

Proposed Property Registration Ordinance

1. The proposal is unnecessary.

The proposal for registration is not needed. Currently state law requires that all deeds contain the name and address of the owner and the name and address of the person or entity responsible for payment of taxes (TCA § 66-24-114). This information is collected by the County Assessor of Property and maintained in a database by them at no expense to the city. The establishment of a separate registry will require a large expenditure of city resources for the establishment of a database that already exists.

2. The proposal is an unreasonable and unnecessary expenditure of city funds.

The thrust of the proposal is to create a database that exists. Has the question been ask or answered as to how many employees it will take to create and maintain this database? What additional resources will it take to maintain this list? How is this list going to be different than the data already collected and maintained by the County Tax Assessor?

According to the County Assessors office, as of January 1, 2012, there were 240,753 separate tax parcels located just within the confines of the City of Memphis. The Assessor's Office maintains a current staff of 140.

Approximately 2/3 of the tax parcels in the county are located within the city therefore it may take as many as 93 unfunded new city employees and there is no projection of income from the ordinance.

Then there is a second registry created for the lenders to register their properties when required. One might ask how many additional entries will this require and how many additional employees to administer this section of the proposal.

3. Does the City have the authority to create this registry?

The proposal cites the Tennessee Code § 6-54-113 (*Removal of vegetation and debris from certain lots*) as authority for the registry. This statute does not authorize any property registration system. The statute talks about "owner of record" and requires any notice only to go to the last known

address of record for the owner for *the growth of trees, vines, grass, underbrush or the accumulation of debris, trash, litter, or garbage, or any combination of the preceding elements, so as to endanger the health, safety or welfare of other citizens or to encourage the infestation of rats and other harmful animals....* This proposal is far more far reaching than the stated authority.

4. Notification for Condominiums

The proposal provides for notification to the Home Owners Association (resident association) for condominiums. Is there something wrong with notifying the owner themselves? The proposal calls for notification to a third party instead of the owner of the property by default. This process is unheard of at law. If TCA § 6-54-113 is held to give the city authority for registration, the state statutes clearly calls for any notice to go to the “property owner” not some third party.

5. Notification thru the Secretary of State

The proposal calls for notice thru the Secretary of State if there is a failure to register. The TCA sections cited in the proposal are for service of process under the state “Long Arm” statute. This is a statute which is applicable to corporate entities, non-residents of Tennessee and *residents of this state who are outside the state and cannot be personally served with process within this state.* It is not a procedure that is available for the effectuation of service of process against any and all persons or entities.

6. Foreclosure and Default Registry overly broad

The proposal also calls for a second registry of properties that are mortgaged and in default or “Abandoned”. The proposal defines “Abandoned Real Property” as any real property that is vacant, or is under notice of default, or is pending a mortgage foreclosure, or notice of mortgagee’s sale, or lien sale and/or properties that have been the subject of a mortgage foreclosure sale where title is retained by the mortgagee, and/ or any properties transferred under a deed-in-lieu of foreclosure sale, a short sale or any other legal means. This does not mean “empty” properties or unoccupied or even unkempt properties. This applies to almost any property. It also states that it applies to any property that has transferred pursuant to a “short sale”.

7. The proposed fines are illegal

The proposal seeks to hold liable parties that are potentially unrelated to the transaction. It calls for holding liable “Mortgagees” who may have transferred away their interest but who have not formally filed an assignment of record (Tennessee does not require recorded assignment of Deeds of Trust for a transfer to be effective). The proposal therefore seeks to hold liable parties unrelated to the transaction.

The proposal seeks to establish fines in excess of \$50 without a jury in violation of the Tennessee Constitution (Article VI, §14 *No fine shall be laid on any citizen of this State that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine should be more than fifty dollars.*). This has been interpreted by the Tennessee Supreme Court to apply to city “fines” that are “punitive” in nature and not merely “remedial”. It is submitted that to be remedial it must be for the recovery of documented administrative expenses and not a flat fee as punishment. The “fines” under this proposal are merely punishment for failure to comply with the registration provisions. (See: *Chattanooga v Davis*, 54 S.W.3d 248)

Additionally, the Home Rule Charter of the City of Memphis, as amended by Ordinance 764 in 1970, does not allow the Council to adopt any ordinance for the imposition of any “penalties” in excess of \$200.00. *The Council of the City of Memphis shall have the power, by ordinance, to impose penalties not exceeding \$200.00 for the violation of any ordinance of the city; and provide for the enforcement, recovery and appropriation of the same and further provide for terms of confinement for failure to pay such penalties.*

8. Pre-violation Penalty

The proposal calls for “fines” prior to any blight or need by the city to regulate the properties. It defines “Evidence of Vacancy” as *any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions may include, but are not limited to: overgrown and/or dead vegetation; electricity, water or other utilities turned off; stagnant swimming pool; or statement by neighbors, passer-by, delivery agents or government agents.* So anyone can turn in any property with a dead bush as “vacant”. There

does not need to be any real vacancy or any real “blight” to trigger this ordinance and the registration penalties associated with it. We already have state statutes and city ordinances that deal with property that is not kept up. This proposal punishes mere ownership.

9. The proposal actually promotes blight

The proposal calls for the monthly inspection of “vacant” (but occupied) property by the mortgagee. This will increase the cost to the owner/borrower who is suffering from financial hardship already. It also calls for annual registration fees when registering the properties. Again this is a “penalty” not associated with the actual cost of processing the registration and all of these costs are merely passed on the financially strapped owner/borrowers placing them in an even worse situation.

This proposal actually does nothing to eliminate or end “blight” in our city. It only creates another unfunded bureaucracy on the backs of the taxpayers. The funds collected go to the office of Code Enforcement and do not even go for the administration of the ordinance and registry.