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ALTERNATIVE STRATEGIES FOR AN EQUITABLE, EFFICIENT, AND EFFECTIVE CODE ENFORCEMENT SYSTEM IN MOBILE, ALABAMA

Center for Community Progress Report to the City of Mobile, Alabama

A Center for Community Progress Technical Assistance Report



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ABOUT CENTER FOR COMMUNITY PROGRESS

Founded in 2010, the Center for Community Progress is the only national 501(c)(3) nonprofit organization solely dedicated to building a future in which entrenched, systemic vacancy and abandonment no longer exist in American communities. The mission of Community Progress is to ensure that communities have the vision, knowledge, and systems to transform vacant, abandoned, and deteriorated properties into assets supporting neighborhood vitality. As a national leader on solutions for blight and vacancy, Community Progress serves as the leading resource for local, state, and federal policies and best practices that address the full cycle of property revitalization.

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INTRODUCTION

In early 2016, the Center for Community Progress was contacted by the City of Mobile, Alabama, and asked to provide assistance in evaluating the challenges posed by vacant, abandoned, and deteriorating properties in the city limits. The initial engagement contemplated four potential areas of focus: (1) the systemic structure of the Neighborhood Renewal Program from the perspective of legal powers and capacities as compared against the powers and capacities of a land bank created under the Alabama Land Bank Act; (2) the structure of the Alabama Land Bank Act as compared to comprehensive state land bank statutes adopted in other state jurisdictions in recent years; (3) the efficiency, effectiveness, and equitable nature of existing property tax enforcement statutes and procedures in Alabama, and in the City of Mobile; and (4) the efficacy of the existing system of housing and building code enforcement system in Mobile and its ability either to achieve compliance by owners, to achieve repayment of public expenditures, or to compel a transfer to a new owner.

Following a series of initial conversations and meetings in Mobile in the spring of 2016, the scope of assistance was revised to focus on alternative strategies for the creation of an efficient and effective code enforcement system in Mobile. This report sets forth the analysis of these alternative strategies.

The purpose of this report is to present a range of conceptual and structural options for the creation of an equitable, efficient, and effective code enforcement system in Mobile, Alabama. It is in response to a request from the Innovation Team to Community Progress for technical assistance relative to the interplay of key legal systems (delinquent tax enforcement, code enforcement, mortgage foreclosure) and the inventories of vacant, abandoned, and deteriorating structures and properties in Mobile. The context for this work has been a series of preliminary telephone conversations and interviews in February and March 2016, exchange of background documentation and reports, and two days of in-person meetings with a broad range of key stakeholders in early April.

The work of Community Progress with local governments throughout the United States has as its focal point the challenges presented by inventories of vacant, abandoned, and deteriorating properties. While socioeconomic changes (population loss, employment loss, mortgage foreclosures) are commonly the primary triggers for such property conditions, what we have learned through our work is that the existing legal systems themselves are often a major contributing cause to vacancy and abandonment. We see this in delinquent tax enforcement systems which leave properties in a state of uncertain ownership for years and create barriers to insurable and marketable title. We see this in code enforcement systems which place priority on criminal or civil (personal) liability and at best liens on the properties which have little enforcement value. We see this in mortgage foreclosure systems which create incentives for “zombie” mortgages, further clouding title to the properties and tolerating deterioration of the security.

As a result of our collaboration over the past few months it was determined that the priority of the work of Community Progress should at this point be directed toward laying the foundation for an equitable, efficient, and effective code enforcement system in Mobile. As a consequence we are not at this time undertaking an evaluation of the delinquent property tax enforcement system, even though a combination of a reformed tax enforcement system with a revised code enforcement system can yield the most efficient and effective systems. Similarly, our focus is not on the existing Alabama mortgage foreclosure system. In both instances, however, we do offer limited observations because of the existing and potential overlap of these legal systems and their impacts on vacant, abandoned, and deteriorating properties.

This memorandum first offers a description of the key concepts of an *equitable, efficient, and effective* code enforcement system. These concepts, in turn, are used as diagnostic tools by which to evaluate the presently existing systems relied upon by Mobile. We have reviewed what we have identified as multiple potentially relevant statutory systems and sought to ascertain the strengths and weaknesses in each of these systems and offer to you our observations about these current systems. Finally, we present a series of options for further consideration.

