

ORDINANCE NO. 646

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, ADDING CHAPTER 8.44 TO INDIAN WELLS MUNICIPAL CODE PERTAINING TO THE REGISTRATION AND MAINTENANCE OF VACANT AND ABANDONED PROPERTIES

WHEREAS, the presence of vacant, abandoned real property can lead to neighborhood decline; and

WHEREAS, the presence of vacant, abandoned real property can create an attractive public nuisance; and

WHEREAS, the presence of vacant abandoned real property can contribute to lower property values; and

WHEREAS, the presence of vacant abandoned real property can discourage potential buyers from purchasing a home adjacent to or in neighborhoods with vacant abandoned residences; and

WHEREAS, many vacant abandoned real properties are the responsibility of out of area, out of state lenders and trustees; and

WHEREAS, in many instances the lender and trustees fail to adequately maintain and secure these vacant residences; and

WHEREAS, the City has an obligation to preserve the health, safety and welfare of residents and the community, and to the extent possible, protect neighborhoods from declining property values, aesthetic decay, and loss of character.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIAN WELLS DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 8.44 is hereby added to the Indian Wells Municipal Code, to read in its entirety as follows:

**"Chapter 8.44
Registration and Maintenance of Abandoned Properties**

Sections:

- 8.44.010 Purpose**
- 8.44.020 Definitions**
- 8.44.030 Duty to Record Assignment of Rents**
- 8.44.040 Registration**
- 8.44.050 Maintenance Requirements**
- 8.44.060 Security Requirements**
- 8.44.070 Local Property Management Company**
- 8.44.080 Additional Requirements**
- 8.44.090 Enforcement**
- 8.44.100 Joint and Several Liability**
- 8.44.110 Appeals**

8.44.010 PURPOSE

It is the intent of the City Council, through the adoption of this chapter, to establish a mechanism to protect residential neighborhoods from becoming blighted through the lack of maintenance and security of abandoned properties; to establish an abandoned property registration program and to set forth guidelines for the maintenance of abandoned properties.

8.44.020 DEFINITIONS

Certain words and phrases in this chapter are defined, when used herein, as follows:

ABANDONED. Any building, structure or real property that is vacant, or occupied by a person without a legal right of occupancy, and subject to a current Notice of Default and/or Notice of Trustee's Sale, pending Tax Assessors Lien Sale and/or any real property conveyed via a foreclosure sale resulting in the acquisition of title by an interested beneficiary of a deed of trust, and/or any real property conveyed via a deed in lieu of foreclosure/sale.

ACCESSIBLE PROPERTY. Real property that is accessible to the public, either, in general or through an open and unsecured door, window, gate, fence, wall, etc.

ACCESSIBLE STRUCTURE. A building or structure that is not secured or is open in such a way as to allow public or unauthorized access to the interior.

AGREEMENT. Any written instrument that transfers or conveys title to residential real property from one owner to another after a sale, trade, transfer or exchange.

ASSIGNMENT OF RENTS. An instrument that transfers the beneficial interest under a deed of trust from one lender or entity to another.

BENEFICIARY. A lender participating in a real property transaction that holds a secured interest in the real property in question identified in a deed of trust.

DAYS. Calendar days.

DEED OF TRUST. An instrument whereby an owner of real property, as trustor, transfers a secured interest in the real property in question to a third party trustee, said instrument relating to a loan issued in the context of a real property transaction. This definition applies to any and all subordinate deeds of trust i.e., 2nd trust deed, 3rd trust deed, etc.

DEED IN LIEU OF FORECLOSURE. A recorded instrument that transfers ownership of real property between parties to a particular deed of trust as follows - from the trustor, i.e., borrower, to the trustee upon consent of the beneficiary, i.e., lender.

DEFAULT. The material breach of a legal or contractual duty arising from or relating to a deed of trust, such as a trustor's failure to make a payment when due.

DISTRESSED. Any building, structure or real property that is subject to a current Notice of Default and/or Notice of Trustee's Sale, pending Tax Assessors Lien Sale, foreclosure action, and/or any real property conveyed via a foreclosure sale resulting in the acquisition of title by an interested beneficiary of a deed of trust, and/or any real property conveyed via a

deed in lieu of foreclosure/sale, regardless of vacancy or occupancy by a person with no legal right of occupancy.

ENFORCEMENT OFFICIAL. The City Manager, or Compliance Officer, as defined in Section 8.08.050, and/or any employee or agent of the City of Indian Wells designated or charged with enforcing the Indian Wells Municipal Code, including but not limited to applicable codes adopted by reference.

