

ORDINANCE NUMBER O- 18301 (NEW SERIES)

ADOPTED ON MAY 28 1996

AN ORDINANCE AMENDING CHAPTER I, ARTICLE 2, DIVISION 5 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 12.0501 RELATING TO THE APPEAL PROCEDURES FOR ADMINISTRATIVE ENFORCEMENT ACTIONS; AMENDING CHAPTER 5, ARTICLE 4, DIVISION 3 BY AMENDING SECTIONS 54.0301 AND 54.0302; REPEALING SECTIONS 54.0304, 54.0307 AND 54.0309; RETITLING, AMENDING AND RENUMBERING SECTION 54.0308 TO SECTION 54.0309; RETITLING, AMENDING AND RENUMBERING SECTION 54.0306 TO SECTION 54.0308; RETITLING, AMENDING AND RENUMBERING SECTION 54.0303 TO SECTION 54.0306; ADDING SECTIONS 54.0303 AND 54.0304; AMENDING AND RENUMBERING SECTION 54.0305 TO SECTION 54.0307; ADDING SECTION 54.0305; AMENDING AND RENUMBERING SECTION 54.0311 TO SECTION 54.0314; RENUMBERING SECTION 54.0310 TO SECTION 54.0311; RETITLING, AMENDING AND RENUMBERING SECTION 54.0312 TO SECTION 54.0310; RENUMBERING SECTION 54.0313 TO SECTION 54.0312; ADDING SECTIONS 54.0313, 54.0315, 54.0316, 54.0317, 54.0318, 54.0319, 54.0320 RELATING TO THE ABATEMENT OF VACANT STRUCTURES; AND AMENDING CHAPTER IX, ARTICLE 1, DIVISION 1 BY AMENDING SECTION 91.0102 RELATING TO THE ABATEMENT OF UNSAFE, SUBSTANDARD OR DANGEROUS BUILDINGS OR STRUCTURES.

WHEREAS, the City Manager established the Vacant Properties Task Force in April, 1993, to address the growing problem of abandoned housing in the City; and

WHEREAS, the Vacant Properties Task Force presented eight policy and program recommendations to the Public Services and Safety Committee on October 27, 1993 (City Manager's Report No. 93-299), to address the problem of vacant structures; and

WHEREAS, the Public Services and Safety Committee on October 27, 1993, approved seven of the recommendations set forth in City Manager's Report No. 93-299; and

WHEREAS, the City Council passed Resolution R-28316 on December 6, 1993, approving the recommendations of the Vacant Properties Task Force (City Manager's Report 93-320) and directed the City Manager to centralize procedures and design a coordinated strategy regarding Vacant Structures, including: a) the creation of a "Vacant Properties Coordinator" position; and b) the hiring of a consultant; and

WHEREAS, City Manager's Report No. 95-204 was presented to the Public Safety and Neighborhood Services Committee on August 16, 1995, as an informational item outlining the status of this project; and

WHEREAS, City Manager's Report No. 95-270 and the consultant's "Strategy Plan for Vacant Boarded Buildings" was presented to the Public Safety and Neighborhood Services Committee on November 15, 1995, as an informational item; and

WHEREAS, Public Safety and Neighborhood Services Committee on February 21, 1996, adopted and approved the recommendations of the consultant (City Manager's Report No. 96-29); NOW THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter I, Article 2, Division 5 of the San Diego Municipal Code be and the same is hereby amended by amending Sections 12.0501 to read as follows:

SEC. 12.0501 Appeal Procedures

(a) A person served with one of the following documents, orders or notices may file an appeal within ten (10) calendar days from the service of the notice:

(1) Any Administrative Abatement Notice and Order issued for those public nuisances listed under Time Frame One of Section 12.0603(c) of the Municipal Code.

(2) An Administrative Citation issued pursuant to Section 12.0903 of the Municipal Code.

(3) A letter from a Director indicating an intent to record a Notice of Violation pursuant to Section 12.1003 of the Municipal Code.

(4) A Notice of Boarded and Vacant Structure Penalty issued pursuant to Sections 54.0315 or 91.0102 of the Municipal Code.

(b) The appeal shall be made in writing and filed with the Director.

