

2nd Reading

ORDINANCE NO. 1394

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING CHAPTER 8.12 OF THE BANNING MUNICIPAL CODE REVISING THE REGULATIONS PERTAINING TO THE MAINTENANCE OF VACANT AND DISTRESSED BUILDINGS.

THE CITY COUNCIL OF THE CITY OF BANNING DOES ORDAIN AS FOLLOWS:

SECTION 1. Amendment of Chapter 8.12 of the Banning Municipal Code. Chapter 8.12, "Boarded or Vacant Buildings," is hereby amended and shall read as shown in Exhibit "A" to this Ordinance.

SECTION 2. Declaration of Facts Constituting Urgency. Vacant and distressed residential properties pose an immediate risk to the public peace, health and safety of the citizens of the City of Banning because the detrimental effects from the lack of security and maintenance of vacant and distressed residential properties endangers children unprotected from unsecured pools and other attractive nuisances, and further endangers neighborhoods affected by the resulting squatting, vandalism, burglaries, other crimes and physical and economic blight.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. Effective Date. This Ordinance shall take immediate effect upon its passage by the City Council.

SECTION 5. Publication. The City Clerk is directed to cause this Ordinance to be published within 15 days of its passage in a newspaper of general circulation published and circulated within the City of Banning.

PASSED, APPROVED, AND ADOPTED this 12th day of August, 2008.

Brenda Salas, Mayor
City of Banning

**APPROVED AS TO FORM AND
LEGAL CONTENT:**

Burke, Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1394 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 12th day of August, 2008, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, Banning, California

EXHIBIT "A"

Chapter 8.12

VACANT AND DISTRESSED BUILDINGS

Sections:

8.12.010	Purpose
8.12.020	Definitions
8.12.030	Registration/Fees
8.12.040	Maintenance Requirements
8.12.050	Signage Requirements
8.12.060	Enforcement, Violations and Penalties
8.12.070	Additional Authority

8.12.010 Purpose. Vacant buildings are a major cause and source of blight in both residential and non-residential neighborhoods, especially when the owner of the building fails to actively maintain and manage the building. Vacant buildings discourage economic development, retard appreciation of property values, are potential fire hazards, and can jeopardize the ability of owners of neighboring property from securing or maintaining affordable fire insurance, among other things. The purpose of this Chapter is to establish uniform and reasonable regulations to prevent the immediate risks and detrimental effects associated with vacant and distressed residential properties.

8.12.020 Definitions. As used in this Chapter, the following terms shall have the following meanings:

- (a) Abandoned property. A residential property that is vacant and is under a current Notice of Default and/or Notice of Trustee's Sale, pending Tax Assessors Lien Sale, or a property that has been the subject of a foreclosure sale where the title was retained by or transferred to the beneficiary of the deed of trust involved in the foreclosure, or a property transferred under a deed in lieu of foreclosure/sale.
- (b) Beneficiary. A lender under a note secured by a deed of trust.
- (c) Building Official. The development services manager of the City's building and safety department.
- (d) Days. Consecutive calendar days.
- (e) Deed of Trust. An instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan. (This type of instrument is used in California instead of a mortgage.) This definition

applies to any and all subsequent deeds of trust, i.e.: second deed of trust, third deed of trust, etc.

- (f) Deed in lieu of foreclosure/sale. 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.
- (g) Default. The failure to fulfill a contractual obligation, monetary or conditional.
- (h) Evidence of vacancy. 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, dry brush, weeds, accumulation of newspapers, circulars, flyers, notices and/or mail (except those required by federal, state or local law), abandoned automobiles not properly stored within a building, past due utility notices and/or disconnected utilities, accumulation of trash, junk, building materials 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 absence of furnishings and/or personal items consistent with residential habitation, observations by neighbors, passersby, delivery agents, government employees or others that the property is vacant.
- (i) Foreclosure. The process by which a property, placed as security for a real estate loan, is sold to satisfy the debt if the trustor (borrower) defaults.
- (j) Local. Within forty (40) road/driving miles distance of the subject property.
- (k) Notice of Default. 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.
- (l) Owner. Any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property.
- (m) Property. Any improved real property, or portion thereof, situated in the incorporated territory of the City of Banning, including any buildings or structures located on such improved real property.
- (n) Secured. Treated with such measures as may be directed by the Director of Community Development or his or her designee that assist in rendering the property inaccessible to unauthorized persons, including, but not limited to, the closure, locking, padlocking, chaining, repair and/or boarding of fences, walls, windows, door(s) (walk-through, sliding and garage), and/or other openings of such size that may allow a child access to the interior of the accessible property. In the case of broken windows, secured includes

the re-glazing or boarding of the window. Boarding shall be completed to a minimum of the current HUD securing standards set 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.

- (o) Trustee. The person, firm or corporation holding a Deed of Trust on a property.
- (p) Trustor. The borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.
- (q) Vacant. A building that is not legally occupied.

