Ord. #5477

AN ORDINANCE AMENDING CHAPTER 48 OF THE CITY OF MEMPHIS, CODE OF ORDINANCES, BY ADDING SECTIONS 48-24 THRU 48-27 TO INCLUDE "PROPERTY REGISTRATION REQUIREMENTS" THAT WILL REQUIRE REGISTRATION BY A MORTGAGEE OR MORTGAGEE'S AGENT AND PROPERTY OWNER UPON NOTICE BY THE CITY OF MEMPHIS OF VACANCY, ABANDONMENT OF PROPERTY AND PROPERTY TAX DELINQUENCY REGARDING SINGLE FAMILY RESIDENTIAL REAL PROPERTY INCLUDING CONDOMINIUMS LOCATED WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF MEMPHIS.

WHEREAS, the present mortgage foreclosure crisis has serious negative implications for all communities trying to manage the consequences of property vacancies and abandoned real properties; and

WHEREAS, the City of Memphis finds that the presence of vacant and abandoned properties can lead to a decline in property value, a corresponding decline in property tax revenue, create and attract nuisances, and lead to a general decrease in neighborhood and community aesthetic; and

WHEREAS, the City of Memphis (hereinafter referred to as "City") recognizes an increase in the number of vacancies and abandoned properties located throughout the City; and

WHEREAS, the City is challenged to identify and locate the owners of such vacant and abandoned properties; and

WHEREAS, the City has already adopted property maintenance codes to regulate building standards for the exterior of structures and the condition of the property as a whole; and

WHEREAS, the City desires to amend the City's Code by creating Section 48-24 through 48-27 to establish a vacant property registration ordinance.

WHEREAS, the City has a vested interest in protecting neighborhoods against decay caused by vacant and abandoned properties and concludes that it is in the best interests of the health, safety,

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and welfare of its citizens and residents to impose registration requirements upon owners of real property located within the City and in certain cases upon mortgagees and other beneficial owners, as remedial measures to assist in correcting ongoing practices by property owners causing and contributing to blight, unsanitary and unsafe conditions.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that **Chapter 48 of the City of Memphis, Code of Ordinances is hereby amended by adding Sections 48-24 thru 48-27 to read as follows:**

CHAPTER 48 ARTICLE II:

PROPERTY REGISTRATION REQUIREMENTS

Sec. 48-24. (a) Purpose and Intent.

It is the purpose and intent of the City of Memphis ("City") to establish a process to address the deterioration and blight of City neighborhoods caused by an increasing amount of abandoned, foreclosed or distressed real property located within the City, and to identify, regulate, and reduce the number of abandoned properties located within the City. It is the City's further intent to establish Vacant Property Registration Requirements as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of abandoned and foreclosed real property.

(b) Definitions.

The following words and terms shall have the meanings set forth in this section, except where otherwise specifically indicated.

i. ***Abandoned Real Property*** means any real property that is vacant, is subject to unauthorized occupancy and, has been determined by evidence

of an affidavit by an agent or officer of the City of Memphis Housing Code Enforcement.

ii. ***Willful and Intentional*** mean the failure to register or take the necessary actions to register as required under this ordinance after three (3) successful attempts by a Housing Code Official to notify the responsible party of their responsibility to register under this ordinance. Such actions shall constitute a rebuttable presumption that the responsible party has willfully and intentional failed to register as required under this ordinance.

iii. ***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 may include, but are not limited to: overgrown and/or dead vegetation; electricity, water or other utilities turned off; stagnant swimming pool; or statement by neighbors, passer-by, delivery agents or government agents.

iv. ***Foreclosure*** means the judicial or non-judicial process by which a property, placed as security for a mortgage loan, is to be sold at an auction to satisfy a debt upon which the borrower has defaulted.

v. ***Material Change*** in ownership is defined for purposes of this ordinance as any change in ownership, whether of record or not, which results in a new party assuming responsibility 1) for care and maintenance, 2) for receipt of notice and/or service of process, or, 3) for acting as agent for the owner of record of the subject property.

