

ORDINANCE NO. 2016-09

AN ORDINANCE OF THE VILLAGE OF PALM SPRINGS, FLORIDA, AMENDING THE VILLAGE CODE OF ORDINANCES AT CHAPTER 10 "BUILDINGS AND BUILDING REGULATIONS", ARTICLE I "IN GENERAL", TO ADD A NEW SECTION 10-30, "FORECLOSED PROPERTY REGISTRATION PROGRAM", PROVIDING FOR REGISTRATION OF FORECLOSED PROPERTIES; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council recognizes there has been an increase in the number of abandoned real properties located throughout the Village; and

WHEREAS, the presence of properties which have been abandoned can lead to a decline in property values and discourage potential buyers from purchasing other residential properties or businesses within the Village; and

WHEREAS, in many cases where there has been a foreclosure instituted, the owners have abandoned the residence or business, or have ceased to maintain the real property, including both the structure and the yard; and

WHEREAS, the failure to maintain properties results in numerous code violations such as the accumulation of trash, debris and discarded personal property, overgrown grass and bushes, the proliferation of vermin, unsecured swimming pools with standing water; vandalism and occupation by vagrants; and

WHEREAS, many of the abandoned properties are the responsibility of out-of-state lenders and trustees who fail to adequately secure and maintain such properties; and

WHEREAS, the Village Council has determined that it is in the best interest of the Village to create regulations requiring the registration of properties that have been, or are in the process of being foreclosed to require their registration, maintenance and security to protect the integrity of the Village's existing residential neighborhoods and commercial corridors.

NOW THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF PALM SPRINGS, FLORIDA:

Section 1. The foregoing recitals are incorporated herein as true and correct findings of fact of the Village Council, and serve as a basis for adoption of this Ordinance.

Section 2. Chapter 10 "Building and Building Regulations", Article I "In General", is hereby amended to add a new Section 10-30 entitled "Foreclosed Property Registration Program" as follows:

Sec. 10-30 - Foreclosed Property Registration Program.

(a) Purpose and intent. It is the purpose and intent of this section to establish a process to monitor and address the conditions of abandoned and distressed real property located within the Village on which a public notice of default has been filed or which is in foreclosure or where ownership has been transferred to a lender or mortgagee by any legal method.

(b) Definitions. The following words, terms and phrases, when used in this section 10-30, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning. Where the context will permit and no definitions are provided herein, the definitions provided in the Florida Building Code shall indicate the meaning.

(1) Abandoned property means any real property that is vacant or distressed.

(2) Default means that the mortgagee has filed a foreclosure action or public notice of default on the mortgage. A mortgage shall be considered in default at such time as the mortgagee declares said mortgage to be in default in writing, by recording a lis pendens, by its actions or by commencing foreclosure proceedings or by any other actions demonstrating a breach of a security covenant on a property.

(3) Disposition means the foreclosure status and/or the mortgagee/servicer's intent if the mortgage remains in default. If the mortgagee enters into a permanent modification agreement with the owner/mortgagor, the mortgage is considered to be no longer in default unless there is further notification by the mortgagee/servicer.

(4) Distressed means any condition that on its own or combined with other conditions present would lead a reasonable person to believe that a property is neglected, abandoned or otherwise not being regularly maintained. Such conditions include, but are not limited to: a repeat violation of any provision of this Code, as defined in F.S. § 162.04(5) or violations which have not been complied; overgrown and/or dead vegetation; the accumulation of trash, junk and/or debris; unsecured doors, windows or other openings; the presence of an unsanitary, stagnant swimming pool, the presence of boards over doors, windows or other openings in violation of the City Code; deterioration of the structure or structures on the property.

(5) Foreclosure means the judicial process by which a property, placed as security for a mortgage loan is to be sold at an auction to satisfy a debt upon which the borrower has defaulted.

(6) Enforcement officer means any fulltime law enforcement officer, building official, fire inspector or code enforcement officer employed by the Village.

(7) Owner means any person, firm, corporation or other legal entity who, individually or jointly or severally with others, holds the legal or beneficial title to any building, facilities, equipment or property subject to the provisions of this chapter. The term shall include the owner's duly authorized agent, a purchaser, devisee, fiduciary, or any other person, firm, corporation or legal entity having a vested or contingent interest or, in the case of a leased premises, the legal holder of the lease or his legal representative. It is intended that this term shall be construed as applicable to the person, firm, corporation or legal entity responsible for the construction, maintenance and operation of the building, facilities or property involved whether vacant or occupied.

