

ORDINANCE NO.19-863

AN ORDINANCE OF CITY OF BURNS INTENDED TO PROTECT NEIGHBORHOODS FROM BLIGHT BY REQUIRING THAT VACANT RESIDENTIAL PROPERTIES BE ADEQUATELY SECURED, MAINTAINED, AND REGISTERED; AND DECLARING AN EMERGENCY.

WHEREAS, City of Burns ("city") has all the powers that the constitutions, statutes, and common laws of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, the Burns City Council (the "council") finds that the characteristics, dangers, and potential impacts of vacant residential properties necessitate the establishment of reasonable security, maintenance, and registration requirements and regulations; and

WHEREAS, by adoption of this Ordinance No.: 19-863 (this "ordinance"), the council desires to protect neighborhoods from blight and other negative impacts of vacant residential properties.

NOW, THEREFORE, CITY OF BURNS ORDAINS AS FOLLOWS:

1. Findings. The above-stated findings are hereby adopted.

2. Title; Purpose. This ordinance may be referred to as the "Vacant Residential Property Ordinance." The purpose of this ordinance is to minimize the characteristics, dangers, and potential negative impacts vacant residential properties may cause in a community, including, without limitation, property blight and public safety concerns, by adopting reasonable security, maintenance, and registration requirements and regulations.

3. Definitions. For purposes of this ordinance, the following terms and phrases have the meanings assigned to them below:

"Borrow" means any person who becomes obligated on a real estate loan agreement, directly or indirectly, and includes, without limitation, mortgagors, vendees under conditional land sales contracts, and grantors under trust deeds.

"Chief of police" means city's then appointed chief of police or his or her designee.

"City" means City of Burns, Oregon, an Oregon municipal corporation.

"City manager" means city's then appointed city manager or his or her designee.

"Code" means city's municipal code, as amended.

"Council" means city's then elected legislative body.

"Evidence of vacancy" means any condition that on its own, or combined with other conditions, may lead the chief of police to reasonably believe that the subject property is vacant, which conditions may include, without limitation, the following: (a) overgrown and/or dead vegetation; (b) accumulation of newspapers, circulars, flyers, and/or mail; (c) past due utility notices and/or disconnected utilities; (d) accumulation of trash, junk, and/or debris; (e) absence of window coverings

(e.g., curtains, blinds and/or shutters); (f) absence of furnishings and/or personal items consistent with residential habitation; (g) evidence of trespass or criminal mischief; and/or (h) statements by neighbors, passerby, delivery persons, and/or government employees that the property is vacant.

“Lender” means any person who makes, extends, and/or holds a real estate loan agreement, including, without limitation, the following: (a) mortgagees; (b) beneficiaries under trust deeds; (c) vendors under conditional land sales contracts; (d) trustees and a successor-in-interest to any mortgagee, beneficiary, vendor, and/or trustee; and/or (e) any mortgagee, beneficiary, and/or trustee that accepts a deed-in-lieu of foreclosure.

“Notice of default” means a written notice to a borrower stating that a default on a real estate loan agreement has occurred and that legal action may be taken.

“Out of area” means outside of Harney County, Oregon.

“Real estate loan agreement” means any agreement and/or instrument providing for a loan on residential real property, secured in whole or in part by real property located within city’s incorporated limits, and/or any interest therein, and includes, without limitation, mortgages, trust deeds, and land sales contracts.

“Vacant” means a subject property that is not then legally occupied.

4. Inspection.

4.1. Immediately upon a borrower’s default, but no later than prior to recording a notice of default with the Harney County Clerk’s Office, a lender will perform an inspection of the subject property that is the security for the real estate loan agreement. If the property is determined to be vacant (or shows evidence of vacancy), the lender will, within ten (10) days after the date of inspection, register the property with the chief of police and/or city manager in accordance with this ordinance.

4.2 If the lender determines that the subject property is occupied but remains in default, the property will be inspected by the lender no less than monthly until the borrower remedies the default. If a subsequent inspection reveals that the property is vacant or shows evidence of vacancy, the lender will, within ten (10) days after the date of inspection, register the property with the chief of police and/or city manager.

5. Registration.

5.1 Each lender must timely register vacant property in accordance with this ordinance. Registration forms will be available at Burns City Hall and on city’s website. The registration form will contain all information the chief of police may require, including, without limitation, the following information: (a) lender’s name and mailing address; (b) a contact name, telephone number, and email address for the lender; (c) the physical address for the lender’s agent authorized to receive service of process, if applicable; and (d) direct contact information for the local property management company responsible for security, maintenance, and marketing of the property, if applicable.

