MEMORANDUM

Agenda Item No. 7(C)

(Second Reading 12-2-08)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: October 7, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Ordinance relating to defining any person who files a Lis Pendens and/or action for foreclosure upon a mortgaged property

The accompanying ordinance was prepared and placed on the agenda at the request of Co-Prime Sponsor Commissioner Natacha Seijas, Co-Prime Sponsor Commissioner Carlos A. Gimenez, and Co-Sponsors Commissioner Jose "Pepe" Diaz, and Commissioner Rebeca Sosa.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

Memorandum

MIAMI-DADE COUNTY

Date: December 2, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Ordinance relating to defining any person who files a Lis Pendens and/or action for foreclosure upon a mortgaged property

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The ordinance will not have a fiscal impact to Miami-Dade County since any additional operating costs will be fully funded by the one-time registry fee. The implementation of this ordinance would require additional researching of foreclosure records, data entry, and additional inspections in order to monitor the condition of abandoned properties ($127,000, two positions plus operating expenses). The proposed one-time registry fee of $125 per property would fully offset the above mentioned operating costs for approximately two years based on the expected amount of registrations.

FOR

Alex Muñoz
Assistant County Manager

fis00509

MEMORANDUM

(Revised)

TO: Honorable Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: December 2, 2008

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 7(C)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(C)
12-2-08

ORDINANCE NO. _____

ORDINANCE AMENDING SECTIONS 19-4, 19-4.2, 19-4.4, 19-4.6, 19-4.7, 19-5, 19-13 , 19-14, 17A-9 AND 17A-13, OF THE CODE OF MIAMI-DADE COUNTY; AND CREATING SECTIONS 17A-18, 17A-19 AND 17A-20 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, ALL TO DEFINE ANY PERSON WHO FILES A LIS PENDENS AND/OR ACTION FOR FORECLOSURE UPON A MORTGAGED PROPERTY; TO BE RESPONSIBLE FOR COMPLIANCE WITH CHAPTERS 19 AND 17A RELATING TO THE MAINTENANCE OF IMPROVED AND UNIMPROVED RESIDENTIAL PROPERTY IN MIAMI-DADE COUNTY; PROVIDING FOR THE REGISTRATION OF ALL SINGLE FAMILY DWELLING UNITS THAT ARE THE SUBJECT OF A MORTGAGE FORECLOSURE ACTION; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 19-4 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:[1]

Sec. 19-4. [[~~Owner~~]] Responsibility for Compliance.

It is the responsibility of each owner to maintain their property in accordance with the provisions of this Chapter. Where applicable, tenants or lessees shall receive enforcement notices in connection with enforcement; however, the owner is ultimately responsible for compliance with this chapter.

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

>>The holder and/or or owner of any mortgage which is upon real property which is in violation of this chapter shall be a responsible party for compliance with this chapter upon the filing of a lis pendens and/or an action, the purpose of which is to foreclose upon the mortgage or similar instrument that secures debt upon the real property. This responsibility for compliance with this chapter shall remain until such time as the property is sold or transferred to a new owner, or the action described herein is dismissed.<<

Section 2. Section 19-4.2 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 19-4.2. Failure to Comply; Penalties.

Except as otherwise specifically provided, the County shall issue a warning notice the first time a property owner is cited for a violation of this Chapter, and shall provide the property owner>>, or other responsible party,<< a reasonable time to come into compliance before the County pursues further enforcement procedures. Thereafter, the County shall have the option to enforce this Chapter as follows:

* * *

Section 3. Section 19-4.4 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 19-4.4. Appellate Procedures for Civil Penalty--First-Time Violator; Time for correction.

For first-time violators receiving a civil violation notice, the owner>>, or other responsible party,<< shall have fourteen (14) calendar days from service of the notice pursuant to Miami-Dade County Code Sec. 8CC-3(c) to correct the violation, or seven (7) calendar days from service to file for an appeal. The appeal shall be in the manner described within the Uniform Civil Violation Notice.

Section 4. Section 19-4.6 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 19-4.6. Time for Correction Upon Finding of Guilt.

If the owner>>, or other responsible party,<< is found guilty by the Hearing Officer, the Hearing Officer shall set a compliance date that shall not exceed 14 days beyond the date of the finding of guilt.

Section 5. Section 19-4.7 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 19-4.7. County's Authority to Abate Public Nuisance.

Failure to comply with or appeal the terms of this Chapter shall constitute a continuing public nuisance. The Director shall then have the authority to promptly abate the public nuisance, in whole or in part, at the expense of the owner>>, or other responsible party<<.

Section 6. Section 19-5 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 19-5. Collection of Enforcement and Remediation Costs.

The Director shall certify the expense incurred in remedying a public nuisance under section 19-4.7 of this Chapter, including advertising, clearing, hauling, disposal and other expenses, together with an administrative fee as authorized in the Department's administrative fee schedule. The owner>>, or other responsible party,<< shall pay the cost within thirty (30) days. If the owner>>, or other responsible party,<< fails to pay the costs, the Director shall place a special assessment lien against the lot for the total amount due. Such a lien shall accrue interest at the legal rate from the date of certification until it is paid. The Director shall keep among his records the documentation relating to the amount payable for liens against lots remedied by the County.

