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CITY OF BOSTON

IN THE YEAR TWO THOUSAND EIGHT

AN ORDINANCE
REGULATING THE MAINTENANCE OF VACANT,
FORECLOSING RESIDENTIAL PROPERTIES

WHEREAS, Recent events in the housing market have led to a drastic rise in the number of foreclosed houses. In cities all over the nation, homes are being left empty as families are forced to move out. These homes are frequently retaken by banks, financial institutions and large real estate conglomerates that have little to no connection with the municipality in which they own property; *and*,

WHEREAS, Many of these homes are frequently vacated prior to the conclusion of the foreclosure process. Homes sit empty for months or years at a time awaiting foreclosure sale; often creating an attractive public nuisance. Some homes are in violation of multiple aspects of state and local building codes and sanitary codes. The mortgagees are large financial institution located out of state, making enforcement of the code very difficult; *and*,

WHEREAS, These code violations include, among multiple other violations, unoccupied buildings susceptible to vandalism and/or open structures rendering them unsafe and dangerous, yards full of litter and trash, unlocked houses, un-shoveled snow that renders sidewalks impassable, overgrown grass and bushes, and unsecured swimming pools that are not only a threat to children but become breeding grounds for infectious insects such as mosquitoes; *and*,

WHEREAS, This problem exists from California to Ohio to Massachusetts. Banks and other financial institutions are refusing to maintain properties, and municipal building inspectors have turned into investigators as they try to find out who the owners are and how to contact them to correct code violations; *and*,

WHEREAS Many other cities around the nation are facing similar problems and searching for solutions in order to keep up the quality of life for the residents. Escondido, CA gave its code enforcement department an extra one million dollars to ensure compliance. Chula Vista, CA has passed an ordinance requiring all financial institutions that foreclose on a property to register, to pay an administrative fee, and to appoint a local property maintenance company to maintain the property once a week. Many other municipalities are considering similar laws or regulations to address this issue; *and*,

WHEREAS, Claims have been filed in courts across the nation against these large institutions for housing code violations, resulting in courts in Buffalo and Cleveland to impose hefty fines and liens on these institutions. Although financial institutions have long been disconnected from the communities they serve and immune from responsibility, groups in Cleveland, Minneapolis, and other cities have filed lawsuits under novel legal theories, which force financial institutions to be responsible for these vacant properties. Some lenders argue that they are not responsible, but fail to address the fact that most mortgage contracts contain an abandonment and waste clause that grants them the authority to enter the property prior to foreclosure in order to secure and maintain the collateral, the home.

WHEREAS, In response to the foreclosure crisis, the state legislature enacted Chapter 206 of the Acts of 2007, which resulted in several amendments to the current law governing foreclosures. Among other things, Chapter 206 of the Acts of 2007 increases mortgage lender accountability during the mortgage note issuance and throughout the foreclosure process. These measures are commendable and compliment the provisions herein; *NOW,*

Be it ordained by the City Council of Boston, as follows that the City of Boston Code be amended by adding the following ordinance:

Regulating the Maintenance of Vacant and Foreclosing Residential Properties.

- (a) *Purpose.* It is the intent of this section to protect and preserve public safety, security, and quiet enjoyment of occupants, abutters, and neighborhoods by (i) requiring all residential property owners, including lenders, trustees, and service companies, to properly maintain vacant and/or foreclosing properties (ii) regulating the maintenance of vacant and/or foreclosing, residential properties to prevent blighted and unsecure residences.

The Commissioner of the Inspectional Services Department has enforcement authority pursuant to, *inter alia*, M.G.L. c. 143, s. 3, the State Building Code, and the Zoning Code of the City of Boston.

- (b) *Definitions.* When used in this section, unless a contrary intention clearly appears, the following terms shall have the following meanings:

City means City of Boston.

Commissioner means Commissioner of the Inspectional Services Department

Days means consecutive calendar days.

Foreclosing means the process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

"Initiation of the foreclosure process" means taking any of the following actions: (i) taking possession of a residential property pursuant to M.G.L. c.244, s. 1; (ii) delivering the Mortgagee's notice of intention to foreclose to the borrower pursuant to M.G.L. c. 244, s. 17B; or (iii) commencing a foreclosure action on a property in either the Land Court or Suffolk Superior Court.

Local means within twenty (20) driving miles distance of the property in question.

Mortgagee means the creditor, including but not limited to, service companies, lenders in a mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

Owner means every person, entity, service company, property manager or real estate broker, who alone or severally with others:

- (1) has legal or equitable title to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or
- (2) has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
- (3) is a mortgagee in possession of any such property; or
- (4) is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- (5) is an officer or trustee of the association of unit owners of a condominium. Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, this ordinance shall not apply to a Condominium Association created pursuant to M.G.L. c. 138A to the extent that such Association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the Association. Owner also means every person who operates a rooming house; or
- (6) is a trustee who holds, owns or controls mortgage loans for mortgage backed securities transactions and has initiated the foreclosure process.