(c) As soon as practicable after receiving the written notice of appeal, a Director shall request the City Manager to appoint an Administrative Enforcement Hearing Officer and to schedule a date, time and place for the hearing.

(d) Written notice of the date, time and place of the hearing shall be served at least ten (10) calendar days prior to the date of the hearing on the person appealing the notice by any one of the methods listed in Section 11.0301 of the Municipal Code.

Section 2. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by amending Sections 54.0301 and 54.0302 to read as follows:

SEC. 54.0301 Declaration of Purpose

The Council of the City of San Diego finds and declares that:

(a) Structures that are vacant and unsecured or boarded attract vagrants, gang members and other criminals as prime locations to conduct illegal criminal activities.

(b) Structures that are vacant and not properly secured are extremely vulnerable to being set on fire by unauthorized persons.

(c) Structures that are vacant and unsecured or boarded are a blight and cause deterioration and instability in neighborhoods.

(d) Structures that are vacant and unsecured or boarded pose serious threats to the public's health and safety and therefore are declared to be public nuisances.

(e) Immediate abatement and rehabilitation of these structures is necessary and can be accomplished by using the judicial or administrative procedures found in this Code.

SEC. 54.0302 Definitions

The words and phrases used in this Division have the meanings set forth in this section:

"Director" means the Director of the Neighborhood Code Compliance Department or any other Director authorized by the City Manager.

"Statement of Intent" means a form filled out by the owner of a boarded structure which contains specific information regarding the structure and the owner's plan for its rehabilitation and maintenance.

"Vacant Structure" means any structure or building that: 1) is unoccupied or occupied by unauthorized persons; and 2) is unsecured or boarded.

Section 3. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by repealing Sections 54.0304, 54.0307 and 54.0309.

Section 4. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by retitling, amending and renumbering Section 54.0308 to Section 54.0309 to read as follows:

SEC. 54.0309 Entry or Interference with Notice Prohibited

(a) It is unlawful for any person to enter or occupy any structure or premises which has been posted pursuant to Section 54.0308(a)(8) of this Division, except to repair or demolish the structure under proper permit or for a purpose authorized by the owner.

(b) It is unlawful for any person to remove or deface any notice posted pursuant to Section 54.0308(a)(8) of this Code until the required repairs or demolition have been completed or a Certificate of Occupancy has been issued in accordance with appropriate provisions of the Uniform Building Code as adopted by the City in Chapter IX of this Code.

Section 5. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by retitling, amending and renumbering Section 54.0306 to Section 54.0308 to read as follows:

SEC. 54.0308 Standards for Boarding a Vacant Structure

(a) Except as provided in Section 54.0308(a)(9), the Responsible Person or Director shall board a Vacant Structure according to the following specifications and requirements:

(1) remove all waste, rubbish or debris from the interior of the structure; and

(2) remove all waste, rubbish, debris or excessive vegetation from the yards surrounding the Vacant Structure; and

(3) barricade all unsecured doorways, windows or exterior openings with minimum 1/2 inch thickness exterior grade plywood which shall extend to the molding stops or studs; and

(4) mount at least two wood stocks of minimum 2 x 4 inch thickness to the reverse face of the plywood with minimum 3/8 inch carriage bolts mated with nuts and two flat washers; and

(5) extend the stock a minimum of eight (8) inches on each side of the interior wall; and

(6) cause all hardware to be galvanized or cadmium plated; and

(7) paint all exterior barricade material the predominate color of the structure; and

(8) post the premises. One or more signs shall be posted at or near each entrance to the structure and on fences or walls as appropriate. The signs shall remain posted until the structure is either lawfully occupied or demolished. Signs shall contain the following information:

DO NOT ENTER

It is a misdemeanor to enter or occupy this building
or premises or to remove or deface this notice

(San Diego Municipal Code)

City of San Diego

Trespassers will be prosecuted

(9) In lieu of requiring the Responsible Person to board a structure as set forth in Sections 54.0308(a)(1) through (7), the Director may allow the Responsible Person to board the Vacant Structure in a manner in which the Director determines adequately prevents unauthorized entry or vandalism. In any event, a Responsible Person shall post the premises as set forth in Section 54.0308(a)(8).

