

**CITY OF CHENEY, WASHINGTON
ORDINANCE NO. X-37**

**AN ORDINANCE OF THE CITY OF CHENEY ESTABLISHING A
FORECLOSURE REGISTRATION PROGRAM TO REQUIRE REGISTRATION
AND MAINTENANCE REQUIREMENTS FOR FORECLOSED PROPERTIES
IN ORDER TO PROMOTE THE BEST INTERESTS OF THE CITY OF
CHENEY AND PROVIDING FOR OTHER MATTERS RELATED THERETO**

WHEREAS, jurisdictions in and around the City of Cheney have adopted a foreclosure registration program which provides for registration of foreclosed property, minimum property maintenance requirements, and other terms which are designed to promote and protect the interests of the City, its residents, neighborhoods, and properties;

WHEREAS, the primary purpose of registering and monitoring properties which are going through a foreclosure process is to ensure they are properly maintained and do not become a nuisance or create an environment that is susceptible to criminal activity; and

WHEREAS, the foreclosure registration program will include collection of a registration fee to support the activities of the City Code Enforcement Officer, to support the regular monitoring of such properties so that they do not exhibit characteristics which would typically be described as a nuisance.

NOW, THEREFORE, the City Council of the City of Cheney does ordain as follows.

Section 1. **New Chapter.** A new chapter 17.08 entitled "Foreclosure Registration Program" is hereby added to the Cheney Municipal Code.

Section 2. **New Section.** A new section 17.08.020 entitled "Purpose" is hereby added to the Cheney Municipal Code as follows:

17.08.020 Purpose.

This chapter establishes a registration program to protect the city from the deterioration, crime, and decline in property value caused by properties in the foreclosure process. The City hereby requires the lender or other responsible party(ies) in the

foreclosure process to register such properties with the City to protect the neighborhoods from the negative impacts of absentee ownership including lack of adequate maintenance and security.

Section 3. New Section. A new section 17.08.030 entitled "Definitions" is hereby added to the Cheney Municipal Code as follows:

17.08.030

Definitions.

As used in this chapter, the following terms have the meanings indicated unless the context clearly indicates otherwise:

Abatement Order means an appealable order, supported by specific factual findings, issued by the Code Enforcement Officer which directs the Owner of a Foreclosure Property to take certain specific steps, within a specific period of time, to ensure that the relevant property is in compliance with this section.

Code Enforcement Department means the department of the code enforcement officer as defined in CMC 2.58.020.

Enforcement Officer means the code enforcement officer as defined in CMC 2.58.

Evidence of Foreclosure Status means any condition that on its own or combined with other conditions present would lead a reasonable person to believe that the property is a Foreclosure Property. Such conditions include, but are not limited to, overgrown and/or dead vegetation; accumulation of newspapers, circulars, flyers and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk, and/or debris; statements by neighbors, passersby, delivery agents, or government employees that the property is in foreclosure; the presence of boards over doors, windows or other openings in violation of applicable building code; and for residential properties, the absence of window coverings such as curtains, blinds, and/or shutters; the absence of furnishings and/or personal items consistent with residential habitation.

Foreclosure means the legal processes described in Title 61, Revised Code of Washington, in which a mortgagee or other lien holder terminates 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. For purposes of this section, the foreclosure process is not concluded until the property obtained by the mortgagee, lien holder, or their designee, by certificate of title or other means, is sold to a non-related, bona fide purchaser in an arms'-length transaction to satisfy the debt or lien.

Foreclosure Property means a property that is:

- (1) under a current notice of default and/or notice of trustee's sale;
- (2) the subject of a pending tax assessor's lien sale;
- (3) the subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure;
- (4) a property title to which has been transferred under a deed in lieu of foreclosure/sale, or
- (5) subject to a contract forfeiture.

Property acquired by Spokane County at a tax foreclosure sale under chapter 84.64 RCW is not "Foreclosure Property" within the meaning of this section. For purposes of this section, a property remains a Foreclosure Property until it is sold at an arms'-length transaction to a non-related bona fide purchaser or until the foreclosure action has been dismissed and any default has been cured.

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

Local Agent means an individual property manager, property management company, or similar person or entity, regardless of location of business or residence, and responsible for, having the authority to make decisions and required expenditures concerning, the maintenance and security of a Foreclosure Property and the abatement of nuisance conditions at the property.

Owner means any individual or group of natural persons, partnership, association, corporation or other entity having legal or beneficial title in real property including any borrower.

Property means any unimproved or improved, residential or commercial real property, or portion thereof, situated in the City, and includes the buildings or structures located on the property regardless of condition.

Responsible Party means any person, partnership, association, corporation, or fiduciary having legal or equitable title to or any interest in any real property, including but not limited to an Owner, borrower, and Lender as defined in this section.

Section 4. New Section. A new section 17.08.040 entitled "Establishment of a Registry" is hereby added to the Cheney Municipal Code as follows:

17.08.040 Establishment of a Registry.

The City of Cheney Code Enforcement Department shall establish and maintain a Foreclosure Property registry to implement this chapter.

Section 5. New Section. A new section 17.08.050 entitled "Registration of Foreclosure Properties" is hereby added to the Cheney Municipal Code as follows:

17.08.050 Registration of Foreclosure Properties.

Foreclosure Property shall be registered as follows:

- (a) By the Enforcement Officer.
- (b) By any Lender or other Responsible Party(ies) of a Foreclosure Property as defined in this section within ten (10) days of the property becoming a Foreclosure Property upon initial inspection or following receipt of notice from the City and every 12 months thereafter until the property is no longer a Foreclosure Property. A separate registration is required for each property.
- (c) The content of the registration shall include:
 - (1) Proof of ownership, or financial interest, such as a lien or loan,
 - (2) The name, address, phone number, and email address for the Owner, Lender , and Responsible Party and twenty-four hour contact phone number of the Local Agent of the respective entity; and
 - (3) Documentation which demonstrates the property is foreclosed, pending foreclosure, or subject to foreclosure, trustee's sale, tax assessor's lien sale or other legal proceedings.
- (d) The Lender, Owner, or Responsible Party shall notify the Code Enforcement Officer within ten (10) days of the date of any change in the information contained in the registration.
- (e) Mortgagees who have existing Foreclosure Properties on the effective date of this ordinance have 30 calendar days from the effective date to register the property with City of Cheney Code Enforcement Department. A separate registration is required for each property.
- (f) All property registrations are valid for one year from the date of entry of registration as recorded by the City of Cheney Code Enforcement Department. Subsequent registrations are due every twelve (12) months thereafter for renewal and must certify required registration data is current and correct.

Section 6. New Section. A new section 17.08.060 entitled "Minimum Property Maintenance Requirements" is hereby added to the Cheney Municipal Code as follows:

17.08.060 Minimum Property Maintenance Requirements.

While a Foreclosure Property is registered, the Lender or Responsible Party shall be required to:

- (1) maintain and keep Foreclosure Property free of conditions including, but not limited to:
- (2) weeds, dry brush, dead vegetation, trash, junk, debris, building materials and junk vehicles,
- (3) accumulation of newspapers, circulars, flyers, notices (except those required by federal, state, or local law), and discarded personal items including, but not limited to, furniture, clothing, or large and small appliances, and
- (4) graffiti, tagging, or similar markings by removal or painting over with an exterior grade paint that matches and/or coordinates with the color of the exterior of the structure,
- (5) secure ponds, pools and hot tubs and ensure that they do not become a public nuisance,
- (6) secure the Foreclosure Property to prevent access by unauthorized persons, including, but not limited to, the following: the closure and locking of windows, doors (walk-through, sliding and garage), gates, and any other opening of such size that it may allow a child or any other person to access the interior of the property and or structure(s). Securing also includes boarding as applicable. Preferred material for boarding shall be painted with an exterior grade paint that matches and/or coordinates with the color of the exterior of the structure, or is of a material that mimics glazed windows and intact doors.
- (7) Post the property with no trespassing signs and current emergency contact information for the local agent.
- (8) take any other action necessary to prevent giving the appearance that the property is abandoned, and
- (9) monitor the Foreclosure Property monthly or more frequently as necessary to prevent the creation of a nuisance.

Section 7. New Section. A new section 17.08.070 entitled "Monitoring of Foreclosure Property" is hereby added to the Cheney Municipal Code as follows:

17.08.070 Monitoring of Foreclosure Property.

- (a) Upon registration, the City will provide regular monitoring of Foreclosure Properties including, but not limited to, periodic site visitation, which will not exceed the City's rights of access as well as notification to Lender or Responsible Party if the property begins to exhibit characteristics established in RCW 35.80.010. The City's

monitoring of Foreclosure Properties does not relieve the Lender or other Responsible Party from monitoring and maintaining the property as required by this section.

- (b) At least monthly while a Foreclosure Property is registered, the Lender or Responsible Party shall inspect the Foreclosure Property.

Section 8. New Section. A new section 17.08.080 entitled "Waiver for City to Abatement – Trespass of Unauthorized Individuals" is hereby added to the Cheney Municipal Code as follows:

17.08.080 Waiver for City to Abatement – Trespass of Unauthorized Individuals.

- (a) As part of the Foreclosure Property registration, the Owner, Lender, Local Agent, Responsible Party, or other person having the legal authority to do so shall waive any objection to the City entering onto the property for purposes of abating any condition that would constitute an unfit or substandard building as established in RCW 35.80.010, or any condition deemed a property maintenance violation under CMC Title 17, and to issue a trespass order against any unauthorized individual from the Foreclosure Property.
- (b) The City shall notify the Owner, Lender, Responsible Party, or Local Agent ten (10) days prior to the City taking abatement action in order to allow the Owner, Lender, Responsible Party, or Local Agent to abate the condition first unless such abatement constitutes an emergency, in which case, the City may abate the emergency immediately.
- (c) The cost of the abatement of any of the illustrative conditions contained in Section 17.08.060 above shall be charged against the Foreclosure Property pursuant to CMC 17.06.070 and shall be lienable pursuant to CMC 17.16.010 and other applicable sections of the municipal code pursuant to state law.

Section 9. New Section. A new section 17.08.090 entitled "Local Agent" is hereby added to the Cheney Municipal Code as follows:

17.08.090 Local Agent.

The Lender or Responsible Party shall provide the City with the name, address, telephone number, email address and 24-hour contact information of a Local Agent who has the authority to act to respond to complaints regarding the Foreclosure Property and to remedy any nuisance, substandard or unfit conditions found on the property.

Section 10. New Section. A new section 17.08.100 entitled "Annual Foreclosure Property Registration Fee" is hereby added to the Cheney Municipal Code as follows:

17.08.100 Annual Foreclosure Property Registration Fee.

The Lender or Responsible Party shall pay the annual non-refundable Foreclosure Property registration fee as set forth by City of Cheney Fee Resolution.

Section 11. New Section. A new section 17.08.110 entitled "Policies and Procedures" is hereby added to the Cheney Municipal Code as follows:

17.08.110 Policies and Procedures.

The City of Cheney Code Enforcement Department shall develop procedures to implement this section which are consistent with and do not conflict with this section, the Cheney Municipal Code, or Washington law.

Section 12. New Section. A new section 17.08.120 entitled "Violation" is hereby added to the Cheney Municipal Code as follows:

17.08.120 Violation.

- (a) Any person, firm or entity who fails to a Foreclosure Property pursuant to the requirements of this section shall be subject to a class 1 civil infraction. Each day in which a Foreclosure Property which is subject to this section is not registered shall constitute a separate violation.
- (b) Failure to maintain a Foreclosure Property as required by this section is a criminal misdemeanor violation under CMC 17.06.090 for maintaining a nuisance property in addition to applicable penalties for nuisance conditions in the municipal code or state law.
- (c) Failure to provide notification of changes in ownership of a Foreclosure Property under this section is a class 1 civil infraction.

Section 13. New Section. A new section 17.08.130 entitled "Removal of properties from the registry" is hereby added to the Cheney Municipal Code as follows:

17.08.130 Removal of properties from the registry.

- (a) A property may only be removed from the Foreclosure Property registry upon the Lender's, Owner's, or Responsible Party's written certification that (1) the mortgage or lien on the property has been satisfied or legally discharged, (2) the property is no longer in mortgage default, or (3) the Foreclosure Property has been sold to a non-related party in a bona-fide, arms' length transaction.

- (b) A Lender's statement that it no longer desires to pursue foreclosure, has filed a dismissal of lis pendens and/or summary of final judgment and/or certificate of title or otherwise, such as deed in lieu of foreclosure shall not be the basis for removal of a Foreclosure Property from the registry under this section.
- (c) For purposes of this section, a transfer to another entity which is under common ownership with the Lender, as determined in the sole discretion of the City of Cheney Code Enforcement Department, is not an arms' length transaction.

Section 14. New Section. A new section 17.08.140 entitled "Transfer of Ownership" is hereby added to the Cheney Municipal Code as follows:

17.08.140 Transfer of Ownership.

- (a) If the mortgage on a registered Foreclosure Property is transferred, the transferee shall be subject to the requirements of this section and shall, within five (5) days of the transfer of the mortgage, register the property as a new registration in accordance with this section. Any previously unpaid registration fees are the responsibility of the transferee and are due and payable upon the new registration.
If the mortgagee sells a Foreclosure Property in an arms'-length transaction to a non-related person or entity, the transferee is subject to the terms of this section and shall register the property as a new registration under this section within five (5) days of the sale. Any previously unpaid registration fees shall be the responsibility of the new owner.

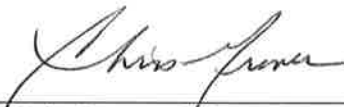
Section 15. Severability. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 16. Effective Date. This ordinance shall become effective thirty (30) days after its passage, approval, and publication.

Introduced this 14 day of AUGUST, 2018.


Passed by the City Council this 22 day of JANUARY, 2019.

Approved by the Mayor this 22 day of JANUARY, 2019.



 Chris Grover, Mayor

ATTEST:


Cynthia L. Niemeier, City Clerk

APPROVED AS TO FORM:


Stanley M. Schwartz, City Attorney