

(Published in the Topeka Metro News November 25, 2019)

**ORDINANCE NO. 20223**

AN ORDINANCE introduced by City Manager Brent Trout creating a new Chapter 8.65 of the Topeka Municipal Code requiring registration of vacant properties and properties that are the subject of mortgage foreclosure proceedings.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 8.65.010, which said section reads as follows:

**Purpose and intent.**

It is the purpose and intent of the governing body to establish a process to address the deterioration, crime, and decline in value of properties located in neighborhoods caused by properties with mortgages in foreclosure and to identify, regulate, limit and reduce the number of these properties. The governing body finds that occupied structures are generally better maintained when compared to vacant structures. Chronically vacant and unutilized structures or structures owned by individuals who are economically strained and unable to meet their mortgage obligations are often not properly or diligently maintained, which contribute to blight, lower property values, and have a negative impact on the residential areas where they are located. It is the governing body's further intent to establish a registration program as a mechanism to help protect neighborhoods from becoming blighted through the lack of adequate maintenance of properties that are in foreclosure or are chronically vacant and unutilized.

Section 2. That the Code of the City of Topeka, Kansas, is hereby amended

by adding a section to be numbered 8.65.020, which said section reads as follows:

**Definitions.**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

“Default” shall mean that the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

“Director” shall mean the director of neighborhood relations or the director’s designee.

“Enforcement officer” shall mean any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector, building inspector, or other person authorized by the City to enforce any applicable ordinance.

“Foreclosure or foreclosure action” shall mean the legal process by which a mortgagee, or other lien holder, terminates or attempts to terminate a property owner’s equitable right of redemption to obtain legal and equitable title to the real property pledged as security for a debt or the real property subject to the lien. The legal process is not concluded until the property obtained by the mortgagee, lien holder, or designee, by certificate of title, or any other means, is sold to a bona fide purchaser in an arm’s length transaction to satisfy the debt or lien.

“Governmental entities” shall mean any federal agency, city, county, school district or other taxing subdivision.

“Mortgagee” shall mean the creditor, including but not limited to, trustees;

mortgage servicing companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor's rights, interests or obligations under the mortgage agreement; or any other person or entity with the legal right to foreclose on the real property, excluding governmental entities.

"Owner" shall mean every person, entity, or mortgagee, who alone or severally with others, has legal or equitable title to any real property; has legal care, charge, or control of any such property; is in possession or control of any such property; and/or is vested with possession or control of any such property, excluding governmental entities.

A property manager shall not be considered the owner. In the absence of substantial evidence to the contrary, records of the Shawnee County Clerk's Office, Registrar of Deeds, certified copies of court records or judgments of any court, copies of lease agreements, contracts for deed, mortgages, tax records, rental agreements and other financial documents related to the property shall be conclusive evidence of the ownership of the property.

"Property manager" shall mean any party designated by the owner as responsible for inspecting, maintaining and securing the property as required in this chapter.

"Real property" shall mean any residential or commercial land and/or buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the City limits.

"Registrable property" shall mean:

(a) Any real property located in the City, whether vacant or occupied,

75 that meets any of the following conditions:

76 (1) The property is the subject of a foreclosure action filed by  
77 the mortgagee;

78 (2) A judgment of foreclosure has been entered;

79 (3) A foreclosure sale has occurred and title transferred to the  
80 beneficiary of a mortgagee; or

81 (4) The property has been transferred to a mortgagee under a  
82 deed in lieu of foreclosure/sale.

83 The designation of a property as “registrable” shall remain in place until such  
84 time as the property is sold to a bona fide purchaser in an arm’s length transaction or  
85 the foreclosure action has been dismissed and any default on the mortgage has been  
86 cured.

87 (b) Any property that is vacant for more than one hundred eighty (180)  
88 days.

89 “Registry” shall mean a web-based electronic database of searchable real  
90 property records, used by the City to allow mortgagees and owners the opportunity to  
91 register properties and pay applicable fees as required in this chapter.

92 “Renovation activities” shall mean actions that demonstrate that property is being  
93 repaired, remodeled, or rehabilitated. Such activities shall include, but not be limited to,  
94 painting, roofing, wallpapering, tiling, carpeting, installing cabinets/counter tops,  
95 installing heating/cooling systems, and repairs to any part of the structure including, but  
96 not limited to, the foundation, windows, doors, siding, and porches.

97 “Semi-annual registration” shall mean six (6) months from the date of the first

98 action that requires registration, as determined by the director, and every subsequent  
99 six (6) months. The date of the initial registration may be different than the date of the  
100 first action that required registration. "Utility" shall mean any utility and/or service that is  
101 essential for a building to be habitable and/or perform a service necessary to comply  
102 with all City ordinances. This includes, but is not limited to, electrical, gas, water, and  
103 sewer.