Section 6. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by retitling, amending and renumbering Section 54.0303 to Section 54.0306 to read as follows:

SEC. 54.0306 Duty to Clean and Secure or Board

(a) It is unlawful for any Responsible Person in charge or control of any Vacant Structure to fail to remove any waste, rubbish or debris from the interior of the structure.

(b) It is unlawful for any Responsible Person in charge or control of any Vacant Structure to fail to remove any waste, rubbish, debris or excessive vegetation from the yards surrounding the Vacant Structures.

(c) It is unlawful for any Responsible Person in charge or control of any Vacant Structure to fail to lock, barricade or secure all doors, windows and other openings.

Section 7. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by adding Sections 54.0303 and 54.0304 to read as follows:

SEC. 54.0303 Enforcement Authority

The Director of the Neighborhood Code Compliance Department, or any other Director authorized by the City Manager, is authorized to administer and enforce the provisions of this Division. The Director or anyone designated by the Director to be an Enforcement Official may exercise any enforcement powers as provided in Division 1, Article 2 of Chapter I of this Code.

SEC. 54.0304 Enforcement Remedies

Violations of this Division may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code Section 12.0201. The Director may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy provided in Chapter I of this Code.

Section 8. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by

amending and renumbering Section 54.0305 to Section 54.0307 to read as follows:

SEC. 54.0307 Administrative Abatement Procedures for Vacant and Unsecured Structures

(a) Whenever the Director determines that a vacant and unsecured structure exists within the City of San Diego, an Abatement Notice and Order may be sent to the Responsible Person directing abatement by cleaning and securing or boarding. Boarding shall be done pursuant to the standards established in Section 54.0308 of this Division.

(b) The Director shall follow the Administrative Abatement procedures for Time Frame One as provided in Division 6 of Article 2 of Chapter I of this Code.

(c) If the Responsible Person does not comply with the Abatement Notice and Order, and no appeal is filed, the Director may: 1) clean and board the unsecured vacant structure; and 2) recover all costs pursuant to the procedures found in Division 6, Article 2 of Chapter I of this Code.

(d) If the Director boards the structure, all barricade materials supplied by the City shall become the property of the Responsible Person upon payment of all costs to the City.

Section 9. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by adding Section 54.0305 to read as follows:

SEC. 54.0305 Strict Liability Offenses

Violations of this Division shall be treated as strict liability offenses regardless of intent.

Section 10. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 54.0311 to Section 54.0314 to read as follows:

SEC. 54.0314 Reinspection Fee

The Director may periodically reinspect Vacant Structures to ensure compliance with the provisions of this Division and all applicable court and administrative orders. The Director may assess a reinspection fee against the Responsible Person for actual costs of each reinspection and continuous monitoring of the structure and premises as is reasonably necessary to determine compliance with the standards and procedures in this Division. The Director shall follow the reinspection procedures found in Division 1, Article 3 of Chapter I of this Code.

Section 11. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by renumbering Section 54.0310 to Section 54.0311 to read as follows:

SEC. 54.0311 Abatement Cost

[No change in text.]

Section 12. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by retitling, amending and renumbering Section 54.0312 to Section 54.0310 to read as follows:

SEC. 54.0310 Continuous Abatement Authority

(a) If a Vacant Structure previously abated by the Responsible Person or the Director pursuant to a Notice and Order again becomes unsecured and open to unauthorized entry, the Director may, without further notice to the Responsible Person, proceed to abate the nuisance and recover costs as provided for in this Division.

(b) If the yards surrounding a Vacant Structure again contain debris, rubbish, waste or excessive vegetation, the Director may, without further notice to the Responsible Person, proceed to abate the nuisance and recover costs as provided for in this Division.

(c) An Enforcement Hearing Officer may issue an Administrative Enforcement Order that would give the Director continuous abatement authority to: 1) abate a Vacant Structure which again becomes unsecured and open to unauthorized entry; or 2) abate the yards surrounding a Vacant Structure if the yards again contain debris, rubbish, waste or excessive vegetation. The Hearing Officer may establish notice requirements as may be reasonable.

Section 13. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by renumbering Section 54.0313 to Section 54.0312 to read as follows:

SEC. 54.0312 Continuous Public Nuisances

[No change in text.]

