



MEMORANDUM

TO: Mayor and Council Members

FROM: Rey Arellano, Assistant City Manager

DATE: December 11, 2017

SUBJECT: City Council Resolution 20160901-028 regarding Mortgage Fraud

On September 1, 2016, Council passed Resolution No. 20160901-028 (Resolution). The purpose of this memo is to inform Council of actions completed regarding subject Resolution. The Resolution directed the City Manager to identify resources available to victims of mortgage fraud from local entities, state government, and nonprofit organizations. The Resolution also called the for the City Manager to develop recommendations to Council for coordinating efforts among these various groups and for creating or improving a central point of contact to provide the public with guidance and resources concerning possible mortgage fraud. Council directed that this central point could include a means to receive, evaluate, and refer complaints of mortgage fraud in coordination with other agencies or organizations.

City staff conducted outreach to state and local agencies responsible for enforcing civil and criminal laws regarding mortgage fraud, including the Texas Office of the Attorney General. City staff also conducted legal research and background analysis on the problem of mortgage fraud in Texas. Based on this work, staff took the following action.

Actions Completed

1. Created a website (<http://www.austintexas.gov/department/mortgage-fraud-protection>) through the City's Department of Neighborhood Housing and Community Development (NHCD). This website: (1) provides information and links to resources (governmental entities and non-profit groups) for individuals seeking assistance or information concerning mortgage fraud; and (2) includes a form for victims to report instances of mortgage fraud (a sample form is attached).
2. Provided training to NHCD staff members. These trained staff members will be able to refer citizens without access to the internet to mortgage fraud assistance resources, including the City of Austin Law Department and the Attorney General's Consumer Protection Division.
3. Designated an Assistant City Attorney in the Law Department's Affirmative Litigation section to review intake forms collected from NHCD's website. The attorney(s) will also be responsible for evaluating potential legal action on the part of the City of Austin, and referring cases to appropriate authorities for civil or criminal prosecution. These authorities may include the

Attorney General's Consumer Protection Division, the Travis County District Attorney, or the U.S. Attorney.

Background & Legal Landscape

The actions outlined above are based on outreach and research conducted by City Staff. Since passage of the Resolution, City Staff has undertaken efforts to contact state and local government entities regarding their handling of mortgage fraud complaints, and gather information generally concerning the landscape of reported mortgage fraud in Texas. In general, state agencies have indicated they would welcome reports of mortgage fraud from the City, or from individual consumers directed by the City. The Attorney General's Consumer Protection Division reported that if appropriate, it would seek the City's assistance in a civil mortgage fraud prosecution. The District Attorney's office also indicated that it would welcome reports of mortgage fraud, civil or criminal, from the City, and would seek assistance if appropriate.

Reported incidences of mortgage fraud in Texas have been dropping since 2008. See Report of the Texas Residential Fraud Task Force, 2015, p. 2 (noting that, among other things, the Texas Attorney General received only 16 complaints of mortgage fraud between January 1, 2014 and August 31, 2015)¹. Most of the complaints received by state agencies are civil, and relate specifically to the licensure of various real estate or mortgage professionals². The Austin Police Department's white-collar crimes unit reports that it receives few, if any, claims of criminal mortgage fraud. Only local district attorneys or appropriate federal authorities may initiate criminal complaints.

As indicated in the Resolution, the State Legislature in 2015 empowered city attorneys to take public civil enforcement action against individuals or businesses engaging in real estate or mortgage fraud in violation of Chapter 27 of the Business & Commerce Code³. The law requires city attorneys to assist the Attorney General with commencement or prosecution of a civil enforcement action, if requested by the Attorney General TEX. BUS. & COM. CODE § 27.015(c).

¹ The Report of the Texas Residential Fraud Task is available at:

<https://texasattorneygeneral.gov/files/cj/TexasResidentialMortgageFraudTaskForceReport2015.pdf>

² For example, the Texas Department of Savings and Mortgage Lending (TDSM) is responsible for, among other things, licensing and regulating mortgage loan originators. In 2015, the TDSM received hundreds of complaints about originators, some of which related to mortgage fraud. See 2015 Task Force Report, p. 5.

³ The nature of the action is defined by Chapter 17, Business & Commerce Code, known as the Deceptive Trade Practices – Consumer Protection Act. In general, a prosecuting entity may file suit in district court for injunctive relief. In addition to injunctive relief, the court may assess a civil penalty and award the entity its costs and attorney's fees. If a city were to prevail in such an action, it would be entitled to deposit 75% of the penalty in its general fund. TEX. BUS. & COM. CODE § 27.015(e).

The new law also gives a city attorney the ability to initiate a civil enforcement action in the same manner as a county or district attorney⁴.

The City of Austin's Neighborhood Housing and Community Development and the Law Department stand ready to take action where possible to assist members of the public who have questions about mortgage fraud, or who believe they may be victims of mortgage fraud.

cc: Elaine Hart, Interim City Manager

Brian Manley, Interim Police Chief

Anne Morgan, City Attorney

Rosie Truelove, Neighborhood Housing and Community Development Director

Chris Coppola, Assistant City Attorney

⁴ Prior to initiating any action, a district, county, or city attorney must provide written notice to the Attorney General's Consumer Protection Division. Id. at §§ 17.48(b); 27.015(d).