



TESTIMONY

TO: The Honorable Julia Lynn, Chair
And Members of the Senate Committee on Commerce

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: February 2, 2016

Good Morning Madam Chair Lynn and Members of the Committee:

I am Whitney Damron and I appear before you this morning on behalf of the City of Topeka in support of SB 338.

With me today is our City Manager Jim Colson; Sasha Stiles, Director of Neighborhood Relations; and Mayor Larry Wolgast, who you will hear from after me on behalf of the 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. In 2015, a subcommittee of this committee worked last year's version, SB 84 and the full committee advanced that bill to the floor, but it was never taken up 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.

Since the 2015 session, we have worked with the historic parties of interest to make amendments to SB 84 as it left this committee last year and have brought back a revised bill that incorporates additional protections for personal property rights and also provides greater clarity as to how the process would work.

I will highlight the provisions of the bill and draw your attention to changes from SB 84:

- 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 16-21)
- “Blighting influence” is defined in the bill in Section 1. (d) with strike language through of many of the delineated violations and the addition of clarifying language relating to adherence to “property maintenance codes.” (Page 1, Lines 27-36 and Page 2, Lines 1-5)
- Beginning on page two, line 16 and repeated throughout the bill are references to sunset provisions for the new enactments contained in this legislation for July 1, 2020. SB 84 contained a 4-year sunset to July 1, 2019. As the legislation did not pass last year, we moved the sunset date forward one year.
- 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 7-20)

We have added several requirements for specific information to be included in the petition that were not specifically required in SB 84, including:

- o History of municipal utility service for the property for the preceding 365 days;
 - o History of property tax payments for the preceding two years;
 - o History of code violations for the preceding two years; and,
 - o History of attempts to notify the last owner or owners of any enforcement action(s).
- Section 2. (g) 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. (Page 4, lines 16-22)

How would this process work?

Typically a city receives complaints about an abandoned property due to code violations, complaints from neighbors or criminal activity. Upon investigation, if it is determined no one is lawfully residing in the property and attempts to contact the owner or interest owners 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. 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).

Throughout this process, the last known property owners and/or interest owners are accorded due process and are allowed at all times to appear before the district court to object to any transfer of possession, assert ownership and accept responsibility.

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 would look forward to returning to this committee in advance of the July 1, 2020 sunset to talk about our success with this legislation.

I am pleased to respond to questions at your convenience and the representatives of the City of Topeka are as well.

Thank you.

WBD