

CITY OF OAKLAND

AGENDA REPORT

2011 APR 14 PM 3:13

TO: Office of the City Administrator
ATTN: P. Lamont Ewell, Interim City Administrator
FROM: Community and Economic Development Agency
DATE: April 26, 2011
RE: Report On The Implementation Of SB 1137 – Mortgage Relief Bill And A Recommendation For The Assessment And Collection Of \$1,000 Per Day Blight Penalties Against Owners Of Foreclosed And Vacant Residential Properties

SUMMARY

At the September 14, 2010, meeting of the Community and Economic Development Committee, staff was requested to return with an update on the Foreclosed and Vacant Residential Building Registration program and alternatives for implementing enforcement of SB 1137 (\$1,000 per day blight penalties). In the interim, the Community and Economic Development Agency (CEDA) and the City Administrator's Office (CAO) met with representatives of Alliance of Californians for Community Empowerment (ACCE), Oakland Community Organizations (OCO), California Reinvestment Coalition (CRC), Service Employees International Union (Local 1021), the Office of the City Attorney (OCA), and the Police Department (PD) to formulate a plan for implementing sustainable enforcement. Oakland needs to hold lenders and other foreclosing parties directly and immediately accountable for the maintenance of their properties, which is a critical element in mitigating the detrimental impact of blight on the health, safety, and quality-of-life in residential neighborhoods.

As a result of this collaborative effort, CEDA has re-assigned staff to full-time inspections of foreclosed residential properties, the list of which was provided by a private subscription service. Clumps of blighted parcels for major lenders are being referred to OCA for SB 1137 noticing and assessments. CEDA will be scheduling meetings with the senior management of these major lenders, including Wells Fargo Bank, to implement a neighborhood revitalization program to produce the following possible outcomes:

- re-occupying foreclosed properties
- actively monitoring foreclosed properties for blight
- pricing foreclosed properties for first-time homebuyers
- partnering with community organizations, youth-training groups, and adult re-employment non-profits to maintain foreclosed properties.

While SB 1137 is a key component of a neighborhood revitalization program, the statute is limited in scope (foreclosed plus vacant plus blighted) and allows each jurisdiction to select its own appeal and collection process. Using the OMC and the new Vacant Building Registration

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Ordinance since June 2010, CEDA has collected \$280,000 in inspection fees and registration penalties and an additional \$500,000 in registration fees.

FISCAL IMPACT

This is an informational report. As such, there is no fiscal impact.

BACKGROUND

The mortgage foreclosure tsunami has heavily impacted Oakland. Thousands of vacant residential properties have fostered crime and blight, deteriorating property values, and degrading neighborhood vibrancy. Oakland’s economic and social health has been damaged by financial institutions that made profit during the home mortgage “bubble” through predatory lending practices. In response to the foreclosure crises, the City Council adopted a Vacant Building Registration ordinance in February 2010 (OMC Chapter 8.56).

In June 2010, OCA began a pilot SB 1137 penalty program (\$36,500 collected), and CEDA began registration enforcement on overtime (1,000 properties inspected). A summary of the following results were presented by CEDA at the Committee’s April 12, 2011, meeting:

Foreclosed and Vacant Residential Properties CEDA - June 2010 to April 2011							
Parcels Cleaned By Lenders	SB 1137 Parcels Cleaned By CEDA	Vacant Buildings Registered By Lenders	Vacant Registration Fees Paid By Lenders	Assessments Against Lenders			
				Charges For Violations			Escrow Payments To Date
				Inspections	Clean-Ups	Registration Penalties	
285	9	900	\$500,000	\$450,000	\$40,000	\$650,000	25%

CEDA’s customary collection method (property liens), however, has not been an effective mechanism to assure that lenders pay inspection fees and penalties. Because property liens do not directly encumber an owner’s assets, lenders have simply ignored violation assessments and required future purchasers of foreclosed properties to pay the City through the escrow process. CEDA staff has determined that alternate collection methods which attach to a lender’s assets, such as nuisance abatement liens, are necessary to assure that lenders are held accountable for their violations and that assessments become an effective deterrent.

KEY ISSUES AND IMPACTS

L Implementation of SB 1137

The following provides information on continuing efforts to use SB 1137 as part of the City’s overall strategies at blight reduction and neighborhood preservation.

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Foreclosed Residential Properties - Sustainable Enforcement

CEDA has initiated inspections during business hours of foreclosed properties throughout Oakland (1,200 parcels) in a lender-by-lender sequence. The first group of foreclosed properties that are being inspected are owned by Wells Fargo Bank (190 parcels). OCA is using CEDA's blight inspections to prepare SB 1137 penalty notices for foreclosed and vacant properties. CEDA will be meeting with Wells Fargo Bank executives, and subsequently with other major lenders, to discuss implementing a neighborhood revitalization program to help restore quality-of-life in residential areas. Topics for discussion will include the following:

- re-occupying foreclosed properties
- actively monitoring foreclosed properties for blight
- pricing foreclosed properties for purchase by first-time homebuyers
- partnering with community organizations, youth-training groups, and adult re-employment non-profits to maintain foreclosed properties.

Foreclosed Residential Properties - SB 1137 Penalties

Oakland's enforcement goal for foreclosed properties is to assure that lenders, rather than the City, maintain properties free of blight and other nuisances and secure from trespassers and criminal activities. Oakland has three (3) options that it can use to do this:

- Oakland Municipal Code
 - Chapter 8.24 (Property Blight)
 - requires that owners maintain all types of properties (industrial, commercial, residential, occupied, vacant, undeveloped)
 - authorizes the City to inspect for compliance
 - has prescriptive processes for serving violation notices, holding appeal hearings, abating violations, and collecting costs and penalties.
 - Chapter 8.54 (Vacant Building Registration)
 - requires that owners register vacant and foreclosed residential buildings (up to four units), pay an annual fee (\$568), and employ a local maintenance firm
 - authorizes the City to inspect for compliance
 - has prescriptive processes for serving violation notices, holding appeal hearings, and collecting costs and penalties.
- SB 1137 (California Civil Code 2929.3)
 - requires that owners maintain foreclosed and vacant residential property

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- authorizes jurisdictions to inspect for compliance, serve notices of violation, and assess penalties (\$1,000 per day)
- allows jurisdictions to select the process for serving violation notices, holding appeal hearings, and collecting penalties
- expires in January 2013.

The most effective strategy for addressing foreclosed properties is to use these legislative tools in combination as follows:

- OMC Chapter 8.24

Use the existing processes to inspect for blight, other nuisance conditions, and vacancy and to notice owners.

- SB 1137

If an owner fails to start a clean-up within fourteen (14) days or complete a clean-up within thirty (30) days, assess \$1,000 per day penalties. The City may not assess SB 1137 blight penalties and also assess OMC penalties for blight - either the administrative citation (up to \$5,000) or the civil citation (up to \$365,000)

- OMC Chapter 8.54

If a lender fails to register a vacant and foreclosed residential building within thirty (30) days, also assess inspection fees (\$2,000) and OMC penalties (\$5,000).

The most effective strategy for effectively implementing SB 1137 is to use the following procedural protocols:

- Focus on one lender at a time in order to effectively engage in needed follow-up work for both clean-up and possibly community re-use of the properties.
- Immediately assess penalties (parcel-by-parcel) if a clean-up is not started after fourteen (14) days or is not completed after thirty (30) days: Place the responsibility for proving compliance directly on the lender (submitting contracts and photographs).
- The City has discretion to shorten the clean-up time for urgent violations (overflowing sewage, etc.).
- Immediately record a public nuisance declaration on the property title for each penalized parcel and post a copy at the property.
- Issue an invoice for costs and penalties and initiate collection actions.

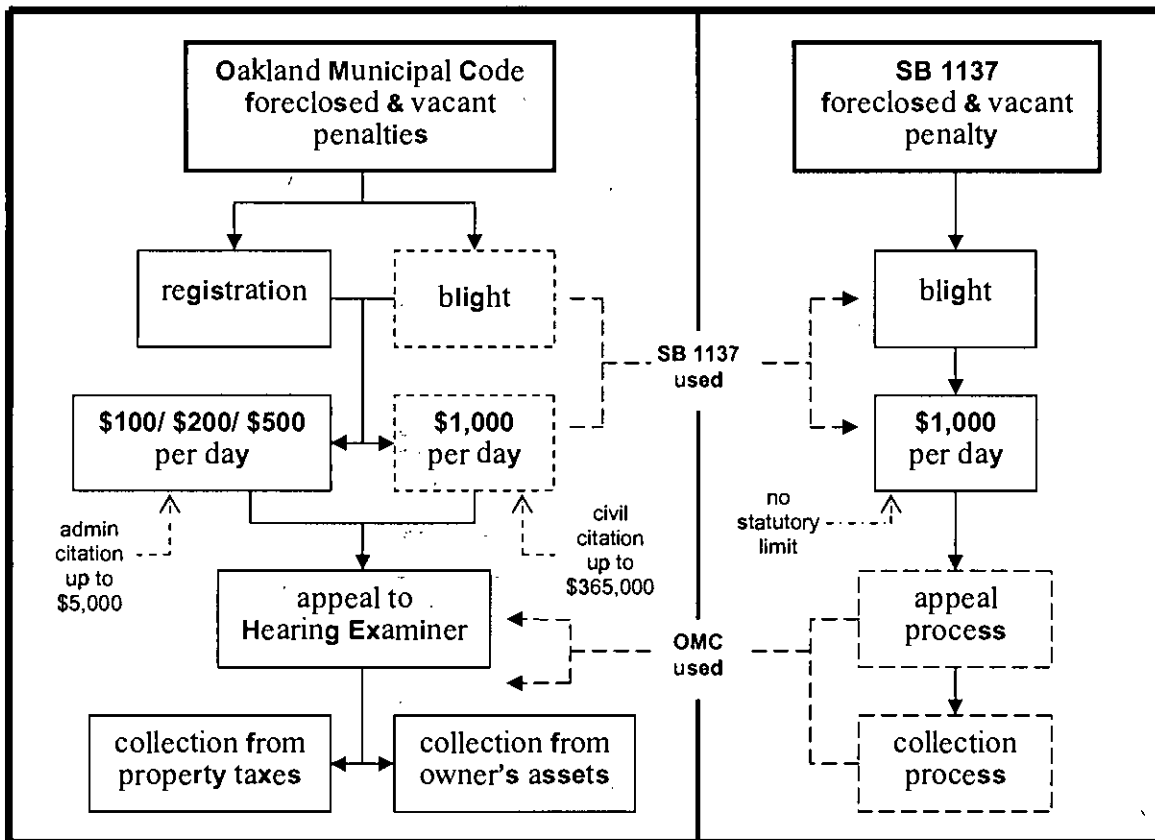
The most effective strategy for effectively implementing SB 1137 has the following resource challenges:

- Rapidly inspecting all foreclosed properties owned by one lender.
- Rapidly issuing a violation notice after blight inspections are completed.
- Holding pre-scheduled appeal hearings.

The most effective strategy for effectively implementing SB 1137 may also include expanding authority in the OMC for declaring properties a public nuisance to include Police, Fire, and OCA and to expand the thresholds for such declarations to include blight and criminal activities. Unlike liens which cannot be conditioned if payment is received, public nuisance declarations can be conditioned to require that lenders execute performance agreements with the City. Staff would have to return with an analysis and suggested legislative changes.

Foreclosed Residential Properties - Penalty and Collection Processes

SB 1137 is targeted anti-blight legislation intended to assist jurisdictions that do not have the robust regulations contained in the OMC. Oakland's blight and penalty ordinances complement SB 1137 by providing comprehensive tools for addressing foreclosed properties and assuring that major lenders are held directly and immediately accountable for registering and maintaining their properties.



SB 1137 confines penalty assessments (\$1,000 per day) to properties that are foreclosed plus vacant plus blighted. OMC penalties, however, have a broader application:

- o blight violation and/ or foreclosed and vacant registration violation
- o administrative citation up to \$5,000 (\$100/ \$200/ \$500 per day) and/ or civil citation up to \$365,000 (\$1,000 per day)
- o Hearing Officer appeal process
- o property taxes and/or owner assets collection processes.

CEDA uses the OMC for registration penalties (\$5,000) and appeal hearings. OCA uses SB 1137 for blight penalties and the OMC for appeal hearings.

Of the two (2) collection methods, only property tax assessment lends itself to automation, which CEDA began fifteen (15) years ago. Asset collection remains resource-intensive, requiring supplemental processing by the Finance and Management Agency (FMA) and OCA. As staffing resources across City agencies have diminished, automated processes have become default processes. CEDA's redemption ratio (lien cash-out) for property tax assessments rises and falls with the vitality of the real estate market. In the current financial crises, CEDA's redemption ratio has plummeted to 37%. Adding to this liquidity problem has been the accumulation of recurring code enforcement liens driving abandoned properties "under water", where the redemption cost exceeds the property value.

Lenders have little incentive to pay property liens, since these assessments only encumber the foreclosed residence. Lenders simply pass-on property liens to the occasional purchaser, who pays the City through escrow. Adding to this dichotomy is the tension of higher fees and penalties crossing the threshold of making otherwise purchasable homes not "pencil out". Because federal legislation (Troubled Asset Recovery Program) did not require bailed-out lenders to reduce home prices for rapid resale, foreclosed homes remain unsold with little consequence for lenders. Attaching lenders' assets is by-far the preferred collection method for foreclosed properties. CEDA will be implementing asset collection, which will require staffing resources from FMA and OCA for processing.

II. Code Enforcement Changes

The following provides information on the changes that CEDA will be making in order to accommodate the prioritization of blighted foreclosed properties.

Public Safety and Public Health Collaborations

CEDA will be coordinating with the Police Department's Area Commanders and attending the monthly Crime Stop and Problem Solving Officers meetings to develop protocols for coordinating sustainable enforcement in targeted areas throughout Oakland which marshals

resources from law enforcement (local, regional, and federal), criminal justice, and health and safety (CPTED, vector control, foreclosed properties, habitability, right-of-way, etc.) to holistically address the revitalization of residential neighborhoods, especially vacant properties.

Sustainable Enforcement Priorities

To accomplish sustainable enforcement, code enforcement's priorities will have to reset back to its neighborhood preservation roots, which exclusively focused on:

- o health and safety for rehabilitating buildings
- o follow-up assistance to neighborhood policing.

Code enforcement had assumed additional duties that shunted neighborhood preservation to the back-burner. Reprioritizing will require curtailing responses to violations that do not meet health and safety, public safety, and the new blighted foreclosed properties priorities, such as:

- o residential - landslides, weeds, sidewalk garbage receptacles, etc.
- o non-residential - truck parking, noise, zoning, graffiti (except Police referrals), etc.
- o right-of-way - news racks, food vending, food display, work without permits, etc.

Process Improvements

CEDA will be contracting with a consulting firm to evaluate existing code enforcement practices and make recommendations for process improvements and prioritizing:

- o noticing and citation alternatives
- o constituent marketing alternatives
- o workload prioritizing alternatives
- o funding and collection alternatives.

Twenty (20) years ago, Oakland's code enforcement protocols were indisputably at the forefront of municipal practices for cost-recovery and "rust prevention" (blight eradication and habitability restoration). Although code enforcement's effectiveness has not diminished in the ensuing years, the public's perception of code enforcement has changed from neighborhood preservationists to code cops. While the demand for code enforcement has never been stronger, the public is increasingly dissatisfied with historic enforcement methods that are now perceived as too slow and too costly. As owners have been foreclosed out of their homes, mounting code enforcement charges combined with unpaid property tax penalties are driving the redemption costs above a residence's market value; thus contributing to a perception of neighborhood abandonment as lenders avoid lien payments and re-sale opportunities.

Code enforcement remains a bulwark for maintaining health, safety, and quality-of-life for residents. Its focus, however, must shift from a 20th century paradigm of using economic

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sanctions as its workhorse to a 21st century partnership for neighborhood revitalization. To do so will require moving public expectations from responding to all manners of requests-for-service to responding to public safety and public health priorities. Marshalling limited resources is the only assured way of stimulating economic growth, from which quality-of-life improvements and self-sustainability will flow.

SUSTAINABLE OPPORTUNITIES

Economic: Sustainable enforcement of public safety and public health violations will assure that distressed neighborhoods are revitalized and opportunistic crime is curtailed.

Environmental: Environmental remediation protocols are used when applicable (debris disposal, lead based paint remediation, vector control, etc.).

Social Equity: Sustainable abatement of public safety and public health violations supports the social fabric of neighborhoods.

DISABILITY AND SENIOR CITIZEN ACCESS

State and City requirements for handicapped accessibility are applied when applicable.

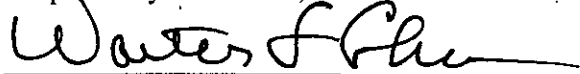
RECOMMENDATIONS

Staff recommends that the Committee accept this report and request that staff return to the Committee upon completion of the consulting firm's report.

ACTION REQUESTED OF THE CITY COUNCIL

No action by the City Council is requested at this time.

Respectfully submitted,

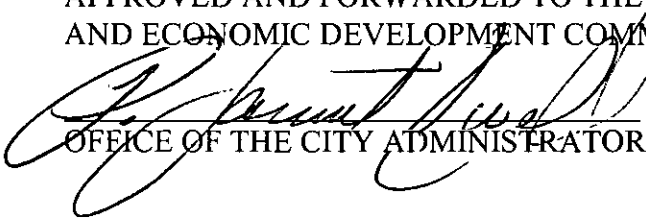


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**APPROVED AND FORWARDED TO THE COMMUNITY
AND ECONOMIC DEVELOPMENT COMMITTEE:**


OFFICE OF THE CITY ADMINISTRATOR