

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: August 16, 2011 ☐ Consent ☐ Regular
☐ Workshop ☒ Public Hearing

Department: Planning, Zoning and Building

Submitted By: Planning, Zoning and Building

Submitted For: Code Enforcement

I. EXECUTIVE BRIEF


Motion and Title: Staff recommends motion to adopt: An Ordinance of the Board of County Commissioners of Palm Beach County relating to mortgaged real property; creating Article XII of Chapter 17 of the Palm Beach County Code (Mortgage Foreclosure Registration); providing for the purpose and intent; providing for definitions; providing for applicability of the ordinance; requiring inspection and registration of real property mortgages in default; providing for annual registration fees; providing for enforcement; requiring maintenance of certain real property by mortgagees; providing for security requirements; providing for posting of property; providing for additional authority; providing provisions are supplemental; providing for severability; providing for captions; providing for inclusion in the code of laws and ordinances; providing for an effective date.

Summary: This ordinance requires banks and mortgage companies to register properties in foreclosure, inspect those properties and identify a property maintenance company for each property. This will assist county agencies in identifying and managing properties with code violations and those which are negatively impacting the surrounding communities. Unincorporated (GDB)

Background and Policy Issues: Numerous jurisdictions have adopted property registration ordinances in order to manage the numerous properties going into foreclosure due to the economic times that have been occurring over the past several years. These ordinances assist the government agencies that are struggling to find responsible parties for maintaining the properties that have code violations. By requiring properties going into or are in foreclosure to register and identify a property manager, it provides readily available information to code enforcement and other county agencies that need immediate information. The ordinance also requires that the property management company name and phone number be posted on the property for the community to be able to contact them directly.

Attachments:
1. Ordinance

Recommended by:  7/20/11
Executive Director Date

Approved By:  8/4/11
Deputy County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 20_11 | 20_12 | 2013 | 2014 | 2015 |
|--|-------|-------|-------|-------|-------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | _____ | _____ | _____ | _____ | _____ |
| External Revenues | _____ | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | ===== | ===== | ===== | ===== | ===== |
| No. ADDITIONAL FTE POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

Is Item Included In Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____
Reporting Category _____

B. **Recommended Sources of Funds/Summary of Fiscal Impact:** Fiscal impact from the adoption of this Ordinance is undeterminable at this time as fees are based on the number of registrations in this program.

C. **Departmental Fiscal Review:** Pat D'Agostino

III. REVIEW COMMENTS

A. **OFMB Fiscal and/or Contract Dev. and Control Comments:** Upon adoption of the ordinance and subsequent setting fee amount, an additional agenda item will be submitted to the BCC to amend the FY2012 budget at the annual balance brought forward amendment period.

N. Diaz 7/28/11
OFMB
WS 7/28/11
7/22/11

Dr. J. Jacobson 8/2/11
Contract Dev. and Control
8-2-11 B. Wheeler

B. **Legal Sufficiency:**

[Signature] 8/4/11
Assistant County Attorney

C. **Other Department Review:**

Department Director

ORDINANCE 2011 -

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY RELATING TO MORTGAGED REAL PROPERTY; CREATING ARTICLE XII OF CHAPTER 17 OF THE PALM BEACH COUNTY CODE (MORTGAGE FORECLOSURE REGISTRATION); PROVIDING FOR THE PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR APPLICABILITY OF THE ORDINANCE; REQUIRING INSPECTION AND REGISTRATION OF REAL PROPERTY MORTGAGES IN DEFAULT; PROVIDING FOR ANNUAL REGISTRATION FEES; PROVIDING FOR ENFORCEMENT; REQUIRING MAINTENANCE OF CERTAIN REAL PROPERTY BY MORTGAGEES; PROVIDING FOR SECURITY REQUIREMENTS; PROVIDING FOR POSTING OF PROPERTY; PROVIDING FOR ADDITIONAL AUTHORITY; PROVIDING PROVISIONS ARE SUPPLEMENTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CAPTIONS; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the present mortgage foreclosure crisis has serious negative implications for all communities trying to manage the resulting property vacancies, decreases in property values, lack of maintenance, and other problems that stem from the financial crisis; and

WHEREAS, foreclosed homes quickly succumb to the forces of nature and the elements, grass and weeds grow, swimming pools become stagnant public health hazards, landscaping dies from lack of attention or grows out of control, windows are broken, exteriors suffer damage from normal wear-and-tear and vandalism, communities suffer, and these consequences have a negative impact first on neighboring residences and then on entire neighborhoods; and

WHEREAS, the conditions identified above negatively impact Palm Beach County and blight neighborhoods; and

WHEREAS, Palm Beach County is challenged to identify and locate owners or foreclosing parties who can correct negative

1 impacts and maintain the properties that are in the foreclosure
2 process or that have been foreclosed; and

3 **WHEREAS**, Palm Beach County finds that neighborhoods should be
4 protected from becoming blighted through the lack of adequate
5 maintenance and security of vacant properties or properties that
6 are subject to mortgages that are in default; and

7 **WHEREAS**, Palm Beach County has adopted property maintenance
8 codes to regulate standards for the interior and exterior of
9 structures and the condition of property as a whole; and

10 **WHEREAS**, a foreclosed property registration process is
11 necessary for Palm Beach County to provide a monitoring mechanism
12 and additional enforcement for defaulted properties; and

13 **WHEREAS**, Palm Beach County finds that the registration process
14 would include properties that have already been foreclosed upon,
15 are currently in the foreclosure process, or may be in the
16 foreclosure process in the future; and

17 **WHEREAS**, the Palm Beach County Board of County Commissioners
18 has determined that the following additions to the County's code
19 will serve and contribute to promoting and protecting the general
20 health, safety and welfare of the residents of the Palm Beach
21 County.

22
23 NOW THEREFORE BE IT ORDAINED by the Board of County
24 Commissioners of Palm Beach County, Florida:

25 **Section 1. Recitals Incorporated.** The above recitals are
26 true and correct and by this reference are incorporated herein
27 and made an integral part hereof.

28 **Section 2. Mortgage Foreclosure Registration enacted.**
29 Title VI (Businesses, Trades and Occupations) is amended to add a
30 new ARTICLE XII of Chapter 17 of the Palm Beach County Code
31 (Mortgage Foreclosure Registration) to read as follows:

32 CHAPTER 17 - LICENSING, TAXATION AND MISCELLANEOUS BUSINESS
33 REGULATIONS

34 **ARTICLE XII. MORTGAGE FORECLOSURE REGISTRATION**

35
36 **Section 1. Purpose and intent.**

37 It is the purpose and intent of this Ordinance to establish a
38 process to limit and reduce the deterioration of property located
39 within unincorporated Palm Beach County, which property is in
40 mortgage foreclosure, where ownership has been transferred to a

1 lender or mortgagee by any legal method or where property is deemed
2 to be vacant or abandoned. It is further intended to establish a
3 registration program as a mechanism to protect neighborhoods from
4 becoming blighted through the lack of adequate maintenance or
5 through abandoned and/or vacated properties which are subject to
6 mortgages that are in default.

7 8 **Section 2. Definitions.**

9 The following words, terms and phrases, when used in this
10 Ordinance, shall have the meanings ascribed to them, except where
11 the context clearly indicates a different meaning. Where the
12 context will permit and no definitions are provided herein, the
13 definitions provided in the Florida Building Code shall apply.

14 *Abandoned real property* means any real property that is
15 vacant, or is under notice of default, or is pending a mortgage
16 foreclosure, or notice of mortgagee's sale, or lien sale and/or
17 properties that have been the subject of a mortgage foreclosure
18 sale where title is retained by the mortgagee, and/or any
19 properties transferred under a deed-in-lieu of foreclosure sale, a
20 short sale or any other legal means.

21 *Default* means that the mortgagee has filed a foreclosure
22 action or notice of default on the mortgage. A mortgage shall be
23 considered in default at such time as the mortgagee declares said
24 mortgage to be in default either by letter or notice to property
25 owner, by recording a lis pendens, by commencing foreclosure
26 proceedings; or by any other actions demonstrating a breach of a
27 security covenant on a property.

28 *Enforcement officer* means any fulltime law enforcement
29 officer, building official, fire inspector or code enforcement
30 officer employed by Palm Beach County.