8.12.030 Registration/Fees.

- (a) Any beneficiary/trustee who holds a deed of trust on a property located within the City of Banning 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 Riverside County Recorders Office.
 - (i) If the property is found to be vacant, the beneficiary/trustee shall, within ten (10) days of the inspection, register the property with the City of Banning Building & Safety Department on forms provided by the City of Banning.
 - (ii) If the property is legally occupied, the beneficiary/trustee or his designee shall inspect the property monthly until either 1) the trustor or other party remedies the default, or 2) it is found to be vacant, at which time the beneficiary/trustee is required to register the property with the City of Banning Building & Safety Department on forms provided by the City of Banning within ten (10) days of finding the property to be vacant.
- (b) The registration shall contain the name of the beneficiary/trustee (corporation or individual), the direct street/office mailing address of the beneficiary/trustee (no postal boxes), a direct contact name and phone number for the beneficiary/trustee, and, in the case of a corporation or non-local beneficiary/trustee, the local property maintenance company and/or real estate agency 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.
- (c) The City Council shall establish a registration fee by resolution. An annual registration fee shall accompany the registration form. 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 and fees are due January 1st of each year and must be received no later than January 31 of the year due. Registration fees will not be prorated.

- (d) A vacant property subject to this section shall be registered annually for as long as it remains vacant.

8.12.040 Maintenance Requirements. Vacant buildings and property shall be maintained in compliance with the following:

- (a) The property is kept free of evidence of vacancy.
- (b) The exterior of any building, including but not limited to paints and finishes, is maintained in good condition and in accordance with previously approved plans, if any;
- (c) The landscaping of visible front and side yards is maintained in good condition and in accordance with previously approved plans, if any.
- (d) Exterior trash, debris, abandoned automobiles and graffiti are promptly and regularly removed.
- (e) 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.
- (f) The property is secured.
- (g) The building is maintained in compliance with all applicable codes and regulations.

Adherence to this section does not relieve the beneficiary/trustee or owner of any obligations set forth in any Covenants Conditions and Restrictions and/or Home Owners Association rules and regulations which may apply to the vacant property.

8.12.050 Signage Requirements. Vacant property that is under a Notice of Default or has been foreclosed upon shall be posted with the name and 24-hour contact phone number of the local property maintenance company and/or real estate agency retained by the beneficiary/trustee. The posting shall be no less than 18" X 24" 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 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 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, 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. The exterior posting must be constructed of and printed with weather resistant materials.

8.12.60 Enforcement, Violations And Penalties.

- (a) *Penalty.* The City of Banning Code Enforcement Division shall have the primary responsibility for enforcing this Chapter. In addition to any other remedies provided by law, any property owner or beneficiary/trustee who violates this Chapter shall be liable for an administrative penalty in an amount not to exceed one thousand dollars (\$1,000.00) for each calendar month, or portion thereof, the violation exists. The administrative penalty shall be waived if the building official or hearing officer finds that imposition of the penalty would cause a substantial economic hardship on the owner or would hinder the rehabilitation of the building.

- (b) *Procedure.* The administrative penalty shall be imposed by a hearing officer upon the recommendation of the building official and after the owner or trustee/beneficiary shall have been afforded a hearing before the hearing officer. The hearing shall be conducted in accordance with the provisions of Section 8.48.470 of this title. In setting the penalty, the hearing officer shall consider the severity of the blighting conditions of the property and the owner's efforts, or lack thereof, to remedy the problem. The decision of the hearing officer shall be final;
 - (i) The administrative penalty shall be due and payable within thirty days after the decision of the hearing officer. If the penalty is not paid within forty-five days after the decision of the hearing officer, the City Council may thereupon order that the penalty be a personal obligation of the property owner, the beneficiary/trustee or that it be specially assessed against the property involved. If the City Council orders that the penalty be specially assessed against the property, it shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxes are applicable to the special assessment;

 - (ii) The City Council may also cause a notice of lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of the property and set forth the last known address of the record owner or possessor, the date on which the penalty was imposed, a description of the real property subject to the lien, and the amount of the penalty

- (c) Nothing in either this Chapter or any other provision of this Code shall prevent the City of Banning Code Enforcement Division from engaging in efforts to obtain voluntary compliance by means of warnings, notices, educational programs, administrative citations or any other administrative remedy.
- (d) Payment of a penalty for violation of this Chapter shall not excuse the failure to correct the violation nor shall it bar further enforcement action.
- (e) This section provides a civil penalty remedy that is in addition to all other legal remedies, criminal or civil, which may be pursued by the city to address any violation of this chapter. The administrative penalty imposed pursuant to the provisions of this section may be imposed concurrently with any administrative citation penalties imposed pursuant to Section 1.20.030 of this Code.

8.12.070 Additional Authority. In addition to the enforcement remedies established in Chapters 1.20 and 1.28 of this Code, the City of Banning Code Enforcement Division shall have the authority to require the beneficiary/trustee/owner and/or owner of record of any property affected by this Chapter to implement additional maintenance and/or security measures including, but not limited to, securing any/all door, window 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.

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