

ORDINANCE NO. 825

AN ORDINANCE CREATING VACANT BUILDING REGULATIONS AND REMEDIES AND AMENDING THE SCAPPOOSE MUNICIPAL CODE AND DECLARING AN EMERGENCY

WHEREAS the City Council has determined that nuisance conditions can and have developed at properties that are abandoned by their owners, foreclosed by lenders, or otherwise left vacant such that conditions and maintenance decline at the property.

WHEREAS this chapter is necessary to preserve and protect the habitability of real property in the city, and the peaceable, safe, sanitary, and secure occupancy, and productive use of real property in the city; and

WHEREAS the City of Scappoose has the authority to declare such real property a nuisance and regulate and abate the nuisance created by use of the real property.

NOW, THEREFORE, THE CITY OF SCAPPOOSE HEREBY ORDAINS:

SECTION 1. VACANT BUILDING ORDINANCE

The language set forth below, incorporated herein and made a part of this Ordinance, shall be added to the Scappoose Municipal Code as Chapter 8.24 to Title 8 and may be known and cited as the "Vacant Building Ordinance."

8.24.010 Definitions As used in this chapter, except as the context otherwise requires:

"Abandoned building" means:

1. A building that is both vacant and subject to either a pending judicial execution sale under ORS 18.901 et seq., or to nonjudicial foreclosure pursuant to ORS 86.735 et seq.; or
2. A building that is both vacant and was the subject of either a judicial execution sale under ORS 18.901 et seq., or nonjudicial foreclosure pursuant to ORS 86.735 et seq. where legal title is retained by the beneficiary(ies) of a foreclosed trust deed or was otherwise transferred to beneficiary(ies) pursuant to a deed in lieu of foreclosure.

"Building" has the meaning supplied in sections 17.26.020 and 17.26.030 of this code.

"Chief" means the Chief of Police of the Scappoose Police Department, or designee.

"City Manager" means the City Manager of the City of Scappoose, or designee.

"Commercial building" means a nonresidential building constructed or used for "commercial use" as defined in section 17.26.030 of this code.

"Foreclosed building" means a building upon real estate that an owner obtains as a result of:

1. Foreclosing a trust deed on the real estate;
2. Obtaining a judgment foreclosing a lien on the real estate;
3. Purchasing the real estate at a trustee's sale or a sheriff's sale; or
4. Accepting a deed to the real estate in lieu of foreclosure.

“Industrial building” means a nonresidential building constructed or used for “industrial use” as defined in section 17.26.030 of this code.

“Lender” means any person who makes, extends, or holds a real estate loan agreement and includes, but is not limited to, mortgagees, beneficiaries under trust deeds, vendors under conditional land sales contracts, trustees, and a successor in interest to any mortgagee, beneficiary, vendor, or trustee. The term also includes any mortgagee, beneficiary, or trustee that accepts a deed in lieu of foreclosure.

“Local” means within 30 miles of a building.

“Owner” means any person holding or claiming to hold any legal title or interest in real property, including, but not limited to, a fee owner, a mortgagee in possession, a vendee under a land sale contract, or a beneficiary under a deed of trust.

“Person” means any natural person, association, partnership, or corporation, or other form of legal entity or entity in fact capable of owning or using property.

“Premises” means real estate, including that upon which a building is located or constructed, that is in the same ownership as the building, and that a reasonable person would associate with ownership or use of the building when viewing the building and premises from outdoors. Where there is more than one building on premises, or where multiple buildings on premises are owned by different owners, the premises are common to each building. Premises are often, but not always, defined by tax lot lines or recorded legal descriptions.

“Real property” means any real property, including but not limited to, lots, parcels, tracts, premises, buildings, houses, rooms, structures, or any separate part or portion thereof, whether temporary or permanent, and whether or not on the ground itself, and any conveyance or any part or portion thereof.

“Tenant” means a residential tenant as defined by the Oregon Residential Landlord and Tenant Act, and any other person holding real property under the terms of a rental agreement.

“Vacant” means:

1. Lack of building habitation or use, or abandonment of habitation or use; or;
2. Use of a building, either intermittent or continuous, by persons with no legal right to be present.

