ORDINANCE 05-2011

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 54, ARTICLE III OF THE CODE OF ORDINANCES ENTITLED "HOUSING CODE" TO CREATE A NEW DIVISION 4, TO BE ENTITLED, "ABANDONED REAL PROPERTY;" PROVIDING FOR SECTION 54-101, ENTITLED "INTENT AND PURPOSE"; PROVIDING FOR SECTION 54-102, ENTITLED "DEFINITIONS"; PROVIDING FOR SECTION 54-103, ENTITLED "APPLICABILITY"; PROVIDING FOR SECTION 54-104, ENTITLED "REGISTRATION OF ABANDONED RESIDENTIAL PROPERTY"; PROVIDING FOR SECTION 54-105 ENTITLED "MAINTENANCE REQUIREMENTS"; PROVIDING FOR SECTION 54-106, ENTITLED "SECURITY REQUIREMENTS"; PROVIDING FOR SECTION 54-107, ENTITLED "IMMUNITY OF ENFORCEMENT OFFICER"; PROVIDING FOR SECTION 54-108, ENTITLED "ADDITIONAL AUTHORITY"; PROVIDING FOR SECTION 54-109, ENTITLED "REMOVAL OF ABANDONED PERSONAL PROPERTY AUTHORIZED"; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, this Ordinance is enacted pursuant to the home rule powers and authority of the Town Commission contained in Article VIII, Section 2, of the Florida Constitution and Chapter 166 Florida Statutes; and

WHEREAS, the Town Commission recognizes there has been an increase in the number of vacant and abandoned improved real properties located throughout the Town; and

WHEREAS, the presence of properties which have been abandoned or are vacant can lead to a decline in property values and discourage potential buyers from purchasing other residential properties or businesses within the Town; and

WHEREAS, there are a large number of residential properties in the Town which are in foreclosure and/or are no longer owner occupied due to national issues such as a decline in property values and unemployment; and

WHEREAS, Palm Beach County and the Town have become particularly impacted by these national issues resulting in homes being abandoned and/or foreclosed upon by large financial institutions and lenders; and

WHEREAS, in many cases where there has been a foreclosure instituted, the individuals or families who have resided in a home have abandoned the residence or ceased maintaining the real property, including both the structure and the yard; and

WHEREAS, the failure to maintain properties results in numerous code violations such as the accumulation of trash, debris and discarded personal property; overgrown grass and bushes; the proliferation of vermin; unsecured swimming pools with standing water; vandalism and occupation by vagrants; and

WHEREAS, allowing residential properties to remain vacant, and to not be maintained creates a public nuisance, requires greater code enforcement activities by the Town, and results in a financial burden on all of the Town's residents and businesses; and

WHEREAS, the failure to maintain residential properties in the Town presents a serious threat to the public health, safety and general welfare; and

WHEREAS, many of the 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 Town Commission has determined that it is in the best interests of the Town to create regulations requiring the registration of vacant residential properties which have been, or are in the process of being foreclosed to require their registration, maintenance and security to protect the integrity of the Town's existing residential neighborhoods.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The foregoing recitals are ratified as true and correct and are incorporated herein.

Section 2. Chapter 54, Article III, Division 4 of the Code of Ordinances of the Town of Lake Park, Florida is hereby created as follows:

DIVISION 4

Sec. 54-101. Purpose and Intent

It is the purpose and intent of the Town Commission to establish a process to require that abandoned residential properties located within the Town be registered with the Town so that the Town may insure they are maintained. Further, it is the Town's intent to establish an abandoned residential property program to protect residential neighborhoods from becoming blighted because of the property owner's failure to maintain and secure an abandoned residential property.

Sec. 54-102. Definitions.

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

Abandoned real property means any residential property that is vacant and is subject to an uncured Notice of Default and/or Notice of Mortgagee's Sale by the lender or a pending Tax Deed Sale; properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary, successor or assign of a mortgage involved in the foreclosure; and any property transferred under a deed in lieu of foreclosure or sale.

Accessible building or property means a residential property with a building that is unsecured and/or breached in such a way as to allow access to the property, including a swimming pool, and/or interior space by unauthorized persons.

Evidence of vacancy means any condition that on its own, or combined with other conditions, 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 personal items and property, 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 a law enforcement officer, building official, code enforcement officer, fire inspector or building inspector.

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

Residential building means any real property, or portion thereof, situated in the Town, improved by a single-family dwelling or multi-family dwelling, and shall include the buildings and structures (including pools) located on such improved real property.

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

Sec. 54-103. Applicability.

This division shall be applicable to all residential zoned properties within the Town and shall be considered to be cumulative and not exclusive in terms of any enforcement actions undertaken by the Town staff regarding the enforcement of Town codes..

