

ORDINANCE NO. 2009-66

AN ORDINANCE OF THE CITY OF WEST MELBOURNE, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 26 OF THE CODE OF ORDINANCES BY CREATING ARTICLE V, OF CHAPTER 26, PROVIDING FOR MORTGAGEE REGISTRATION OF REAL PROPERTY MORTGAGES IN DEFAULT; REQUIRING MAINTENANCE OF REAL PROPERTY BY MORTGAGEES; SECURITY REQUIREMENTS AND OTHER RELATED MATTERS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE HEREOF AND FOR OTHER PURPOSES.

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

WHEREAS, foreclosed homes quickly succumb to the forces of nature and the elements, grass and weeds grow long creating an eyesore and attracting vermin, swimming pools become stagnant creating 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, all of which has a negative impact, first on neighboring residences and then on entire neighborhoods; and

WHEREAS, registration requires the personal contact information of the owner or other responsible party who may be personally liable for any violation of codes when such person is or was the person owning or managing, controlling, or acting as agent in regard to buildings or premises; and

WHEREAS, the City of West Melbourne 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 of West Melbourne 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 of West Melbourne 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.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST MELBOURNE, BREVARD COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Code of Ordinances of the City of West Melbourne, Florida is hereby amended by creating Article V of Chapter 26, as follows:

“ARTICLE V. REGISTRATION OF MORTGAGED REAL PROPERTY.

Sec. 26-108. Purpose and Intent.

It is the intent of this ordinance to protect and preserve public safety and security, 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 residential properties in foreclosure to prevent blighted and unsecured residences.

Sec. 26-109. Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them. Where no definitions are provided herein, the definitions provided in the Florida Building Code shall prevail.

Abandoned real property means any real property that is vacant and/or is under a public notice of default, a notice of mortgagee's 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.

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 by recording a lis pendens or commences foreclosure proceedings.

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: overgrown and/or dead vegetation; electricity, water or other utilities turned off; stagnant swimming pool; or otherwise failing to maintain property in compliance with the code of the city or any other condition existing upon the property that indicates that the title owner of the property has abandoned or vacated.

Enforcement officer means any full time law enforcement officer, building official, fire inspector or code enforcement officer employed by the City.

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.

Owner means 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 either a 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 control mortgage loans for mortgage backed securities transactions and has initiated the foreclosure process.

Property means any real, residential property, or portion thereof located in the City of West Melbourne, 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.

Residential Property means any property that contains one or more dwelling units used, intended, or designated to be occupied for living purposes.

Secure means measures that assist in making the property inaccessible to unauthorized persons, and shall include closure and locking of all windows, doors, gates, pet doors, and other openings of such size that may allow any person access to the interior of any structure on the property.

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

Sec. 26-110. Applicability.

This section is related to abandoned and vacant property and to property subject to a mortgage that has been determined by the mortgagee to be in default.

Sec. 26-111. Enforcement.

Violations of this section shall be subject to enforcement by the Code Enforcement Board of the City or by the courts.

Sec. 26-112. 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 filing a court action to foreclose the property. The mortgagee shall, within two (2) days of the inspection, register the property with the code enforcement office on forms provided by the office or its designee, even though the real property may not be vacant. No later than ten (10) days after the date that a default is declared, the mortgagee shall register the property with the code enforcement office electronically via the internet. The code enforcement office shall provide the internet address to mortgagee upon request.

B. If the property is occupied but remains in default, it shall be inspected monthly by the mortgagee or mortgagee's designee.

C. Within ten (10) days of the date the mortgagee declares its mortgage to be in default, the mortgagee shall register the real property with the City's designee and, at the time of registration, shall designate in writing a local property manager to inspect, maintain and secure the real property subject to the mortgage in default.

D. Registration. Registration pursuant to this section shall contain the name of the mortgagee, the mailing address, e-mail address, and telephone number of the mortgagee, and name of the local property manager and said person's address, e-mail address, and telephone number. The local property manager shall be responsible to inspect, secure and maintain the property. The property manager named in the registration shall be located within thirty (30) miles of West Melbourne 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 an annual fee of One Hundred Fifty Dollars (\$150.00) for any registration or a modification of registration and it may assign and delegate the collection of such fee to an independent contractor.

E. 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.

F. 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.

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

H. Failure of the mortgagee and/or property owner of record to properly register or to revise from time to time the registration to reflect a change of circumstances as required by this section is a violation of the this code. Pursuant to a finding and determination by the Code Enforcement Board that any property is in violation of the codes of the City, the City may take the necessary action to ensure compliance with its codes and place a lien(s) on the property for the cost of the work performed to benefit the property and to bring it into compliance, which lien may be assigned to either the entity that performs the work or arranges to have the work performed.

Sec. 26-113. Maintenance requirements.

A. Properties subject to this section 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. Weeds, grass, overgrown brush or dead vegetation over twelve inches (12") tall are prohibited.

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. Yards shall be landscaped and maintained pursuant to the standards set forth in the city code.

D. Pools and spas shall be kept 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 and/or property owner of record to properly maintain the property is a violation of this code.

Sec. 26-114. 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. If a mortgage on the property is in default and the property has become vacant or abandoned, a local property manager shall be designated by the mortgagee to perform the work necessary to bring the property into compliance with the code and the local property manager must perform monthly inspections to verify compliance with the requirements of this section, and any other applicable laws or ordinances of the City.

C. When the property becomes vacant or abandoned, it shall be posted with the name, address and twenty-four (24) hour contact telephone number of the local property manager. The posting shall be no less than 18 inches x 24 inches, and shall be of a font that is legible from a distance of 45 feet. The posting shall contain the following language:

THIS PROPERTY IS MANAGED BY:

ADDRESS: _____

24 HR. PHONE NUMBER: _____

D. 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. Exterior posting shall be constructed of and printed with weather-resistant materials.

E. Failure of the mortgagee and/or property owner of record to properly inspect and secure the property, and post and maintain the signage noted in this section, is a violation of this section.

Sec. 26-115. Supplemental Provisions.

Nothing contained in this chapter 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.

Sec. 26-116. Penalties.

Any person violating this chapter shall, upon conviction, be punished as provided in Section 1-16 of the code.”

Section 2. The provisions of this Ordinance are severable, and if any section, sentence, clause, or phrase hereof is for any reason held to be unconstitutional, invalid, or ineffective, such holding shall not affect the validity of the remaining portions of this Ordinance, it being expressly declared to be the City Council's intent that it would have passed the valid portions of this Ordinance without the inclusion therein of any invalid portion or portions.

Section 3. This Ordinance shall become effective ten (10) days following its adoption and signed by the Mayor.

PASSED AND ADOPTED by the City Council of the City of West Melbourne, Brevard County, Florida, this 17th day of November, 2009.

ATTEST:

Hal J. Rose, Mayor

Cynthia S. Hanscom, City Clerk

1st Reading: November 5, 2009
2nd Reading: November 17, 2009
Effective Date: November 27, 2009

Approved as to form and content:

By: _____
James P. Wilson, City Attorney