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(O-2012-62)

ORDINANCE NUMBER O- 20203 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 10 2012

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 4, DIVISION 3 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING THE TITLE OF DIVISION 3; BY AMENDING SECTIONS 54.0301, 54.0302, 54.0303, AND 54.0304; BY AMENDING SECTIONS 54.0306, 54.0307, AND 54.0308; BY AMENDING SECTIONS 54.0310, 54.0311, 54.0312, 54.0313, 54.0314, 54.0315, 54.0316, 54.0317, 54.0318, AND 54.0319; BY AMENDING THE TITLE OF SECTION 54.0320; AND BY AMENDING SECTION 54.0321, ALL RELATING TO THE ABATEMENT AND REHABILITATION OF ABANDONED PROPERTIES.

WHEREAS, amendments to the Municipal Code are necessary to address gaps in the present Vacant Structures Ordinance which only applies to vacant structures which are boarded or unsecured; and

WHEREAS, amending the ordinance to designate various problematic properties as “Abandoned Properties” and bringing them all under the current regulations applicable to vacant structures, will assist code enforcement and the police in reducing crime and encourage the rehabilitation of these properties so they are put to productive use; and

WHEREAS, the following problematic properties lower property values, attract nuisance activity and crime, constitute fire hazards, and have a detrimental effect on neighborhoods, endangering their health, safety, and quality of life: 1) properties on which there exists a vacant boarded or unsecured structure; 2) properties on which there exist a vacant structure and code or public nuisance violations; 3) properties on which there exist a vacant structure and code or public nuisance violations, and the property is under a current Notice of Default, Notice of a Trustee’s Sale, pending Tax Assessor’s Lien Sale or have

been the subject of a foreclosure sale; and vacant lots on which code or nuisance violations exist; and

WHEREAS, it is the intent of the City Council that these properties shall constitute “Abandoned Properties,” and shall be subject to current and amended regulations in Chapter 5, Article 4, Division 3 of the San Diego Municipal Code; and

WHEREAS, additional amendments to Chapter 5, Article 4, Division 3 of the San Diego Municipal Code are needed to ensure that “Abandoned Properties” are properly maintained and that the responsible persons for these properties provide proper documentation, information, property maintenance, and security measures to protect the public; NOW THEREFORE,

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

Section 1. That Chapter 5, Article 4, of the San Diego Municipal Code is amended by amending the title of Division 3, to read as follows:

Division 3: Abatement of Abandoned Properties

Section 2. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by amending sections 54.0301, 54.0302, 54.0303 and 54.0304, to read as follows:

§54.0301 Declaration of Purpose

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

- (a) Vacant lots attract littering, dumping, and nuisance activity and create public nuisances in the community when these conditions exist.
- (b) *Vacant structures* attract vagrants, gang members and other criminals as prime locations to conduct illegal criminal activities.

- (b) *Vacant structures* are extremely vulnerable to being set on fire by unauthorized persons.
- (d) *Vacant structures* which are boarded or are located on properties with code and *public nuisance* violations cause deterioration and instability in neighborhoods.
- (e) *Vacant structures* located on a property which is foreclosed or under a current *Notice of Default, Trustee's Sale*, or Tax Lien Sale often fall into disrepair, attract nuisance activity and crime, decrease property values, and are a burden to the City of San Diego's resources, making it necessary to ensure that accurate ownership information and contacts are provided to the City so that proper maintenance and security measures are implemented on these properties.
- (f) Immediate abatement and rehabilitation of *vacant structures* and vacant lots where code or *public nuisance* violations exist is necessary and can be accomplished by using the judicial or administrative procedures found in this Code.

§54.0302 Definitions

The words and phrases used in this Division have the meanings set forth in this section. Defined terms appear in italics.

Abandoned property means any property upon which one or more of the following conditions exist:

- (1) a vacant lot upon which code or *public nuisance* violations exist as determined by the *Director*; or

- (2) a *vacant structure* and code or *public nuisance* violations exist as determined by the *Director*; or
- (3) a *vacant structure* which is boarded, irrespective of whether code or *public nuisance* violations exist at the property; or
- (4) a *vacant structure*, and the property is under a current *Notice of Default*, *Notice of Trustee's Sale*, pending Tax Assessor's Lien Sale, or it has been the subject of a *Foreclosure* sale where the title was retained by the *beneficiary* of a *Deed of Trust* involved in the *Foreclosure*, or has been transferred under a *Deed in Lieu of Foreclosure*.

