

ORDINANCE NO. 07-2012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL, BREVARD COUNTY, FLORIDA; RELATING TO THE REGISTRATION OF PROPERTIES IN FORECLOSURE; AMENDING CHAPTER 82, BUILDINGS AND BUILDING REGULATIONS, OF THE CAPE CANAVERAL CODE OF ORDINANCES BY CREATING A NEW ARTICLE V, REGISTRATION AND MAINTENANCE OF PROPERTIES IN FORECLOSURE; PROVIDING FOR PURPOSE AND INTENT, DEFINITIONS, REGISTRATION REQUIREMENTS, MAINTENANCE REQUIREMENTS, SECURITY REQUIREMENTS, PENALTIES, SUPPLEMENTAL AUTHORITY AND OTHER RELATED PROVISIONS; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority under section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City Council finds that property subject to a mortgage in default often ends up in situations causing neighborhood blight as a result of lack of adequate monitoring, maintenance and security; and

WHEREAS, the City Council recognizes that the recent wave of foreclosures during the current economic recession has caused a significant increase in properties becoming vacant within the City; and

WHEREAS, the abandonment of real property due to foreclosure often results in property becoming deteriorated and a public nuisance; and

WHEREAS, the City Council finds that mortgagees have an interest in maintaining real property that is subject to foreclosure proceedings so the property does not become an eyesore to the neighborhood or a public nuisance; and

WHEREAS, the City Council further finds that it is in the public interest to address, through code enforcement, the safety, aesthetic, and economic concerns caused by real property in foreclosure; and

WHEREAS, the City Council's intent by imposing the registration and other requirements

set forth in this Ordinance, is to decrease the likelihood of vacant real property and real property in foreclosure from becoming public eyesores and public nuisances; and

WHEREAS, the City Council also desires to provide a local mechanism to collect and share information regarding foreclosed real properties so these properties can quickly move into the hands of owners who can make productive use of them for the economic well-being of the community; and

WHEREAS, the City Council of the City of Cape Canaveral, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Cape Canaveral.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF CAPE CANAVERAL, BREVARD COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Council of the City of Cape Canaveral.

Section 2. Chapter 82 Code Amendment. Chapter 82, Article V of the Cape Canaveral Code of Ordinances is hereby created and adopted as follows:

Chapter 82. BUILDINGS AND BUILDING REGULATIONS

* * *

ARTICLE V. REGISTRATION AND MAINTENANCE OF PROPERTIES IN FORECLOSURE

Sec. 82-116. Purpose and Intent.

Vacant buildings and real property under foreclosure are a major source of blight in commercial and residential neighborhoods, especially when the owner or mortgagee fails to properly maintain said buildings and property. Vacant buildings and real property under foreclosure can also have a negative impact on the local economy. In many cases, real property under foreclosure often suffers from lack of maintenance and becomes neglected during the time it takes a mortgagee to complete the foreclosure process and secure the property. Such blight and negative conditions are hereby declared a public nuisance. It is the purpose and intent of this article to establish registration and maintenance requirements for vacant properties and properties under foreclosure as a mechanism to protect neighborhoods from becoming blighted and nuisances through lack of adequate maintenance and security.

Sec. 82-117. Definitions.

In construing the provisions of this article, the following definitions shall apply:

Building means any structure approved for occupancy by the city.

Default means the mortgagee files a foreclosure action in a court of law or records a *lis pendens*.

Enforcement officer means any code enforcement officer, law enforcement officer, building official, or fire inspector employed by or contracting with the City of Cape Canaveral authorized to enforce this article.

Evidence of vacancy means any real property condition that independently, or in the context of the totality of the circumstances relevant to the real property, would lead a reasonable person to believe that the real property is vacant. Such conditions may include, but not be limited to, lack of human occupancy of any building for a long period of time, overgrown or dead vegetation; electricity and other utilities turned off; stagnant swimming pool; accumulation of trash or debris; the absence of window coverings such as curtains, blinds, or shutters; the absence of furnishings or personal items consistent with habitation or occupancy of a building; statements by neighbors, delivery or government agents.

Foreclosed property means real property that is in default.

Local property manager means an individual property manager, property management company, property maintenance company or similar entity with a current business address and land line telephone number within Brevard, Indian River, Orange, Osceola, Seminole, or Volusia County, designated by the owner or mortgagee responsible for the maintenance of abandoned real property.

Owner of record means the person or entity holding recorded title to the real property in question as reflected in the Official Records of Brevard County, Florida.

Secure manner shall include, but not be limited to, the closure and locking of all windows, doors, gates, garages, and other openings that may allow access to the interior of any building or structure on the real property. In the case of broken windows or doors, securing shall mean replacing the window or door. Temporary boarding of openings may be allowed pending repairs to the extent required by the enforcement officer to address public safety and emergency situations.

Vacant means any building that is not lawfully occupied by human beings or inhabited based on the evidence of vacancy.

