

**ORDINANCE NO. 2329**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTEBELLO AMENDING TITLE 8 OF THE MONTEBELLO MUNICIPAL CODE ADDING CHAPTER 8.40 ENTITLED ABANDONED PROPERTY AND VACANT LOT**

**Case No.: Code Amendment 1-09**  
**Applicant: City Initiated**  
**Location: City-wide**

**WHEREAS**, the presence of abandoned and/or vacant properties can lead to neighborhood decline;

**WHEREAS**, the presence of abandoned and/or vacant properties can create an attractive nuisance;

**WHEREAS**, the presence of abandoned and/or vacant properties can contribute to lower property values;

**WHEREAS**, the presence of abandoned and/or vacant properties can discourage potential buyers from purchasing a home adjacent to, or in neighborhoods with abandoned and/or vacant properties;

**WHEREAS**, many abandoned and/or vacant properties are the responsibility of persons who may not reside or conduct business in the city and would be considered an out of the area lender, beneficiary, trustee, or owner;

**WHEREAS**, in many instances the lender, beneficiary, trustee, or owner fail to adequately maintain and secure these abandoned and/or vacant properties;

**WHEREAS**, the city has an obligation to protect the community from decline and devaluation; and

**WHEREAS**, The City Attorney has reviewed the proposed activity for compliance with the California Environmental Quality Act ("CEQA") and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore pursuant to Section 15060(C)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus no environmental review is necessary.

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

**SECTION 1.** That Title 8 of the Montebello Municipal Code is amended to add new Chapter 8.40 to read as follows

**8.40 ABANBONDED PROPERTY AND VACANT LOT**

**Sections:**

- 8.40.010 Purpose**
- 8.40.020 Definitions**
- 8.40.030 Maintenance of Unimproved Vacant Lots**
- 8.40.040 Maintenance of Vacant Property Acquired by Foreclosure**
- 8.40.050 Recordation of Transfer of Loan/Deed of Trust/Assignment of Rents**
- 8.40.060 Registration of Vacant Properties Under Notice of Default**
- 8.40.070 Maintenance Requirements**
- 8.40.080 Security Requirements**
- 8.40.090 Additional Authority**
- 8.40.100 Fees**

8.40.110	<b>Enforcement</b>
8.40.120	<b>Appeals</b>
8.40.130	<b>Violation/Penalty</b>
8.40.140	<b>Severability</b>

**8.40.010 Purpose/Scope.**

It is the purpose and intent of the Montebello City Council, through the adoption of this Chapter, to establish a vacant property registration and maintenance program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned and/or vacant properties. This Chapter is intended to apply to abandoned and/or vacant property located within the City of Montebello.

**8.40.020 Definitions.**

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

- A. **"Abandoned"** means real property that is vacant and is under a current Notice of Default and/or Notice of Trustee's Sale, pending Tax Assessors Lien Sale and/or a 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 and any properties transferred under a deed in lieu of foreclosure/sale.
- B. **"Accessible property"** means a property that is accessible through a compromised or breached gate, fence, wall etc.
- C. **"Accessible structure"** means a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.
- D. **"Agreement"** 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.
- E. **"Assignment of Rents"** means an instrument that transfers the beneficial interest under a deed of trust from one lender/entity to another.
- F. **"Beneficiary"** means a lender under a note secured by a deed of trust.
- G. **"Buyer"** means any person, co-partnership, association, corporation, or fiduciary who agrees to transfer anything of value in consideration for property described in an agreement of sale, as defined in this subsection.
- H. **"Days"** means consecutive calendar days.
- I. **"Deed of Trust"** means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan. In California, a deed of trust is used instead of a mortgage. This definition applies to any and all subsequent deeds of trust i.e.: 2<sup>nd</sup> trust deed, 3<sup>rd</sup> trust deed, etc.
- J. **"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.
- K. **"Default"** means the failure to fulfill a contractual obligation, monetary or conditional.
- L. **"Distressed"** means a property that is under a current Notice of Default and/or Notice of Trustee's Sale and/or pending Tax Assessor's Lien Sale or has been foreclosed upon by the trustee or has been conveyed to the beneficiary/trustee via a Deed in lieu of Foreclosure/sale.