Sec. 54-104. Registration of Abandoned Real Property

(a) Any mortgagee who holds a mortgage on residential real property located within the Town shall perform an inspection of the property that is the security for the mortgage upon the issuance of a Notice of Default and the expiration of any cure period set forth in the mortgage documents. If such property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the mortgagee shall, within 10 days of the inspection, register the property with the Town's Community Development Department on a form provided by the Town. A registration fee as may be established by the Town staff from time to time which is required to be paid for each vacant residential property.

(b) If such property is occupied but remains in default, it shall be inspected by the mortgagee or its designee monthly until (1) the mortgagor 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 mortgagee shall, within 10 days of that inspection, pay the applicable administrative fee and register the property with the Community Development Department on a form provided by the Town.

(c) Registration pursuant to this division 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) This division shall also apply to properties whether improved with a residential building, or not, 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.

(e) Properties subject to this division shall remain under the annual registration requirement, security and maintenance standards of this division as long as they remain vacant and for properties not yet subject to a foreclosure sale or a transfer under a deed in lieu of foreclosure, the property owner remains in default.

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

Sec. 54-105. Maintenance Requirements.

(a) In addition to the requirements of this division, properties subject to the provisions of this division shall be maintained in accordance with the Town's relevant nuisance, minimum housing, landscaping, building, and other code regulations.

(b) Improved or vacant properties subject to this division shall be kept free of 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 or is not being maintained by the proerty owner.

(c) Buildings on residential properties 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.

(d) Landscaping shall be maintained in accordance with the Town's standard at the time registration was required. Landscaping shall include, but not be limited to, grass, ground covers, bushes, trees, shrubs, hedges or similar plantings, or decorative rock or bark.

(e) Maintenance shall include, but not be limited to, watering, irrigation, cutting, trimming, and mowing of any landscaping and the removal of all landscaping trimmed, cut, or mowed.

(e) Pools and spas shall be maintained so the water remains free and clear of pollutants and debris. Pools and spas shall comply with the enclosure requirements of the Town Code and the Florida Building Code, as amended from time to time.

Sec. 54-106. Security Requirements

(a) Residential buildings subject to this division 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 re-glazing or boarding of the window.

(c) If the property is owned by a business entity such as a partnership, limited partnership, limited liability company, or corporation and/or out of area mortgagee, the owner shall retain a local property management company to perform the inspections required herein and shall be responsible for the requirements of this division, and any other applicable Town codes or ordinances for so long as the property is vacant.

(d) The property shall be posted with the name and 24 hour contact phone number of the person or entity charged with the property's management, security and maintenance. 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 postings shall be constructed of, and printed with, weather-resistant materials.

(e) The person, entity or property management company shall inspect the property on a bi-weekly basis to ensure that the property is in compliance with this division and other applicable Town ordinances, codes, and laws. Upon the request of Town, the person, entity or property management company shall provide a copy of the inspection reports to the Town's Community Development Department.

(f) Failure of the mortgagee and/or property owner of record to properly register and/or maintain the property may result in a violation of the Town Code and issuance of a Notice of Violation/Notice of Hearing by an enforcement officer. Alternatively, the Town may elect to abate any nuisance upon the property pursuant to Section 54-132 of the Code and assess the costs of same upon order of the Town's Magistrate.

Sec. 54-107. Immunity of enforcement officer.

Any enforcement officer or other person authorized by or acting as an enforcement official or agent for the Town shall be immune from prosecution, civil or criminal, for their reasonable, good faith trespass upon real property while in the discharge of duties imposed by this division.

Sec. 54-108. Additional Authority.

The Community Development Director, or his or her designee, shall have authority to require the mortgagee and/or owner of record of any property affected by this division, to implement additional maintenance and/or security measures as may be reasonably required to help prevent further decline or depreciation of the property.

Sec. 54-109. Removal of abandoned personal property authorized.

(a) It shall be a violation of the Town's Code for any person or entity to abandon personal property, or permit personal property to be left outside of a structure on a property subject to this division. Abandoned personal property is hereby declared to be a public nuisance, the abatement of which is necessary to preserve the public health, safety and general welfare.

(b) Upon a determination by an enforcement officer that a property is vacant and that personal property has been abandoned upon the property, the enforcement officer shall make a reasonable effort to ascertain the name and address of the person or entity responsible for abandoning said personal property. The enforcement officer's citation of the property owner for personal property which has been left on a property shall constitute a presumption that the personal property is, or was the personal property of the owner of the real property and that a prima facie case has been established that the personal property has been abandoned, subject to rebuttal at a hearing before the Town's Special Magistrate.

(c) For the purposes of this division, a reasonable effort to ascertain the name and address of the owner of the abandoned personal property shall include a search of the public records of the Tax Collector, Property Appraiser, and Clerk of the Courts in Palm Beach County.

(d) The property owner who has abandoned property shall be noticed of a hearing that he is in violation in accordance with the notice provisions of §162.12, *Florida Statutes*, as it may be amended from time to time.

(e) If the Special Magistrate determines that the property constitutes abandoned property, a reasonable time shall be given to remove the property. If the property is not removed the Town shall be authorized to remove the personal property, and destroy, sell, or salvage the property, and shall be entitled to its proceeds to defray the Town's expenses.

