ORDINANCE NO. 2019-05

ORDINANCE OF THE CITY OF WEST MIAMI, FLORIDA, CREATING CHAPTER ENTITLED "ABANDONED REAL AND COMMERCIAL PROPERTY" TO INCLUDE BUT NOT BE LIMITED TO PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR NOTIFICATION PROCEDURES; PROVIDING FOR REGULATIONS FOR ABANDONED REAL AND COMMERCIAL PROPERTIES; PROVIDING FOR THE REGISTRATION OF ABANDONED REAL PROPERTY; PROVIDING FOR MAINTENANCE AND INSPECTION REQUIREMENTS; PROVIDING FOR SECURITY REQUIREMENTS; AND PROVIDING FOR PENALTIES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is important for the City of West Miami (hereinafter referred to as "City") to establish a process to address the amount of abandoned real and commercial properties within the City; and

WHEREAS, the City recognizes an increase in the number of vacant and abandoned properties located throughout the City; and

WHEREAS, the presence of vacant and abandoned properties can lead to a decline in property value, create attractive nuisances and lead to general decrease in neighborhood and community aesthetic; and

WHEREAS, the current conditions of vacant and abandoned properties present a serious threat to the public health and safety of the community; and

WHEREAS, the presence of vacant and abandoned properties may discourage buyers from purchasing property within the City; and

WHEREAS, many vacant and abandoned properties are the responsibility of out-of-state lenders and trustees who fail to adequately secure and maintain such properties; and

WHEREAS, the City Commission deems it to be in the City's best interests to create a new chapter related to abandoned real and commercial properties on public and private lands and to include the maintenance of abandoned real property as well; and

WHEREAS, the City has a vested interest in protecting the City against the decay caused by vacant and abandoned properties and concludes that it is in the best interest of the citizens and residents to impose registration requirements on such properties located within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF WEST MIAMI, FLORIDA

SECTION 1: The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby incorporated herein and made a part hereof.

SECTION 2: That Chapter 18, Article I, of the West Miami Code of Ordinances entitled "Abandoned Real and Commercial Property" is hereby created to read as follows:

CHAPTER 18.

ABANDONED REAL AND COMMERCIAL PROPERTY

Section 1. Purpose and Intent.

It is the purpose and intent of the City to establish a process to address the amount of abandoned real and commercial properties located within the City. It is the City's further intent to specifically establish an abandoned residential property program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

Section 2. Definitions.

The following words, terms and phrases, when used in this' chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Abandoned commercial property means any investment or income property that is vacant and is under a current Notice of Eviction by Landlord, Default and/or Notice of Mortgagee's Sale by the lender or a pending Tax Assessors Lien Sale and/or investment or income 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 investment or income properties transferred under a deed in lieu of foreclosure or sale, or simply abandoned and vacant.

Abandoned real property means any property that is vacant and is under a current Notice of Default and/or Notice of Mortgagee's Sale by the lender or a pending Tax Assessors Lien 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 or sale, or simply abandoned and vacant.

Accessible property means a property that is accessible through a comprised/breached gate, fence, wall, etc.

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.

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 real property, as defined herein, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

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

Enforcement officer means any building official, zoning inspector, code compliance officer, or building inspector employed within the City.

Landlord means owner of real or commercial property that is rented or leased to an individual or business.

Lender means a banking or commercial institution that lends money to owner of real or commercial property.

Private property means all lands and improvements other than public lands and improvements.

Property management company means a local property manager, property maintenance company or similar entity responsible for the maintenance of abandoned real property.

Public property means lands and improvements owned by a governmental body or any governmental agency including but not limited to easements and rights-of-way.

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.

Tenant means a person or entity who occupies real or commercial property rented or leased from a landlord.

Vacant means any building/structure that is not legally occupied.

Section 3. Applicability.

This chapter shall be considered cumulative and not superseding or subject to any other law or provision for same, but shall rather be an additional remedy available to the City above and beyond any other state, county, and/or local provisions for same.

Section 4. Registration of Abandoned Real Property

a) Any mortgagee who holds a mortgage on real property located within the City and has been adjudicated, in favor of the mortgagee, by a court of competent jurisdiction, shall perform an inspection of the property that is the security for the mortgage upon default by the mortgagor. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the mortgagee shall, within ten (10) days of the inspection, register the property with the Director of Code Enforcement, or his or her designee, on forms provided by the City. A separate registration is required for each vacant property.

b) Any landlord who holds a lease on commercial property located within the City and who has been granted an eviction in favor of the landlord by a court of competent jurisdiction, shall perform an inspection of the commercial property that is the security for the lease upon default by the tenant/lessor. If the commercial property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the landlord shall, within ten (10) days of the inspection, register the commercial property with the Director of Code Enforcement, or his or her designee, on forms provided by the City. A separate registration is required for each vacant commercial property.

c) Registration pursuant to this section shall contain the name of the mortgagee, the direct mailing address of the mortgagee, a direct contact name and telephone number of mortgagee, facsimile number and e-mail address and, in the case of a corporation or out-of-area mortgagee, the local property management company responsible for the security and maintenance of the property,

d) An annual registration fee in the amount of **$500.00** per property shall accompany the registration form(s).

e) 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.