31 *Evidence of vacancy* means any condition that on its own, or
32 combined with other conditions present, would lead a reasonable
33 person to believe that the property is vacant. Such conditions may
34 include, but are not limited to: overgrown and/or dead vegetation;
35 electricity, water or other utilities turned off; stagnant swimming
36 pool; or statements by neighbors, passers-by, delivery agents or
37 government agents.

38 *Foreclosure* means the judicial process by which a property,
39 placed as security for a mortgage loan, after a judicial process,

1 is to be sold at an auction to satisfy a debt upon which the
2 borrower has defaulted.

3 Vacant means any building or structure that is not
4 lawfully occupied or inhabited as evidenced by the conditions set
5 forth in the definition of "Evidence of Vacancy" above.

6
7 **Section 3. Applicability.**

8 This Ordinance applies to occupied or abandoned and/or vacant
9 property which is in default located within unincorporated Palm
10 Beach County, or which property is in or has been in mortgage
11 foreclosure, or where ownership has been transferred to a lender or
12 mortgagee by any legal method.

13
14 **Section 4. Inspection and registration of real property by**
15 **mortgagee holding mortgages in default.**

16 (a) Within ten (10) days of the date any mortgagee declares
17 its mortgage to be in default, the mortgagee shall register the
18 real property with Palm Beach County Planning, Zoning & Building
19 Department, or its designee, or the County's authorized
20 representative. At the time of registration, a local property
21 manager shall be designated to inspect, maintain and secure the
22 real property subject to the mortgage in default. A registration is
23 required for each property.

24 (b) Any mortgagee who holds a mortgage on real property
25 located within unincorporated Palm Beach County shall perform an
26 inspection of the property within five (5) days of the registration
27 pursuant to subsection (a) above.

28 (c) Property inspected pursuant to subsection (b) above that
29 is occupied but remains in default, shall be inspected quarterly
30 by the mortgagee or mortgagee's designee.

31 (d) Property which is found to be vacant, or which shows
32 evidence of vacancy shall be inspected at least every sixty (60)
33 days by the mortgagee or mortgagee's designee.

34 (e) Registration pursuant to this section shall contain at a
35 minimum the name of the mortgagee, the mailing address of the
36 mortgagee, e-mail address and telephone number of the mortgagee,
37 and the name of the local property manager and said person's
38 address, e-mail address, and telephone number. The local property
39 manager shall be responsible to inspect, secure and maintain the
40 property. The property manager named in the registration shall be

1 located within twenty (20) miles of Palm Beach County and available
2 to be contacted by the County, Monday through Friday between 9:00
3 a.m. and 5:00 p.m., holidays and lunch hours excepted.

4 (g) This section shall also apply to properties that have
5 been the subject of a foreclosure sale where title is transferred
6 to the mortgagee as well as any properties transferred to the
7 mortgagee under a deed in lieu of foreclosure.

8 (h) Properties subject to this section shall remain under the
9 registration requirement, and the inspection, security, and
10 maintenance standards of this ordinance as long as they remain
11 vacant or subject to having been declared by a mortgagee to be in
12 default.

13 (i) Any person or other legal entity that has registered a
14 property under this ordinance must report any change of information
15 contained in the registration within ten (10) days of the change.
16

17 **Section 5 - Annual Registration Fee**

18 An annual registration fee in an amount approved by the Board
19 of County Commissioners, per property, shall accompany the
20 registration. Fees shall be deposited into a Special Revenue
21 Account, which account shall be for the purpose of enforcement of
22 the Palm Beach County Property Maintenance Code, the Florida
23 Building Code and other related property codes.
24

25 **Section 6 - Enforcement**

26 (a) Failure of the mortgagee and/or property owner of record
27 to properly register or to modify the registration from time to
28 time to reflect a change of circumstances as required by this
29 ordinance is a violation of this Ordinance and shall be subject to
30 enforcement by any of the enforcement means available to Palm Beach
31 County.

32 (b) Pursuant to any judicial finding and determination,
33 including any administrative proceeding, that any property which is
34 in violation of this Ordinance, Palm Beach County may take the
35 necessary action to ensure compliance with and place a lien on the
36 property for the cost of the work performed, including an
37 administrative fee, to benefit the property and to bring it into
38 compliance.

39 (c) Failure of the mortgagee and/or property owner of record
40 to properly inspect and secure a property subject to this

Ordinance, and post and maintain the signage noted in this section, is a violation of this Ordinance and shall be subject to enforcement by any of the enforcement means available to Palm Beach County. Pursuant to a finding and determination, Palm Beach County may take the necessary action to ensure compliance with this section, and recover costs and expenses in support thereof.

Section 7. Maintenance requirements.

Properties subject to this Ordinance shall be maintained in accordance with all relevant County regulations, including the County's Property Maintenance Code (Ordinance 2003-051, as amended).

Section 8. Security requirements.

(a) Properties subject to this Ordinance 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 all windows, doors, gates and other openings of such size that will not allow a child or adult to access the interior of the property and/or structure. Broken windows or doors shall be secured by reglazing or boarding.

Section 9 - Posting of Property

(a) When a property subject to this Ordinance becomes vacant or abandoned, it shall be posted with the name and twenty four (24) hour contact telephone number of the local property manager. The posting shall be no less than 18 inches x 24 inches and shall be of a font that is legible from a distance of 45 feet. The posting shall contain the following language, at a minimum, with supporting information:

THIS PROPERTY IS MANAGED BY _____

AND IS INSPECTED ON A REGULAR BASIS.

THE PROPERTY MANAGER CAN BE CONTACTED

BY TELEPHONE AT _____

OR BY EMAIL AT _____

(b) The posting required in subsection (a) above 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

1 front of the property so that it is visible from the street or if
2 no such area exists, on a stake of sufficient size to support the
3 posting in a location that is at all times visible from the street
4 to the front of the property but not readily accessible to vandals.
5 Exterior posting shall be constructed of and printed with weather-
6 resistant materials.

7
8 **Section 10. Additional authority.**

9 (a) If an appropriate County code enforcement administrator
10 has reason to believe that a property subject to the provisions of
11 this Ordinance is posing a serious threat to the public health
12 safety and welfare, the code enforcement administrator may bring
13 the violations before the County's code enforcement board or code
14 enforcement special magistrate, or a court of competent
15 jurisdiction as soon as possible to address the conditions of the
16 property.

17 (b) If there is a finding that the condition of the property
18 is posing a serious threat to the public health safety and welfare,
19 then the code enforcement board or code enforcement special
20 magistrate or a court of competent jurisdiction may direct the
21 County to abate the violations and charge the mortgagee with the
22 cost of abatement.

23 (c) If the mortgagee does not reimburse the County for the
24 cost of abatement within thirty (30) days of the County sending the
25 mortgagee the invoice, then the County may lien the property with
26 the cost of abatement, along with any and all administrative fees
27 allowed by law to recover the administrative personnel services.

28
29 **Section 11. Provisions Supplemental.**

30 Nothing contained in this Ordinance shall prohibit Palm Beach
31 County from enforcing its codes by any other means, including, but
32 not limited to, injunction, abatement or as otherwise provided by
33 law or ordinance.

34
35 **Section 12 Severability.**

36 It is hereby declared to be the intention of Palm Beach County
37 that the sections, paragraphs, sentences, clauses and phrases of
38 this Ordinance are severable, and if any phrase, clause, sentence,
39 paragraph or section of this Ordinance shall be declared
40 unconstitutional by the valid judgment or decree of a court of

competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

Section 13. Captions

The captions, part headings, and part designations in this Ordinance are intended for the convenience of users only and shall have no effect in the interpretation of the provisions of this Ordinance.

Section 14. Inclusion in the Codes of Laws and Ordinances

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 15. Effective Date.

The provisions of this ordinance shall become effective upon filing with the Department of State

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on the ____ day of _____, 20____.

SHARON R. BOCK, CLERK &
COMPTROLLER

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____

By: _____

Deputy Clerk

Karen T. Marcus, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  _____

County Attorney

1 EFFECTIVE DATE: Filed with the Department of State on the
2 _____ day of _____, 2011.

3

4

5

6 U:\Exec\Data\Property Registration Ordinance-7-13-11