

ORDINANCE No. 2009-04-176

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, CREATING AN ORDINANCE ENTITLED "CERTIFICATE OF RE-OCCUPANCY"; PROVIDING FOR AN APPLICATION PROCESS; PROVIDING FOR REGULATIONS; PROVIDING FOR PENALTIES; PROVIDING FOR AN AMNESTY PERIOD; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is incumbent upon the City to ensure that properties are constructed in accordance with the City's Zoning regulations, and

WHEREAS, it has been brought to the City's attention that, on several occasions, properties that are not in compliance with the City's Zoning regulations have been transferred to new owners without their knowledge, and

WHEREAS, the City of Miami Gardens, along with other cities across the Nation, is experiencing a high foreclosure rate and at some point these homes will be transferred to new owners, and

WHEREAS, the purpose of this Ordinance is to ensure that prior to residential properties being transferred, the City is able to confirm that the properties meet the current City zoning requirements, and

WHEREAS, the stated purpose and intent of this Ordinance is compliance with Zoning regulations, provided however, the City recognizes that compliance with such Zoning regulations may also cause the need to comply with other City Codes, including but not limited to Building Code and life safety requirements, and

WHEREAS, staff intends to undertake an educational component prior to enforcing this Ordinance, to make the public aware of the existence of the Ordinance and its requirements,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, as follows:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. CREATION OF ORDINANCE: There is hereby created in the City of Miami Gardens an Ordinance entitled "Certificate of Re-Occupancy" as follows:

**Section 1. Purpose**

The Purpose of this Ordinance is to ensure that prior to a residential property being conveyed to a new ownership, that the City is able to confirm that the property meets the current City zoning requirements; that the premises are being used solely for residential purposes; and that the premises have not been unlawfully altered, in violation of the City's Zoning Codes.

**Section 2. Certificate of Re-Occupancy Required**

Prior to the purchase, sale, conveyance and transfer of title to any single-family, condominium, duplex, triplex townhouse dwelling unit, or apartment complex consisting of four (4) or more units, a certificate of re-occupancy must be obtained. This section shall not apply in instances where property has been transferred by virtue of a certificate of title issued after a foreclosure sale. However, prior to any reoccupancy of such foreclosed property, a certificate of reoccupancy shall be obtained. The certificate of re-occupancy, if issued, shall state that the city has inspected the dwelling and determined that the dwelling complies with the residential occupancy regulations of the zoning district in which the property wherein the dwelling unit is located and does not contain any uncorrected building violations.

**Section 3. Application**

1. It shall be unlawful for any person, firm or corporation to, sell convey, or transfer any single-family, condominium, duplex, triplex or townhouse dwelling unit, or apartment complex consisting of four (4) or more units owned by such person, firm or corporation, which property has been sold, transferred or conveyed to such person, firm or corporation after the effective date of this ordinance unless a certificate of re-occupancy has been issued by the director of the Development Services Department or his/her designee. The certificate of re-occupancy, if issued, shall state that a city inspector has inspected the dwelling and has determined that the dwelling meets the residential occupancy regulations of the zoning district in which the dwelling unit is located.

2. It shall be unlawful for any person, firm or corporation to transfer or convey a single family, condominium, duplex, triplex, or townhouse dwelling unit, or apartment complex consisting of four (4) or more units owned by such person, firm or corporation, without first disclosing by written notice to the buyer, grantee or transferee the fact that a certificate of re-occupancy is required in accordance with this Ordinance. Such notice shall be issued on a form to be provided by the City.

3. Application for a certificate of re-occupancy shall be made by the seller or owner or the designated agent, upon a form provided by the city and the payment of an inspection fee to be determined by a separate resolution of the City Council. Said fees shall be paid by the applicant. If dwelling must be inspected within fifteen (15) business days of receipt of the application, an expedited inspection may be requested. There shall also be a fee for expedited inspections, which shall be established by a separate resolution of the City Council.

4. Upon receipt of the application and fee, a city inspector shall inspect the dwelling within thirty (30) days and, if such dwelling is found to be in conformance with the provisions of paragraph 1(a) above, a certificate of re-occupancy shall be issued. If the dwelling is not in conformance with such provisions, the director or the director's designee shall indicate by itemized list corrective action and the certificate of re-occupancy shall be withheld unless and until such provisions are complied with, to the reasonable satisfaction of the director or the director's designee.

5. In the event of acts of God, terrorism or other force majeure acts, the dates outlined herein shall be extended and the City shall be relieved of any responsibility as a result thereof.

**Section 4. Restriction on inspection**

Information gained or conditions observed in the course of any inspection conducted pursuant to the authority of this ordinance shall not be utilized by the code enforcement officers of the city as the basis for bringing code enforcement violation proceedings other than as to the residential occupancy regulations of the zoning district in which the dwelling unit is located, and the safety violations directly addressed by the inspection made under this ordinance, as applicable. This shall not preclude other enforcement actions brought upon the basis of information gained or violations observed by other lawful means.

**Section 5. Exemption**

A certificate of re-occupancy shall not be required for the original transfer or conveyance of a newly constructed single family, duplex, triplex dwelling unit, or apartment complex to any firm, corporation, or individual, or to any transfer that represents the first transaction since the issuance of the original certificate of occupancy.

