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06/30/11 S. Hatcher, Dpty Clerk

ORDINANCE NO. 2011-1942

AN ORDINANCE RELATING TO MORTGAGED REAL PROPERTY; CREATING CHAPTER 26 OF THE CITY OF NEW PORT RICHEY, FLORIDA, TITLED FORECLOSURE REGISTRATION, SECTIONS 1 THROUGH 11; PROVIDING PURPOSE, INTENT, DEFINITIONS, AND APPLICABILITY, REQUIRING MORTGAGEE REGISTRATION RELATING TO MORTGAGED REAL PROPERTY IN DEFAULT; PROVIDING FOR AN ELECTRONIC FORM OF REGISTRATION; PROVIDING SECURITY REQUIREMENTS; PROHIBITING OBSTRUCTION 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; AND PROVIDING AN EFFECTIVE DATE

PAULA S O'NEIL, Ph D PASCO CLERK & COMPTROLLER
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WHEREAS, the mortgage foreclosure crisis has serious negative implications for the City of New Port Richey in 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 determined local codes must be adopted to mitigate the negative impact of foreclosure; and

WHEREAS, foreclosure filing is at an all time high, with delinquencies on the rise, and 2 million adjustable rate mortgages scheduled to re-set this year; and

WHEREAS, relying on 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, foreclosed homes quickly succumb to the forces of nature and the elements, grass and weeds grow, 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 and communities suffer, and causing 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 previously by the City; 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

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or was the person owning or managing, controlling, or acting as agent in regard to buildings or premises; and

WHEREAS, the City of New Port Richey 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 New Port Richey finds that it is in the public interest to address safety and aesthetic concerns and the economic wellbeing of the City so as 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 NEW PORT RICHEY, FLORIDA:

Section 1. The above recitals are true and correct and by this reference are incorporated herein and made an integral part hereof.

Section 2. The Code of Ordinances of the City of New Port Richey, Florida, is hereby amended by establishing Chapter 26, titled Foreclosure Registration, and the following new sections, to be numbered Sections 26-1 through 26-11, which sections read as follows:

Sec. 26-1. Purpose and intent.

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

Sec. 26-2. 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, 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 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
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said mortgage to be in default either in writing, by recording a lis pendens, or by its actions, or commences foreclosure proceedings.

Enforcement officer means any fulltime law enforcement officer, building official, fire inspector or code enforcement officer employed by the city.

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.

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

Sec. 26-3. Applicability

This chapter relates to abandoned or vacant real property.

Sec. 26-4. Penalties

Violations of this chapter shall be subject to enforcement by the City of New Port Richey in any lawful manner.

Sec. 26-5. 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. 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 two days of the inspection, register the property with the City code enforcement office on forms developed and provided by the office or the City's designee, even though the real property may not be vacant. If the mortgage on the property is in default, no later than ten days after the date that a default is declared, the mortgagee shall register the property with the code enforcement office electronically via the internet and further located at <http://www.cityofnewportrichey.org/vacant> registry with forms provided at said address.

(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 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.

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(d) Registration. Registration pursuant to this section shall contain at a minimum the name of the mortgagee, the mailing address of the mortgagee and e-mail address, and telephone number and name of the local property manager. 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 50 miles of the City of New Port Richey 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 accepted. The city shall charge a fee of \$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. The structure shall be posted by the City with an 8 1/2 inch x 11 inch sign containing the information required for registration. The sign shall be located in the front window facing the street.

(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 are abandoned real property.

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

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

Sec. 26-6. Maintenance requirements.

(a) 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 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, overgrown brush or dead vegetation over ten inches 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. 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.

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(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 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 the city code of the City of New Port Richey and may result in the issuance of a citation.

Sec. 26-7. Security requirements.

(a) Properties subject to this chapter shall be maintained in a secure manner so as to not 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 reglazing or boarding.

(c) If a mortgage on the property is or has been in default on the property and the property becomes vacant or abandoned real property, a local property manager shall be designated by the mortgagee to perform the work necessary to bring the property into compliance with this Code and the local property manager 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 real property, it shall be posted by the City with the name and 24-hour contact telephone number of the local property manager. The posting shall be at least 8 1/2 inches by 11 inches and shall contain the following language:

THIS PROPERTY IS MANAGED BY _____ . TO REGISTER PROPERTY AND OBTAIN AN APPROVED POSTER, _____ .

(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 to 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 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 chapter and shall result in the issuance of a citation by a code compliance officer.

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Sec. 26-8. Opposing, obstructing enforcement officer; penalty.

Whoever opposes obstructs or resists any enforcement officer, or any person authorized by the city, in the discharge of duties as provided in this chapter, upon conviction may be sanctioned as provided in this Code.

Sec. 26-9. Immunity of enforcement officer.

Any enforcement officer, or any person authorized by the city to enforce this chapter, 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 chapter.

Sec. 26-10. Additional authority.

The code compliance officer shall have authority to require the mortgagee and/or owner of record of any property affected by this chapter to require an on-site security guard. Failure to comply with the terms of this chapter 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 or other responsible party.

Sec. 26-11. 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.

Section 3. This ordinance shall become effective immediately upon adoption.

Section 4. If any phrase or portion of this ordinance, or the particular application thereof, shall be held invalid or unconstitutional by any court, administrative agency, or other body with appropriate jurisdiction, then the remainder thereof shall not be affected thereby.

Section 5. The above and foregoing Ordinance was read, approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida, the 19th day of April, 2011.

The above Ordinance was read and approved on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida, the 3rd day of May, 2011.

ATTEST:

Linda Kann, CMC
Linda Kann, CMC, City Clerk

Bob Consalvo
Bob Consalvo
Mayor-Council Member

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APPROVED AS TO LEGAL FORM AND CONTENT

By: 
Michael S. Davis, City Attorney

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