



Legislation Text

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There will likely be a small increase in General Fund revenues derived from new fees for registration of abandoned properties and potential forfeitures for violations. Administration of the abandoned property registry and associated activities can likely be accommodated within existing staff resources, depending on the number of such properties that may ultimately be registered.

Creating Section 27.10 of the Madison General Ordinances to require persons asserting a collateral or other legal or equitable interest in a residential property to register such property with the City if the property is abandoned and to require said persons to inspect, maintain and secure such properties to promote public health, safety and welfare of the immediate neighborhood and the community.

DRAFTER'S ANALYSIS: Vacant and abandoned residential buildings are a major cause and source of blight in neighborhoods when they are not maintained or secured. Abandoned residential buildings attract vagrants and criminal activity and are extremely vulnerable to others using the property without authorization. Frequently persons asserting a collateral or other legal or equitable interest in a residential property (primarily banks and lending institutions) decline to take responsibility for the property during foreclosure proceedings even after they have been made aware that the property has been abandoned. This ordinance is intended to reduce and prevent neighborhood blight, to ameliorate conditions that threaten the public health, safety and welfare and promote neighborhood stability by requiring those persons asserting collateral, legal or equitable interests in a property to inspect, register, maintain and secure the property if the property is abandoned. This ordinance is modeled after similar ordinances that have been adopted in many cities around the country, including Milwaukee, Wisconsin; San Diego, Chula Vista, Riverside, Inglewood and Palmdale, California; Aurora, Colorado; Richmond, Virginia; and Fort Lauderdale, Florida.

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The Common Council of the City of Madison do hereby ordain as follows:

Section 27.10 entitled "Maintenance of Abandoned Residential Properties Pending Foreclosure" of the Madison General Ordinances is created to read as follows:

**"27.10 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

- (2) Definitions.
  - "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. If there is no direct knowledge of abandonment by the bank, lender or financial institution, 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.

"Accessible Structure" means a building or structure 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.

"Agent" means a person, firm or other entity that 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.

"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.

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

"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.

"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.

"Property" means any unimproved or improved real property or portion thereof, situated in the City and includes the buildings or structures located on the property regardless of condition.

"Registrant" means the person or entity required to register a property under sub. (4) of this ordinance.

"Residential" means any property or portion thereof, situated in the City, designed or permitted to be used for dwelling purposes, and shall include all buildings and structures located on such 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.

"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.

"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, initiate foreclosure proceedings by filing a summons and complaint in Dane County Circuit Court 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 thirty (30) days from the date of notice and in no event later than thirty (30) days after the filing of the summons and complaint. 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 thirty (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 is 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 Building Inspection Division of the Department of Planning and Community and Economic Development ("Building Inspection Division) on a form prescribed by the Building Inspection Division that includes, but is not limited to:

1. Information identifying the location of the property, the last known owner or owners of the property, last known contact information for owners including address(es), phone number(s) and/or email address(es)
2. 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.
3. Name of bank, lender or financial institution (corporation or individual); the street/office address (not a post office box) and if different, the mailing address; a direct contact name and phone number for the person handling the foreclosure; and if applicable, the name, address and phone number of a local property manager responsible for the security and maintenance of the property.
4. Identification of 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 five (5) working days of inspection. The fee for registration of abandoned residential property is \$250. If it should appear that the registration is filed six (6) or more days after the inspection, a late fee of fifty dollars (\$50) shall be charged. The registration form and fee may be transmitted electronically or by any other means to be determined by the Building Inspection Division. The registration shall be valid from the date the registration form is completed and filed with the Building Inspection Division if the registration fee is received by the Building Inspection Division within seven (7) days of receipt of the registration form. If the registration fee is not received within seven (7) days of receipt of the registration form, a late fee of fifty dollars (\$50) shall be charged.

(c) The registration will be dissolved and considered void upon receipt by the Building Inspection Division 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 Building Inspection Division may, in appropriate circumstances, provide for conversion of the registration required in this subsection to a registration of residential property as provided in Sec. 27.05(2)(k), MGO.

(d) Any person, firm or corporation required to register a property pursuant to this section must report any change of information contained in the registration within ten (10) days of the change.

(5) Registrant Duties.

(a) The property maintenance duties of a registrant are limited to the following:

1. Secure the property in a manner to prevent access by unauthorized persons, including but not limited to the following; the closure and locking of windows, doors (walk-through, sliding and garage), gates and any other opening of such size that it may allow a child to access the interior of the property and or structure(s). In the case of broken windows, securing means the replacement or boarding of the window.
2. Assure 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, eutrophic water, and maintaining public walkways and thoroughfares free from ice, snow, mud and other debris consistent with the requirements of Chapter 27, Minimum Housing Code.
3. Keeping the property 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.
  4. All yards shall be landscaped and maintained in accordance with Chapter 27, Minimum Housing Code.
- (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 Building Inspection Division 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 Building Inspection Division within ten (10) days unless the violation is subject to the summary abatement process, 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:
1. Sec. 10.28, MGO, Snow and Ice Removal from Sidewalks.
  2. Sec. 27.05, MGO, Maintenance of Premises.
  3. Sec. 27.05(2)(b), MGO, Noxious Weeds.
  4. Sec. 27.05(2)(c), MGO, Exterior property areas shall be free from physical hazards.
  5. Secs. 27.05(2)(c) and 27.05(3)(b)4., MGO, Littering of Premises.
  6. Sec. 27.05(2)(j), MGO, Plumbing Fixtures and Waste Pipes.
  7. Sec. 27.05(2)(v), MGO, Graffiti Abatement.
  8. Secs. 27.05(3)(b)4 and 27.05(2)(c), MGO, Rodent Harborages.
  9. Sec. 27.085, MGO, Vacant Structures; Securing.
  10. Sec. 28.141(10)(d), MGO, Inoperable Vehicles.
- (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 Building Inspection Division 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 Chapter 27, Minimum Housing Code. The Building Inspection Division may require a registrant, or party with a duty to register, to repay the Building Inspection Division the reasonable costs incurred by the Building Inspection Division 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 Building Inspection Division upon request.

- (e) A registrant, or registrant's agent or servicing company, shall provide notice to the Building Inspection Division, in a manner to be prescribed by the Building Inspection Division, within fifteen (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 fifteen (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 Building Inspection Division 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 two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), together with the cost of the action, and in default of payment thereof may be imprisoned in the Dane County Jail not less than ten (10) days nor more than forty (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 five hundred dollars (\$500) nor more than two thousand dollars (\$2,000), together with the cost of the action, and in default of payment thereof may be imprisoned in the Dane County Jail not less than twenty (20) days nor more than eighty (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 subs. (5)(a) and (b) shall, upon conviction, forfeit not less than three hundred fifty dollars (\$350) nor more than fifteen hundred dollars (\$1,500), together with the cost of the action, and in default of payment thereof may be imprisoned in the Dane County Jail not less than fourteen (14) days nor more than sixty (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 one hundred dollars (\$100) nor more than five hundred dollars (\$500), together with the cost of the action, and in default of payment thereof may be imprisoned in the Dane County Jail not less than four (4) days nor more than twenty (20) days.”