Beneficiary means a lender under a note secured by a *Deed of Trust*.

Deed in Lieu of Foreclosure means a recorded document that transfers ownership of a property from the *trustor* upon consent of the *beneficiary* of the *Deed of Trust*.

Deed of Trust means an instrument by which title to real estate is transferred to a third party *Trustee* as security for a real estate loan. This definition applies to all *deeds of trust* regardless of priority.

Default means the failure to fulfill a contractual obligation, monetary or nonmonetary.

Director means the *Director* of the Permit Issuance and Code Enforcement Division or any other *Director* authorized by the City Manager and any of their designated agents or representatives.

Foreclosure means the process by which a property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the *Trustor* defaults.

Graffiti has the same meaning as in San Diego Municipal Code section 54.0402.

Letter of Agency means a trespass authorization form signed by a property owner or designated agent which allows the San Diego Police Department to act as the owner's agent for purposes of enforcing laws against any person(s) found on private property without the owner's consent or without lawful purpose.

Liquid waste has the same meaning as in San Diego Municipal Code section 54.0202.

Litter has the same meaning as San Diego Municipal Code section 54.0202.

Local contact means a contact located within a distance of 50 driving miles from the *abandoned property*.

Notice of Default means a recorded notice that a *Default* has occurred under a *Deed of Trust*.

Public nuisance has the same meaning as in San Diego Municipal Code section 11.0210.

Responsible person has the same meaning as in San Diego Municipal Code section 11.0210.

Rubbish has the same meaning as in San Diego Municipal Code section 54.0202.

Solid waste has the same meaning as in San Diego Municipal Code section 54.0202.

Statement of Intent means a form filled out by the *responsible person* for an *abandoned property* which contains specific information regarding the

ownership of the property and the *responsible person's* plan for its rehabilitation, development, occupancy, and maintenance.

Trustee means the person, firm or corporation holding a *Deed of Trust* to a trust on a property.

Trustor means a borrower under a *Deed of Trust*, who deeds property to a *Trustee* as security for the payment of a debt.

Vacant structure means any structure or building that is unoccupied or occupied by unauthorized persons.

Waste has the same meaning as in San Diego Municipal Code section 54.0202.

§54.0303 Enforcement Authority

The *Director* 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 1 of this Code.

§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 1 of this Code.

Section 3. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by amending sections 54.0306, 54.0307 and 54.0308, to read as follows:

§54.0306 Abandoned Properties Regulations

- (a) An *abandoned property* where code or public nuisance violations exist constitutes a *public nuisance per se*.
- (b) In determining whether a *vacant structure or vacant lot* meets the definition of *abandoned property*, the *Director* shall consider the length of vacancy as a factor contributing to the existence of a *public nuisance*.
- (c) A commercial *vacant structure* which meets the definition of an *abandoned property* as provided in this Division, shall continue to be deemed a *vacant structure* until there is a lawfully permitted business operating in the *vacant structure* on a daily basis. The *Director* may make an exception based on the nature of the particular business.
- (d) It is unlawful for any *responsible person* for an *abandoned property* to fail to lock, barricade or secure all doors, windows and other openings to any *vacant structure* on the property in accordance with the standards listed in this Division.
- (e) It is unlawful for any *responsible person* for an *abandoned property* to fail to remove from the entire property including the interior of any *vacant structure*, any of the following: *litter, waste, rubbish, solid waste, liquid waste, debris, unpermitted vehicles, storage not incidental to the corresponding zoning use for the property, or excessive vegetation* as determined by a fire inspector to constitute a fire hazard.

- (f) It is unlawful for any *responsible person* for an *abandoned property* to fail to erect fences, barriers, berms or other suitable means to discourage access and to discourage illegal dumping or littering on the property when requested by the *Director*.
- (g) It is unlawful for any owner of an *abandoned property* or any owner's agent to fail to file a *Letter of Agency* with the San Diego Police Department or to fail to update the *Letter of Agency* every six months.
- (h) It is unlawful for any *responsible person* for an *abandoned property* to fail to maintain the property in accordance with the abatement requirements listed in an Abatement Notice and Order or other written notice issued by the *Director*.
- (i) It is unlawful for any *responsible person* for an *abandoned property* to fail to maintain the property in accordance with the maintenance standards listed in this Division.

