

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2015-01

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA, AMENDING THE CODE OF THE CITY OF CORAL GABLES, FLORIDA, BY CREATING SECTIONS 34-175 THROUGH 34-186 OF THE CITY CODE, "FORFEITURE OF ABANDONED REAL PROPERTY" OF CHAPTER 34 "NUISANCES", TO CREATE A PROCESS BY WHICH THE CITY CAN TAKE AND PERFECT RIGHT, TITLE, AND INTEREST IN AND TO SUCH PROPERTIES WHICH ARE OR REMAIN IN VIOLATION OF THE CITY CODE OR ZONING CODE; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City has established a process to address the deterioration of and harm to 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; and

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

WHEREAS, the purpose of this ordinance is to ensure that properties on the abandoned real property registry are lawfully maintained pursuant to applicable law. A number of non-homestead properties on the registry that are vacant (and where the property owner has effectively abandoned the property) have multiple violations of the City Code (including the abandoned real property maintenance requirements and the minimum housing code), many of which can persist for months. The failure by banks (as mortgage holder or as the eventual owner) to maintain these properties is a cause for serious concern, creating hazardous and unsafe conditions, and constituting unlawful conduct, which makes the property subject to forfeiture; and

WHEREAS, the City intends to invoke this ordinance to address extraordinary situations where the City has requested that a bank maintain the non-homestead property in question and the bank has refused or failed to do so. Ultimately, this ordinance provides additional tools for the City to address situations where one of these properties is found to have multiple violations of the abandoned real property maintenance requirements or minimum housing code for an extended period of time, specifically exceeding 6 months. In addition to other remedies, such as fines and code enforcement, such violations are punishable by up to 60 days imprisonment for each offense pursuant to sections 1-7 and 34-174 of the City Code. This unlawful conduct involving the real property in question makes the property subject to forfeiture;

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

SECTION 1. The foregoing “WHEREAS” clauses 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 the City Code shall be amended to add the following provisions:

Sec 34-175. Purpose and intent.

It is the purpose and intent of the City to establish a process to address the deterioration of city neighborhoods caused by an increasing amount of abandoned, foreclosed or distressed non-homestead 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 provide the City with an enforcement mechanism to compel compliance with the City Code or otherwise bring the forfeitable property into compliance as authorized by section 162.22 of the Florida Statutes.

Sec 34-176. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, and as defined in the Florida Contraband Forfeiture Act, Fla. Stat. §§ 932.701 - 932.706, except where the context clearly indicates a different meaning:

- (a) “Owner” shall be construed to mean and include individuals, partners, joint owners, legal entities and corporations, with title to the forfeitable property, regardless of how title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure. This term shall also apply to any person, legal entity or agent responsible for the construction, maintenance or operation of the property involved.
- (b) “Forfeitable Property” shall be any non-homestead, real property, which qualifies for registration as abandoned real property under Chapter 34, Article VI, “Abandoned Real Property,” of the City Code, and which has, at the time of the seizure pursuant to this ordinance, two or more violations of sections 34-166 (Abandoned Real Property Maintenance Requirements) and/or 105-146 through 105-342 (Minimum Housing Code) of the City Code for a period in excess of six (6) months.
- (c) “Bona fide lienholder” means the holder of a lien perfected pursuant to applicable law.

- (d) "Promptly proceed" means to file the complaint within 45 days after seizure.
- (e) "Complaint" is a petition for forfeiture filed in the civil division of the circuit court by the City requesting the court to issue a judgment of forfeiture.
- (f) "Person entitled to notice" means any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the City after a diligent search and inquiry.
- (g) "Adversarial preliminary hearing" means a hearing in which the City is required to establish probable cause that the property subject to forfeiture was used in violation of the Florida Contraband Forfeiture Act.
- (h) "Forfeiture proceeding" means a hearing or trial in which the court or jury determines whether the subject property shall be forfeited.
- (i) "Claimant" means any party who has proprietary interest in property subject to forfeiture and has standing to challenge such forfeiture, including owners, registered owners, bona fide lienholders, and titleholders.
- (j) "Probable Cause" means fact and circumstances, that may be established by circumstantial or hearsay evidence, that there is sufficient probability to warrant a reasonable belief that that property is in violation of this article.
- (k) "City" will mean the City of Coral Gables.

Sec. 34-177. Property Subject to Forfeiture.

- (a) Any forfeitable property, as defined in Sec. 34-176, may be seized and shall be forfeited subject to the provisions of this code. The City will not initiate the seizure or forfeiture until the City Commission or the City Manager, in consultation with the City Attorney, makes a finding that such seizure or forfeiture substantially promotes or protects the health, safety, and welfare of the community.
- (b) All rights to, interest in, and title to the forfeitable property shall immediately vest in the City of Coral Gables upon seizure by the City of Coral Gables Police Department in accordance with this code.
- (c) The City of Coral Gables may not use the seized property for any purpose until the rights to, interest in, and title to the seized property are perfected in accordance with the provisions of this code. This section does not prohibit use or operation necessary for reasonable maintenance of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value and/or maintain the property in the state in which it was when seized.

Sec. 34-178. Notice of Seizure

- (a) The forfeitable property may not be seized or restrained, other than by *lis pendens*, under the provisions of this code, until the persons entitled to notice are afforded the opportunity to attend a pre-seizure adversarial preliminary hearing. A *lis pendens* may be obtained by any method authorized by law.
- (b) Notice of the adversarial preliminary hearing shall be by certified mail, return receipt requested.
- (c) The purpose of the adversarial preliminary hearing is to determine whether probable cause exists to believe that such property is subject to forfeiture pursuant to the provisions of this code. The City of Coral Gables shall make a diligent effort to notify any person entitled to notice of the seizure.
- (d) The pre-seizure adversarial preliminary hearing provided herein shall be held within 10 days of the filing of the *lis pendens* or as soon as practicable.

Sec. 34-179. Adversarial Preliminary Hearing.

At the adversarial preliminary hearing, the court shall review affidavit(s) and any other supporting documents and take any testimony to determine whether there is probable cause to believe that the property is subject to forfeiture pursuant to the provisions of this article. If probable cause is established, the court shall authorize the seizure of the subject property. A copy of the findings of the court shall be provided to any person entitled to notice.

Sec. 34-180. Maintenance of Seized Property.

If the court determines that probable cause exists to believe that the subject property is in violation of the provisions of this section, the court shall order the property restrained by the least restrictive means to protect against disposal, waste, or continued illegal use of such property pending disposition of the forfeiture proceeding. The court may order any claimant to post a bond or other adequate security equivalent to the value of the property.

Sec. 34-181. Return of Seized Property.

Any owner of forfeitable property may halt the forfeiture action and obtain the return of said property by bringing the forfeitable property into compliance with the code after satisfying all outstanding code violations and making such changes as are necessary to bring the property into compliance. The owner is also responsible for paying the fees and costs incurred by the City while instituting the forfeiture action, including but not limited to attorney's fees and costs for the prosecution of the forfeiture action.

Sec. 34-182. Forfeitable Property; Exceptions.

- (a) Property may not be forfeited under this provision unless the City establishes by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the property was forfeitable property as defined in this code.
- (b) A bona fide lienholder's interest that has been perfected in the manner prescribed by law prior to the seizure may not be forfeited under this code unless the City establishes by a preponderance of the evidence that the lienholder had actual knowledge, at the time the lien was made, that the property was being employed or was likely to be employed in violation of this code. If a lienholder's interest is not subject to forfeiture under the requirements of this section, such interest shall be preserved by the court by ordering the lienholder's interest to be paid as provided in section 932.7055 of the Florida Statutes.
- (c) Property titled or registered between husband and wife jointly by the use of the conjunctives "and," "and/or," or "or," in the manner prescribed by law prior to the seizure, may not be forfeited under this code unless the City establishes by a preponderance of the evidence that the co-owner either knew or had reason to know, after reasonable inquiry, that such property was forfeitable property as defined herein.
- (d) Any interest in, title to, or right to property titled or registered jointly by the use of the conjunctives "and," "and/or," or "or" held by a co-owner, other than property held jointly between husband and wife, may not be forfeited unless the City establishes by a preponderance of the evidence that the co-owner either knew, or had reason to know, after reasonable inquiry, that the property was forfeitable property as defined herein. When the interests of each culpable co-owner are forfeited, any remaining co-owners shall be afforded the opportunity to purchase the forfeited interest in, title to, or right to the property from the City. If any remaining co-owner does not purchase such interest, the City may hold the property in co-ownership, sell its interest in the property, liquidate its interest in the property, or dispose of its interest in the property in any other reasonable manner.
- (e) Any defenses to a forfeiture action which may be maintained under state or federal law shall be recognized as defenses to an action brought pursuant to this code.

Sec.34-183. Forfeiture Proceedings.

- (a) Forfeiture actions under this section shall be heard before a circuit court judge of the civil division. The Florida Rules of Civil Procedure shall govern forfeiture proceedings under this ordinance.

- (b) Any trial on the ultimate issue of forfeiture shall be decided by a jury, unless such right is waived by the claimant through a written waiver or on the record before the court conducting the forfeiture proceeding.
- (c) The complaint shall be styled, "In RE: FORFEITURE OF _____" (followed by the name or description of the property). The complaint shall contain a brief jurisdictional statement, a description of the subject matter of the proceeding, and a statement of the facts sufficient to state a cause of action that would support a final judgment of forfeiture. The complaint must be accompanied by a verified supporting affidavit.
- (d) The court shall require any claimant who desires to contest the forfeiture to file and serve upon the attorney representing the City any responsive pleadings and affirmative defenses within 20 days after receipt of the complaint and probable cause finding.
- (e) If the property is required by law to be titled or registered, or if the owner of the property is known in fact to the City, or if the seized property is subject to a perfected security interest in accordance with the Uniform Commercial Code, Florida Statutes chapter 679, the attorney for the City shall serve the forfeiture complaint as an original service of process under the Florida Rules of Civil Procedure and other applicable law to each person having an ownership or security interest in the property. The City shall also publish, in accordance with chapter 50 of the Florida Statutes, notice of the forfeiture complaint once each week for two (2) consecutive weeks in a newspaper of general circulation, as defined in section 165.031 of the Florida Statutes, in the county where the seizure occurred.
- (f) The complaint must, as appropriate, describe the property; state the county, place, and date of seizure; state the name of City; and state the name of the court in which the complaint will be filed.
- (g) The City shall be obligated to make a diligent search and inquiry as to the owner of the subject property, and if, after such diligent search and inquiry, the City is unable to ascertain any person entitled to notice, the actual notice requirements by mail shall not be applicable.
- (h) When the claimant and the City agree to settle the forfeiture action prior to the conclusion of the forfeiture proceeding, the settlement agreement shall be reviewed, unless such review is waived by the claimant in writing, by the court or a mediator or arbitrator agreed upon by the claimant and the City. If the claimant is unrepresented, the settlement agreement must include a provision that the claimant has freely and voluntarily agreed to enter into the settlement without benefit of counsel.

- (i) Upon clear and convincing evidence that the subject property is forfeitable property as defined in this ordinance, the court shall order the seized property forfeited to the City. The final order of forfeiture by the court shall perfect in the City of Coral Gables right, title, and interest in and to such property, subject only to the rights and interests of bona fide lienholders, and shall relate back to the date of seizure.
- (j) If the claimant prevails at the conclusion of the forfeiture proceeding, if the City decides not to appeal, the seized property shall be released immediately to the person entitled to possession of the property as determined by the court.
- (k) The City shall periodically review seizures of assets made by the City in addition to, settlements and forfeiture proceedings initiated by the City, to determine whether such seizures, settlements, and forfeitures comply with this ordinance and the guidelines adopted under this subsection. The determination of whether the City will file a civil forfeiture action may be made in accordance with either section 2-201(e)(3) or section 34-168(b) of the City Code.

Sec.34-184. Disposition of liens and forfeited property.

- (a) When the City obtains a final judgment granting forfeiture it may elect to:
 - i. Retain the property for the City's use; or
 - ii. Sell the property in a commercially reasonable manner after appraisal by listing on the market.
- (b) If the forfeited property is subject to a lien preserved by the court, the City shall:
 - i. Sell the property with the proceeds being used towards satisfaction of any liens; or
 - ii. Have the lien satisfied prior to taking any action authorized by subsection (a).

Sec. 134-185. Applicability.

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to the City above and beyond any other state, county or local provisions for same.

Sec. 134-186. Transition of Ownership.

The purpose of the City forfeiting these properties is to prevent continued unlawful conduct related thereto, and to ensure that bona fide efforts are made to bring them into compliance with applicable law. Through this ordinance, the City does not waive its discretion to provide time to property owners purchasing the property following forfeiture, or to the City itself if it retains the property, to bring the property into such compliance.

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 that are inconsistent or in conflict with the provisions of this Ordinance are 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 renumbered 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 THIRTEENTH DAY OF JANUARY, A.D., 2015.

(Moved: Quesada / Seconded: Lago)

(Yeas: Keon, Kerdyk, Lago, Quesada, Cason)

(Unanimous: 5-0 Vote)

(Agenda Item: E-1)

APPROVED:



JIM CASON
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



CRAIG E. LEEN
CITY ATTORNEY