

**AN ORDINANCE EXACTING
A CODE FOR THE CITY OF AUSTELL**

**ARTICLE III
VACANT AND FORECLOSED PROPERTY REGISTRY ORDINANCE**

AN ORDINANCE BY THE MAYOR AND CITY COUNCIL FOR THE CITY OF AUSTELL, GEORGIA RELATING TO MORTGAGES, CONVEYANCES TO SECURE DEBT, AND LIENS; TO PROVIDE FOR VACANT AND FORECLOSED PROPERTY REGISTRIES; TO PROVIDE FOR DEFINITIONS; TO PROVIDE FOR GUIDELINES FOR VACANT AND FORECLOSED PROPERTY REGISTRIES; TO PROVIDE FOR EXEMPTIONS; TO PROVIDE FOR MAXIMUM FEES AND PENALTIES FOR REGISTRATION AND FAILURE TO REGISTER; TO PROVIDE FOR APPELLATE RIGHTS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; AND FOR OTHER PURPOSES.

SECTION ONE

Chapter 13 of the Municipal Code of the City of Austell, Georgia is amended by adding a new Article, to be numbered Article III, which shall include the following language:

Section 13-40. Short Title.

This Article shall be known as the “City of Austell, Georgia Vacant and Foreclosed Property Registry Ordinance.”

Section 13-41. Findings and Intent.

This ordinance is adopted to address the interest of public safety.

- (a) The governing authority finds that there is a need to establish a foreclosure and vacant real property registry as a mechanism to protect property values in neighborhoods for all property owners.
- (b) Due to the lack of adequate maintenance and security of properties that are foreclosed or where ownership has been transferred after foreclosure, the property values and quality of life of neighboring properties are negatively impacted.
- (c) Improperly maintained and secured foreclosed properties can become a hazard to the health and safety of persons who may come on or near the property and can adversely affect the aesthetic and economic attributes of communities. Difficulties also often arise in locating the person responsible for the condition of foreclosed real property. The governing authority finds that there is a substantial need directly related to the public health, safety and welfare to comprehensively address these concerns through the adoption of the provisions in this article.

- (d) This foreclosure and vacant real property registry will require owners and agents to provide the city with official information for contacting a party responsible for bringing foreclosed and vacant real property into compliance with applicable provisions of municipal code of the City of Austell, Georgia.

Section 13-42. Definitions.

- (a) **Agent:** An individual with a place of business in this state in which he or she is authorized to accept inquiries, notices, and service of process on behalf of a vacant or foreclosed real property owner. The definition of ‘agent’ shall have the same meaning as set forth in the Official Code of Georgia Annotated, Section 44-14-14 should that definition differ from the definition in this Article.
- (b) **Foreclosed Real Property:** Improved or unimproved real property and is held pursuant to a judicial or non-judicial foreclosure of a mortgage, deed of trust, security deed, or other security instrument securing a debt or obligation owed to a creditor or a deed in lieu of foreclosure in full or partial satisfaction of a debt or obligation owed to a creditor or shall have the same meaning as set forth in the Official Code of Georgia Annotated, Section 44-14-14, should that definition differ.
- (c) **Street Address:** The street or route address. Such term shall not mean or include a post office box. The definition of ‘street address’ shall have the same meaning as set forth in the Official Code of Georgia Annotated, Section 44-14-14 should that definition differ from the definition in this Article.
- (d) **Vacant Real Property:** Real property that:
 - (1) Is intended for habitation, has not been lawfully inhabited for at least 60 days, and has no evidence of utility usage within the past 60 days; or
 - (2) Is partially constructed or incomplete, without a valid building permit.

Such term shall not include a building or structure containing multiple units with common ownership that has at least one unit occupied with evidence of utility usage. The definition of ‘vacant real property’ shall have the same meaning as set forth in the Official Code of Georgia Annotated, Section 44-14-14 should that definition differ from the definition in this Article.

Section 13-43. Registration of Vacant or Foreclosed Property.

- (a) Owner or agents of foreclosed real property or vacant real property, including foreclosed real property and vacant real property which is also residential rental property, are required to register such property with the City of Austell Public Works office (“Office”) within thirty (30) days of such property becoming foreclosed or vacant real property by following the provisions of this section unless otherwise exempted by this Article or state law.

- (b) Any such owner or agent of foreclosed real property or vacant real property located within the jurisdiction of the city is required to file with the Office a registration form in either electronic or paper format containing the following information:
 - (1) The real property owner's name, street address, mailing address, phone number, facsimile number, and e-mail address;
 - (2) The agent's name, street address, mailing address, phone number, facsimile number, and e-mail address;
 - (3) The real property's street address and tax parcel number;
 - (4) The transfer date of the instrument conveying the real property to the owner; and
 - (5) At such time as it becomes available, recording information, including deed book and page numbers, of the instrument conveying the real property to the owner.
- (c) Registration is required for all vacant or foreclosed real property unless otherwise exempted, pursuant to this Article, but is not required for vacant or foreclosed real property within 90 days of such real property's transfer:
 - (1) Pursuant to a deed under power of sale or deed in lieu of foreclosure; or
 - (2) To the first subsequent transferee after the vacant real property has been acquired by foreclosure under power of sale pursuant to the Official Code of Georgia Annotated, Section 44-14-160, or acquired pursuant to a deed in lieu of foreclosure.
- (d) Any owner or agent required to register any vacant or foreclosed real property pursuant to this Article or to Georgia law shall also be required to update the information specified in subsection (a) of this section within 30 days after any change in such required information regardless of whether the information provided to the registry was in the deed under power of sale or deed in lieu of foreclosure.

Section 13-44. Foreclosed and Vacant Real Property Exemptions.

- (a) Registration or payment of any administrative fees of foreclosed real property pursuant to this Article and Georgia law is not required of transferees as described in subsection (b) of this section.
- (b) Any transferee who acquires any real property by foreclosure under power of sale pursuant to the Official Code of Georgia Annotated, Section 44-14-160 or acquires any real property pursuant to a deed in lieu of foreclosure and:
 - (1) The deed under power of sale or deed in lieu of foreclosure contains the information specified in subsection (a) of this section;
 - (2) The deed is filed with the clerk of the superior court within 60 days of the transfer; and

- (3) Proof of the following is provided to the office or the officer in charge of the city foreclosed real property registry:
 - (A) A filing date stamp or receipt showing payment of the applicable filing fees; and
 - (B) The entire deed under power of sale or entire deed in lieu of foreclosure.
- (d) Any owner or agent required to register any vacant or foreclosed real property pursuant to this Article or to Georgia law shall also be required to update the information specified in subsection (a) of this section within 30 days after any change in such required information regardless of whether the information provided to the registry was in the deed under power of sale or deed in lieu of foreclosure.

Section 13-45. Removal from Registry.

- (a) Any owner or agent of a vacant or foreclosed real property may apply to the City of Austell Public Works Department to remove a vacant or foreclosed real property from the city registry at such time as the real property no longer constitutes a vacant or foreclosed real property.
- (b) Any application for removal allowed under subsection (a) of this section shall be granted or denied by the City of Austell Public Works Department within 30 days, and if no such determination is made within 30 days then the application for removal from the registry shall be deemed granted.
- (c) If the property was sold, a copy of the HUD-1 statement and Security Deed must be provided as proof. If the property is rented by a tenant, a copy of the lease signed by the landlord must be provided as proof.

Section 13-46. Administrative Fees.

Any owner or agent of a vacant or foreclosed real property which is required to be registered with the city under this Article shall be required to make a payment for administrative fees that reasonably approximate the cost to the city of the establishment, maintenance, operation, and administration of the registry in a non-refundable amount of \$100.00 per registration.

Section 13-47. Appeal Procedures.

- (a) Any owner or agent aggrieved of any determination or decision of the City of Austell Public Works Department or the city in the administration of this Article may appeal to the municipal court of the city. All appeals hereunder must be taken within thirty (30) days of the decision in question by filing with the City of Austell Public Works a notice of appeal specifying the grounds thereof.
- (b) The City of Austell Public Works Department shall forthwith transmit to the notice of appeal and all the papers constituting the record upon which the action appealed was taken to the municipal court clerk who shall schedule an appeal hearing within sixty (60) days following the date the appealing party submits its completed written appeal with subsection (a) above.

- (c) The municipal court judge may call for further information to be provided within the next thirty-five (35) days following the hearing, and may continue the hearing for the purpose of receiving such information or for such other proceedings and reasons as the municipal court judge deems appropriate.
- (d) An appeal shall stay all proceedings in furtherance of the action appealed from unless the City of Austell Public Works Department certifies to the municipal court, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case, the proceedings shall not be stayed except by order of the municipal court judge on notice to the City of Austell Public Works, and on due cause shown.
- (e) The municipal court judge may, in conformity with the provisions of this Article, reverse or affirm, in whole or in part, or modify the decision, requirement, or determination of the City of Austell Public Works Department appealed from by the owner or agent and may make such decision, requirement, or determination, as may be appropriate under the circumstances.

Section 13-48. Administration.

- (a) The foreclosure and vacant real property registry is subject to the Open Records Act of the State of Georgia and the city may make such registry information available online.
- (b) Registration information shall be deemed prima facie proof of the statements contained therein in any court proceeding or administrative enforcement proceeding in connection with the enforcement of this chapter.

Section 13-49. Nuisances.

Nothing in this Article shall be construed to impair, limit, or preempt in any way the power of the city to enforce any applicable codes, as defined in state law, or to define or declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Section 13-50. Penalties.

Any owner or agent required to register a vacant or foreclosed real property under this Article who fails to register or fails to update the information specified in subsection (a), of Section 13-43, of this Article, Registration of Vacant or Foreclosed Property, may be fined up to \$1,000.00 per occurrence.

SECTION TWO

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION THREE

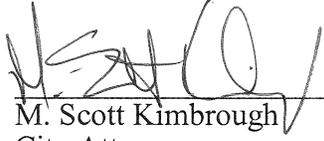
If any section, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

SECTION FOUR

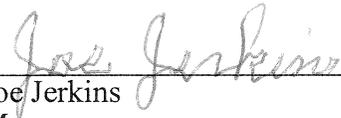
This ordinance shall become effective immediately upon its adoption by the City Council.

ADOPTED by the City Council of the City of Austell this 3rd day of February 2014.

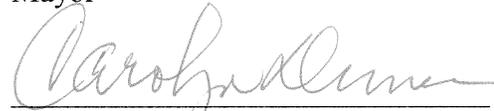
APPROVED AS TO FORM:



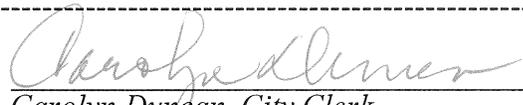
M. Scott Kimbrough
City Attorney



Joe Jerkins
Mayor



Carolyn Duncan
City Clerk

Certified By: 

Carolyn Duncan, City Clerk

Date: Monday, February 3, 2014

