



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Property Value Protection Ordinance

OVERVIEW

On September 14, 2011, a draft Property Value Protection Ordinance (PVPO) was presented to the Land Use & Housing (LU&H) Committee by the Center on Policy Initiatives and the Alliance of Californians for Community Empowerment as an informational item. The core item within the PVPO is the establishment of a registry of contact information for residential properties that have fallen into the foreclosure process. Direction was provided to the Development Services Department staff and the Office of the City Attorney to provide feedback on “harmonizing” the PVPO with the Abandoned Property Ordinance (APO), which had previously been heard by the LU&H Committee. The APO is an ordinance to expand the definition of “abandoned properties” within the existing City property related regulations.

Subsequently, on October 26, 2011, the draft PVPO was again presented and discussed at the LU&H Committee. Additionally, the Development Services Department presented a report outlining a comparison of the draft PVPO and the proposed APO. The LU&H Committee opted to not attempt to harmonize the PVPO and the APO since the APO, previously vetted and revised by several committees, was in position to be forwarded to the City Council for consideration. Additional analysis was requested for the PVPO. The LU&H Committee requested additional analysis from the Development Services Department, the City Attorney’s Office and the Office of the IBA.

On July 11, 2012, the LU&H Committee reviewed and discussed the additional analysis that had been requested of staff at the October 26, 2011 LU&H Committee meeting. Based upon the discussion during this meeting, the City Attorney’s Office, working with Councilmember Alvarez’s office, was directed to draft language for the PVPO as proposed in Councilmember Alvarez’s July 10, 2012 memorandum. The Development Services Department was requested to provide an evaluation and estimate of suggested fees to accompany the developed PVPO. Additionally, it was requested that the Technical

Advisory Committee review the developed PVPO prior to City Council consideration. The APO was presented and approved by the City Council on September 18, 2012.

Based upon previous discussions and recommendations from TAC, a revised PVPO will be presented to the City Council for consideration on November 13, 2012. The primary intent of the PVPO, to provide additional information to the City's code enforcement officials to better address public nuisances and protect the public, has remained consistent throughout the various discussions and revisions to the PVPO. This report provides an overview of the revised PVPO being presented for consideration.

FISCAL/POLICY DISCUSSION

As proposed, the PVPO will require lenders or banks who issue a Notice of Default or foreclose on residential properties to provide the City with current contact information so when the City receives a complaint about lack of maintenance, lack of security, or danger to public safety for one of the identified residential properties, City code enforcement officials can quickly contact the responsible party and address the complaint. The collected contact information will be compiled into a registry for City code enforcement officials to access as necessary. The City has estimated a nominal cost recovery fee for the development and maintenance of this registry. It should be noted that the PVPO, as proposed, does not necessitate additional field staff but develops an additional tool for field staff to more effectively address complaints.

There are several components of the PVPO that have received much discussion. These components include: which party is responsible for filing the contact information with the City and responsible for any related penalties; what is the event or "trigger" that initiates the need to file contact information with the City; what is required in terms of maintenance, security, and signage for the residential property; and how to recover the costs associated with the registry.

PARTY RESPONSIBLE FOR FILING WITH THE CITY

As described in the PVPO, the party responsible for filing the contact information with the City is the lender or the bank. Any penalties associated with not filing the contact information are also the responsibility of the lender or bank. The homeowner will not be required to file the contact information or be required to pay any fees or penalties to the City related to the PVPO. While the lender or bank may recoup the filing costs or any related penalties through other fees, there is no mechanism within the PVPO for the bank or lender to charge homeowners. It is not the intent of the PVPO to burden the homeowner with any additional charges, to delay any possible sale of the home, or to delay any loan modification negotiations.

TRIGGER FOR FILING

The event that would trigger the required filing of contact information with the City would be when a lender or bank issues a Notice of Default (NOD) to the homeowner or when a residential property has become a Real Estate Owned (REO) property. From this

trigger event, the lender or bank has 10 calendar days to register the property with the City, or otherwise pay a \$100 per day penalty, not to exceed \$5,000 per calendar year.

From our review of other municipalities or agencies that have established similar registry ordinances, the trigger event initiating the filing with the appropriate registry varies. Conditions that necessitate a filing include; the residential property has been identified as a vacant property; the residential property has been issued a NOD and is vacant; and the residential property has completed the foreclosure process and becoming a REO property.

The advantage of the trigger proposed in the PVPO under consideration, i.e. the issuance of NOD or the residential property becoming a REO property, is the trigger will apply to a larger number of properties than a narrower event such as the residential property becoming vacant. As the intent of the PVPO is to assist City code enforcement officers with better information related to residential properties, a more encompassing trigger may be favored to collect as much data as possible for future use.

