



CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 10 - 0 1 1 7

REPORT RE:

APR 29 2010

DRAFT ORDINANCE ADDING ARTICLE 4 TO CHAPTER XVI OF THE LOS ANGELES MUNICIPAL CODE TO CREATE THE CITY OF LOS ANGELES FORECLOSURE REGISTRY PROGRAM, AND AMENDING SECTIONS 98.0716 AND 98.0717 OF THE LOS ANGELES MUNICIPAL CODE TO INCREASE THE CIVIL PENALTY FOR VIOLATIONS OF LOS ANGELES MUNICIPAL CODE SECTIONS 98.0701, *et seq.*

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 09-0365

Honorable Members:

Pursuant to your request, we have prepared and transmit to you for your consideration, approved as to form and legality, a draft ordinance that would add Article 4 to Chapter XVI of the Los Angeles Municipal Code (LAMC) to establish a Foreclosure Registry Program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties as a result of the foreclosure crisis. This draft ordinance would also amend Sections 98.0716 and 98.0717 of the LAMC to increase the civil penalty for violations of LAMC Sections 98.0701, *et seq.*, which regulate the maintenance and security of vacant buildings.

Background and Summary of Ordinance Provisions

On February 17, 2009, the City Council instructed the Chief Legislative Analyst (CLA), the City Administrative Officer (CAO), the Los Angeles Housing Department

(LAHD), the Department of Building and Safety (DBS), and requested the City Attorney's Office, to report to Council on the framework of an ordinance that would create a registry of foreclosed properties and create a process to contact owners of these properties in order to notify them of their obligations under the City's Code. The motion also directed that the ordinance include penalties for non-compliance, a registration fee, and the creation of a shared database of foreclosed properties for access by DBS, LAHD, and the Department of Water and Power (DWP). Finally, the ordinance was to also prevent the disconnection of utilities at occupied foreclosed rental property and prevent the re-connection of electricity at lender-owned vacant properties without the consent of the lender.

Pursuant to this action, a working group comprised of representatives from the CLA, CAO, LAHD, DBS, the City Attorney's Office, the Mayor's Office, and Council Districts 12 and 13 convened and developed the requested framework, which was transmitted in the CLA report to Council dated November 2, 2009. In that report, the CLA recommended that the Council approve a proposed framework for an ordinance establishing registration and maintenance requirements and associated fees and fines for properties in foreclosure within the City. The CLA noted in the report that the framework was developed using SB 1137 (Perata), now codified as Civil Code Section 2929.3, as a guide. The CLA also recommended that Council request that the City Attorney, with the assistance of the CLA and LAHD, prepare and present an ordinance that 1) requires lenders, mortgagees, or beneficiaries of trust who issue a Notice of Default on a property within the City as a result of a defaulted obligation to register that property with the City of Los Angeles; 2) requires lenders to maintain subject properties according to standards proposed in the framework created by the working group; 3) imposes a fee for registration and fines for failure to register and/or maintain properties in accordance with the framework's standards; 4) establishes a fund for fee revenue and fines associated with the registry requirement to support LAHD's administrative costs associated with enforcement of the registration requirement of the ordinance, subject to a requirement that any fine revenue remaining in the fund not required to offset the shortfall of fees collected to pay LAHD's administrative costs be reverted to the General Fund at the end of each fiscal year.

On December 4, 2009, the Housing, Community, and Economic Development (HCED) Committee recommended approval of the proposed framework for the ordinance set forth in the CLA report. It also recommended adoption of the recommendations in the report. It further instructed the CLA to report on three items: potential City liability associated with the proposed ordinance; the ability to further define the maintenance requirement and definition of "vacancy" in the proposed framework; and the possibility of depositing post-cost-recovery maintenance fine revenue collected into the Affordable Housing Trust Fund, rather than the General Fund. On December 11, 2009, your Honorable body adopted the HCED Committee's report.

