


MEMORANDUM

TO: MAYOR BENDEKOVIC AND MEMBERS OF CITY COUNCIL
FROM: QUENTIN E. MORGAN, ASSISTANT CITY ATTORNEY
RE: SPECIAL RISK PROPERTIES
DATE: MAY 25, 2016



On May 11, 2016, City Council considered this draft Ordinance at First Reading. The draft Ordinance has been revised to: adjust the rebuttable presumption provisions, as requested by Council; to incorporate some of the legislative intent recitals directly into the body of the draft Ordinance; and to establish an effective date of October 1, 2016.

The Ordinance is now ready for consideration at Second Reading.

Attachment

[647]9002-11001 v#3

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PLANTATION, FLORIDA, PERTAINING TO THE SUBJECT OF SPECIAL RISK PROPERTIES; AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES TO CREATE A REGISTRATION PROGRAM FOR SPECIAL RISK PROPERTIES; PROVIDING FOR DEFINITIONS, DEFINING SPECIAL RISK PROPERTIES AS VACANT PROPERTY IN FORECLOSURE; PROVIDING RESPONSIBILITIES OF OWNERS AND LENDERS; CREATING A REGISTRATION FEE TO OFFSET THE COST OF THE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE THEREFOR.

WHEREAS, real property subject to lien foreclosure proceedings present increased risks of the potential adverse secondary effects which can result from real property which is abandoned, not maintained, dilapidated, unsafe, or not compliant with the City's community appearance standards; and

WHEREAS, the City finds that it is necessary to create a registration program for lenders who commence foreclosure proceedings within Plantation, which the City Council determines will provide information helpful to accelerate the City's efforts to prevent the adverse secondary effects identified above; and

WHEREAS, the City determines that the creation of the rebuttable presumption herein is a reasonable means to accomplish this Ordinance's objectives; and

WHEREAS, the registration fees collected will serve to defray the costs of the administration of the registration program; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANTATION, FLORIDA THAT:

Section 1. Chapter 5 of the City of Plantation Code of Ordinances is hereby amended to create a new Article X, "LENDER REGISTRATION AND RESPONSIBILITY," which shall read as follows:

ARTICLE X. – LENDER REGISTRATION AND RESPONSIBILITY

Section 5-250. Special Risk Property; declaration of purpose and intent

(a) The recitals of Ordinance No. _____ [this Ordinance] are incorporated herein by reference as evidence of purpose and intent.

- (b) It is hereby declared that improvements to real property which are not used, occupied, and maintained can become dilapidated, unsafe, overgrown, or exhibit conditions which violate the City's community appearance standards. It is further declared that the presence of poorly maintained real property can lead to a decline in property value, create aesthetic nuisances, and lead to a general decrease in neighborhood and community aesthetics and may discourage buyers from purchasing property within the City.
- (c) It is further the purpose and intent of the City to establish a formal process to assist in addressing the health, safety and welfare concerns that develop as a result of vacant real property experiencing lender foreclosure. It is specifically the intent of the City to establish a registration program in order to have continuity of certain information to assist in addressing the multitude of issues surrounding these properties, which if unaddressed effect the health, safety and quality of life of the City's residents and visitors, and the tax base.
- (d) The provisions and procedures contained in this Article shall be considered cumulative and in addition to and supplemental to any other remedies now existing, or subsequently available to the City, including but not limited to those remedies set forth in the City's Code, Broward County Code, the Florida Building Code and any and all State and Federal statutes.

Section 5-251. Definitions

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

- (a) "Special Risk Real Property" means any real property that is vacant, and is subject to a lender foreclosure proceeding.
- (b) A "lender foreclosure proceeding" is defined as an action to foreclosure a mortgage on real property location within the City of Plantation, Broward County, Florida, which is commenced at the time a Complaint or Lis Pendens is filed and is typically completed after a Certificate of Title is issued. An action which remains pending after a deed in lieu of foreclosure is executed and delivered shall not be considered completed by such conveyance.
- (c) "Vacant" means any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is not occupied. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; electricity, water or other utilities being turned off; a stagnant swimming pool; the accumulation of newspapers or mail; the presence of homeless persons or vagrants or transients; or sworn statements by neighbors, passers-by, delivery agents, city code enforcement staff, or other governmental agents.

