



TESTIMONY

TO: The Honorable Mark Hutton, Chair
Members of the House Commerce, Labor & Economic Development Committee

FROM: Whitney Damron
On behalf of the City of Topeka

RE: SB 338 An Act concerning cities; relating to the rehabilitation of abandoned property.

DATE: March 9, 2016

Good afternoon Chairman Hutton and Members of the Committee:

I am Whitney Damron and I appear before you this afternoon on behalf of the City of Topeka in support of SB 338. Following my presentation you will hear from Mayor Larry Wolgast on behalf of both the City of Topeka and League of Kansas Municipalities.

The concept behind SB338 is not new to the Legislature or this Committee, having been around for five years or more in one form or another. The last time the House considered similar legislation was in 2014 when HB 2075 was approved on a vote of 72-51. The Senate did not take the bill up that year.

In 2015, a Senate Commerce Subcommittee worked last year's version, SB 84 and the full committee advanced that bill to the floor, but it was never scheduled for debate. Since that time, the City of Topeka has made the issue of addressing abandoned housing one of their primary legislative initiatives and the League has made this legislation an action item for 2016 as well.

First of all, I would like to describe the challenges cities face in dealing with abandoned structures and then walk through SB 338 and describe how we believe this legislation can improve neighborhoods and the quality of life in our community.

Abandoned structures are not commonplace in Topeka, but they do exist and effectively dealing with them is a procedural challenge. When you have a property with unclear ownership, unresponsive mortgage or interest owners and are unable to bring about owner responsibility for a property, it is not the interest owner who suffers, but rather the neighbors and neighborhood who must deal with the consequences.

These properties are also present a safety risk for police, fire and other public safety employees who must enter these structures to confirm whether any individuals are present in the structure when responding to emergencies or complaints. For example, the fire department must presume any structure could have an occupant until confirmed otherwise. Entering an unsafe structure when the building is on fire has the potential for a dangerous situation for first responders.

Since the 2015 session, the City of Topeka has worked with the historic parties of interest to make amendments to SB 84 as it left the Senate Commerce Committee last year and brought back a revised bill that incorporated additional protections for personal property rights and also provides greater clarity as to how the process would work (League, various cities, Kansas Association of Realtors, Kansas Bankers Association, Associated Landlords of Kansas, etc.). Following hearings in the Senate this year, we again worked with the parties of interest and made further amendments to address concerns expressed with the bill by Americans for Prosperity and the Associated Landlords of Kansas. SB 338 represents the work product of those discussions.

SB 338 was approved by the Senate on a vote of 32-8.

By way of information, current law allows a nonprofit as defined in the Act to seek temporary possession of abandoned real property under certain circumstances. I am unclear whether existing authority has ever been used; if so, certainly not to any great extent. The intent behind SB 338 is to grant cities that kind of authority, too, albeit with additional restrictions on the process.

The provisions of SB 338 and highlight are as follows:

- Section 1. (c)(2) requires a city to prove before a district court judge that the residential real estate has been unoccupied continuously by the persons legally in possession for the preceding 365 days. SB 84 required only 180 days of non-occupancy. In addition to being unoccupied for one year, the property must have a “blighting influence on surrounding properties”. If the exterior of the property is being maintained and the property is subject to a probate action, action to quiet title or other ownership dispute or subject to a mortgage, it is not covered by this Act. (Page 1, Lines 17-22)
 - o Comment: If the property is being maintained, the authority created under SB 338 is not applicable.
- “Blighting influence” is defined in the bill in Section 1. (d) with strike language through many of the delineated violations and the addition of clarifying language relating to adherence to “property maintenance codes which constitute a health or safety threat.” (Page 1, Lines 28-36 and Page 2, Lines 1-7)
- A nonprofit organization that would utilize the authority under this Act must be organized in part for the purpose of improving housing and be in existence for at least three years or more. (Page 3, line 10)
- Beginning on page two, line 18 and repeated throughout the bill are references to sunset provisions for the new enactments contained in this legislation for July 1, 2020.
- Before a petition can be filed with the district court, the governing body of a city must formally approve the filing of an action (Page 3, Lines 9-10).
 - o Comment: Requires affirmative action by elected officials with additional opportunity for public notice and comment.

- Section 2. (b)(1) et. seq. outlines required information for the petition process for a city bringing an action before a district court. (Page 3, Lines 9-27)

A petition to the district court must include the following information:

- o History of municipal utility service for the property for the preceding 365 days;
- o History of property tax payments for the preceding three years;
- o History of code violations for the preceding two years and efforts of the city to remedy such code violations;
- o History of attempts to notify the last owner or owners of any enforcement action(s); and,
- o History of actions by other governmental entities, including, but not limited to tax liens or bankruptcy proceedings (e.g., public safety calls, criminal activity, etc.).

Comment: Intent of these requirements is to provide the district with a complete picture as to the challenges the property has been to the city, neighbors and public and private resources.

- Section 2. (c) effectively prevents the use of this Act if a property is brought into code compliance, but the property taxes are delinquent. (Page 4, Lines 2-3).

Comment: The City's priority and preference is for the existing interest owner to accept responsibility for their property and maintain it in compliance with applicable codes. If they remain delinquent in their property taxes, that matter is dealt with through other statutes (e.g., tax sale if 3 years in arrears or more).

- Section 2. (g)(1)(2) outlines the process in which the possessor of the property can seek fee simple title through a quiet title action and prohibits such action for at least one year after possession has been transferred by the court, but requires an action within two years. (Page 4, lines 24-42)

Comment: Intent of this section is to insure compliance with the rehabilitation plan and help transition the property back into private ownership and back on the tax rolls.

How would this process work?

Typically a city receives complaints about an abandoned property due to repeated code violations, complaints from neighbors or criminal activity. Complaints may come from residents through a city council member, a neighborhood improvement association, public safety agencies and etc. Upon investigation, if it is determined no one is lawfully residing in the property and attempts to contact the owner or interest owners through legal process is unsuccessful and it can be proved the property has been unoccupied for one year or longer, a city could bring an action in district court for temporary possession of the property.

It is likely a city would work with its own housing authority or perhaps local non-profits to partner with an entity willing to accept responsibility for maintaining the property. The petition requires inclusion of a plan for the rehabilitation of the property and evidence that the organization has suitable resources to rehabilitate and manage the property. The City of Topeka envisions its existing housing authority or a non-profit would take temporary possession and stabilize the property to prevent further deterioration, bring the exterior into code compliance and maintain the property in a safe and responsible manner.

It is possible the property could be utilized as a residence for a third party following a change in possession. However, if a property has deteriorated to such an extent that the expenditure of significant sums is required, it is likely such investment would be delayed until title to the property were transferred as outlined in Section 2. (g).

Not less than one year after possession to the property has transferred an action for quiet title can be brought in district court. An action must be brought within two years of transfer.

At any time before a quiet title action is completed, the interest owner has the right to appear before district court and seek possession of their property.

To reiterate two key previous points:

- Before a city or third party can seek temporary possession of a residential property, it must be proved before a district court judge that the property has been unoccupied by the persons legally in possession for at least one year; and,
- Before a city or third party can seek a change in ownership through a quiet title action, it must be proved before a district court judge that the property has been unoccupied by the persons (formerly) legally in possession for a minimum of two years.

Properties become abandoned for many reasons, including owners passing away without heirs or intestate, out-of-state landlords difficult to track down, bankruptcy, pending foreclosure actions, owners simply moving away for any variety of reasons and lenders who refuse to foreclose on properties. Regardless of how or why this occurs, such properties can have a devastating impact on surrounding property values and public safety. Under current law, under such circumstances, the only recourse would be to wait for three years of unpaid property taxes and foreclose on the property. After three years of abandonment, most houses would be virtually uninhabitable and beyond repair. SB 338 is a way to save a house and maintain the value, aesthetics and safety of neighborhoods.

SB 338 is not a cure all for urban blight, but it can be an effective tool in certain unique situations where other options simply are not available or effective (e.g., code enforcement). Abandoned properties are not exclusive to big cities, as we have heard from rural communities and small cities that they face these challenges, too.

On behalf of the City of Topeka, we ask for your favorable consideration of SB 338 and I am pleased to respond to questions at the appropriate time.

Thank you.

WBD