**Section 6. Limitation of Liability**

The issuance of a certificate of re-occupancy does not constitute any representation or warranty as to the condition of the dwelling or other structures on said premises described herein (or any aspect of such condition), and interested persons are advised and encouraged to make their own inspection of the premises in order to determine the condition thereof. The issuance of a certificate of re-occupancy does not prevent the City from making future findings that violations exist that were not found in the any previous inspection(s).

**Section 7. Payment of Outstanding Lien Amounts**

No re-occupancy certificate shall be issued for any property unless the property is in compliance with any outstanding warning notices or notices of violation issued by the City and until the owner of the property has satisfied any and all City of Miami Gardens liens against the property.

**Section 8. City Manager Authority**

In the event of a pending real estate transaction, the City Manager shall enter into stipulated settlement agreements for the issuance of conditional certificates of re-occupancy. Such conditional certificates shall provide for a reasonable time for compliance with any outstanding zoning or building code issues and for a fine in the event of noncompliance. Conditional certificates of re-occupancy shall not be issued where life-safety violations exist on the property. The fee for a conditional certificate of re-occupancy shall be established by separate resolution. The property owner to whom the property is transferred must agree to be bound by the terms of this ordinance and in the event the requisite remedial action does not occur within the timeframe stipulated in the conditional certificate, agrees to be subject to the penalties outlined in Paragraph 10 below.

**Section 9. Warning Notices**

Prior to the imposition of any lien or penalty for the failure to obtain a reoccupancy certificate, a warning notice shall be issued to the violator(s) requiring compliance within a reasonable period of time. In the event, the requisite inspection does not occur within the time set by the City, a notice of violation shall be issued.

**Section 10. Penalties**

Any person convicted of a violation of this section shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00), or by imprisonment not to exceed sixty (60) days, or both, in the discretion of the County Court. In addition, any property for which an application for re-occupancy inspection and certificate is not filed prior to the sale of said property shall be subject to a fine equivalent to the expedited application fee, payable at the time the late application is filed.

**Section 11. Amnesty Period**

The provisions of this Ordinance take effect until October 1, 2009. Prior to that date, City staff will undertake steps to educate City residents about the Ordinance and its implementation. Commencing October 1, 2009, all affected persons or entities must comply with its provisions.

SECTION 3. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 4. 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 of this Ordinance.

SECTION 5. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 6. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

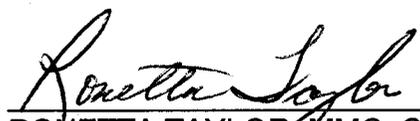
PASSED ON FIRST READING ON THE 14<sup>TH</sup> DAY OF JANUARY, 2009.

PASSED ON SECOND READING ON THE 28<sup>TH</sup> DAY OF JANUARY, 2008.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 28<sup>TH</sup> DAY OF JANUARY, 2008

  
\_\_\_\_\_  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
\_\_\_\_\_  
RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: COUNCILMAN ANDRÉ WILLIAMS

MOVED BY: Councilman Williams

SECONDED BY: Vice Mayor Watson

**VOTE: 5-2**

Mayor Shirley Gibson	<u>X</u> (Yes)	___ (No)
Vice Mayor Barbara Watson	<u>X</u> (Yes)	___ (No)
Councilman Melvin L. Bratton	___ (Yes)	<u>X</u> (No)
Councilman Aaron Campbell	<u>X</u> (Yes)	___ (No)
Councilman Oliver Gilbert, III	___ (Yes)	<u>X</u> (No)
Councilwoman Sharon Pritchett	<u>X</u> (Yes)	___ (No)
Councilman André Williams	<u>X</u> (Yes)	___ (No)

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## City of Miami Gardens Agenda Cover Memo

<b>Council Meeting Date:</b>	January 28, 2009		<b>Item Type:</b>	<b>Resolution</b>	<b>Ordinance</b>	<b>Other</b>	
					x		
<b>Fiscal Impact:</b>	Yes	No	<b>Ordinance Reading:</b>		<b>1<sup>st</sup> Reading</b>		<b>2<sup>nd</sup> Reading</b>
	x		<b>Public Hearing:</b>		<b>Yes</b>	<b>No</b>	X
							X
<b>Funding Source:</b>	General Fund		<b>Advertising Requirement:</b>		<b>Yes</b>		<b>No</b>
							X
<b>Contract/P.O. Required:</b>	Yes	No	<b>RFP/RFQ/Bid #:</b>				
		X					
<b>Sponsor Name</b>	Councilman Andre' Williams		<b>Department:</b>		Planning and Zoning		

**Short Title:**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, CREATING AN ORDINANCE ENTITLED "CERTIFICATE OF RE-OCCUPANCY"; PROVIDING FOR AN APPLICATION PROCESS; PROVIDING FOR REGULATIONS; PROVIDING FOR PENALTIES; PROVIDING FOR AN AMNESTY PERIOD; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

**Staff Summary:**

**Background**

As previously noted, due to the City's aging housing stock, many property owners have over time, modified their structure. In several instances, these modifications were done without appropriate permits and resulted in the housing unit being out of compliance with current zoning and building requirements. Over time as these units were sold, the new owners inherited conditions for which they were not responsible or aware. The purpose of this ordinance is to ensure that housing units are primarily in compliance with current zoning requirements, specifically as it pertains to use.

