

Office of
The City Attorney
City of San Diego

MEMORANDUM

(619) 533-5500

DATE: October 11, 2005
TO: Toni Atkins, Deputy Mayor
FROM: City Attorney
SUBJECT: Assessing Fines on Vacant Structures

QUESTION PRESENTED

You have asked this office to “look into the legalities and possibilities of assessing a significant fine, for example a percentage of assessed value” on abandoned or vacant properties that sit vacant for a certain period of time, and “what parameters must be met before the City could initiate such proceedings.”

SHORT ANSWER

1. If the vacant property is in violation of an applicable law, e.g., it constitutes a public nuisance or violates a provision of the Vacant Properties ordinance (*see Attachment I*), the ability to assess significant fines already exists under the San Diego Municipal Code [SDMC]. If a civil judicial action is filed, SDMC section 12.0202(b) allows a maximum civil penalty of \$2,500 per violation of the Municipal Code for each day the violation exists. The assessed value of the property certainly may be used as a criterion by the prosecutor in determining the penalty amount. Similarly, an administrative civil penalties action can be brought against the property owner by a City Department pursuant to SDMC section 12.0804(a). The Department may likewise consider the assessed value of the property in determining the amount of penalty. Note SDMC section 12.0805(c) lists eleven factors which may be considered in determining the amount of penalty, e.g., duration of the violation, good faith effort by the Responsible Person to comply, impact of the violation upon the community, and any other factors that justice may require. The maximum rate for an administrative civil penalty is \$2,500 per violation, not to exceed \$250,000 per parcel or structure for any related series of violations.
2. If the vacant structure is fenced and secured with no associated crime statistics, it may be problematic proving a public nuisance; especially if the owner continues to obtain building permits and repeatedly lets the permits lapse. These properties may be completely abandoned or constitute “perpetual remodels” which are never completed. In

order to compel the timely rehabilitation of these properties, amendments are needed to the Municipal Code. The City Attorney has drafted possible ordinance amendments for the City Council's consideration and is presently attempting to docket these amendments before the Public Safety and Neighborhood Services Committee.

BACKGROUND

Since the enactment of the Vacant Properties ordinance in 1993, the Neighborhood Code Compliance Department [NCCD] has successfully resolved many cases involving vacant structures which are boarded or unsecured. The majority of the cases are resolved through initial notices advising owners of the requirements of the Vacant Properties ordinance. The City's Vacant Properties Coordinator [Coordinator] provides assistance to property owners and helps remove barriers that are preventing the timely rehabilitation of the property. For example, the Coordinator assists the owner in determining what permits are required to rehabilitate the property and the extent of the scope of work. In addition, the Coordinator refers the owner to available resources in the public or private sector to obtain redevelopment loans, grants, or other funding sources. In many cases the Coordinator locates absentee owners, facilitates the probate of the property where necessary, coordinates the cleanup of contaminated sites, and involves Adult Protective Services, the Public Guardian and other local agencies as appropriate.

In addition, cases involving vacant properties are regularly referred to the Code Enforcement Unit of the City Attorney's Office by NCCD or the Police Department to compel compliance or abate nuisance activity. Typically, these are cases where voluntary compliance cannot be obtained, the property has sat vacant for a long period of time, or the property is attracting criminal activity. The City Attorney files a civil or criminal complaint against the owner who is subsequently ordered by the Court to rehabilitate the property in a timely manner.

Attachment 2 illustrates examples of properties which have been successfully resolved either administratively by NCCD or through prosecution by the City Attorney's Office.

It is important to note that high fines are typically not sought in these cases for the following reasons:

1. The profile of the owner dictates whether fines are appropriate in each case. Typically, the owners do not have significant resources to rehabilitate the property. It is preferable that the owner spend any available monies on the rehabilitation of the property, rather than on high fines. A typical plea bargain or settlement reached by the City Attorney's Office would require the recovery of investigative costs and the suspension of fines or custody if the property is not timely achieved.
2. When the Vacant Properties ordinance was enacted in 1993, it was the clear direction of the City Council that the appropriate manner of enforcement was to first obtain voluntary compliance through the methods outlined in the Vacant Properties ordinance. When the owner fails to file a Statement of Intent as required by the ordinance or is in

violation of the ordinance once a Statement of Intent is filed, the Coordinator is authorized to fine the owner \$250 every ninety days up to \$1,000 per structure in a calendar year.

ANALYSIS

Despite its successes, it has become apparent that the Vacant Properties ordinance needs to be strengthened. Over the past year, NCCD and the City Attorney's Office have worked with key community groups to draft amendments to the ordinance. The administrative fines imposed by the Coordinator are effective in motivating some owners to expeditiously rehabilitate their properties. However, the fines provide little incentive for owners with considerable resources or assets. A copy of the suggested amendments is attached. (*See Attachment 3.*)

The proposed amendments do not address the problem presented by property owners who allege they are remodeling their structure, but continually let permits lapse and the "remodel" sits for years unfinished. *Attachment 4* is an outline of the problem presented by these "perpetual remodels." This outline has been circulated among staff in NCCD and Development Services Department (DSD) to call attention to this problem and better coordinate the processing of these cases in DSD. In late June 2005 this outline was submitted to your staff by this office, asking for assistance in docketing this item before Council Committee.

It is noteworthy that the Grand Jury addressed this same issue in 1997. In response, the City enacted amendments to the Municipal Code to qualify and limit the number of times a building permit could be extended. These amendments failed to adequately address the problem of perpetual remodels.

Also included in the attached background material is a copy of a recent law passed in the state of New Jersey to deal with "abandoned properties." *Attachment 5* is a draft ordinance proposed by the City Attorney's Office which uses the New Jersey law as a model, and takes into consideration related provisions of the Municipal Code. This proposed ordinance attempts to address the problem of abandoned properties which do not presently come under the Vacant Properties ordinance.

CONCLUSION

The ability to assess a significant fine against a property owner who is maintaining a vacant and boarded or unsecured structure already exists. Typically, however fines are only assessed when the structure constitutes a public nuisance or otherwise constitutes a violation of the Municipal Code. The assessed value of the property can be used as a criterion by the prosecutor or City Department in determining the appropriate amount of fine. As explained above, significant fines are usually not assessed, since usually the owner needs any available money for the rehabilitation of the structure. In the past year, the City Attorney's Office and NCCD have reviewed existing laws to determine how the City can be more aggressive in requiring the timely rehabilitation of vacant structures. Our conclusion is that the existing Vacant Properties ordinance (sections

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54.0301 through 54.0320) needs to be strengthened and revised. In addition, new regulations need to be enacted which would address abandoned properties, including those that are allegedly under rehabilitation, but have a long history of lapsed permits.

