



## STAFF REPORT

**DATE:** June 6, 2017

**TO:** Ronald L. Olson, City Manager

**FROM:** Kathy Davis, City Attorney

**SUBJECT:** Authorizing the filing of interventions for the foreclosure of abatement liens

### **BACKGROUND AND FINDINGS:**

The law firm of McCreary, Veselka, Bragg & Allen, P.C. represents the Bell County Tax Appraisal District in the collection of delinquent property taxes. Several properties that are subject to a pending delinquent tax collection lawsuit also have city health and safety liens for the abatement of weeds, grass, trash, rubbish, and/or substandard structures.

Typically, properties on which the city has liens are vacant and abandoned and collection of the liens via foreclosure is difficult, if not impossible. First, the owners of the properties may not have any non-exempt assets from which the city may collect the amount of its lien; so a personal judgment against the property owners has little or no impact. Second, the city's liens are inferior to the tax liens securing payment of the delinquent taxes on the property. Often, the total amount of the city's liens and the delinquent property taxes exceed the "true" market value of the property and therefore exceed the amount a purchaser will pay for the property at a tax lien foreclosure sale conducted by the Bell County Sheriff.

If the minimum bid required by law is not received by the Sheriff at the tax lien foreclosure sale, the property is struck off the tax roll, rendering the property tax exempt. Delinquent taxes are not collected, the property is exempt from current taxes, the city does not collect its liens, and the city will continue to incur costs for maintenance of the property.

Section 214.004 of the Local Government Code, Section 342.007(h) of the Health and Safety Code, and Section 33.41(c) of the Tax Code provide that the city may attempt to recover the amount of its liens in conjunction with a delinquent tax collection lawsuit. If the city intervenes in the county's delinquent tax collection lawsuits, the city's liens will be included in the judgment for the foreclosure of the tax liens. The city will receive the amount of its liens from the proceeds of the tax sale to the extent there are proceeds remaining after the payment of the delinquent taxes and costs of the foreclosure suit and sale. Since the city's liens are inferior to the tax liens, the city may not recover all or any of the amount of its liens, and the city's liens will be extinguished. However, the city will benefit from having the property sold to a new owner who will maintain the property and pay taxes on the property in the future. Furthermore, the city will obtain payment of the delinquent taxes, may obtain payment of its liens, and will be relieved from the future cost of maintenance of the property.

Since the Tax Appraisal District is in the process of foreclosing several tax liens, the Appraisal District's attorney is offering to also represent the city by preparing an intervention for the city in the delinquent tax collection lawsuit in order that the city's liens may be included in the judgment for the foreclosure on the tax liens. There will be no charge by the law firm to the city for filing this intervention or for the recovery of all or part of the amount of the city's liens from the tax lien foreclosure sale.

Additionally, the law firm has offered to include the city's unpaid liens in future delinquent tax collection lawsuits, as well. The city does extensive collection efforts, and is most successful when the property contains a structure. Rather than automatically include property in a delinquent tax collection lawsuit, the law firm has agreed to ask the city before intervening so that the likelihood of collection can be reviewed before proceeding.

**THE ALTERNATIVES CONSIDERED:**

Available options are allowing the law firm to intervene on the city's behalf; intervening independently of the Tax Appraisal District and at the city's own cost; or continuing with the current practice of not participating in the foreclosure and continuing to maintain properties that do not sell.

**Which alternative is recommended? Why?**

Staff believes the best alternative is to authorize the law firm to intervene. If the property sells at sheriff's sale, the purchaser will maintain it and pay taxes, and there is potential for recovery of some of the outstanding liens.

**CONFORMITY TO CITY POLICY:**

This action is in compliance with state law and city policy.

**FINANCIAL IMPACT:**

**What is the amount of the expenditure in the current fiscal year? For future years?**

There is no expenditure associated with this action.

**Is this a one-time or recurring expenditure?**

N/A

**Is this expenditure budgeted?**

N/A

**If not, where will the money come from?**

N/A

**Is there a sufficient amount in the budgeted line-item for this expenditure?**

N/A

**RECOMMENDATION:**

That the City Council authorize the law firm of McCreary, Veselka, Bragg & Allen, P.C. to file interventions on behalf of the City of Killeen for the foreclosure of abatement liens for the costs of abating weeds, grass, trash, rubbish, and/or substandard structures, in conjunction with the delinquent tax collection lawsuits filed by the Tax Appraisal District of Bell County, and authorizing the City Manager to execute any and all required documents.

**DEPARTMENTAL CLEARANCES:**

Finance

**ATTACHED SUPPORTING DOCUMENTS:**