



Unified Government of Wyandotte County/ Kansas City, Kansas

Senate Committee Chair: Senator Carolyn McGinn
Senate Committee on Local Government
Written Testimony in opposition to Senate Bill 510
March 3, 2022 @ 9:30am

Thank you for this opportunity to provide comment on Senate Bill 510, relating to prohibiting municipalities from imposing any fees or registration requirements on unoccupied residential or commercial property. My name is Greg Talkin, and I am providing this testimony on behalf of the Unified Government of Wyandotte County/Kansas City, KS.

The Unified Government currently has in place a Vacant Property Registration Ordinance (VPRO). Unoccupied buildings with the potential to deteriorate present local governments with high social and economic costs. VPROs seek to address the high rates of vacancy that have plagued many municipalities since the foreclosure crisis including Kansas, City, KS.

VPROs have three main objectives:

- Ensure owners of vacant properties are known to the city and other interested parties can be reached if necessary
- Ensure owners of vacant properties are aware of their obligations of ownership under relevant city codes and regulations
- Ensure owners meet a minimum standard of maintenance of their properties

Benefits of a VPRO:

- Funds generated through the Registry help cover the costs of enforcement.
- First responders and emergency personnel can be kept safer when they know if a building is vacant and the condition of the building's roof and interior
- Research has confirmed vacant homes, especially those that are left to deteriorate, greatly reduce the value of surrounding properties. VPROs are a proven strategy in reducing the number of vacant properties to encourage a healthier real estate market, which benefits everyone.

Some opponents of VPROs argue they raise the costs of property ownership as well as the costs of servicing delinquent loans and foreclosed properties. The truth is the costs imposed by a VPRO represent the true costs of owning and managing a vacant property. A VPRO shifts the costs of vacant properties away from neighborhoods and local governments and onto the appropriate private parties. By requiring the cost of a vacant property to be considered during underwriting decisions, a VPRO encourages responsible investment and lending while discouraging irresponsible investment and speculation.

For example, if an owner of a vacant property finds \$200 too burdensome to pay, it's unlikely they will invest the \$30,000 required to redo their roof and mechanical systems. Meanwhile, as their vacant property deteriorates, the property values of neighboring properties will decline, and the neighborhood's real estate market suffers.

Additionally, if the property owner is making good faith efforts to bring properties into code and/or to be occupied we acknowledge those efforts and will work with the owner.

In closing, we would request that you decline to support Senate Bill 510. The fact is, many more owners' property rights are infringed upon by a blighted and deteriorating building, than are infringed by adoption of a VPRO – which affects only the property rights of the single owner of the vacant property. This bill will continue to allow those who have vacant properties to diminish their neighborhoods while good law-abiding citizens pay the price.

I have attached a copy of our communities VPRO Ordinance if you would wish to review it.

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Sec. 8-481. Mortgage default registration.

When an owner of a building, structure or vacant parcel has been determined to be in default of a mortgage, the mortgagee or lienor shall inspect the mortgaged property to determine whether such property is vacant or occupied. Within ten days of an inspection, the mortgagee or lienor shall register the property in the manner required regardless of whether it's vacant or occupied.

(1) *Definitions.*

- a. *Default* shall mean that the mortgagor has not complied with the terms of the mortgage on the property, or the promissory note, or other evidence of the debt, referred to in the mortgage.
- b. *Foreclosure* shall mean the legal process by which a mortgagee, or other lien holder, terminates a property owner's equitable right of redemption to obtain legal and equitable title to the real property pledged as security for a debt or the real property subject to the lien. This definition shall include, but is not limited to, public notice of default, a deed-in-lieu of foreclosure, sale to the mortgagee or lien holder, certificate of title and all other processes, activities and actions, by whatever name, associated with the described process. The process is not concluded until the property obtained by the mortgagee, lien holder, or their designee, by certificate of title, or any other means, is sold to a non-related bona fide purchaser in an arm's length transaction to satisfy the debt or lien.
- c. *Mortgagee* means the creditor, including but not limited to, trustees; mortgage servicing companies; lenders in a mortgage agreement; any agent, servant, or employee of the creditor; any successor in interest; or any assignee of the creditor's rights, interests or obligations under the mortgage agreement.
- d. *Registrable property* means, any real property located in the corporate limits of the city, whether vacant or occupied, that it is subject to an ongoing foreclosure action by the mortgagee or trustee, has been the subject of a foreclosure action by a mortgagee or trustee and a judgement has been entered, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a "default/foreclosure" property as "registrable" shall remain in place until such time as the property is sold to a non-related bona fide purchaser in an arm's length transaction or the foreclosure action has been dismissed.