- M. "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 by neighbors, passersby, delivery agents, government employees that the property is vacant.
- N. "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.
- O. "Local" means within forty (40) road/driving miles distance of the subject property.
- P. "Neighborhood standard" means those conditions that are present on a simple majority of properties within a three hundred (300) foot radius of an individual property. A property that is the subject of a neighborhood standard comparison, or any other abandoned property within the three hundred (300) foot radius, shall not be counted toward the simple majority.
- Q. "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.
- R. "Out of area" means in excess of forty (40) road/driving miles distance of the subject property.
- S. "Owner" means any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property.
- T. "Owner of record" means the person having recorded title to the property at any given point in time the record is provided by the Los Angeles County Recorders Office.
- U. "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.
- V. "Residential property" means any improved real property, or portion thereof, situated in the city, designed or permitted to be used for dwelling purposes, and shall include 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 and/or zoned for such use.
- W. "Securing" means such measures as may be directed by the City Administrator, or his or her designee that assist in rendering the property inaccessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/pad locking of gates, the repair or boarding of door, window and/or other openings. Boarding shall be completed to a minimum of the current HUD securing standards at the time the boarding is completed or required.
- X. "Trustee" means the person, firm or corporation holding a Deed of Trust on a property.
- Y. "Trustor" means a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.
- Z. "Vacant" means a building, structure, or real property that is not legally occupied.

**8.40.030 Maintenance of Unimproved Vacant Lots.**

Lots that are unimproved due to never having been developed or having become vacant subsequent to the removal of any pre-existing buildings, structures or impervious surfaces shall be subject to the approval of a Landscape and Irrigation Plan by the Planning Division and shall be improved and maintained at all times in accordance with the following provisions:

**A. Lots Less Than One Acre.** For unimproved vacant lots that are less than one acre in size, the entire lot shall be improved and maintained in the following manner:

1. For residentially zoned lots, the entire lot shall be maintained using sod, hydro-seed, drought tolerant ground cover or other acceptable ground cover approved by the Planning Division. The ground cover shall be maintained in good condition at all times.
2. For commercial or industrial zoned lots, a minimum ten-foot wide perimeter landscape planter along all street frontages shall be provided. All other internal areas may be landscaped or include a decorative hardscape subject to the approval of the Planning Division.
3. The lot shall be improved with an irrigation system and maintained in good condition at all times.
4. The lot shall be maintained free of litter and debris, including the stockpiling of any material, at all times. Any on-site litter, debris or stockpiling of material shall be immediately removed. The property owner shall be responsible for inspecting the property weekly, or taking all necessary steps to reasonably ensure that no litter, debris or material stockpiling collects or is maintained on the lot.
5. Any dead or dying vegetation as well as any broken, malfunctioning or non-functioning irrigation components on the lot shall be replaced within seventy-two hours of their discovery. The property owner shall be responsible for inspecting the property weekly, or taking all necessary steps to reasonably ensure that there is no dead or dying vegetation or any broken, malfunctioning or non-functioning irrigation components on the lot.

**B. Lots One Acre or Greater.** For unimproved vacant lots that are one acre or greater in size, the entire lot shall be improved and maintained in the following manner:

1. A minimum ten-foot wide perimeter landscape planter along all street frontages shall be provided.
2. All landscape planters shall be improved with an irrigation system and consist of decorative landscaping containing a combination of trees, shrubs, and groundcover, or other acceptable landscaping approved by the Planning Division. A Landscape and Irrigation Plan shall be submitted to and approved by the Planning Division prior to implementation.
3. All on-site landscaping and irrigation shall be maintained in good condition at all times. Any dead or dying landscaping shall be replaced within seventy-two hours of their discovery, including any broken, malfunctioning or non-functioning irrigation components. The property owner shall be responsible for inspecting the property weekly, or taking all necessary steps to reasonably ensure that all of the landscaping and irrigation on the lot is maintained in good condition and there are no broken, malfunctioning or non-functioning irrigation components on the lot.

4. A six-foot high decorative view obscuring, fence shall be installed behind all required perimeter landscaping to secure the lot. If the property owner decides not to install the six-foot high view obscuring fence, the entire lot shall be landscaped. In circumstances where the Director of Planning and Community Development finds that a higher fence is warranted for adequate security of the site and/or because of usual topographical circumstances associated with the vacant lot, a fence may be constructed up to a maximum of eight feet high. All fences shall include a security gate to provide accessibility to the lot for the Police Department or other emergency personnel. A security code for the gate shall be provided to the Police Department upon installation and shall be kept up-to-date at all times.
5. Decorative view obscuring fencing may include redwood or cedar fencing, woodcrete, green vinyl chain-link fencing with a green windscreen securely attached, or any other durable, aesthetically attractive, material deemed acceptable by the Planning Division. Green vinyl chain-link fencing with a green windscreen will not be permitted in residential or commercial zones or zones which abut residential or commercial zones, except as a temporary construction fence with the approval of Planning Division.
6. All fencing shall be maintained in good condition at all times. Any on-site graffiti shall be removed within twenty-four hours of its appearance. The property owner shall be responsible for inspecting the property weekly, or taking all necessary steps to reasonably ensure that the entire lot is free from graffiti.

#### **8.40.040 Maintenance of Vacant Property Acquired by Foreclosure.**

Subject to certain amendments and additions as hereinafter set forth in this Chapter, the City Council references California Civil Code Section 2929.3 which requires a legal owner to maintain vacant residential property purchased by that owner at a foreclosure sale or acquired by that owner through foreclosure under a mortgage or deed of trust.

The definition of "failure to maintain" as found in Civil Code Section 2929.3(a)(3)(b) is supplemented and clarified by referencing the conditions designated as public nuisances in Chapter 8.16.010 and the maintenance and security requirements of 8.40.070 & 8.40.080 of the Montebello Municipal Code (Civil Code Section 2929.3(a)(3)(f)).

#### **8.40.050 Recordation of Transfer of Loan/Deed of Trust/Assignment of Rents.**

Within ten (10) days of the purchase and/or transfer of a loan/deed of trust secured by property the new beneficiary/trustee shall record, with the Los Angeles County Recorders Office, an Assignment of Beneficial Interest, or similar document, that lists the name of the corporation, and/or individual, the mailing address and contact phone number of the new beneficiary/trustee responsible for receiving payments associated with the loan/deed of trust.

#### **8.40.060 Registration of Vacant Properties Under Notice of Default.**

Any beneficiary/trustee, who holds a deed of trust on a property located within the City of Montebello, shall perform an inspection of the property that is the security for the deed of trust, upon default by the trustor, prior to recording a Notice of Default with the Los Angeles County Recorders Office. If the property is found to be vacant or shows evidence of vacancy, it is, by this Chapter, deemed abandoned and the beneficiary/trustee shall, within ten (10) days of the inspection, register the property with the Code Enforcement Division or his or her designee on forms provided by the City.

If the property is occupied but remains in default it shall be inspected by the beneficiary/trustee, or his designee, monthly until 1) The trustee or other 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, register the property with the Code Enforcement Division on forms provided by the City.

The registration shall contain the name of the beneficiary/trustee (corporation or individual), the direct street/office mailing address of the beneficiary/ trustee (no P. O. Boxes), a direct contact name and phone number for the beneficiary/trustee and, 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. Registration fees will not be prorated.

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 1<sup>st</sup> of each year and must be received no later than January 31 of the year due.

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

Properties subject to this chapter shall remain under the annual registration requirement, security and maintenance standards of this section as long as they remain vacant.

