

TAB 1

Point Paper
Abandoned Real Property
Workshop 4:30pm
August 17, 2009

Issue: The number of abandoned and foreclosed properties continues to increase and the maintenance and upkeep is costing the City time and money.

Background: It is the purpose and intent of the city to establish a process to address the amount of abandoned real property located within the city. It is the city's further intent to specifically establish an abandoned real property program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties. The attached document contains language from the City of Cape Coral's abandoned property ordinance. The changes that have been made to the existing ordinance are highlighted in red. Based on the discussion, staff will incorporate any changes and put the document in ordinance format for 1st reading and the public hearing process.

The basic premise behind the ordinance is to have property owners such as the bank register properties that are entering the foreclosure process. This allows our code enforcement officers to establish a local contact for questions/issues that arise with the property. Our Code Enforcement Director has also spoken with personnel in Cape Coral and the process seems to be working quite well. However, it was noted that there is some additional administrative burden associated with maintaining a foreclosure database.

I anticipate someone with the Code Enforcement department will be responsible for maintaining the database.

Alternatives:

1. Provide feedback to the proposed ordinance and ask staff to move this forward to 1st reading.
2. Instruct staff to bring this back for another workshop.

Recommendation: Alternative #1

Budget Impact: If the program is successful, it will reduce the City's burden associated with lawn maintenance and reduce the time associated with tracking down owner information. There will also be some administrative time associated with maintaining a database.

Chapter 18. Junked, Wrecked, Abandoned Property.

Article II. Abandoned Real Property

Section 18-7. Purpose and intent.

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Section 18-8. Definitions.

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ACCESSIBLE PROPERTY. (means-a) A property that is accessible through a compromised/breached gate, fence, wall, etc.

ACCESSIBLE STRUCTURE. (means-a) A structure/ building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

EVIDENCE OF VACANCY. (means-a) 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 not be limited to, overgrown and/or dead vegetation, accumulation of abandoned personal property, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

FORECLOSURE. (means-t) The process by which a property, placed as security for a real estate loan, is sold at public sale to satisfy the debt if the borrower defaults.

INSPECTION. (means-a) A close viewing of the property and the exterior of any structures located thereon placed as security for a real estate loan and includes a viewing of any interior portions of the structure which are visible from the outside of the structure. However, an inspection does not require an entry into any structure for purpose of viewing the interior.

PROPERTY MANAGEMENT COMPANY (means-a) A property manager, property maintenance company or similar entity responsible for the maintenance of abandoned real property.

VACANT. (means-a) Any building or structure that is not legally occupied.

Section 18-9. Applicability.

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

Section 18-10. Penalties.

Any person who is found in violation of the provisions of this chapter shall ~~(, upon conviction,)~~ be punished as provided in the Code of Ordinances, ~~(and the Land Development Regulations, including section 2-85 of the Code of Ordinances and section 10-2 of the Land Development Regulations)~~ Chapter 2, Division 2 and Division 3, and Chapter 16, Article II, Division 1, Division 2 and Division 3, as applicable. It shall be an affirmative defense to an alleged violation of Sec. 18-13 that the mortgage documents do not give the lender a right to enter upon and maintain the property which is the subject of the mortgage.

Section 18-11. Public nuisance.

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

Section 18-12. 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 that is the security for the mortgage, upon default by the mortgagor, prior to the issuance of a notice of default ~~or Lis Pendens~~. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the mortgagee shall, within ten days of the inspection, register the property with the ~~(Director of Community Development) City Clerk, or the (Director's) Clerk's~~ designee, on forms provided by the city. A separate registration is required for each vacant property.

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

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

(2) 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, register the property with the City Clerk, or the Clerk's designee, on forms provided by the city.

(c) Registration pursuant to this section shall contain the name of the mortgagee, the direct mailing address of the mortgagee, a direct contact name and telephone number of mortgagee's contact, a facsimile number and e-mail address and, in the case of a corporation or out-of-area mortgagee, the property management company responsible for the security and maintenance of the property.

(d) An annual registration fee shall accompany the registration form(s) in the following amounts:

(1) If title to the property is in the name of the defaulting mortgagor at the time registration is required then the fee shall be in the amount of \$150, per property;

(2) If title to the property is in the name of a person or entity other than the defaulting mortgagor at the time registration is required and the property is then currently listed for sale with a Florida registered real estate brokerage firm or Florida licensed real estate agent then the fee shall be waived although registration shall still be required;

(3) In all other cases the fee shall be in the amount of \$50, per property.

(e) This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the mortgagee/ 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 shall remain under the annual registration requirement, security and maintenance standards of this section as long as they remain vacant.

(g) Any person or corporation 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) Any mortgagee who holds a mortgage on real property located within the city which is in default and the subject of an outstanding notice of default ~~or Lis Pendens~~ as of March 1, 2009 shall perform an inspection of the property by ~~(May~~

1, 2009) September 1, 2009. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the mortgagee shall, within ten (10) days of the inspection, register the property with the (Director of Community Development) City Clerk, or the (Director's) Clerk's designee, on forms provided by the city. A separate registration is required for each vacant property. If the property is occupied but remains in default, it shall thereafter be subject to the re-inspection requirements as set forth in Sec. 18-12(b) above.

Section 18-13. Maintenance requirements.

(a) The exteriors of the properties subject to this chapter 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 included, 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 exteriors of 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 yard landscaping shall be maintained in accordance with the city's standard at the time registration was required.

(d) Landscape shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod.

(e) Maintenance shall include, but not be limited to, watering, cutting, and mowing of required landscape and removal of yard waste.

(f) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris. Pools and spas shall comply with the enclosure requirements of the City Code of Ordinances and Florida Building Code, as amended from time to time.

(g) Failure of the mortgagee or property owner of record to properly maintain the property may result in a violation of the City Code and issuance of a citation, notice of violation/notice of hearing, or notice of nuisance by a city's code enforcement officer. If the condition has not been remedied, the city may take the necessary action to remedy the condition at the expense of the mortgagee or property owner of record.

Section 18-14. Security requirements.

(a) Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

(b) A "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 to the interior of the property or structure. Broken windows shall be secured by re-glazing or boarding of the window.

(c) If the property is owned by a corporation or out of area mortgagee, a property management company shall be contracted to perform monthly inspections to verify compliance with the requirements of this section, and any other applicable laws.

(d) The property management company shall inspect the property on a monthly basis to ensure that the property is in compliance with this chapter. Upon the request of city, the property management company shall provide a copy of the inspection reports to the code enforcement division.

(e) Failure of the mortgagee or property owner of record to properly maintain the property may result in a violation of the City Code and issuance of a citation, notice of violation/notice of hearing, or notice of nuisance by a city's code enforcement officer or adjudication of such violation by county court. (Pursuant to a finding and determination by the city's special magistrate or adjudication by county court) If the condition has not been remedied, the city may take the necessary action to (ensure compliance with this section) remedy the condition at the expense of the mortgagee or property owner of record.

Section 18-15. Additional authority.

The ~~(Director of Community Development) City Clerk~~, or the ~~(Director's) Clerk's~~ designee, shall have 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 door, window 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.

Section 18-16. Adoption of rules; expenditure of funds; declaration of city purpose.

The City ~~(Manager) Clerk~~, consistent with City ~~(Manager's) Clerk's~~ duties and authorities under the City Charter and Code of Ordinances, including those duties and authorities relating to emergency situations, is authorized and empowered to adopt rules and regulations and expend city funds as may be reasonably necessary and available to carry out the terms of this chapter, the expenditure of such funds being declared a proper municipal purpose.

Section 18-17. Assessment of cost as lien on property.

The City shall assess the entire costs to remediate the condition(s) including any unpaid fees and costs arising out of any appeal hearing, against the real property, upon which such costs were incurred. This assessment including all administrative costs, postal expenses, newspaper advertising or other similar costs, when made, constitute a lien upon such property of equal dignity to tax liens. Such municipal lien shall bear interest from the date of recording at the rate of nine (9) percent per year and shall be enforceable by foreclosure in the same manner and time as a city code enforcement lien if unsatisfied after the expiration of thirty (30) days from the date of recording the notice of lien.

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