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

g) Any person or corporation that has registered a property under this section must report any change of information contained in the registration within ten (10) days of the change.

Section 5. Maintenance Requirements.

a) Properties subject to this chapter shall be kept free of overgrown weeds, overgrown brush, 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 included, 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.

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

c) Front, side, and rear yard landscaping shall be maintained in accordance with the City's standard at the time registration was required.

d) Landscape shall include, but not be limited to, grass, ground covers bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation.

e) Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required landscape and removal of all trimmings.

f) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in Chapter 10-21(g) of the West Miami Code of Ordinances. Pools and spas shall comply with the enclosure requirements of West Miami's Code of Ordinances and the Florida Building Code.

g) Failure of the mortgagee and/or property owner of record to properly maintain the property pursuant to the Code of Ordinances of the City of West Miami may result in a code enforcement violation and issuance of a citation or Notice of Violation/Notice of Hearing in accordance with Chapter 2, Article VII of the West Miami Code of Ordinances. Pursuant to a finding and determination by the City's Code Enforcement Board or a court of competent jurisdiction, the city may take the necessary action to ensure compliance with this section.

Section 6. Security Requirements.

a) Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

b) A "secure manner" shall include, but not be 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 or boarding of the window.

c) If the property is owned by a corporation and/or out of area mortgagee, a local property management company shall be contracted to perform bi-weekly inspections to verify compliance with the requirements of this section, and any other applicable laws.

d) The property shall be posted with the name and twenty-four (24) hour contact phone number of the local property management company. The posting shall be no less than an eight-inch by ten-inch sign. The posting shall contain the following language:

THIS PROPERTY IS MANAGED BY:

TO REPORT PROBLEMS OR CONCERNS CALL:

The posting shall be placed on the interior of a window facing the street to the front of the property so it is visible, or secured to the exterior of the building/structure facing the street to the front of the property so it is visible or, if no such area exists on a stake of sufficient size to support the posting in a location as close as possible to the main door entrance of the property. Exterior posting shall be constructed of and printed with weather-resistant materials.

e) The local property management company shall inspect the property on a bi-weekly basis to ensure that the property is in compliance with this chapter. Upon the request of City, the local property management company shall provide a copy of the inspection reports to the Code Compliance Officer.

f) Failure of the mortgagee and/or property owner of record to properly maintain the property may result in a violation of West Miami's Code of Ordinances and issuance of a citation or Notice of Code Violation/Notice of Hearing in accordance with Chapter 2, Article VII of West Miami's Code of Ordinances. Pursuant to a finding and determination by the City's Code Enforcement Board or a court of competent jurisdiction, the City may take the necessary action to ensure compliance with this section,

Section 7. Opposing, obstructing code enforcement officer; penalty.

Whoever opposes, obstructs or resists any code enforcement officer or any person authorized by the code enforcement office in the discharge of duties as provided in this chapter shall be punishable as provided in Section Chapter 2, Section 2-157 of the Code of Ordinances.

Section 8. Additional Authority.

The Director of Code Enforcement, or his or her designee, shall have authority to require the mortgagee 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 and all door, window or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.

Section 9. Adoption of rules; expenditure of funds; declaration of city purpose.

The City Manager, consistent with his/her duties and authorities under the City Charter, including those duties and authorities relating to emergency situations, is authorized and empowered to adopt rules and regulations and expend City funds as may be reasonably necessary and available to carry out the terms of this chapter the expenditure of such funds being declared a proper City purpose.

Section 10. Penalties.

Any person who shall violate the provisions of this chapter shall, upon conviction by a court of competent jurisdiction or a finding of violation by the Code Enforcement Board be punished as provided in Chapter 2, Article VII, Section 2-163 of the West Miami Code of Ordinances as applicable.

SECTION 3: That it is the intention of the City Commission that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of West Miami, Florida, and the provisions of this ordinance may be renumbered to accomplish such intention.

SECTION 4: That if any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

SECTION 5: That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 6: The provisions of this Ordinance shall be codified as, and become and be made a part of the Code of Ordinances of the City of West Miami. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention.

SECTION 7: That this ordinance shall be in full force and effect immediately upon its passage and adoption.

PASSED on First Public Reading **May 15th, 2019.**

PASSED on Second Reading, Public Hearing **June 5th, 2019.**

PASSED AND ADOPTED, by the City Commission of the City of West Miami, Florida, in regular session assembled, this 5th day of June, 2019.

