



CITY COUNCIL REPORT

DATE: May 12, 2009

TO: Honorable Mayor and City Council

FROM: John Szerlag, Acting City Manager
Brian Murphy, Assistant City Manager/ Economic Development Services
Mark Stimac, Director of Building & Zoning

SUBJECT: City of Farmington
Abandoned Residential Property Registration Ordinance

Background:

- The maintenance of structures within the City of Troy is regulated by a number of ordinances of the City Code. This includes Property Maintenance Ordinance, Litter Ordinance, Weed Ordinance, Nuisance Ordinance, and Fire Prevention Code. City Council asked that we look at the abandoned property registration ordinance that the City of Farmington has recently adopted to see if there is a need or desire to adopt similar language in the City of Troy Ordinances. A copy of the ordinance is attached for your reference.

In general most of the provisions contained within the Farmington Ordinance are currently contained within the Troy Ordinances in one form or another with the exception of three items. The first is a requirement that the owners of vacant properties must annually and within 10 days of ownership or vacancy of a home, register their ownership of a vacant residential property. Their fee for this registration is \$250 per calendar year. Owners that fail to register can be fined in addition to the cost of registration. We have a requirement that the ownership of vacant property be registered with the City within 60 days, however, we do not charge a fee for such registration.

The second is a requirement that the properties be maintained to a "neighborhood standard". This requires the properties to be maintained to a level equal to the standard on a majority of homes within 300' of the subject home. Even though there may be homes within that 300' distance that are legally maintained to a lesser standard, the vacant home would be required to be maintained to this potentially higher average standard. We apply the same minimum standard to all homes regardless of their state of occupancy.

The third requirement is for a new Certificate of Occupancy to be issued before a vacant home can be re-occupied. This is regardless of whether there were any conditions at the home that

would make a previous certificate invalid. We would only require a new certificate of occupancy if the previous certificate was deemed to be invalid due to the conditions of the structure.

In general, we believe that the current City of Troy Ordinances sufficiently address the conditions of homes within the City of Troy and will be further enhanced when the new edition of the Property Maintenance Code is adopted by City Council.

We will be happy to discuss this matter further if you desire.

STATE OF MICHIGAN
CITY OF FARMINGTON
ORDINANCE NO. C-740-2009

**AN ORDINANCE TO AMEND THE FARMINGTON CITY CODE,
CHAPTER 19, NUISANCE, TO ADD A NEW ARTICLE, ARTICLE IX,
“ABANDONED RESIDENTIAL PROPERTY REGISTRATION AND
MAINTENANCE”**

THE CITY OF FARMINGTON ORDAINS:

Section 1 of Ordinance

Chapter 19, Nuisance, of the Farmington Code of Ordinances, is hereby amended to add Article IX, Abandoned Residential Property Registration and Maintenance,” to read as follows:

Section 19-200. Purpose.

It is the purpose and intent of the City of Farmington through the adoption of this ordinance, to establish an abandoned residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

Section 19-201. Definitions.

For the purposes of this ordinance, certain words and phrases are defined as follows:

- A. “Abandoned” means a property that is vacant and is under a current complaint for foreclosure or notice of foreclosure and/or notice of trustee’s sale, pending tax sale, and/or properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.
- B. “Accessible property” means a property that is accessible through a compromised/breached gate, fence, wall, etc.
- C. “Accessible structure” means a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by unauthorized persons.
- D. “Agreement” means any agreement or written instrument which provides that title to residential property shall be transferred or conveyed from one owner to another owner after the sale, trade, transfer, or exchange.

- E. “Assignment of rents” means an instrument that transfers the beneficial interest under a mortgage from one lender/entity to another.
- F. “Beneficiary” means a lender under a note secured by a mortgage.
- G. “Buyer” means any person, co-partnership, association, corporation, or fiduciary who agrees to transfer anything of value in consideration for property described in an agreement of sale, as defined in this subsection.
- H. “Dangerous building” means any building/structure that is in violation of any condition referenced in Chapter 19, Article II of the City Code.
- I. “Days” means consecutive calendar days.
- J. “Deed in lieu of foreclosure/sale” means a recorded document that transfers ownership of a property from the trustor to the holder of a mortgage upon consent of the beneficiary of the mortgage.
- K. “Default” means the failure to fulfill a contractual obligation, monetary, or conditional.
- L. “Distressed” means a property that is under a current notice of default and/or notice of trustee’s sale and/or pending tax assessor’s lien sale or has been foreclosed upon by the trustee or has been conveyed to the beneficiary/trustee via a deed in lieu of foreclosure/sale.
- M. “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 include, but are not limited to, overgrown and/or dead vegetation, accumulation of newspapers, circulars, flyers and/nor mail, past due utility notices and/or disconnected utilities, accumulation of trash, junk and/or debris, the absence of window coverings such as curtains, blinds and/or shutters, the absence of furnishings and/or personal items consistent with residential habitation, statements by neighbors, passersby, delivery agents, government employees that the property is vacant.
- N. “Foreclosure” means the process by which a property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the trustor (borrower) defaults.
- O. “Local” means within 40 road/driving miles distance of the subject property.
- P. “Mortgage” means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan.
- Q. “Neighborhood standard” means those conditions that are present on a simple majority of properties within a 300-foot radius of an individual property. A property that is the subject of a neighborhood standard comparison, or any other abandoned property within the 300-foot radius, shall not be counted toward the simple majority.