However, in our analysis of information available on ForeclosureRadar.com for San Diego County for September 2012, only twenty-three percent of foreclosure outcomes resulted in homes becoming REO homes. As a small percentage of homes that enter the foreclosure process become REO homes, the proposed PVPO is requiring a large number of properties to be registered, when only a small portion of the information gathered will be used by the City.

As indicated by the variety of trigger events in different municipalities, there is no established guideline for determining the appropriate trigger event to initiate the filing. However, the proposed trigger event within the proposed PVPO has been developed to support the information gathering intent of the PVPO.

MAINTENANCE, SECURITY, AND SIGNAGE REQUIREMENTS

According to the U.S. Government Accountability Office (“GAO”) report titled “Vacant Properties, Growing Number Increases Communities’ Costs and Challenges”, dated November 2011, there are two categories of ordinances established by local governments related to property registries: ordinances that require the titleholders to register the properties with the local governments; and ordinances that, in addition to the registration, place maintenance requirements and responsibilities upon the titleholders. As proposed, the PVPO is only requiring the registration element. The recently approved APO and existing municipal code regulations have established maintenance requirements for residential property owners not just those impacted by a foreclosure process. The PVPO does not place any additional maintenance requirements on lenders or banks and does not require any additional property inspections or monitoring other than those normally performed by City code enforcement officers under the existing City property regulations.

REGISTRATION FEE

The estimated registration fee for the proposed PVPO has been established to be a cost recovery fee for anticipated costs related to the PVPO. The proposed PVPO is only requiring the registration of previously described residential properties. The ordinance does not specifically require initial property inspections upon registration; does not require property inspections for a random sample of registered properties; and inspections from City code enforcement officers are anticipated to remain complaint driven. The registration process will be supported by three new administrative positions anticipated to be funded through the proposed registration fee.

The Permit Issuance and Code Enforcement (PICE) Division of the Development Services Department has calculated a registration fee of \$76 for all filings. This fee is based on recovering the administrative costs associated with the PVPO as described in the memo titled *“Revised Staffing Analysis for the Proposed PVPO Ordinance”*, dated October 31, 2012. Per the proposed Section 54.1109 to the Municipal Code, the costs associated with this ordinance shall be determined within 60 days of the effective date of the ordinance and thereafter annually by the City in accordance with the City Council’s User Fee Policy. From the proposed additional Municipal Code language, it appears as if this fee will be reviewed annually. It should be noted that the proposed registration fee does not anticipate funding any additional field staff.

In reviewing registration fees charged by other jurisdictions that have similar ordinances, the fees range from \$0 to \$765. The \$0 fee is due to the usage of the Mortgage Electronic Registration System (MERS). MERS is a national database of collected information related to the registration of residential properties. It was developed by the Mortgage Bankers Association and contains information on more than 2,500 lenders nationwide. The usage of MERS is offered to municipalities at no cost. As such, some municipalities offer registration with MERS as an option for complying with the municipality’s registration requirement and do not charge lenders to register residential properties with MERS.

Although MERS is used by many lenders and multiple municipalities, it does not capture all of the residential properties that need to be registered; therefore, municipalities that offer MERS as a registration option to lenders still establish their own registry to capture the balance of required registrations. Though MERS is widely used for registration purposes, MERS is currently in litigation relating to the role MERS can play in the initiation of the foreclosure process. This additional role of MERS is not a requirement for the usage of MERS as an informational database.

In reviewing multiple industry resources, no definitive “best practices” have been established for property registration ordinances. In addition to a property registration ordinance, many jurisdictions have established abandoned property or vacant property ordinances. A 2009 survey conducted by the United States Conference of Mayors highlighted actions other municipalities are undertaking to address vacant and abandoned properties. Most frequently, the agencies have made changes to local ordinances to

strengthen property maintenance and code enforcement and require some type of registration of contact information for the titleholder of the property. While many agencies already had some type of public nuisance or vacant property ordinance in place, changes made to the existing ordinances include expanding certain definitions related to properties or vacant lots, increasing penalties, and adding the registration requirement.

CONCLUSION

On July 11, 2012, the LU&H Committee discussed the PVPO and direction was given to the City Attorney's Office to work with Councilmember Alvarez's office to draft language for the PVPO. The PVPO will be presented to the City Council on November 13, 2012 for consideration. As proposed, the PVPO will require lenders or banks who issue a Notice of Default or foreclose on residential properties to provide current contact information with the City so when the City receives a complaint about the lack of maintenance, lack of security, or danger to public safety for one of the identified residential properties, City code enforcement officials can quickly contact the responsible party and address the complaint.

The intent of this ordinance is to provide an additional tool for the City's code enforcement officers and follows a trend amongst municipalities to strengthen property maintenance and code enforcement.



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