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CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2018-___

AN ORDINANCE OF THE CITY COMMISSION AMENDING THE CODE OF THE CITY OF CORAL GABLES, FLORIDA, BY AMENDING ARTICLE VII “ABANDONED REAL PROPERTY” OF CHAPTER 34 “NUISANCES”, AND PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City has established a process to address the deterioration and blight of City neighborhoods caused by abandoned, foreclosed or distressed real property located within the City, and to identify, regulate, limit and reduce the number of abandoned properties located within the City;

WHEREAS, the City has established a registration program as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of abandoned and foreclosed properties;

WHEREAS, the City Commission is concerned that abandoned properties that are vacant are less likely to be maintained, and finds that remedial action is particularly necessary against vacant properties where existing Code violations have existed for a period of over 60 days;

WHEREAS, the City Commission finds that many owners and mortgagees are not maintaining the properties listed on the abandoned real property registry in an adequate manner, and at times do not maintain the properties at all;

WHEREAS, the City Commission finds that the City must expend significant police, public service, and code enforcement resources in monitoring vacant properties;

WHEREAS, it is the City’s intent to utilize the mechanisms in place to ensure compliance with the City’s Codes.

NOW THEREFORE BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA:

SECTION 1. That the foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2. That “Abandoned Real Property” of Chapter 34, “Nuisances” of the Code of the City of Coral Gables, Florida, is hereby amended to read as follows:¹

¹/ Deletions are indicated by ~~striketrough~~. Insertions are indicated by underlining

Sec. 34-198. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Abandoned real property means any real property located in the city, whether vacant or occupied, that is in default on a mortgage, has had a lis pendens filed against it by the lender holding a mortgage on the property, is subject to an ongoing foreclosure action by the lender, is subject to an application for a tax deed or pending tax assessors lien sale, or has been transferred to the lender under a deed in lieu of foreclosure. The designation of a property as “abandoned” shall remain in place until such time as:

(1) the property is sold or transferred, in an arm’s length transaction to satisfy the debt or lien or after the mortgagee acquires the property, to a good faith purchaser who is not related to the owner or mortgagee, new owner, or any default on the mortgage has been cured; and

(2) the foreclosure action and any appeals have been closed or dismissed, and any default on the mortgage has been cured.

Unimproved real property and vacant real property that is also blighted property or that the City has cited for a violation of the applicable codes shall also meet the definition of abandoned real property, even if the unimproved or vacant property is not encumbered by a mortgage that it is in default.

Accessible property/structure means a property that is accessible through a compromised/breached gate, fence, wall, etc., or a structure that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

Applicable codes means to include, but not be limited to, the city’s zoning code, this Code of Ordinances and the Florida Building Code.

Blighted property means:

(1) Properties that have broken or severely damaged windows, doors, walls, or roofs ~~which~~that create hazardous conditions and encourage trespassing;

(2) Properties whose maintenance is not in conformance with the maintenance of other neighboring properties, causing a decrease in value of the neighboring properties;

(3) Properties cited for a public nuisance pursuant to this Code; or

(4) Properties that endanger the public’s health, safety, or welfare because the properties or improvements thereon are dilapidated, deteriorated, or violate minimum

health and safety standards or lack maintenance as required by the city and zoning codes.

Evidence of Vacancy shall mean any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to: overgrown or dead vegetation; past due utility notices or disconnected utilities; accumulation of trash, junk, or debris; abandoned vehicles, auto parts, or materials; the absence of furnishings or personal items consistent with habitation or occupancy; the presence of an unsanitary, stagnant swimming pool; the accumulation of newspapers, circulars, flyers or mail; statements by neighbors, passers-by, delivery agents or government agents; or the presence of boards over doors, windows or other openings in violation of applicable codes.

Enforcement officer means any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector or building inspector, or other person authorized by the city to enforce the applicable codes.

Owner means any person, legal entity or other party having any ownership interest, whether legal or equitable, in real property. The term “owner” shall also apply to any person, legal entity or agent responsible for the construction, maintenance or operation of the property involved. The mortgagee, the mortgagee’s servicer, and the owner’s or mortgagee’s property management company are all responsible for compliance with the requirements of this article.

Property management company means a local property manager, property maintenance company or similar entity responsible for the maintenance and security of abandoned real property.