104 "Vacant" shall mean any building or structure intended for residential or  
105 commercial use which does not appear to be occupied or in use by the owner or tenant  
106 on a permanent, non-transient basis. Evidence that a property is "vacant" shall include  
107 any condition that on its own, or combined with other conditions present, would lead a  
108 reasonable person to believe that the property has not been occupied or in use for at  
109 least one hundred eighty (180) days. Such conditions may include, but are not limited  
110 to: overgrown and/or dead vegetation; past due utility notices and/or disconnected  
111 utilities; accumulation of trash junk or debris; abandoned vehicles, auto parts and/or  
112 materials; the absence of furnishings and/or personal items consistent with habitation or  
113 occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation  
114 of newspapers, circulars, flyers and/or mail; statements by neighbors, passers-by,  
115 delivery agents or government agents; and/or the presence of boards over doors,  
116 windows or other openings.

117 Section 3. That the Code of the City of Topeka, Kansas, is hereby amended  
118 by adding a section to be numbered 8.65.030, which said section reads as follows:

119 **Establishment of a registry.**

120 The director shall establish a registry cataloging each registrable property

121 containing the information required by this chapter.

122 Section 4. That the Code of the City of Topeka, Kansas, is hereby amended  
123 by adding a section to be numbered 8.65.040, which said section reads as follows:

124 **Registration of Property Subject to Mortgage Foreclosure.**

125 (a) Within ten (10) days of the date that the property becomes registrable, the  
126 mortgagee shall:

127 (1) Register the real property and indicate whether the property is  
128 vacant; and

129 (2) If the property is vacant, the mortgagee shall designate in writing a  
130 property manager to inspect, maintain and secure the real property. A separate  
131 registration will be required for each registrable property.

132 (b) Initial registration pursuant to this section shall contain at a minimum the  
133 name of the mortgagee, the mailing address of the mortgagee, e-mail address,  
134 telephone number and name of the property manager and the manager's mailing  
135 address, e-mail address, and telephone number.

136 (c) At the time of initial registration each registrant shall pay a non-refundable  
137 semi-annual registration fee to be determined by the director, with the approval of the  
138 city manager, in an amount not to exceed five hundred dollars (\$500) for each  
139 registrable property. Subsequent semi-annual registrations of registrable properties and  
140 fees in that amount shall be due within ten (10) days of the expiration of the previous  
141 registration.

142 (d) If the mortgage and/or servicing on a property is sold or transferred, the  
143 new mortgagee is subject to all the terms of this chapter. Within ten (10) days of the

144 transfer, the new mortgagee shall register the property or update the existing  
145 registration. The previous mortgagee(s) will not be released from the responsibility of  
146 paying all previous unpaid fees, fines, and penalties accrued during that mortgagee's  
147 involvement with the property.

148       (e) If the mortgagee sells or transfers the registrable property in a non-arm's  
149 length transaction to a related entity or person, the transferee is subject to all the terms  
150 of this chapter. Within ten (10) days of the transfer, the transferee shall register the  
151 property or update the existing registration. Any and all previous unpaid fees, fines, and  
152 penalties, regardless of who the mortgagee was at the time registration was required,  
153 including but not limited to unregistered periods during the foreclosure process, are the  
154 responsibility of the transferee and are due and payable with the updated registration.  
155 The previous mortgagee will not be released from the responsibility of paying all  
156 previous unpaid fees, fines, and penalties accrued during that mortgagee's involvement  
157 with the property.

158       (f) Properties subject to this section shall remain subject to the semi-annual  
159 registration requirement, the security, and maintenance standards of this section as  
160 long as the property remains registrable.

161       (g) Failure of the mortgagee and/or owner to properly register, pay the  
162 registration fees, or to modify the registration to reflect a change of circumstances as  
163 required by this ordinance is a violation of this chapter and shall be subject to a civil  
164 penalty of not to exceed \$250 for each violation. Each property shall constitute a  
165 separate offense. A citation may be issued every thirty (30) days by the director until a  
166 registration statement, payment of the registration fees, amendment, or other statement

required by this chapter is filed.

(h) If the civil penalties are not paid within thirty days from the payment date or, if appealed pursuant to Chapter 2.145 TMC, thirty (30) days from the final decision of the hearing officer, the obligation shall constitute a lien upon the real property and shall be assessed as a special assessment against the property that is the subject of the requirement. The city clerk shall certify the unpaid portion of the penalty to the county clerk who shall collect the assessment at the same time as ad valorem property taxes.

