



July 27, 2011

Honorable Rahm Emanuel  
City Hall  
121 N. LaSalle Street  
Chicago, Illinois 60602

Dear Mayor Emanuel,

The Securities Industry and Financial Markets Association (SIFMA)<sup>1</sup> writes this letter to express our serious concerns with a proposed ordinance titled *“Amendment of Chapters 13-12 and 13-13 of Municipal Code concerning owner and minimum requirements for vacant buildings”* (“the Proposed Ordinance”), which relates to the maintenance of vacant properties. We understand this Proposed Ordinance has been passed out of committee and will be considered by the full city council shortly. SIFMA represents the interests of the range of funding sources for mortgage lending, including banks, other lenders and financial institutions, as well as institutional investors that provide a critical source of finance through the securitization markets. Our members are concerned that this proposed ordinance is overly broad and will discourage mortgage and home equity lending to residents of Chicago, and we therefore oppose this ordinance as drafted. Accordingly, we have included three proposed amendments, found at the conclusion of this letter.

SIFMA members understand the intention of the Proposed Ordinance. Long-vacant properties can create significant challenges and problems for the communities in which they are located. The Proposed Ordinance looks to remedy these problems by placing responsibility on actual owners as well as certain imputed owners of such vacant properties to register them with the city and maintain them.

Our primary concern is the overly broad definition of “owner” in the Proposed Ordinance. An owner would be defined, in part, as *“a mortgagee who holds a mortgage on the property or is the assignee or agent of the mortgagee.”* This definition would draw in holders of the mortgage who lack possession of and title to the property and therefore generally would not have legal rights to enter or provide access to the property, and the proposal provides no safe-harbor protections to those imputed “owners” for undertaking actions required by the ordinance. In other words, the Proposed Ordinance would require mortgagees and assignees to take actions that may be in violation of other laws or contractual obligations<sup>2</sup>, putting them at a very real risk of litigation and even endangering the safety of their employees or agents tasked to enter or maintain the properties. For example, the Proposed Ordinance suggests that owners could examine the proportion of the property that is

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<sup>1</sup> The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> Importantly, some of our members have expressed Constitutional concerns with respect to the manner in which this ordinance would appear to usurp the property rights of the current owner of the home, where title to the property has not yet been legally transferred from the initial owner to the servicer or mortgagee.

lived in; or that owners could inspect the “condition and value of” property in the house. Thus, imputed “owners” would be expected (1) to enter a house to which may have no rights of access or title and (2) examine, and presumably touch and move, property in that dwelling to which they may have no rights or title; all the time with no legal protection for doing this. Is it clear that the imputed “owner” or its agent would not be arrested should a police officer happen to witness them breaking down a door? Will neighbors understand that this person is not a vandal? A litany of similar questions and concerns arise from this extension of responsibilities to imputed “owners.”

It should also be mentioned that requiring owners to shoulder the enumerated responsibilities with respect to any loan – regardless of its delinquency status – and also requiring owners to monitor the occupancy status of each loan in their portfolio in real time would be unreasonable tasks.

The effect of this will be to discourage lending to Chicago borrowers. The ordinance would create potentially significant, and uncertain, costs to lenders or mortgagees, as imputed owners. Foreclosure timelines in the Chicago area are extremely long; according to our information they average almost 17 months. Costs would be related not only to the actual upkeep of the properties, but also litigation that would surely stem from actions taken under the Proposed Ordinance. Banks that hold loans in portfolio would likely raise borrowing costs to reflect this; loans that are funded through securitization would similarly see cost increases due in part to the actual cost burden of the Proposed Ordinance, and also due to the decreased attractiveness of Chicago loans to secondary market purchasers due to liability and other concerns. The worst case scenario is that imputed owners would find themselves squeezed between two opposing laws, and would decide that the best solution is to simply exit the Chicago market rather than bear the risk of violating the Proposed Ordinance on one hand, and risking the violation of property rights and attendant litigation on the other hand.

As noted above, we strongly object that under this ordinance, “owners” (1) would include persons with no right of access or title to the property, and (2) that such non-owner “owners” would be expected, apparently, to forcibly enter properties at personal and legal risk to themselves or their agents. SIFMA believes there are better approaches to accomplish the goals that underlie this ordinance.

First, if the Council proceeds with the Proposed Ordinance, the definition of “owner” should be redrafted so that it does not include parties who have no right of access or title to the property. We suggest that at a minimum, rather than including mortgagees in the definition of “owners,” the Proposed Ordinance should, as some other municipalities have done, address mortgagees and any exterior maintenance requirements in a separate paragraph that is specific to such mortgagees and which does not make it incumbent upon the mortgagee to provide access to the property for inspection. As discussed, servicers or mortgagees do not generally have authority to provide access to the property to others until after they take title to the property through foreclosure or otherwise.

Second, in terms of timing, the Proposed Ordinance should be limited to properties on which a Notice of Default or foreclosure motion has been filed, and which a mortgagee or its agent have determined is vacant. Especially in the residential context, it is unreasonable and unnecessary for mortgagees and their agents to monitor the vacancy status of properties with a loan that is current.

Finally, and importantly, the foreclosure process should be examined and reconsidered so that vacant properties can be moved through the process in a much more expeditious manner.

We believe these changes would further the shared goals of the Council, the affected communities, and the financial markets that provide mortgage funding to them. We would be pleased to discuss these issues further at your convenience; I can be reached directly at (212) 313-1317 or via email at [mgibson@sifma.org](mailto:mgibson@sifma.org).

Sincerely,

/S/

Marin E. Gibson  
Managing Director & Counsel  
State Government Affairs

Cc: Chairman Daniel Solis  
Chairman Ray Suarez