5.2 A lender that has registered a property under this ordinance will report any change of information contained in the registration within ten (10) days after the change. A property subject to this ordinance will remain registered until the property is no longer vacant.

6. Maintenance and Security.

6.1 Property Maintenance. Each lender must maintain the property subject to this ordinance in reasonable and safe (non-hazardous) condition and repair. A lender's obligation to maintain property subject to this ordinance includes, without limitation, the following: (a) ensuring that the property's condition does not constitute a nuisance as described under the code; (b) maintaining the property free of weeds, dead vegetation, graffiti, trash, debris, accumulated newspapers, circulars, flyers, discarded personal items, and all other items and/or conditions that may cause a reasonable person to determine that the property is vacant; (c) regular watering, irrigation, cutting, pruning, and mowing of the property and removal of all trimmings and debris, as applicable; and (d) if there is an outdoor pool or spa on the property, such facility(ies) will be kept in working order so that water remains clear and free of pollutants and debris or drained and kept covered (provided, however, a property with a pool and/or spa will comply with city's minimum-security fencing requirements, if any).

6.2 Property Security. Each lender will ensure that the lender's property subject to this ordinance remains secure and locked. Windows and doors may be boarded up if damaged or if otherwise permitted under the code. Damaged windows and doors will be repaired or replaced within ten (10) days after discovery or notice of the damaged windows or doors.

7. Lender Local Presence Required. An out of area lender will retain the services of a local licensed property management company to ensure compliance with this ordinance. The management company will provide city a direct contact name and 24-hour contact telephone number and email address for persons to report problems or concerns, and the posting will be placed on the interior of a window facing the street to the front of the property so it is visible from the street. If no such area exists, the posting will be placed on the exterior of the property in a location visible from the street to the front of the property. An exterior posting will be constructed of and printed with weather resistant materials.

8. Additional Authority. The chief of police and/or city manager has the authority to require the lender to implement any additional maintenance and/or security measures the chief of police and/or city manager determine reasonable and appropriate concerning the subject property, including, without limitation, the following: (a) installation of additional security lighting; (b) increasing on-site inspection frequency; (c) employment of an on-site security guard; and (d) all other measures or actions the chief of police and/or city manager determine reasonable to prevent decline of the property.

9. Violation; Penalties.

9.1 Warnings; Citations. The chief of police and/or city manager may issue warnings, citations, and/or orders to any lender violating this ordinance. Each violation of this ordinance will be a civil offense and subject to fine of no less than \$500.00 for the first failure to comply and \$1,000.00 for each subsequent failure to comply committed within one year of the first occurrence. In addition to any other rights or remedies provided under this ordinance, the city may file a civil action to recover unpaid fees, fines, and costs, including, without limitation, attorney fees and other fees, costs, and expenses incurred by city to enforce this ordinance.

9.2 Continuing Violation. Each separate calendar day a violation of this ordinance occurs and is on-going constitutes a separate offense. The citation for a continuing violation will state the date the violation is alleged to have first occurred, the date or range of dates of the continuing violation, and the amount of fine(s) for each day's violation. The city's rights and remedies under this ordinance are not exclusive. The city may pursue all other rights and remedies provided under applicable federal, state, and local laws, regulations, and ordinances to address violations. All available rights and remedies are cumulative and may be exercised singularly or concurrently.

9.3 Inspections. The chief of police and/or city manager may enter upon any property in connection with city's provision of any notice or order provided under this ordinance, determining compliance with this ordinance, and/or to enforce this ordinance; the city will not be liable for trespass or conversion in connection therewith.

9.4 Notice of Violation. The chief of police and/or city manager have the authority to enforce this ordinance and may cause a ten-day written notice of violation to be issued to the lender and/or management company. The notice will contain (a) a description of the violation, (b) identification of the property upon which the violation is located by address or otherwise, and (c) inform the lender and/or management company that if the violation is not remedied within ten (10) days, or such longer period as may be provided in the notice, the city may pursue all rights and remedies available to the city at law and in equity, including, without limitation, fines and penalties as provided under the ordinance.

9.5 Service. Any notice required under this ordinance will be (a) personally delivered to the lender and/or management company, or (b) sent to the lender and/or management company by certified mail to the address(es) identified in the registration form or, if the property has not been registered, the lender's and/or management company's last known address. Any notice or order served by mail will be deemed received three days after the date mailed. Failure of any lender and/or management company to receive notice or an error in the name or address of any lender and/or management company will not render the notice void; the notice will be deemed proper and sufficient. Refusal to accept the certified mail will not be deemed to, and will not, render the notice invalid.

