

To: The Honorable Mayor and City Council

From: *for* Jeff P. H. Cazeau, City Attorney

Jennifer Wanner

Date: November 22, 2016

RE: Proposed Ordinance Amending Chapter 12, Article VIII "Abandoned Real Property Registration"

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 12 OF THE NORTH MIAMI CODE OF ORDINANCES, ENTITLED "NUISANCES", AT ARTICLE VIII, ENTITLED "ABANDONED REAL PROPERTY REGISTRATION", SPECIFICALLY AT SECTION 12-28, ENTITLED "DEFINITIONS" AND AT SECTION 12-32, ENTITLED "REGISTRATION OF ABANDONED REAL PROPERTY" TO PERMIT ENFORCEMENT AGAINST ALL PROPERTIES REGARDLESS OF WHETHER THEY ARE OCCUPIED OR VACANT AND TO INCREASE THE NON-REFUNDABLE ANNUAL REGISTRATION FEE; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND FOR AN EFFECTIVE DATE.

RECOMMENDATION

That the City Council adopt the proposed ordinance permitting enforcement against all properties regardless of whether they are vacant or abandoned and increasing the annual registration fee.

BACKGROUND

This Ordinance arises from a need to better address abandoned and vacant properties in the City. Currently, the City's Code, specifically at Chapter 12, Article VIII, requires that every abandoned property in the City be registered in order to protect residential neighborhoods from being blighted. However, the Code only applies to properties after they become vacant. Unfortunately, the level of compliance, even with the limited scope of the Code has been low, resulting in significant increased enforcement activities by the Code Enforcement Department.

The proposed amendments to the Code would resolve some of its deficiencies including making it applicable to both occupied and vacant properties and increasing the registration fee from \$200 to \$300. These two changes will make it feasible to eventually

better manage the City's inventory of abandoned and vacant properties; thereby, increasing compliance and decreasing the burden on Code Enforcement.

Attachments

Proposed Ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 12 OF THE NORTH MIAMI CODE OF ORDINANCES, ENTITLED “NUISANCES”, AT ARTICLE VIII, ENTITLED “ABANDONED REAL PROPERTY REGISTRATION”, SPECIFICALLY AT SECTION 12-28, ENTITLED “DEFINITIONS” AND AT SECTION 12-32, ENTITLED “REGISTRATION OF ABANDONED REAL PROPERTY” TO PERMIT ENFORCEMENT AGAINST ALL PROPERTIES REGARDLESS OF WHETHER THEY ARE OCCUPIED OR VACANT AND TO INCREASE THE NON-REFUNDABLE ANNUAL REGISTRATION FEE; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND FOR AN EFFECTIVE DATE.

WHEREAS, on July 8, 2014, the Mayor and City Council enacted Ordinance Number 1376 which among other things, regulated abandoned and/or vacant property; and

WHEREAS, abandoned and vacant properties continue to be a nuisance within the City of North Miami ("City"); and

WHEREAS, City administration finds that the application of the ordinance to both occupied and vacant properties undergoing foreclosure proceedings will strengthen the enforcement mechanisms against foreclosing banks and mortgage servicing agents; and

WHEREAS, due to the increase burden arising from the numerous abandoned and vacant properties City Administration finds that it is necessary to increase the registration fee; and

WHEREAS, the Mayor and City Council wish to revise and strengthen the regulations concerning abandoned and vacant property as it serves to protect the public health, safety and welfare of the City and its residents.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. Amendments to Chapter 12, North Miami Code of Ordinances. The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 12 of the North Miami Code of Ordinances entitled “Nuisances”, at Article VIII, entitled “Abandoned Real Property Registration”, specifically at Section 12-28, entitled “Definitions” and at Section 12-32,

entitled "Registration of Abandoned Real Property" to permit enforcement against all properties regardless of whether they are occupied or vacant and to increase the non-refundable annual registration fee, as follows:

* * * * *

ARTICLE VIII. ABANDONED REAL PROPERTY REGISTRATION

Sec. 12-27. Abandoned real property; purpose and intent.

