

Fort Myers, Fl.
Ordinances 3539, 3588 & 3639

Subpart A - ADMINISTRATIVE CODE
Chapter 54 – NUISANCES

ARTICLE XII. - REGISTRATION OF ABANDONED REAL PROPERTY

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Sec. 54-440. - Purpose and intent.

The purpose and intent of this article is to establish a process for the registration of real property located within the city to protect neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties or properties in the process of foreclosure. It is recognized abandoned properties are prone to criminal activities and trespass and as such, the registration of the subject properties shall include submittal of trespass affidavits to further assist law enforcement officers in the performance of their duties. All registration and citation revenue collected as provided in this article will be dedicated to community development department abatement activities on private property.

(Ord. No. 3539, § 2, 1-4-2010; Ord. No. 3588, § 1, 6-6-2011; Ord. No. 3639, § 1, 9-4-2012)

Sec. 54-441. - Definitions.

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

Abandoned real property shall mean any property that is illegally occupied, or is in default, or the subject of a tax lien certificate sale, or is under the process of foreclosure, and/or shows evidence of vacancy.

Accessible structure shall mean a property that is accessible through a compromised/breached gate, fence, wall, etc.

Annual registration shall mean 12 months from the date of the first action that required registration, as determined by the code enforcement division of the community development department, or their 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.

Default shall mean that the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.

Evidence of vacancy shall mean 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.

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 to satisfy the debt or lien.

Inspection shall mean 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 the purpose of viewing the interior.

Local shall mean within 20 driving miles of the property in question.

Property management company shall mean a property manager, property maintenance company or similar entity responsible for the management and maintenance of real property.

Vacant shall mean any building or structure that is not legally occupied.

(Ord. No. 3539, § 2, 1-4-2010; Ord. No. 3588, § 2, 6-6-2011)

Sec. 54-442. - Applicability.

This article 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.

(Ord. No. 3539, § 2, 1-4-2010)

Sec. 54-443. - Penalties.

Penalties for violation of any section of this article shall be pursuant to City Code, [section 1-14](#) and/or [section 2-411](#). Owners of property and mortgagees shall comply with the City Code, [section 2-413](#) disclosure requirements. If foreclosure is concluded and the mortgagee, lien holder or property owner were not notified of all provisions of this article at the time, a notice of violation may be issued after the fact pursuant to City Code, subsection [2-416\(b\)](#). It shall be an affirmative defense to an alleged violation that the mortgage documents do not give the lender a right to enter upon and maintain the property which is the subject of the mortgage, whether occupied or vacant.

(Ord. No. 3539, § 2, 1-4-2010; Ord. No. 3588, § 3, 6-6-2011)

Sec. 54-444. - Public nuisance.

All abandoned real 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. 3539, § 2, 1-4-2010)

Sec. 54-445. - Registration of abandoned real property.

- (a) Any mortgagee, who holds a mortgage on any abandoned real property located within the city, shall perform an inspection of the property that is the security for the mortgage. The mortgagee shall, within ten days of the inspection register the property with the director of the community development department, or designee, on forms provided by the city, or other manner as directed. A separate registration is required for each property simultaneous with the filing of a public notice of default, intention to foreclose, or any other action to foreclose on a mortgage, lien or similar instrument that secures debt, upon abandoned real property located in the city.
- (b) Property inspected but remaining in default shall be inspected by the mortgagee or the designee on a regular basis. Within ten days of the date any mortgagee declares its mortgage to be in default, the mortgagee shall register the real property with the city's designee and, at the time of registration, shall also designate in writing a local property manager to inspect, maintain, and secure the real property subject to the mortgage in default.
- (c) Registration pursuant to this section shall contain at a minimum the names, mailing addresses, e-mail addresses, and telephone numbers for the mortgagee, their chief executive officer or designee, and a local property manager. The local property manager shall be responsible to inspect, secure, and maintain the property. The property manager named in the registration shall be located within 20 miles of the city and available to be contacted by the city, Monday through Friday between 9:00 a.m. and 5:00 p.m. excluding holidays.
- (d) An annual registration fee in the amount of \$200.00 per property, shall accompany each registration.
- (e) Properties subject to this section shall remain under the annual registration requirement, security and maintenance standards of this section until the foreclosure, as defined in this article, is concluded.
- (f) 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, or lien holder who initiated foreclosure proceedings, from all the requirements of this article as long as the borrower is in default.
- (g) Any person or corporation that has registered a property under this section must report any change of information contained in the registration to the city within ten days of the change.
- (h) All mortgagees who hold a mortgage on abandoned real property located within the city shall perform an inspection of the property and register it within ten days.

(Ord. No. 3539, § 2, 1-4-2010; Ord. No. 3588, § 4, 6-6-2011; Ord. No. 3639, § 2, 9-4-2012)

Sec. 54-446. - Maintenance requirements.

- (a) The exteriors of the properties subject to this article shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state, or local law, discarded personal items included, but not limited to, furniture, clothing, large and small appliances, printed material, vehicles, vessels and trailers and/or any other items that give the appearance that the property is abandoned.

- (b) The exteriors of 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 structure.
- (c) Front, side, and rear yard landscaping shall be maintained in accordance with the city standard at the time registration was required.
- (d) Landscape shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod.
- (e) Maintenance shall include, but not be limited to, watering, cutting, and mowing of required landscape and removal of yard waste.
- (f) Pools and spas shall be maintained so the water remains free and clear of hazards, pollutants and debris. Pools and spas shall comply with the enclosure requirements of the City Code and Florida Building Code, as amended from time to time.
- (g) Failure of the mortgagee or property owner of record to properly maintain the property may result in a violation of the City Code and issuance of a citation or notice of violation/notice of hearing by a code enforcement officer. Pursuant to a finding and determination by the code enforcement board, the city may take the necessary abatement action to ensure compliance with this article.

(Ord. No. 3539, § 2, 1-4-2010; Ord. No. 3588, § 5, 6-6-2011)

Sec. 54-447. - Security requirements.

- (a) Properties subject to this article 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 shall be secured by re-glazing or temporary boarding of the windows, doors, or other openings.
- (c) If the property is owned by a corporation or out of area mortgagee, a local property management company shall be contracted to perform monthly inspections to verify compliance with the requirements of this section, and any other applicable laws.
- (d) The local property management company shall inspect the property on a monthly basis to ensure the property is in compliance with this chapter. Upon the request of the city, the property management company shall provide a copy of the inspection report(s) to the code enforcement division.
- (e) Failure of the mortgagee or property owner of record to properly maintain the property may result in a violation of the City Code and issuance of a citation or notice of violation/notice of hearing by a code enforcement officer or adjudication of such violation by county court. Pursuant to current code, a finding and determination by the code enforcement board, or adjudication by county court, the city may take the necessary abatement action to ensure compliance with this section.

(Ord. No. 3539, § 2, 1-4-2010)

Sec. 54-448. - Additional authority.

The director of the community development department, or designee, shall have authority to require the mortgagee and/or owner of record of any property affected by this article, to implement additional maintenance and/or security measures including, but not limited to, securing any and all door, window 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. The community development director or designee may designate a third party to process and serve citations for property maintenance standards and violations as they relate to the registration of abandoned real property.

(Ord. No. 3539, § 2, 1-4-2010; Ord. No. 3639, § 3, 9-4-2012)

Sec. 54-449. - Adoption of rules; expenditure of funds; declaration of purpose.

The city manager, consistent with city manager's duties and authorities under the city charter and City Code, including those duties and authorities relating to emergency situations, is authorized and empowered to adopt rules and regulations and expend city funds as may be reasonably necessary and available to carry out the terms of this article, the expenditure of such funds being declared a proper municipal purpose.

(Ord. No. 3539, § 2, 1-4-2010)