

**CITY OF CLEVELAND HEIGHTS  
MEMORANDUM**

TO: Members of Council:  
Carol Ann Roe, Mayor  
Melissa Yasinow, Vice Mayor  
Mary A. Dunbar  
Kahlil Seren  
Jason S. Stein  
Cheryl Stephens  
Michael N. Ungar

FROM: Allan Butler, Housing Programs Director  
Laurie Sabin, Director of Finance  
Elizabeth Wells Rothenberg, Assistant Law Director

cc: Tanisha R. Briley, City Manager  
L. James Juliano, Jr., Law Director

DATE: May 25, 2018

RE: Proposed Foreclosure Bond Legislation

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We have been asked to respond to the draft foreclosure bond legislation circulated by Councilmember Kahlil Seren on March 26, 2018. What follows is a policy analysis from the Housing Department, an administrative analysis from the Finance Department, and a legal recommendation from the Law Department.

**I. POLICY ANALYSIS**

The central question in reviewing the proposed foreclosure bond legislation is whether its enactment would be a beneficial tool for addressing blight at vacant properties that have active mortgage foreclosures. Relevant research summarized below includes:

- mortgage foreclosure and tax foreclosures trends;
- nuisance abatement costs and existing programs;
- market values;
- unintended consequences of the proposed legislation.

### ***Mortgage Foreclosure Trends***

Mortgage foreclosures in Cleveland Heights are in decline. They peaked at five hundred sixty-four (564) foreclosures in 2008 and have since been decreasing. There were one hundred ninety-four (194) mortgage foreclosures filed in 2017 – which was one hundred (100) mortgage foreclosures fewer than were filed in 2016 and the lowest amount since 2005. In 2018, there have been only sixty (60) mortgage foreclosures filed as of the date of this memorandum, which projects to approximately one hundred fifty (150) filings for this year. This significant decrease in mortgage foreclosures reduces the need, if any, for the proposed foreclosure bond measures.

### ***Minimal Nuisance Abatement Costs and Existing Programs***

The City already has a comprehensive nuisance abatement program that enables staff to efficiently remove a blighting issue on properties and assess a lien, including an administrative fee, if the invoices to repair the blight are not reimbursed. Properties that are sold at sheriff's sale via a mortgage foreclosure are subject to pay any tax liens assessed to the property, including nuisance abatement assessments.

The total nuisance abatement costs assessed to vacant structures with active mortgage foreclosure in 2017 were:

\$536 for board ups,  
\$0 on demolition,  
\$0 for police actions,  
\$1,227 for special cleanups, and  
\$2,800 on grass cutting.

This totals Four Thousand Five Hundred Sixty-Three Dollars (\$4,563), which equaled less than two percent (2%) of the total nuisance abatement costs assessed in 2017. In other words, analysis of the nuisance abatement costs assessed for the target area of the legislation reveals that vacant structures with active mortgage foreclosures are contributing to minimal blight in our city.

### ***Tax Foreclosures Trends***

Tax foreclosures would not be subject to the bond requirements of the proposed foreclosure bond legislation. However, unlike mortgage foreclosures, tax foreclosures appear to be on the rise in Cleveland Heights. Seventy-two (72) tax foreclosures were filed in Cleveland Heights in 2017 and ninety (90) tax foreclosures are already currently projected for 2018. The majority of nuisance abatement costs that are not reimbursed to the City occur at tax delinquent, vacant properties. In other words, the proposed legislation will not help address issues that are on the rise in the City and currently taxing city resources.

### ***Market Value***

Ohio cities that have enacted legislation for foreclosure bonds, such as Youngstown, Warren, and Canton, are not comparable to Cleveland Heights because they have suffered greater economic impacts from the foreclosure crisis than Cleveland Heights. These other cities had a greater percentage of vacancy rates and, as a result, the majority of the mortgage principal amounts were significantly higher than the appraised value.

For example, according to Zillow, the current median list price for a home in Youngstown is Thirty-Nine Thousand Five Hundred Dollars (\$39,500), compared to Cleveland Heights median list price at One Hundred Fifteen Thousand Dollars (\$115,000). Lenders in other cities refused to foreclose or otherwise abandon properties due to the significant loss they would incur. Notably, Zillow has also indicated that the median home sales price in Cleveland Heights has increased four and Seven-Tenths Percent (4.7 %) in the previous year and is forecasted to increase the same amount over the next twelve months.

The Housing Inspection Department currently adheres to a “fix it first” policy in conjunction with the City’s Master Plan to avoid demolition and return structures to productive

tax status. The current market sales prices in Cleveland Heights are increasing and, in most cases, renovation costs do not outweigh market value. These conditions make it more likely for lenders to continue through the foreclosure process to sheriff's sale and not walk away from the foreclosure creating "zombie" mortgages.

#### *Unintended Consequences*

A potential unintended consequence of the proposed legislation would be that lenders are less likely to lend to potential buyers of properties in cities that have foreclosure bond requirements due to the higher potential costs involved with the overall mortgage. The potential additional costs of a foreclosure bond on a mortgage may be added to loan ratio requirements and potentially reduce the number of mortgages provided.

Another potential unintended consequence may be that lenders would be less likely to foreclose on properties due to the additional costs required by the foreclosure bond. This may be more prevalent in areas where the mortgage amount and the property value are greatly disparate.

Some additional questions arise as to the release of the bond with regard to the lender no longer having a lien on the property or if a foreclosure case is dismissed with or without prejudice.

In sum, research reveals that Cleveland Heights likely is not in need of the proposed foreclosure bond legislation because the foreclosure crisis is in decline, the existing nuisance abatement program includes foreclosure properties, while the proposed legislation does not address tax foreclosure properties which poses a much greater financial drain on the City. As demonstrated below, the administrative requirements of the proposed legislation would

unnecessarily tax City resources in light of the minimal benefits offered by the proposed legislation.

## **II. ADMINISTRATIVE ANALYSIS**

If the proposed foreclosure bond legislation was passed by Council, much administrative costs would be required of City staff. Logistically, the administration of the bond would follow similar procedures to those which are used for fire damage deposits and disbursements which are summarized below.

### ***Legislation and Agency Fund Department Set Up***

The proposed legislation would require mortgage companies to deposit funds with the City until foreclosed properties are sold or demolished. A ledger accounting code would need to be created linking the Miscellaneous Agency Fund 858 to the Housing Department code 7402. Revenue and expense base account numbers would be created for foreclosure bond disbursements (858.7402.6xxx.xx and 858.7402.4xxx.xx)

### ***Accounts and Budget Set Up and Revenue Receipt***

When checks are received from mortgage companies, the Finance Director would create a revenue account number with the foreclosure bond base account and a detail code for that property address and an expense account number with the foreclosure bond base account and a detail code for that property address. (base account.01, base account.02, etc.) The check and the new revenue accounting string (858.7402.6xxx.xx) would be given to the cashier to receipt. A copy of the receipt would be given to the Finance Director to complete an expense budget adjustment in the amount of the check.

### ***Disbursements for Services Performed***

As the property is maintained by City employees, the Housing Department would create an invoice for services performed and send to the Finance Department. A journal entry would be created and posted to charge the appropriate expense account, relieve the 858 Miscellaneous Agency Fund cash account, credit the Housing Department mowing fees or nuisance abatement revenue account and increase the General Fund cash account.

### ***Record Retention***

In addition to revenue, expense and budget adjustment in the NWS system, copies of the original check, each Housing Department invoice, the resulting journal entry and final disbursements would be maintained by the Accountant in a manual file and in an Excel file as a subsidiary ledger.

### ***Carryover of Expense Budgets from Year to Year***

At the beginning of each year, a budget adjustment would need to be completed to make the remaining unexpended budgets be the carryover budgets for the new budget year.

### ***Disbursement of Remaining Funds***

Once the property is sold or demolished, the mortgage company would send a letter to the Housing Department, which would create a document requesting the remaining funds be disbursed to the listed party.

### ***Administrative Costs***

Administering the proposed legislation would require maintaining a monthly lists of new and existing foreclosures list; monthly inspections of all properties with active foreclosures to determine the occupancy status; issuing notice to lender and/or plaintiff and/or plaintiff's attorney that a bond is required if the property is deemed vacant, processing a bond (if received)

or issuing summons (if not received); creating an account for the bond in the finance system; prosecution of a violation notice if not in compliance; processing of bond fees and registration costs; determining if bond compliance is met and if bond can be released; and miscellaneous administrative duties related to answering questions about the bond regarding fees, processing, and release. These duties will be spread among Housing Inspections Department, Finance Department, and the Law Department.

A very rough estimate of the time involved to administrate this proposed legislation is approximately fifty (50) hours per month, not including setup of the financial accounting system and changes to any forms and applications. The total estimated cost yearly costs to administer this program for an employee making \$20/hour plus benefits would be \$17,820 per year.