EVIDENCE OF VACANCY. Any real property condition that independently, or in the context of the totality of circumstances relevant to that real property would lead a reasonable enforcement official to believe that a property is vacant or occupied by a person without a legal right of occupancy. Such real property conditions include but are not limited to: overgrown or dead vegetation; accumulation of newspapers, circulars, flyers or mail; past due utility notices or disconnected utilities; accumulation of trash, junk or debris; the absence of window coverings such as curtains, blinds or shutters; the absence of furnishings or personal items consistent with residential habitation; and/or statements by neighbors, passersby, delivery agents, government employees that the property is vacant.

FORECLOSURE. The process by which real property subject to a deed of trust is sold to satisfy the debt of a defaulting trustor, i.e., borrower.

LOCAL. Within forty (40) road/driving miles of the subject property.

NOTICE OF DEFAULT. A recorded instrument that reflects and provides notice that a default has taken place with respect to a deed of trust, and that a beneficiary intends to proceed with a trustee's sale.

OUT OF AREA. In excess of forty (40) road or driving miles of the subject property.

OWNER. Any person, partnership, association, corporation, fiduciary or other legal entity having a legal or equitable title or any interest in real property.

OWNER OF RECORD. The person holding recorded title to the real property in question at any point in time when Official Records are produced by the Riverside County Recorder's Office.

PROPERTY. Any unimproved or improved real property, or portion thereof, including but not limited to buildings or structures located on said real property, regardless of condition.

SECURING. Such measures as may be directed by an enforcement official that assist in rendering real property inaccessible to unauthorized persons, including but not limited to repairing fences and walls, chaining/pad locking gates, repairing or boarding doors, windows or other openings, and as otherwise required by this Code and other laws.

TRUSTEE. Any person, partnership, association, corporation, fiduciary or other legal entity holding a Deed of Trust securing an interest in real property.

TRUSTOR. Any owner/borrower identified in a deed of trust, who transfers an interest in real property to a trustee as security for payment of a debt by that owner/trustor.

VACANT. Any building, structure or real property that is unoccupied, or occupied by a person without a legal right of occupancy.

8.44.030 DUTY TO RECORD TRANSFER OF LOAN AND/OR DEED OF TRUST AND/OR ASSIGNMENT OF RENTS

Within ten (10) days of a property transaction involving a change in the identity of an owner or the owner of record, or alternatively a transfer/assignment of a loan or deed of trust secured by property, or an assignment of rents, each beneficiary and trustee engaged in said transaction or transfer/assignment shall record, with the Riverside County Recorder's Office, an Assignment of Rents, or similar instrument. This instrument shall list name of the corporation or other entity or individual, the mailing address and telephone number of the trustee and beneficiary responsible for receiving payments associated with the loan or deed of trust. This duty/obligation shall be joint and several among and between all trustees and beneficiaries and their respective agents.

8.44.040 REGISTRATION

- a) Within fifteen (15) days of recording a Notice of Default, the beneficiary and trustee shall register the property with the Indian Wells Code Enforcement Department. If the beneficiary or trustee has recorded a Notice of Default prior to the effective date of this Section, they shall register such property with the Code Enforcement Department within fifteen (15) days of the effective date of this Section.
- b) Each beneficiary and trustee, who holds or has an interest in a deed of trust on a distressed property located within the City of Indian Wells, shall perform an inspection of the property in question prior to recording a Notice of Default or similar instrument with the Riverside County Recorder's Office.
- c) If the property is occupied, but distressed, the trustee and beneficiary or a designee shall inspect the property on a monthly basis until the trustor or another party remedies the default.
- d) Regardless of whether the distressed property is occupied or unoccupied, the beneficiary, trustee, owner and any other entity or person that holds an interest in the subject property, as well as the local property management company must comply with the requirements of this chapter.
- e) The registration required by this chapter shall contain the legal name of the beneficiary and trustee, a direct contact person, the direct mailing address of the beneficiary and trustee (excluding P.O. boxes), the phone numbers of the beneficiary and trustee, and in the case of a corporate or an out of area beneficiary or trustee, the local property management company responsible for the security, maintenance and marketing of the property in question.
- f) In order to ensure the City has the ability to properly maintain the property in the event of noncompliance with this chapter, the registration form shall also state that registration of the property constitutes a grant of authority to the City

to cause utilities to the property to be turned on or off, as may be necessary. This does not relieve the duty of the beneficiary, trustee, owner and any other entity or person that holds an interest in the subject property, as well as the local property management company to comply with the obligations set forth in this chapter.

