ORDINANCE NO. 20464

AN ORDINANCE introduced by Interim City Manager Richard U. Nienstedt, concerning Vacant Property Registration, amending Chapter 8.65 of the Topeka Municipal Code and repealing original sections.

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

Section 1. That section 8.65.010, Purpose and intent, of The Code of the City of Topeka, Kansas, is hereby amended to read 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 vacant 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 contributes to blight, fires, trespassers, lower property values, and has 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 section 8.65.020, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read 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 Chief of Police or 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, or 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:

(1) Any real property located in the City, whether vacant or occupied, that meets any of the following conditions:

(i) The property is the subject of a foreclosure action filed by the mortgagee;
(ii) A judgment of foreclosure has been entered;

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

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

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

(2) Any property that is vacant for more than 180 days.

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

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

“Semiannual registration” shall mean six months from the date of the first action that requires registration, as determined by the Director, and every subsequent six months. The date of the initial registration may be different than the date of the first action that required registration.
“Utility” shall mean any utility and/or service that is essential for a building to be habitable and/or perform a service necessary to comply with all City ordinances. This includes, but is not limited to, electrical, gas, water, and sewer.

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

Section 3. That section 8.65.030, Establishment of a registry, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Establishment of a registry.

The Director shall establish a registry cataloging each registrable vacant property containing the information required pursuant to this chapter.

Section 4. That section 8.65.040, Registration of property subject to mortgage foreclosure, of The Code of the City of Topeka, Kansas, is hereby repealed.
(a) Within 10 days of the date that the property becomes registrable, the mortgagee shall:

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

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

(b) Initial registration pursuant to this section shall contain at a minimum the name of the mortgagee, the mailing address of the mortgagee, email address, telephone number and name of the property manager and the manager’s mailing address, email address, and telephone number.

(c) At the time of initial registration each registrant shall pay a nonrefundable semiannual registration fee to be determined by the Director, with the approval of the City Manager, in an amount not to exceed $500.00 for each registrable property. Subsequent semiannual registrations of registrable properties and fees in that amount shall be due within 10 days of the expiration of the previous registration.

(d) If the mortgage and/or servicing on a property is sold or transferred, the new mortgagee is subject to all the terms of this chapter. Within 10 days of the transfer, the new mortgagee shall register the property or update the existing registration. The previous mortgagee(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that mortgagee’s involvement with the property.

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

(f) Properties subject to this section shall remain subject to the semiannual registration requirement, the security, and maintenance standards of this section as long as the property remains registrable.

(g) Failure of the mortgagee and/or owner to properly register, pay the registration fees, or to modify the registration to reflect a change of circumstances as required by this chapter is a violation of this chapter and shall be subject to a civil penalty of not to exceed $250.00 for each violation. Each property shall constitute a separate offense. A citation may be issued every 30 days by the Director until a 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 30 days from the payment date or, if appealed pursuant to Chapter 2.45 TMC, 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 section 8.65.050, Registration of vacant property, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Registration of vacant property.

(a) (1) Any owner of vacant property located within the City shall register the real property within 10 days after the property becomes vacant, or within 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 or has temporarily vacated the property for a period not in excess of 180 days.

(b) Initial Registration pursuant to this section shall contain at a minimum the name of the owner, the mailing address of the owner, email address, and telephone number of the owner, and, if applicable, the name and telephone number of the property manager and the manager’s address, email address, and telephone number.

(c) If the owner resides outside a 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), email address (if applicable), telephone number and mailing address.

(d) At the time of initial registration each registrant shall pay a nonrefundable semiannual registration fee to be determined by the Director, with the approval of the City Manager, in an amount not to exceed $500.00 for each vacant property. Subsequent semiannual registrations of vacant properties and fees in that amount are due within 10 days of the expiration of the previous registration.
(ed) If the property is sold or transferred, the new owner is subject to all the terms of this chapter. Within 10 days of the transfer, the new owner shall register the vacant property or update the existing registration, on a form provided by the Director. The previous owner(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that owner’s involvement with the vacant property.

(ef) Properties subject to this section shall remain subject to the semiannual registration requirement, the security, and maintenance standards of this section as long as the property is vacant. An owner shall notify the Director, on a form provided by the Director, when the property is no longer vacant.

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

(hf) Failure of the owner to properly register, pay registration fees, or to modify the registration to reflect a change of circumstances as required by this chapter is a violation of this chapter and shall be subject to a civil penalty of not to exceed $250.00 for each violation. Each property shall constitute a separate offense. A citation may be issued every 30 days by the Director until a registration statement, payment of registration fees, amendment, or other statement required by this chapter is filed.

(ig) If the civil penalties are not paid within 30 days from the payment date or, if appealed pursuant to Chapter 2.45 TMC, 30 days from the final decision of the Hearing Officer, the obligation may be collected in the same manner as a personal debt of the owner to the City and/or through placement of 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 section 8.65.060. Maintenance requirements, of The Code of the City of Topeka, Kansas, is hereby amended to read 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 TMC 8.60.010 and all other codes adopted by the City.

Section 7. That section 8.65.070, Security requirements, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Security requirements.

(a) Properties subject to this chapter that are vacant 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 reglazing 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 TMC 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 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 three inches by five inches, 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. That original § 8.65.010, § 8.65.020, § 8.65.030, § 8.65.050, § 8.65.060 and § 8.65.070 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 9. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 10. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 11. 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 21, 2023.

CITY OF TOPEKA, KANSAS

__________________________________
Michael A. Padilla, Mayor

ATTEST:

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Brenda Younger, City Clerk