“Vacant building” means:

1. A building, or substantial portion thereof, that is unoccupied or has not actively been furnished and so used as a place of business, employment, residence, or other human activity, for more than 15 days. This includes manufactured housing and mobile homes, whether located in a mobile home park or not. A vacant building also includes any building under construction where no substantial work has taken place for more than 60 days. “Vacant building” does not include a building designed for storage, intermittent or similar types of use, if such building is secure from unauthorized entry, in good repair, and does not otherwise constitute a nuisance; or
2. A building where one or more conditions is present, either singularly or in combination, that would lead a reasonable person to conclude that the building is vacant. Such conditions include, but are not limited to:
 - a. Overgrown or dead vegetation at the property;
 - b. Accumulation of newspapers, circulars, flyers, mail, or similar

- items;
- c. Past due utility notices or disconnected utilities;
- d. Accumulation of trash, junk, or debris;
- e. Absence of furnishings or other items typically found inside a residential, industrial, or commercial building as the case may be;
- f. Evidence of criminal mischief or criminal trespass; or
- g. Statements or other evidence supplied by neighbors, delivery agents, passers-by, or government employees, that the building is vacant.

8.24.020 Registration

- A. A building owner shall register the building with the city recorder in the event:
 - 1. Of an anticipated judicial foreclosure of the property, no earlier than the commencement of any of the actions described by ORS 18.904, 18.906, 18.908 (2012) and not later than the date first set for the execution sale described in ORS 18.930 (2012);
 - 2. Of an anticipated nonjudicial foreclosure of the property under ORS 86.735 et seq. (2012) not later than the date of service or mailing of the notice of sale described in ORS 86.740 (2012); or
 - 3. The owner receives written notice from the chief that the chief believes the building is a vacant building, abandoned building, or foreclosed building.
- B. Each registration shall be made on a form approved by the city recorder and shall contain, at a minimum:
 - 1. If 8.24.020(A)(1) or (2) applies, then
 - a. The name of the lender;
 - b. The direct address of the lender (post office boxes are not acceptable);
 - c. A direct contact name and telephone number for the lender;
 - d. If the lender does not reside in or have a business office in Columbia County, Oregon, then the name, mailing address, telephone number, and email address of a local individual or entity charged with responsibility by the trustee, mortgagee, or beneficiary, for ensuring compliance with the obligations imposed by this chapter; and
 - e. A person or entity appointed by the lender who resides in or has a business office in Columbia County, Oregon who is authorized to receive service of process, if applicable.
 - 2. If 8.24.020(A)(3) applies, then:
 - a. The name of the owner;
 - b. The direct address of the owner (post office boxes are not acceptable);
 - c. A direct contact name and telephone number for the owner;
 - d. If the owner does not reside or have a principal office in Columbia County, Oregon, the name, mailing address, telephone number, and electronic mail address of an agent for the owner who resides or has a principal address in Columbia County, Oregon.
- C. Each registration must be accompanied by a payment of a registration fee in an amount to be set by council resolution.
- D. The city recorder shall maintain a list of registered buildings and deliver a copy thereof to

the chief upon request.

E. If ownership of a registered building changes, the registrant shall send notice of the change to the city recorder within 30 days of the change.

8.24.030 Maintenance

A. Every owner of an abandoned building, foreclosed building, or vacant building, shall cause the building and premises to be maintained in generally well-kempt condition, at least consistent with conditions found on surrounding or nearby occupied property, and including all of the following:

1. Keeping the premises free of weeds, dead vegetation, graffiti, trash, accumulated newspapers, circulars, flyers, discarded personal items, and other items or conditions that would cause a reasonable person to suspect the building or real property is vacant or abandoned.
2. Regular watering, irrigation, cutting, pruning, and mowing of the lawns and other vegetated areas of the subject real property and the removal of all trimming and debris resulting from such work;
3. If there is an outdoor pool or spa on the premises, such facility shall be kept in working order, so that water remains clear and free of pollutants and debris, or drained and kept dry and covered.

B. Compliance with this section does not relieve a person of any obligations imposed by state law, other sections of this code, or any covenants, conditions, and restrictions that apply to the building or premises.

8.24.040 Security

A. Every owner of an abandoned building, foreclosed building, or vacant building, shall cause the building to be secured (including closure and locking of windows, doors, gates and other opening(s) allowing access to the building) and thereafter maintained so as not to be accessible to unauthorized persons.

B. The owner shall post a direct contact name and a telephone number available 24 hours a day for persons to report problems or concerns with the building or real property. The following standards apply to this notice:

1. The telephone number listed in the notice must:
 - a. Be answered, or reasonably likely to be answered, by a human being during the hours of 8:00 AM and 5:00 PM;
 - b. Be connected to a voicemail system that records calls between the hours of 5:00 PM and 8:00 AM, if no human is available to answer the phone; and
 - c. Be a domestic number or a toll-free number but not an international number
2. The notice must be placed on the interior of a window facing the street to the front of the property so the notice is visible from outside of the building. If no such area exists, then the posting must be placed on the exterior of the building in a location visible from the street to the front of the property. An exterior posting shall be constructed of and printed with weather-resistant materials.
3. The notice shall be printed in a typeface at least 12 points in size, and must list the name and contact information of the owner or local individual or entity charged with complying with this chapter, along with the following phrases completed

with the appropriate identification and contact information: “THIS PROPERTY OWNED/MANAGED BY: _____,” and “TO REPORT PROBLEMS OR CONCERNS CALL _____.”

8.24.050 Inspection

- A. Every owner of an abandoned building, foreclosed building, or vacant building, shall inspect the building and premises at least once every two (2) weeks to verify the requirements of this chapter, and any other laws applicable to the building, are being met.
- B. The owner or agent inspecting the property shall record and post in a conspicuous place on the property the dates of inspection in a form to be provided by the City.

8.24.060 Local presence or property management required

- A. If an owner fails to comply with the requirements of this ordinance within fifteen (15) days after the date of any notice required by section 8.24.080(A) below, then the owner shall contract with a property management company with a business office in Columbia County, Oregon, to perform weekly inspections and to verify that the maintenance and security requirements of sections 8.24.030 and 8.24.040 are being carried out.
- B. A property management company retained under this section must post the notice described in section 8.24.040(B).
- C. Nothing in this chapter prevents a local owner from contacting with a property management company to assist the owner in meeting the owner’s responsibilities under this chapter.

8.24.070 Additional authority

- A. The chief may require with city manager approval, an owner or lender to implement any additional maintenance listed below:
1. Installation and operation of additional security lighting;
 2. Increasing frequency of property inspections;
 3. Employment of an onsite security guard;
- and refer any additional actions to the City Council.

8.24.080 Additional remedies; lien against real property

- A. In addition to other penalties or enforcement specified in this chapter, if a lender or owner fails to register the building or premises as provided in this chapter, the chief may give notice of such failure by first class mail. The notice shall:
1. Be directed to all persons shown on the assessor’s records or otherwise known to the city to be owners;
 2. Refer to the real property involved with convenient certainty, a building’s street address, if any, being sufficient; and
 3. Notify the owner to comply with the registration requirements in this chapter within 15 days of mailing.
- B. If a lender or owner fails to maintain, inspect, or secure the building or premises as provided in this chapter, then notwithstanding whether the premises is registered the chief may give notice and abate such conditions as follows:
1. Give written notice to the owner that includes the following:

- a. A statement that the chief has evaluated the building as being a vacant building pursuant to the definition of “vacant building” set forth in section 8.24.010, along with a statement of the reasons why the building has been so evaluated;
 - b. A reference to the building with convenient certainty, a building’s street address, if any, being sufficient;
 - c. Notice of the deficiency in maintenance, inspection, or security that has been observed, and direction to comply with the maintenance, inspection, and security requirements of this chapter within 72 hours of the time described in section 8.24.080(B)(2)(a), below;
 - d. Notice that if the condition is not corrected within 72 hours the city may cause the real property to be maintained, inspected, or secured, as provided in this chapter and will charge the costs to the lender and owners and register the same on the city’s lien docket against the real property. This subsection 8.24.080(B)(1)(d) constitutes the authority needed for the city to so maintain, inspect, or secure property to the standards of this chapter.
2. A copy of the notice described in section 8.24.080(B)(1) must, at a minimum, be:
 - a. Posted to the front door of the building, or to that side of the building fronting the most well-traveled street adjacent to the building, with the date, time of day, and name of the person posting the notice written on the front of the document in permanent ink;
 - b. Mailed, at least three business days before abatement, to the owner or owners at their last-known mailing addresses on record with the Columbia County Assessor’s office on the date of posting, or available from title company or other documents, by first-class mail and certified mail, no later than the date the real property is posted. If no mailing address is of record with the assessor’s office or known to police at the time of posting, then a good-faith effort to locate an address for an owner or owners, conducted on or before the day the notice is posted, will satisfy this section.
 3. The chief shall make a good-faith effort to locate the telephone number of the owner, and call the owner on the day notice is posted and give a person reasonably appearing to be meaningfully connected to the real property oral notice that the building has been evaluated as vacant and that there are 72 hours to secure or maintain the building, as the case may warrant. Efforts to locate phone numbers and call the owner qualify as good faith if they are reasonable under the circumstances then existing.
 4. Notices mailed under section 8.24.080(B)(2)(b) must be placed in the mail three business days before commencement of city abatement activity under the vacant building ordinance. For this purpose, a business day is any day except a Saturday, Sunday, or a legal holiday observed by the State of Oregon under ORS 187.010 and 187.020.
 5. If the building is registered with the city then the chief must also send the notice required under section 8.24.080(B)(2)(b) to the lenders listed in the registration materials. The chief will send this notice concurrently with the notice required

under section 8.24.080(B)(2)(b).

6. If the building is not registered with the city, then the chief may send a courtesy copy of the notice required under section 8.24.080(B)(2)(b) to one or more lenders if the lenders have an ownership interest in the property, as opposed to a mere security interest, and if the chief has actual knowledge of the ownership interest on the day the chief sends the owner notice under section 8.24.080(B)(2)(b). This provision does not create or impose a duty on the chief or any other city employee, official, or agent to receive or collect information about lenders or to send courtesy notice to a lender.

C. A lender or owner may, within fifteen days after mailing of any notice, appeal to the city council for relief by filing a petition with the city recorder seeking a hearing before the council.

1. Such petition must include:
 - a. A copy of the chief's notice;
 - b. Facts upon which petitioner relies for relief from the obligations of this chapter relative to the building or premises;
 - c. The petitioner's signature, telephone number, and mailing address. If a petitioner is not a natural person, a natural person must sign the petition on behalf of the petitioner and provide his or her mailing address and direct telephone number; and
 - d. The payment of a filing fee, if any is established by city council from time to time for the petition.
2. If the council finds that strict compliance with this chapter would work a real and unnecessary hardship upon the petitioner, then the council may relieve the petitioner of one or more obligations of this chapter.
3. Filing a petition under this subsection does not:
 - a. Relieve an owner or lender from complying with any requirement of the vacant building ordinance, including requirements listed in posted or mailed notices;
 - b. Stay city abatement of a building or premises;
 - c. Require the city to reverse, cancel, or undo any abatement action or effort completed, planned, or in progress at the time the petition is filed; or
 - d. Avoid any abatement cost or lien, whether or not the cost or lien has been calculated or, if calculated, charged against real property.
4. Any relief granted under this section operates only upon an owner or lender listed as a petitioner

D. Nothing in this section obligates the city to remedy the problem conditions alleged in the chief's letter without charging the cost of such abatement as a lien against the real property on which the building is constructed. The total cost of such abatement, including but not limited to time of city employees or contractors, materials, expenses, overhead, and legal fees and costs, shall be included in such lien filing.

E. The city manager, at or near the time council passes this vacant building ordinance or any amendment thereto, shall promulgate a press release that announces passage of the legislation. A press release is adequately promulgated under this section if it is directed to the media sources customarily contacted by the city manager for distributing newsworthy city information. Failure of or disagreements about compliance with this subsection supply no defense in any action.

8.24.090 Violation

A. Any person who violates any provision of this chapter commits a violation and is subject to the general penalty of 1.08.010. Every day in which the violation is caused or permitted to exist constitutes a separate violation. This violation is a strict liability offense.

B. In addition to the general penalty, a sentencing court may impose an enhanced penalty of up to \$1,000.00 per day if the court finds that a lender's or owner's failure to comply with any requirement of this chapter was willful, purposeful, or demonstrates conscious disregard of a risk that the person would violate, is violating, or will continue to violate one or more requirements of this chapter.

8.24.100 Duties joint and several

A. Where a building or premises is owned by more than one person, any duty created by this chapter is joint and several as to all owners.

SECTION 3 No duty created

A. Nothing in this Ordinance requires the city to abate a vacant building nuisance. Failure of any person to receive a notice described in this Ordinance does not invalidate any action taken under the notice.

SECTION 4 Severability

A. If any provision of this Ordinance is held to be invalid for any reason by a court of competent jurisdiction, the remainder shall not in any way be affected.

SECTION 5 Emergency

Due to present concerns with property and buildings in the city, the Council declares that emergency conditions exist and this Ordinance shall take effect upon its passage.

Adopted by the Scappoose City Council and approved by the Mayor this 19th day of February 2013.

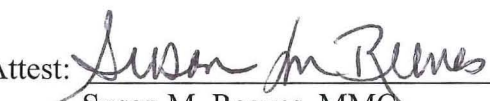
CITY OF SCAPPOOSE, OREGON



Scott Burge, Mayor

First reading: February 19, 2013

Second reading: February 19, 2013

Attest: 

Susan M. Reeves, MMC
City Recorder