Section 5. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 8.65.050, which said section reads as follows:

**Registration of Vacant Property.**

(a) (1) Any owner of vacant property located within the City shall register the real property within ten (10) days after the property becomes vacant, or within ten (10) days after assuming ownership of the property, whichever is later.

(2) An owner of vacant property shall not be required to register the real property if the owner is performing renovation activities.

(b) Initial registration pursuant to this section shall contain at a minimum the name of the owner, the mailing address of the owner, e-mail address, and telephone number of the owner, and if applicable, the name and telephone number of the property manager and the manager's address, e-mail address, and telephone number.

(c) If the owner resides outside a sixty (60) mile radius of the City limits, the owner shall appoint an agent who resides within the City limits. The owner shall provide the agent's full name, property management company name (if applicable), e-mail address (if applicable), telephone number and mailing address.



190           (d) At the time of initial registration each registrant shall pay a non-refundable  
191 semi-annual registration fee to be determined by the director, with the approval of the  
192 city manager, in an amount not to exceed five hundred dollars (\$500) for each vacant  
193 property. Subsequent semi-annual registrations of vacant properties and fees in that  
194 amount are due within ten (10) days of the expiration of the previous registration. (e)

195           (e) If the property is sold or transferred, the new owner is subject to all the  
196 terms of this chapter. Within ten (10) days of the transfer, the new owner shall register  
197 the vacant property or update the existing registration. The previous owner(s) will not be  
198 released from the responsibility of paying all previous unpaid fees, fines, and penalties  
199 accrued during that owner's involvement with the vacant property.

200           (f) Properties subject to this section shall remain subject to the semi-annual  
201 registration requirement, the security, and maintenance standards of this section as  
202 long as the property is vacant.

203           (g) Properties registered as a result of this section are not required to be  
204 registered again under TMC 8.65.040.

205           (h) Failure of the owner to properly register, pay registration fees, or to modify  
206 the registration to reflect a change of circumstances as required by this ordinance is a  
207 violation of this chapter and shall be subject to a civil penalty of not to exceed \$250 for  
208 each violation. Each property shall constitute a separate offense. A citation may be  
209 issued every thirty (30) days by the director until a registration statement, payment of  
210 registration fees, amendment, or other statement required by this chapter is filed.

211           (i) If the civil penalties are not paid within thirty days from the payment date  
212 or, if appealed pursuant to Chapter 2.145 TMC, thirty (30) days from the final decision of

the hearing officer, the obligation shall constitute a lien upon the real property and shall be assessed as a special assessment against the property that is the subject of the requirement. The city clerk shall certify the unpaid portion of the penalty to the county clerk who shall collect the assessment at the same time as ad valorem property taxes.

Section 6. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 8.65.060, which said section reads as follows:

**Maintenance requirements.**

Each mortgagee of a registrable property and each owner of a vacant property shall maintain the properties subject to this chapter in accordance with the property maintenance code adopted in the Topeka Municipal Code section 8.60.010 and all other codes adopted by the City.

Section 7. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 8.65.070, which said section reads as follows:

**Security requirements.**

(a) Properties subject to this chapter shall be maintained by the owner or mortgagee in a secure manner so as not to be accessible to unauthorized persons.

(b) A “secure manner” shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates, and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by re-glazing of the window.

(c) If a property is registrable, a property manager shall be designated by the

mortgagee and/or owner to perform the work necessary to bring the property into compliance with section 8.65.060 and the property manager must perform regular inspections to verify compliance with the requirements of this chapter and any other applicable laws.

(d) When a property subject to this chapter becomes vacant, it shall be posted with the name and twenty-four (24) hour contact telephone number of the property manager. The property manager shall be available to be contacted by City staff Monday through Friday between 9:00 a.m. and 5:00 p.m., legal holidays excepted. The sign - which shall be at least 3" by 5" - shall be placed on the front door. The property manager shall ensure that the sign is made or covered with weather-resistant materials. The sign shall contain the following language with supporting information:

THIS PROPERTY IS MANAGED BY \_\_\_\_\_.  
THE PROPERTY MANAGER CAN BE CONTACTED BY TELEPHONE AT \_\_\_\_\_  
OR BY EMAIL \_\_\_\_\_  
AT \_\_\_\_\_.

(e) Failure of the mortgagee and/or owner to secure a property subject to this chapter, and post and maintain the signage noted in this section, is unlawful and punishable in accordance with TMC 1.10.070.

Section 8. This ordinance shall take effect on January 1, 2020, after its approval and publication in the official City newspaper.

Section 9. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 10. Should any section, clause or phrase of this ordinance be declared

invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council on November 19, 2019.

CITY OF TOPEKA, KANSAS

---

Michelle De La Isla, Mayor

ATTEST:

---

Brenda Younger, City Clerk