(f) In the event the abandoned property is deemed to be an imminent public health and safety hazard, the Town is authorized to immediately remove the personal property. The Owner shall be noticed in accordance with §162.12 and assessed the cost of the Town's removal following a hearing by the Town Magistrate.

Section 3. **Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of

competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 4. **Repeal of Laws in Conflict.** All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. **Codification.** The sections of the Ordinance may be made a part of the Town Code of Ordinances and may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall take effect immediately upon adoption.

Upon First Reading this 3 day of August, 2011, the foregoing Ordinance, was offered by Vice-Mayor Rumsey, who moved its approval. The motion was seconded by Commissioner Stevens and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR JAMES DUBOIS	✓	
VICE-MAYOR KENDALL RUMSEY	✓	
COMMISSIONER STEVEN HOCKMAN		✓
COMMISSIONER JEANINE LONGTIN	✓	
COMMISSIONER TIM STEVENS	✓	

PUBLISHED IN THE PALM BEACH POST THIS 28 DAY OF August, 2011

Upon Second Reading this 7 day of September, 2011, the foregoing Ordinance, was offered by Vice-Mayor Rumsey, who moved its adoption. The motion was seconded by Commissioner Stevens and being put to a vote, the result was as follows:

	AYE	NAY
MAYOR JAMES DUBOIS	✓	
VICE-MAYOR KENDALL RUMSEY	✓	
COMMISSIONER STEVEN HOCKMAN		✓
COMMISSIONER JEANINE LONGTIN		✓
COMMISSIONER TIM STEVENS	✓	

The Mayor thereupon declared **Ordinance No.** 05-2011 duly passed and adopted this 7 day of September, 2011.

TOWN OF LAKE PARK, FLORIDA

BY: _____
Mayor, James DuBois

ATTEST:

_____
Town Clerk, Vivian Lemley
(Town Seal)

TOWN OF LAKE PARK SEAL FLORIDA

Approved as to form and legal sufficiency:

_____
Town Attorney, Thomas J. Baird

THE PALM BEACH POST

Published Daily and Sunday
West Palm Beach, Palm Beach County, Florida

PROOF OF PUBLICATION

STATE OF FLORIDA
COUNTY OF PALM BEACH

Before the undersigned authority personally appeared **Ellen Sanita**, who on oath says that she is **Call Center Revenue Manager** of The Palm Beach Post, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising for **Notice** in the matter **Ordinance 05-2011** was published in said newspaper in the issues of **August 28, 2011**. Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she/he has neither paid nor promised any person, firm or corporation any discount rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. Also published in Martin, St. Lucie and Indian River Counties.

Sworn to and subscribed before 29th day of August, A.D. 2011.
Who is personally known to me.

NOTARY PUBLIC-STATE OF FLORIDA
Karen M. McLinton
Commission #DD832672
Expires: NOV. 15, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

NO. 6217851
LEGAL NOTICE OF
PROPOSED ORDINANCE ADOPTION,
TOWN OF LAKE PARK

Please take notice that on Wednesday, September 7, 2011 at or as close to 7:00 p.m. the Town Commission of the Town of Lake Park, Florida in a regular session to be held in the Commission Chambers, Town Hall, 535 Park Avenue, Lake Park, Florida will consider the following Ordinance on second reading and proposed adoption thereof:

ORDINANCE 05-2011

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 54, ARTICLE III OF THE CODE OF ORDINANCES ENTITLED "HOUSING CODE" TO CREATE A NEW DIVISION 4, TO BE ENTITLED, "ABANDONED REAL PROPERTY"; PROVIDING FOR SECTION 54-101, ENTITLED "INTENT AND PURPOSE"; PROVIDING FOR SECTION 54-102, ENTITLED "DEFINITIONS"; PROVIDING FOR SECTION 54-103, ENTITLED "APPLICABILITY"; PROVIDING FOR SECTION 54-104, ENTITLED "REGISTRATION OF ABANDONED RESIDENTIAL PROPERTY"; PROVIDING FOR SECTION 54-105 ENTITLED "MAINTENANCE REQUIREMENTS"; PROVIDING FOR SECTION 54-106, ENTITLED "SECURITY REQUIREMENTS"; PROVIDING FOR SECTION 54-107, ENTITLED "IMMUNITY OF ENFORCEMENT OFFICER"; PROVIDING FOR SECTION 54-108, ENTITLED "ADDITIONAL AUTHORITY"; PROVIDING FOR SECTION 54-109, ENTITLED "REMOVAL OF ABANDONED PERSONAL PROPERTY AUTHORIZED"; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

If a person decides to appeal any decision made by the Town Commission with respect to any hearing, they will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. For additional information, please contract Vivian M. Lemley, Town Clerk at 561-881-3311.

Vivian M. Lemley, Town Clerk
Town of Lake Park, Florida
PUB: The Palm Beach Post
August 28, 2011