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CITY ATTORNEY

REPORT NO. R 1 4 - 0 3 8 0
OCT 2 4 2014

REPORT RE:

**DRAFT ORDINANCES AMENDING ARTICLE 4 OF CHAPTER XVI OF THE
LOS ANGELES MUNICIPAL CODE TO REVISE THE CITY OF LOS ANGELES
FORECLOSURE REGISTRY PROGRAM TO INCLUDE A PROACTIVE INSPECTION FEE
FOR ALL FORECLOSED PROPERTIES AND OTHER TECHNICAL CHANGES, AND
ADDING ARTICLE 28 TO CHAPTER 5 OF DIVISION 5 OF THE LOS ANGELES
ADMINISTRATIVE CODE TO CREATE A FUND FOR FEES AND PENALTIES
COLLECTED BY THE CITY THROUGH THE FORECLOSURE REGISTRY PROGRAM**

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. 12-0647-S6

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 amend Article 4 of Chapter XVI of the Los Angeles Municipal Code (LAMC) to impose a fee for visual inspections by the Department of Building and Safety (DBS) on foreclosed properties on the Foreclosure Registry (as established by the Foreclosure Registry Program), as well as make technical and other changes to Article 4 of Chapter XVI of the LAMC.

We have also prepared and transmit to you for your consideration, pursuant to your request, a draft ordinance adding Article 28 to Chapter 5 of Division 5 of the Los Angeles Administrative Code (LAAC) to create a fund into which the Housing and Community

Investment Department (HCID) can transfer the fees and penalties collected through the Foreclosure Registry Program.

Background and Summary of Ordinance Provisions

On June 3, 2014, a motion introduced by Councilmember Cedillo requested the City Attorney, with the assistance of HCID, DBS, the Chief Legislative Analyst (CLA), and the City Administrative Officer (CAO), to prepare and present an ordinance amending the Foreclosure Registry Program to require lenders to pay a fee for a property inspection by DBS at the time a property's status changes from "defaulted" to "foreclosed." (CF 12-0647-S6.) The motion also instructed the CAO, with the assistance of the CLA and DBS, to complete a study to support the fee for this new proactive DBS inspection. Additionally, the motion instructed HCID to report on the statistics of the program with regard to compliance, potential penalties and penalties actually collected.

At a special joint meeting held on June 24, 2014, the Housing and Budget & Finance Committees approved the motion and also instructed HCID to provide a cost analysis for an upgrade of the Foreclosure Registry database and related technology in order to ensure better coordination with DBS and other relevant departments.

On October 22, 2014, the Housing Committee held a special meeting and considered a joint CLA and CAO report that included a fee study supporting the establishment of a fee for proactive DBS inspections of properties listed as "foreclosed" on the City's Foreclosure Registry. This fee, as analyzed in the fee study, recovers the City's cost on a single visual inspection for each foreclosed property on the Foreclosure Registry. The Committee approved the recommendations of the joint CLA and CAO report and requested that the City Attorney draft an ordinance to apply the proactive DBS inspection fee to all foreclosed properties. The members also requested that the City Attorney include in the ordinance a penalty of \$250 per day for failure to pay the DBS inspection fee, with the penalty and fees collected under the Foreclosure Registry Program to be deposited in a trust fund created to receive Foreclosure Registry Program monies.

The proposed ordinance amending the LAMC establishes a \$356 fee that is collected via the Foreclosure Registry to support a single, visual inspection by DBS. The fee is collected at the time a property's status is changed from "defaulted" to "foreclosed." Failure to pay triggers a \$250 per day penalty.

The proposed ordinance also makes technical changes and reorganizes the provisions of the Foreclosure Registry Program regulation for clarity and ease of reference. It updates the language of the ordinance in order to be more consistent with the definitions and phrasing used by other California cities in enacting similar programs.¹

¹ A number of motions have been made with the shared goal of improving the City's Foreclosure Registry Program. (See CF 12-0647-S1 through CF 12-0647-S7.) The proposed ordinance addresses the concerns cited by Council, including consistency and compatibility with similar regulations throughout the state.

The second proposed ordinance creates a fund into which all monies collected under the Foreclosure Registry Program can be deposited, including penalties. Under the proposed ordinance, HCID's General Manager is the administrator of the fund, and DBS receives reimbursements for inspections conducted on foreclosed properties pursuant to LAMC Section 164.06.B.

Notice Requirements

The proposed ordinance imposes a new fee, and therefore 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.

Council Rule 38 Referral

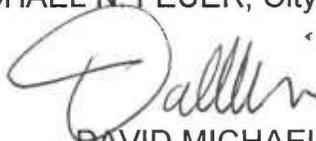
The draft ordinance was sent, pursuant to Council Rule 38, to the Los Angeles Housing and Community Investment Department and the Department of Building and Safety. The Departments were requested to report their comments directly to you at the time this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Adrienne Khorasane at (213) 978-8246. A member of this Office will be present to answer any questions you may have when you consider this matter.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

DM/ASK:pj
Transmittal

ORDINANCE NO. _____

An ordinance amending Article 4 of Chapter XVI of the Los Angeles Municipal Code to amend the City of Los Angeles Foreclosure Registry Program to establish an inspection fee on foreclosed properties, and to make technical and other changes.

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

Section 1. Article 4 of Chapter XVI of the Los Angeles Municipal Code is amended in its entirety to read as follows:

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. PURPOSE AND INTENT.

The purpose of this article is to promote the health, safety and welfare of the residents, workers, visitors and property owners of the City of Los Angeles, as well as protect the economic stability, viability and livability of neighborhoods in the City by requiring the registration and monitoring of defaulted and foreclosed residential properties. This Foreclosure Registry Program will also protect the public from health and safety hazards while reducing further compromise of neighboring property values resulting from the neglect and deterioration of real property.

It is the intent of the Los Angeles City Council, through the adoption of this article, to maintain a residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of residential properties. The Council further intends, through adoption of this article, to provide for the proactive inspection of foreclosed residential properties to assist in neighborhood stabilization efforts, because such properties have an increased potential to become blighted.

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 within an individual section 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.*, of this Code.

A. "Abandoned" means any building, structure or real property that is vacant or occupied by a person or persons without a legal right of occupancy.

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 or other person or entity holding, owning, participating in, or otherwise having an interest in the proceeds of a loan represented by a note secured by a deed of trust.

D. "Days" means consecutive calendar days.

E. "Deed in lieu of foreclosure and/or sale" means a recorded document that transfers ownership of a property from the trustor to the holder of a deed of trust upon consent of the beneficiary of the deed of trust, without completion of a foreclosure proceeding.

F. "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.

G. "Default" means the failure to fulfill a contractual obligation, monetary or nonmonetary.

H. "Evidence of occupancy" means any condition that on its own or combined with other conditions would lead a reasonable person to believe that the property is legally occupied. Such conditions include, but are not limited to, secured/locked structures; active utility services; the absence of overgrown and/or dead vegetation; the absence of an accumulation of newspapers, circulars, flyers and/or mail; the presence of window coverings such as curtains, blinds, and/or shutters; the presence of furnishings and/or personal items consistent with residential habitation; statements by neighbors, delivery agents or government employees that the property is legally occupied; or actual contact with occupants.

I. "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 include, but are not limited to, overgrown and/or dead vegetation; accumulation of newspapers, circulars, flyers and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk, and/or debris; the absence of window coverings such as curtains, blinds, and/or shutters; the absence of furnishings and/or personal items consistent with residential habitation; and statements by neighbors, delivery agents or government employees that the property is vacant.

J. "Foreclosure" means the process by which a property, placed as security for a real estate loan, is sold to satisfy the debt of the defaulting trustor, including a transfer by deed in lieu of foreclosure and/or sale.

K. "Inspection" means a physical investigation at a property to obtain evidence of occupancy or vacancy, to assess the physical condition of the property and to verify compliance with this article and any other applicable code or law.

L. "Local" means within 100 road/driving miles distance of the subject property.

M. "Notice of default" means a recorded notice that a default has occurred under a deed of trust.

N. "Occupied" means the lawful habitation of the property by trustor or tenants.

O. "Out of area" means in excess of 100 road/driving miles distance of the subject property.

P. "Property" means any unimproved or improved residential real property, or portion thereof, situated in the City of Los Angeles, including the buildings, structures or other improvements located on the property regardless of condition.

Q. "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.

R. "Trustee" means the person, firm, entity or corporation holding a deed of trust on a property.

S. "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 10 days of the purchase and/or transfer of a loan and/or deed of trust secured by property the new beneficiary and/or 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.

A. Properties Subject to Registration Requirements.

1. 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 and Community Investment Department ("HCID") within 30 days of the issuance of a notice of default.

2. The registration requirements of this article also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary or the trustee of a deed of trust involved in the foreclosure or transferred under a deed in lieu of foreclosure/sale.

Registration shall be renewed annually until the property is no longer subject to this article.

B. Registration Methods.

Registration in satisfaction of this article shall be with HCID pursuant to the rules, regulations and methodology it promulgates to carry out the provisions of this article. Registration shall only be deemed complete once the information and registration fees required under this article have been received by HCID.

C. Required Registration Information.

1. Registrants under this article shall provide HCID with contact information, including name, street address and direct telephone number for the beneficiary and/or trustee. Post office boxes do not constitute an acceptable address.

2. The beneficiary and/or trustee must be empowered to promptly: (1) comply with code enforcement orders issued by the City and other enforcement entities; (2) provide a trespass authorization upon request of local law enforcement authorities; (3) conduct inspections of the property in foreclosure; and (4) accept rental payments from tenants of the property if no management company is otherwise employed for such purpose.

3. If the beneficiary and/or trustee is located out of area, registrants under this article shall also provide the contact information, including street address and phone number for the staff of the local property management or property preservation company responsible for the security, maintenance, inspection and marketing of the property.

4. The registration required by this section shall also include: 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; 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, inspection and marketing of the property. Post office boxes do not constitute an acceptable address.

D. Change of Property Status and/or Information; De-Registering.

1. Any person, firm or corporation that has registered a property under this article must report any change of status or information contained in the registration to HCID within 10 calendar days of the change. This includes, but is not limited to, a change in the property servicer or management, change in occupancy status and bank owned status, or any change affecting the ownership or condition of the property.

2. The beneficiary and/or trustee are required to de-register the property within 10 calendar days after the property is no longer subject to the registry, as a result of notice of default being cancelled or the property being sold to a third party.

3. It is the obligation of the beneficiary and/or trustee to inform the City of any pending action, such as bankruptcy or other court or administrative action, that would prohibit the beneficiary and/or trustee from taking any of the actions required in this article.

4. If a property is found to be vacant and has already been registered, the beneficiary and/or trustee shall change the status of the property to vacant on the City's registration, pursuant to Section 164.04.D.

5. All vacant properties subject to this article shall have recorded against the property with the county recorder a declaration stating that the property is and shall remain vacant, and shall provide that the property has been secured against unauthorized entry.

E. Annual Registration Fee.

1. A non-refundable annual registration fee in the amount of \$155 shall be paid to HCID at the time of registration.

2. 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. Registration fees will not be prorated.

3. Subsequent annual registrations and fees are due January 1st of each year and must be received no later than January 31st of the year due.

4. Registration fees collected by HCID pursuant to this article shall be deposited into the Foreclosure Registry Program Fund established by Article 28 of Chapter 5 of Division 5 of the Los Angeles Administrative Code.

5. The City Council may adjust the amount of the annual registration fee. Such adjustments must be supported by a fee study.

SEC. 164.05. SPECIAL PROVISIONS WHERE PROPERTY IS ENCUMBERED WITH THE SECURITY INTERESTS OF MULTIPLE BENEFICIARIES.

In the event that a property is encumbered by the security interests of more than one beneficiary at the time when a notice of default is recorded, the beneficiary who first causes a notice of default for its security interest to be recorded shall be responsible for registering the property with the City as required by this article.

SEC. 164.06. INSPECTION REQUIREMENTS.

A. Inspection by Beneficiary or Trustee.

1. Any beneficiary and/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.

2. A property with a recorded notice of default shall be inspected by the beneficiary and/or trustee monthly until the trustor or other party remedies the default, or until the foreclosure process is complete. The beneficiary and/or trustee shall provide monthly reports to HCID that record the date of the monthly inspection and the condition of the property as observed during that inspection.

3. Once the foreclosure process is complete, if the beneficiary or trustee takes title to the property, the beneficiary or trustee shall continue to inspect the property monthly and provide monthly reports to HCID recording the date of the monthly inspection and the condition of the property as observed during that inspection.

4. Failure to satisfy the inspection and reporting requirements of this section shall result in the imposition of penalties under Section 164.09 of this article.

B. Inspection by the Los Angeles Department of Building and Safety.

1. The Department of Building and Safety shall inspect all foreclosed properties that are registered pursuant to this article.

2. When a registered property's status changes to indicate that the foreclosure process against that property is complete, the beneficiary or trustee who acquired the property shall pay a proactive inspection fee in the amount of \$356. Failure to pay the inspection fee at the time the property's status is changed to reflect foreclosure on the registry, or at the time a foreclosed property is registered if it was not registered upon default, will result in penalties pursuant to Section 164.09 of this article.

3. For purposes of this section and only as applicable to the Los Angeles Department of Building and Safety, "inspection" means a physical investigation of a property to verify compliance with this article and any other applicable code or law.

SEC. 164.07. MAINTENANCE OF PROPERTIES AND ENFORCEMENT OF PROPERTY MAINTENANCE REQUIREMENTS.

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

B. The provisions of Article 1, Division 89 (Section 91.8901, et seq.) and all requirements described therein shall apply to properties subject to this article. 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 and/or trustee by the City.

C. If a property subject to this article 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. 164.08. UTILITIES.

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

SEC. 164.09. VIOLATIONS AND PENALTIES.

A. 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.

B. A beneficiary and/or trustee who has failed to comply with the registration requirements of this article, including the payment of any fees and satisfaction of inspection and reporting requirements, will be notified by HCID in writing of such delinquency by letter deposited in the United States mail in a sealed envelope, postage prepaid, and addressed to such person to be notified at the address listed on the notice of default recorded with the Los Angeles County Recorder office.

C. A beneficiary and/or trustee who fails to comply with all registry registration requirements of this article, including the payment of any fees and satisfaction of inspection and reporting requirements, within 30 days of HCID's notification, shall be assessed a penalty in the amount of \$250 per day for each day subsequent to such notification until the deficiency is cured.

D. If the beneficiary and/or trustee fail to pay any fee or penalty imposed under this article, HCID may transmit any claim for unpaid fees to the appropriate City department for collection and/or appropriate legal recourse.

E. Administrative penalties imposed pursuant to this ordinance shall not exceed \$100,000 per property.

SEC. 164.10. SEVERABILITY.

If 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. 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 _____.

HOLLY L. WOLCOTT, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
ADRIENNE S. KHORASANEE
Deputy City Attorney

Date October 24, 2014

File No. CF 12-0647-S6

ORDINANCE NO. _____

An ordinance adding Article 28 of Chapter 5 of Division 5 of the Los Angeles Administrative Code establishing the Foreclosure Registry Program Fund.

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

Section 1. Article 28 of Chapter 5 is added to Division 5 of the Los Angeles Administrative Code to read as follows:

CHAPTER 5, ARTICLE 28

FORECLOSURE REGISTRY PROGRAM FUND

Sec. 5.115.12. Creation and Administration of the Fund.

(a) There is hereby created and established in the Treasury of the City of Los Angeles a special fund to be known as the "Foreclosure Registry Program Fund" (Fund).

(b) The purpose of the Fund shall be the receipt, retention and disbursement of funds received by the Housing and Community Investment Department pursuant to Article 4 of Chapter XVI of the Los Angeles Municipal Code (LAMC). The Fund shall also be used for the disbursement of monies transferred into the Fund by the City Council.

1. Disbursement of funds shall include the reimbursement of monies to the Los Angeles Department of Building and Safety for proactive external inspections of certain properties pursuant to LAMC Section 164.06.B.

(c) The Fund shall be administered by the General Manager of the Housing and Community Investment Department (General Manager) or the General Manager's designee(s), in accordance with established City practices.

(d) Disbursement of funds requires the approval of the General Manager or the General Manager's designee(s). No expenditure shall be made from this Fund without the prior approval of the General Manager or his or the General Manager's designee.

(e) The General Manager shall inform the Controller of any special condition or restriction imposed upon any monies accepted for deposit in the Fund.

(f) The General Manager is authorized to establish procedures to carry out the provisions of this article.

(g) The Fund shall be interest bearing. All interest and other earnings attributable to monies in the Fund shall be credited to the Fund and devoted to the purposes of the Fund.

(h) The General Manager shall maintain appropriate accounting records of the actual costs of the services rendered pursuant to the Fund. A year-end report shall be prepared which shall be submitted within 90 days after the close of each fiscal year. Uncommitted funds remaining in this Fund at the close of any fiscal year shall not revert to the Reserve Fund, but shall remain in the Fund.

Sec. 2. 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 _____.

HOLLY L. WOLCOTT, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  for
ADRIENNE S. KHORASANEE
Deputy City Attorney

Date 10/24/2014

File No. CF 12-0647-S6