### **III. LEGAL RESPONSE**

Should Council determine that it is in the best interests of the City and its residents to move forward with foreclosure bond legislation, we recommend amending the existing code chapters concerning vacant commercial and residential properties rather than enacting an entirely new chapter. As a general policy, we prefer to update the Code rather than redraft it whenever possible. This is especially true where, as here, the Code is functioning well. Substantial revisions to the City's Codified Ordinances always carry a risk of unforeseen issues. Such risk seems unnecessary where amendments can achieve the same goals.

The legislation as originally proposed would appear only in the *Housing Code* and thus would only apply to residential properties despite the text saying it applies to all properties. To apply to both residential and commercial properties, the bond requirement must appear in Title Five, *Housing Code* and Title Seven, *Business Maintenance Code*. Accordingly, the proposed amendments, which are attached as Exhibit A, would add the foreclosure bond requirement to

both titles. See Exhibit A at the newly numbered Subsections 1351.33(d) and (e) for residential properties and at the newly numbered Subsections 1369.17(d) and (e) for commercial properties.

The main reason why a new chapter is not needed is because the vast majority of the proposed legislation is covered by the existing code. The below chart illustrates which portions of the proposed legislation are already covered by the existing code.

<b>Proposed legislation</b>	<b><i>Housing Code</i> CH Title Five</b>	<b><i>Business Maintenance Code</i> CH Title Seven</b>
§1339.03(a), definition of “abandoned”	Covered by “vacant” definition (see below)	Covered by “vacant” definition (see below)
§1339.03(b), definition of “Commissioner of Buildings”	Duplicative of §1341.05, “Building Commissioner,” in <i>Definitions</i> , Chapter 1314	Duplicative of §1361.09, “Building Commissioner” in <i>Definitions</i> , Chapter 1361
§1339.03(c), definition of “Codes” [ <i>currently refers to entire Code but should only refer to Housing or Business Codes to avoid vagueness</i> ]	“Code” defined as “Housing Code” by §1341.07	“Code” defined as “Business Maintenance Code” by §1361.08
§1339.03(d), definition of “Inspectors”	Who has authority to inspect is explained by §1354.01	Who has authority to inspect is explained by §1365.01
§1339.03(e), definition of “vacant”	§1351.33(d), definition of “vacant”	§1369.17(d), definition of “vacant”
§1339.03(f), definition of “owner”	Duplicative of “owner” definition in §1341.21	Duplicative of “owner” definition in §1361.12
All of first and most of fourth and fifth paragraphs of §1339.04(a), requiring vacant properties registration	Duplicative of §1351.33(a) registration requirement	Duplicative of §1369.17(a) registration requirement
§1339.04(b), agent for vacant registration requirement	Duplicative of §1351.33(c), agent vacant registration requirement	Duplicative of §1369.17(c), agent vacant registration requirement
§1339.04(d), notice of code violations	Duplicative of notice provision of §1345.03	Duplicative of notice provision of §1365.03
§1339.04(e), Commission can issue rules and regs	Duplicative of rules and regs by Commission provision, §1345.08	Duplicative of rules and regs by Commission provision, §1365.08
§1339.05(a), restating registration requirement	Duplicative of §1351.33(a) registration requirement	Duplicative of §1369.17(a) registration requirement
§1339.05(b), (c) regarding penalty	Already covered by §1345.99, “Penalty”	Already covered §1365.99, “Penalty”

<b>Proposed legislation</b>	<b><i>Housing Code</i> CH Title Five</b>	<b><i>Business Maintenance Code</i> CH Title Seven</b>
§1339.06(a), “Violations” Liability generally	Already covered by §1345.99, “Penalty”	Already covered §1365.99, “Penalty”
§1339.06(a), “Violations” concerning nuisance abatements	Duplicative of §1351.991 and covered by Chapter 553, “Nuisance Abatement”	Covered by §1369.18 and Chapter 553, “Nuisance Abatement”
§1339.06(a), “Violations” concerning appeals	Duplicative of §1345.09, “Right of Appeal”	Duplicative of §1365.09, “Right of Appeal”
§1339.06, 1339.06(d), Severability	Duplicative of §101.08, Severability	

Please note that the definition of “secure” in proposed Subsection 1339.03(g) mandates the securing of vacant properties with plywood which is illegal and banned under House Bill 463 and has intentionally been omitted from our analysis. There are, however, a few remaining sections in proposed Chapter 1339 that are not covered by the above chart or the attached proposed amendments. Should Council determine it is in the best interests of the City and its residents to move forward with the foreclosure bond, it should additionally examine the following:

- (1) Whether the County Land Reutilization Corporations should be exempt from the vacant registration and related bond requirements. *See* proposed §1339.02
- (2) Whether all government agencies and tax-exempt 501(c)(3) corporations should be exempt from the vacant registration fee. *See* paragraph four of proposed §133904(a).
- (3) Whether to include an inspection requirement as part of the vacant property registration. *See* proposed §1339.04(c). *[If Council decides to move forward with an inspection process, this section should be redrafted to address potential constitutional concerns related to entering a property]*

#### **IV. SUMMARY**

In summary:

- Mortgage foreclosures in Cleveland Heights are declining from a high of 564 in 2008 to projected foreclosures of 150 in 2018.
- Tax foreclosures, which are not reimbursed to the City, have increased from 72 in 2017 to a projected 90 in 2018, and make up the majority of unreimbursed nuisance abatement costs.
- 2017 nuisance abatement costs for vacant properties in active mortgage foreclosure were less than 2% of total assessed nuisance abatement costs at \$4,563.
- The estimated yearly cost to administer the proposed legislation is \$17,820.

Representatives from the Housing, Finance, and Law Departments will be available for questions and further comments.

# EXHIBIT A

Proposed: ???

ORDINANCE NO. (HT)

By Council Member

An Ordinance amending Chapter 1351, “Basic Standards for Residential Occupancy,” of Title Five, *Housing Code*, of the Codified Ordinances of Cleveland Heights by enacting a new Subsection 1351.33(d) to enact a provision requiring a cash bond upon foreclosure of vacant residential properties.

WHEREAS, the City of Cleveland Heights wishes to proactively address potential blight resulting from foreclosures on vacant residential real property within the City; and

WHEREAS, the posting of a cash bond will encourage responsible behavior on the part of foreclosing property owners and will provide further incentive for them to consider every option available to keep a property occupied; and

WHEREAS, in the event that keeping a property occupied is not achievable, the bond requirement will encourage the owner to do everything in their power to ensure the property remains well-maintained and code compliant; and

WHEREAS, if a foreclosing property owner does not fulfill responsibility to ensure property maintenance and code compliance, the posting of a cash bond will mitigate the public costs of maintaining distressed properties.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 1351.33, “Basic Standards for Residential Occupancy,” of Chapter 1351, “Basic Standards for Residential Occupancy,” of Title Five, *Housing Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended so that Subsection 1351.33(b) shall be henceforth renumbered as Subsection 1351.33(c).

SECTION 2. Section 1351.33, “Basic Standards for Residential Occupancy,” of Chapter 1351, “Basic Standards for Residential Occupancy,” of Title Five, *Housing Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended so that Subsection 1351.33(c) shall be henceforth renumbered as Subsection 1351.33(b).

SECTION 3. Section 1351.33, “Basic Standards for Residential Occupancy,” of Chapter 1351, “Basic Standards for Residential Occupancy,” of Title Five, *Housing Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended so that Subsection 1351.33(d) shall be henceforth renumbered as Subsection 1341.27, VACANCY, of Chapter 1341, “Definitions,” of Title Five, *Housing Code*, of the Codified Ordinances of Cleveland Heights All references to the definition of “vacant,” including the one set forth in Subsection 1351.33(a) shall be accordingly updated to the renumbering set forth herein.

SECTION 4. Section 1351.33, "Basic Standards for Residential Occupancy," of Chapter 1351, "Basic Standards for Residential Occupancy," of Title Five, *Housing Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to enact and adopt a new Subsection 1351.33(d) to read as follows:

(d) Any plaintiff in a foreclosure action meeting the provisions of Subsection 1351.33(c) herein, shall, in addition to all other requirements of this Section, provide a cash bond to the Director of Public Works or designee, in the sum of Fifteen Thousand Dollars (\$15,000.00), to secure the continued maintenance of the property throughout its vacancy and remunerate the City for any fees owed and expenses incurred in inspecting, securing, repairing and/ or making such building safe by any legal means including, but not limited to, demolition. An administrative fee of Five Hundred Dollars (\$500.00) per year will be deducted from the bond by the City for administrative expenses including, but not limited to, the processing, accounting and other related functions inherent in the administration of the foreclosure bond. The fee will be deducted if the bond is in the possession of the City for the entire year, or any portion thereof. This fee is in addition to all other allowable expenses charged off against the bond.