An important note is that we are not members of the Alabama Bar and believe that any and all of this analysis should be reviewed for accuracy and sufficiency by Alabama counsel. This memorandum should not be viewed as our legal opinions but rather as our suggestions of policy options for further consideration.¹

¹ All textual references to code sections are to the Alabama Code. References to the City of Mobile Code as identified as “Mobile Code § ____”.

I. THE OBJECTIVE: EQUITABLE, EFFICIENT, AND EFFECTIVE CODE ENFORCEMENT

EQUITABLE

Equity in the law is grounded upon both equal treatment of persons and treatment of persons as equals. The second half of this proposition is what is most often overlooked as we seek to create laws of general applicability. As individuals live in very different circumstances, with vastly different resources and inherently different relationships to land, it makes little sense to design legal systems with identical treatment for vacant and abandoned retail structures, for overgrown empty lots, and for occupied residential restructures.

Equity in the law requires acknowledgement that the most vulnerable individuals have the most to lose in the face of laws that do not differentiate according to property uses. They have the least capacity to respond to laws requiring affirmative acts. They have the least ability to have counsel advise them on defenses and strategies. They have the fewest choices for alternative uses and locations.

In the context of housing and building code enforcement the most vulnerable population is the class of low-income owner-occupied housing.

Owner-occupied housing stands in sharp contrast to properties which are vacant lots or lots with deteriorating unoccupied dangerous structures. An equitable code enforcement system must differentiate in its procedures and in its enforcement actions between owner-occupied housing and all other forms of land ownership and land use. The minimum housing standards of the community may be the same, but protection of this vulnerable population requires more extensive provisions of notice of violations and opportunities to remedy, the possibility of public resources to assist in remediation, the availability of counsel and guidance, and support throughout the process. Strict enforcement of low-value violations, given the relative marginal utility of the resources available, can easily become counterproductive both to the vulnerable populations and to the community at large. This is perhaps never more evident than in those laws that impose civil (personal) liability, or criminal liability, upon an individual with a fractional ownership interest in a home as a result of multigenerational intestate distribution.

EFFICIENT

An efficient code enforcement system is one which achieves maximum compliance in the shortest period of time at the lowest public cost.

Maximum compliance is “voluntary” compliance by the property owner following notice of the violation. In strong market communities and in otherwise stable neighborhoods such voluntary compliance occurs in a very high percentage of cases. It is in the instances of the small number of properties in stable neighborhoods, and the large numbers of properties in weak neighborhoods, where owners elect not to respond or cannot respond to the notices that the problems magnify.

The length of time between notice of a violation and final remediation of the violation is the greatest determinant of efficiency. The longer the period of time, the greater the deterioration of the property, the greater the external public costs (such as police and fire safety), and the greater the negative impact on adjoining property values. Rights of redemption subsequent to the date of a code lien enforcement sale are one of the strongest examples of an inefficient component.

Imposing criminal liability and sanctions for housing and building code enforcement is invariably inefficient. While it may resonant with moral outrage, the simple proposition is that criminal liability and criminal sanctions have little positive effect on the underlying property conditions. The public costs of criminal enforcement are much higher, with heightened judicial jurisdictional requirements, burdens of proof, and at times the parallel costs of public defenders. The ease of avoiding civil and criminal liability when the property is owned by a single-asset out-of-state LLC is simply too great. The public costs of seeking civil (personal) liability or imposing criminal liability as remedies for code enforcement violations far outweigh the likelihood of recovery or remediation of the violation.

The most efficient code enforcement system is one that is grounded purely in *in rem* liability and enforcement. Notice of the violation is given and an opportunity to cure. Failure to cure results in a lien on the property, securing the fine amount as well as the amount of any public expenditures (boarding costs, demolition). If the lien amount is not paid it proceeds to an enforcement sale of the property to a new owner. Fix it up, pay it up, or give it up.

The efficient code enforcement system should be premised on its equitable considerations. More notices should be provided to the owner occupants of low-income houses and more resources made available to assist in remediation. When it is vacant and abandoned property, however, such equitable considerations are not at stake and efficiency requires effective enforcement.

EFFECTIVE

An effective code enforcement system is one that provides simple notice when voluntary compliance is probable, notice that meets the standards of due process when voluntary compliance is not likely, and (in the event of noncompliance) a judicial sale of the property to a new owner with insurable and marketable title.