(8) Property management company means a local property manager, property maintenance company or similar entity responsible for the maintenance of the abandoned real property.

(9) 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. In the case of broken windows, such windows shall be secured by re-glazing or if the structure is vacant it may be boarded up in accordance with Code requirements.

(c) Applicability. This section relates property subject to a mortgage that has been determined by the mortgagee to be in default, is in foreclosure, or to properties that have been the subject of a foreclosure sale where title is transferred to the mortgagee or lender as well as any properties transferred to the mortgagee or lender under a deed in lieu of foreclosure by any legal method. All such properties shall comply with the registration, security and maintenance requirements of this section.

(d) Penalties. Violations of this section shall be subject to enforcement by a special magistrate of the Village.

(e) Registration of real property; mortgagee holding mortgage in default, foreclosure, or where ownership of property has been transferred to a lender or mortgagee.

(1) All property, located within the Village, which property is in or has been declared to be in default, mortgage foreclosure, or to properties that have been the subject of a foreclosure sale where title is transferred to the mortgagee as well as any properties transferred to the mortgagee or lender under a deed in lieu of foreclosure by any legal method shall be registered under this section.

(2) Any mortgagee who holds a mortgage on vacant or abandoned real property located within the Village shall perform an inspection of the property upon default by the mortgagor or 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 vacant or abandoned, and the mortgagee shall, within two (2) days of the

inspection, register the property with the Village's land development department on forms provided by the department, even though the real property may not be vacant.

(3) If the property is occupied, it should be inspected monthly by the mortgagee or mortgagee's designee.

(4) Within ten (10) days of the date the mortgagee declares its mortgage to be in default, the mortgagee shall register the real property with the Village's designee and, at the time of registration, and, if vacant, shall also designate in writing a local property manager to inspect, maintain and secure the real property subject to the mortgage in default.

(5) Registration. Registration pursuant to this section shall contain at a minimum: the name, the mailing address, the e-mail address, and the telephone number for the mortgagee, trustee and/or servicer along with the disposition and occupancy status of the real property.

If the property is vacant or deemed vacant by the code enforcement staff of the Village, then the name of the local property manager and said person's address, e-mail address, and telephone number shall also be provided for all new registrations. If the occupancy status of a registered property changes to vacant then the registration must be modified.

The local property manager shall be responsible to inspect, secure and maintain the property. The local property manager shall be available to be contacted by the Village twenty-four (24) hours a day. The Village shall charge a fee as established in the Village fee resolution for any registration or modification of registration, and it may assign and delegate the collection of such fee to an independent contractor. The registration fee must be paid by the mortgagee, trustee or mortgage servicer and cannot be assigned for payment or remitted by a third party for payment.

(6) This section 10-30 shall also apply to properties that have been the subject of a foreclosure sale where title is transferred to the mortgagee, as well as any properties transferred to the mortgagee under a deed in lieu of foreclosure.

(7) Properties subject to this section 10-30 shall remain under the annual registration requirement, inspection, security, and maintenance standards of this section as long as they remain abandoned, vacant or subject to having been declared by a mortgagee to be in default.

(8) Any person or other legal entity that has registered a property under this section 10-30 must report any change of information contained in the registration within ten (10) days of the change.

(9) Failure of the mortgagee and/or property owner of record to properly register or to revise the registration to reflect a change of circumstances as required by this section 10-30 is a violation of the ordinances of the Village.

(f) Maintenance requirements.

(1) Properties subject to this section 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 including, but not limited to, furniture, clothing, large and small appliances, or any other items that give the appearance that the property is abandoned or not being properly maintained. Grass over twelve (12) inches tall is prohibited.

(2) The property shall be maintained free of graffiti or similar markings by removal or painting over such graffiti or markings with an exterior grade paint that matches the color of the exterior structure.

(3) Yards shall be landscaped and maintained pursuant to the standards set forth in the ordinances of the Village. Landscaping shall include, but shall not be limited to, grass, ground cover, bushes, shrubs, hedges or similar plantings, decorative rock or bark, artificial turf or sod designed specifically for residential, commercial or industrial installation, as applicable. Landscaping shall not include weeds, gravel, broken concrete, asphalt or similar material. Maintenance shall include, but shall not be limited to, watering, irrigation, cutting and mowing of required landscape and removal of all trimmings and weeds.

(4) Pools and spas shall be kept in a safe and sanitary 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 Village's ordinances and the Florida Building Code.