Vacant means any ~~building or structure that is not legally occupied~~ parcel of land in the city that contains any building or structure that is not lawfully occupied or inhabited by human beings as evidenced by the conditions set forth in the definition of “evidence of vacancy” above or that is without a lawful tenant or lawful occupant or without a certificate of occupancy. Vacant property does not mean property that is temporarily unoccupied while the residents are away on vacation, personal matters or business, or is not intended by the owner to be left vacant, so long as the period does not exceed thirty (30) days.

Sec. 34-199. - Purpose and intent.

It is the purpose and intent of the city to establish a process to address the deterioration and blight of city neighborhoods caused by an increasing amount of abandoned, foreclosed or distressed real property located within the city, and to identify, regulate, limit and reduce the number of abandoned properties located within the city. It is the city’s further intent to establish a registration program as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of abandoned vacant and foreclosed properties.

Sec. 34-200. – ~~Applicability~~ Provisions supplemental.

~~These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather are an additional remedy available to the city above and beyond any other state, county or local provisions for same. The provisions of this article are cumulative with and in addition to other available remedies. Nothing contained in this article shall prohibit the city from collecting on fees, fines, and penalties in any lawful manner; or enforcing the applicable codes by any other means, including, but not limited to, injunction, abatement, or as otherwise provided by state law or county or city ordinance.~~

Sec. 34-201. - Establishment of a registry.

Pursuant to the provisions of section 34-202, the city or designee shall establish a registry cataloging each abandoned real property within the city, containing the information required by this article.

Sec. 34-202. - Registration of abandoned real property.

(a) Any mortgagee who holds a mortgage on real property located within the city shall perform an inspection of the property, upon default by the mortgagor. The mortgagee shall, within ten days of the inspection, register the property with the division of code enforcement, or its designee, on forms provided by the city, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be vacant or occupied.

(b) If the property is occupied but remains in default, it shall be inspected by the mortgagee or his or her designee monthly until:

~~(1) The mortgagor or other party remedies the default; or,~~

~~(2) If it is found to be vacant or shows evidence of vacancy, at which time it is deemed abandoned, and the mortgagee shall, within ten days of that inspection, update the property registration to a vacancy status on forms provided by the city.~~

~~(c) The Registration pursuant to this section shall contain the name, direct mailing address, a direct contact name and telephone number, facsimile numbers and e-mail addresses for both parties of the mortgagee, and the servicer, and the property management company the direct mailing address of the mortgagee and the server, a direct contact name and telephone number for both parties, facsimile numbers and e-mail addresses for both parties, as well as the folio or tax identification number for the abandoned real property, and the name and 24-hour contact phone number of the property management company responsible for the security and maintenance of the property shall be a 24-hour contact number. If the mortgagee has a general counsel's office or legal department, the direct contact name, telephone number, facsimile number, mailing address and email address and contact information of a representative from the general counsel's office or legal department shall~~

be provided as well. The City may provide service of code enforcement notices to the mailing addresses provided in the registration.

(d) A nonrefundable annual registration fee in the amount established in section 1-8, shall accompany the registration form. In the event the abandoned real property is vacant, and in addition to the annual fee, an additional nonrefundable annual fee in the amount established in section 1-8 shall be paid to account for the city's additional costs in monitoring the property under this ordinance.

(e) This ~~section~~ article shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

(f) Properties subject to this ~~section~~ article shall remain under the annual registration requirement, and the inspection, security and maintenance standards requirements of this section article, as long as they remain vacant or in default.

(g) Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten days of the change.

(h) Failure of the mortgagee ~~and/or~~ owner to properly register or to modify the registration ~~form~~ from time to time to reflect a change of circumstances as required by this article is a violation of the article and shall be subject to enforcement.

(i) Pursuant to any administrative or judicial finding and determination that any property is in violation of this article, the city may take the necessary action to ensure compliance and place a special assessment lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

(j) In registering an abandoned real property as vacant, the form will indicate that submission grants the city police department the authority to issue trespass warnings to individuals who cannot demonstrate written authorization to be on the property. The mortgagee or owner can opt out of or revoke the police department's authority to issue a trespass warning by notifying the police department on the registration form or in writing, directed to the chief of police.

(k) In addition to the mortgagee, the owner also has a duty to ensure compliance with the provisions of this article.

