

TAB 14



City of Palmetto Agenda Item

Meeting Date

11/1/10

Presenter: Jim Freeman

Department: City Clerk

Title: Ordinance No. 2010-16 Abandoned Real Property/Foreclosure Registry

Background"

The number of abandoned and foreclosed properties continues to increase and the maintenance and upkeep is a public health concern and is costing the City time and money. 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.

Discussion:

The attached ordinance takes key aspects from ordinances of other jurisdictions. The basic premise behind the ordinance is to have mortgage holders, such as a bank, register properties that are entering the foreclosure process. This allows City Code Enforcement Officers to establish a local contact for questions/issues that arise with the property. The City's 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. The Code Enforcement Department is anticipated to be responsible for maintaining the database.

Since the Commission workshop, a provision was added to require that the Mortgagee identify its rights to enter the property for maintenance and repair purposes when it files the registration form. The Commission also requested that staff examine the registration fees. No changes were made in this area from the prior draft. The initial registration fee is moderate compared to some communities, although the modification fee is on the higher end of those communities that charge a fee. The fee is attempting to recoup some of the estimated administrative costs of the program, but can be adjusted. Alternatively, staff could monitor the costs and adjustment could be made as the program progresses if appropriate.

Budgeted Amount: \$0.00 **Budget Page No(s):** **Available Amount:** \$0.00 **Expenditure Amount:** \$0.00

Additional Budgetary Information: _____

Funding Source(s): _____ **Sufficient Funds Available:** Yes No **Budget Amendment Required:** Yes No **Source:** _____

City Attorney Reviewed: Yes No N/A **Advisory Board Recommendation:** For Against N/A **Consistent With:** Yes No N/A _____

Potential Motion / Direction Requested:
Approve for first reading and authorize the Mayor to notice for adoption.

Staff Contact: Jim Freeman

Attachments: Draft Ordinance No. 2010-16

ORDINANCE NO. 2010-16

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF PALMETTO RELATING TO REAL PROPERTY; PROVIDING PURPOSE, INTENT, DEFINITIONS, AND APPLICABILITY, REQUIRING MORTGAGEE REGISTRATION RELATING TO REAL PROPERTY MORTGAGES IN DEFAULT; PROVIDING FOR AN ELECTRONIC FORM OF REGISTRATION; REQUIRING MAINTENANCE OF CERTAIN REAL PROPERTY BY PROPERTY OWNERS AND MORTGAGEES, PROVIDING SECURITY REQUIREMENTS; PROHIBITING OBSTRUCTION OF CODE ENFORCEMENT OFFICERS; PROVIDING FOR IMMUNITY OF CODE ENFORCEMENT OFFICERS; PROVIDING FOR ADDITIONAL MAINTENANCE AND SECURITY REQUIREMENTS; PROVIDING SUPPLEMENTAL AUTHORITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

WHEREAS, the general economic recession and the mortgage foreclosure crisis has serious negative implications for all communities trying to manage the resulting vacant properties, increases in crime, homelessness, and other problems that stem from family financial crisis; and

WHEREAS, the CITY is challenged because of the recent wave of foreclosures and it has been determined local codes must be adopted to mitigate the negative impact of foreclosures; and

WHEREAS, with foreclosure filing at an all time high, delinquencies on the rise, and additional adjustable rate mortgages scheduled to re-set this year; and

WHEREAS, relying on home rule power, common law tradition and the statutory grant of general police power, local governments have a variety of powerful tools available to combat the negative impact foreclosures have on neighborhoods; and

WHEREAS, abandoned or foreclosed homes quickly succumb to the forces of nature and the elements, grass and weeds grow long, swimming pools become stagnant, public health hazards, landscaping dies from lack of attention or grows out of control, windows break, and exteriors suffer damage from normal wear-and-tear and vandalism and communities suffer, and has a negative impact first on neighboring residences and then on entire neighborhoods; and

WHEREAS, property maintenance codes to regulate community standards for the interior and exterior condition of structures have been adopted; and

