

## ORDINANCE NO. O-09-40

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE IV, OF THE CITY OF WINTER HAVEN CODE OF ORDINANCES ADDING SECTIONS 12-91 THROUGH 12-97, RELATING TO ABANDONED REAL PROPERTY; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, the City of Winter Haven has determined that the presence of vacant, abandoned properties pose a health and safety risk to the citizens of Winter Haven; and

WHEREAS, the City Commission finds that the detrimental effects of vacant, abandoned properties include leading to neighborhood decline, creating a public nuisance, contributing to lower property values, increased crime, and discouraging potential buyers from purchasing a home adjacent to or in neighborhoods with vacant abandoned residences; and

WHEREAS, many vacant abandoned residences are the responsibility of out-of-area and out-of-state lenders and trustees who in many instances fail to adequately maintain and secure these vacant properties; and

WHEREAS, the City Commission finds that the detrimental effects of vacant abandoned properties requires the City Commission to take action to preserve the public health and safety of the citizens of the City of Winter Haven; and

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA, AS FOLLOWS:

1. That Chapter 12, Article IV of the Code of Ordinances be revised to add Sections 12-91 through 12-97 relating to Abandoned Real Property as follows:

### **Section 12-91. Purpose and intent.**

It is the purpose and intent of the City to establish a process to address abandoned real properties located within the City. It is the City's further intent to specifically establish an abandoned real property program as a mechanism to protect neighborhoods within the City limits from becoming blighted through the lack of adequate maintenance and security of such abandoned real properties.

### **Section 12-92. Definitions.**

(a) "*Abandoned real property*" means any property that is vacant and under a current notice of default and/or notice of mortgagee's sale by the lender or the subject of a tax lien certificate sale and/or properties that have been the subject of a foreclosure

sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure sale.

(b) *"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, accumulation of abandoned personal property, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

(c) *"Foreclosure"* means the process by which a property, placed as security for a real estate loan, is sold at public sale to satisfy the debt if the borrower defaults.

(d) *"Inspection"* means a close viewing of the property and the exterior of any structures located thereon placed as security for a real estate loan and includes a viewing of any interior portions of the structure which are visible from the outside of the structure. However, an inspection does not require an entry into any structure for purpose of viewing the interior.

(e) *"Property Management Company"* means a property manager, property maintenance company or similar entity responsible for the maintenance of abandoned real property.

(f) *"Vacant"* means any building or structure that is not legally occupied.

### **Section 12-93. Applicability.**

The provisions of Sections 12-91 through 12-97 of this Code of Ordinances shall be considered cumulative and not superseding or subject to any other law or provision for same, but shall rather be an additional remedy available to the City above and beyond any other state, county, and/or local provisions for same.

### **Section 12-94. Penalties.**

Violations of the provisions of Sections 12-91 through 12-97 of this Code of Ordinances shall be treated as a strict liability offense regardless of intent. Any person, firm, and/or corporation that violates any portion of these code sections shall be subject to prosecution and/or administrative enforcement as provided in the City of Winter Haven Code of Ordinances, including, but not limited to, sections 2-61 through 2-67 and sections 2-201 through 2-209.

### **Section 12-95. Registration of abandoned real property.**

(a) Any mortgagee who holds a mortgage on real property located within the City shall perform an inspection of the property that is the security for the mortgage, upon default by the mortgagor, 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 abandoned and the mortgagee shall, within ten (10) business days of the inspection, register the property with the City's Director of Community Development, or the Director's designee, on forms provided by the City. A separate registration is required for each vacant property.

(b) If the property is occupied but remains in default, it shall be inspected by the mortgagee, or the mortgagee's designee, monthly until (1) the mortgagor or other party remedies the default, or (2) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the mortgagee shall, within ten (10) business days of that inspection, register the property with the City's Director of Community Development, or the Director's designee, on forms provided by the City.