(l) The owner of abandoned real property that is not in default of a mortgage and that is required to register because the property is blighted property or the City has cited the property for a violation of the applicable codes shall register the property within ten days of the property becoming abandoned real property or blighted property as defined by this article. The owner shall register the property as provided in this section, except that the owner need only provide the contact information for the owner and any property management company. The abandoned real property described in this subsection shall remain under the annual registration, inspection, security and maintenance requirements of this article during the registration period. The owner shall renew the registration and the

property shall remain subject to the requirements of this article for **each** additional year **in which** the property constitutes blighted property or if the City cites the property for a violation of the applicable codes at any time during the annual registration period.

Sec. 34-203. - Maintenance requirements.

(a) Properties subject to this ~~chapter~~ **article** shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state or local 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.

(b) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.

(c) Front, side, and rear yards, including landscaping, shall be maintained in accordance with the applicable codes ~~at the time registration was required.~~

(d) Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/ or sod designed specifically for residential installation. Acceptable maintenance of yards ~~and/or~~ landscape shall not include weeds, gravel, broken concrete, or asphalt, or similar material.

(e) Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings and dead vegetation.

(f) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable codes. If a pool is not kept full of water and filtered with a functioning pump, it must be covered to prevent the accumulation of water and the breeding of mosquitoes.

(g) Failure of the mortgagee ~~and/or~~ owner to properly maintain the property may result in a violation of the applicable codes and issuance of a citation or notice of violation/notice of hearing in accordance with chapter 101. Pursuant to a finding and determination by the city's code enforcement board, hearing officer/special magistrate or a court of competent jurisdiction, the city may take the necessary action to ensure compliance with this section.

(h) In addition to the above, the property is required to be maintained in accordance with the applicable codes.

Sec. 34-204. - Security requirements.

(a) Properties subject to ~~these sections~~ **this** article shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

(b) The term “secure manner” shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by re-glazing of the window.

(c) If a mortgage on a property is in default, and the property has become vacant or abandoned, a property manager shall be designated by the mortgagee to perform the work necessary to bring the property into compliance with the applicable codes, and the property manager must perform regular inspections to verify compliance with the requirements of this article, and any other applicable laws.

Sec. 34-205. - Public nuisance.

(a) All abandoned real property is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare and safety of the residents of the city.

(b) The city attorney, with the approval of the city manager or designee, is authorized to initiate court action, including seeking injunctive relief before a court of competent jurisdiction, or to initiate foreclosure or forfeiture proceedings, in order to enforce this article. If a violation of this article exists, the city shall be entitled to an injunction requiring the mortgagee or owner to correct the violation on an expedited basis and at the mortgagee’s or owner’s expense. If requested, the city shall also be entitled to appointment of a receiver for the property, with expenses for the receiver to be paid by the mortgagee or owner. Likewise, the city shall be entitled to recovery of its attorney’s fees and costs in ~~obtaining a court order~~ enforcing this article. The mortgagee or owner shall pay all costs of enforcement in administrative or court proceedings, including, but not limited to, reasonable attorney’s fees, for all trial, appellate, and bankruptcy litigation, including litigation for the amount as well as the entitlement to such fees and costs, whether or not suit is brought. The provisions of this section are cumulative with and in addition to other available remedies, including code enforcement.

(c) In registering a property as vacant, and in order to abate part of the harm caused by the public nuisance of vacant properties, the police department is granted the authority to issue a trespass warning to individuals on the property unless they can demonstrate authority in writing to be on the property. The mortgagee or owner can opt out of or revoke the police department’s authority to issue a trespass warning by notifying the police department on the registration form or in writing, directed to the chief of police.

(d) The mortgagee and owner of a property that is a public nuisance as described herein each have an affirmative duty to take action to abate the public nuisance for that property. Nothing in this article is intended to place an affirmative duty on the city to take any action or to otherwise limit the city’s discretion in addressing a public nuisance.

Sec. 34-206. - Penalties; schedule of civil penalties.

Any person who shall violates the provisions of this article may be cited and fined as provided in section 1-7.

Sec. 34-207. – Transfer of interest and inspections for violations.

Adherence to this article does not relieve any person, legal entity, or agent from any other obligations regarding the abandoned real property as set forth in any applicable codes, ~~which may apply to the property.~~ Upon sale or transfer of the mortgage or title to the property, the new holder or owner shall be responsible for all unpaid fees, fines, and costs and attorney's fees and all violations of the applicable codes.

Sec. 34-208. - Additional authority.

