

ORDINANCE NO. 2008-61

AN ORDINANCE OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, REGULATING THE MAINTENANCE OF ABANDONED FORECLOSING RESIDENTIAL PROPERTIES; PROVIDING DEFINITIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING AN APPEAL PROCESS; PROVIDING FOR THE REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR INCLUSION IN THE CITY OF PALM BAY CODE OF ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, recent events in the housing market have led to a drastic rise in the number of foreclosed houses. In cities all over the nation, homes are being left empty as families are forced to move out. These homes are frequently retaken by banks, financial institutions and large real estate conglomerates that have little or no connection with the municipality in which they own property, and

WHEREAS, many of these homes are frequently vacated prior to the conclusion of the foreclosure process. Homes sit empty for months or years at a time awaiting foreclosure sale; often creating an attractive public nuisance. Some homes are in violation of multiple aspects of state law and local ordinances. The mortgagees are large financial institutions located out of state, making enforcement of the code very difficult, and

WHEREAS, these code violations include, among multiple other violations, unoccupied buildings susceptible to vandalism and/or open structures rendering them unsafe and dangerous, yards full of litter and trash, unlocked houses, overgrown grass and bushes, and unsecured swimming pools that are not only a threat to children but become breeding grounds for infectious insects such as mosquitoes, and

WHEREAS, this problem exists nationwide. Banks and other financial institutions are refusing to maintain properties, and code compliance officers have turned into investigators as they try to find out who the owners are and how to contact them to correct code violations.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PALM BAY, BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Purpose.

It is the intent of this ordinance to protect and preserve public safety, security, and quiet enjoyment of occupants, abutters, and neighborhoods by (i) requiring all residential property owners, including lenders, trustees, and service companies, to properly maintain abandoned foreclosing properties (ii) regulating the maintenance of abandoned foreclosing, residential properties to prevent blighted and unsecured residences.

SECTION 2. Definitions.

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates and requires a different meaning.

ABANDONED. A property is abandoned when mortgage foreclosure proceedings have been initiated for that property, no mortgage payments have been made by the property owner for at least ninety (90) days, and the property has been unoccupied for at least ninety (90) days.

CITY. The City of Palm Bay, Florida.

CITY MANAGER. The City Manager of the City of Palm Bay or other person(s) designated by the City Manager to carry out the enumerated responsibilities of the City Manager in this ordinance.

DAYS. Consecutive calendar days.

FORECLOSING. The process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

INITIATION OF THE FORECLOSURE PROCESS. Taking any of the following actions: (i) taking possession of a residential property; (ii) delivering the Mortgagee's notice of intention to foreclose to the borrower; or (iii) commencing a foreclosure action on a property in Brevard County Circuit or County Court.

LOCAL. Within twenty (20) driving miles distance of the property in question.

MORTGAGEE. The creditor, including but not limited to, service companies, lenders in a mortgage agreement and any agent, servant, or employee of the

mortgagee, or any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

OWNER. Every person, entity, service company, property manager or real estate broker, who alone or severally with others:

1) has legal or equitable title to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or

2) has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or

3) is a mortgagee in possession of any such property; or

4) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or

5) is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, this ordinance shall not apply to a either Condominium Association created pursuant to Chapter 718, Florida Statutes; a Cooperative Association created pursuant to Chapter 719, Florida Statutes; or a Homeowner's Association created pursuant to Chapter 720, Florida Statutes, to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association. Owner also means every person who operates a rooming house; or (6) is a trustee who holds, owns or controls mortgage loans for mortgage backed securities transactions and has initiated the foreclosure process.

PROPERTY. Any real, residential property, or portion thereof located in the City of Palm Bay, including building or structures situated on the property. For purposes of this ordinance only, property does not include property owned or subject to the control of the City or any of its governmental bodies. Such property includes, but is not limited to, property owned or controlled by the Bayfront Community Redevelopment Agency.

RESIDENTIAL PROPERTY. Any property that contains one or more dwelling units used, intended, or designed to be occupied for living purposes.

SECURING. Measures that assist in making the property inaccessible to unauthorized persons.

SECTION 3. Registration of Abandoned Foreclosing Residential Properties; Duty to Provide Written Notice of Abandoned Residential Property.

A. All owners must register abandoned foreclosing residential properties with the Police Department, Code Compliance Division, on forms provided by the City Manager. All registrations must state the individual owner's or agent's phone number and mailing address located within the State. The mailing address may not be a post office box. This registration must also certify that the property was inspected. The owner and/or registrant must designate and retain a local individual or local property management company responsible for the security and maintenance of the property. This designation must state the individual or company's name, phone number, and local mailing address. The mailing address may not be a post office box. If the property is in the process of foreclosure, then the registration must be received within seven (7) days of the initiation of the foreclosure process as defined in Section 2 herein

B. A registration fee of One Hundred Dollars (\$100.00) must accompany the registration form.

C. Once the property is no longer abandoned or is sold, the owner must provide proof of sale or written notice and proof of occupancy to the Code Compliance Division of the Police Department.

SECTION 4. Maintenance Requirements.

A. Properties subject to this ordinance must be maintained in accordance with the relevant sanitary codes, building codes, and local regulations concerning external and/or visible maintenance. The owner, local individual or local property management company must inspect and maintain the property on a monthly basis for the duration of the abandonment.

B. Adherence to this ordinance does not relieve the owner of any applicable obligations set forth elsewhere in the Code of Ordinances or within any covenant conditions and restrictions and/or homeowner's association rules and regulations.

SECTION 5. Inspections.

The Code Compliance Division of the Police Department shall have the authority and the duty to inspect properties subject to this ordinance for compliance and to issue citations for any violations. The Code Compliance Division shall have the discretion to determine when and how such inspections are to be made, provided that its policies are reasonably calculated to ensure that this ordinance is enforced.

SECTION 6. Enforcement and Penalties.

Violations of this ordinance may be either cited, reported and considered by the Code Enforcement Board pursuant to the provisions of Chapter 52, Palm Bay Code of Ordinances, or shall be punishable as provided in Chapter 10, Section 10.99, Palm Bay Code of Ordinances. Each day a violation continues shall be considered a separate offense.

SECTION 7. Appeal.

Any person aggrieved by the requirements of this ordinance may seek an administrative appeal to the City Manager. Any person aggrieved by a final decision issued under this ordinance by the City, may seek relief in any court of competent jurisdiction as provided by the laws of the state.

SECTION 8. All ordinances or parts of ordinances in conflict herewith are hereby repealed and all ordinances or parts of ordinances not in conflict herewith are hereby continued in full force and effect.


SECTION 9. It is the intention of the City Council of the City of Palm Bay that the provisions of this Ordinance shall be made a part of the City of Palm Bay Code of Ordinances, as Chapter 98, titled 'Maintenance of Abandoned Foreclosing Residential Properties', under Title IX, General Regulations, and the sections renumbered to accomplish such intention.

SECTION 10 . If any portion, clause, phrase, sentence or classification of this ordinance is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, then such declaration shall not be construed to affect other portions of the ordinance; it is hereby declared to be the express opinion of the City Council of the City of Palm Bay that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this ordinance did not induce its passage, and that without the

inclusion of any such portion or portions of this ordinance, the City Council would have enacted the valid constitutional portions thereof.

SECTION 11. The provisions within this ordinance shall take effect immediately upon the enactment date.

Read in title only at Meeting No. 2008-34, held on November 6, 2008; and read in title only and duly enacted at Meeting No. 2008-36, held on November 20, 2008.



John J. Mazziotti, MAYOR

ATTEST: 

Alice Passmore, CITY CLERK

cc: 11-21-08 All Department Heads
Libraries (2)
ALP