§54.0307 Administrative Abatement Procedures and Maintenance Standards for Abandoned Properties

- (a) Whenever the *Director* determines that an *abandoned property* exists within the City of San Diego upon which code or *public nuisance* violations exist, an Abatement Notice and Order may be sent to the *responsible person* directing the abatement of any *vacant structure* by cleaning and securing or boarding the *vacant structure* and removing conditions creating a *public nuisance* on the property or directing the abatement of any vacant lot by removing conditions

creating a *public nuisance*. Boarding shall be done pursuant to the standards established in Section 54.0308 of this Division.

- (b) The *Director* may also require as part of an Abatement Notice and Order or other written notice that the *responsible person* erect fences, barriers, berms or other suitable means to discourage access to the *abandoned property* and to discourage illegal dumping or littering on the property. The *Director* may also require the *responsible person* to post signs that prohibit trespassing, littering or illegal dumping.
- (c) The *Director* may also require as part of the Abatement Notice and Order or other written notice that the *responsible person* remove any *litter, waste, rubbish, solid waste, liquid waste, debris, unpermitted storage, weeds* which are over twelve inches in height or excessive vegetation from *the abandoned property*.
- (d) The *Director* may also require as part of the Abatement Notice and Order or other written notice that the *responsible person* remove any vehicles or additional items not listed in subsection (c) which are stored on the property in violation of the Land Development Code.
- (e) The *Director* may also require as part of the Abatement Notice and Order or other written notice, that the *responsible person* maintain the property free of *graffiti*, and paint over any *graffiti* with an exterior grade paint that matches the color of the exterior of the *vacant structure*.

- (f) The *Director* may also require as part of the Abatement Notice and Order or other written notice, that the *responsible person* keep any pools or spas on the property in working order so the water remains clear and free of pollutants and debris or drained and kept dry. Pools or spas must comply with the fencing requirements contained in Division 31, Article 5, Chapter 14 of this Code.
- (g) The *Director* may also require as part of the Abatement Notice and Order or other written notice, that the *responsible person* post a sign on the property. The sign shall be no less than 18" x 24" in size and shall contain lettering of a font size that is legible from a distance of 45 feet. The sign shall include all of the following information:
- 1) the address of the property;
 - 2) that a *Letter of Agency* is on file with the San Diego Police Department; and
 - 3) the name and telephone number of the *responsible person* or designee, one of whom must be a *local contact*, such as the property manager, asset manager, or real estate agent or broker.
- (h) The *Director* shall follow the Administrative Abatement procedures for Time Frame One as provided in Division 6 of Article 2 of Chapter 1 of this Code. However, if the abatement involves a *vacant structure* which is a single family dwelling, then the time frame for compliance shall be fifteen (15) calendar days in accordance with California Health and Safety Code section 17980.9(b)(1).

- (i) 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 any unsecured *vacant structure*; 2) remove all *litter, waste, rubbish, solid waste, liquid waste*, debris or excessive vegetation from the *abandoned property*; 3) remove all vehicles and items stored in violation of the Land Development Code; and 4) recover all costs pursuant to the procedures found in Division 6, Article 2 of Chapter 1 of this Code.
- (j) If the *Director* boards any *vacant structure*, all barricade materials supplied by the City shall become the property of the *responsible person* upon payment of all costs to the City.

§54.0308 Standards for Boarding a Vacant Structure

Except as provided in Section 54.0308(a)(9), the *responsible person* or *Director* shall board a *vacant structure* according to all of the following specifications and requirements:

- (a) Remove all *waste, rubbish* or debris from the interior of the *vacant structure*;
- (b) Remove all *waste, rubbish*, debris or excessive vegetation from the yards surrounding the *vacant structure*;
- (c) 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;

- (d) 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;
- (e) Extend the stock a minimum of eight (8) inches on each side of the interior wall;
- (f) Cause all hardware to be galvanized or cadmium plated;
- (g) Paint all exterior barricade material the predominant color of the structure;
- (h) Post the premises. One or more signs shall be posted at or near each entrance to the *vacant structure* and on fences or walls as appropriate. The signs shall remain posted until the *vacant 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. Trespassers will be prosecuted. The sign shall be of a size of no less than 18" x 24" in size and the lettering shall be of a font size that is legible from a distance of 45 feet.
- (i) In lieu of requiring the *responsible person* to board a structure as set forth in Sections 54.0308(a) through (h), 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 with signs as required by this Division, including as set forth in Section 54.0308(h).