At the core of an effective code enforcement system is the existence of a code enforcement lien which has “super-priority” status, meaning that it is a senior lien on the property superior to all other liens, claims, and judgments, and subordinate only to the liens for property taxes. In jurisdictions that have an efficient and effective property tax enforcement system the simplest approach is to transfer the code enforcement lien to the tax collector for enforcement. When, however, the existing property tax system is neither efficient nor effective, that approach is not viable.

In order to meet the objective of delivery of insurable and marketable title at an enforcement sale, notice must be provided which meets the constitutional due process notice requirements. This entails a comprehensive title examination to reveal all interested parties, notice by regular first class mail, posting of the property, publication of notice, and such additional steps as may be reasonably necessary to identify and notify all interested parties. Participation of local title insurance companies in the initial design of the statutory requirements is pivotal. Because the enforcement action is an *in rem* action (an action against the property itself) rather than an *in personam* action (an action against an individual or corporate entity), personal jurisdiction is not a necessary condition to the action.

The effective code enforcement system is also grounded in judicial process which reviews the adequacy of notice and the existence of the lien, provides an opportunity to be heard, and authorizes the sale. A judicial order and decree is central to marketable and insurable title. A post-sale right of redemption is not necessary for an effective system and is most often counter-productive.

Because the code enforcement lien is subordinate to outstanding property taxes, the minimum bid at the code enforcement sale should include the amount of senior tax liens. The minimum bid should include all amounts secured by the code enforcement lien (direct and indirect costs, interest and penalties).

When the aggregate minimum bid at a code enforcement sale exceeds all open market estimates of the fair market value of the property there will be no open market bidders. It is not efficient, however, simply to reduce the minimum bid or conduct multiple sales in subsequent time

frames. Such options serve only to increase passive speculative investment. Instead, the property should be sold for the minimum bid directly to the local government, or a special purpose local government entity (such as a land bank).² Such a complete sale resolves all title issues and places ownership in the public entity which can then manage and transfer the property in accordance with the locally determined common good.

One consequence of an effective judicial *in rem* code enforcement system is that it resolves all title issues presented by highly fractured and complex ownership. This is most commonly the case in “heir” property, where ownership descends through intestacy as a consequence of the lack of probate of estates through multiple generations. It also addresses and resolves the challenges posed by mortgages that are open of record but for which there have been no payments or enforcement actions for many years.

II. THE EXISTING SYSTEMS IN THE CITY OF MOBILE

STATUTORY AUTHORITY

As the City of Mobile grapples with the possibility of creating a new code enforcement system it will have to address how and where the necessary legal changes should occur. At one end of the spectrum would be action solely to amend the existing City Code to create a new code enforcement system. At the other end of the spectrum would be state statutory amendments to repeal and replace existing sections of the Alabama Code applicable to all municipalities. Between these ends of the spectrum are options of enacting new state legislation permissive for all municipalities, extensive legislation applicable only to a Class 2 municipality, or brief legislation for a Class 2 municipality expressly authorizing it to enact its own comprehensive code enforcement system.³

At present there are several relevant statutory provisions applicable to all municipalities in Alabama. These include statutory authority for the demolition of unsafe building structures,

² Though Alabama has enacted the Alabama Land Bank Authority Act, § 24-9-1, this statute at the present time is of relatively limited scope and utility to the City of Mobile as it seeks to address problems posed by growing inventories of vacant, abandoned, and deteriorating properties. Birmingham, AL is the only municipality that appears to have created a local land bank authority. For this reason this memorandum does not explore potential amendments to the Act. A land bank or land banking program can indeed be a valuable tool for local governments in confronting vacant and abandoned properties. It will not, however, be an effective tool in the absence of key equitable, efficient, and effective enforcements systems for public liens.

³ It is beyond the scope of this memorandum to explore and examine the full extent of constitutional or legislative home rule of the City of Mobile.

§11-40-30, general nuisance abatement powers, §§11-47-117, 118, health and cleanliness ordinances, §11-47-130, and general health, safety, and welfare powers, §11-53-1. The most significant ordinance related to code enforcement is applicable to all municipalities, §11-53B-1.

In addition to these ordinances of statewide applicability there are a number of ordinances that are applicable only to the City of Mobile (as a Class 2 municipality, §11-40-12). These include statutory authority to enact ordinances “for the rehabilitation, repair, and maintenance of all structures, party wall, foundations, buildings, parts of buildings, and vacant parcels.” §11-40-51. This statute may be the underlying statutory authorization by which the City of Mobile has recently adopted the International Building Code and International Property Maintenance Code, but this is not entirely clear.⁴ The City of Mobile also has separate statutory authority, applicable solely to it as a second class city, for weeds and public nuisances. §11-67-1.

Key Statutes Relative to Mobile Code Enforcement

STATUTES APPLICABLE TO ALL MUNICIPALITIES

Ala. Code § 11-40-30: Demolition of Unsafe Structure
 Ala. Code § 11-47-117, 118: General Nuisance Abatement
 Ala. Code § 11-47-130: Health and Cleanliness
 Ala. Code § 11-53-1: General Health, Safety and Welfare
 Ala. Code § 11-53B-1: General Blight Ordinances and Enforcement

STATUTES APPLICABLE ONLY TO MOBILE (AS A CLASS 2 MUNICIPALITY)

Ala. Code § 11-40-50: Use and Occupancy of Buildings
 Ala. Code § 11-67-1: Weed Ordinances

OTHER KEY ALABAMA STATUTES

Ala. Code § 24-9-1: Alabama Land Bank Act
 Ala. Code § 11-70: Alabama Expedited Quiet Title Act
 Ala. Code § 35-10: Mortgage Foreclosure
 Ala. Code §§ 40-1, 40-10: Property Tax Foreclosure
 Mobile City Ordinances, particularly IPMC and IBC

⁴ As the focus of this memorandum is not directly on the legal basis for the IBC or IPMC it is entirely possible that such authority is found elsewhere. To the extent that §11-40-51 is the basis for actions then any enactments of City Code amendments dealing with code enforcement will need to be reconciled with this section.

MULTIPLE APPROACHES TO CODE ENFORCEMENT

While the multiple differing statutes pertaining in one way or another to municipal ordinances for housing and building codes may individually or collectively be quite important in assessing the appropriate strategy for creating a new code enforcement system for the City of Mobile, none of these existing statutes provides for an equitable, efficient, and effective system.

The statute dealing with “Demolition of Unsafe Structures,” has a limited subject matter and an unusual limitation of being applicable and enforceable only “to the extent of being a public nuisance.” §11-40-30. This subject matter scope of this statute does not reach the breadth of the IPMC. Notice is given to the owner and mortgagees of record (a full title exam is not done), by certified or registered mail. If requested by an Interested Party a hearing is held before the entire governing body of the municipality, with a right to appeal to the circuit court. §11-40-32. This statute does contain the important recognition that demolition costs become a lien on the property with super-priority status, §11-40-33, and survive a tax foreclosure, §11-40-34. Otherwise this statute does not set forth a mechanism for the enforcement of the lien in a manner which satisfies due process and results in a final sale with marketable title.

A second statute, also applicable to all municipalities in Alabama, §11-53-1, appears to be a general statutory recognition of the public health, safety, and welfare basis for housing and building code ordinances. The language of §11-53-2 permits ordinances “regulating the use, control, repair, and maintenance of buildings, dwellings, and structures of all types and descriptions used for human habitation or occupancy.” Other than this broad authority, this section sets forth no procedures or limitations on enforcement.

One of the statutes that is available only to the City of Mobile as a Class 2 municipality, §11-40-50, applies to the “rehabilitation, repair, and maintenance of all structures, party wall, foundations, buildings, parts of buildings, and vacant parcels” and authorizes the City to adopt an ordinance for minimum standards for notice and for hearing. §11-40-51. It is puzzling that the reference to “vacant parcels” found in §11-40-51(a) is not found in the language of subsequent sections.⁵ The owner is required to submit a work plan. “Unreasonable economic hardship” is a defense. Upon failure of the owner to remediate the violation the City can perform the remediation and impose an assessment on the property, and may assess a civil penalty of \$3000 per year. The assessment and penalty may be transmitted to the Revenue Commissioner and added to the tax bill. As a consequence, enforcement of this code lien is placed entirely in the existing property tax enforcement system.

⁵ Note that the parties to whom notice is to be given is defined by reference to Section 2, Act 140 of the 1971 First Special Session, which cannot be located.

The statutory provision that is the most comprehensive in its subject matter focus, and in its enforcement procedures, is entitled “Municipal Authority to Repair or Demolish Unsafe Structures.” §11-53B-1. This statute applies to all municipalities in Alabama, and is presumably the one most commonly relied upon by the City of Mobile at the present time. It contains the most detailed statutory provision for “blight.” The term “vacant property” is found in the first section, §11-53B-1, but not in subsequent sections. Notice of a violation is given to the owner of record and all mortgagees of record by certified or registered mail. §11-53B-3. Remediation must occur in 45 days or the City can proceed with remediation. If requested by an Interested Party a hearing is held before the “governing body of the city.” Appeal of the decision is to the circuit court. Costs of the remediation are reported to the “governing body” which imposes an assessment lien. A critical limitation with this particular statutory enforcement system is that the lien is subordinate to mortgages of record. §11-53B-6. The assessment lien may be enforced directly by the City by a nonjudicial sale. There do not appear to be adequate due process notice provisions. There is also a 2 year post sale right of redemption. §11-53B-10, which continues until a subsequent Certificate of Warning to Redeem is issued by the judge of the probate court. §11-53B-12.

The utility of the separate statutory section dealing with weeds and grass as nuisances and the possibility of a “weed lien,” §11-67-1, should be evaluated in terms of the extent to which it is equitable, efficient, and effective. It is entirely possible that the relative low cost or low value of the violations can be addressed with a high degree of “voluntary” compliance and relatively low public costs of notices. It appears that a separate resolution of the governing body is required for each such declaration of a public nuisance, though the resolution may identify multiple properties in one resolutions. §11-67-3. The transaction costs of notices are increased by the requirements that notice of the resolution be given by certified mail to the owner of record, must be published once a week for two consecutive weeks, and posted on the property. §11-67-4. It appears that in this instance the statute is blending unnecessarily the context in which notice is designed to achieve “voluntary” compliance with the context of notice designed to meet due process standards. If objections are raised, there is a hearing before the City Council. If approved by the City Council, the City may proceed with abatement. “Weed Liens” are transmitted to the Tax Collector to add the respective weed liens to the tax bills. §11-67-8. The relative priority of the weed lien is not expressly addressed, but it is provided that such “amounts shall be collected at the same time and in the same manner as ordinary municipal ad valorem taxes are collected”. §11-67-8. The Weed Lien statute does authorize additional actions by the City Council for repeat violations, with notice to owners of records by first class mail.

Despite the multiplicity of statutes that have been enacted pertaining to the City of Mobile’s code enforcement programs, none of these statutory systems set forth an equitable, efficient,

and effective system at the present time. The statute that does contain express super-priority status for a code enforcement lien applies to only a partial range of subject matters and does not contain an enforcement mechanism that satisfies due process or conveys clean title. §11-40-30. The statute that is solely available to the City of Mobile with relative broad subject matter coverage has internal structural limitations and relies entirely on the property tax enforcement system for its own enforcement. §11-40-50. The statute that is most readily available to all municipalities in Alabama with the most extensive subject matter coverage and detailed enforcement procedures, §11-53B-1, specifies that code liens are subordinate to mortgages, fails to meet due process standards, and has a multiyear post-sale redemption period.

TIES TO AN INADEQUATE PROPERTY TAX SYSTEM

In jurisdictions which have an equitable, efficient, and effective property tax enforcement system, the simplest and cleanest approach to code enforcement is to provide for transfer of the code enforcement lien to the tax collector for enforcement as part of the minimum bid at sale. At the present time the Alabama property tax enforcement system is not designed in a manner that complements an efficient and effective code enforcement system.

The existing Alabama property tax system does begin with the vital role of judicial oversight and commencement, §40-10-4, followed by a relatively short period of time until the sale of the property. §40-10-12. The sale is followed, however, by what is functionally a minimum of a three year period (of redemption and then termination of redemption rights) in which property ownership is contingent. As to properties which are vacant and abandoned the deterioration is exacerbated by this post-sale redemption. When properties do not receive minimum bid at the initial tax sale they are transferred to the State, §40-10-18, where they are functionally unable to be transferred to new owners for a minimum of three years. §40-10-29. As notice is not provided to all parties with an interest in the property, the enforcement procedure does not meet due process notice standards and likely requires subsequent additional judicial actions (a Quiet Title Action) by the ultimate transferee of the property.

There is very little authority or control of the City of Mobile with respect to enforcement of delinquent property taxes, or tax liens that incorporate code enforcement liens. Presumably it is possible for the City of Mobile to purchase property at the initial sale for minimum bid but then it would still hold only the certificate of sale for a three year redemption period and be required to undertake a quiet title action.

In 1995 the legislature enacted Act 95-408 which authorized the direct sale of tax liens at the commencement of the delinquent tax enforcement process to private purchasers. Numerous

sections of the property tax enforcement statute were amended to reflect the status and standing of the holders of these tax certificates. The extent to which tax certificates have been issued for properties in the City of Mobile, and remain open of record, is not clear.

In the absence of significant modifications to the existing state property tax enforcement system it makes little sense to reform the code enforcement system in the City of Mobile and then transfer the code lien to the State for incorporation in its property tax enforcement system. It is important, however, that any new code enforcement system designed by and for the City of Mobile include within its definition of minimum bid at sale the inclusion of the amount of the senior lien for property taxes.

THE INADEQUACY OF A MORTGAGE ENFORCEMENT APPROACH

Some jurisdictions in the United States create an equitable, efficient, and effective code enforcement system by tying the code lien into the dominant mortgage foreclosure system. The statutory authority for mortgage foreclosure specifies that the amount of the code lien (and commonly property taxes) must be paid from foreclosure sale proceeds prior to application of the sales proceeds to the mortgage debt. A variation on this approach is in judicial mortgage foreclosure states where the court has authority to require payment of existing code liens, or remediation of code violations, as a condition of authorization to conduct a foreclosure sale. In all such situations, however, the effectiveness is entirely dependent on mortgagees pursuing mortgage foreclosures. When property is vacant and abandoned the very existence of tax liens and code liens will frequently exceed plausible fair market value in which case mortgages simply remain dormant and no foreclosure is pursued.

The mortgage foreclosure process in Alabama consists of a relatively simple and straightforward nonjudicial power of sale. A mortgage instrument which fails to contain a power of sale may nonetheless be enforced by auction, or by a judicial foreclosure. §35-10-3. The place and terms of the sale may be established by the mortgage instrument. In absence of such specification the sale is at the courthouse doors, for cash to the highest bidder, following 30 days' notice by publication once a week for four consecutive weeks. §35-10-2. By separate statutory section the publication must occur once a week for three weeks, §35-10-13, and the sale must occur at the courthouse door between the hours of 11 am and 4 pm. There is no form of post-foreclosure right of redemption.

There are no specific statutory requirements applicable to notice to the debtor, or to the owner. There are no specific statutory requirements applicable to notice to other Interested Parties. There is little basis for concluding that a mortgage foreclosure, conducted purely in accordance

with the statute, would satisfy due process. As due process does apply to all government actions, it is plausible to assume that due process would apply if and when mortgage foreclosures include code lien enforcement. The existing mortgage foreclosure statute, as a nonjudicial mortgage foreclosure system, renders it a nonviable approach for local governments to which due process is applicable.

QUIET TITLE ACTIONS

Two separate statutory provisions for Quiet Title Actions have been added to the Alabama Code in recent years. One of these is found in the Alabama Land Bank Authority Act, §24-9-1. It is applicable only to property held by the State Land Bank Authority, or transferred by it to local land bank authorities. §24-9-8. The second of these Quiet Title statutes was enacted in 2014 and is applicable only to the City of Mobile as a Class 2 municipality. §11-70-1. This City of Mobile Quiet Title statute is applicable only to tax sale parcels purchased by the City. §11-70-2. Both of these statutes appear to permit the possibility of filing Quiet Title Petitions for multiple properties simultaneously.

For purposes of potential code enforcement reforms in the City of Mobile the significance of these two statutes does not lie in the designated scope of properties for which Quiet Title Actions could be initiated. The significance of these two recent statutes is that they represent the clearest and cleanest examples of judicial jurisdiction, with adequate due process notice, that results in a final resolution of all claims to the property and a judicial order of good and marketable title.

While there are differences between these two statutes, the conceptual frame and structure of the statutes provide a key element of what could become an efficient and effective code enforcement system for Mobile. A judicial *in rem* code enforcement system could and should build upon the framework of these statutes.

To the extent that the City of Mobile elects to pursue some form of a judicial *in rem* code it would be advantageous to gain the perspectives and guidance of title insurance underwriters in Mobile (and perhaps Birmingham) on the quality of these statutory procedures in making possible marketable and insurable title at the conclusion of the proceedings.

III. OPTIONS FOR CONSIDERATION

As the City of Mobile considers the possibility of moving towards a new equitable, efficient, and effective code enforcement system there are two separate yet overlapping categories of questions that must be addressed. The first category is the extent of change; the second category is how the change is made in the appropriate legal systems.

A NARROW, LIMITED, APPROACH

It is entirely possible and plausible for the City to elect to seek only narrow targeted changes, in as few statutes as possible, as will address inefficiencies and ineffectiveness in the current system. Examples of such “modest” changes would include the following:

1. Amend §11-53B-5 to provide that code liens are senior to all claims other than taxes.
2. Amend §11-53B-3 to provide that notice is given to all Interested Parties as reveal by a comprehensive title examination (tracking the language of the Quiet Title Acts).
3. Amend §11-53B-9 to shift from a nonjudicial sale to a judicially authorized sale.
4. Amend §11-53B-9 to specific the components of a minimum bid, and the terms of the sale.
5. Amend §11-53B-10 to delete all post-sale redemption. Repeal §§11-53B-11 through 11-53B-14.
6. Amend the Mobile City Code, Chapt. 28, Art. IV, §106.3 to make clear that code violations result solely in the creation of an assessment lien and not personal liability or criminal liability. To the extent necessary, make parallel amendments to state statutes.

The challenge to this modest approach, and these amendments is that they are sought to be made to a statute of statewide applicability, not a statute limited to a Class 2 City.

A BROAD COMPREHENSIVE APPROACH

A far broader approach would be to create a comprehensive self-contained judicial *in rem* code enforcement system.

7. Design a system which picks up at the process stage, outlined in the IBC and IPMC, where the violation is not remediated and the fines and charges are not paid. The key stages in the system would be (a) perfection of the lien in the real property records with the lien having super-priority status subordinate only to taxes; (b) comprehensive title examination parallel to that of the Quiet Title Acts, (c) filing of a petition (for one or more parcels) in the Circuit Court; (d) notice to all Interested Parties of the Petition; (e) judicial hearing on non-remediation of code lien violations and on the adequacy of notice, (f) judicial authorization for sale, (g) sale, (h) confirmation of sale by the Circuit Court and order for issuance of a deed with no further rights of redemption.
8. In designing the system express provision should be made for differential treatment of low-income owner-occupied properties. Determining this subset with accuracy may require additional investigation and events. Additional notices, and time frames, would be applied to this subset as a matter of equity.

This broader approach would certainly create the most equitable, efficient, and effective Code enforcement system for the City of Mobile. In terms of drafting, internal coherence, and accuracy it would be less time consuming than a more narrow and limited approach.

The broader approach also presents a different set of strategies for consideration in seeking legislative authorization.

9. Repeal §11-40-50 in its entirety and replace it with the entirely new judicial *in rem* code enforcement system. The advantage of this approach is that this section is presently applicable only to a Class 2 municipality so no legislative changes would be made to state statutes that are applicable to any municipality other than Mobile.
10. Amend §11-40-30 or §11-40-50 to contain express authorization for a Class 2 municipality to adopt by local ordinance a comprehensive ordinance providing for the procedures for enforcement of code violations. The advantage of this approach is that it minimizes the need for state legislative focus on the topic and shifts all authority and responsibility to the City of Mobile. A possible limitation of this

approach involve the extent to which City Code ordinances can confer jurisdiction and authority on circuit courts.

IV. CONCLUSION

The City of Mobile is faced with a concentrated inventory of vacant, abandoned, and deteriorating parcels of real property. It has taken significant steps in just the past 18 months in gathering strong data on these properties and in creating visual depictions of their concentrations and their adverse impacts on adjoining properties. It has also taken significant actions in the adoption of the International Property Maintenance Code and the International Building Code.

What the City of Mobile does not have at the present time is an equitable, efficient, and effective system of code enforcement. There are a large number of state statutes which confer broad authority for general subject matters but do not address enforcement procedures, confer authority for limited subject matters with limited procedures, or confer authority for broad subject matters with specific procedures which are neither efficient nor effective.

The purpose of this memorandum is to present to the City of Mobile the core components of an equitable, efficient, and effective code enforcement system. It offers an analysis of the strengths and weaknesses of the existing statutory approaches. It outlines a range of options for consideration by the City both in terms of the magnitude of the changes to be sought, and the alternative legal approaches by which to accomplish those changes. If the purpose is successful it will permit the conversations surrounding these issues to become focus and clarified and decisions to be made with a clear vision of the outcomes desired.



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