- g) An annual registration fee, as set from time to time by resolution of the City Council, shall be paid upon registration. The fee and registration shall be valid for one (1) year from the date of registration. Registration fees will not be prorated.
- h) The registration shall be renewed annually on January 1st of each year and must be received by the City no later than January 15th of the year due.
- i) This section shall also apply to properties that have been the subject of a foreclosure sale wherein title has been transferred to the beneficiary of a deed of trust involved in the foreclosure, and to any properties transferred under a deed in lieu of foreclosure or sale.
- j) Properties subject to this chapter shall remain subject to the annual registration requirement, security and maintenance standards of this chapter as long as they remain vacant or otherwise distressed.
- k) Any person, partnership, association, corporation, fiduciary or other legal entity that has registered a property under this chapter must make a written report to the Indian Wells Code Enforcement Department of any change of information contained in the registration within ten (10) days of the change.

8.44.050 MAINTENANCE REQUIREMENTS

It is declared a public nuisance for any person, partnership, association, corporation, fiduciary or other legal entity, that owns, leases, occupies, controls or manages, or is beneficiary or trustee of any property subject to the to the registration requirement contained in this chapter, to cause, permit, or maintain any property condition contrary to any provision of this chapter. Violation of this chapter constitutes a public nuisance that may be abated by any means provided in this Code. Any distressed, abandoned or property otherwise subject to the registration requirement in this chapter must be in compliance with the following maintenance requirements.

- a) Any property subject to this chapter must comply with the requirements of Indian Wells Municipal Code Chapter 8.08.
- b) In addition, the property shall be kept free of weeds, dry brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper, circular, flyers, notices (except those required by law), discarded personal items including but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned, vacant or otherwise distressed.
- c) The property shall be maintained free of graffiti, tagging or similar marking. Any removal or painting over of graffiti shall be with an exterior grade paint

that matches the color of the exterior of the structure. The City may elect to take action to remove the graffiti as provided in Municipal Code Chapter 8.36 or may summarily abate this nuisance.

- d) Visible front and side yards shall be landscaped and properly maintained, and any dead or overgrown vegetation shall be removed.
- e) Landscaping includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation, and in conformance with this Code.
- f) Pools and spas shall be completely drained and kept dry. Properties with pools and/or spas must comply with the minimum security fencing requirements of federal, state and local laws.
- g) Adherence to this section does not relieve the beneficiary/trustee or property owner of obligations set forth in any covenants conditions and restrictions and/or homeowners association rules and regulations that may apply to the property.
- h) The beneficiary and trustee shall ensure the utilities to the property are not terminated if the property is lawfully occupied.
- i) Water shall be supplied to the property, whether occupied or not, in an amount adequate to properly maintain living and healthy landscaping. Upon registration of the property, the City shall be deemed to have authority to act on behalf of the registrant, owner, beneficiary and trustee to request water service be initiated by the applicable water authority, including the Coachella Valley Water District. The beneficiary and trustee or other owner shall be responsible for timely payment of the water bill to the applicable water authority. Any costs or fees incurred by the City shall be an obligation of the beneficiary and trustee or other owner, and shall be recoverable against the property as provided in Municipal Code Chapter 8.08.
- j) Violation of any provision of this Chapter shall constitute a public nuisance, and may be abated by any means authorized by this Code or state law.

An enforcement official may allow exceptions to the maintenance standards set forth in this section for abandoned property that is under construction and/or repair that is diligently pursued for at least three (3) business days per week and is undertaken in compliance with all applicable laws including, but not limited to, City permitting requirements.

8.44.060 SECURITY REQUIREMENTS

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

- b) Secure manner includes but is not limited to closing and locking of windows, doors (walk-through, sliding and garage) gates and any other opening that may allow access to the interior of the property and or structure(s). In the case of broken windows securing means re-glazing or boarding the window.