- R. “Out of area” means in excess of 40 road/driving miles distance of the subject property.
- S. “Owner” means any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property.
- T. “Owner of record” means the person having recorded title to the property.
- U. “Property” means any unimproved or improved real property, or portion thereof, situated in the Township and includes the buildings or structures located on the property regardless of condition.
- V. “Residential building” means any improved real property, or portion thereof, situated in the City, designed, or permitted to be used for dwelling purposes, and shall include the buildings and structures located on such improved real property. This includes any real property being offered for sale, trade, transfer, or exchange as “residential” whether or not it is legally permitted and/or zoned for such use.
- W. “Secure” or “secured” means such measures as may be directed by the City of Farmington Code Official or his or her designee that render the property inaccessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/padlocking of gates, and the repair or boarding of doors, broken windows and/or other openings. In the case of broken windows, securing means the reglazing or boarding of the window. Boarding shall be completed to a minimum of the current HUD securing standards at the time the boarding is completed or required. In addition, “secure” or “secured” means closing and locking windows, doors (walk-through, sliding and garage), gates and any other opening of such size that it may allow a person to access the interior of a property and/or structure(s).
- X. “Trustee” means the person, firm, or corporation holding a mortgage on a property.
- Y. “Trustor” means a borrower under a mortgage, who deeds property to a trustee as security for the payment of a debt.
- Z. “Vacant” means a building/structure that is not legally occupied.

Section 19-202. Registration.

Any beneficiary/trustee, who holds a mortgage on a property located within the City, shall perform an inspection, to the extent permitted by law or under the mortgage, of the property that is the security for the mortgage, upon default by the trustor, within five (5) days after either filing a complaint for foreclosure (if foreclosure is by judicial action) or publishing a notice of foreclosure (if foreclosure is by advertisement). If the property is found to be vacant or shows evidence of vacancy, it is, by this ordinance, deemed abandoned and the beneficiary/trustee shall, within 10 days of the inspection, register the property with the City of Farmington Code Official head or his or her designee on forms provided by the City.

If the property is occupied but remains in default it shall be inspected, to the extent permitted by law and the mortgage, by the beneficiary/trustee, or his designee, monthly until (1) the trustor or other party remedies the default or (2) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the trustee shall, within 10 days of that inspection, register the property with the City of Farmington Code Official head or his or her designee on forms provided by the City.

In either case the registration shall contain the name of the beneficiary/trustee (corporation or individual), the direct street/office mailing address of the beneficiary/trustee (no P.O. boxes), a direct contact name and phone number for the beneficiary/trustee and, in the case of a corporation or out-of-area beneficiary/trustee, the local property management company responsible for the security, maintenance, and marketing of the property. Registration fees will not be prorated.

An annual registration fee shall accompany the registration form. The fee and registration shall be valid for the calendar year, or remaining portion of the calendar year, in which the registration was initially required. Subsequent registrations and fees are due January 1st of each year and must be received no later than January 31st of the year due.

This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. Such properties shall be registered with the City in accordance with the terms of this section upon transfer even if occupied at the time of the transfer.

Properties subject to this ordinance shall remain under the annual registration requirement, security, and maintenance standards of this section as long as they remain vacant.

Any person, firm, or corporation that has registered a property under this ordinance must report any change of information contained in the registration to the City of Farmington Building Department within 10 days of the change.

Section 19-203. Maintenance requirements.

Vacant and abandoned properties subject to this section shall be, in comparison to the neighborhood standard, kept free of weeds, dry bush, 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, printed material or any other items that give the appearance that the property is abandoned.

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

Visible front and side yards shall be landscaped and maintained to the neighborhood standard at the time registration was required. Landscape includes, but is not limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Landscape does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch, indoor-outdoor carpet or any similar material.

Maintenance includes but is not limited to regular watering, irrigation, cutting, pruning, and moving of required landscape and removal of all trimmings.

Pools and spas shall be kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry. In either case properties with pools and/or spas must comply with the minimum security fencing requirements of the State of Michigan.

Adherence to this section does not relieve the beneficiary/trustee or property owner of any obligations set forth in any covenants, conditions, and restrictions and/or homeowners' association rules and regulations which may apply to the property.

Section 19-204. Security requirements.

Properties subject to this section shall be secured so as not to be accessible to unauthorized persons.

If the property is owned by a corporation and/or out-of-area beneficiary/trustee/owner, a local property management company shall be contracted to perform weekly inspections to verify that the requirements of this section, and any other applicable laws, are being met.

The local property management company shall inspect the property on a weekly basis to determine if the property is in compliance with the requirements of this ordinance.

Section 19-205. Additional authority.

In addition to the enforcement remedies established in this Chapter 19 or in Chapter 24 of the City of Farmington Code of Ordinances, the City of Farmington Code Official head or his or her designee shall have the authority to require the beneficiary/trustee/owner 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 securing any/all door, window, or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard or other measures as may be reasonably required to arrest the decline of the property.

Section 19-206. Fees.

The fee for registering an abandoned residential property shall be set by resolution of the City of Farmington.

Section 19-207. Right of Entry.

If the owner has failed to secure a property and it has been secured by the City, the City and/or its contracted agent, may enter or re-enter the structure to conduct necessary inspections to assure compliance with the requirements of this Code and to determine if there are emergency or hazardous health and safety conditions in existence.

Section 19-208. Re-Occupancy.

An abandoned residential structure shall not be occupied until a Certificate of Occupancy has been issued by the City, and all violations have been corrected in accordance with the applicable requirements of the Michigan Building/Residential Code, Michigan Electrical Code, Michigan Mechanical Code, Michigan Plumbing Code, International Property Maintenance Code and applicable provisions of the City of Farmington Code of Ordinances. All mechanical, electrical, plumbing, and structural systems shall be certified by a licensed contractor as being in good repair. In addition, a Certificate of Occupancy shall not be issued until all outstanding costs, assessments and/or liens owed to the City have been paid in full.

Section 19-209. Violation/Abatement.

Violations of this ordinance shall be treated as a strict liability offense regardless of intent. Violations of this ordinance may be enforced as allowed in Chapter 24, Property Maintenance, of the City of Farmington Code of Ordinances. Alternatively, at the sole discretion of the City, the City may issue to the beneficiary/trustee/owner and/or owner of record a Notice to Abate. The Notice to Abate shall include:

- (1) The nature and location of the violation;
- (2) The time within which the violation must be abated;
- (3) Notice that the City may act to abate the violation if it is not abated by the owner within a reasonable time stated in the Notice, but which may not exceed fifteen (15) days;
- (4) Notice that the cost of such action by the City, plus an administrative fee, shall be a personal debt of the owner, which may be assessed as a lien against the property until paid; and
- (5) Notice that any refusal to allow the City to abate an uncorrected violation shall be a separate violation under this Code.

Section 19-210. Authorization for City Abatement.

Upon failure of a beneficiary/trustee/owner and/or owner of record to abate a violation as ordered in a Notice to Abate, the City may abate the nuisance. This abatement may be performed by the City, by a contract vendor, or by other means determined by the City.

Section 19-211. Administrative Fees.

The fees necessary for the administration of this Article and authorized by Section 19-213 shall be established from time to time by resolution of the City Council. Such administrative fees shall include the following:

- (1) Notice to Abate;
- (2) Search Warrant;
- (3) Contact Request or Warning of Abatement Action;
- (4) Warning Letter;
- (5) Civil Infraction Preparation;
- (6) Additional Inspections;
- (7) Vending;
- (8) Second and Subsequent Vending;
- (9) Vehicle Removal;
- (10) Second and Subsequent Vehicle Removal; and
- (11) Denied Entry.

Section 19-212. Charge to Owner.

When the City has abated a cited nuisance, the cost of abatement, plus any applicable administrative charges as established by City Council resolution, shall be billed to the property owner. Such billing shall be a personal debt of the owner to the City, which may be assessed as a lien against the property, including interest thereon, until paid.

Section 19-213. Appeals.

Any person aggrieved by any of the requirements of this section may appeal to the City Council of the City of Farmington, provided that a written application for appeal is filed within 20 days after the day the decision, notice, or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, the requirements of this code are adequately satisfied by other means, or the strict application of any requirement of this code would cause an undo hardship.

Section 19-214. Penalty.

Violation of this Article is a civil infraction.

Section 2 of Ordinance

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3 of Ordinance

That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 4 of Ordinance

That nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 3 of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 5 of Ordinance

That the City Clerk is hereby ordered and directed to cause this ordinance to be published in a newspaper in general circulation in the City.

Section 6 of Ordinance

That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect upon publication.

Motion by Councilmember McShane, seconded by Councilmember Wiggins.

Ayes: Knol, McShane, Wiggins, Wright, Buck.
Nays: None.
Abstentions: None.
Absent: None.

MADE, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FARMINGTON, OAKLAND COUNTY, MICHIGAN, ON THE 6th DAY OF APRIL, 2009.

CITY OF FARMINGTON

VALERIE S. KNOL, Mayor

SUSAN K. HALBERSTADT, Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

I, the undersigned, the qualified and acting City Clerk of the City of Farmington, Oakland County, Michigan, do certify that the foregoing is a true and complete copy of the Ordinance adopted by the City Council of the City of Farmington at a meeting held on the 6th day of April 2009, the original of which is on file in my office.

SUSAN K. HALBERSTADT, City Clerk
City of Farmington

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