WHEREAS, the CITY finds that neighborhoods should be protected from becoming blighted through the lack of adequate maintenance and security of abandoned and vacant properties subject to mortgages that are in default; and

WHEREAS, the CITY finds that the mortgagee's registration of abandoned and vacant real property, or property subject to a mortgage which is in default, will establish a contact person for the CITY to address concerns regarding the maintenance and security of the property; and

WHEREAS, the CITY finds that it is in the public interest to address safety and aesthetic concerns and the economic order of the CITY to assure that property subject to a mortgage in default or foreclosure will continue to be maintained and secured and that blight will not occur.

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA:

SECTION 1. *Recitals.* above recitals are true and correct and by this reference are incorporated herein and made an integral part hereof.

SECTION 2. *Text Changes to the Code of Ordinances.* The Code of Ordinances of the City of Palmetto, Florida, is hereby amended by adding a new Article II to Chapter 18 and changing the title to Chapter 18 to "Junked, Wrecked, Abandoned or Vacant Property." Further,

Chapter 18 of the Code of Ordinances is hereby amended by new sections, to be numbered Section 18-21 through 18-31, which sections shall read as follows:

ARTICLE II. ABANDONED OR VACANT REAL PROPERTY

Section 18-21. Purpose and intent.

It is the purpose and intent of this ordinance to establish a process to limit and reduce the amount of deteriorating property located within the CITY, which property about which a public notice of default has been filed, is in foreclosure, or where ownership has been transferred to lender or mortgagee by any method. It is further intended to establish a registration program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance of abandoned and vacated properties which are subject to mortgages that are in default.

Section 18-22 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning. Where the context will permit and no definitions are provided herein, the definitions provided in the Florida Building Code shall apply.

Abandoned real property means any real property that is vacant and/or is under a public notice of default and/or recording of a Lis Pendens, notice of mortgagee's sale, pending tax assessor's lien sale and/or properties that have been the subject of a foreclosure sale where title is retained by the mortgagee, and any properties transferred under a deed-in-lieu of foreclosure sale, a short sale or any other legal means.

Accessible Property means a property that is accessible through a compromised/breached gate, fence, wall, etc or a property that is accessible because of a lack of a gate, fence, wall, etc.

Default means that the mortgagee files a foreclosure action or public notice of default on the mortgage. A mortgage shall be considered in default at such time as the mortgagee declares said mortgage to be in default either in writing, by recording a lis pendens, or by its actions, or commences foreclosure proceedings.

Disposition means the foreclosure status and/or the Mortgagee intent if the mortgage remains in default. If the mortgagee enters into a permanent modification agreement with the owner/mortgagor the mortgage is considered to be no longer in default unless further notification by the mortgagee/servicer.

Evidence of vacancy means 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, electricity, water or other utilities turned off, stagnant swimming pool, statements by neighbors, passers-by, delivery agents or government agents, among other evidence.

Foreclosure means the judicial process by which a property, placed as security for a mortgage loan, after a judicial process, is to be sold at an auction to satisfy a debt upon which the borrower has defaulted.

Mortgagee means a person or entity to whom the property is mortgaged and includes a trustee or servicer for the purposes of this Article.

Property Management Entity means a property management or maintenance person, company or other entity responsible for the maintenance of abandoned real property.

Public Nuisance. Every condition, substance or activity which exists or occurs in such a manner and to such an extent to threaten or endanger the public health, safety or welfare or adversely impacts the economic welfare of adjacent property.

Enforcement officer means any law enforcement officer, building official, or code enforcement officer employed by the CITY.

Vacant means any building or structure that is not lawfully occupied or inhabited by human beings.

Section 18-23. Applicability.

This Article II relates to abandoned or vacant property and to property subject to a mortgage that has been determined by the mortgagee to be in default. This Article II shall be considered cumulative and not superseding or subject to any other law or provision for the same, but shall be an additional remedy.