The intent of this legislation is to insure that new homeowners in Miami Gardens will know that they are purchasing a home free from any major zoning violations, which ultimately would become that property owner's responsibility to correct. The proposed legislation would also provide an avenue for the City to uncover and

correct unlawful violations of the zoning code, which often involves illegal dwelling units that can become a nuisance to the surrounding community.

The proposed effective date of this Ordinance is October 1, 2009. By establishing this delayed effective date, the City will have an opportunity to prepare property owners for its implementation. Preparations will include:

**1. Publicity and Community Outreach Campaign**

- Brochure Handout/Mailer similar to Sign Code Brochure. Estimate 4-5,000 copies.
- Contact with Realtors, Title Companies, Lawyers, Banks, and related businesses, Miami Gardens and surrounding area
- Advertisements in Herald
- Public Meetings

**2. Establishment of Administrative Procedures**

The re-occupancy process involves the creation of a new permit type in the Eden permitting system and the creation of policies and procedures for the inspection and administration of the program.

**Current Situation**

The attached ordinance was approved on 1<sup>st</sup> reading at the January 14, 2009 meeting of the City Council. Regarding fiscal impact of this program, a revised analysis/comparison chart of other municipalities is provided below. An estimate for the City of Miami Gardens is included in the chart. This estimate is based on established programs in the cities of North Miami and Hialeah, as they are the most comparable in terms of total number of housing units. The estimated fee for this program is \$115.00 for the initial re-occupancy certification application.

As it relates to the expected cost of the program, Staff provides two long term options:

**Option # 1 (High)**

- Salaries-\$129,870 (includes fringes)
  - 1 Building Inspector @ \$73,000
  - 1 administrative clerk @ \$26,900
- Operating expenses- \$30,000
  - 1 vehicle (inclusive of maintenance & fuel)
  - Office space/equipment

Total for Option # 1: **\$159,870**

**Option # 2 (Low)**

- Salaries-\$89,570 (includes fringes)
  - 1 Code officer @\$42,000
  - 1 administrative clerk @ \$26,900

- Operating expenses-\$30,000
  - 1 vehicle (inclusive of maintenance & fuel)
  - Office space/equipment

Total for Option # 2: **\$119,570**

While the above mentioned options consider the long term operating costs of this program, it is possible to entertain a limited staffing level during program start-up. Given today's changing real estate environment, it is difficult to estimate the volume of home sales which would result in re-occupancy applications/inspections. Additionally, due to budget constraints within the Development Services Fund, concern was raised regarding incurring administrative costs for a program that may not be self-supporting. Therefore, it is proposed that the City utilize existing staff for program start-up and then determine if there is a need for additional staff based on volume. Staff would need to monitor sales volume to insure that sufficient resources are available to meet program demand.

The attached ordinance requests Council approval on 2<sup>nd</sup>

<sup>t</sup> reading, to implement the re-occupancy certificate program. If adopted, a fee resolution will be drafted for Council's consideration prior to implementing this program.

Comparison Table - January 2008

Jurisdiction	Fee Schedule	Process Time (Days)	Number of Staff	Positions/Salary	Total Housing Units: Per 2000 Census	Annual Applications History	2008 App's	Estimated Annual Revenue (2008 X min. fee)
Miami Gardens	\$115.00	-	2	Code officer/\$42,000 Clerk/\$26,900	30,988	-	765**	\$ 87,975.00
North Miami	SF \$75.00/ \$300.00; Apt (4 units) \$150.00/\$600.00; Each Addn'l - \$7.50/\$20.00	10/2 expedited	2	Inspector/\$52,000 Clerk/\$22,500	22,281	2004-2005: 2100	932	\$ 69,900.00
Hialeah	\$50.00/\$100.00	30/10 expedited	2	Inspector/\$55,000 Building Code Clerk/\$25,500	72,142	2005: 1352 2006:1386 2007: 446	545	\$ 27,250.00
Biscayne Park	\$75.00/\$100.00	30 / 1-2 expedited	2	Code Inspector/\$19/hr Clerk/\$28,000	1,341	2005-2006: 2000	35	\$ 2,625.00
El Portal	\$70.60	2-3	1	Building Inspector/\$50,700	878	2006-2007: 52	38	\$ 2,682.80
Miami Shores	\$60.60	7	2	Inspector/\$56,500-\$62,000	3,836	2005-2006: 34	42	\$ 2,545.20

\*\* Estimate based on North Miami & Hialeah's 2008 applications: an average of total applications divided by total housing units X total number of housing units in Miami Gardens.

**Proposed Action:**

Councilman Andre Williams recommends approval of the Re-Occupancy Ordinance that creates a program requiring the issuance of a Certificate of Re-Occupancy in the City of Miami Gardens.

**Attachment:**

None