

# CITY OF CLAYTON, OHIO

ORDINANCE NO. O – 09 - 09 - 12

## AN ORDINANCE ENACTING CLAYTON CODIFIED ORDINANCE CHAPTER 1333 ENTITLED “MAINTENANCE OF ABANDONED RESIDENTIAL PROPERTIES PENDING FORECLOSURE”

WHEREAS, properties within the City of Clayton which are in foreclosure may be left vacant and deteriorating thereby resulting in a neighborhood blighting effect; and

WHEREAS, the stated purposes of the City’s Property Maintenance Code include the establishment of minimum standards for maintaining residential, commercial and industrial environmental quality to preserve and achieve the presentable appearance of existing structures and premises, the avoidance of blighting effects of the substandard surrounding properties, elimination of hazardous conditions and fixing the responsibilities of owners, operators and occupants of structures and their premises; and

WHEREAS, requiring maintenance of abandoned residential properties pending foreclosure and located within the City of Clayton will allow the City to better monitor and address said properties and assist in enforcement of the City’s Building Code and/or Property Maintenance Code.

### NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF CITY OF CLAYTON, STATE OF OHIO:

1. That a new Chapter 1333 entitled "Maintenance of Abandoned Residential Properties Pending Foreclosure", to be included in PART THIRTEEN – BUILDING CODE of the Clayton Codified Ordinances, is enacted to read as follows:

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### TITLE ONE – Property Maintenance Code Chapter 1333 Maintenance of Abandoned Residential Properties Pending Foreclosure

#### SECTION 1333.01 PURPOSE AND SCOPE

A. The purpose of this section is to establish an abandoned residential property registration program and to regulate the maintenance of abandoned residential properties by parties asserting a collateral or other legal or equitable interest in the property. This section is intended to reduce and prevent neighborhood blight, to ameliorate conditions that threaten the health, safety and welfare of the public, to promote neighborhood stability and residential owner occupancy by preserving the condition and appearance of residential properties, and to maintain residential property values and assessments. Nothing in this section shall be construed as waiving, relieving or otherwise excusing an owner of residential property from compliance with all applicable building codes and ordinances and the owner or owners shall at all times remain responsible and liable therefore.

#### SECTION 1333.02 DEFINITIONS

A. In this section:

1. "Abandoned property" or "abandoned premises" means a property that is vacant as the result of the relinquishment of possession or control by a mortgagor or the mortgagor's assigns whether or not the mortgagor or mortgagor's assigns have relinquished equity and title. Property may be deemed abandoned when there is evidence of conditions, taken

separately or as a whole, that would lead a reasonable person to conclude that the property was abandoned including, but not limited to evidence of overgrown or dead vegetation, accumulation of newspapers, circulars, flyers or mail, past due utility notices, accumulation of junk, litter, trash or debris, absence of window treatments such as blinds, curtains or shutters, absence of furnishings and personal items, and statements by neighbors, delivery agents or similarly situated persons that the property is vacant.

2. "Accessible Structure" means a building that is accessible through a compromised door, wall, window or similar structure and which is unsecured in a manner that allows access to interior space by unauthorized persons.

3. "Agent" means a person, firm or other entity that, by agreement for payment of services, is responsible to a bank, lender, other financial institution or individual, for securing, maintaining, foreclosing upon or selling any residential property as the result of loan default or mortgage foreclosure proceedings whether or not the proceedings are judicial or initiated as the result of a power of sale clause in the mortgage document. In this section, agent does not include a servicing company. Except, however, an attorney shall not be deemed to be an agent if that attorney is retained solely to represent a bank, lender or other financial institution in connection with a foreclosure proceeding in a court of competent jurisdiction.

4. "Financial institution" means any individual, firm, corporation or entity other than a lender or duly constituted bank that asserts a collateral interest in residential real property as the result of an assignment, sale or transfer of a mortgage or similar instrument.

5. "Foreclosure" means the judicial process prescribed by the Ohio Revised Code and the process for non-judicial sale authorized by a power of sale clause in a mortgage document.

6. "Mortgage" means a written instrument creating a lien on real property whereby the mortgagor retains the interest that the mortgagor had at the time of mortgage until that interest is divested by some later act.

7. "Occupied property" or "occupied premises" means a premises on which any person over one year of age, including an owner or operator, lives, sleeps, cooks or otherwise maintains actual possession.

8. "Servicing company" means an individual, firm or entity that, as a regular part of its business, provides services to the owner or holder of one or more mortgage liens which services may include collection of payments, creation and administration of escrow and insurance accounts, assessment of late-payment charges, managing loss mitigation, and securing and managing foreclosed properties on behalf of the holder of a mortgage lien or the holder's attorney or agent.

9. "Vacant premises" means a building that is not lawfully occupied.

## **SECTION 1333.03 INSPECTION OF RESIDENTIAL PROPERTY**

A. Initial Inspection. Whenever a bank, lender or other financial institution shall directly, or through an agent or servicing company, initiate foreclosure proceedings upon residential real property, the bank, lender or other financial institution, either directly or through its agent or servicing company, shall cause a physical inspection to be made of the property not later than 30 days from the date of notice and in no event later than 30 days after the filing of foreclosure proceedings. One or more photographs shall be taken of the residential property accurately portraying the condition of the exterior premises. Photographs shall be dated and preserved.

B. Periodic Inspections. Any bank, lender or financial institution, or its agent or servicing company, shall perform a re-inspection of a residential premises subject to foreclosure proceedings at least once every 30 days following the initial inspection until such time as the property is no longer in default as a result of agreement with the owner,

or is sold at a sheriff's sale or is otherwise lawfully conveyed to a new owner. One or more photographs shall be taken at each re-inspection and shall be dated and preserved in the same manner as is required upon initial inspection.

**SECTION 1333.04 REGISTRATION OF ABANDONED RESIDENTIAL PROPERTY**

A. If, upon inspection of residential property required by Section 1333.03, it should be determined that the property is abandoned, the bank, lender, other financial institution or its responsible agent or servicing company, shall register the property in the name of the lien holder with the City on a form prescribed by the City that includes, but is not limited to, information identifying the location of the property, the last known owner or owners of the property, the date foreclosure proceedings were commenced and the docket number of the foreclosure action, a description of the external condition of the property and whether there is an accessible structure on the property. Registration information shall identify the agent or servicing company, if any, that is authorized by the lien holder to enter upon the property and to conduct repairs or maintenance as required in Section 1333.05.

B. Registration of abandoned property shall be made within 5 working days of inspection. The fee for registration of abandoned residential property is \$75.00. If it should appear that the registration is filed 6 or more days after the inspection, an additional late fee of \$25.00 will be charged. The registration shall be valid from the date the registration form is completed and filed with the City if the registration fee is received by the City within 7 days of receipt of the registration form. If the registration fee is not received within 7 days of receipt of the registration form, an additional late fee of \$25.00 will be charged.

C. The registration will be dissolved and considered void upon receipt by the City of written evidence of a sale in foreclosure, redemption of the property by the lien holder or other transfer of the lien holder's interest.

**SECTION 1333.05 REGISTRANT DUTIES**

A. The property maintenance duties of a registrant are limited to the following:

1. Assuring that there are no accessible structures on the premises.
2. Assuring that there are no conditions upon the property presenting an immediate risk to health and safety of the public including removing or abating fire hazards, removing or containing potentially toxic materials and explosives, securing the perimeters of swimming pools, ponds or other bodies of water, and maintaining public walkways and thoroughfares free from ice, snow, mud and other debris consistent with the requirements of par. C.

B. A registrant shall include a statement in the registration form identifying any action taken or planned to be taken to comply with the requirements of par. A. From and after registration of the abandoned residential property, or from and after the time that registration is required to be made, and until the abandoned residential property has been sold at a sheriff's foreclosure sale or has otherwise been legally conveyed to a new owner, the City may make a finding that the conditions of the residential premises constitute an immediate threat to the health, safety and welfare of the public and, upon such finding, may issue a written order to the registrant to abate the condition. If the registrant, or party with a duty to register, fails to comply with the order of the City within 10 days, the City may enter and abate said nuisance and the cost thereof shall be certified to the County Auditor for collection in the same manner as other taxes and assessments are collected. This remedy is in addition to other penalties and/or remedies available to the City.

C. The minimum requirements of a registrant, or party with a duty to register, for preservation and protection of residential premises, absent a specific order of the City to abate a condition of the premises, shall be consistent with the rules, regulations and other requirements published by the Federal Housing Administration (FHA) of the United States Department of Housing and Urban Development for the preservation and protection of single-family residential properties secured by FHA loans as those requirements may be amended by FHA mortgagee letters or otherwise, and as applied by the FHA to the state of Ohio including guidelines related to winterization and heating systems. Under these guidelines, debris removal shall be deemed to include snow and ice removal, and the elimination of weeds and other plant growths. The City may require a registrant, or party with a duty to register, to repay the department the reasonable costs incurred by the department related to abatement of conditions that are subject to FHA guidelines identified in this paragraph or which are subject to an order under par. B and threaten the health, welfare and safety of the public.

D. A registrant shall maintain written records, including photographs, of any re-inspection required herein that identifies any change in condition of the abandoned real property requiring correction under pars. A. and B, and identifying actions taken or planned to assure compliance. Written records of re-inspection shall be made available to the City or City's designee upon request.

E. A registrant, or registrant's agent or servicing company, shall provide notice to the City in a manner to be prescribed by the City, within 15 working days, of any agreement executed by the lawful owner with the party or parties asserting a mortgage lien interest curing or otherwise forgiving default of the mortgage lien, or within 15 days of a sheriff's sale in foreclosure or other sale or lawful conveyance of the abandoned residential property, and declaring that registrant is no longer responsible for inspection of the registered property or for securing or maintaining the property. If the foreclosing entity purchases the subject property at Sheriff's Sale or otherwise, its duties as specified in Sections 1333.03 through 1333.05 shall remain unaffected until such time as the foreclosing entity lawfully conveys the property to another. Upon receipt of the notice required in this paragraph, the City shall dissolve the registration.

#### **SECTION 1333.06 APPEALS**

A. Any person aggrieved by any of the requirements of this Chapter may appeal insofar as such appeal is allowed under Chapter 1309.

#### **SECTION 1333.99 PENALTIES**

A. Failure to Inspect. Any person, firm, bank, lender, financial institution or an agent or servicing company that fails its duty to inspect or re-inspect residential property as required herein shall, upon conviction, forfeit not less than \$250 nor more than \$1,000, together with the cost of the action, and in default of payment thereof may be imprisoned for not less than 10 days nor more than 40 days.

B. Failure to Register. Any person, firm, bank, lender, financial institution or an agent or servicing company that fails its duty to register abandoned residential property as required hereunder shall, upon conviction, forfeit not less than \$500 nor more than \$2,000, together with the cost of the action, and in default of payment thereof may be imprisoned for not less than 20 days nor more than 80 days.

C. Failure to Secure and Maintain. Any person, firm, bank, lender, financial institution or an agent or servicing company having a duty to register abandoned residential property that fails its duty to secure and maintain the property as required hereunder shall, upon conviction, forfeit not less than \$350 nor more than \$1,500, together with the cost of the action, and in default of payment thereof may be imprisoned for not less than 14 days nor more than 60 days.

D. Failure to Maintain Records or Provide Written Notice. Any person, firm, bank, lender, financial institution or responsible agent or servicing company that fails to maintain records as required hereunder or to provide the notices required hereunder shall,

upon conviction, forfeit not less than \$100 nor more than \$500, together with the cost of the action, and in default of payment thereof may be imprisoned for not less than 4 days nor more than 20 days.

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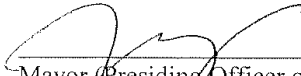
2.. That this Ordinance shall be effective as an exception to any ordinance, resolution or other legislation of the City of Clayton, Ohio, inconsistent with this Ordinance or which imposes additional requirements for effectiveness or validity.

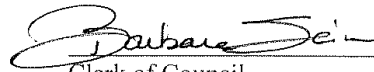
3. That in accordance with Clayton Charter Section 4.031 the requirement that this enactment be read on two (2) separate days is complied with by readings on September 3, 2009 and September 17, 2009.

4. That in accordance with Clayton Charter Section 4.031(H) this enactment shall become effective thirty days after its second reading and enactment.

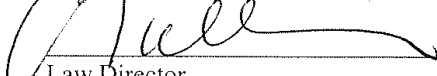
ADOPTED BY COUNCIL ON SEPTEMBER 17, 2009.

AUTHENTICATION:

  
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Mayor (Presiding Officer of Council)

  
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Clerk of Council

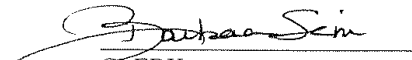
APPROVED AS TO FORM:

  
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Law Director

#### CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper Englewood Independent Date of publication 9-23-09

  
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CLERK