(5) In the event that the National Weather Service, National Hurricane Center, or other appropriate weather agency declares a hurricane warning for any portion of the Village, all materials, furnishings, and equipment at the property shall be secured, stored, or removed so as to not create a safety hazard due to hurricane force winds.

(6) Failure of the mortgagee and/or property owner of record to properly maintain the property is a violation of the Code of Ordinances of the Village. Pursuant to a finding and determination by a special magistrate, the Village may take the necessary action to ensure compliance with its ordinances and place a lien or liens and a special assessment on the property.

(g) Security requirements.

(1) Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

(2) A "secure manner" shall include, but shall not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child or adult to access the interior of the property and/or structure. Broken windows shall be secured by re-glazing or boarding. All means of access shall be secured by replacing, reglazing or boarding of the openings so as to meet all applicable laws, codes and regulations.

(h) Property management.

(1) If a mortgage on the property is in default and the property has become vacant or abandoned, a local property manager shall be designated by the

mortgagee to perform the work necessary to bring the property into compliance with the Code of Ordinances and the local property manager must perform weekly inspections to verify compliance with the requirements of this section 10-30 and any other applicable laws or ordinances of the Village.

(2) Upon request of the Village or its authorized representative, the local property manager shall provide a copy of the inspection reports to the land development department.

(3) When a property becomes vacant, it shall be posted with the name and 24-hour contact telephone number of the local property manager. The posting shall be no less than eighteen (18) inches x twenty-four (24) inches, and no larger than thirty-six (36) inches times forty-eight (48) inches in size, and shall be of a font that is legible from a distance of forty-five (45) feet. The posting shall contain the following language: THIS PROPERTY IS MANAGED BY [name of local property manager], who may be contacted at any time by calling () [the 24-hour contact telephone number].

(4) All written information thereupon shall be clear, legible and updated as required. 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 exists, on a stake of sufficient size to support the posting in a location that is at all times visual 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.

(5) Failure of the mortgagee or property owner of record to properly inspect and secure the property and post and maintain the signage required by this section 10-30 is a violation of this section. Pursuant to a finding and determination by a special magistrate of the Village, the Village may take the necessary action to ensure compliance with this section 10-30, and place a lien or liens on the property to recover costs and expenses in support thereof.

(i) Opposing, obstructing enforcement officer; penalty. Whoever opposes, obstructs or resists any enforcement officer or any person authorized by the Village in the discharge of duties as provided in this section, upon conviction, may be sanctioned as provided in the Code of Ordinances of the Village or F.S. Chapter 162.

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

(k) Additional authority. The land development director shall have authority to require the mortgagee and/or owner of record of any property affected by this section to implement additional maintenance and/or security measures, including but not limited to having an on-site security guard. Failure to comply with the terms of this section 10-30 shall constitute a continuing public nuisance. The Village shall have the authority to promptly abate the public nuisance, in whole or in part, at the expense of the mortgagee or other responsible party.

(l) Supplemental provisions. Nothing contained in this section 10-30 shall prohibit the Village from enforcing its codes by any other means, including, but not limited to, injunction, abatement or as otherwise provided by Code.

Section 3. Codification. The sections of the ordinance shall be made a part of the Village Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 4. Repeal of Conflicting Ordinances. All Ordinances, Resolutions or parts of Ordinances and Resolutions in conflict herewith are hereby repealed.

Section 5. Severability. If any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption.

Council Member Waller, offered the foregoing Ordinance, and moved its adoption. The motion was seconded by Council Member Gunther, and upon being put to a vote, the vote was as follows:

	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
BEV SMITH, MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JONI BRINKMAN, VICE MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PATTI WALLER, MAYOR PRO TEM	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DOUG GUNTHER, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LIZ SHIELDS, COUNCIL MEMBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The Mayor thereupon declared this Ordinance approved and adopted by the Village Council of the Village of Palm Springs, Florida, on second reading, the 14th day of July, 2016.

VILLAGE OF PALM SPRINGS, FLORIDA

BY: _____

BEV SMITH, MAYOR

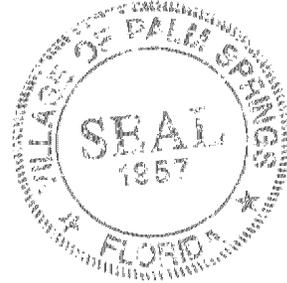
First Reading: June 9, 2016

Second Reading: July 14, 2016

ATTEST:

BY: _____

SUSAN CALJEAN, VILLAGE CLERK



REVIEWED FOR LEGAL FORM AND SUFFICIENCY

BY: _____

GLEN J. TORCIVIA, VILLAGE ATTORNEY