- (d) “Lender” means a person or business entity who makes a loan, the repayment of which is secured by a mortgage on real property, or who is the successor in interest, assignee, or servicer of Lender’s interest in the mortgage, or who holds the mortgage. A lender shall also include the named party instituting an action to foreclose a mortgage.
- (e) “Owner” means any person, persons, or legal entity having legal or equitable title to real property, or any real or contingent interest in any real property; or who is identified as an owner on the registration form filed pursuant to this Article; or some or all of the foregoing. Typically, but not always, the Owners are reflected on the most recent Ad Valorem Tax Roll records of the Broward County Property Appraiser.
- (f) “Posted” means posting or affixing a notice with the name, address and twenty-four (24) hour contact phone number of the property management company or Lender. The posting shall be an eight-inch by ten-inch (8”x10”) sign and shall be in a font that is clearly visible and legible from the abutting sidewalk or street of the Special Risk Property. The posting shall be placed on either the interior of the window facing the abutting street of the front of the Special Risk Property or secured to the exterior of the Special Risk Property and constructed of a weather-resistant material.
- (g) “Property management company” means a property management company with Palm Beach, Broward, or Miami-Dade County offices, or similar person or entity that is contracted with to be responsible for the security and maintenance of Special Risk Property.
- (h) “Secure manner” means and includes, but not be limited to, the closing and locking of windows, doors, gates and other openings that would allow someone to access the interior of the property. Broken windows shall be secured by reglazing (replacing) the window or other means allowed by the Florida Building Code.

Section 5-252. Registration of Special Risk Property

- (a) Any Lender who commences a lender foreclosure proceeding shall perform an inspection of the real property which is the subject of such proceeding to determine whether it is vacant. The inspection shall occur upon the commencement of a lender foreclosure proceeding. The Lender shall, within ten (10) calendar days of the inspection, register the property with the City’s code enforcement unit if the property is vacant. A registration is required for each Special Risk Property.
- (b) If the property is not vacant after the initial inspection, it shall be inspected by the Lender or the Lender’s designee monthly until the lender foreclosure proceedings are concluded. The Lender shall, within ten (10) calendar days of any inspection which determines the property is vacant, including inspections conducted by the code enforcement staff which are communicated to the Lender’s legal counsel of record in the proceeding lender foreclosure, register the property with the City’s code enforcement unit.

(c) Registration pursuant to this Article shall contain the following:

(1) The name of the Lender.

(2) The direct mailing address of the Lender.

(3) The name and last known address of the owners of the property.

(4) The address and Parcel ID Number of the property.

(5) A direct contact representative of the Lender and telephone number for that representative, facsimile number and e-mail address and, in the case of a corporation or out-of-area Lender, the local property management company responsible for the security and maintenance of the property.

(6) A property management company, if any.

(7) For purposes of notice, the name, telephone number, mailing address, and e-mail address of an individual or entity designated by the Lender who has the authority to make decisions concerning the correction of violations and the abatement of deleterious or adverse conditions of the property or its improvements.

(8) Whether the owners have executed and delivered a deed-in lieu of foreclosure.

(9) The City reserves the right to require such other information as needed to carry out the public purpose and intent of this Article.

(d) A non-refundable annual registration fee in the amount of two hundred fifty (\$250.00), per Special Risk Property, shall accompany the registration form(s); the annual registration fee shall correspond to the fiscal year of the City and renewal of the registration shall be performed prior to October 1st of any year; the renewal of the registration with its accompanying fee shall be the responsibility of the Lender and a failure to timely renew the registration shall be a violation of this Code. The registration fee shall be non-refundable, shall not be pro-rated, and shall be subject to adjustment in accordance with Sec. 2-421, Plantation City Code.

(e) Any Lender that has registered under this Article must report any change of information contained in the registration to the City's code enforcement unit and file an amended registration form within thirty (30) days of the change. Failure to comply with this requirement shall also be a violation of this Code. Each day after the thirty (30) day period elapses in which the change is not reported by an amended registration shall be a separate violation. There shall be no additional registration fee for amending the registration form as required in this subsection (e).

(f) Registrations pursuant to this Article shall not be transferable.

(g) Special Risk Properties shall remain under the registration requirement, and the inspection, security, and maintenance standards of this Article.

Section 5-253. Additional Maintenance and Management Requirements for Special Risk Properties

(a) Owners' responsibilities. Owners of Special Risk Properties shall maintain the property in a secure manner so as not to be accessible to unauthorized persons; shall cause the property to comply with the community appearance standards, building standards, landscaping standards set forth in the City Code; shall cause the property to comply with all other applicable maintenance requirements set forth in the City Code; and shall cause the property to be posted.

(b) Lenders' responsibilities. A rebuttable presumption is created that Lenders foreclosing mortgages on vacant real property within Plantation have the legal right and authority to comply with the requirements set forth in this subsection (b). Lenders shall: (i) maintain the property in a secure manner so as not to be accessible to unauthorized persons; (ii) cause the property to comply with the community appearance standards, building standards, and landscaping standards set forth in the City Code; (iii) cause the property to comply with all other applicable maintenance requirements set forth in the City Code; and (iv) cause the property to be posted. A Property Management Company may be contracted and enabled by the Lender to perform monthly inspections to verify and cause compliance with the Lenders responsibilities set forth in this subsection (b). Upon request of the Code Enforcement Unit, the Lender or Property Management Company, or both, shall provide a copy of all inspection and maintenance reports of the Special Risk Property to the code enforcement unit.

(c) Rebuttable presumption. Lenders may provide the City or Special Magistrate, whichever is appropriate, with evidence that rebuts the presumption created in subsection (b). Should the Lender successfully rebut the presumption of its presumed legal right and authority to maintain Special Risk Property in a secure manner so as not to be accessible to unauthorized persons, cause property to comply with the community appearance standards, building standards, and landscaping standards set forth in the City Code, and to comply with all other applicable maintenance requirements set forth in the City Code, and to cause such property to be posted, then the Lender shall not be a responsible party for the property maintenance requirements set forth in subsection (b). The Lender shall remain responsible for all other requirements set forth in this Article.

The presumption may be rebutted by the following evidence:

- (1) The mortgage securing repayment of the loan not containing any provisions which allow the Lender to protect its security or maintain the property; or,
- (2) Such other reasonable evidence as the Magistrate determines sufficient.

It shall not be sufficient to rebut the presumption if the mortgage securing repayment of the loan has provisions which allow the Lender to protect its security, but such provisions

are expressly qualified or expressly conditioned upon entry of an authorizing Order of the Presiding Judge in the mortgage foreclosure action, unless the Lender has obtained a ruling from the Presiding Judge, prior to the Magistrate's or City's consideration of the matter, which prevents the Lender from exercising such rights.

In the event the owners execute and deliver a deed in lieu of foreclosure to the Lender, the Lender shall be conclusively presumed to be able to comply with the requirements of subsection (b), regardless of whether the action remain pending.

Section 5-254. Supplemental provisions.

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

Section 5-255. Penalties.

Violations of this Article may be subject to the code enforcement process by the issuance of a notice of violation pursuant to Chapter 6, Article I of the City Code. Violations of this Article may also be punished as provided in Section 1-13 of the Code.

Section 2. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, such unconstitutional or invalid part shall be considered as eliminated, so as not to effect the validity of the remainder of the Ordinance which will remain in full force and effect.

Section 3. That it is the intention of the City Council, and it is hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of the City of Plantation; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word. Sections 5-240-5-249 shall be reserved.

Section 4. This Ordinance shall take effect on October 1, 2016.

PASSED ON FIRST READING by the City Council this ____ day of _____, 2016.

PASSED AND ADOPTED ON SECOND READING by the City Council this ____ day of _____, 2016.

SIGNED by the Mayor this ____ day of _____, 2016.

MAYOR

ATTEST

2nd Reading DRAFT

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CITY CLERK

234 RECORD ENTRY:

235 I HEREBY CERTIFY that the original of the foregoing signed Ordinance _____, was received by the
236 Office of the City Clerk and entered into the Public Record this _____ day of
237 _____, 2016.

ORDINANCE ADVERTISING REQUIREMENTS

AN ORDINANCE OF THE CITY OF PLANTATION, FLORIDA, PERTAINING TO THE SUBJECT OF SPECIAL RISK PROPERTIES; AMENDING CHAPTER 5 OF THE CODE OF ORDINANCES TO CREATE A REGISTRATION PROGRAM FOR SPECIAL RISK PROPERTIES; PROVIDING FOR DEFINITIONS, DEFINING SPECIAL RISK PROPERTIES AS VACANT PROPERTY IN FORECLOSURE; PROVIDING RESPONSIBILITIES OF OWNERS AND LENDERS; CREATING A REGISTRATION FEE TO OFFSET THE COST OF THE PROGRAM; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE THEREFOR.

| <u>I. SPECIAL INSTRUCTIONS</u> | |
|--|--|
| | See letter to City Clerk regarding specific instructions for this Ordinance. |
| <u>II. CITY COUNCIL MEETING</u> | |
| A. Statutory Advertising: | |
| x | Small advertisement; 1 time, 10 days prior to adoption |
| B. Plantation City Code Advertising | |
| x | Post agenda outside City Hall at least 3 business days before the hearing. §27-11, Plantation City Code. |

This proposed land development regulation is initiated by the City: These advertising instructions are approved by the Legal Dept.:

Planning Director OK

(date)

Attorney OK

(date)