(a) If the enforcement officer has reason to believe that a property subject to the provisions of this article is posing a serious threat to the public health, safety and welfare, the code enforcement officer may temporarily secure the property at the expense of the mortgagee and/or owner, and may bring the violations before the city's code enforcement board or code enforcement special magistrate as soon as possible to address the conditions of the property.

(b) The code enforcement board or hearing officer/special magistrate shall have the authority to require the mortgagee and/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, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.

(c) If there is a finding that the condition of the property is posing a serious threat to the public health, safety and welfare, then the code enforcement board or special magistrate may direct the city to abate the violations and charge the mortgagee with the cost of the abatement.

(d) If the mortgagee does not reimburse the city for the cost of temporarily securing the property, or of any abatement directed by the code enforcement board or special magistrate within 30 days of the city sending the mortgagee the invoice, then the city may lien the property with such cost, along with an administrative fee established in section 1-8 to recover the administrative personnel services.

(e) In addition to any other procedures or remedies provided for in this Code, this section shall apply to all liens for the costs of correction of violations of this article. The owner or mortgagee shall reimburse the city for the costs incurred in correcting the violation, along with an administrative fee as provided in section 1-8 to recover personnel service costs, within 30 days of the date the city sends an invoice. The city shall have a lien against the property for all such costs and the lien shall not expire. The lien shall accrue interest at the maximum legal rate from the date of the city's invoice until the costs and administrative

fee are paid. Such lien shall be valid, effective, and binding from the date the city incurs the expense to correct the violation, even if the lien is not recorded. The city shall record the lien in the public records of Miami-Dade County; however recording of the lien shall not be required to establish the validity of the lien. The city commission may authorize the city attorney to foreclose on such lien pursuant to article VI of chapter 101 of this Code or by any other means authorized by law. Existing liens and liens imposed hereafter as set out in this subsection shall be treated as special assessment liens against the subject real property, and until fully paid and discharged, shall remain liens equal in rank and dignity with the lien for all state, county, district, or municipal ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the real property involved until paid. Such liens for the costs of correction shall be enforced by any of the methods provided in F.S. chapter 86, or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions applicable to practice, pleading and procedure for the foreclosure of mortgages on real estate set forth in state law, or may be foreclosed per F.S. chapter 173, if applicable; or the collection and enforcement of payment thereof may be accomplished by any other method authorized by law. The owner shall pay all costs of collection, including, but not limited to, reasonable attorney's fees, for all trial, appellate, and bankruptcy litigation, including litigation for the amount as well as the entitlement to such fees and costs, whether or not suit is brought. The remedy provided for in this subsection shall be cumulative.

Sec. 34-209. - Opposing, obstructing enforcement officer; penalty.

Whoever opposes, obstructs or resists any enforcement officer or any person authorized by the enforcement office in the discharge of duties as provided in this ~~chapter~~ **article** shall be punishable as provided in the applicable codes or a court of competent jurisdiction.

Sec. 34-210. - Immunity of enforcement officer and other persons authorized to enforce article.

Any enforcement officer or any person authorized by the city to ~~enforce the sections here within~~ this article shall be immune from prosecution, civil or criminal, for actions taken to enforce this article, as well as for reasonable, good faith entry upon real property while in the discharge of duties imposed by this article.

~~**Sec. 34-211. - Failure to register and maintain a vacant property.**~~

~~(a) The city is concerned about the failure of owners and mortgagees to register and maintain vacant properties on the abandoned property registry.~~

~~(b) Accordingly, it is unlawful for an owner or mortgagee to fail to register a vacant property on the abandoned property registry or to fail to maintain said vacant property, which shall be punished as provided in section 1-7. There is a rebuttable presumption of a violation of this provision if a vacant property has two or more violations of the city's minimum housing code or the registration and maintenance provisions of this article for a period of 60 days or more after the city notifies the owner or mortgagee. The provisions of~~

~~this section are cumulative with and in addition to other available remedies, including code enforcement.~~

SECTION 3. SEVERABILITY.

If any section, sentence, clause, 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 affect the validity of the remaining portions of this Ordinance.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith, are hereby repealed.

SECTION 5. CODIFICATION.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention, and the word “ordinance” may be changed to “section”, “article”, or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 6. EFFECTIVE DATE.

This ordinance shall become effective upon adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, A.D., 2018.

APPROVED:

RAUL VALDES-FAULI
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

MIRIAM SOLER RAMOS
CITY ATTORNEY