Section 4. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by amending sections 54.0310, 54.0311, 54.0312, 54.0313, 54.0314, 54.0315, 54.0316, 54.0317, 54.0318 and 54.0319, to read as follows:

§54.0310 Continuous Abatement Authority

- (a) If a *vacant structure* previously abated by a *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 *public nuisance* and recover costs as provided for in this Division.
- (b) If an *abandoned property* again contains debris, *rubbish*, *waste*, or excessive vegetation, the *Director* may, without further notice to the *responsible person*, proceed to abate the *public 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 an *abandoned property* if the property again contains debris, *rubbish*, *waste* or excessive vegetation. The Hearing Officer may establish notice requirements as may be reasonable.

§54.0311 Abatement Costs

- (a) [No change in text.]

- (b) Once the abatement is complete, the *Director* shall recover all abatement costs pursuant to the procedures found in Division 3, Article 3 of Chapter 1 of this Code.

§54.0312 Continuous Public Nuisances

Any *abandoned property* that was originally abated by the *responsible person's* voluntary actions or pursuant to a judicial or administrative order may be declared a permanent *public nuisance* by the *Director* if the property again contains debris, *rubbish*, *waste*, excessive vegetation or other conditions creating a *public nuisance*. Any *vacant structure* that was originally abated by the *responsible person's* voluntary actions or pursuant to a judicial or administrative order and continues to remain open and unsecured on a periodic basis, thereby requiring additional reinspections, clearing of the lot, or resecuring of the *vacant structure*, may be declared a permanent *public nuisance* by the *Director*. The *Director* may seek the abatement of any lot and the demolition of any *vacant structure* that become a continuous *public nuisance* by seeking a court order or following any of the administrative abatement procedures found in this Code.

§54.0313 Duty to File a Statement of Intent

- (a) The *Director* shall create and make available a form entitled *Statement of Intent* to be completed by the *responsible person* for an *abandoned property*.
- (b) The *responsible person* for an *abandoned property* shall complete the information required on the *Statement of Intent* and submit the statement to the City within thirty (30) calendar days of the date the

Director determines the property meets the definition of *abandoned property* as provided in this Division. If an *abandoned property* remains in an abandoned state for more than three hundred sixty-five (365) calendar days from the date the first *Statement of Intent* was submitted, then a new *Statement of Intent* must be submitted, and annually thereafter until the property no longer meets the definition of an *abandoned property* as provided in this Division.

- (c) The *Director* shall determine whether a submitted *Statement of Intent* is complete and may require the *responsible person* to provide more complete information.
- (d) When a submitted *Statement of Intent* does not meet with the *Director's* approval as it does not contain adequate information as required by this Section, the *responsible person* shall immediately correct and resubmit the *Statement of Intent*.
- (e) The *Statement of Intent* shall include the following information:
 - (1) expected period of vacancy;
 - (2) a plan for regular maintenance during the period of vacancy;
 - (3) a plan and time line for the lawful occupancy, rehabilitation or demolition of the *vacant structure*;
 - (4) a plan for the development or sale of the vacant lot if the *abandoned property* is a vacant lot;
 - (5) complete ownership information and all contact information for persons responsible for the property

including the name, telephone number and street address for any corporation, individual, *beneficiary* or *trustee* responsible for receiving payments associated with any loan or *Deed of Trust*. The *Statement of Intent* shall also include information regarding the property management company, servicing company, asset manager, or property preservation company responsible for the security, maintenance and marketing of the property; and

- (6) any additional information required by the *Director*.
- (f) It is unlawful for a *responsible person* to:
 - (1) fail to submit a *Statement of Intent* within the time period specified by Section 54.0313(b); or
 - (2) fail to submit a *Statement of Intent* annually as required by Section 54.0313(b); or
 - (3) submit a *Statement of Intent* which does not comply with the requirements of this Division.

§54.0314 Reinspection Fee

The *Director* may periodically reinspect an *abandoned property* 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 the 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 1 of this Code.