APPROVED:

RHONDA A. RODRIGUEZ, MAYOR

ATTEST:

ANNERY GONZALEZ, CITY CLERK

APPROVED AS TO FORM AND SUFFICIENCY:

JOSE A. VILLALOBOS, CITY ATTORNEY

The Prime Sponsor of the foregoing Ordinance is Mayor Rhonda A. Rodriguez. It was offered by Commissioner Candida Blanca, who moved its adoption. The motion was seconded by Commissioner Juan M. Blanes. The vote was as follows:

ROLL CALL VOTE:

MAYOR RHONDA A. RODRIGUEZ	**Y**
VICE-MAYOR LUCIANO L. SUAREZ	**Y**
COMMISSIONER CANDIDA BLANCA	**Y**
COMMISSIONER JUAN M. BLANES	**Y**
COMMISSIONER ERIC DIAZ-PADRON	**Y**

City of West Miami

Code Enforcement Division

901 SW 62 Avenue, West Miami, Florida 33144

Phone (305) 266-4214 • Fax (305) 266-6574 **www.cityofwestmiamifl.com**

REGISTRATION OF ABANDONED REAL PROPERTY

City of West Miami Code of Ordinances requires that mortgagees of real property shall perform an inspection of the property that is the security for the mortgage upon default by the mortgagor, prior to the issuance of Notice of Default. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the mortgagee shall, within ten (10) days of the inspection, register the property with the City of West Miami Code Enforcement Division. An annual registration is required for each vacant property. The annual registration fee is $_____ per property.

PROPERTY INFORMATION (Please print or type)

PROPERTY ADDRESS:_____
Street Zip Code

LEGAL DESCRIPTION: _____

PROPERTY IDENTIFICATION/FOLIO NUMBER: _____

MORTGAGEE NAME: _____

ADDRESS:_____
Street City State Zip Code
*Mortgagee address is where notices will be sent.

TELEPHONE: _____FACSIMILE: _____EMAIL: _____

MORTGAGEE CONTACT PERSON: _____CELL PHONE:_____

TELEPHONE: _____FACSIMILE: _____EMAIL: _____

LOCAL CONTACT AND/OR MAINTENANCE COMPANY NAME: _____

ADDRESS:_____
Street City State Zip Code

TELEPHONE: _____FACSIMILE: _____EMAIL: _____

24 HOUR/EMERGENCY CONTACT NAME: _____ CELL PHONE: _____

ADDRESS:_____
Street City State Zip Code

TELEPHONE: _____FACSIMILE: _____EMAIL: _____

FORECLOSURE ATTORNEY NAME:

ADDRESS:_____
Street City State Zip Code

TELEPHONE: _____FACSIMILE: _____EMAIL: _____

RECORDATION INFORMATION FOR LIS PENDENS:_____
Official Record Book and Page and Recording date

DATE OF INITIAL INSPECTION:_____

CASE # _____

WEST MIAMI POLICE DEPARTMENT
TRESPASS AFFIDAVIT

Type of Business: _____ **Rental Property # of Units:** _____

RETURN TO:
City of West Miami Police Department
901 SW 62nd Avenue
West Miami, Florida 33144
(305) 266-0530

NEW: ☐ **UPDATE:** ☐

NOTE: Update is required every year and/or upon the property's change of ownership.

FROM:
Owner/Agent Name: _____
Address: _____
City: _____
State: _____ Zip: _____

Owner/Manager:
Name: _____
Home Phone: _____
Business Phone: _____
Fax: _____
Mailing Address: (Other than property address)
Name: _____
Address: _____
City: _____
State: _____ Zip: _____

To Whom it May Concern:
West Miami Police Officers are hereby designated authorized representative, of the above business/property, and/or are empowered to warn and direct persons to leave said property.

Authority is granted by _____, who is the ❑ Owner, ❑ Agent, ❑ Other (_____) of said business/property and is authorized to act on behalf of the above named business/property for the purposes of the affidavit, and who herein requests that West Miami Police Officers enforce said Statute or Ordinance, on the said property, including parking areas and curtilages thereof. This Affidavit is valid for a period of one year from the date of authorization. If for any reason (sale, change of ownership, dissolution of business, etc.) cancellation is desired, it will be the responsibility of the affiants to notify the Police Department, cancel their authorization, and remove the trespass notices.

It is also acknowledged that this writer, on behalf of the business/property will prosecute anyone arrested according to this document.

_____ _____ ___/___/___
Authorized Agent's Signature (Print Name) (Date)

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this day of _____, _____ by _____ _____ (Affiant's name), who is personally known to me or who has produced _____ (Affiant's ID type) as identification who did take an oath.

_____ _____
POLICE OFFICER – NOTARY PUBLIC, STATE OF FLORIDA Type/Print Name Date

WHITE-Police Department YELLOW-Affiant