

TESTIMONY

House Bill 2404

An Act concerning cities; relating to the rehabilitation of abandoned property.

House Local Government Committee

Whitney Damron

On behalf of the City of Topeka

March 23, 2017

Good afternoon Madam Chair Williams 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 HB 2404. With me today are several representatives of the City and you have written remarks from the City submitted for the record with comments provided in that document by:

Larry Wolgast, Mayor
Doug Gerber, Interim City Manager
Kris Kramer, Interim Chief of Police
Sasha Haehn, Director of Neighborhood Relations
Mike Haugen, Director of Property Maintenance Code Enforcement
Seth Brackman, Chief of Prosecution

The concept behind HB 2404 is not new to the Legislature, as the issue has been considered in one form or another for each of the past 6-7 years and in 2016, the model for this legislation was approved by the Legislature on votes of 32-8 and 79-44, but the bill, SB 338, was vetoed by Governor Brownback.

After SB 338 was vetoed last session, we were requested by the administration to look to other states for how they deal with abandoned, vacant and blighted property and also visit with the opponents to that bill to see what they would suggest as changes.

We have reviewed other state's legislation and by and large, they provide much more authority to local units of government to address these kinds of abandoned and blighted properties. For example, in Missouri, the timeline for taking an action against an abandoned property is 6 months (Missouri Revised Statutes, Section 447.620.1 et. seq.). In Texas, there is no minimum timeframe whatsoever (Texas Local Government Code subsection 314.003). Given the time and effort that has gone into the precursors of SB 31, proponents felt it best to continue moving forward with this legislation and seek to address the concerns of opponents, rather than bringing in a totally new approach and bill.

Before walking through the bill, I would like to describe the challenges cities face in dealing with abandoned structures and then walk through HB 2404 and describe how we believe this legislation can improve neighborhoods and the quality of life in our community.

919 South Kansas Avenue ■ Topeka, Kansas 66612-1210

(785) 354-1354 (O) ■ (785) 354-8092 (F) ■ (785) 224-6666 (M)

www.wbdpa.com ■ wbdamron@gmail.com

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 suffer with the consequences.

These properties present a safety risk for police, fire and other public safety employees for in emergency calls, those who respond must enter these structures to confirm whether any individuals are present. For example, on an emergency responder call, the fire department must presume any structure has 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 an abandoned housing bill to address concerns for property rights and clarify the legal process involved with the abandoned housing legislation.

Parties who have been involved in the discussion over abandoned housing legislation include the League of Kansas Municipalities, the City of Wichita, the Unified Government of Wyandotte County and Kansas City, Kansas, the Kansas Association of Realtors, Kansas Bankers Association, Associated Landlords of Kansas and American's for Prosperity.

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 (in summary, 2-years delinquent property taxes and 90 days unoccupied). I am unclear whether existing authority has ever been used; if so, certainly not to any great extent. The intent behind HB 2404 is to grant cities similar authority, albeit with additional restrictions on the process.

The provisions of HB 2404 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 fifteen months and 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 HB 2404 is not applicable.*

Comment: The Senate Committee on Ethics, Elections and Local Government amended their bill, SB 31, to declare that “abandoned property” does not mean any real estate where the owner has expressed in writing to the governing body a desire to retain ownership and maintain the property and bring into code compliance within 90 days of such expressed desire. We support that amendment. Attached is a copy of page one of SB 31, which contains that amendment.

- “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 at least in part for 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, 2021.
- Notice, or attempts to notify the lawful interest owners is required throughout the process outlined in the bill by certified or registered mail. An addition to the notice provisions contained in previous versions of this legislation (SB 338, 2016 Session) is a requirement to send notice to neighbors located within 200 feet of the property and any neighborhood improvement association in which the property is located within, if any (Page 3, Lines 4-6).
- 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 12-13).
 - 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 20-30)

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 remain delinquent. (Page 4, Lines 5-6).
 - 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 27-43 and Page 5, Line 1)

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, 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 fifteen (15) months; 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 or demolition under unsafe structures authority. After three years of abandonment, most houses would be virtually uninhabitable and beyond repair. HB 2404 is a way to save a house and maintain the value, aesthetics and safety of neighborhoods.

SB 31 is not a cure all for urban blight - I like to say cities are dealing with unicorns, not herds of cattle - but HB 2404 can be an effective tool in certain unique situations where other options simply are not available or effective (e.g., code enforcement or demolition).

On behalf of the City of Topeka, we ask for your favorable consideration of HB 2404 and I am pleased to respond to questions at the appropriate time.

Thank you.

WBD

Attachments:

- Page one of SB 31 with Amendment offered/added by Senator David Haley
- Comments from Various City of Topeka Officials

SENATE BILL No. 31

By Committee on Ethics, Elections and Local Government

1-17

1 AN ACT concerning cities; relating to the rehabilitation of abandoned
2 property; amending K.S.A. 2016 Supp. 12-1750 and 12-1756a and
3 repealing the existing sections; also repealing K.S.A. 2016 Supp. 12-
4 1756e.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 12-1750 is hereby amended to read as
8 follows: 12-1750. As used in this act:

9 (a) "Structure" means any building, wall or other structure.

10 (b) "Enforcing officer" means the building inspector or other officer
11 designated by ordinance and charged with the administration of the
12 provisions of this act.

13 (c) (1) "Abandoned property" means:

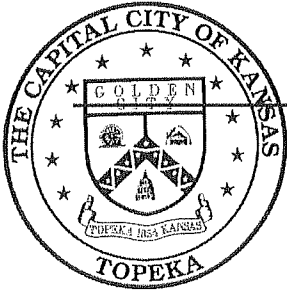
14 (1) (A) Any residential real estate for which taxes are delinquent for
15 the preceding two years and which has been unoccupied continuously by
16 persons legally in possession for the preceding 90 days; ~~or~~

17 (2) (B) *any residential real estate which has been unoccupied*
18 *continuously by persons legally in possession for the preceding 15 months*
19 *and which has a blighting influence on surrounding properties, unless the*
20 *exterior of the property is being maintained and the property is either the*
21 *subject of a probate action, action to quiet title or other ownership*
22 *dispute, or the property is subject to a mortgage; or*

23 (3) (C) commercial real estate for which the taxes are delinquent for
24 the preceding two years and which has a blighting influence on
25 surrounding properties. "Commercial real estate" means any real estate for
26 which the present *approved* use is other than one to four residential units
27 or for agricultural purposes.

28 (2) *"Abandoned property" shall not mean any real estate where the*
29 *owner of such real estate is known and has expressed in writing to the*
30 *governing body a desire to retain ownership and maintain such real*
31 *estate and has brought the property into code compliance within 90 days*
32 *of such expressed desire.*

33 (d) "Blighting influence" means conditions in such structure which
34 are dangerous or injurious to the health, safety or ~~morals~~ *welfare* of the
35 occupants of such buildings or other residents of the municipality ~~or which~~
36 ~~have an adverse impact on properties in the area.~~ Such conditions may



CITY OF TOPEKA

OFFICE OF THE MAYOR
City Hall, 215 SE 7th St., Suite 350
Topeka, KS 66603-3914

House Bill 2404

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TESTIMONY

CITY OF TOPEKA

March 23, 2017

On behalf of the City of Topeka, we respectfully submit these comments from selected public officials and municipal department leaders in support of HB 2404 to the House Local Government Committee. Similar statements were presented to the Senate in support of SB 31 earlier this session.

Larry Wolgast
Mayor, City of Topeka
Past President, League of Kansas Municipalities (2016)

As Mayor of Topeka, I know firsthand that abandoned and blighted properties have become one of the major areas of concern and complaint for our citizens in recent years. Our city is in the midst of a renaissance of sorts in our downtown area with many exciting projects completed, in progress or planning. However, as a mature city, we have neighborhoods with properties that suffer from neglect and disrepair. The problems become more challenging when owners simply abandon these properties or are no longer responsive to legal notice to repair. Too often this leads to the structures falling into disrepair, becoming a fire hazard, becoming a source of criminal activity or becoming a sanctuary for vagrants or the homeless. This situation leads to a disproportional increase in police and fire calls to the property and the continued decline has a blighting influence on the entire neighborhood resulting loss of property value to surrounding properties.

Cities have tools to address dangerous structures, albeit not a good one: Tear the property down and then likely become the caretaker for a vacant lot forever. We also have tools to deal with code compliance issues when the owner can be served with legal process and held accountable in court. Unfortunately, the former is not our preference and the latter does not help with properties that have been abandoned. HB 2404 would give a city a tool to use in extreme cases where the owner of a property is simply not able to be found and the property has a blighting influence on surrounding properties and constitutes a health or safety threat. On behalf of the City of Topeka, we respectfully request your support for HB 2404.

Doug Gerber
Interim City Manager
City of Topeka

It is an exciting time to be in Topeka. The changes taking place in the city are vibrant and exciting. Unfortunately, one area of continued concern is the blighted and abandoned properties throughout the city. As a city, we want to address these concerns. However, our approach to resolving the blighted and abandoned properties can be more difficult because of owners that do not care and abandon these properties. This in turn promotes difficulties in other areas of municipal operations, whether it is additional criminal activity, increased fire hazard, or a haven for homelessness. Finally, it cannot be understated that the most serious concern posed by these properties is that blighting influence that they have on the entire neighborhood. This vicious cycle too often manifests itself in the loss of property values for entire areas of the city.

I have had the opportunity to serve in leadership roles in communities, large and small, across our great state. Although I speak for the City of Topeka on this issue, I can assure you that this is an issue that all communities face. It is a challenge for communities with the resources of Topeka and even more challenging for communities with fewer resources.

We all strive to serve our citizens to make our communities more livable. Having additional legislative tools to accomplish that goal will benefit citizens in Topeka and across the state. On behalf of the City of Topeka, we respectfully request your support for HB 2404.

Chief K. Kramer
Chief of Police, Topeka Police Department
City of Topeka

The abandonment of houses and/or structures are a constant drain on first responder resources and other city resources to manage the risk these properties propagate.

These places are nuisances which offer a harborage to carry on criminal activities while promoting squatting, stripping of copper wire and plumbing, prostitution, rape, assault and battery, narcotic activity, storage of stolen property, fugitive sanctuaries, and many other activities which destroy the quality of life in a neighborhood.

Children are naturally curious, and abandoned run down houses are an attractive nuisance. Children are fascinated with these places because of the unknowns and may want to explore the “scary house” on the block. This innocent exploration can bring them face to face with the ill intended criminal, sexual predator and unseen danger. Abandoned houses are fraught with dangers like broken glass, rotten floor boards, diseased pets, feral animals, and people who would harm the child in a dark place beyond the natural surveillance of the community.

Law Enforcement prescribe to “broken windows theory” and Crime Prevention Through Environmental Design (CPTED). “Broken Windows” basically offers that if a window is broken and not fixed, other windows will be broken as there is no caretaker, or at least none who cares, making it easier and easier for more vandalism to occur, graduating to criminal damage and escalating to more devastating criminal activity. Basically, blight begets blight as succinct as it can be explained.

CPTED puts a purposeful design in place to maximize natural surveillance, define authority, define boundaries, and create a safer environment. Abandoned houses and/or structures effectively negates this design. Additionally, abandoned houses are attractive to arsonists. Not only are police called on these, but the fire department responds. This creates a dangerous situation beyond the fire, as fireman will need to search for any human life. Since abandoned houses rarely have custodians who can be contacted quickly, or not at all, first responders put their selves at needless risk.

Sasha Haehn
Director of Neighborhood Relations
City of Topeka

Abandoned housing has a devastating impact on the quality of life and livability of the neighborhoods they are surrounded by. Neighbors and property owners who surround these blighted and abandoned properties are helpless against the negative impact to their own property values that this blight brings. Likewise, they are often held hostage in their own homes by the criminal and undesirable activity that surrounds these abandoned and neglected houses. Community members share experiences of fear and mistrust in their neighborhoods as they deal with the criminal activity that is attracted to abandoned homes on the block. Parents fear for the safety of their children from the activity on the block and children are no longer allowed to play outside or walk to school. Neighbors keep doors locked and curtains closed in attempts to protect themselves, and soon neighbors are no longer visiting over fences or on front porches and security of community is lost. This erosion of the livability and quality of life in our aging and at-risk neighborhoods is not a result of the actions of those living in these once vibrant neighborhoods and communities, but rather the inaction or inability of deceased, absent or unknown property owners whose properties are quickly sliding into decline and pulling the neighborhood along with them.

Mike Haugen
Manager, Division of Property Maintenance Code Enforcement
City of Topeka

Abandoned houses are indicators of blight, which reduce the quality of life for the surrounding community. The "Broken Window Theory" is reality in neighborhoods dealing with abandoned housing. Not only do these unmaintained structures negatively impact neighboring property values, failure to maintain these properties leads to an overall decline in the maintenance to entire neighborhoods. Abandoned houses attract crime and criminals. With little to no oversight, abandoned houses provide a haven for criminal activity and a danger to those living near them. Dangerous crime such as drug activity, prostitution, sexual assault and murder regularly occur in or around abandoned properties. Police and the Property Maintenance resources are spend dealing with the lack of maintenance and responsible ownership of abandoned property, with taxpayers footing the bills. Virtually every abandoned house I have secured contained drug paraphernalia, signs of prostitution activity and stolen property. Residents of surrounding property are fearful of an environment containing abandoned houses, which in return limits healthy outdoor activities. Finally, these properties are frequent targets of arson, which puts the neighbors, the homeless and our firefighters in danger.

Seth K. Brackman
Chief of Prosecution, Legal Department
City of Topeka

Our office has the duty and the privilege to both enforce code violations as well as protect individuals' constitutional rights throughout the legal process. The City of Topeka Prosecution Office has worked closely with Code Enforcement Officers to ensure the citizens in our community are receiving proper service as it is our goal to fix and repair the properties rather than to prosecute an individual or business for failing to comply with City Ordinance. Our Code Enforcement Officers do an excellent job working with the citizens and answering any questions he or she may have to promote compliance. It is only after the citizens fail to take any action that the prosecution office files charges. Even after charges are filed, our office seeks to work with citizens regarding the time needed to find sufficient funds as well as additional time to complete such projects. Additionally, we provide contact information for community resources/organizations that are available to assist citizens in completing the projects.

This joint effort to fix and rebuild, however, is impossible when dealing with abandoned property as defined by the amended language in HB 2404. The new language addresses a large hole in our system, which provides an intense process a City may follow to reclaim abandoned property and promote the welfare of our City. As the law is written now, our City has its hands tied behind its back and is not able to take action to adequately protect our citizens. The Prosecution Office continues to work within the constraints of the current system to prosecute violations on abandoned property, but to no avail. This does not affect the woman in the nursing home who is not living at her house, but rather the individual in New York who has never seen the property he or she owns and does not care to maintain the property for the safety of those who live close by.

The new language in HB 2404 does not provide an avenue for abuse as the legal process will ensure individual constitutional rights are protected; rather, it will finally provide the cities with a legal avenue to take action on properties that meet the definition of 'abandoned' to protect the community as well as closing the loop hole being abused by uninterested, indifferent "owners".

For additional information, please contact the City Manager's Office:

Doug Gerber
Interim City Manager, City of Topeka
(785) 368-3725