



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: October 18, 2011 REPORT NO. 11-140

ATTENTION: Land Use and Housing Committee
Agenda of October 26, 2011

SUBJECT: Comparison between proposed PROPERTY VALUE PROTECTION
ORDINANCE and proposed ABANDONED PROPERTY ORDINANCE

REFERENCE: LU&H Meeting of September 14, 2011

SUMMARY:

Background

On September 14, 2011 the Center on Policy Initiatives (CPI) and the Alliance of Californians for Community Empowerment (ACCE) presented an Informational Item to this Committee. The Item presented a draft ordinance entitled "PROPERTY VALUE PROTECTION ORDINANCE (PVPO)". Committee discussion primarily focused on the similarities and differences between this proposed ordinance and the proposed "Abandoned Property Ordinance (APO)" which will be scheduled to go before Council in the next few months. The APO was drafted by staff pursuant to previous direction by this Committee.

The proposed APO amends the existing Vacant Property Ordinance (SDMC §54.0301 to §54.0321) to rename it the Abandoned Property Ordinance and address loopholes within the existing ordinance. In general, the APO expands the types of structures already addressed to include not just boarded vacant structures but all vacant structures with code violations or nuisance activity; vacant structures facing foreclosure; and vacant lots with code violations and nuisance activity. The APO is the subject of two previous City Attorney reports. See Attachment One for these reports and a Legislative History.

The PVPO proposed by CPI and ACCE is similar to the proposed APO. However, the scope of the PVPO is much larger in that it includes all properties presently under a Notice of Default, not just vacant properties. In general, the ordinance requires lending institutions or other responsible parties to register a property with the City once a Notice of Default is issued. Fines and penalties may be imposed for failing to register a property and there would be a required fee to register the property.

On September 14, 2011 this Committee directed the Neighborhood Code Compliance Division and the Office of the City Attorney to provide feedback to the merits of harmonizing the PVPO with the APO previously discussed at LU&H Committee. The Committee also suggested that it would be beneficial for CPI and ACCE to get feedback from the Community Planners Committee and the Mayor's Office prior to returning back with a report out to this Committee on October 26, 2011.

Analysis

The proposed PVPO is very similar to both the existing Vacant Properties Ordinance and the proposed APO. A side by side comparison chart is included as Attachment Two. Both ordinances require some form of registration; the PVPO requires specific contact information for all cases. The APO requires a Statement of Intent that includes both contact information and an intended plan for rehabilitation of the property. Both ordinances also provide for abatement authority and recovery of abatement costs.

There are minor differences between the ordinances with respect to fees, maintenance requirements and required signage. The PVPO collects a cost recovery fee for filing a registration, notice of violation or notice to abate. The APO does not charge a fee for filing a statement of intent or any enforcement notices but allows for cost recovery re-inspection fees. Additional cost recovery is available under the City's existing ordinances authorizing Administrative Remedies.

The PVPO provides that properties must be maintained in comparison to a neighborhood standard, the APO does not contain the neighborhood standard language as it was considered too subjective and was considered unfair because the maintenance standard would not apply to similar neighborhood properties not abandoned or otherwise distressed. The PVPO requires contact signage in every instance, the APO requires signage at the discretion of the City. This recommendation resulted from concerns raised during the APO's vetting process that signage identifying a property as abandoned was just as detrimental to a neighborhood as other blight conditions and can in some cases encourage nuisance behavior. As a compromise, staff modified the requirement to enable the use of contact signage for problem properties while avoiding the stigma of an "abandoned property" sign in cases where nuisance activity did not exist.

The main differences between the two ordinances are the expanded scope of the PVPO and the structure and use of penalties under both ordinances. The APO applies only to vacant structures in foreclosure or where code violations or nuisance conditions exist. The PVPO requires registration of all REO properties and all residential properties under a Notice of Default regardless of whether they are occupied or not.

The pool of properties included within the scope of the PVPO is likely many thousands more than those addressed by the APO. The anticipated increase in workload caused by adding these properties would add to the burden of already limited resources and would likely derive little benefit. Thousands of homes fall under a Notice of Default every year but only a limited number of those ever become a community problem. Community code enforcement issues related to foreclosures almost solely arise from vacant and abandoned properties.

Assuming the burden of monitoring every property in the City where a Notice of Default was issued would require at least one and possible more administrative positions. Shifting assignments among present staff would likely require adjustments to the existing enforcement priorities. This could result in the suspension of enforcement of lower priority violations and/or create delays in the opening and processing of cases, the processing of cases to be submitted to the City Attorney, and the processing and scheduling of Administrative Enforcement Hearings.

Rather than expending limited resources on monitoring properties that many never become a nuisance, the APO provides a more focused effort on the properties most likely to fall into this category. Given our long experience with enforcement of the Vacant Properties Ordinance, we believe that the APO offers a more efficient method of addressing the problem.

The PVPO provides a penalty of \$1000 per day up to a maximum of \$500,000 for failure to comply with a Notice of Violation directing compliance with registration or maintenance requirements. Penalties under the APO consist of a series of fines in \$500 increments that cannot exceed \$5000 per calendar year.

While the penalties between the two ordinances appear disparate, it is important to note that the penalties set for the APO were drafted as part of the original Vacant Properties Ordinance and were not intended to be the sole remedy for these violations. The APO is always used in conjunction with the Administrative Remedies Section of Chapter One of the Municipal Code.

This Section authorizes administrative penalties and other remedies that can be tailored to individual cases. Violations of the APO may be subject to Administrative Citations of up to \$1000 for each violation and Administrative Civil Penalties or Abatement Penalties that may levy a fine of up to \$2500 per day, per violation, not to exceed a maximum penalty of \$250,000. In addition, the City may utilize any other administrative or judicial remedy available to enforce the APO regulations.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTIONS

Please see Attachment One Legislative History for a list of prior Council Committee actions related to the Abandoned Property Ordinance.

The PVPO ordinance was heard by the Land Use and Housing Committee on September 14, 2011.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS

In an effort to address the foreclosure crisis, the Mayor convened a task force which met from November 2008 to March 2009. A list of participants on this task force is included as Attachment 3. As a result of these meetings, the City Attorney's Office and Development Services drafted the proposed APO and presented it to the Technical Advisory Committee on February 9th 2011 and to the Housing Committee of the Regional Chamber of Commerce on February 16th 2011.

Staff has not conducted any outreach on the proposed PVPO.



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Attachment(s):

1. City Attorney Reports regarding APO and Legislative History
2. Comparison Table for PVPO
3. Mayor's Task Force Participant List