§54.0315 Abandoned Property Penalty

- (a) If an *abandoned property* is left in an abandoned state for ninety (90) consecutive calendar days, the *responsible person* for that *abandoned property* may be liable for a civil penalty in the amount of five hundred dollars (\$500) per property, not to exceed five thousand dollars (\$5,000) per property in a calendar year unless:
- (1) a *Statement of Intent* has been filed and approved by the *Director*; and
 - (2) one of the following applies:
 - (A) a *vacant structure* exists on the property and it is the subject of an active building permit for repair or rehabilitation and the *responsible person* is proceeding diligently in good faith to complete the repair or rehabilitation;
 - (B) a *vacant structure* exists on the property and it is maintained in compliance with this Division and is actively being offered for sale, lease or rent;
 - (C) the *abandoned property* is a vacant lot and there has been no recurring code violations or nuisance activity; or

- (D) the *responsible person* can demonstrate that he or she made a diligent and good faith effort to implement the actions set forth in the approved *Statement of Intent* within the time line contained within the *Statement of Intent*.
- (b) If the property continues to meet the definition of *abandoned property* as provided in this Division beyond the initial ninety (90) calendar days, and if the *responsible person* does not meet any of the exceptions set forth in this Section, the *Director* may continue to assess penalties in the following amounts: one thousand dollars (\$1,000) for the next ninety (90) calendar day period the property continues to meet the definition of an *abandoned property* as provided in this Division; one thousand five hundred dollars (\$1,500) for the next ninety (90) calendar day period; and two thousand dollars (\$2,000) for the next ninety (90) calendar day period that the property continues to meet the definition of an *abandoned property* as provided in this Division. At no time may the amount of the civil penalty exceed five thousand dollars (\$5,000) per property 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.

§54.0316 Procedures for Abandoned Property Penalty

- (a) Whenever a *Director* determines that a property meets the definition of *abandoned property* as provided in this Division for more than ninety (90) consecutive calendar days, and the *responsible person* does not meet any of the exceptions set forth in Section 54.0315, a Notice of Abandoned Property Penalty may be issued to the *responsible person* for the property.
- (b) A separate Notice of Abandoned Property Penalty shall be issued for each subsequent penalty that may be assessed pursuant to Section 54.0315.
- (c) The Notice of Abandoned Property Penalty shall be served upon the *responsible person* by any one of the methods of service listed in San Diego Municipal Code Section 11.0301.

§54.0317 Appeal of Abandoned Property Penalty

An appeal of an *abandoned property* penalty shall follow the procedures set forth in Division 5 of Article 2 of Chapter 1 of this Code.

§54.0318 Administrative Enforcement Hearing

- (a) The appeal hearing shall follow the enforcement hearing procedures set forth in Division 4, Article 2 of Chapter 1.
- (b) The Enforcement Hearing Officer shall only consider evidence that is relevant to the following issues:
 - (1) whether the property meets the definition of *abandoned property* as provided in this Division for ninety (90) consecutive calendar days;

- (2) whether a *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)(2)(A) through (D) have been met.

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

§54.0319 Failure to Pay Penalties

The failure of any person to pay the penalty within the time specified in the Notice of Abandoned Property 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.

Section 5. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by amending the title of section 54.0320, to read as follows:

§54.0320 Allocation of Abandoned Property Penalty

[No change in text.]

Section 6. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by amending section 54.0321, to read as follows:


§54.0321 Timely Rehabilitation of Abandoned Properties

As authorized by California Health and Safety Code section 17980.9 (b)(1), the *Director* may require the demolition or expeditious rehabilitation of *vacant structures* which are single-family dwellings and deemed to be substandard as determined by an inspection by the *Director*.

Section 7. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 8. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

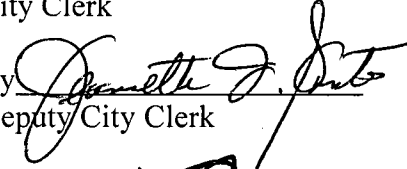
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Diane Silva-Martinez
Chief Deputy City Attorney

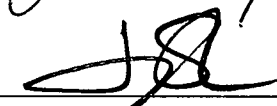
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2/16/2012
Or.Dept:CA
O-2012-62

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego,
at this meeting of OCT 02 2012.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10/02/12
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor