

ORDINANCE NO. 5352

PROPOSED ORDINANCE NO. 12-067

AN ORDINANCE OF THE CITY OF LAKE LAND, FLORIDA RELATED TO MORTGAGED REAL PROPERTY; AMENDING THE CODE OF THE CITY OF LAKE LAND, FLORIDA BY CREATING ARTICLE V OF CHAPTER 54, "REGISTRATION OF REAL PROPERTY IN FORECLOSURE"; PROVIDING FOR PURPOSE INTENT AND APPLICABILITY; PROVIDING FOR PENALTIES AND ENFORCEMENT; REQUIRING MORTGAGEE REGISTRATION OF REAL PROPERTY MORTGAGES IN DEFAULT; PROVIDING FOR THE TERM OF REGISTRATION; CREATING MAINTENANCE REQUIREMENTS FOR CERTAIN REAL PROPERTY BY MORTGAGEES; PROVIDING SECURITY REQUIREMENTS; SETTING FORTH ADDITIONAL MAINTENANCE AND SECURITY REQUIREMENTS; PROVIDING SUPPLEMENTAL AUTHORITY; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

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 resulting from family financial crisis; and

WHEREAS, the City Commission of the City of Lakeland, Florida has determined local codes must be adopted to mitigate the negative impacts of foreclosures; and

WHEREAS, foreclosed homes quickly become nuisances, grass and weeds grow untended, swimming pools become stagnant public health hazards,

landscaping either dies or grows out of control, windows are broken, and exteriors suffer damage, both from normal wear-and-tear as well as vandalism, thus resulting in loss of value on nearby properties and neighborhoods, and ultimately the entire community; and

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

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

WHEREAS, most mortgages contain clauses allowing Mortgagees to enter onto the mortgaged Property to prevent waste and damage, and to correct or abate nuisances; and

WHEREAS, in the absence of the Property owner, it is appropriate for the City of Lakeland to expect and require the Mortgagee to exercise authority and be responsible for inspecting and maintaining the mortgaged Property while the owner is in Default of the mortgage; and

WHEREAS, the City Commission of the City of Lakeland, Florida finds that neighborhoods should be protected from becoming blighted through the lack of adequate maintenance and security of properties subject to mortgages that are in Default; and

WHEREAS, the City Commission of the City of Lakeland, Florida finds that the Mortgagee's registration of Property subject to a mortgage which is in Default, will establish a contact person for the City of Lakeland to address concerns regarding the maintenance and security of the Property; and

WHEREAS, the City Commission of the City of Lakeland, Florida finds that it is in the public interest to address safety and aesthetic concerns of the City of Lakeland 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 COMMISSION OF THE CITY OF LAKELAND, 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 the City of Lakeland, Florida is hereby amended by enacting CHAPTER 54, ARTICLE V., "Registration of Real Property in Foreclosure" to read as follows:

Sec. 54-100. Purpose and Intent.

It is the purpose and intent of this Article to establish a process to mitigate the level of deteriorating Property located within the City of Lakeland, which is in Default, for which a public notice of Default has been filed regardless of occupancy, is in foreclosure, or where ownership has been transferred to 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 adequate maintenance of properties subject to mortgages that are in Default.

Sec. 54-101. 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.

Accessible Property means a Property that is accessible through a compromised or breached gate, fence, wall, etc.

Accessible structure means a structure or building that is unsecured or breached in such a way as to allow access to the interior space.

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 and by recording a Notice of Lis Pendens, or by its actions, or commences foreclosure proceedings.

Enforcement officer means any law enforcement officer, building inspector, fire inspector, or code enforcement officer employed by the City of Lakeland, Florida.

Evidence of vacancy means any condition that on its own, or combined with other conditions present would lead a reasonable person to conclude that the Property is vacant. Such conditions may include, but not be limited to, overgrown and/or dead vegetation, lack of active electric, water or other utilities, stagnant swimming pool, statements by neighbors, passers-by, delivery agents or government officials, 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 the creditor, including but not limited to, trustees; service companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor's rights, interests or obligations under the mortgage agreement. For purposes of this ordinance, the term Mortgagee does not apply to governmental entities.

Property means any real Property, or portion thereof, located in the City of Lakeland, Florida, that is under a current 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 beneficiary of a mortgage involved in the foreclosure, and any properties transferred under a deed-in-lieu of foreclosure sale, a surrender of real Property to a Mortgagee pursuant to a

bankruptcy proceeding or any other legal means. For purposes of this ordinance, Property does not include any exterior elements and common areas that are jointly owned and/or where maintenance is the joint responsibility of a community association or home owner's association.

Property manager means an individual Property Manager, Property management company, Property maintenance company or similar entity designated by the owner or Mortgagee to be responsible for the maintenance of real Property subject to the provisions of this ordinance.

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

54-102. Applicability.

This Article relates to Property subject to a mortgage that has been determined by the Mortgagee to be in Default. This Article shall be considered cumulative and is not superseding or subject to any other law or provision for same, but shall rather be an additional remedy available to the City of Lakeland above and beyond any other state, county, or local provisions for same.

54-103. Penalties.

Any violation of this Article may be enforced by the City of Lakeland Code Enforcement Board as authorized and constituted by Chapter 2, Article IV, Division 2 of the Lakeland Code of Ordinances.

54-104. Registration of Real Property Mortgagee Holding Mortgages in Default.

- (a) Any Mortgagee who holds a mortgage on real Property located within the City of Lakeland, Florida shall perform an inspection of the Property that is the security for the mortgage upon Default by the mortgagor or issuance of a notice of Default. Within ten (10) days of the inspection, the Mortgagee shall register the Property with the City's Community Development Director or authorized designee, or the City's authorized representative, on forms provided for same. If the Property remains in Default, it shall be inspected by the Mortgagee or designee at least once monthly, until the mortgagor or other party remedies the Default.
- (b) Within ten (10) days of the date the Mortgagee declares its mortgage to be in Default, the Mortgagee shall register the Property as provided in Sec. 54-104 (a) and, at the time of registration, shall designate in writing a Property Manager to inspect, secure, and maintain the real Property subject to the mortgage in Default.

- (c) Registration pursuant to this section shall contain, at a minimum, the name of the Mortgagee and servicer along with their corresponding mailing addresses email addresses, and telephone numbers and the name of the Property Manager and said person's address, email address and telephone number. The Property Manager shall be responsible to inspect, secure and maintain the Property. The Property Manager named in the registration shall be available to be contacted by the City of Lakeland, Monday through Friday between 8:00 a.m. and 5:00 p.m., excluding holidays.
- (d) Any Property registration pursuant to this Article is valid for one (1) calendar year. An annual registration fee set by Resolution of the City Commission of the City of Lakeland, Florida shall accompany each registration or modification of registration. No fee shall be charged for modifying contact information, provided the organizational information remains the same. The City of Lakeland may assign and delegate the collection of such fee to a third party independent contractor, as noted on the registration form.
- (e) This section shall also apply to properties that have been the subject of a foreclosure sale where title is transferred to a beneficiary of a mortgage involved in the foreclosure and any properties transferred to the Mortgagee under a deed-in-lieu of foreclosure/sale or properties surrendered to a Mortgagee pursuant to a bankruptcy proceeding.
- (f) Any person or other legal entity that has registered a Property under this Article must report any change of information contained in the registration within ten (10) days of the change.
- (g) Properties subject to this Article shall remain under the annual registration requirement, inspection, security and maintenance standards of this section as long as they remain in Default.
- (h) Failure of the Mortgagee and/or Property owner of record to properly register or to revise the registration to reflect a change of circumstances as required by this Article shall constitute a violation punishable as provided in Sec. 54-103.

54-105. Maintenance Requirements.

- (a) Properties subject to the provisions of this Article 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, household appliances, or any other items that give the appearance that the Property is vacant, shows evidence of vacancy or is not being properly maintained. Grass, weeds, overgrown brush or dead vegetation which exceeds the maximum height provided by Sec. 86-2 of the Code of the City of Lakeland is prohibited.

- (b) Properties subject to the provisions of this Article 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 of the structure. Yards shall be landscaped and maintained pursuant to the standards set forth in the Code of the City of Lakeland. Landscaping shall include, but not be limited to, grass, ground cover, bushes, shrubs, hedges or similar ornamental 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 required under this Article 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 on properties subject to the provisions of this Article shall be kept in working order such that the water therein remains free and clear of pollutants and debris. Pools and spas shall comply with any of the applicable enclosure requirements set forth in the Florida Building Codes and local ordinances, including but not limited to, required permitting and inspections.
- (e) Failure of the Mortgagee and/or Property owner of record to properly maintain a Property subject to the provisions of this Article shall constitute a violation punishable as provided in Sec. 54-103.

Sec. 54-106. Security Requirements.

- (a) Properties subject to the provisions of this Article shall be maintained in a secure manner so as to be inaccessible to unauthorized persons.
- (b) A "secure manner" shall include, but not be limited to, the closure and locking of all windows, doors, gates and other openings of such size that may allow access to the interior of the Property and/or structure. Broken windows shall be secured by reglazing, or by boarding in accordance with City of Lakeland Ordinance 3371.

- (c) If a mortgage on a Property subject to the provisions of this Article is in Default a Property manager shall be designated by the Mortgagee. The Property Manager shall perform all work necessary to bring the Property into compliance with this Article and all other applicable codes and ordinances.
- (d) Properties subject to the provisions of this Article shall be posted with the name and twenty-four (24) hour contact telephone number for the Property manager. The posting shall be not less than eight and one half (8 1/2) inches by eleven (11) inches in size. The posting shall contain the following language: THIS PROPERTY IS MANAGED BY (Name of Property Manager). TO REPORT PROBLEMS OR CONCERNS CALL AND/OR E-MAIL (Telephone Number and/or E-Mail address of Property Manager).
- (e) The posting shall be placed on the interior of a window facing the street to the front of the Property or secured to the exterior of the building structure facing the street to the front of the Property, or if no such area exists, on a stake of sufficient size to support the posting. Exterior postings shall be constructed of rigid materials and printed with weather resistant materials.
- (f) Properties subject to the provisions of this Article shall be inspected by the Property Manager weekly so as to ensure continued compliance with this Article. Upon the request of the City's Community Development Director or authorized designee, the Property Manager shall provide a copy of the inspection reports.
- (g) Failure of the Mortgagee and/or Property owner of record to properly inspect and secure, post and maintain the notice required by this Article shall constitute a violation punishable as provided in Sec. 54-103.

Sec. 54-107. Additional Authority.

The Community Development Director or authorized designee shall have the authority to require the Mortgagee and/or owner of record of any Property, subject to the provisions of this Article, to complete additional maintenance and/or security measures including, but not limited to, securing any and all door, window or other openings, employment of an on-site security guard, or other measures as may be reasonably necessary to prevent further deterioration of the Property.

Sec. 54-108. Adoption of Rules; Expenditure of Funds; Declaration of Municipal Purpose.

The City Manager, consistent with powers and duties prescribed in Sec. 21 of the City of Lakeland Charter, including those duties and authorities relating to emergency situations, is authorized and empowered to adopt rules and regulations, and expend funds as may be reasonably necessary and available to carry out the terms of this Article, the expenditure of such funds having been declared a proper municipal purpose.

Sec. 54-109. Supplemental Provisions.

Nothing contained in this Article shall prohibit the City of Lakeland from enforcing its codes and ordinances by any other means, including, but not limited to, injunction, abatement, or as otherwise provided by state or local law.

SECTION 3. Should any section, paragraph, sentence, clause or phrase of this Ordinance conflict with any section, paragraph, sentence, clause or phrase of any prior City of Lakeland Ordinance, Resolution, or Code provision, then in that event the provisions of this Ordinance shall prevail to the extent of such conflict.

SECTION 4. If any one or more of the covenants, agreements or provisions of this Ordinance should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of this Ordinance.

SECTION 5. Specific authority is hereby granted to codify this Ordinance.

SECTION 6. This Ordinance shall take effect on April 1, 2013 in the manner provided by law.

PASSED AND CERTIFIED AS TO PASSAGE this 3rd day of December,
A.D. 2012.

GOW B. FIELDS, MAYOR

ATTEST: _____
KELLY S. KOOS, CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS: _____
TIMOTHY J. McCAUSLAND
CITY ATTORNEY