Sec. 82-118. Registration Requirements.

(a) Any mortgagee who holds a mortgage on real property located within the city shall, within ten (10) days of default by the mortgagor of the real property that is the security for the mortgage, register the property with the city. Registration shall be on a form provided by the city and shall include, at a minimum, the following:

- (1) The mortgagee's name, direct mailing address, e-mail address, contact person, and telephone number;
- (2) The address and parcel identification number of the real property that is being foreclosed upon by mortgagee;
- (3) Whether the property is vacant or occupied during the default period;
- (4) If the real property is, or becomes, vacant, the name, street address, e-mail address, and telephone number of the local property manager that will work on the mortgagee's behalf to inspect, maintain, and secure the real property;
- (5) If a foreclosure complaint involving the real property has been filed in circuit court, or the real property is subject to a bankruptcy proceeding, the style of the case, including, court name, case number, and parties;
- (6) Express authorization for city employees to enter upon the exterior of the property in the event the property becomes vacant for the purpose of ensuring compliance with this article.

(b) At the city's discretion, registration required by this section shall be made on a paper form or electronically. If the city chooses electronic registration, the city may retain the services of a third party to handle the registration requirements, provided the information obtained pursuant to this section is made readily available to the city and accessible pursuant to the public records laws of Florida.

(c) Any person or other legal entity that has registered a property under this section shall be required to report any change of information contained in the registration within ten (10) days of the change.

(d) In the event there are several mortgagees with mortgages on the property, the registration, inspection, maintenance, and security requirements imposed by this article shall apply to the mortgagee with the most superior mortgage that has declared the mortgage in default unless the several mortgagees notify the city to the contrary in writing. However, nothing herein shall prevent inferior mortgagees from voluntarily complying with this article after a primary mortgagee registers hereunder.

Sec. 82-119. Registration Fees.

The City Council shall establish, by resolution, fees for the registration and re-registration requirements required by this article. Said fees shall be based on the reasonable estimated cost of administering the provisions of this article and shall be due and payable at the time of registration or re-registration. The fee schedule may be based on the size and type of property being registered.

Sec. 82-120. Mortgagee Inspection Requirements.

If the foreclosed property becomes vacant at any time, the mortgagee shall initiate and maintain on-site inspections of the property at least once every thirty (30) days to verify compliance with this article. Said inspections shall continue until such time as the default is cured, or the mortgagee completes the foreclosure process and the property is sold to a third party either directly by the mortgagee or at a foreclosure sale. Once the property is sold, the mortgagee shall provide the city written proof of the sale in order to be relieved of the requirements of this article.

Sec. 82-121. Maintenance Requirements.

The following maintenance requirements shall apply to properties subject to this article:

- (a) The property shall be kept free of excessive weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices (excluding those required by federal, state, or local law), discarded personal items such as furniture, clothing, appliances, printed materials or any other items that give the appearance that the property is abandoned or not being properly maintained.
- (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 of the structure.
- (c) Yards on developed property shall be regularly landscaped and maintained in good condition pursuant to the property maintenance standards set forth in the City Code. At a minimum, landscaping on developed property shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges, mulch, or similar plantings which are appropriately designed for residential, commercial, or industrial installation as applicable. Maintenance on developed property shall include, but not be limited to, watering, irrigation, cutting and mowing of required landscape and removal of all trimmings. Undeveloped property that has been cleared shall be maintained in good condition free of excessive weeds, debris, and junk pursuant to the property maintenance standards set forth in the City Code. Property in a natural condition shall be maintained in its natural condition free and clear of debris and junk.
- (d) Pools and spas shall be regularly 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 Florida Building Code.

(e) Outdoor play equipment, furnishings, or other accessory structures shall be properly maintained and secured so as not to be accessible to unauthorized persons or not to create an attractive nuisance or safety hazard.

(f) The property shall be regularly monitored for indications of criminal activity on the premises such as use and sale of controlled substances, prostitution, and criminal street gang activity. Any indication of criminal activity shall be reported to the Sheriff's Department at such time it becomes reasonably known.

Sec. 82-122. Security Requirements.

(a) Buildings and structures subject to this article, and property subject to this article which is required to be enclosed or secured in accordance with law, shall be maintained in a secure manner at all times so as not to be accessible to unauthorized persons.

(b) If a foreclosed property becomes vacant, the mortgagee shall perform, or designate a local property manager to perform on the mortgagee's behalf, on-site inspections of the foreclosed property to verify compliance with the requirements of this article, and any other applicable laws. Said inspections shall occur a minimum of once every thirty (30) calendar days unless an enforcement officer determines, in writing, that more frequent inspections are required to ensure compliance with this article or to prevent a decline of the property, a public or attractive nuisance, or a blight on the surrounding neighborhood. At the written request of the city prior to any inspection required by this article, the person performing the inspection shall be required to schedule the inspection with the city for a date and time certain so that an enforcement officer can meet the person on-site in order to address any compliance issues under this article.

(c) When a foreclosed property becomes vacant, it shall be posted as follows:

(1) The posting shall contain the name and telephone number of the local property manager, who shall be accessible at said telephone number 24 hours per day. The posting shall be on white paper 8 ½ by 11 inches in size and shall be in a type no smaller than 24 point.

(2) The posting shall contain language substantially similar to the following: THIS PROPERTY IS MANAGED BY [NAME OF LOCAL PROPERTY MANAGER]. TO REPORT PROBLEMS OR CONCERNS, CALL [TELEPHONE NUMBER(S) OF LOCAL PROPERTY MANAGER].

(3) 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 exist, 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.

Sec. 82-123. Additional Authority of Enforcement Officers; Immunity.

(a) Enforcement officers shall have the authority to require the mortgagee and/or owner of record affected by this section to implement additional maintenance and/or security measures including, but not limited to, securing or repairing of any and all doors, windows, or other openings, chaining or pad locking gates, repairing fences and gates, or other measure as may be reasonably required to prevent a decline of the property, a public or attractive nuisance, or a blight on the surrounding neighborhood. Temporary boarding of openings may be allowed pending repairs to the extent required by an enforcement officer to address public safety and emergency situations. Said additional requirements shall be stated in writing and shall have the force of law under this article.

(b) Any enforcement officer authorized by the city to enforce this article shall be immune from prosecution, civil or criminal, for reasonable good faith entry or trespass upon any real property while in the discharge of duties imposed by this article.

Sec. 82-124. Enforcement; Penalties.

(a) The provisions of this article may be enforced and penalties imposed on mortgagees and/or owners of record for violations of this article as provided by law. Without limiting the city's right to impose any other penalties as provided by law, or to enforce this article by any other lawful means, a violation of this article shall be deemed a class IV violation for code enforcement citation purposes. Nothing under this article shall be construed as imposing liability on local property managers acting on a mortgagee's behalf pursuant to this article.

(b) Upon failure of the mortgagee to comply with the maintenance or security requirements under this article, the city manager or designee may take such appropriate action deemed necessary to remedy a maintenance and security failure on property subject to this article. Any such action taken on such premises shall be charged against the real estate upon which the building or structure is located and shall be a lien upon such real estate. Any such lien shall be superior to all other liens except those of state, county or municipal taxes and shall be on a parity with liens of state, county or municipal taxes. Further, such lien shall bear interest at the maximum rate permitted by state law and costs of collection, and shall continue to be a lien against the real estate until paid.

Sec. 82-125. Supplemental Authority.

This article shall be deemed in addition and supplemental to any other provision of law.

Section 3. Amendment to Section 2-283. Section 2-283 of the Cape Canaveral Code of Ordinances is hereby amended as follows (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (* * *) indicate a deletion from this Ordinance of text existing in section 2-283. It is intended that the text in section 2-283 denoted by the asterisks and set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance):

Sec. 2-283. Applicable codes and ordinances; class violations.

(a) The following city codes and ordinances may be enforced by civil citation to the Brevard County Court, and are assigned the violation classification enumerated below:

* * *

(13) Chapter 82, Article V, Registration and Maintenance of Properties in Foreclosure . . . Class IV.

* * *

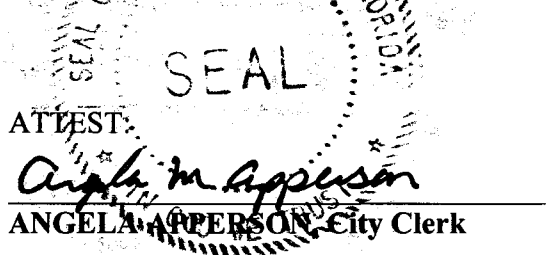
Section 4. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 5. Incorporation Into Code. This Ordinance shall be incorporated into the City Code for the City of Cape Canaveral, and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this Ordinance and the City Code may be freely made.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 7. Effective Date. This Ordinance shall become effective immediately upon adoption by the City Council of the City of Cape Canaveral, Florida.

ADOPTED by the City Council of the City of Cape Canaveral, Florida, this 15th day of May, 2012.



ATTEST:

Angela M. Apperson
ANGELA APPERSON, City Clerk

Betty Walsh
Betty Walsh, Mayor Pro Tem

	For	Against
John Bond	<u>X</u>	_____
Bob Hoog	<u>Second</u>	_____
Buzz Petsos	<u>Motion</u>	_____
Rocky Randels	<u>Absent</u>	_____
Betty Walsh	<u>X</u>	_____

First Reading: April 17, 2012
Legal Ad published: April 23, 2012
Second Reading: May 15, 2012

Approved as to legal form and sufficiency
for the City of Cape Canaveral only by:

Anthony A. Garganese
ANTHONY A. GARGANESE, City Attorney