A special assessment lien shall be enforceable in the same manner as a tax lien in favor of Miami-Dade County and may be satisfied at any time by payment thereof, including accrued interest. Upon payment the Clerk of the Circuit Court shall, by appropriate means, evidence the satisfaction and cancellation of such lien upon the record thereof. Notice of a special assessment

lien may be filed in the Office of the Clerk of the Circuit Court and recorded among the public records of Dade County, Florida.

Section 7. Section 19-13 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 19-13. Maintenance of Lots in Residential-Zoned Districts.

(A) >>In accordance with Section 19-14, [[I]]>>i<<t shall be the responsibility of the [[~~owner of~~]] >>responsible party for<< any lot in a residential-zoned district to regularly maintain their property to prevent the following:

(1) Storage or maintenance of junk, trash, abandoned property or solid waste on any lot;

(2) The growth or accumulation of any grass, weeds, non-native undergrowth or other dead plant life:

(a) on *improved* lots, that exceeds the height of twelve (12) inches from the ground for more than ten (10) percent of the area to be maintained;

(b) on *unimproved* lots, that exceeds the height of eighteen (18) inches from the ground that occurs within one hundred (100) feet from the boundary line of any property with a building or structure or within one hundred (100) feet from the boundary line of any improved road. In the event that the remaining area constitutes less than twenty-five (25) percent of the total square footage of the lot then the entire lot shall require maintenance action.

(B) It shall be the responsibility of the [[~~owner of~~]] >>responsible party for<< property in a residential-zoned district and adjacent to a County right-of-way to maintain ~~the swale area which abuts their property.~~

* * *

Section 8. Section 19-14 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 19-14. Maintenance Standards for Lots in Non-Residential Zoned Districts.

(A) It shall be the responsibility of the [[~~owner of~~]]>>responsible party for<< any lot in a non-residential zoned district to regularly maintain their property to prevent the following:

(1) The growth or accumulation of any grass, weeds, non-native undergrowth or other dead plant life that exceeds the height of eighteen (18) inches from the ground for more than fifty (50) percent of the area to be maintained;

(2) Storage or maintenance of junk, trash, abandoned property or solid waste on any lot.

All lots shall be maintained within one hundred (100) feet from the boundary line of any property with a building or structure or within one hundred (100) feet from the boundary line of any improved road. In the event that the remaining area constitutes less than twenty-five (25) percent of the total square footage of the lot, then the entire lot shall require maintenance action.

(B) It shall be the responsibility of the [[~~owner of~~]]>>responsible party for<< the property adjacent to a County right-of-way and in a non-residential zoned district to maintain the swale area which abuts their property.

* * *

(C) *Agricultural zoned property.* When concerns or complaints are raised about agricultural properties, a compliance officer shall investigate. The Department shall apply the definition in Section 19-3(B) to determine a bonafide agricultural use. If the concern or complaint is deemed to be valid, a notice of evaluation shall be issued to the property owner or lessee. The property owner or lessee shall be given thirty (30) days from the date of such notice to correct the use or practice. If clarification of the use or practice is needed, an appropriate agricultural agency shall

be consulted for information. If the property owner or lessee fails to correct the condition, enforcement action shall commence to require compliance with this code.

Section 9. Section 17A-5 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 17A-5. Definitions.

In construing the provisions of this chapter, where the context will permit and no definition is provided herein, the definitions provided in [[~~Chapter 4 of~~]]the [[~~South~~]] Florida Building Code shall apply. The following words and phrases when used in this chapter shall have the meanings ascribed to them in this section:

* * *

(17) *Operator* shall mean any person who has charge, care or control of vacant dwellings, vacant dwelling units, vacant hotels, vacant hotel units, vacant rooming houses, vacant rooming units, or vacant premises. >>Upon the filing of a lis pendens and/or an action, the purpose of which is to foreclose upon the mortgage or similar instrument that secures a debt upon the property, the owner and holder of the note and mortgage or other similar instrument shall be considered an operator of a property for purposes of the maintenance of the property as set forth in this Chapter. This status as an operator shall remain until such time as the property is sold or transferred to a new owner or the foreclosure action described herein is dismissed.<<

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Section 10. Section 17A-9 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 17A-9. Notice of violations.

Whenever the Minimum Housing Enforcement Officer or his or her assistant finds and determines that there has been a violation of the standards established by this chapter, he or she shall give notice of such violation to the owner>> and any operators<<. Such notice shall be in writing, shall specify the violation, and shall specify the time for compliance. Such notice shall specify that the violation

must be corrected or a building permit for the work required to correct the violation must be obtained from Team Metro or appropriate municipal Building and Zoning Department and that final compliance must conform to the requirements of the South Florida Building Code. Such notice shall contain an outline of the remedial action which, if taken, will constitute compliance with the requirements of this chapter. Such notice shall inform the owner >>and any operators<< of the right to apply to the Minimum Housing Appeals Board for a hearing and review of matters within the notice and advise that failure to comply or appeal may result in the Minimum Housing Enforcement Officer's securing the vacant structure without further notice to the owner or a hearing. Such notice may also inform the person or persons to whom it is directed that failure to comply may result in enforcement action as provided for in Section 17A-13 or Chapter 8CC of this Code. Such notice shall be served upon the owner>> and any operators<<. Such notice shall be deemed to be properly served and binding upon the owner>> and upon any operators<< and upon the vacant structure or vacant premises involved if a copy is served by certified mail return receipt requested, addressed to the owner's >>and/or operator's<< last known address. If the owner cannot be served by certified mail, a copy of the notice shall be posted in a conspicuous place on the vacant structure or vacant premises involved. Such notice shall state the date of posting.

Section 11. Section 17A-13 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 17A-13. Remedies for enforcement; hindering or obstructing Minimum Housing Enforcement Officer.

(d) The Minimum Housing Enforcement Officer or his assistant, may, in the Minimum Housing Enforcement Officer's or his assistant's discretion, terminate an investigation or an action commenced under the provisions of this chapter upon execution of a written consent agreement between the Minimum Housing Enforcement Officer or his assistant and the record owner of the land >>or an operator of the land<< which is the subject of the investigation or action. The consent agreement shall provide written assurance of voluntary compliance with all the applicable provisions of this chapter by the record owner>> or operator<<. The consent agreement shall provide the following: Repayment of costs of the county

for investigation, enforcement, and litigation, including attorneys' fees; and remedial or corrective action. The consent agreement may, in the discretion of the Minimum Housing Enforcement Officer upon agreement of the owner>> or operator<<, provide for compensatory damages, punitive damages and civil penalties. An executed written consent agreement shall neither be evidence of a violation of this chapter nor shall such agreement be deemed to impose any limitations upon any investigation or action by the Minimum Housing Enforcement Officer or his assistant, in the enforcement of this chapter. The consent agreement shall not constitute a waiver of or limitation upon the enforcement of any federal, state or local laws and ordinances. Executed written consent agreements are hereby deemed to be lawful orders of the Minimum Housing Enforcement Officer or his assistant. Each violation of any of the terms and conditions of an executed written consent agreement shall constitute a separate offense under this chapter by the owner>> or operator<< who executed the consent agreement, his respective officers, directors, agents, servants, employees and attorneys; and by those persons in active concert or participation with any of the foregoing persons and who receive actual notice of the consent agreement punishable in accordance with the provisions of Section 17A-13 and Chapter 8CC of this Code. Each day during any portion of which each such violation occurs constitutes a separate offense under this chapter. Decisions and action of the Minimum Housing Enforcement Officer or his assistant, pursuant to Section 17A-13(c) of this Code and written consent agreements executed thereunder, shall not be subject to appeal to or review by the Minimum Housing Appeals Board pursuant to Section 17A-15 of the Code of Metropolitan Miami-Dade County, Florida.

(e) If the owner>> or operator<< shall fail to comply with a final order within the time stipulated therein, the Minimum Housing Enforcement Officer may cause such vacant structure or vacant premises to be vacated if occupied, and initiate action through private contractors or his or her own employees to secure the vacant structure or vacant premises.

Section 12. Section 17A-18 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Section 17A-18. Purpose and Intent

It is the intent of the Board of County Commissioners, through the enactment of sections 17A-18 to 17A-20 to provide a registry of single family residential dwelling units, including condominium, duplexes and town home units, where the individual unit is the subject of a Foreclose Action. Through this registry, residences that are at risk of or have become vacant, overgrown, dilapidated or in poor repair can be tracked and remediated to prevent blight or unsightly conditions. The definitions contained in section 17A-5 shall apply throughout this section.

Section 13. Section 17A-19 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Section 17A-19. Registration of Single Family Dwelling Units Subject to Foreclosure.

Upon the filing of a lis pendens or an action to foreclose upon a mortgage or other instrument of debt which debt is secured by the real property of a single family dwelling unit, whether a house, townhouse, condominium or duplex, the holder or owner of said mortgage or other debt instrument, or the party bringing the foreclosure action, shall immediately register the single family dwelling unit with the Office of Neighborhood Compliance. The registration shall be upon forms as are designated by the Director of the Department and shall be accompanied by the approved registration fee as established in the Department's duly enacted fee schedule.

Section 14. Section 17A-20 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

Section 17A-20. Registration Inspection and Enforcement Procedure.

Upon registration of any dwelling unit as set forth in section 17A-19, the Minimum Housing Enforcement Officer or his or her

assistant shall conduct an inspection of the registered real property to determine it's compliance with the provisions of this Chapter 17A and/or the provisions of Chapter 19 of the County Code.

Section 15. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 16. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 17. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Thomas H. Robertson

Co-Prime Sponsor:	Commissioner Natacha Seijas
Co-Prime Sponsor:	Commissioner Carlos A. Gimenez
Co-Sponsor:	Commissioner Jose "Pepe" Diaz
Co-Sponsor:	Commissioner Rebeca Sosa