vi. ***Mortgage*** means, any consensual lien created by a written instrument which grants or retains an interest in real estate to secure a debt or other obligation. The term includes, without limitation:

aa. Mortgages securing reverse mortgage loans;

bb. Mortgages securing revolving credit loans;

cc. Every Deed conveying real estate, although an absolute conveyance in its terms, which shall have been intended only as a security in the nature of a mortgage; and

dd. Equitable mortgages.

vii. ***Mortgagee*** means:

aa. the holder of an indebtedness or oblige of a non-monetary obligation secured by a mortgage or any person designated including mortgage servicers or authorized to act on behalf of such holder, including mortgage servicers;

bb. any person claiming through a mortgage as successor; and

cc. Any person identified as such in a recorded document which has not been released, assigned, or superseded of record.

viii. ***Mortgagor*** means the person whose interest in the real estate is the subject of the mortgage and any person claiming through a mortgagor as successor. Where a mortgage is executed by a trustee of a land trust, the mortgagor is the trustee and not the beneficiary or beneficiaries.

ix. ***Owner*** means any person who alone, jointly, or severally with others:

aa. Has legal title to the property, with or without accompanying actual possession thereof:

bb. Has charge, care or control of the property as owner or agent of the owner or an executor, administrator, trustee or guardian of the estate of the owner: or

cc. Is the agent or the owner for the purpose of managing, controlling the property or collecting rents, or is any other person managing or controlling the property or is any person entitled to the control or direction of the management or disposition of the property. This ordinance definition

excludes Real Estate listing Agents when acting exclusively in that capacity.

x. ***Property*** means any real, residential, commercial or industrial property, or portion thereof, located within the City of Memphis, including buildings or structures situated on the property.

xi. ***Residential Property*** means buildings of three stories or less in height where the whole building or parts thereof are designed or used as residential units or auxiliary uses to a residential unit.

xii. *Vacant* means any building or structure that is not lawfully occupied or inhabited as evidenced by the conditions set forth in the definition of *"Evidence of Vacancy"* (see Sec. 48-24(b)(iii) and as defined in T.C.A. 13-21-202 .

(c) Applicability.

i. These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather an additional remedy available to the City, above and beyond any other state, county or local provisions.

ii. Parties identified as owners in subsection (b) (ix) (bb and cc) above will not be fined or held liable for fines (under the doctrine of agency) in cases where their principal is disclosed and is identified by subsection (b) (ix) (aa).

I. VACANT PROPERTY REGISTRATION

Sec. 48-25.

(a) Vacant Property Registration Ordinance.

Pursuant to the authority of T.C.A. §6-54-113 and in addition to the requirements of Sec. 48(24-26) set forth herein, the City of Memphis or its designee shall establish a Vacant Property Registry and require registration by the mortgage holder of single family residential real property, including condominiums within the City of Memphis upon Notice of Vacancy, Abandonment (vacancy), and Tax Delinquency.

Sec. 48-26.

(a) Registration of Real Property Upon Vacancy, Abandonment, and Tax Delinquency.

Any mortgagee who holds a mortgage on single family residential housing, including condominiums located within the City of Memphis, shall, register the property within 30 thirty days of a notice of a declaration of vacancy, abandonment and tax delinquency as well as other housing code violations pursuant to a sworn affidavit by a City of Memphis Housing Code Official. The sworn affidavit shall be issued by the Housing Code Official after reasonable observation and monitoring of the property. In addition, the Housing Code Official shall also state under oath that after a reasonable and diligent search of all Shelby County public records, the said Housing Code Official has not been able to determine the correct name and address of the mortgagee. Upon completing and filing the said affidavit with the Department of Code Enforcement, a notice to register will be issued pursuant to the standards set forth in T.C.A. 13-21-202. A separate registration is required for each property parcel.

(b) Cure Prior to Registration.

If within 30 days after notification of vacancy, abandonment and tax delinquency by a City of Memphis Housing Code Official pursuant to Section 48-27(a), a mortgagee

shows proof of payment of all tax delinquencies, no registration will be required for that notification.

(c) Registration Requirements.