(2) *Registration of defaulted mortgaged real property.*

- a. Any mortgagee who holds a mortgage on real property located within the corporate limits of the city shall perform an inspection of the property to determine vacancy or occupancy, upon default by the mortgagor as evidenced by a foreclosure filing. The mortgagee shall, within ten days of the inspection, register the property with the code enforcement department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is found to be vacant or occupied.
- b. Registration pursuant to this section shall contain the name, direct mailing address, a direct contact name, telephone number, and e-mail address for the mortgagee/trustee, and the mortgage servicer, and the name and 24-hour contact phone number of the local property management company responsible for the security and maintenance of the property who has the authority to make decisions concerning the abatement of nuisance conditions at the property, as well as any expenditure in connection therewith.
- c. Mortgagees who have existing registrable property on the effective date of this section have 30 calendar days from the effective date to register the property with the code enforcement

department, or its designee, on forms or other manner as directed, and indicate whether the property is vacant or occupied. A separate registration is required for each property, whether it is vacant or occupied.

- d. If the mortgage on a registrable property is sold or transferred, the new mortgagee is subject to all the terms of this article. Any previous unpaid registration fees are the responsibility of the new mortgagee or trustee and are due and payable with their initial registration. Except if it is determined that the transferee is exempt from paying fees then the previous mortgagee will not be released from the responsibility of paying all previous unpaid fees and fines, regardless of who the mortgagee was at the time when registration was required, including but not limited to unregistered periods during the foreclosure process. The provisions of this section are cumulative with and in addition to other available remedies. Moreover, the code enforcement department is authorized and empowered to refer the previous mortgagee's nonpayment of previous fees and fines to the code enforcement special magistrate or a court of competent jurisdiction for disposition.
- e. If the servicing rights for a mortgage on a registrable property are sold or transferred, the registration must be updated to include all the new servicer information within ten days of the servicing transfer.
- f. If the mortgagee owner of a foreclosed real property sells or transfers the property to a non-arm's length related person or entity, the transferee is subject to all the terms of this article and within five days of the transfer update the property. Any previous unpaid registration fees are the responsibility of the new registrable property owner and are due and payable with their initial registration. Except if it is determined that the transferee is exempt from paying fees then the previous mortgagee will not be released from the responsibility of paying all previous unpaid fees and fines, regardless of who the mortgagee was at the time when registration was required, including but not limited to unregistered periods during the foreclosure process. The provisions of this section are cumulative with and in addition to other available remedies. Moreover, the code enforcement department is authorized and empowered to refer the previous mortgagee's nonpayment of previous fees and fines to the code enforcement special magistrate or a court of competent jurisdiction for disposition.
- g. As long as the property is registrable it shall be inspected by the mortgagee, or designee, monthly. If an inspection shows a change in the property's occupancy status the mortgagee shall, within ten days of that inspection, update the occupancy status of the property registration.
- h. A nonrefundable annual registration fee of \$200.00 shall accompany each registration pursuant to this section.
- i. If the foreclosing or foreclosed property is not registered, or the registration fee is not paid within 30 days of when the registration or renewal is required pursuant to this section, a late fee equivalent to ten percent of the semi-annual registration fee shall be charged for every 30-day period, or portion thereof, the property is not registered and shall be due and payable with the registration.
- j. Properties subject to this section shall remain under the semi-annual registration requirement, and the inspection, security and maintenance standards of this section as long as they are registrable.
- k. Until the mortgage or lien on the property in question is satisfied, or legally discharged, the desire to no longer pursue foreclosure, the filing of a dismissal of lis pendens and/or summary of final judgment and/or certificate of title, voluntary or otherwise, does not exempt any mortgagee holding the mortgage, from all the requirements of this article as long as the borrower is in foreclosure.

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- l. Any person or legal entity that has registered a property under this section must report any change of information contained in the registration within ten days of the change.
 - m. Failure of the mortgagee to properly register or to modify the registration information from time to time to reflect a change of circumstances as required by this article is a violation of the article and shall be subject to enforcement and any resulting monetary penalties and/or property liens.
 - n. Pursuant to any administrative or judicial finding and determination that any property is in violation of this article, the unified government may take the necessary action to ensure compliance with and place a lien on the property for the cost of the work performed to benefit the property and bring it into compliance.
 - o. Properties registered as a result of this section are not required to be registered in the vacant property or rental property registries.

(Code 1988, § 8-387; Ord. No. 65152, § 1(21-61), 5-28-1987; Ord. No. O-12-17, § 5, 6-29-2017; Ord. No. O-6-18, § 7, 2-22-2018; Ord. No. O-14-20, § 1, 3-12-2020)

Editor's note(s)—Ord. No. O-6-18, § 7, adopted Feb. 22, 2018, amended § 8-481 and in so doing changed the title of said section from "Registration of mortgagees and lienors" to "Mortgage default registration," as set out herein.

Sec. 8-482. False statements.

- (a) Every registration statement filed with the codes administrator shall be signed by the person required or authorized to submit such registration statement.
- (b) Any person who signs a registration statement shall certify that all statements contained therein are true and correct.
- (c) Any person signing a registration statement who makes any false statement therein as to any material matter shall be guilty of a violation of the provisions of this code.

(Code 1988, § 8-388; Ord. No. 65152, § 1(21-62), 5-28-1987)

Sec. 8-483. Vacant properties.

- (a) Upon any building or structure located within the corporate city limits becoming vacant, the owner of such building or structure shall have 60 days from the first date of vacancy to register such building or structure in the same manner as provided in sections 8-471 and 8-474 and said statement must include an agent designation as provided in section 8-472 as well as a written comprehensive plan of action detailing a timeline for correcting any Code violations, any rehabilitation required, the maintenance that will be performed while the building or structure is vacant and the future use of the building or structure and pay a registration fee of \$200.00.
- (b) The owner of any vacant building or structure subject to this section shall be required to update the plan of action provided with the registration statement and pay a fee of \$200.00 every year the said building or structure remains vacant.
- (c) Any vacant building or structure registered pursuant to this section shall be subject to inspection to verify the status of the plan of action submitted.
- (d) In addition to the registration statement in subsection (a) above, the owner of any vacant building or structure shall provide written notice, within 30 days, of a change in: (1) ownership of the property, including a copy of the deed; (2) contact information for either the owner or the designated agent.

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- (e) Upon identification of a vacant building or structure by an enforcement officer that has not been registered under this section, a written notice shall be issued to the property owner by means of personal service, or by first class mail to their last known address of record, and by posting on the property. The owner of said vacant building or structure shall have 30 days from the date the written notice is issued in which to register.
 - (f) Properties that are vacant and in default or bank owned (REO) remain subject to the registration requirements as set forth in section 8-481 and are exempt from the requirements of this section.
 - (g) This registration requirement shall not apply to:
 - (1) Any governmental entity, excluding government sponsored entities (G.S.E.'s), any public authority or any quasi-public, nonprofit corporation engaged in housing development, management or operation under contract with a governmental entity.
 - (2) Any owner who has a current and valid license as required by section 19-226 with respect to the subject parcel.
 - (3) Any owner who intends for the building or structure to be his/her/its domicile regardless of whether said building or structure is occupied for all 12 months of the year.
 - (4) Any owner who has listed the building or structure for sale with a licensed real estate agent or broker.
 - (h) Upon written request from an owner of an unoccupied building or structure, the codes administrator may approve of an existing use of said building or structure if, after verification of the records on file in the codes administration office to determine there have been no code violations on the subject property for the preceding 12 months and after inspection, it is found that such use is a permitted and lawful use under current code requirements, and, provided further, that no fire hazards or other hazards are found in such building or structure or part thereof, and relieve said owner of the registration fee required under this section.

(Ord. No. O-12-17 , § 6, 6-29-2017; Ord. No. O-6-18 , § 8, 2-22-2018)

Sec. 8-484. Definitions.

For purposes of this division, certain phrases and words are defined below. Words or phrases not defined in this division but defined in applicable state law or the Code shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context requires otherwise. The following words, terms and phrases, when used in this division, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Enforcement officer* means any law enforcement officer, building official, fire inspector or code enforcement officer employed by or working on behalf of the unified government, or their designees.
- (2) *Occupy* means to conduct a lawful business or reside in all or any part of the building or structure as the licensed business occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a person occupies a building or structure may include, but shall not be limited to, the regular receipt or delivery of regular mail through the U.S. Postal Service; proof of continual electric, gas, heating, water and sewer services; a valid business license; or the most recent federal or state income tax statements indicating that the subject property is the official business or residence address of the person(s) or business(es) claiming occupancy.
- (3) *Vacant* means any premises intended for residential or commercial use which is not currently occupied or in use wherein no person or persons actually, currently conduct a lawfully licensed business or lawfully reside or live in any part of the building as the legal or equitable owner(s) or tenant-

occupant(s) or tenant(s) on a permanent, non-transient basis or that is unoccupied and has no evidence of utility usage within the past 60 days.

- (4) *Domicile* means the building or structure at issue is the owner's true, fixed and permanent home where the individual intends to remain permanently and indefinitely, and to which, whenever absent, the individual intends to return.

(Ord. No. O-12-17 , § 7, 6-29-2017; Ord. No. O-6-18 , § 9, 2-22-2018)