Property means any real, residential property, or portion thereof, located in the City of Boston, including building or structures situated on the property. For purposes of this section only, property does not include property owned or subject to the control of the City or any of its' governmental bodies. Such property includes, but is not limited to, property owned or controlled by the Boston Redevelopment Authority, Boston Housing Authority, and Department of Neighborhood Development.

Residential Property means any property that contains one or more dwelling units used, intended, or designed to be occupied for living purposes.

Securing means measures that assist in making the property inaccessible to unauthorized persons.

Vacant means any property not currently legally occupied and not properly maintained or secured.

(c) Registration of Vacant and/or Foreclosing Residential Properties

Duty to Provide Written Notice of Vacant, Residential Property and/or Mortgage Foreclosure.

All owners must register vacant and/or foreclosing residential properties with the Commissioner of the Inspectional Services Department on forms provided by the Commissioner. All registrations must state the individual owner's or agent's phone number and mailing address located within the Commonwealth as required by M.G.L. c. 59, s. 57D, M.G.L. c. 156D, s. 5.02, and 950 CMR 113.20. The mailing address may not be a P.O. Box. This registration must also certify that the property was inspected and identify whether the property is vacant at the time of filing. If the property is vacant, the owner and/or registrant must designate and retain a local individual or local property management company responsible for the security and maintenance of the property. This designation must state the individual or company's name, phone number, and local mailing address. The mailing address may not be a P.O. Box. If the property is in the process of foreclosure, then the registration must be received within seven days of the initiation of the foreclosure process as defined in subsection (b). If the Commissioner determines that the property is vacant and that foreclosure proceedings have not been initiated, the registration must be received within fourteen days of the Commissioner's first citation for improper maintenance.

All property registrations are valid for one calendar year. An annual registration fee of one-hundred dollars and no cents (\$100.00) must accompany the registration form. Subsequent annual registrations and fees are due within thirty (30) days of the expiration of the previous registration and must certify whether the foreclosing and/or foreclosed property remains vacant or not.

Once the property is no longer vacant or is sold, the owner must provide proof of sale or written notice and proof of occupancy to the Commissioner of the Inspectional Services Department.

(d) Maintenance Requirements

Properties subject to this section must be maintained in accordance with the relevant Sanitary Codes, Building Codes, and local regulations concerning external and/or visible maintenance. The owner, local individual or local property management company must inspect and maintain the property on a monthly basis for the duration of the vacancy.

The property must contain a posting with the name and 24-hour contact phone number of the local individual or property management company responsible for the maintenance. This sign must be posted on the front of the property so it is clearly visible from the street.

Adherence to this section does not relieve the owner of any applicable obligations set forth in Code regulations, Covenant Conditions and Restrictions and/or Home Owners Association rules and regulations.

(e) *Inspections*

The Inspectional Services Department shall have the authority and the duty to inspect properties subject to this section for compliance and to issue citations for any violations. The Inspectional Services Department shall have the discretion to determine when and how such inspections are to be made, provided that their policies are reasonably calculated to ensure that this section is enforced.

(f) *Enforcement and Penalties.*

Failure to initially register with the Commissioner is punishable by a fine of three hundred dollars and no cents (\$300.00).

If applicable, failure to properly identify the name of the local individual or local property management company is punishable by a fine of three hundred dollars and no cents (\$300.00).

Failure to maintain the property is punishable by a fine up to three hundred dollars and no cents (\$300.00) for each week the property is not maintained.

All monies collected pursuant to this section shall be directed to a specific Inspectional Services Department enforcement fund.

(g) *Appeal.* Any person aggrieved by the requirements of this section may seek an administrative appeal to the Inspectional Service Department. Any person aggrieved by a final decision issued under this section by the Inspectional Services Department, may seek relief in any court of competent jurisdiction as provided by the laws of the Commonwealth.

(h) *Applicability.* If any provision of this section imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, by-law, order, or policy then the provisions of this section control.

(i) *Regulatory Authority.* The Commissioner of the Inspectional Services Department has the authority to promulgate rules and regulations necessary to implement and enforce this section.

(j) *Severability.* If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

(k) *Implementation.* The provisions of this section are effective immediately upon passage and all provisions shall be enforced immediately but no monetary fine shall be imposed pursuant hereto until ninety (90) days after passage.

(l) *Notice.* A copy of this ordinance is to be mailed to all owners of residential property located in the City of Boston. In addition, a copy of this ordinance is to be mailed to all loan institutions, banks, real estate offices, and management companies located in and/or having legal or equitable interest in residential property located in the City of Boston.