Although our office was not formally instructed by City Council under Council File Number 09-0365 to amend the LAMC to update these penalties, it is clear through the adopted report and recommendations that the Council's intent was to implement the maximum civil penalty authorized by Civil Code Section 2929.3. Therefore, we present this ordinance for your consideration to create the City's Foreclosure Registry Program and simultaneously amend the LAMC to allow DBS to collect penalties commensurate with the maximum amount authorized by Civil Code Section 2929.3 for violations of LAMC Section 98.0701, *et seq.*

Summary of Ordinance Provisions

Ordinance Provisions Adding Article 4 to Chapter XVI of the LAMC to Create the City's Foreclosure Registry Program

This ordinance would require any beneficiary or trustee, who holds, or has an interest in, a deed of trust on a property in foreclosure located within the City to pay a \$155.00 fee and register the property with the Housing Department. The registration requirements of this ordinance shall be satisfied by providing the Housing Department with contact information, including street address and a telephone number for the person, or persons, directly responsible for the property. Properties which are registered with the Mortgage Electronic Registration Service (MERS) will be deemed to have complied with the registration requirement and shall be exempt from the \$155.00 fee.

The standards for property maintenance can be found elsewhere in the LAMC, as can the enforcement mechanisms for lenders' failure to maintain the registered properties, whether lawfully occupied or vacant. Enforcement of these Code sections is performed by DBS. Basic maintenance of existing buildings and structures is regulated by LAMC Sections 91.8104, *et seq.* Among other requirements, that section requires premises to be "clean and free from accumulation of debris, rubbish, garbage, trash, overgrown vegetation and other similar material." LAMC Section 91.8104.2. Additionally, LAMC Sections 91.8901, *et seq.*, regulate the abatement of premises deemed to be nuisance, substandard or hazardous properties.

LAMC Sections 98.0701, *et seq.*, regulate the abatement of vacant buildings. While the framework conceived by the working group included fines for lenders' failure to maintain properties registered under this draft ordinance, the existing LAMC code sections mentioned above have their own fee schedules. In order to achieve Council's intent to increase the penalties for failure to maintain and secure vacant properties so that they are commensurate with the maximum penalties allowed by Civil Code Section 2929.3, we include in the draft ordinance amendments to LAMC Sections 98.0716 and 98.0717. If the Council directs DBS to do so, DBS can reassess the actual cost of its enforcement of all the aforementioned Code sections and provide the information required to amend the LAMC accordingly; at that time the Code sections can be

amended to include additional definitions and clarifications provided in the CLA report and included in the recommendations adopted by the Council on December 11, 2009.

Ordinance Provisions Amending Sections 98.0716 and 98.0717 of the LAMC to Increase the Civil Penalty for Violations of LAMC Section 98.0701, et seq.

The proposed ordinance would amend LAMC Section 98.0716 to increase the penalty for violations of LAMC Sections 98.0701, *et seq.*, to \$1000 per calendar day for each structure in violation of City's regulations, not to exceed \$100,000 per calendar year. The proposed ordinance would also amend LAMC Section 98.0717 to include the notice requirements specified by Civil Code Section 2929.3, specifically that the City provide property owners with 30 day written notice. That notice must also include a description of the conditions that gave rise to the proposed penalty and also provide notice that the City will commence with penalty assessment if corrective actions are not taken within fourteen days from the date the notice is mailed. Moreover, the corrective actions must be completed within thirty days from the date the notice is mailed.

Notice Requirements

We note that, because this ordinance would impose a new fee, notice of its proposed adoption should be given in accordance with the provisions of California Government Code sections 66018 and 6062a. Those sections of State law require that prior to adoption of a new or increased fee a public hearing be held and notice of that hearing be published in a newspaper with two publications at least five days apart over a ten day period. The notice period begins the first day of publication, and there must be at least five days intervening between the first and the second publications, not counting the dates of publication.

CEQA Determination

Regarding a determination pursuant to the California Environmental Quality Act (CEQA), you can find that adoption of this ordinance is exempt from the provisions of CEQA under Section 15378 (b) (4) of the State CEQA Guidelines and Article II, Section 2(m) of the City's CEQA Guidelines, in that the adoption of this ordinance does not constitute a project because the draft ordinance creates a government funding mechanism or other government fiscal activity which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. In addition, you could determine that adoption of the ordinance is exempt from CEQA under City CEQA Guidelines Article II, Section 1 (General Exemption) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. If you concur, you may comply with CEQA by making one or both of these determinations prior to or concurrent with its action on the ordinance.

Council Rule 38 Referral

The draft ordinance was sent, pursuant to Council Rule 38, to the Los Angeles Housing Department and the Department of Building and Safety. The Departments were requested to report their comments directly to you at the time this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Suzanne Spillane at (213) 978-8030 or Deputy City Attorney Adrienne Khorasanee at (213) 978-8246. They or another member of this Office will be present to answer any questions you may have when you consider this matter.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 
PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE/ASK:lee
Transmittal

ORDINANCE NO. _____

An ordinance adding Article 4 to Chapter XVI of the Los Angeles Municipal Code to create the City of Los Angeles Foreclosure Registry Program, and amending Sections 98.0716 and 98.0717 of the Los Angeles Municipal Code to increase the civil penalty for violations of Los Angeles Municipal Code Sections 98.0701, *et seq.*

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 4 is added to Chapter XVI of the Los Angeles Municipal Code to read:

**ARTICLE 4
FORECLOSURE REGISTRY PROGRAM**

SEC. 164.00. TITLE.

This Article shall be known as the City of Los Angeles Foreclosure Registry Program.

SEC. 164.01. INTENT.

It is the intent of the Los Angeles City Council, through the adoption of this Article, to establish an abandoned residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties as a result of the foreclosure crisis.

SEC. 164.02. DEFINITIONS.

The following words and phrases, whenever used in this Article, shall be construed as defined in this section unless the context clearly indicates otherwise. Words and phrases not defined here shall be construed as defined in Sections 12.03, 12.20.3, 91.8901, *et seq.*, and 98.0702, *et seq.*:

A. "Abandoned" means a property that is vacant and is under a Notice of Default and/or Notice of Trustee's Sale, pending tax assessor's lien sale and/or properties that have been the subject of a previous foreclosure sale in which title was retained by the beneficiary of a deed of trust involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure and/or sale.

B. "Assignment of rents" means an instrument that transfers the beneficial interest under a deed of trust from one lender/entity to another.

- C. "Beneficiary" means a lender under a note secured by a deed of trust.
- D. "Days" means consecutive calendar days.
- E. "Deed of Trust" means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan. This definition applies to all deeds of trust regardless of priority.
- F. "Deed in lieu of foreclosure and/or sale" means a recorded document that transfers ownership of a property from the trustor upon consent of the beneficiary of the deed of trust.
- G. "Default" means the failure to fulfill a contractual obligation, monetary or nonmonetary.
- H. "Foreclosure" means the process by which a property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the trustor (borrower) defaults.
- I. "Local" means within 100 road/driving miles distance of the subject property.
- J. "Notice of default" means a recorded notice that a default has occurred under a deed of trust.
- K. "Out of Area" means in excess of 100 road/driving miles distance of the subject property.
- L. "Property" means any unimproved or improved residential real property, or portion thereof, situated in the City of Los Angeles and includes the buildings or structures located on the property regardless of condition.
- M. "Property in Foreclosure" means any Property upon which a Notice of Default has been issued by a lender, mortgagee, or beneficiary of any deed of trust.
- N. "Trustee" means the person, firm or corporation holding a deed of trust on a property.
- O. "Trustor" means a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.

SEC. 164.03. RECORDATION OF TRANSFER OF LOAN AND/OR DEED OF TRUST AND/OR ASSIGNMENT OF RENTS.

Within ten days of the purchase and/or transfer of a loan and/or deed of trust secured by Property the new beneficiary/trustee shall record, with the Los Angeles County Recorder's Office, an assignment of rents, or similar document, that lists the name of the corporation, and/or individual, the mailing address and contact phone number of the new beneficiary and/or trustee responsible for receiving payments associated with the loan and/or deed of trust.

SEC. 164.04. REGISTRATION OF PROPERTIES IN FORECLOSURE.

Any beneficiary or trustee who holds, or has an interest in, a deed of trust on a Property in Foreclosure located within the City of Los Angeles ("City") shall register the Property in Foreclosure with the Housing Department of the City of Los Angeles ("LAHD"). If the beneficiary or trustee issues a Notice of Default after the Effective Date of this Ordinance, the property shall be registered with LAHD within 30 days of the issuance of such Notice of Default. If the beneficiary or trustee issues a Notice of Default prior to the Effective Date of this Ordinance, and such Notice of Default has not been rescinded, the beneficiary or trustee shall register the Property in Foreclosure with LAHD within 30 days of the Effective Date of this Ordinance.

The registration requirements of this Ordinance shall be satisfied by providing LAHD with the street address of the Property in Foreclosure and contact information including street address and telephone number for the person or persons directly responsible for the Property in Foreclosure. If such person or persons are located Out of Area, such person or persons shall also provide the contact information, including street address and phone number for the staff of any applicable property management or property preservation company responsible for the security, maintenance, and marketing of the property. Such person or persons responsible for the property must be empowered to: (1) comply with code enforcement orders issued by the City, (2) provide a trespass authorization upon request of local law enforcement authorities if the property is unlawfully occupied, (3) conduct weekly inspections of the Property, (4) accept rental payments from tenants of the property if no management company is otherwise employed for such person.

An annual registration fee in the amount of \$155.00 shall be paid to LAHD at the time of registration. The fee and registration shall be valid for the calendar year, or remaining portion of the calendar year, in which the registration was initially required. Subsequent registrations and fees are due January 1st of each year and must be received no later than January 31st of the year due.

The registration shall contain the name of the beneficiary and/or trustee (corporation or individual), the direct street and/or office mailing address of the beneficiary and/or trustee (P.O. boxes are insufficient), a direct contact name and

phone number for the beneficiary and/or trustee and, in the case of a corporation or Out of Area beneficiary and/or trustee, the local property management company responsible for the security, maintenance and marketing of the property. Registration fees shall not be prorated.

The registration requirements of this Section may be satisfied by providing the information required above to the Mortgage Electronic Registration System (MERS). Lenders that register properties with MERS will not be required to pay the registration fee to LAHD.

Any beneficiary or trustee who holds a deed of trust on a Property in Foreclosure shall perform an inspection of the property that is the security for the deed of trust, upon default by the trustor, prior to recording a Notice of Default with the Los Angeles County Recorder's Office.

If the property is occupied but remains in default it shall be inspected by the beneficiary and/or trustee, or his designee, monthly until the trustor or party remedies the default.

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 deed of trust involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

Properties subject to this chapter shall remain under the annual registration requirement, security and maintenance standards of this Section as long as they remain vacant.

Any person, firm or corporation that has registered a property under this Article must report any change of information contained in the registration with LAHD within 10 days of the change.

Failure to comply with the registry requirements of this Section shall result in a penalty fine of \$250 per day.

SEC. 164.05. MAINTENANCE AND ENFORCEMENT OF MAINTENANCE REQUIREMENTS.

Properties shall be maintained by the beneficiary/trustee in accordance with the standards set forth in Section 91.8104.

The provisions of Article 1, Division 89 (Section 91.8901, *et seq.*) and all requirements described therein shall apply to properties subject to this section. Should a property be deemed a nuisance, hazardous, or substandard by the City, the abatement procedures described in Article 1, Division 89, may be initiated against beneficiary/trustee by the City.

SEC. 164.06. MAINTENANCE OF VACANT PROPERTIES AND ENFORCEMENT OF VACANT PROPERTY MAINTENANCE REQUIREMENTS.