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 establish an abandoned property program as a mechanism to protect neighborhoods from becoming blighted through the lack of adequate maintenance of abandoned properties.

Sec. 12-28. Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned real property means any property that is ~~vacant and~~ is subject to a mortgage under a current notice of default and/or notice of mortgagee's sale, pending tax assessors lien sale and/or ~~vacant~~ properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure or sale.

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, 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 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.

Mortgagee means the person or entity who holds mortgaged property as security for repayment of a loan.

Owner means any person, persons, or entity having legal or equitable title, or any real or contingent interests in any real property; being shown to be the property owner in the records of the Miami-Dade County property appraiser's office; being identified on the abandoned/vacant real property registration form pursuant to this article; being a mortgagee in possession of real property; or the plaintiff in a mortgage foreclosure claim, in which the abandoned real property is the subject of the lis pendens and foreclosure lawsuit. Any such person, persons, or entity shall have joint and several obligations for compliance with the provisions of this article.

Property management company means a property manager, property maintenance company or similar entity or individual responsible for the maintenance of abandoned real property.

Vacant means any building/structure that is not legally occupied.

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Sec. 12-32. Registration of abandoned real property.

(a) Any mortgagee who holds a mortgage on real property located within the city shall upon default by the mortgagor and prior to the issuance of a notice of default, perform an inspection of the property that is the security for the mortgage. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned real property and the mortgagee shall, within ten (10) days of the inspection, register the property with the code enforcement manager, or his or her designee, on forms provided by the city. A registration is required for each ~~vacant~~ abandoned real property regardless of whether it's occupied or vacant.

(b) If the property is occupied but the mortgage on the property remains in default, the property shall be inspected by the mortgagee or his 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 (10) days of that inspection, ~~register~~ update the property registration with the code compliance manager, or his or her designee, on forms provided by the city.

(c) Registration pursuant to this section shall contain the name of the mortgagee and mortgage servicing agent, the direct mailing address of the mortgagee and mortgage servicing agent, a direct contact name and telephone number of mortgagee and mortgage servicing agent, a facsimile number and e-mail address for mortgagee and mortgage servicing agent and the name and 24-hour contact phone number of the property management company responsible for the security and maintenance of the property. A non-refundable annual registration fee in the amount of three ~~two~~ hundred dollars (~~\$200.00~~ \$300.00) per property, shall accompany the registration form(s).

(d) At such time that property becomes abandoned property, the mortgagee shall promptly post it with the name and contact phone number of the local property manager. The posting shall be no less than eighteen (18) inches by twenty-four (24) inches, and shall be clearly visible and legible from an adjacent street. The posting shall contain the following language: THIS PROPERTY IS MANAGED BY: _____ TO REPORT PROBLEMS OR CONCERNS CALL: (XXX) XXX-XXXX.

(e) This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the 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 registration requirement, security and maintenance standards of this section as long as they remain ~~vacant~~ in default or are bank owned (REO).

(g) Any person or corporation that has registered a property under this section must report any change of information contained in the registration, including change in status of property from vacant to occupied, in writing within ten (10) days of the change to the code enforcement manager, or his or her designee.

(h) Failure of the mortgagee and/or property owner of record to properly register or to revise the registration to reflect a change in circumstances as required by this chapter is a violation of the city's codes and may result in issuance of a civil violation ticket.

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Section 2. **Repeal.** All ordinances or parts of ordinances in conflict herewith are repealed.

Section 3. **Conflicts.** In the event that the provisions of this Ordinance are in conflict with any other ordinance, rule or regulation, the provisions of this Ordinance shall prevail.

Section 4. **Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Codification.** It is the intention of the City Council of the City of North Miami and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and the word “ordinance” may be changed to “section,” “article” or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this _____ day of _____, 2016.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this _____ day of _____, 2016.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Sponsored by: _____

Vote:

Mayor Smith Joseph, D.O., Pharm. D.	_____ (Yes)	_____ (No)
Vice Mayor Alix Desulme	_____ (Yes)	_____ (No)
Councilman Scott Galvin	_____ (Yes)	_____ (No)
Councilwoman Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilman Philippe Bien-Aime	_____ (Yes)	_____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.