Any person, firm, corporation or any other legal entity that has registered a property under this chapter must report any change of information contained in the registration within ten (10) days of the change.

#### **8.40.070 Maintenance Requirements**

Properties subject to this section shall be:

- A. Free from all conditions expressly designated as public nuisances in Chapter 8.16.010.
- B. In a condition comparable to the neighborhood standards.
- C. Shall comply with all of the landscape and irrigation requirements in Title 17 (Zoning Code) of the Montebello Municipal Code.
- D. Pools and spas shall be kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry. 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/trustee or property 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 property.

#### **8.40.080 Security Requirements.**

Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

Secure manner includes, but is not limited to, the closure and locking of windows, doors (walk-through, sliding and garage) gates and any other opening of such size that it may allow any person including but not limited to a child to access the interior of the property and or structure(s). In the case of broken windows securing means the re-glazing or boarding of the window immediately and within ten (10) days the window shall be replaced.

If the property is owned by a corporation and/or out of area beneficiary/trustee/ owner, a local property management company shall be contracted to perform weekly

inspections to verify that the requirements of this section, and any other applicable laws, are being met.

The property shall be posted with name and 24-hour contact phone number of the local property management company. 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 it is visible from the street, secured to the exterior of the building/structure facing the street to the front of the property so it is visible from the street or if no such area exists, or on a stake of sufficient size to support the posting in a location that is visual 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.

The local property management company shall inspect the property on a weekly basis to determine if the property is in compliance with the requirements of this chapter.

**8.40.100 Additional Authority.**

In addition to the enforcement remedies established in Chapters 1.12 & 1.14, the City Administrator or his or her designee 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/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.

**8.40.110 Fees.**

The fee for registering an Abandoned Property shall be set by resolution of the City of Montebello City Council.

**8.40.120 Enforcement.**

Violations of this chapter may be enforced in any combination as allowed in Chapters 1.12 & 1.14. The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

**8.40.130 Appeals.**

Any person aggrieved by any of the requirements of this section may appeal insofar as such appeal is allowed under Chapter 1.14.

**8.40.140 Violation/Penalty.**

Violations of this chapter shall be treated as a strict liability offense regardless of intent. Any person, firm and/or corporation that violates any portion of this section shall be subject to prosecution and/or administrative enforcement under Chapters 1.12 & 1.14. Fines and penalties collected pursuant to this section shall be directed to City nuisance abatement programs.

**8.40.150 Severability.**

Should any provision, section, paragraph, sentence or word of this chapter be determined or declared invalid by any final court 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.** This ordinance shall take effect thirty (30) days after its final passage by the City Council.

**SECTION 3.** The City Clerk of the City of Montebello is hereby directed to certify the passage and adoption of this Ordinance and to cause it to be published or posted as required by law.

First read at a regular meeting of the City Council held on the 25th day of March, 2009 and adopted and ordered published at a regular meeting of said Council held on the 8th day of April, 2009.



*Rosemarie Vasquez*  
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Rosemarie Vasquez, Mayor

ATTEST:

APPROVED AS TO FORM:

*Robert J. King*  
\_\_\_\_\_  
Robert J. King, City Clerk

*Arnold Alvarez-Glasman*  
\_\_\_\_\_  
Arnold Alvarez-Glasman, City Attorney

STATE OF CALIFORNIA        )  
COUNTY OF LOS ANGELES   )ss.  
CITY OF MONTEBELLO        )

I, Robert J. King, City Clerk of the City of Montebello, do hereby certify that the foregoing Ordinance No.2329 was introduced, on March 25, 2009 was passed and duly adopted by the City Council of the City of Montebello at their regular meeting of April 8, 2009, and carried by the following vote:

AYES:           Members:   Salazar, Saucedo-Rodriguez, Molinari, Urteaga, Vasquez

NOES:           Members:   None

ABSTAIN:       Members:   None

ABSENT:        Members:   None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City on this 8th day of April 2009.

*Robert J. King*  
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Robert J. King, City Clerk