(c) Registration pursuant to this section shall contain the name of the mortgagee, the direct mailing address of the mortgagee, a direct contact name and telephone number of mortgagee's contact, a facsimile number and e-mail address and, in the case of a corporation or out-of-area mortgagee, the property management company responsible for the security and maintenance of the property.

(d) An annual registration fee shall accompany the registration form(s) in the following amounts:

(1) If title to the property is in the name of the defaulting mortgagor at the time registration is required then the fee shall be in the amount of one hundred fifty dollars (\$150.00), per property;

(2) If title to the property is in the name of a person or entity other than the defaulting mortgagor at the time registration is required and the property is then currently listed for sale with a Florida registered real estate brokerage firm or Florida licensed real estate agent then the fee shall be waived although registration shall still be required.

(3) In all other cases the fee shall be in the amount of fifty dollars (\$50.00), per property.

(e) This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the mortgagee/beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

(f) Properties subject to this section shall remain under the annual registration requirement, security and maintenance standards of this section as long as they remain vacant.

(g) Any person or corporation that has registered a property under this section must report any change of information contained in the registration within ten (10)

business days of the change.

(h) Any mortgagee who holds a mortgage on real property located within the City which is in default and the subject of an outstanding Notice of Default shall perform an inspection of the property. 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) business days of the inspection, register the property with the City's Director of Community Development, or the Director's designee, on forms provided by the City. A separate registration is required for each vacant property. If the property is occupied but remains in default, it shall thereafter be subject to the re-inspection requirements as set forth in subparagraph (b) in Section 12-95 of this Code of Ordinances.

#### **Section 12-96. Maintenance Requirements.**

(a) The exteriors of the properties subject to Sections 12-91 through 12-97 of this Code of Ordinances shall be kept free of grass and weeds in excess of twelve inches (12"), junk, trash, 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, appliances, or any other items that give the appearance that the property is abandoned.

(b) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris. Pools and spas shall comply with the enclosure requirements of the City of Winter Haven's Code of Ordinances and Florida Building Code, as amended from time to time.

(c) Failure of the mortgagee or property owner of record to properly maintain the property may result in a violation of the City of Winter Haven's Code of Ordinances and issuance of a Notice of Violation/Notice of Hearing or a Notice to Correct/Citation by the City's Code Enforcement Officer. Pursuant to finding and determination by the City's Special Magistrate, or a State Court Judge with jurisdiction, the City may take the necessary action to ensure compliance with this section.

#### **Section 12-97. Security requirements.**

(a) Properties subject to Sections 12-91 through 12-97 of this Code of Ordinances shall be maintained in a secure manner so as not to 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 to access the interior of the property and/or structure.

(c) If the property is owned by a corporation and/or out of area mortgagee, a local property management company shall be contracted to perform bi-weekly inspections to verify compliance with the requirements of this section, and any other

applicable laws. Upon the request of the City, the local property management company shall provide copy of the inspection reports to the City's Director of Community Development, or his designee.

(d) The property shall be conspicuously posted with the name and twenty-four (24) hour contact phone number of the local property management company.

2. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City; and that sections of this Ordinance may be re-numbered or re-lettered and the word "ordinance" may be changed to "chapter," "section," "article," or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the Code is accomplished, sections of this Ordinance may be re-numbered or re-lettered and the correction of typographical and/or scrivener's errors which do not affect the intent may be authorized by the City Manager or designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

3. All ordinances in conflict herewith are hereby repealed to the extent necessary to give this Ordinance full force and effect, provided however, that nothing herein shall be interpreted so as to repeal any existing ordinance or resolution relating to means of securing compliance with the City's Code of Ordinances, unless such repeal is explicitly set forth herein.

4. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

5. This Ordinance shall take effect immediately upon passage at second reading.

INTRODUCED on first reading this \_\_\_\_ day of \_\_\_\_\_, 2009.

PASSED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF WINTER HAVEN

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MAYOR-COMMISSIONER

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY