

ORDINANCE 2011-51

AN ORDINANCE OF THE CITY OF OCALA, FLORIDA, CONCERNING ABANDONED PROPERTIES IN FORECLOSURE, AND MAINTENANCE AND SECURITY OF PROPERTIES; AMENDING THE TITLE OF ARTICLE VI OF CHAPTER 34 PROVIDING FOR A NEW TITLE "ABANDONED PROPERTIES IN FORECLOSURE, AND MAINTENANCE AND SECURITY OF PROPERTIES;" AMENDING SECTION 34-141 PROVIDING FOR DEFINITIONS BY ALPHABETIZING EXISTING DEFINITIONS; AMENDING SECTION 34-142 PROVIDING FOR REGISTRATION OF PROPERTY BY MORTGAGEES HOLDING MORTGAGES IN DEFAULT BY REQUIRING REGISTRATION OF MORTGAGED PROPERTY IF UTILITY SERVICE IS DISCONTINUED TO THE PROPERTY; AMENDING SECTION 34-143 PROVIDING FOR MAINTENANCE REQUIREMENTS BY CLARIFYING THAT ANY OWNER OF ABANDONED PROPERTY SHALL COMPLY WITH SUCH SECTION REGARDLESS OF WHETHER SUCH PROPERTY IS MORTGAGED OR ANY MORTGAGE ON SUCH PROPERTY IS IN DEFAULT; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

Section 1. That the title of Article VI Section 34 of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read: ABANDONED PROPERTIES IN FORECLOSURE, AND MAINTENANCE AND SECURITY OF PROPERTIES.

Section 2. That Section 34-141 of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows.

Sec. 34-141. Definitions.

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

Abandoned or abandoned property - Any property in the city that is: vacant; shows evidence of vacancy; or to which water, sewer or electric service has been discontinued for in excess of two consecutive days.

Deed in lieu of foreclosure - A recorded document, such as a deed, that: (a) transfers ownership of a property from the owner to the mortgagee when the mortgage encumbering the property is in default; and (b) has been accepted by the mortgagee, regardless of whether it fully satisfies the mortgage indebtedness.

Default - The failure to fulfill a contractual obligation, monetary or otherwise, and either the expiration of any cure period or the sending by mortgagee of a notice of default. A mortgage shall be considered to be in default until the following: (a) the failure to fulfill the obligation is cured to mortgagee's satisfaction (such that mortgagee no longer considers the mortgage to be in default and dismisses any applicable foreclosure proceedings); (b) title to the property is transferred pursuant to a certificate of title or deed in lieu of foreclosure, and if the transferee is the mortgagee, the mortgagee thereafter conveys the property to a bona fide third party purchaser who thereafter opens a separate electric utility account in such purchaser's name with the city or other utility provider.

Evidence of vacancy - 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 include, without limitation: overgrown or dead vegetation; accumulation of newspapers, circulars, flyers or mail; past due utility notices or disconnected utilities; accumulation of trash, junk or debris; the absence of window coverings such as curtains, blinds or shutters; the absence of furnishings or personal items consistent with habitation or use; or statements by neighbors, passersby, delivery agents or government employees that the property is vacant.

Foreclosure - The process by which a property encumbered by a mortgage that is in default is sold at a judicial sale pursuant to section 45.031, F.S., or a final order or judgment entered in a mortgage foreclosure proceeding.

Local contact person - A person employed by, or under contract with, a mortgagee to fulfill the obligations under this article, with offices in Marion County, Florida, and available in Marion County on week days (excluding holidays) between 8:00 a.m. and 5:00 p.m., so that it may be contacted by city.

Local property manager - A person employed by, or under contract with, a mortgagee to fulfill the obligations under this article, with offices in Marion County, Florida, and available in Marion County on week days (excluding holidays) between 8:00 a.m. and 5:00 p.m., so that it may be contacted by city.

Mortgage - A lien on property conveyed by its owner to a mortgagee as security for an underlying debt or other obligation owed the mortgagee. The term includes all conveyances, conditioned or defensible obligations, bills of sale or other written instruments that convey or sell property for the purpose, or with the intention of, securing the payment of money.

Mortgagee - The owner or holder of a mortgage. Absent actual notice received by city, the mortgagee shall be presumed to be the owner or holder of the mortgage as set forth in the public records of Marion County, Florida.

Notice of default - A notice that a default has occurred under a mortgage or that the mortgagee may pursue remedies under the mortgage including a foreclosure proceeding or sale.

Owner - Any person or entity having legal or equitable title to any property.

Property - Any unimproved or improved real property or portion thereof, residential, commercial or otherwise, located in the municipal limits of city, including any buildings or structures located on the property regardless of their condition.

Vacant - Property that is not legally occupied or used for the purpose for which it was constructed.

Section 3. That Section 34-142 of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows.

Sec. 34-142. Registration of abandoned property by mortgagees holding mortgages in default.

(a). **Initial inspection and registration requirement.**

(1). Any mortgagee that holds a mortgage on property shall, upon a default under the mortgage, perform an inspection of the property that is encumbered by the mortgage. 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 building official on forms provided by the city. A registration is required for each abandoned property.

(2). Any mortgagee that holds a mortgage on property that, upon the effective date of the ordinance originally adopting this section (April 20, 2010), is in default shall perform an inspection of the property that is encumbered by the mortgage and register any property under subsection (1)(a) that is if found to be vacant or shows evidence of vacancy, within ninety (90) days of the effective date of such ordinance.

(b). **Continuing inspection and registration requirement.** If, at the initial inspection, the property is not found to be vacant or to show evidence of vacancy, but the mortgage encumbering the property remains in default, the property shall be inspected by the mortgagee monthly until (1) the default is remedied, or (2) the property is found to be vacant or shows evidence of vacancy at which time it shall be deemed abandoned, and the mortgagee shall, within ten (10) days of that inspection, register the property with the building official, or its designee, on forms provided by the city.

(c). Registration upon discontinuance of utility service. Regardless of whether, upon the initial inspection or any subsequent inspection under subsections (a) or (b) above, property encumbered by a mortgage in default is found to be vacant or shows evidence of vacancy, the property shall be deemed to be abandoned, and therefore the mortgagee shall be required to register pursuant to this section, if any electric, water or sewer utility services are discontinued to the property and remain discontinued for a period of in excess of two consecutive days.

(1). If the city determines that utility service has been discontinued to the property for in excess of the above time period, it shall provide notice to the mortgagee in any of the following manners:

a). By posting a notice on the property in a conspicuous place.

b). By mailing a notice to the mortgagee at the address of the mortgagee or its attorney set forth in any notice of lis pendens recorded in connection with a foreclosure action concerning the property.

c). By mailing a notice to any address provided by the mortgagee in any registration form provided to the City in connection with another property.

d). By mailing the notice to the mortgagee's address as contained in the mortgage encumbering the property or, if any assignment of mortgage is recorded in the public records of Marion County, Florida, to the address of the assignee as set forth in the most recently recorded assignment.

(2). Provision of the notice in any of the foregoing manners shall be deemed received by the mortgagee for purposes of this section.

(3). The mortgagee shall register the property within thirty (30) days of the city's provision of notice.

(d). Contents of registration. Registration pursuant to this section shall contain the name of the mortgagee; the mortgagee's mailing address, e-mail address, and telephone number; the name of the local contact person and such person's mailing address, e-mail address and telephone number; and the name of the local property manager and such person's mailing address, email address and telephone number.

(e). Registration fee. Each mortgagee shall pay an annual registration fee for each registration in an amount established by a city council resolution.

(f). Duration of registration. Properties required to be registered under this section shall remain under the annual registration requirement, inspection, security, and maintenance standards of this article as long as they remain either abandoned or encumbered by a mortgage that is in default.

(g). Change of information. Any person 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.

Section 4. That Section 34-143 of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows.

Sec. 34-143. Maintenance requirements.

(a). Any mortgagee that holds a mortgage on property that is in default (regardless of whether the property is abandoned), and any owner of abandoned property (regardless of whether the property is encumbered by a mortgage or any mortgage encumbering such property is in default) shall comply with the requirements of this section.

(b). The property 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 or not being properly maintained.

(c). 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.

(d). Yards shall be landscaped and maintained pursuant to the standards set forth in this code.

(1). "Landscaping" shall include, without limitation, the following existing landscape features: grass, ground covers, 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. This provision shall not be construed to require additional new landscaping unless otherwise required by this code.

(2). "Maintenance" shall include, without limitation, watering, irrigation, cutting, and mowing of required landscape and removal of all trimmings.

(e). 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 this code and the Florida Building Code, as amended from time to time.

Section 5. That Section 34-144 of the Code of Ordinances, City of Ocala, Florida, is hereby amended to read as follows.

Sec. 34-144. Security requirements.

(a). Any mortgagee that holds a mortgage on property located within the city that is in default (regardless of whether the property is abandoned), and any owner of abandoned property (regardless of whether the property is encumbered by a mortgage or any mortgage encumbering such property is in default) shall comply with the requirements of this section.

(b). The property shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

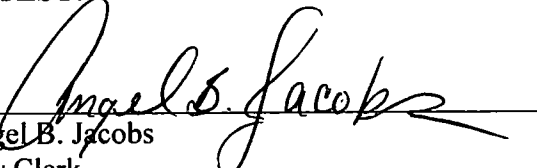
(c). A "secure manner" shall include, without limitation, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure. Broken windows shall be secured by reglazing or boarding of the window.

Section 6. Severability Clause: Should any provision or section of this ordinance be held by a court of competent jurisdiction to be held unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

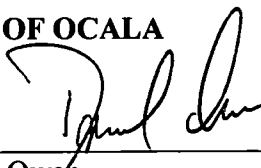
Section 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 8. This ordinance shall take effect upon approval by the mayor, or upon becoming law without such approval.


ATTEST:

By: 
Angel B. Jacobs
City Clerk


CITY OF OCALA

By: 
Daniel Owen
President, Ocala City Council

☒ Approved ☐ Denied by me as Mayor of the City of Ocala, Florida, on April 28th, 2011.

By: 
Randall Ewers
Mayor

Approved as to form and legality:

By: 
Patrick G. Gilligan
City Attorney

Ordinance No: ORD-2011-51
Introduced: 4/5/2011
Adopted: 4/19/2011
Legal Ad No: A000692097 - 4/8/11