



Legislation Details (With Text)

File #: 080871 **Version:** 2

Type: Ordinance **Status:** Passed

File created: 10/7/2008 **In control:** ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE

On agenda: **Final action:** 12/16/2008

Effective date:

Title: A substitute ordinance regulating the maintenance of abandoned residential properties pending foreclosure and during foreclosure proceedings.

Sponsors: ALD. MURPHY, ALD. BOHL, ALD. WADE, ALD. BAUMAN

Indexes: FORECLOSURES

Attachments: 1. Fiscal Note, 2. Summary of Legislation Provided by the Legislative Reference Bureau, 3. Opinion - Boardman Law Firm on Behalf of Wisconsin Bankers Association, 4. Standard Wisconsin Fannie Mae/Freddie Mac Mortgage Form, 5. Letter from Boardman Law Firm on Behalf of the Wisconsin Bankers Association, 6. Letter from Wells Fargo Home Mortgage, 7. Comments of Tim Elverman, 8. Hearing Notice List, 9. Notice Published on 1-7-09

Date	Ver.	Action By	Action	Result	Tally
10/7/2008	0	COMMON COUNCIL	ASSIGNED TO		
10/10/2008	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/10/2008	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/10/2008	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/10/2008	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/14/2008	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
10/21/2008	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
10/21/2008	0	CITY CLERK	Sponsor added		
10/21/2008	0	CITY CLERK	Sponsor added		
12/4/2008	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
12/5/2008	0	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
12/9/2008	2	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	5:0
12/9/2008	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	AMENDED	Pass	5:0
12/9/2008	1	ZONING, NEIGHBORHOODS & DEVELOPMENT COMMITTEE	SUBSTITUTED	Pass	5:0
12/10/2008	1	CITY CLERK	DRAFT SUBMITTED		
12/10/2008	2	CITY CLERK	DRAFT SUBMITTED		

12/16/2008	2	COMMON COUNCIL	PASSED	Pass	15:0
12/23/2008	2	MAYOR	SIGNED		
1/7/2009	2	CITY CLERK	PUBLISHED		

080871
SUBSTITUTE 2

ALD. MURPHY, BOHL, WADE AND BAUMAN

A substitute ordinance regulating the maintenance of abandoned residential properties pending foreclosure and during foreclosure proceedings.

200-22.5 cr

200-33-47 cr

This ordinance establishes a process requiring parties with a mortgage lien interest in residential property to inspect the property when a foreclosure action has been initiated, if upon inspection the property is determined to be abandoned the ordinance requires registration of the property with the commissioner of neighborhood services. The fee for registration is \$35. A late fee of \$10 is charged when registration occurs more than 5 days after inspection and a determination of abandonment made. A further late fee of \$10 is charged when the initial registration fee is not paid within 7 days of filing the registration information.

Definitions are provided including a definition of “abandoned residential property.” A description is provided of the evidence that may be considered in reaching a conclusion that residential property has been abandoned.

Minimum requirements are established for registrants in securing and maintaining the premises of abandoned properties that include assuring that structures will not be accessible to unauthorized persons, hazards are removed or abated, and external conditions that contribute to neighborhood blight are removed or abated. These external conditions include snow and ice removal from public sidewalks, control of weeds and overgrown bushes, removal of litter and trash, and graffiti abatement. Interpretation of these requirements shall be guided, where applicable, by the regulations, instructions and other requirements of the Federal Housing Administration (FHA) of the United States Department of Housing and Urban Development (HUD) for the preservation and protection of residential properties that secure FHA-insured loans.

Parties required to register abandoned residential properties are also held responsible for certain specified ordinance violations that apply to persons who own or control real property upon receipt of an order from the commissioner of neighborhood services identifying a condition of the property that constitutes an immediate threat to the health, welfare and safety of the public.

A penalty is provided for failure to inspect in an amount not less than \$250 nor more than \$1,000, and, in default of payment, imprisonment for not less than 10 days nor more than 40 days. A penalty for failure to register is provided in an amount not less than \$500 nor more than \$2,000, and in default of payment, imprisonment not less than 20 days nor more than 80 days. A penalty is provided for failure to secure or maintain the premises in an amount not less than \$350 nor more than \$1,500, and, in default of payment, imprisonment not less than 14 days nor more than 60 days. A penalty is provided for failure to maintain records or to provide required notices in an amount not less than \$100 nor more than \$500, and in default of payment, imprisonment not less than 4 days nor more than 20 days.

Whereas, Events in national and local residential housing markets have resulted in significant increases in mortgage loan defaults and in foreclosures on residential properties; and

Whereas, Increased numbers of defaults and foreclosures have resulted in increased numbers of vacant, abandoned and otherwise unoccupied homes in the City of Milwaukee and elsewhere; and

Whereas, Vacant and abandoned residential properties contribute to a decline in assessed values of properties adjacent and near to an abandoned residence, create an increased risk of fire, offer opportunities for crime including drug-trafficking and vandalism, often constitute an attractive public nuisance, and, when neglected, threaten the health, safety and welfare of neighborhoods due to accumulation of litter, trash weeds and overgrown bushes, infestation by insects and other vermin, and the dangers of unshoveled snow and ice; and

Whereas, Residential premises facing foreclosure may be vacant for many months and even years, and often accumulate building code violations which the legal owners, though unavailable, are responsible to remedy and for which the legal owners remain liable; and

Whereas, Banks, lenders and other financial institutions, their agents and servicing companies, generally have rights or responsibilities to secure and preserve properties constituting the collateral for loans in default, and to prevent wastage; and

Whereas, Banks, lenders and other financial institutions with interests in residential properties are increasingly disconnected from the communities they serve and are often based or headquartered in states other than Wisconsin or even in foreign countries; and

Whereas, The practice of “bundling,” transferring, and “securitizing” loan and mortgage documents has contributed to difficulties in identifying and locating parties that assert a legal interest in residential properties as collateral for a loan that is in default; and

Whereas, In some instances involving residential mortgage loan defaults, the bank, lender, other financial institution, or their agent or servicing company, fails to adequately secure a vacant and abandoned premises and to keep the premises free from wastage, thereby resulting in deterioration of the premises and contributing to neighborhood blight and other conditions that threaten health, safety and welfare; and

Whereas, Section 62.11(5), Wis. Stats., and ss. 4-03 and 4-10, Milwaukee city charter, empower the common council to act for the government and good order of the city, for its commercial benefit, and for the health, safety and welfare of the public; now therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 200-22.5 of the code is created to read:

200-22.5. Maintenance of Abandoned Residential Properties Pending Foreclosure.

1. PURPOSE AND SCOPE. 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.

2. DEFINITIONS. In this section:

a. "Abandoned property" or "abandoned premises" means a property that is vacant as the result of the relinquishment of possession or control by a mortgager or the mortgager's assigns whether or not the mortgager or mortgager'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.

b. "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.

c. "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.

d. "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.

e. "Foreclosure" means the judicial process prescribed by ch. 846, Wis. Stats., and the process for non-judicial sale authorized by a power of sale clause in a mortgage document.

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

g. "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.

h. "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.

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

3. INSPECTION OF RESIDENTIAL PROPERTY. a. Initial Inspection. Whenever a bank, lender or other financial institution shall directly, or through an agent or servicing company, initiates 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.

4. REGISTRATION OF ABANDONED RESIDENTIAL PROPERTY. a. If, upon inspection of residential property required by sub. 3, 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 commissioner on a form prescribed by the commissioner 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 sub. 5-a.

b. Registration of abandoned property shall be made within 5 working days of inspection. The fee for registration of abandoned residential property is prescribed in s. 200-33-47-a. If it should appear that the registration is filed 6 or more days after the inspection, a late fee will be charged as prescribed in s. 200-33-47-b. The registration form and fee may be transmitted electronically or by any other means to be determined by the commissioner. The registration shall be valid from the date the registration form is completed and filed with the commissioner if the registration fee is received by the commissioner 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, a late fee will be charged as prescribed in s. 200-33-47-b.

c. The registration will be dissolved and considered void upon receipt by the commissioner 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. The commissioner may, in appropriate circumstances, provide for conversion of the registration required in this subsection to a registration of residential property as provided in s. 200-51.5.

5. REGISTRANT DUTIES. a. The property maintenance duties of a registrant are limited to the following: a-1. Assuring that there are no accessible structures on the premises.

a-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 commissioner 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 commissioner within 10 days, the registrant, or party with a duty to register, shall be held liable and punished in the same manner and to the same extent as the owner of the property if the unabated condition is found to be in violation of the following:

b-1. Section 79-12. Littering of Premises.

b-2. Section 79-13. Sidewalks to be Kept Clean.

b-3. Section 80-13. Odors from Privy Vaults, Drains, Sewers.

b-4. Section 80-17. Hay Fever Weeds, etc.

b-5. Section 80-31. Breeding Place for Flies.

b-6. Section 80-49. Nuisance Vehicles.

b-7. Section 105-16. Icicles on Buildings.

b-8. Section 214-11. Storing of Fuel in a Dwelling.

b-9. Section 214-12. Securing of Pressurized Gas Cylinders.

b-10. Section 217-13-4. Locks.

b-11. Section 236-41. Hazardous Substance Spills.

b-12. Section 275-32-7. Vacant Structures; Boarding

b-13. Section 275-35. Graffiti Abatement.

b-14. Section 275-81-5. Maintenance Of Premises.

b-15. Section 275-81-6. Rat Harborages.

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 commissioner 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 Wisconsin including guidelines related to winterization and heating systems. Under these guidelines, debris removal shall be deemed to include snow and ice removal, the elimination of weeds and other plant growths in s. 80-17. The commissioner 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 by sub. 3-b 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 commissioner or commissioner's designee upon request.

e. A registrant, or registrant's agent or servicing company, shall provide notice to the commissioner, in a manner to be prescribed by the commissioner, 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. Upon receipt of the notice required in this paragraph, the commissioner shall dissolve the registration.

6. 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 under sub. 3 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 in the house of correction or county jail of Milwaukee county 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 under sub. 4 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 in the house of correction or county jail of Milwaukee county 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 under sub. 5-a and b 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 in the house of correction or county jail of Milwaukee county 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 required in sub. 5-d or to provide the notices required in sub. 5-e 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 in the house of correction or county jail of Milwaukee county not less than 4 days nor more than 20 days.

Part 2. Section 200-33-47 of the code is created to read:

200-33. Fees.

47. REGISTRATION OF ABANDONED RESIDENTIAL PROPERTY. a. The fee for registration of an abandoned residential property required by s. 200-22.5-4 shall be \$35.

b. If a completed registration form is not received by the commissioner within 5 days of inspection and a determination of abandonment of residential property, or if the registration fee required in par. a is not received by the commissioner within 7 days of receipt of the registration form, there shall be an additional late fee of \$10.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

Department of Neighborhood Services

LRB08398-5

RLW

12/9/2008

Clerical corrections -- jro -- 01/12/09