



Council Communication

To: Mayor and Village Council
From: Edward Koconis, AICP, Village Manager
Date: May 9, 2013

**SUBJECT: SECOND READING - ORDINANCE CREATING REGISTRATION
FOR REAL PROPERTY MORTGAGES IN DEFAULT**

Background:

During the ongoing nation-wide financial crisis and the related high rate of home foreclosures, the condition of vacant properties in Islamorada has at times become a nuisance. Unkempt vacant properties decrease neighborhood and community aesthetics and can lead to a decline in property values. At present, there are over 200 properties in Islamorada with mortgages in default.

Continual efforts have been made by Code Compliance officials to address the problem during the past few years. The Village's Code Compliance procedure for these matters is a slow process, beginning with the sometimes time-consuming endeavor to identify and contact the responsible homeowner or financial institution to provide notification that the property requires maintenance. If the property is not maintained following the initial request, issuing a notice of violation, scheduling a hearing with the Code Compliance Hearing Officer can take many months.

On February 14, 2013, Council gave direction to the Village Manager to further research superior methods to address distressed properties and to meet with a representative of Federal Property Registration Corp. On April 11, 2013, the Village Manager scheduled a representative of that firm to provide a presentation to Council. Following that presentation, Council gave direction to move forward with the process which includes the creation of an ordinance to require the registration of properties with mortgages in default.

Council approved the proposed ordinance with a unanimous vote on April 25, 2013. Subsequent to first reading, a provision was added to Section 18-44 of the proposed ordinance; the addition is indicated by a double underline of the text in the attached document for ease of reference and is found at the top of page 5 of 10. The additional language in Section 18-44 clarifies that properties in default at the time of adoption of the ordinance would be subject to the ordinance in addition to those that are foreclosed subsequent to adoption of the ordinance.

Analysis:

Adoption of the proposed ordinance would provide a consolidated summary of procedures for the maintenance of distressed properties to be included in Chapter 18 of the Village Code. Registration of properties with mortgages in default would provide Village staff the means to establish a schedule for the monitoring of distressed property and to quickly contact the parties responsible in the event of overgrown lawns or other property maintenance requirements.

Through enforcement of the proposed ordinance, upon the issuance of a notice of default, the Lender would be required to perform an inspection of the property and within ten days of the inspection, register the property with the Village. The registration fee would be \$200.00 annually. Registration requirements would include a named Property Manager responsible for maintenance of the property and a 24-hour contact number for the responsible Property Manager. Submission of a No Trespass Affidavit enforceable by the Monroe County Sheriff's Office is also a requirement of the proposed ordinance.

Budget Impact:

The ordinance would establish a registration fee of \$200 annually for each distressed property in the registry. It is anticipated that the Village would enter into an agreement with a firm to provide the Village with the services required to identify and register vacant properties as well as provide assistance to Code Compliance officials. The funds collected for the registration are anticipated to cover the costs of Village Code Compliance efforts to maintain a distressed properties enforcement program.

Staff Impact:

Staff has prepared a resolution to approve an agreement with a firm to provide the distressed property registry and additional services to the Village.

The longer term impact to staff would be a reduction in time required to address distressed properties.

Recommendation:

It is recommended that the Village Council pass and adopt the proposed ordinance on second reading.

ORDINANCE NO.

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 18 “ENVIRONMENT” AND ESTABLISHING THEREIN ARTICLE III “DISTRESSED REAL PROPERTY” OF THE VILLAGE CODE; PROVIDING FOR ARTICLE III “NOISE” TO BE RENUMBERED ARTICLE IV; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Village Council of Islamorada, Village of Islands (the “Village”) finds that distressed properties, or property subject to a mortgage which is in default, may often facilitate situations causing neighborhood blight; and

WHEREAS, the Village Council finds that during this time of economic problems, neighborhoods should be protected from becoming blighted due to the lack of adequate maintenance and security of distressed properties or properties subject to mortgages which are in default; and

WHEREAS, the abandonment of real property due to foreclosure or a default in a mortgage often produces a situation in which mortgagees are left to tend for property and seldom closely supervise such property, thereby allowing the property to deteriorate; and

WHEREAS, the Village Council finds that mortgagees have an interest in maintaining the distressed real property or property subject to a mortgage which is in default; and

WHEREAS, the Village Council finds that, as provided for by this ordinance, the mortgagee’s registration of distressed real property will establish a contact person for the Village to address concerns regarding the maintenance and security of the real property; and

WHEREAS, the Village Council finds that it is in the public interest to address safety and aesthetic concerns and the economic order of the community, in order to assure that abandoned

or distressed real property subject to a mortgage will continue to be maintained and secured and that blight will not occur; and

WHEREAS, the Village Council finds that it is necessary to provide for a consolidated summary of procedures for the maintenance of distressed property as provided herein by amending Chapter 18 of the Village Code; and

WHEREAS, the Village Council of Islamorada, Village of Islands, Florida deems it to be in the best interest and welfare of the residents of the Village to prohibit the creation of public nuisances which pose a detriment to the community and to facilitate the abatement of such nuisances, as provided herein by amending Chapter 18 of the Village Code.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** Each of the above stated recitals is true and correct and is incorporated herein by this reference.

Section 2. **Amendment to Village Code.** That Chapter 18 “Nuisances” of the Islamorada Code of Ordinances is hereby amended to create Article III “Distressed Real Properties” to read as follows¹:

CHAPTER 18

~~ENVIRONMENT~~ **NUISANCES**

ARTICLE III. DISTRESSED REAL PROPERTIES.

Sec. 18-41. **Intent and Purpose.** It is the purpose and intent of this article to establish a process to address the deterioration and blight of village neighborhoods caused by abandoned, foreclosed or distressed real property located within the village, and to identify, regulate, limit and reduce the number of distressed properties located within the village. It is the village’s

¹ Additional text is shown as underlined; deleted text is shown as ~~strikethrough~~.

further intent to establish a registration program as a mechanism to protect neighborhoods from becoming blighted due to the lack of adequate maintenance and security of distressed and foreclosed properties.

Sec. 18-42. Definitions. The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Distressed Property means any real property located in the Village, whether vacant or occupied, that is in default on the mortgage; has had a lis pendens filed against it by the Lender holding a mortgage on the property, is subject to an ongoing foreclosure action to foreclose on a mortgage, or an application for a tax deed or pending tax assessors lien sale; has been the subject of a foreclosure sale where the title was retained by the Lender; or where ownership was transferred to the Lender or mortgagee by any legal method. The designation of a property as “Distressed” shall remain in place until such time the default on the mortgage is cured or the property has been sold to a new property owner who is not a Lender as defined in this section and the property is occupied under the new ownership.

Evidence of vacancy means 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 junk, trash or garbage, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

Legal Agent means an employee or designee of a Lender designated by the Lender for purposes of receiving legal notices relating to real property.

Lender means the owner and holder of a note and mortgage or other similar instrument that secures a debt upon the property and the servicer of said note and mortgage as well as the assignee of any rights or ownership acquired by the Lender in a foreclosure action or by any other means.

Property Manager means a local maintenance agent, property maintenance company or similar entity located within Monroe County north of the Seven Mile Bridge and south of the Miami-Dade County boundary line, responsible for the maintenance of distressed property.

Properly Secured means maintenance of a structure such that it is not accessible and shall include, but is not 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. Broken windows shall be secured by reglazing of the window.

Sec. 18-43. Establishment of a Registry/Fee. Pursuant to the provisions enumerated in Section 18-44, the Village Manager or designee shall establish a registry cataloging each Distressed Property within the Village, containing the information required by this Article.

a) The Village Manager or designee shall use the information collected in the registry to establish a schedule for the monitoring of Distressed Property located within the Village.

b) The Village shall charge an annual registration fee of two hundred dollars (\$200.00) for each Distressed Property to be listed in the registry. A new annual fee shall become due on the anniversary of the date that the Distressed Property was added to the registry or event requiring registration whichever occurred first. The annual registration fee may be subsequently changed or amended by resolution.

Sec. 18-44. Registration of real property. Upon default by the mortgagor, the issuance of a notice of default, or for properties currently subject to a notice of default or foreclosure proceedings, the Lender shall perform an inspection of the property that is the security for the mortgage. Within ten (10) days of the inspection, the Lender shall register the property with the Village Manager or designee on forms provided by the Village. The Lender shall indicate whether the property is vacant or occupied and provide evidence thereof. A separate registration is required for each Distressed Property.

a) The property shall be inspected by the Lender monthly until (1) the mortgagor or other party remedies the default, or (2) the property has been sold to a new property owner who is not a Lender as defined in this section and the property is occupied under the new ownership.

b) Properties subject to this Article shall remain under the annual registration requirement, and the inspection, security and maintenance standards enumerated in this Article as long as they remain subject to a notice of default or foreclosure proceeding, or until the property has been sold to a new property owner who is not a Lender as defined in this section and the property is occupied under the new ownership.

c) 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.

d) If during any inspection a previously occupied property is found to be vacant or shows evidence of vacancy the Lender shall, within ten (10) days of that inspection, update the registration to indicate such change in occupancy.

e) Registration pursuant to this section shall contain the property owner's name, the address of the property, the Monroe County Property Appraiser's folio number for the property, the Lender's name, the name of any Property Manager and Legal Agent of the Lender, the Lender's loan number and the name, address, telephone number, facsimile number, and email address for the Lender's Property Manager and Legal Agent. The Lender's Legal Agent and Property Manager may be the same person. The registration shall also contain the name and 24-hour contact telephone number of the Property Manager responsible for security and maintenance of the property. The Village may require such other information the Village deems necessary to fulfill the intent and purpose of this section.

f) A Lender's registration of a property shall constitute the consent of the Lender for the Village to enter the premises for inspection purposes in the limited circumstances defined in Section 18-45(a).

g) Within ten days of the date of a change in any of the information required by this section, the Lender shall update the registry to reflect the updated information, including the status of any foreclosure proceedings initiated by the Lender.

h) At such time that the property becomes vacant the mortgagee shall submit a No Trespass Affidavit with the Islamorada Branch of the Monroe County Sheriff's Office or assignee.

Sec. 18-45. Inspection.

a) The Village may physically enter the premises of a registered property in the normal course of property inspections under the same legal authority possessed by the Lender to enter upon such property, not more often than once every month, for the purpose of examining the property to ensure that the property is Properly Secured and is not a threat to the public

health, safety, and welfare. The Village shall notify the Property Manager of the date and time of the proposed inspection at least two (2) days prior to entering the property. The Lender's Property Manager may accompany the Village's inspectors during such inspection.

b) If the Village enters upon the premises of any Distressed Property for the purposes enumerated in this section, the Village shall be immune from prosecution or liability except for liability for negligence on the part of officials of the Village while conducting an inspection.

Sec. 18-46. Maintenance Requirements. In addition to any other responsible party, the Lender shall maintain all Distressed Properties as set forth in this section:

a) Properties shall be maintained in accordance with Sections 18-33 and 18-34 of the Village Code.

b) Properties shall not give the appearance that the property is vacant or distressed.

c) The property shall be maintained free of graffiti or similar markings.

d) Front, side, and rear yard landscaping shall be maintained in accordance with the Village Code applicable at the time registration was required.

e) All pools and spas shall comply with the barrier requirements of the Florida Building Code in force at the time of inspection of the property.

f) All properties, including pools, spas, ponds and buildings shall be maintained free of stagnant water, rubbish, debris, and all other objectionable, unsightly or unsanitary matter so as to prevent any condition wherein a property is or may reasonably become infested with or inhabited by rodents, vermin or wild animals, or may furnish a breeding place for mosquitoes, or threaten or endanger the public health, safety, or welfare, or may reasonably cause disease or adversely affect and impair the economic welfare of adjacent property.

g) The Village may issue notices requiring a Lender to correct any violations of the Village Code.

Sec. 18-47. Repair. In addition to the owner, the Village may notify the Lender or its agents, that the owner or Lender must correct a violation of Section 18-46 or the Village may correct the violation and impose an assessment lien on the property and foreclose on said lien as authorized in Chapter 2 and Chapter 18 of the Village Code. Making such repairs does not create a continuing obligation on the part of the Village to make further repairs or to maintain the property and does not create any liability against the Village for any damages to the property if such repairs were completed in good faith as set forth in Section 162.09(1), Florida Statutes.

Sec. 18-48. Enforcement. Nothing contained in this article shall prohibit the Village from enforcing its Code by any other means, including but not limited to the enforcement provisions of Chapter 2 of the Village Code and Chapter 162 Florida Statutes, a summons, a notice to appear in the County Court, an arrest, a civil action for injunctive relief, a stop work order, or demolition.

ARTICLE ~~III~~ IV. NOISE

Section 3. Repeal of Conflicting Provisions. The Provisions of the Village of Islamorada Code and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any sentence, section, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining

sentences, sections, clauses or phrases of the Ordinance but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Inclusion in the Code.** It is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Islamorada, Village of Islands, Florida Code of Ordinances; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 6. **Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

The foregoing Ordinance was offered by Vice Mayor Ted Blackburn, who moved for its adoption on first reading. This motion was seconded by Councilwoman Gillis, and upon being put to a vote, the vote was as follows:

Mayor Ken Philipson	YES
Vice Mayor Ted Blackburn	YES
Councilman Mike Forster	YES
Councilwoman Deb Gillis	YES
Councilman Dave Purdo	YES

PASSED on first reading this 25th day of April, 2013.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

The foregoing Ordinance was offered by _____, who moved for its adoption on second reading. This motion was seconded by _____, and upon being put to a vote, the vote was as follows:

**FINAL VOTE AT ADOPTION
VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS:**

Mayor Ken Philipson _____
Vice Mayor Ted Blackburn _____
Councilman Mike Forster _____
Councilwoman Deb Gillis _____
Councilman Dave Purdo _____

PASSED AND ADOPTED on second reading this ___day of ____, 2013.

KEN PHILIPSON, MAYOR

ATTEST:

ARIANA LAWSON, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF ISLAMORADA,
VILLAGE OF ISLANDS ONLY:

VILLAGE ATTORNEY