10. Lender Appeals.

10.1 City Manager.

10.1.1 Any person affected by a notice or order issued under this ordinance by the city manager or chief of police may request reconsideration by filing a request with the city manager. The request for reconsideration must be received by the city manager within ten (10) days after the effective date of the applicable notice or order. The request for reconsideration must be in writing and include (a) the name, address, and telephone number of the lender requesting reconsideration, (b) a copy of the notice or order being requested for reconsideration, and (c) a statement that the person requests that the city manager reconsider the notice or order.

10.1.2 The city manager's response to the request for reconsideration will be personally delivered to the lender requesting reconsideration, or sent to the lender via first class mail at the address listed on the request for reconsideration. Any request for reconsideration may be granted or denied by summary order of the city manager.

10.2 City Council.

10.2.1 Any person affected by a notice or order of the city manager or chief of policy may appeal the notice or order to the council by filing a notice of appeal with the city recorder, subject to the provisions of this Section 10.2. A person must first request that the city manager reconsider the notice or order as provided in Section 10.1 of this ordinance. The filing of a notice of appeal will stay all enforcement proceedings until final disposition of the appeal. The notice of appeal must be filed within ten (10) days after the date the city manager's response to the request for reconsideration is delivered to the person. A copy of the notice of appeal must also be filed with the city manager.

10.2.3 An appeal filed with the council must be in writing and include (a) the name, address, and telephone number of the appellant, (b) a copy of the notice or order being appealed, (c) a statement that the person wishes to appeal the notice or order, and (d) basis for the appeal, stating with specificity why the notice or order was issued in error, based on one or more of the following: (1) the city failed to follow the procedures prescribed in this ordinance and such failure has prejudiced the person with respect to some substantial right; (2) no violation exists on the property that is the subject of the notice or order; and/or (3) the time for or method of compliance required in the notice or order is impossible to comply with or, because of circumstances particular to the person or property, would cause an unreasonable hardship.

10.2.4 The council's hearing on the appeal will be limited to the reasons why the notice or order is incorrect, as set forth in the notice of appeal. A notice of appeal that is filed after the period provided for filing an appeal will be dismissed by the council as untimely. Failure to appeal as provided under this Section 10.2 will be a waiver of all right to review the notice or order. The city recorder will provide the appellant with written notice of the hearing on the appeal no less than ten (10) days prior to the hearing.

10.2.5 The appellant will be afforded the opportunity to provide evidence or a statement in opposition to the notice or order. The city manager will be afforded the opportunity to present any evidence, argument, or statement in support of the notice or order. At the hearing, the appellant may present testimony and oral argument, personally or through legal counsel, and all additional evidence; provided, however, the rules of evidence as used by courts of law do not apply. The decision of the council is final and conclusive. The decision of the council will be recorded in the minutes. The council will adopt findings and conclusions supporting a decision which either (a) affirms the notice or order as given, (b) modifies the notice or order, or (c) rescinds the notice or order.

11. Miscellaneous.


11.1 General Application. This ordinance applies to all vacant properties, including, without limitation, vacant properties that have been the subject of foreclosure sale where title has transferred from one lender to another lender; and a property transferred under a deed in lieu of foreclosure. Compliance with this ordinance does not relieve a lender of any obligations set forth by state law, or any covenants, conditions, and/or restrictions that may apply to the subject property.

11.2 Interpretation; Severability. All pronouns contained in this ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the

singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, rule, regulation, code, or ordinance includes the law, rule, regulation, code, or ordinance as now in force and which may hereafter be amended. The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this ordinance. Nothing in this ordinance affects the validity of any criminal or civil enforcement actions commenced prior to the adoption of this ordinance; all city ordinances existing at the time that such actions were filed will remain valid and in full force and effect for purposes of those actions. This ordinance may be corrected by order of the council to cure editorial and/or clerical errors.

11.3 Emergency Declaration. The council finds that passage of this ordinance is necessary for the immediate preservation of the peace, health, and safety of City's citizens by establishing certain definitions of nuisance and derelict structures, penalties, and procedures for abatement. The council further finds that a delay of thirty (30) days prior to the effective date of this ordinance may result in acts, omissions, and/or conditions detrimental to the public health, safety, and welfare. Therefore, an emergency is declared to exist and this ordinance will be in full force and effect upon its passage by the council and approval of the mayor.

This Ordinance was PASSED and ADOPTED by the Burns City Council by a vote of ___ for and ___ against and APPROVED by the mayor this 13th day of February, 2019.


Jerry Woodfin, Mayor

ATTEST:


Dawn Crafts, City Recorder