8.44.070 LOCAL PROPERTY MANAGEMENT COMPANY

- a) If the property is owned by a corporation and/or out of area beneficiary, trustee or owner, a local property management company shall be contracted to perform weekly inspections to verify that the requirements of this chapter, and any other applicable laws, are being met. The local property management company must have authority to 1) comply with orders of the City, 2) provide a trespass authorization upon request of City police officials if the property is illegally occupied, 3) conduct weekly inspections of the property, 4) request utilities be turned on, 5) provide authority to the City to enter the property upon request.
- b) The property shall be posted with the name and 24-hour contact phone number of the local property management company. The posting shall be no less than 18" X 24", shall be of a font that is legible from a distance of forty-five (45) feet, and shall contain the following verbiage: "THIS PROPERTY MANAGED BY _____," and "TO REPORT PROBLEMS OR CONCERNS CALL (name and phone number)".
- c) 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, or secured to the exterior of the building/structure facing the street of the front of the property so it is visible from the street. If no such area exists, the posting shall be on a stake of sufficient size to support the posting, in a location that is visible from the street to the front of the property, and to the extent possible, not readily accessible to potential vandalism. Exterior posting must be constructed of, and printed with weather resistant materials.
- d) 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. If the property management company determines the property is not in compliance, it is the company's responsibility to bring the property into compliance.

8.44.080 ADDITIONAL REQUIREMENTS

In addition to the enforcement remedies established in this Chapter, the City shall have the authority to require the beneficiary, trustee, owner 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 and all doors, windows 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 secure and reduce the visual decline of the property.

9.44.090 ENFORCEMENT

- a) Any violation of this chapter shall constitute a public nuisance.
- b) Any person, partnership, association, corporation, fiduciary or other legal entity, that owns, leases, occupies, controls or manages any property subject to this chapter and that causes, permits, or maintains a violation of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided in Section 1.16.060 of this Code. Violations shall be treated as a strict liability offense, a violation shall be deemed to have occurred regardless of a violator's intent.
- c) If an enforcement official determines a violation of this chapter exists, the enforcement official may impose a civil fine of up to one thousand dollars (\$1,000) against the violating person or entity for each separate violation and on each day the violation exists, not to exceed a total of \$100,000 in fines per calendar year. Each day the violation exists shall constitute a separate and distinct violation. The City shall be authorized to recover such fines by any means authorized by this Code and state law, including filing and maintaining an action in a court of appropriate jurisdiction to collect any such civil fine, and/or by a lien or special assessment as provided in this Code and state law.
- d) In lieu of civil fines, an enforcement official may issue an administrative citation for each day a violation exists, containing fines up to one thousand dollars (\$1,000) per day, as provided in Municipal Code Chapter 8.08.
- e) This section is intended to be cumulative to, and not in place of, other rights and remedies available to the City pursuant to the Indian Wells Municipal Code, including any civil, criminal and/or administrative action.
- f) Any and all costs, including attorney's fees, incurred by the City in enforcing this Chapter shall be recoverable, and shall constitute a lien and special assessment against the subject property, pursuant to the definitions and procedures in Municipal Code Sections 1.16.020, 8.08.180, 8.08.140 and as otherwise provided by this Code.

8.44.100 JOINT AND SEVERAL LIABILITY

The duties/obligations specified in this chapter shall be joint and several among and between all trustees and beneficiaries and their respective agents. In addition, local property management companies retained pursuant to Municipal Code Section 8.44.070 shall also be jointly and severally liable for compliance with Municipal Code Sections 8.44.050 and 8.44.060.

8.44.110 APPEALS

Any person aggrieved by any of the requirements of this chapter may appeal a determination made hereunder in the manner specified in Section 8.08.100 of this Code."

SECTION 2. Severability. If any provision, clause, sentence or paragraph of this Ordinance, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable. This Ordinance amends, adds to, or deletes (as applicable) sections of the Indian Wells Municipal Code.

SECTION 3. Effective Date. This ordinance shall take effect and be in full force on the 30th day after its adoption.

SECTION 4. Publication. The City Clerk is directed to publish this Ordinance in the manner and in the time required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Indian Wells, California, at a regular meeting held on 6th day of January, 2011.


PATRICK J. MULLANY
MAYOR

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)ss.
CITY OF INDIAN WELLS)

CERTIFICATION FOR ORDINANCE NO. 646

I, Greg Johnson, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that Ordinance No. 646, having been regularly introduced at the meeting of December 16, 2010, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on 6th day of January, 2011, and said Ordinance was passed and adopted by the following stated vote, to wit:

AYES: Hanson, Mullany, Power, Roche, Spicer
NOES: None

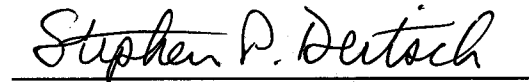
and was thereafter on said day signed by the Mayor of the City of Indian Wells

ATTEST:

APPROVED AS TO FORM:



GREG JOHNSON
CITY MANAGER/CITY CLERK



STEPHEN P. DEITSCH
CITY ATTORNEY