Section 14. That Chapter V, Article 4, Division 3 of the San Diego Municipal Code be and the same is hereby amended by

adding Sections 54.0313, 54.0315, 54.0316, 54.0317, 54.0318, 54.0319 and 54.0320 to read as follows:

SEC. 54.0313 Duty to Submit a Statement of Intent

(a) The Director shall create and make available a form entitled "Statement of Intent."

(b) The owner of a boarded structure shall complete the information required on the Statement of Intent and submit it to the Director within thirty (30) days of the date the Director determines the structure became boarded.

(c) The Director shall determine whether a submitted Statement of Intent is satisfactorily completed and may return it to the owner to provide more complete information.

(d) When a submitted Statement of Intent does not meet with the Director's approval, the owner shall immediately correct and resubmit the Statement of Intent.

(e) The Statement of Intent shall include information as to:

(1) the expected period of vacancy;

(2) a plan for regular maintenance during the period of vacancy;

(3) a plan and timeline for the lawful occupancy, rehabilitation or demolition of the boarded structure; and

(4) any additional information required by the Director.

(f) It is unlawful to:

(1) fail to submit a Statement of Intent within the time period specified by Section 54.0313(b); or

(2) submit a Statement of Intent which does not meet with the approval of the Director or otherwise comply with the requirements of this Section.

SEC. 54.0315 Boarded and Vacant Structure Penalty

(a) Any owner of a structure which meets the definition of Vacant Structure as provided in this Division for ninety (90) consecutive calendar days may be liable for a civil penalty in the amount of two hundred fifty dollars (\$250) per structure, not to exceed one thousand dollars (\$1,000) per calendar year unless:

(1) a Statement of Intent has been filed and approved by the Director; and

(2) one of the following applies:

(A) The structure is the subject of an active building permit for repair or rehabilitation and the owner is proceeding diligently in good faith to complete the repair or rehabilitation; or,

(B) The structure is maintained in compliance with this Division and is actively being offered for sale, lease or rent; or,

(C) The property owner can demonstrate that he or she has made a diligent and good faith effort to implement the actions set forth in the approved Statement of Intent within the timeline contained within the Statement of Intent.

(b) If the structure continues to meet the definition of Vacant Structure as provided in this Division beyond the initial ninety (90) calendar days, and the owner does not meet any of the exceptions set forth in this Section, the Director may continue to assess a penalty of two hundred fifty dollars (\$250) for each ninety (90) calendar day

period the structure continues to constitute a Vacant Structure. At no time may the amount of the assessment exceed one thousand dollars (\$1,000) per structure in a calendar year.

(c) All penalties assessed shall be payable directly to the City Treasurer.

(d) The City Manager shall develop policies and procedures for the implementation of this penalty.

SEC. 54.0316 Procedures for Boarded and Vacant Structure Penalty

(a) Whenever a Director determines that a structure meets the definition of a Vacant Structure as provided in this Division for more than ninety (90) consecutive calendar days, and the owner does not meet any of the exceptions set forth in Section 54.0315, a Notice of Boarded and Vacant Structure Penalty may be issued to the owner of the structure.

(b) A separate Notice of Boarded and Vacant Structure Penalty shall be issued for each subsequent penalty that may be assessed pursuant to Section 54.0315.

(c) The Notice of Boarded and Vacant Structure Penalty shall be served upon the owner by any one of the methods of service listed in Section 11.0301 of Chapter I of this Code.

SEC. 54.0317 Appeal of Boarded and Vacant Structure Penalty

An appeal of a vacant boarded structure penalty shall follow the procedures set forth in Division 5 of Article 2 of Chapter I of this Code.

SEC. 54.0318 Administrative Enforcement Hearing

(a) The appeal hearing shall follow the enforcement hearing procedures set forth in Division 4, Article 2 of Chapter I.

(b) The Enforcement Hearing Officer shall only consider evidence that is relevant to the following issues:

(1) whether the structure meets the definition of Vacant Structure as provided in this Division for ninety (90) consecutive calendar days;

(2) whether an approved Statement of Intent has been filed and approved by the Director; and

(3) whether any of the exceptions set forth in section 54.0315(a)(1) through (3) have been met.

(c) The Enforcement Hearing Officer may assess administrative costs.

SEC. 54.0319 Failure to Pay Penalties

The failure of any person to pay the penalty within the time specified in the "Notice of Boarded and Vacant Structure Penalty" may result in the Director using any legal means to recover the civil penalties, including referring the matter to the City Treasurer to file a claim with the Small Claims Court.

SEC. 54.0320 Allocation of Vacant Building Penalty

Administrative civil penalties collected pursuant to this Division shall be deposited in the civil penalties fund established pursuant to Section 13.0402 of this Code.

Section 15. That Chapter IX, of the San Diego Municipal Code be and the same is hereby amended by amending Article 1, Division 1, Section 91.0102, to read as follows:

SEC. 91.0102 UNSAFE, SUBSTANDARD OR DANGEROUS BUILDINGS OR STRUCTURES

102.1 Declaration of Purpose.

[No change in text.]

102.2 Definitions.

[No change in text.]

102.3 Conditions Causing a Dangerous Building or Structure.

[No change in text.]

102.4 Conditions Causing an Unsafe Building or Structure.

[No change in text.]

102.5 Procedures for Notice and Order.

102.5.1

[No change in text.]

102.5.2

[No change in text.]

102.5.3

[No change in text.]

102.5.4

[No change in text.]

102.5.5

[No change in text.]

102.5.6

[No change in text.]

102.5.7

[No change in text.]

102.5.8

[No change in text.]

102.5.9

[No change in text.]

102.5.10

[No change in text.]

102.6 Extensions of Time.

[No change in text.]

102.7 Failure to Comply with Notice and Order.

[No change in text.]

102.8 Recordation of Notice and Order.

[No change in text.]

102.9 Repair, Vacation and Demolition Requirements.

[No change in text.]

102.10 Posting of Signs. Once the Director orders the vacation of tenants or once the building is secured pursuant to the regulations in Chapter V, Article 4, Division 3 of this Code, the Responsible Person or the Director shall post signs in substantially the following form at or near each entrance of the building:

DO NOT ENTER

It is a misdemeanor to enter or occupy this building
or premises or to remove or deface this notice

(San Diego Municipal Code)

City of San Diego

Trespassers will be prosecuted

1. Trespass. It is unlawful for any person to enter or occupy any building which has been posted in accordance with this Section, except that entry may be made to repair or demolish such building under proper permit.
2. Defacement. It is unlawful for any person to remove or deface any sign or notice after it is posted until the required repairs have been completed or until demolition is finished and all debris removed pursuant to the demolition permit.

102.11 Abatement Hearing.

[No change in text.]

102.12 Enforcement Hearing Officer Decision. Once all evidence and testimony is completed, the Enforcement Hearing Officer shall affirm, reject or modify the Director's decision. If the Enforcement Hearing Officer confirms the existence of a public nuisance, the Enforcement Hearing Officer may issue an order that compels the Responsible Person to abate and permits the City to abate the conditions causing the public nuisance pursuant to Section 12.0606 of this Code.

102.13 Failure to Comply with Administrative Enforcement Order. If the Responsible Person served with an Administrative Enforcement Order fails to comply with the terms of the order, the Responsible Person may be prosecuted under Municipal Code section 12.0413 and the Director may commence appropriate

abatement action as authorized in the Administrative Enforcement Order.

102.14 Interference with Repair or Demolition Work Prohibited.

[No change in text.]

102.15 Performance of Work.

[No change in text.]

102.16 Recovery of Repair, Demolition or Vacation Costs.

[No change in text.]

102.17 Summary Abatement.

[No change in text.]

102.18

[No change in text.]

102.19 Statement of Intent. Any owner of an Unsafe, Substandard or Dangerous Building or Structure, which meets the definition of a Vacant Structure under section 54.0302 of this Code, shall file a Statement of Intent pursuant to Section 54.0313 and be subject to the penalties contained in that section.

102.20 Boarded and Vacant Structure Penalty. Any owner of an Unsafe, Substandard or Dangerous Building or Structure, which meets the definition of a Vacant Structure under section 54.0302 of this Code for ninety (90) consecutive calendar days, may be subject to a Boarded and Vacant Structure Penalty pursuant to Section 54.0315 of this Code.

Section 16. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By



Diane Silva-Martinez
Deputy City Attorney

DSM:lmd:mac
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