

## **ARTICLE IV. REGISTRATION OF DEFAULTED MORTGAGED PROPERTY**

### **Sec. 11-75. Purpose and intent.**

It is the purpose and intent of the city to establish a process to address property concerns caused by vacant properties and property with defaulted mortgages located within the city that may and/or have gone into various degrees of disrepair by creating a means to identify, track and regulate such properties, with the intent to preserve the health, wellness, and beauty of the community. This article establishes a registration program as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of registrable property.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-76. Definitions.**

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

*Registrable property* means any real property located in the city, whether vacant or occupied, that is encumbered by a mortgage in default, is subject to an ongoing foreclosure action by the mortgagee or trustee, is subject to an application for a tax deed or pending tax assessor's lien sale, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a property as "registrable" shall remain in place until such time as the property is sold to a non-related bona fide purchaser in an arm's length transaction or the foreclosure action has been dismissed and any default on the mortgage has been cured.

*Accessible property/structure* means a property that is accessible through a comprised/breached gate, fence, wall, etc., or a structure that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.

*Annual registration* shall mean 12 months from the date of the first action that required registration, as determined by the city, or its designee, and every subsequent 12 months. The date of the initial registration may be different than the date of the first action that required registration.

*Applicable codes* means to include, but not be limited to, the city's zoning code, the city's property rehabilitation and maintenance code, neighborhood improvement ordinance, solid waste ordinance, residential and commercial recycling ordinance, and the state, county and city building and fire codes.

*Blighted property* means:

- (1) Properties that have broken or severely damaged windows, doors, walls, or roofs which create hazardous conditions and encourage trespassing; or
- (2) Properties whose maintenance is not in conformance with the maintenance of other neighboring properties causing a decrease in value of the neighboring properties; or
- (3) Properties cited for a public nuisance pursuant to the city codes; or

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- (4) Properties that endanger the public's health, safety, or welfare because the properties or improvements thereon are dilapidated, deteriorated, or violate minimum health and safety standards or lacks maintenance as required by the applicable codes.

*Code inspector* means code compliance officers as defined in section 11-1.

*Foreclosure* shall mean the legal process by which a mortgagee, or other lien holder, terminates a property owner's equitable right of redemption to obtain legal and equitable title to the real property pledged as security for a debt or the real property subject to the lien. This definition shall include, but is not limited to, public notice of default, a deed-in-lieu of foreclosure, sale to the mortgagee or lien holder, certificate of title and all other processes, activities and actions, by whatever name, associated with the described process. The process is not concluded until the property obtained by the mortgagee, lien holder, or their designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in an arm's length transaction to satisfy the debt or lien.

*Local property management company* means a property manager, property maintenance company or similar entity responsible for the maintenance and security of registrable real property within 20 driving miles of the city limits. Upon review of credentials the city, or its designee, may allow a non-local property manager to be listed.

*Mortgagee* means the creditor, including but not limited to, trustees; mortgage 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.

*Owner* means any person, legal entity or other party having any ownership interest, whether legal or equitable, in real property. This term shall also apply to any person, legal entity or agent responsible for the construction, maintenance or operation of the property involved.

*Property management company* means a local property manager, property maintenance company or similar entity responsible for the maintenance of registrable real property.

*Real property* means any improved residential or commercial land, buildings, leasehold improvements and anything affixed to the land, or portion thereof identified by a property parcel identification number, located in the city limits.

*Vacant* means any building or structure that is not legally occupied. Occupants of properties subsequent to a foreclosure sale without a valid lease are considered illegal occupants.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-77. Applicability.**

These sections shall be considered cumulative and not superseding or subject to any other law or provision for same, but rather be an additional remedy available to the city above and beyond any other state, county or local provisions for same.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-78. Establishment of a registry.**

Pursuant to the provisions of this division, the city shall establish a registry cataloging each abandoned property within the city, containing the information required by this article.

(Ord. No. 2018-14 , § 2, 9-12-2018)

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## **Sec. 11-79. Registration of defaulted mortgage real property.**

- (a) Any mortgagee who holds a mortgage on real property located within the city shall perform an inspection of the property to determine vacancy or occupancy, upon default by the mortgagor. The mortgagee shall, within ten days of the inspection, register the property with the code enforcement department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be vacant or occupied.
- (b) Registration pursuant to this section shall contain the name, direct mailing address, a direct contact name, telephone number, and e-mail address for the mortgagee, and the servicer, and the name and 24-hour contact phone number of the local property management company responsible for the security and maintenance of the property.
- (c) Mortgagees who have existing registrable property on the effective date of this article have 30 calendar days from the effective date to register the property with the code enforcement department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is vacant or occupied.
- (d) If the mortgage on a registrable property is sold or transferred, the new mortgagee is subject to all the terms of this article and within five days of the transfer register the property and pay a registration fee in accordance with this article. Any previous unpaid annual registration fees are the responsibility of the new mortgagee or trustee and are due and payable with their initial registration.
- (e) If the mortgagee owner of a foreclosed real property sells or transfers the property to a non-arm's length related person or entity, the transferee, is subject to all the terms of this article and within five days of the transfer register the property and pay a registration fee in accordance with this article. Any previous unpaid annual registration fees are the responsibility of the new registrable property owner and are due and payable with their initial registration.
- (f) As long as the property is registrable it shall be inspected by the mortgagee, or designee, monthly. If an inspection shows a change in the property's occupancy status the mortgagee shall, within ten days of that inspection, update the occupancy status of the property registration.
- (g) A non-refundable annual registration fee established by resolution by the city council, shall accompany each registration pursuant to this section.
- (h) All registration fees must be paid directly from the mortgagee, trustee, servicer, or owner. Third party registration fees are not allowed without the consent of the city and/or its authorized designee.
- (i) Properties subject to this section shall remain under the annual registration requirement, and the inspection, security and maintenance standards of this section as long as they are registrable.
- (j) Until the mortgage or lien on the property in question is satisfied, or legally discharged, the desire to no longer pursue foreclosure, the filing of a dismissal of lis pendens and/or summary of final judgment and/or certificate of title, voluntary or otherwise, does not exempt any mortgagee holding the defaulted mortgage, from all the requirements of this article as long as the borrower is in default.
- (k) Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten days of the change.
- (l) Failure of the mortgagee to properly register or to modify the registration form from time to time to reflect a change of circumstances as required by this article is a violation of the article and shall be subject to enforcement and any resulting monetary penalties.

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- (m) Pursuant to any administrative or judicial finding and determination that any property is in violation of this article, the city may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-80. Maintenance requirements.**

Properties subject to this chapter shall be kept in accordance with chapters 5 and 30 of this Code.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-81. Security requirements.**

- (a) Properties subject to these sections 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 or structure. Broken windows, doors, gates and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by re-glazing of the window.
- (c) If a property is registrable, and the property has become vacant or blighted, a local property manager shall be designated by the mortgagee to perform the work necessary to bring the property into compliance with the applicable code(s), and the property manager must perform regular inspections to verify compliance with the requirements of this article, and any other applicable laws.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-82. Public nuisance.**

All registrable property is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare and safety of the residents of the city.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-83. Inspections for violations.**

Adherence to this article does not relieve any person, legal entity or agent from any other obligations set forth in any applicable code(s), which may apply to the property.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-84. Additional authority.**

- (a) If the code inspector has reason to believe that a property subject to the provisions of this article is posing a serious threat to the public health, safety and welfare, the code inspector may temporarily secure the property at the expense of the mortgagee and/or owner, and may bring the violations before the magistrate as soon as possible to address the conditions of the property.
- (b) The code inspector or magistrate shall have the authority to require the mortgagee affected by this section, to implement additional maintenance and/or security measures including, but not limited to, securing any

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and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.

- (c) If there is a finding that the condition of the property is posing a serious threat to the public health, safety and welfare, then the code enforcement board or special magistrate may direct the city to abate the violations and charge the mortgagee or trustee with the cost of the abatement.
- (d) If the mortgagee does not reimburse the city for the cost of temporarily securing the property, or of any abatement directed by the code inspector or magistrate, within 30 days of the city sending the mortgagee or trustee the invoice then the city may lien the property with such cost, along with an administrative fee as determined in the city's fee ordinance to recover the administrative personnel services. In addition to filing a lien the city can pursue financial penalties against the mortgagee.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-85. Opposing, obstructing code inspector; penalty.**

Whoever opposes obstructs or resists any code inspector or any person authorized by the enforcement office in the discharge of duties as provided in this chapter shall be punishable as provided in the applicable code(s) or a court of competent jurisdiction.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-86. Immunity of code inspector.**

Any code inspector or any person authorized by the city to enforce the sections here within shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon real property while in the discharge of duties imposed by this article.

(Ord. No. 2018-14 , § 2, 9-12-2018)

### **Sec. 11-87. Enforcement and penalties.**

- (a) *Enforcement.* The requirements of this article may be enforced as follows:
  - (1) By citation for civil penalties pursuant to chapter 11 of this Code.
  - (2) By an action for injunctive relief, civil penalties, or both, through a court of competent jurisdiction;
  - (3) By exercise of the city's nuisance abatement process;
  - (4) By revocation or temporary suspension of necessary permits and/or certificates or occupancy and/or licenses;
  - (5) By any other process permitted at law or equity; and
  - (6) Use of one enforcement process or theory does not preclude the city from seeking the same, different, or additional relief through other enforcement methods.
- (b) *Separate offenses.* A violation of this article shall constitute a separate offense for each day it shall continue or recur. Each condition which exists in violation of this article is a separate violation.
  - (1) Each day a property remains unregistered when required to be registered by this article is a separate offense for each day it shall continue or recur.
  - (2) Each day a property is not inspected as required by this article is a separate offense.

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- (3) Each day a property is not secured as required by this article is a separate offense.
  - (4) Each day a condition violating the county's minimum housing codes or property maintenance codes exists on a property subject to registration under this article is a separate offense.
  - (c) *Persons responsible for violations.* The, owner, mortgagee, trustee or servicer as those terms are defined in this article, and their duly authorized officers, employees or agents employed in connection therewith who has assisted in the commission of the violation or failed to perform as required by the article shall be guilty of the violation.

(Ord. No. 2018-14 , § 2, 9-12-2018)