Section 18-24. Penalties.

Any person who is found in violation of the provisions of this Article II shall be punishable by or subject to enforcement in accordance with Sections 1-14 and 16-27 of the Palmetto Code of Ordinances. It shall be an affirmative defense to an alleged violation of Sections 18-26 and 18-27 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 18-25. Registration of real property mortgagee holding mortgages in default.

(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 or prior to the issuance of a notice of default or filing of lis pendens. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed vacant or abandoned and the mortgagee shall, within ten (10) days

of the inspection, register the property with the City Clerk, or the Clerk's designee on forms provided by the office, even though the real property may not be vacant. If vacant, Mortgagee shall also designate in writing a Property Management Entity to inspect, maintain and secure the real property subject to the mortgage in default. A separate registration is required for each vacant property.

(b) If the property is occupied but remains in default, it should be inspected monthly by the Mortgagee or Mortgagee's designee.

(c) Registration pursuant to this section be pursuant to a form prepared by the CITY ("registration form") and shall contain, at a minimum, the name, the mailing address, the e-mail address, and the telephone number for the Mortgagee along with disposition and occupancy status of the real property. The registration form also shall include information as to whether the Mortgagee has the ability to enter the property to maintain or repair the property prior to any foreclosure on the property. If the property is vacant or deemed vacant by Code Enforcement, then the Mortgagee shall amend its registration form to provide the name of the Property Management Entity and its address, e-mail address, and telephone number, if not previously provided. If the occupancy status of a registered property changes to vacant then the registration must be modified. The Mortgagee, through the Property Management Entity, shall be responsible to inspect, secure and maintain the property. The Property Management Entity named in the registration shall be located within twenty (20) miles of the City of Palmetto and available to be contacted by the CITY, Monday through Friday between 9:00 a.m. and 5:00 p.m., holidays and lunch hours excepted. The CITY shall charge a fee of One Hundred and Fifty Dollars (\$150.00) for any initial registration for each property, and it may assign and delegate the collection of such fee to an independent contractor. The CITY shall charge a fee of Seventy-

Five Dollars (\$75.00) for a modification of the registration for a property. The registration fee shall be the responsibility of the Mortgagee.

(d) This section shall also apply to properties that have been the subject of a foreclosure sale where title is transferred to the Mortgagee as well as any properties transferred to the Mortgagee under a deed in lieu of foreclosure.

(e) Properties subject to this section shall remain under the annual registration requirement, inspection, security, and maintenance standards of this section as long as they remain vacant or subject to having been declared by a mortgagee to be in default.

(f) Any person or other legal entity that has registered a property under this Article II shall report any change of information contained in the registration within ten (10) days of the change.

(g) Failure of the Mortgagee to properly register or to revise from time to time the registration to reflect a change of circumstances as required by this ordinance is a violation of this Article II

(h) Any Mortgagee who currently 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 November 30, 2010, shall perform an inspection of the property by December 1, 2010. If the property is found to be vacant or shows evidence of vacancy, the mortgagee shall, within ten (10) days of the inspection, register the property with the City Clerk or the Clerk's designee, on registration forms. A separate registration form 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 18-26. Maintenance requirements.

(a) Properties subject to this ordinance 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, or any other items that give the appearance that the property is abandoned or not being properly maintained.

(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. Yards shall be landscaped and maintained pursuant to the standards set forth in the code. Landscaping shall include, but not be limited to, grass, ground cover, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential, commercial or industrial installation, as applicable. Landscaping shall not include weeds, gravel, broken concrete, asphalt or similar material.

(c) Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required landscape and removal of all trimmings and weeds.

(d) Pools and spas shall be kept in working order so that pool and spa water remains free and clear of pollutants and debris. Pools and spas shall comply with the enclosure requirements of the CITY's code and the Florida Building Code.