Registration pursuant to this section shall require the mortgagee to provide the name of mortgagee and the servicer, the direct mailing address of the mortgagee and the servicer, a direct contact name and telephone number for each, facsimile number and e-mail address for each, the folio or tax number, and the contact name and telephone number of the person responsible for the security and maintenance of the property. The owner shall be required to provide his direct mailing address, a direct contact name and telephone number, facsimile number and e-mail address, and the folio or tax number where applicable. Upon Notification of Vacancy by Code Enforcement both the mortgagee, or his designated agent, and the property owner shall be responsible for compliance with this ordinance whether the vacancy occurred through default, foreclosure, vacancy, or otherwise.

(d) Annual Registration Fee For Vacant, Abandoned, and, Tax Delinquent Property.

A non-refundable annual registration fee in the amount of $200.00 per property parcel, shall accompany the registration forms as provided by the City of Memphis. The registration fee shall be paid by the mortgagee or his agent.

(e) Registration of Transferred Property.

This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred by the mortgagee, or its agent, or when any property is transferred under a deed in lieu of foreclosure/sale, or quit claim deed, or by transfer,

whether filed with the Register of Deeds or not, and, upon transfer of ownership upon the death of a prior owner.

(f) Duration of Registration for Vacant, Abandoned, and Tax Delinquent Property.

Properties subject to this section shall remain under all registration requirements and maintenance standards of the Department of Housing Code Enforcement as long as the property remains vacant, abandoned, and tax delinquent. Property may be removed from the registry upon verification by the City of Memphis or its designee of cure of vacancy, abandonment or tax delinquency; and cure of any existing code violations, with title vested in an owner of record.

(g) Reporting Changes in Service, Property Conditions, Mortgage Status, etc.

Any person or legal entity that has registered a property under this section must report any change of information contained in the registration pursuant to Section 48-26(c) within ten (10) days of the change.

(h) Limited Reporting Requirements.

No release of private information shall be required if the release of such information would constitute a violation of any Federal or State privacy law. In such event where the City requires such information, the City shall seek such private information by way of application to a court of competent jurisdiction.

(i) Service

Service of Notice under this Section shall be: (1) mailed to the mortgagee and owner at their last known addresses as it appears in Shelby County public records; (2) posted on the property in a conspicuous location; or (3) published at least three (3) weeks in a

newspaper of general circulation in Shelby County, providing that the first publication is thirty (30) days before the hearing date.

II. COMPLIANCE

Sec. 48-27.

(a) Failure to Comply.

Failure of the mortgagee and/or owner to properly register or to modify the registration from time to time to reflect a change of circumstances as required by this article is a violation of this article and shall be subject to enforcement and/or the levy of administrative fee of fifty dollars ($50.00) per violation. Where the failure to register is found to be willful and intentional, then the administrative fee of fifty dollars shall continue to be assessed daily until corrected.

(b) Exceptional Penalty Provision.

Upon reasonable cause to believe a deliberate attempt by a mortgagee to evade, conceal or otherwise not identify its true ownership or lienholder interest in a vacant property as certified by the Department of Code Enforcement, the City may petition a court of competent jurisdiction to order that notice of any further transfer of title, ownership or interest to said property shall be filed with the City of Memphis Department of Code Enforcement.

(c) Description of Violation: Civil Penalty.

Any violation of (Sec. 48-26(a) – (g) of this ordinance shall result in the levy of an administrative fee of fifty dollars ($50.00) per violation payable by the mortgagee and subject to a continual violation where Section 48-27(a) applies. This administrative fee

amount shall not be increased without written justification presented at a hearing before the Memphis City Council, and by passage of a super majority (9) of the Council.

(d) Collections and Use of Funds.

All funds collected under this ordinance 48-24 through 27, including fines and fees are to be reserved for the use of the office of Code Enforcement for the removal of blight in the City of Memphis.

SECTION 2. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect from and after the date it shall have been passed by the City Council, signed by the Chairman of the Council, certified and delivered to the Office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

THE FOREGOING ORDINANCE
5477 PASSED
1st Reading 11-6-12
2nd Reading 11-20-12
3rd Reading 4-2-13
Approved Edmund Ford
Chairman of Council
Date Signed: 4/16/2013
Approved: [illegible]
Mayor, City of Memphis
Date Signed: 4/19/13

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.
Valerie C. Snyder
Comptroller