If a property subject to this Section is found to be vacant, the provisions of Article 8, Division 7 (Section 98.0701, *et seq.*), and all maintenance and security requirements described therein, shall apply. Enforcement by the Los Angeles Department of Building and Safety shall be pursuant to the provisions of Article 8, Division 7.

SEC. 164.07. UTILITIES.

The beneficiary and/or trustee shall ensure that utility services to the property are not terminated if the property is lawfully occupied.

SEC. 164.08. VIOLATION/PENALTY.

Violations of this Article shall be treated as a strict liability offense regardless of intent. Any person, firm and/or corporation that violates any portion of this Article shall be subject to prosecution and/or administrative enforcement under the Los Angeles Municipal Code.

SEC. 164.9. SEVERABILITY.

Should any provision, section, paragraph, sentence or word of this Article be determined or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Article shall remain in full force and effect.

Sec. 2. Section 98.0716 of the Los Angeles Municipal Code is hereby amended to read:

SEC. 98.0716. VACANT STRUCTURE PENALTY.

(a) Any Responsible Person in charge of a structure which meets the definition of a Vacant Structure as provided in this division for 90 consecutive calendar days shall be liable for a civil penalty in the amount of \$1,000 per structure, not to exceed \$100,000 per structure per calendar year unless:

- (1) a Statement of Intent has been filed and approved by the Superintendent; and
- (2) the building has been posted as required by Section 98.0714 of this Code; and
- (3) one of the following applies:

(A) The structure is the subject of an active building permit for repair, rehabilitation or demolition and the owner is proceeding diligently in good faith to complete the repair, rehabilitation or demolition; or,

(B) The structure is maintained in compliance with this division and is actively being offered for sale, lease or rent; or,

(C) The Responsible Person can demonstrate that he or she made a diligent and good faith effort to implement the actions set forth in the approved Statement of Intent within the time line contained within the Statement of Intent.

(b) If the structure continues to meet the definition of Vacant Structure as provided in this division beyond the initial 90 calendar days, and if the Responsible Person does not meet any of the exceptions set forth in this section, the Superintendent may continue to impose a penalty of \$1,000 for each calendar day the structure continues to constitute a Vacant Structure. At no time may the amount of the civil penalty exceed \$100,000 per structure in a calendar year.

Sec. 3. Section 98.0717 of the Los Angeles Municipal Code is hereby amended to read:

SEC. 98.0717. PROCEDURES FOR BARRICADED AND VACANT STRUCTURE PENALTY.

(a) Whenever the Superintendent determines that a structure meets the definition of a Vacant Structure as provided in this division for more than 90 consecutive calendar days, and the Responsible Person does not meet any of the exceptions set forth in Section 98.0716(a), a 30-day Notice of Barricaded and Vacant Structure Penalty may be issued to the Responsible Person, and any other person listed in the title report as having an interest in the real property. The Notice of Barricaded and Vacant Structure Penalty shall include a description of the conditions that gave rise to the penalty and notice of the City's intent to assess a civil penalty pursuant to Section 98.0716 if action to correct the violation is not commenced within a period of not less than 14 days from the date the Notice is mailed, and completed within a period of not less than 30 days from the date the Notice is Mailed. Notwithstanding the foregoing, in accordance with Civil Code Section 2929.3, the City may provide less than 30-days notice to remedy a violation if the City determines that a specific condition of the property threatens public health and safety and provided that notice in accordance with that Civil Code Section is given.

(b) A separate 30-day Notice of Barricaded and Vacant Structure Penalty shall be issued for each subsequent penalty that may be imposed pursuant to Section 98.0716.

(c) The Notice of Barricaded and Vacant Structure Penalty shall be served on each required person by any one of the methods of service listed in Section 91.8903.3.4 of this Code.

Sec. 4. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE A. LAGMAY, City Clerk

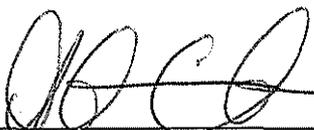
By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By  _____
ADRIENNE S. KHORASANEE
Deputy City Attorney

Date 4/29/10

File No. CF 09-0365