(e) Failure of the Mortgagee to properly maintain the property is a violation of this Article II and may result in the enforcement pursuant to Section 18-24. If necessary to protect the immediate public health, safety, and welfare, the CITY may take the necessary action to ensure compliance with this Article II. The Mortgagee shall be responsible to reimburse the CITY of all fees and costs of the CITY to bring the property in compliance within 45 days of

being billed by the CITY. Upon failure of the Mortgagee to reimburse the CITY as provided herein, the CITY, after consulting with the City Attorney, may place a lien(s) on the property for the cost of the work performed to bring it into compliance.

Section 18-27. Security requirements.

(a) Properties subject to this ordinance shall be maintained in a secure manner as soon as reasonably possible 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 or adult to access the interior of the property and/or structure. Broken windows shall be secured by replacement within five (5) days, provided that if the window cannot be replaced within five (5) days, the window may be boarded for a period not to exceed ninety (90) days.

(c) If a Mortgage on the property is in default and the property has become vacant or abandoned, a Property Management Entity shall be designated by the Mortgagee to perform the work necessary to bring the property into compliance with the code of ordinances and the Property Management Entity must perform weekly inspections to verify compliance with the requirements of this section, and any other applicable laws or ordinances of the CITY.

(d) When the property becomes vacant or abandoned, it shall be posted with the name and twenty four (24) hour contact telephone number of the Property Management Entity. The posting shall be no less than 18 inches x 24 inches, and shall be of a font that is legible from the street. At a minimum, the posting shall contain the following language:

THIS PROPERTY IS MANAGED BY _____,

WHO CAN BE CONTACTED BY CALLING _____.

(e) The posting shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so that it is visible from the street or if no such area exists, on a stake of sufficient size to support the posting in a location that is at all times visible from the street at the front of the property but not readily accessible to vandals. Exterior posting shall be constructed of and printed with weather-resistant materials.

(f) Failure of the Mortgagee to properly inspect and secure the property, and post and maintain the signage noted in this section, is a violation of this Article II.

Section 18-28. Opposing, obstructing enforcement officer; penalty.

Whoever opposes, obstructs or resists any Enforcement Officer in the discharge of duties as provided in this Article II, shall be in violation of this Article II.

Section 18-29. Immunity of Enforcement Officer.

Any Enforcement Officer, or any person authorized by the CITY to enforce this Article II, shall be immune from prosecution, civil or criminal, for reasonable, good faith entry or trespass upon real property while in the discharge of duties imposed by this article.

Section 18-30. Additional authority.

The City Clerk, or the Clerk's designee, shall have authority to require the Mortgagee of any property affected by this Article II to require an on-site security guard to protect the immediate health, safety, and welfare of the public until property is otherwise secured as provided herein. Failure to comply with the terms of this Article II shall constitute a continuing public nuisance. The CITY shall have the authority to promptly abate the public nuisance, in whole or in part, at the expense of the Mortgagee.

Section 18-31. Supplemental Provisions.

Nothing contained in this ordinance shall prohibit the CITY from enforcing its codes by any other means, including, but not limited to, injunction, abatement or as otherwise provided by code.

SECTION 3. *Severability/Interpretation Clause.* It is hereby declared to be the intention of the Commission that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 4. *Ordinances in Conflict.* All ordinances or resolutions or parts thereof that may be determined to be in conflict herewith are hereby repealed.

SECTION 5. *Effective Date.* This Ordinance shall take effect as provided by law and by City Charter upon execution by the Mayor, or if vetoed by the Mayor, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes.

FIRST READING	November 1, 2010
PUBLICATION DATE	November 5, 2010
SECOND READING	November 15, 2010

PASSED AND DULY ADOPTED, BY THE CITY COMMISSION OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and voting, in regular session assembled, this 15th day of November, 2010.

**CITY OF PALMETTO, FLORIDA, BY
AND THROUGH THE CITY
COMMISSION OF THE CITY OF
PALMETTO**

**By: _____
SHIRLEY GROOVER BRYANT,
MAYOR**

ATTEST:

**By: _____
James R. Freeman, City Clerk**