SECTION 5. Section 1351.33, "Basic Standards for Residential Occupancy," of Chapter 1351, "Basic Standards for Residential Occupancy," of Title Five, *Housing Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to enact and adopt a new Subsection 1351.33(e) to read as follows:

(e) In the event the City or one of its contractors, due to a lack of response of an owner or agent, is required to take action to abate a nuisance at a vacant property, the owner will be billed for the cost of abatement in accordance with Chapter 553, "Abatement of Nuisances," or if the property is subject to a foreclosure bond as set forth in Subsection 1351.33(d) herein, said bond will be drawn upon to cover such costs.

SECTION 6. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights

SECTION 7. This Ordinance shall take effect and be in force at the earliest time possible permitted by law.

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CAROL ANN ROE, Mayor  
President of the Council

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LAURIE SABIN  
Clerk of Council

Passed:

Proposed: ???

ORDINANCE NO. (HT)

By Council Member

An Ordinance amending Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights to enact a provision requiring a cash bond upon foreclosure of vacant commercial properties.

WHEREAS, the City of Cleveland Heights wishes to proactively address potential blight resulting from foreclosures on vacant commercial real property within the City; and

WHEREAS, the posting of a cash bond will encourage responsible behavior on the part of foreclosing property owners and will provide further incentive for them to consider every option available to keep a property occupied; and

WHEREAS, in the event that keeping a property occupied is not achievable, the bond requirement will encourage the owners to do everything in their power to ensure the property remains well-maintained and code compliant; and

WHEREAS, if a foreclosing property owner does not fulfill responsibility to ensure property maintenance and code compliance, the posting of a cash bond will mitigate the public costs of maintaining distressed properties.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Section 1369.17, “Basic Standards for Business Occupancy,” of Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended so that Subsection 1369.17(b) shall be henceforth renumbered as Subsection 1369.17(c).

SECTION 2. Section 1369.17, “Basic Standards for Business Occupancy,” of Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended so that Subsection 1369.17(c) shall be henceforth renumbered as Subsection 1369.17(b).

SECTION 3. Section 1369.17, “Basic Standards for Business Occupancy,” of Chapter 1369, “Basic Standards for Business Occupancy,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended so that Subsection 1369.17(d) shall be henceforth renumbered as Subsection 1361.18, VACANCY, of Chapter 1341, “Definitions,” of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights. All references to the definition of “vacant,” including the one set forth in Subsection 1369.17(a) shall be accordingly updated to the renumbering set forth herein.

SECTION 4. Section 1369.17, "Basic Standards for Business Occupancy," of Chapter 1369, "Basic Standards for Business Occupancy," of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to enact and adopt a new Subsection 1369.17(d) to read as follows:

(d) Any plaintiff in a foreclosure action meeting the provisions of Subsection 1369.17(c) herein, shall, in addition to all other requirements of this Section, provide a cash bond to the Director of Public Works or designee, in the sum of Fifteen Thousand Dollars (\$15,000.00), to secure the continued maintenance of the property throughout its vacancy and remunerate the City for any fees owed and expenses incurred in inspecting, securing, repairing and/or making such building safe by any legal means including, but not limited to, demolition. An administrative fee of Five Hundred Dollars (\$500.00) per year will be deducted from the bond by the City for administrative expenses including, but not limited to, the processing, accounting and other related functions inherent in the administration of the foreclosure bond. The fee will be deducted if the bond is in the possession of the City for the entire year, or any portion thereof. This fee is in addition to all other allowable expenses charged off against the bond.

SECTION 5. Section 1369.17, "Basic Standards for Business Occupancy," of Chapter 1369, "Basic Standards for Business Occupancy," of Title Seven, *Business Maintenance Code*, of the Codified Ordinances of Cleveland Heights shall be, and is hereby, amended to enact and adopt a new Subsection 1369.17(e) to read as follows:

(e) In the event the City or one of its contractors, due to a lack of response of an owner or agent, is required to take action to abate a nuisance at a vacant property, the owner will be billed for the cost of abatement in accordance with Chapter 553, "Abatement of Nuisances," or if the property is subject to a foreclosure bond as set forth in Subsection 1369.17(d) herein, said bond will be drawn upon to cover such costs.

SECTION 6. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights

SECTION 7. This Ordinance shall take effect and be in force at the earliest time possible permitted by law.

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Passed: