined as a violation by this chapter.
  - 1. Definition of Costs. For the purpose of this chapter, costs shall mean all costs incurred by the City, including, but not limited to, administrative costs, staff time expended and reasonably related to the violation enforcement and/or abatement cases, attorney's fees, investigation, site inspection and monitoring, reports, telephone contacts, correspondence, photography labs, consultants, and meetings with affected parties.
  - 2. Cost Accounting and Recovery Required. The enforcement personnel shall maintain records of all costs incurred by responsible City departments associated with the enforcement process pursuant to this chapter and shall recover the costs

- from the property owner as provided by this section. Staff time shall be calculated at an hourly rate as established and revised from time to time by the department.
3. Notice of Cost Recovery Requirements. The enforcement personnel shall include in the notice of violation a statement of the intent of the City to charge the property owner for all costs associated with enforcement, and of the owner's right to a hearing if he or she objects to such charges. The notice shall state that the property owner will receive, at the conclusion of the enforcement case, a summary of costs associated with the processing of the enforcement case. The notice shall state that the property owner will have the right to object to the charges by filing a request for hearing with the City Council within thirty (30) days of service of the summary of charges, pursuant to subsection (D) of this section.
  4. Summary of Costs. At the conclusion of the enforcement case, the enforcement personnel shall send a summary of costs associated with enforcement to the property owner by certified mail. The summary shall include a notice which states that if the owner objects to the charges, a request for hearing must be filed as provided by subsection (5) of this section, and that if no such hearing is requested, the owner's right to object will be waived, and he or she will be fully liable for the charges, to be recovered as a special assessment against the property to be collected at the same time and manner as the property taxes, or through a civil action in the name of the City, in any court of competent jurisdiction within the City.
  5. Hearing on Objection to Charges. Any property owner who receives a summary of costs pursuant to subsection (4) of this section shall have the right to a hearing before the City Council on his or her objections to the proposed costs, as follows:
    - a. Request for Hearing. A request for hearing shall be filed with the community development department within thirty (30) days of the service by mail of the summary of costs, in the form of a letter setting forth the nature of the property owner's objections to the costs.
    - b. Scheduling of Hearing. Not less than ten (10) days of the filing of the request for hearing, and on thirty (30) days written notice to the owner, the City Council shall hold a hearing on the owner's objections and determine the validity thereof.
    - c. Decision by the City Council. In determining the validity of the costs, the City Council shall consider whether total costs are reasonable in the circumstances of the case. Factors to be considered include, but are not limited to, whether the present owner created the violation, whether there is a present ability to correct the violation, whether the owner moved promptly to correct the violation, the degree of cooperation provided by the owner, and whether reasonable minds can differ as to whether a violation exists. The decision of the City Council shall be final.
  6. Collection of Charges. In the event that no request for hearing is filed pursuant to subsection (5) of this section or after a hearing, the City Council affirms the validity of the costs, the property owner shall be liable to the City in the amount stated in the summary or any lesser amount as determined by the building official. The City shall be reimbursed for all of the costs within forty-five (45) days from the date of decision pursuant to subsection (5) or, if no appeal is filed, within thirty (30) days from the mailing of the summary of costs pursuant to subsection (4). Payment may be received at the community development department. Delinquent fees shall be subject to a penalty of twenty-five percent (25%) of the total summary of costs. If payment is not received, such costs may be collected as a special assessment against the property and collected at the same time and manner as the property taxes or may be recovered in a civil action in the name of the City in any court of competent jurisdiction within the City.

**15.20.130 Severability.**

Should any provision, section, paragraph, sentence, or word of this chapter be determined or declared invalid by any final action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this chapter shall remain in full force and effect.

**Section 2. Notice.** The City clerk shall certify to the passage and adoption of this ordinance and shall cause this Ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

**Section 3. Severability.** If any section, subsection, sentence, clause, phrase, or word of this Ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of McFarland hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or word might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation.

**Section 4. Effective Date.** This Ordinance shall take effect thirty days after its adoption pursuant to California Government Code section 36937.

**Section 5. Certification; Publication.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

**INTRODUCED, PASSED** at a regular meeting of the City Council of the City of McFarland, California on the 10<sup>th</sup> day of August, 2023, by the following vote:

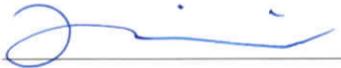
**ADOPTED** at a regular meeting of the City Council of the City of McFarland, California on the 24<sup>th</sup> day of August, 2023, by the following vote:

	<b>Aye</b>	<b>Nae</b>	<b>Abstain</b>	<b>Absent</b>
<b>Saul Ayon</b>	✓			
<b>Ricardo Cano</b>	✓			
<b>Anita Gonzalez</b>	✓			
<b>Amador Ayon</b>	✓			
<b>Maria T. Perez</b>	✓			

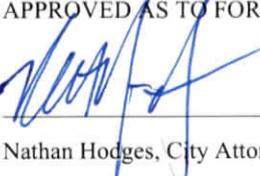
  
\_\_\_\_\_  
Saul Ayon, Mayor

I hereby certify that the foregoing Ordinance was duly and regularly adopted by the City Council of the City of McFarland by a regular meeting thereof held on August 24, 2023.

ATTEST:

  
\_\_\_\_\_  
Francisca Alvarado, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Nathan Hodges, City Attorney

Posted: August 25, 2023