MICHAEL J. AGUIRRE, City Attorney

By



Diane Silva-Martinez
Head Deputy City Attorney

DSM:mac
Attachments

cc: Lamont Ewell, City Manager
Michael J. Aguirre, City Attorney
Marcia Samuels, Neighborhood Code Compliance Director

Article 4: Public Hazards and Public Nuisances

Division 3: Abatement of Vacant Structures

*("Public Property Nuisance Abatement"
added 8-17-1981 by O-15573 N.S.)*

*(Retitled to "Public Property Nuisance Abatement"
on 8-10-1993 by O-17957 N.S.)*

§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.

(Amended 5-28-1996 by O-18301 N.S.)

§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.

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

(Amended 5-28-1996 by O-18301 N.S.; corrected 1-23-1998.)

§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 1 of this Code.

(“Enforcement Authority” added 5-28-1996 by O-18301 N.S.)

§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.

(“Enforcement Remedies” added 5-28-1996 by O-18301 N.S.)

§54.0305 Strict Liability Offenses

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

(“Strict Liability Offenses” added 5-28-1996 by O-18301 N.S.)

§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.

(“Duty to Clean and Secure or Board” renumbered, retitled and amended from Sec. 54.0303, 5-28-1996 by O-18301 N.S.)

§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 1 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 1 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.

("Administrative Abatement Procedures for Vacant and Unsecured Structures" renumbered and amended from Sec. 54.0305 on 5-28-1996 by O-18301 N.S.)

§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 predominant 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).

("Standards for Boarding a Vacant Structure" renumbered, retitled and amended from Sec. 54.0306 on 5-28-1996 by O-18301 N.S.)

§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 California Building Code as in Chapter IX of the Municipal Code.

(Amended 7-19-1999 by O-18656 N.S.)

§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.
(“Continuous Abatement Authority” renumbered, retitled and amended from Sec. 54.0112 on 5-28-1996 by O-18301 N.S.)

§54.0311 Abatement Cost

- (a) Abatement costs shall include the cost to perform the actual work and the City’s cost to administer any abatement.
- (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.
(“Abatement Cost” renumbered from Sec. 54.0310 on 5-28-1996 by O-18301 N.S.)

§54.0312 Continuous Public Nuisances

Any Vacant Structure that was originally secured by the Responsible Person’s voluntary actions or pursuant to judicial or administrative order may be declared a permanent public nuisance by the Director if the structure continues to remain open and unsecured on a periodic basis, thereby requiring additional reinspections and resecuring of the structure. The Director may seek demolition of this continuous

public nuisance by seeking a court order or follow any of the administrative abatement procedures found in this Code.
("Continuous Public Nuisances" renumbered from Sec. 54.0313 on 5-28-1996 by O-18301 N.S.)

§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 owner of a Vacant Structure.
- (b) The owner of a Vacant Structure shall complete the information required on the standard Statement of Intent and submit the statement to the City 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 complete and may require an 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) expected period of vacancy;
 - (2) a plan for regular maintenance during the period of vacancy; and
 - (3) a plan and time line 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.

("Duty to File a Statement of Intent" added 5-28-1996 by O-18301 N.S.; corrected 1-23-1998.)

§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 1 of this Code.

("Reinspection Fee" renumbered from Sec. 54.0311 on 5-28-1996 by O-18301 N.S.)

§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 (\$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 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 structure continues to meet the definition of Vacant Structure as provided in this Division beyond the initial ninety (90) calendar days, and if 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.
("Boarded and Vacant Structure Penalty" added 5-28-1996 by O-18301 N.S.)

§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 54.0515, 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 1 of this Code.
("Procedures for Boarded and Vacant Structure Penalty" added 5-28-1996 by O-18301 N.S.)

§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 1 of this Code.
("Appeal of Boarded and Vacant Structure Penalty" added 5-28-1996 by O-18301 N.S.)

§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 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)(2)(A) through (C) have been met.
- (c) The Enforcement Hearing Officer may assess administrative costs.
("Administrative Enforcement Hearing" added 5-28-1996 by O-18301 N.S.)

§54.0319 Failure to Pay Penalties

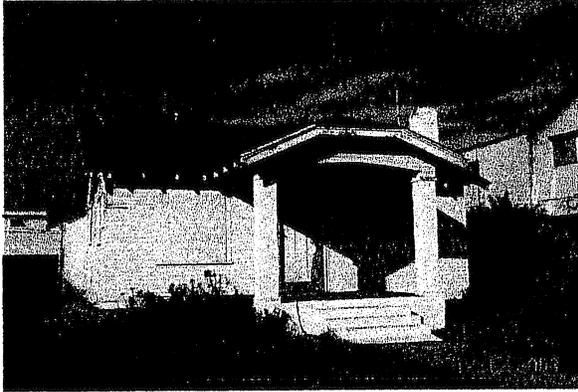
The failure of any person to pay the penalty within the time specified in the "Notice of Boarded and Vacant Structure Penalty" may result in the Director using any legal means to recover the civil penalties, including referring the matter to the City Treasurer to file a claim with the Small Claims Court.
("Failure to Pay Penalties" added 5-28-1996 by O-18301 N.S.)

§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.
("Allocation of Vacant Building Penalty" added 5-28-1996 by O-18301 N.S.)

ADMINISTRATIVE ENFORCEMENT

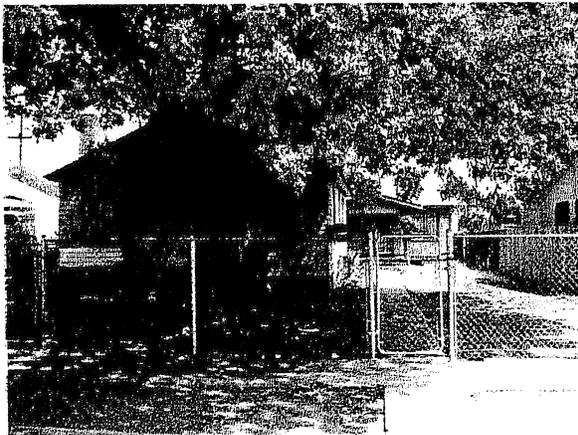
4224 COPPELAND AVE



3641 CHEROKEE AVE

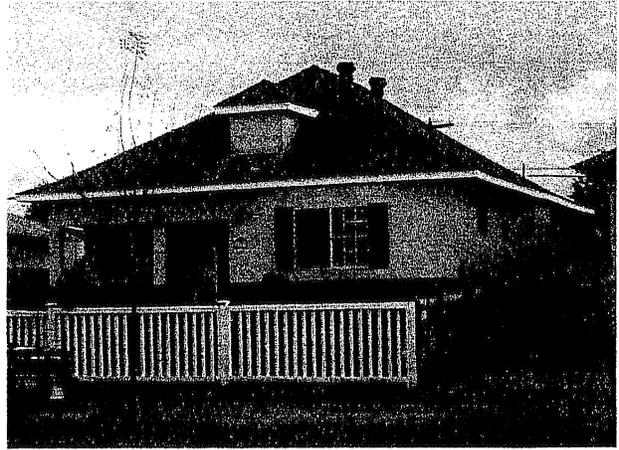


4181-4183 44TH ST

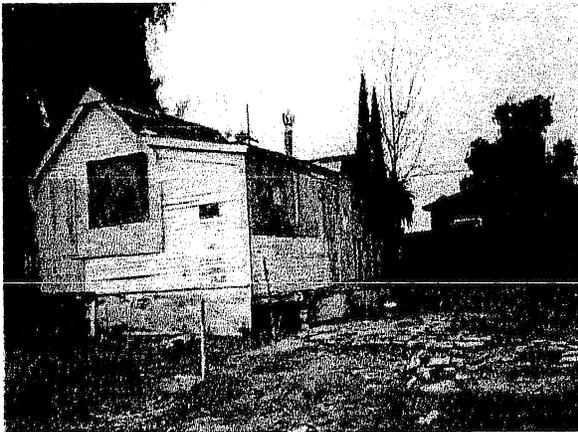


JUDICIAL ENFORCEMENT

2923 IMPERIAL AVE



3226 FRANKLIN AVE



3002 LOGAN AVE



PROPOSED AMENDMENTS TO VACANT PROPERTIES ORDINANCE

§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.

§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.

"Litter" has the same meaning as provided in Division 2, Article 4, Chapter 5 of this Code.

"Rubbish" has the same meaning as provided in Division 2, Article 4, Chapter 5 of this Code.

"Solid Waste" has the same meaning as provided in Division 2, Article 4, Chapter 5 of this Code.

"Liquid Waste" has the same meaning as provided in Division 2, Article 4, Chapter 5 of this Code.

"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.

ATTACHMENT 3

§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 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.

§54.0305 Strict Liability Offenses

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

§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 litter, waste, rubbish, solid waste, liquid waste, 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.

§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 may also require as part of the Abatement Notice and Order, that the Responsible Person erect fences, barriers, berms or other suitable means to discourage access to the Vacant Structure and to discourage illegal dumping or littering on the yards surrounding the Vacant Structure. 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, that the Responsible Person remove any litter, waste, rubbish, solid waste, liquid waste, debris or excessive vegetation from the yards surrounding the Vacant Structures.

(d) The Director may also require as part of the Abatement Notice and Order, that the Responsible Person remove any vehicles or items illegally stored in the yards surrounding the Vacant Structure which are in violation of the Land Development Code.

(b) 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.

(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; 2) remove all litter, waste, rubbish, solid waste, liquid waste, debris or excessive vegetation from the yards surrounding the Vacant Structures; 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.

(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.

§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 predominant 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).

§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 California Building Code as in Chapter IX of the Municipal Code.

§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.

§54.0311 Abatement Cost

(a) Abatement costs shall include the cost to perform the actual work and the City's cost to administer any abatement.

(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 Vacant Structure that was originally secured by the Responsible Person's voluntary actions or pursuant to judicial or administrative order may be declared a permanent public nuisance by the Director if the structure continues to remain open and unsecured on a periodic basis, thereby requiring additional reinspections and resecuring of the structure. The Director may seek demolition of this continuous public nuisance by seeking a court order or follow 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 owner of a Vacant Structure.

(b) The owner of a Vacant Structure shall complete the information required on the standard Statement of Intent and submit the statement to the City within thirty (30) days of the date the Director determines the structure became boarded. If a Vacant Structure remains in a vacant state for more than 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 structure is no longer a Vacant Structure.

(c) The Director shall determine whether a submitted Statement of Intent is complete and may require an 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) expected period of vacancy;

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

(3) a plan and time line 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) fail to submit a Statement of Intent annually as required by Section 54.0313(b);
or

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

§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 1 of this Code.

§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~~) (\$500) per structure, not to exceed one thousand (~~\$1,000~~) (\$5000) 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 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 structure continues to meet the definition of Vacant Structure as provided in this Division beyond the initial ninety (90) calendar days, and if 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~~) (\$500) 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~~) (\$5000) 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.

§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 54.0515, 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 1 of this Code.

§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 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 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)(2)(A) through (C) 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 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.

§54.0320 Allocation of Vacant Building Structure 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.

§54.0321 Timely Rehabilitation of Vacant Structures

(a) As authorized by 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.

**REMODELS WHICH ARE PUBLIC NUISANCES AND WHICH
CONSTRUCTION OR REHABILITATION IS NOT BEING COMPLETED IN
A TIMELY MANNER**

ISSUE: How to ensure that vacant properties which are public nuisances are rehabilitated in a timely manner when the Municipal Code allows owners to have an active building permit good for 24 months within which a remodel or rehab work may be performed?

BACKGROUND: Vacant properties often are structures that owners intend to remodel or need to significantly rehabilitate. Some might be in the framing stage with no walls, while others look like abandoned boarded homes. In some instances, the owner may have obtained a building permit for new construction one to two years ago, yet the owner never began or completed the work. In other cases, the owner abandoned the remodel and never obtained a permit. The problem is magnified when the property has been vacant for a number of years and/or crime is occurring on the property (e.g., arson, prostitution, transients, drug activity). In these cases, the police or neighboring residents are frustrated at the length of time that the property has remained in a deteriorated or unfinished condition. The community is anxious to have the property rehabilitated as quickly as possible.

Why do vacant properties constitute public nuisances? Section 54.0301 declares that structures that are vacant and unsecured or boarded constitute a public nuisance per se. The Declaration of Purpose of Section 54.0301 states 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.

In addition, Municipal Code section 11.0201 defines a public nuisance as "any condition caused, maintained or permitted to exist which constitutes a threat to the

public's health, safety and welfare or which significantly obstructs, injures or interferes with the reasonable or free use of property in a neighborhood, community or to any considerable number of persons. A public nuisance also has the same meaning as set forth in California Civil Code Section 3479.

EXAMPLES OF CASES:

- Emerald Street
- Atrium Drive
- 2310 – 2366 F Street
- 3131 National Ave
- 3573 – 3577 41st Street
- see examples from Vacant Property Coordinator

CURRENT ENFORCEMENT STRATEGIES:

- To fill a void in this area, the Vacant Properties Coordinator currently treats many of these structures that are under “remodel” as “vacant properties”.¹ (Note however that if the structure is not boarded and the property is fenced, the owner can argue it is not “unsecured” and it therefore does not meet the definition of a vacant property.) The Vacant Properties Coordinator has a few enforcement tools available pursuant to Section 54.0301 of the Municipal Code that sometimes work in the case of cooperative property owners. For example:

1. Section 54.0313 requires an owner to file a Statement of Intent that outlines a plan and timeline for the rehabilitation or demolition of the structure.
2. Within a 90-day period, a fine of \$250.00 may be assessed against the owner if he or she fails to diligently proceed to complete the rehabilitation per the Statement of Intent. The owner may appeal the fine which is not to exceed \$1000 in a calendar year.

The Vacant Properties Coordinator often finds, however, that owners will pay the \$250 fine, but will still not rehabilitate the property

- NCCD may refer the case to the City Attorney to file a civil injunction alleging a public nuisance. If the owner is cooperative, he or she may enter into a stipulation signed by a judge whereby the owner is required to immediately rehabilitate the property. Failure to comply with the stipulation may result in high fines and a contempt action. If the owner is not cooperative, the City Attorney will seek a Court order requiring the owner to immediately rehabilitate the property or sell it.

¹ Section 54.0302 defines *vacant property* as "... any structure or building that: 1) is unoccupied or occupied by unauthorized persons; and 2) is unsecured or boarded."

- If the structure is determined to unsafe, dangerous, or substandard, then NCCD could administratively abate pursuant to Municipal Code section 121.0401 et seq. This remedy is rarely used.

RELEVANT CODE SECTIONS

- Municipal Code Section 129.0216 states that a building permit shall become void if the work authorized by the permit has not begun within 180 calendar days of the date of permit issuance.
- Municipal Code Section 129.0217 states that a building permit shall become void if at any time after the work is begun, the structure or work authorized by the Building Permit is suspended or abandoned for a continuous period of 180 calendar days.
- These same provisions are found in California Building Code section 106.4.4.
- Municipal Code Section 129.0218 establishes when a building permit expires. It reads as follows:
 - (a) A Building Permit shall expire by limitation and become void 24 months after the date of permit issuance, unless an exception is granted in accordance with Section 129.0218(b).
 - (b) When the permit is issued, the Building Official may approve an expiration date exceeding 24 months if the permittee can demonstrate that the complexity or size of the project makes completion of the project within 24 months unreasonable. The expiration date for the Building Permit shall be specified on the permit.
 - (c) If the building or work authorized by a Building Permit has not received final inspection approval by the permit expiration date, all work shall stop until a new permit is issued.
- Section 129.0219 delineates when the Building Official may approve an extension of time for a Building Permit. 129.0219 (a) provides that “...the Building Official may extend the Building Permit one time, for a period not exceeding 180 calendar days, if the Building Official determines that circumstances beyond the control of the permittee prevented completion of the work..”
- Section 129.0219 (d) allows one additional extension of time beyond 129.0219(a), if the Building Official finds:
 - (1) There has not been a significant change in the regulations applicable to the site since the date the permit was issued;
 - (2) The additional extension is in the public interest; and
 - (3) Circumstances beyond the control of the *applicant* prevented the authorized work from proceeding.
- The above code sections do not help eliminate the public nuisance. Voiding the permit because of failure to work or abandonment merely requires the owner to start over and pay fees for a new permit. The permit is good for another 2 years. What is needed is a requirement to perform work and call for inspections within a much shorter time period.

POSSIBLE SOLUTIONS:

- Amend the Municipal Code to require an owner of a vacant property for which there is an active building permit to perform work within a specific time and call for inspections within a specific time.
- Amend the Vacant Properties Ordinance or enact separate ordinance in a separate section of the Municipal Code to clearly include as public nuisances unfinished remodels or structures left in partial state of construction for more than ???????? period of time, e.g., “a *vacant property* is ...

(a) any structure or building that: 1) is unoccupied or occupied by unauthorized persons; and 2) is unsecured or boarded.”, or

(b) structures that are being remodeled or are under construction and the owner has not constructed more than x% of the project within a 360 calendar day period, irrespective of whether there is a corresponding active building permit or any permits have been voided or extended pursuant to SDMC sections 129.0216, 129.0217, 129.0218 and 129.0219

- Amend the Municipal Code to provide that once work under a building permit has been abandoned for 180 days or more, then owner is required to obtain new permit and diligently pursue the work to completion within 90 days. (See City of L.A.’s ordinance regarding Unfinished Buildings or Structures)
- See also City of Costa Mesa – structure shall not be partially destroyed abandoned, unsecured or permitted to remain in the state of partial construction for more than 30 days.
- See also New Jersey Model ordinance

RELEVANT DOCUMENTS

- Grand Jury Report, “San Diego City Building Code Enforcement”, Findings and Recommendations 97-54 and 97-55
- Letter from Jack McGrory to Grand Jury Foreman, dated July 1997

§ 129.0217 Maintaining Utilization of a Building Permit

A Building Permit shall become void if at any time after the work is begun, the *structure* or work authorized by the Building Permit is suspended or abandoned for a continuous period of 180 calendar days.

§ 129.0218 Expiration of a Building Permit

- (a) A Building Permit shall expire by limitation and become void 24 months after the date of permit issuance, unless an exception is granted in accordance with Section 129.0218(b).
- (b) When the permit is issued, the Building Official may approve an expiration date exceeding 24 months if the permittee can demonstrate that the complexity or size of the project makes completion of the project within 24 months unreasonable. The expiration date for the Building Permit shall be specified on the permit.
- (c) If the building or work authorized by a Building Permit has not received final inspection approval by the permit expiration date, all work shall stop until a new permit is issued.

§ 129.0219 Extension of Time for a Building Permit

- (a) Except for relocation of *structures*, a permittee may submit an application for an extension of time before the expiration date of the Building Permit. The Building Official may extend the Building Permit one time, for a period not exceeding 180 calendar days, if the Building Official determines that circumstances beyond the control of the permittee prevented completion of the work.
- (b) If an application for an extension of time has been filed before expiration and in accordance with this section, the existing Building Permit shall automatically be extended until the Building Official has made a decision on the application for an extension.
- (c) If the Building Permit has expired before an application is submitted for an extension of time, no extension shall be granted. If the previous permittee or any other *applicant* wants to proceed with the same *development*, a new application is required and the application is treated in all respects as a new application.
- (d) If an extension of time has been previously approved in accordance with Section 129.0219(a), the Building Official may extend the expiration of the Building Permit one additional time if the Building Official finds the following:
 - (1) There has not been a significant change in the regulations applicable to the site since the date the permit was issued;
 - (2) The additional extension is in the public interest; and
 - (3) Circumstances beyond the control of the *applicant* prevented the authorized work from proceeding.

§ 129.0220 Issuance of a Building Permit for Relocation of a Structure

- (a) Before the Building Official issues a Building Permit for relocation of a *structure*, a surety bond issued by a surety company authorized to do business in the State of California or other

*Penny -
P.L.S. Respond. Q*

Grand Jury

CONFIDENTIAL

COUNTY OF SAN DIEGO
330 West Broadway, Suite 477
San Diego, CA 92101-3830
(619) 515-8707
(619) 515-8696 FAX

Gale L. Acker, Foreman

June 23, 1997

RECEIVED

JUN 23 1997

City Manager

Jack McGrory, City Manager
City of San Diego
202 C Street
San Diego, CA 92101

RECEIVED

JUN 26 1997

RE: San Diego County Grand Jury 1996-1997 Final Report

Asst. City Manager

Dear Mr. McGrory:

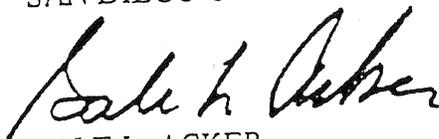
The San Diego County Grand Jury 1996-1997 submits the report listed below for your review and comments per the Penal Code of California sections 933 and 933.05. This Jury's inquiry was conducted under Penal Code sections 925 and 925 (a). The enclosed report is:

"San Diego City Building Code Enforcement"

In accordance with the Penal Code section 933.05(e), this report is being provided two working days prior to its public release and after it has been approved by the Presiding Judge of the Superior Court. No officer, agency, department, or governing body of a public agency shall disclose any content of the report prior to its public release. This report is an individual report that is part of the San Diego County Grand Jury 1996-1997 Final Report that will be filed with the County Clerk and released to the public on Thursday, June 26, 1997.

Sincerely,

SAN DIEGO COUNTY GRAND JURY 1996-1997



GALE L. ACKER
Foreman

GLA:jml
Enc.

SAN DIEGO CITY BUILDING CODE ENFORCEMENT

Synopsis

A San Diego resident complained about the condition of a building under construction in a residential neighborhood. The San Diego County Grand Jury 1996-1997 found that an unsightly condition has persisted for at least five years and that the current San Diego City Building Codes¹ and the City's handling of construction projects do not promote timely completion of construction in progress. This Grand Jury, therefore, recommends revisions of the City's Building Codes, inclusion of a City Planner in the City organizational structure, and changes in the handling of construction projects by the Development Services and Neighborhood Code Compliance Departments.

Background

Neighbors complained that little if any progress had been made in the replacement of a residence, partially burned down in 1991, which created an eyesore, an unstable structure, a haven for transients, and a site for drug sales for the past five years. In 1992, the owner had applied for and received a permit for reconstruction and began work, essentially by himself. In 1993, the owner filed an amended application with a building plan that revised the house from one-story to two-story and substantially increased the square footage. In December 1993, City Council member Ron Roberts requested the City Manager to have the Police Department further inspect and assess the neighbors' complaints. This Grand Jury could not locate any formal response to that request. Little or no progress was made in the construction process for at least two years. On March 12, 1994, the Neighborhood Code Compliance Department issued an Abatement Notice and Order declaring the property a public nuisance and ordering its demolition. On May 4, 1994, at the abatement hearing, the Department set a time limit of three weeks to dismantle the house. On May 16, 1994, the abatement hearing decision was amended to assess the owner \$2,123.51 in abatement costs. On November 15, 1994, the Superior Court sustained the assessment judgment on appeal. To date, nearly two and one-half years later, the owner has corrected the problems cited in the abatement notice by removing some of the structurally unsound members and fencing in the property so that it is no longer a public nuisance. However, the structure was never demolished as ordered.

The Development Services Department is responsible for issuing building permits, inspection for compliance, and permit enforcement. This Department is not the department responsible for the abatement and enforcement procedures relating to a public nuisance or declaration that a building is structurally unsafe or dangerous. The responsibility for these actions comes under the purview of the Neighborhood Code Compliance Department.

Investigative Process

Members of this Grand Jury inspected the construction site approximately once a month. Jurors held

¹San Diego Municipal Code §91.000 et seq.

interviews with the complainant and several of the neighbors who had signed ancillary petitions requesting correction of the construction site. Additionally the Jurors met with the building owner, the City's Development Services and Neighborhood Code Compliance Departments, City Planners and San Diego City attorneys. These Jurors reviewed the neighbors' allegations, the response of the building owner, and the responses of City officials.

Investigation

Members of this Grand Jury confirmed from their observation that no significant progress was made in the reconstruction of the residence during the eight-month investigation period. However, the owner, who was aware of the applicable codes, was in compliance with them. The Building Codes contain no regulation or procedure that place a maximum time limit for the complete construction or reconstruction of a building. As long as some work is performed, owners can continue to obtain new permits or six month extensions to their existing building permits. This anomaly allows the creation and existence of a "public eyesore."

The City Attorney's Office explained that they advised the Development Services and Neighborhood Code Compliance Departments that enforcement is difficult because of the vague standards in the Building Codes. As a result, past enforcement efforts have been extremely expensive and often unsuccessful.

During this Grand Jury's term, the City of San Diego issued its Land Development/Zoning Code Update. In response to the Development Services Department's request for public input, this Grand Jury sent the recommendations set forth in this report to the planners.² However, this Department did not include these recommendations in its proposed Update.³ This Jury is concerned because the Update still does not have a maximum time limit within which to complete construction of a building. Consequently, to remedy these eyesores the City must undertake the expensive and time-consuming process of establishing that they are public nuisances or unsafe by virtue of activities such as drug sales or structural deficiencies.

With respect to the Departments' handling of this case, the Grand Jury was advised by Development Services in April 1997, that the last permit issued to the owner was scheduled to expire on March 13, 1997. A call from "a neighbor" of the property to inquire about its status was received by a Building Official on March 28, 1997. This resulted in the Inspection Services division of the Development Services Department determining that a computer had "automatically" extended the expiration date to September 1997. That Department advised the Jurors that it had corrected this mistake and had scheduled the matter to be presented to the City Attorney in April 1997. Subsequently, the Jury was advised by the Development Services Department that the building permit extension had been

²San Diego County Grand Jury, Letter to San Diego County Development Services (Feb. 19, 1997) (available at the Office of the San Diego County Grand Jury).

³San Diego County Development Service Department, Letter to the San Diego County Grand Jury (Apr. 14, 1997) (available at the Office of the San Diego County Grand Jury).

rescinded and the file was turned over to the Neighborhood Code Compliance Department for abatement and enforcement procedures. This file was in turn forwarded to the City Attorney's office for review and action. To date, May 30, 1997, no action has been taken by any City department.

Jurors also learned that in this case no "paper trail" existed of either the City's notification to the building owner, or of communication between the Development Services Department and the Neighborhood Code Compliance Department. These Departments communicated primarily through verbal contacts. Also, one of the Departments informed the Jurors that a requested document "... has been misplaced or lost in the interoffice mail system."

The Jurors also discovered that communications between the Inspection Services and the Neighborhood Code Compliance Departments is informal. This informality is illustrated by the dotted line in Exhibit 1 following this report. This information is excerpted from the City's Proposed Annual Budget for Fiscal Year 1997. The formal line of authority goes from Inspection Services up through Development Services to the City Manager, then down to the Community and Neighborhood Business Center, and through another administrative layer to Neighborhood Code Compliance.

The Jurors also found that the City Planning Commission,⁴ American Institute of Architects, San Diego Council of Design Professionals, Citizens Coordinate for Century, American Planning Association, Partners for Livable Places, League of Women Voters, and community planning groups within San Diego have stressed the need for a City Planning Director to professionally define and implement a long range vision for the City, and oversee the various stages of the design and construction process.

Findings and Recommendations

97-54. The San Diego Building Codes do not have a maximum time limit to complete construction of a building which hinders the City's ability to eliminate public eyesores created by long-term incomplete construction.

The San Diego City Council should revise the Building Codes to incorporate the following provisions:

"Time Limits for Construction or Reconstruction of Dwellings

A City building permit shall serve as the construction or reconstruction permit. For such uses the building permit must be obtained and work thereunder shall be commenced within six months of issuance of the permit and shall be completed within

⁴City of San Diego Development Services Department, Community and Economic Development Department, Report to the Planning Commission No. P97-027 (Feb. 4, 1997) (available at the Office of the San Diego County Grand Jury).

twelve months of the commencement of construction.

The Building Official may approve only a single one-year extension of the period for construction, restoration or reconstruction specified above if substantial and diligent progress toward completion has been made or, if not, the delay in, or inability to complete, the restoration is attributable to factors not reasonably within the applicant's control including, but not limited to, insurance settlement delays, the weather and the unavailability of necessary building materials.

Failure to complete the work under the building permit within the year or two year period, as applicable, with acceptance by the Building Official will cause an Abatement Notice to be issued and demolition be permitted and commenced within thirty (30) days of the Notice and completed within sixty (60) days of the Notice."

97-55. Split responsibility for issuance, inspection and enforcement of building permits under the Development Services Department on the one hand, and abatement and enforcement procedures under the Neighborhood Code Compliance Department on the other hand, create inefficiencies in the construction and abatement processes.

The San Diego City Council should include a City Planner in the City's organizational structure and reorganize the Development Services and Neighborhood Code Compliance Departments under a central head as illustrated in Exhibit 2 following this report.

Response Required

The Penal Code of California section 933 (c) requires comment on the findings and recommendations in this report no later than 90 days from the date of filing. Comment to the Presiding Judge of the Superior Court in compliance with Penal Code of California section 933.05 is required from the:

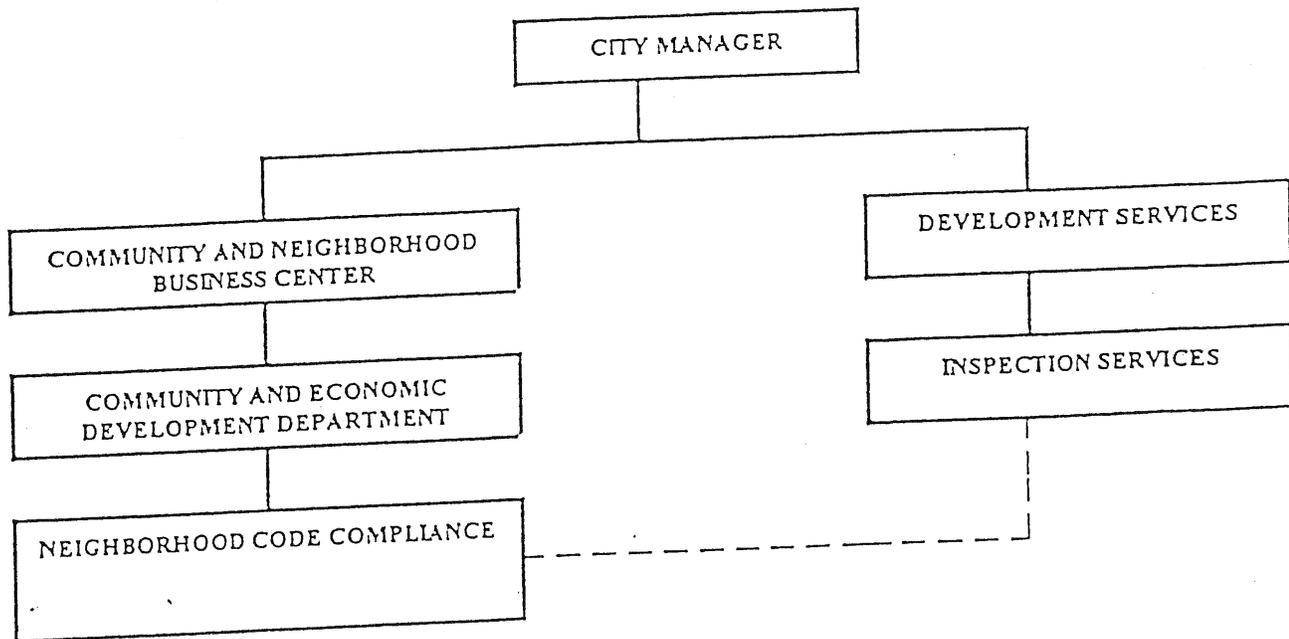
San Diego City Council

Findings and Recommendations
97-54 and 97-55

San Diego City Manager

Findings and Recommendations
97-54 and 97-55

CURRENT ORGANIZATION CHART *



* Excerpted from City of San Diego Proposed Annual Budget, Fiscal Year 1997

EXHIBIT 1

PROPOSED ORGANIZATION CHART

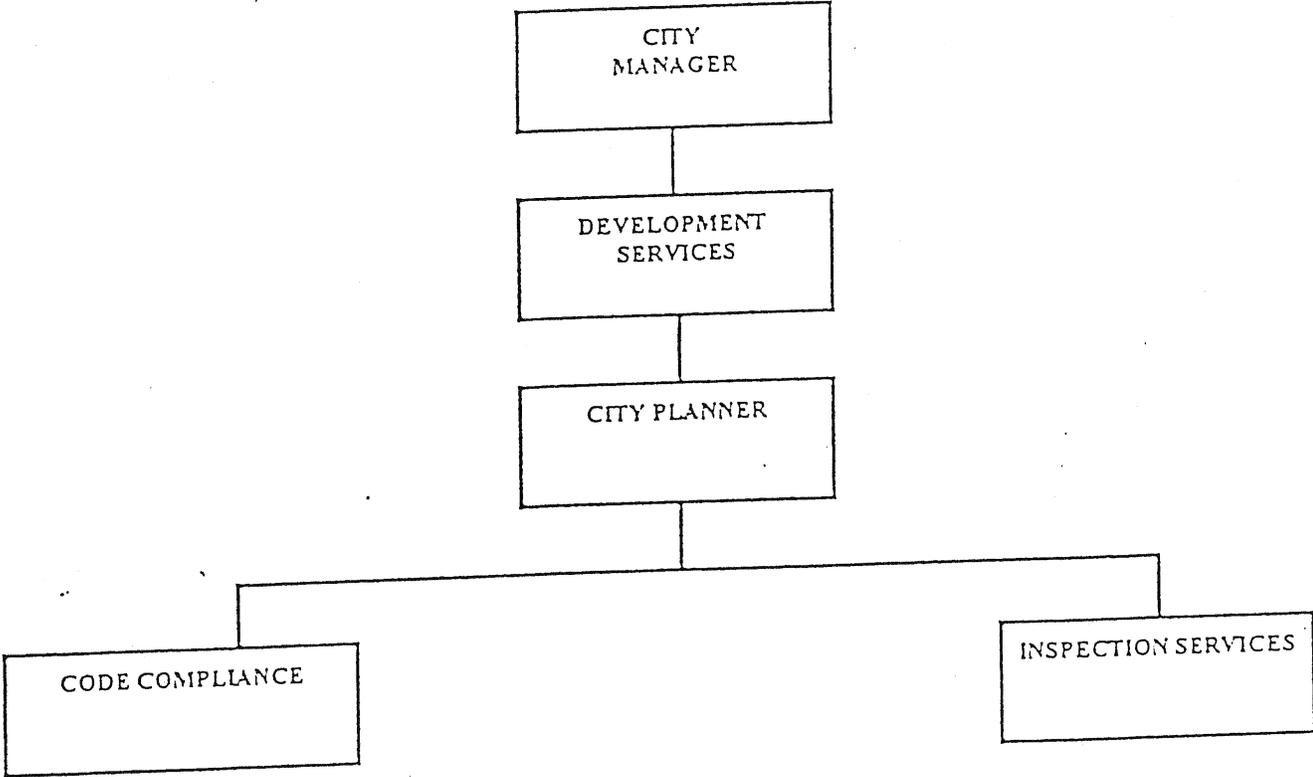


EXHIBIT 2

SUMMARY OF ABANDONED PROPERTIES REHABILITATION ACT P.L.2003, c.210

The following is a summary of the principal provisions of the Abandoned Properties Rehabilitation Law, Chapter 210 of the Laws of 2003, as enacted by the New Jersey State Legislature and signed into law by Governor McGreevey on January 8, 2004. This new law provides municipalities and others with new tools to address the problems of abandoned properties in their communities.

This summary was prepared by the Housing & Community Development Network of New Jersey for the information of interested parties, and is not an official document of the State of New Jersey.

Sec. 1 Short Title

Sec. 2 Legislative findings

The legislature makes a number of findings with respect to the impact of abandoned properties, citing their social and economic impact on the communities in which they are located, and that abandoned properties are presumptively to be considered nuisances. The legislature also finds that failure of an owner to maintain a property, as well as failure to comply with municipal orders to demolish or repair the property, creates a presumption of abandonment.

Sec. 3 Definitions

Definitions include a definition of “qualified rehabilitation entity”, entities that may act as an agent of a municipality for purposes of the possession provisions of the law (see Sections 7 through 21 below).

Sec. 4 Definition of abandoned property

The law defines “abandoned property” as any property that has not been legally occupied for six months, and which also meets *any one* of the following criteria: (a) the property is in need of rehabilitation, and no rehabilitation has taken place for six months; (b) construction was initiated and then discontinued prior to completion, and no construction has taken place for six months; (c) the property is in property tax arrears by at least one installment; or (d) the property is determined to be a nuisance by the public officer.

Sec. 5 Definition of nuisance

The law provides a detailed definition of what conditions serve as the basis for a determination by the public officer that a property is a nuisance. In addition to traditional nuisance definitions, including fire risk, health and safety hazards, physical deterioration, and the presence of vermin or debris, the law provides that a property is a nuisance if its dilapidated appearance affects the welfare, including the economic welfare of residents in close proximity to the property.

Sec. 6 Exceptions

Properties on which an entity other than the municipality holds a tax lien and is not in arrears, and where that entity moves to foreclose within six months after the property is eligible for foreclosure; and properties held for seasonal use, are not considered abandoned property. A finding that a property is abandoned under this law does not constitute a finding that a property is abandoned for purposes of zoning or land use regulation.

Sections 7 through 21 Possession of abandoned properties

Where a property that has been found to be abandoned under any of the criteria of Sec. 4 or 5 of this bill is deemed to be in need of rehabilitation, the law provides that a municipality can seek possession of the property from the courts in order to rehabilitate the property. The court must first give the owner and any lienholder the opportunity to rehabilitate the property, but if neither is qualified, or if neither agrees to do so by a firm timetable, the municipality may be granted possession by the court.

The municipality must then submit a plan for rehabilitation of the property, and may designate a qualified rehabilitation entity, which can be a CDC or a developer, to act as its agent to carry out the plan. Possession entitles the entity to receive grants or borrow money from state agencies or other sources, and to secure funds it borrows with a lien that has priority over all existing liens other than municipal liens. In order to recover control of the property, the owner must make the municipality whole, comply with all conditions of grants or loans obtained for the property, or repay the funders in full. If the owner does not seek recovery of the property in a timely fashion, the court can authorize the purchase of the property by the entity, or the sale of the property to a third party, with the provisions for distribution of the proceeds set forth in the bill. Any municipal costs incurred in connection with this provision are a municipal lien as provided in R.S.54:5-9.

Sec. 22 Limitations on certain lienholders

Lienholders that share a common interest with the owner of an abandoned property as defined in the law are not entitled to certain rights otherwise available under the law to lienholders.

Sec. 23 Recourse against owners

In addition to the liens currently authorized by law, the law gives municipalities recourse against any other assets of the owners of abandoned properties to recover funds spent for repairs, boarding or demolition of the property. An owner includes an individual, any member of a partnership, or any owner of a 10% or greater interest in a corporation.

Sec. 24 Special tax sale

The law gives municipalities the authority to remove properties on the municipality's abandoned property list from the regular tax sale process, and sell them through special tax sales. In a special tax sale, the municipality may set qualifications for bidders, may limit bidding to entities

that commit to rehabilitate or reuse the properties, may reduce the minimum bid below the amount of taxes due, and may bundle properties into packages for qualified bidders. Tax liens sold through a special tax sale may revert to the municipality if the buyer fails to carry out any provision that has been established as a condition of sale.

Sec. 25 Eminent domain

The law establishes a standard for determining the value of properties on the abandoned property list for purposes of eminent domain proceedings. As a general proposition, if the market value of the property after rehabilitation, or after demolition and construction of a new unit on the site, is less than the cost of rehabilitation, or demolition and construction, as the case may be, there is a rebuttable presumption that the value of the abandoned property is zero.

Sec. 26 Amendment to C.40:48-2.4 dealing with code enforcement

C.40:48-2.4 is amended to authorize a municipality to designate more than one public officer for different purposes.

Sec. 27 Amendments to Sec. 35 of the Urban Redevelopment Law

The Urban Redevelopment Law is amended (1) to make the definition of abandoned property consistent with this act, and (2) to give municipalities more flexibility in appointing public officers to address various abandoned property issues.

Sec. 28 Amendments to Sec. 36 of the Urban Redevelopment Law dealing with creating and maintaining an abandoned property list

The law amends the Urban Redevelopment Law in a number of important respects to make the provisions governing abandoned property lists more workable:

- Remove the requirement that a municipality conduct a complete inventory of abandoned property before initiating an abandoned property list;
- Expand the potential scope of the list to include the entire municipality (not just redevelopment areas), or those parts of the municipality designated by the governing body;
- Enable the municipality to add properties to the list or delete properties from the list at any time;
- Permit the municipality to pursue the remedies associated with a property's being on the list at any time after one property has been listed and has passed the period for appeal.
- Deletes the requirement that the Department of Community Affairs adopt rules and regulations governing this section.

Sec. 29 Removal of property on which tax lien held

The law provides that the owner of a tax sale certificate on an abandoned property, who pays all municipal taxes and liens when due, can have the property removed from the abandoned property list, but must initiate foreclosure proceedings within six months from when the property

was first placed on the list.

Sec. 30 Creation of abandoned property list by petition

The law establishes a procedure whereby if a municipality does not create an abandoned property list, it can be required to do so by petition.

Sec. 31 Participation in proceedings

The law establishes procedures under which interested parties can get properties added to the abandoned property list, and participate in hearings on abandoned properties held by the public officer. Interested parties include residents of the municipality, owners and operators of businesses within the municipality, and organizations representing residents' interests or furthering neighborhood revitalization within the area where the property is located.

Sec. 32 Amendments to the Tax Sale Law expanding rights of tax lien purchasers

The law amends the Tax Sale Act, R.S.54:5-86 to enhance the powers of entities other than the municipality holding tax liens (tax sale certificates) on abandoned properties. Such entities are:

- Permitted to foreclose at any time, rather than waiting two years;
- Granted right of entry to make repairs or abate nuisance conditions; and
- Permitted to add the cost of such repairs to the balance due for redemption.

Prepared 1.9.04

**POSSIBLE ORDINANCE REVISIONS TO REQUIRE THE TIMELY
REHABILITATION OF ABANDONED STRUCTURES OR REMODELS**

Ideas for placement of ordinance: Ordinance could either be inserted: 1) as part of Section 54.0321 Chapter V (Abatement of Vacant Structures); 2) as a separate Division dealing with structures under rehab – see section 129.0219; or 3) enact a separate section dealing with these structures as public nuisances. Need to reference and reconcile existing LDC and Vacant Properties ordinance.

§XXXXX Abandoned Structures

§XXXXX Definitions

“*Abandoned Structure*” means any structure that has not been legally occupied for a period of six months and which a *Director* determines meets any one of the following additional criteria:

- (a) the property is in need of rehabilitation and no lawful rehabilitation has taken place during that six month period; or
- (b) construction was initiated on the property and was discontinued prior to completion, leaving the building unsuitable for occupancy, and no construction has taken place for at least six months as of a date determined by the *Director* and based on inspections of the property; or
- (c) the *Director* has determined that the structure or the property on which it is situated constitutes a *public nuisance*.

“*Public Nuisance*” shall have the same meaning as provided in Section 11.0210 of this Code. In addition, for purposes of this Division, the *Director* may also determine that the structure is a *public nuisance* if:

- (a) The structure has been found to be unfit for human habitation, occupancy, or use pursuant to the Land Development Code or Health and Safety Code; or
- (b) The condition and vacancy of the structure materially increases the risk of fire to the property and adjacent properties; or
- (c) The structure or the property on which it is located is subject to unauthorized entry, leading to potential health and safety hazards; or
- (d) The owner has failed to take reasonable and necessary measures to secure the property; or

- (e) the City has previously abated the property by boarding or securing the structure or property after the owner has failed to do so; or
- (f) a Health Officer has determined the presence of vermin on the property; or
- (g) there is an accumulation of waste and debris on the property which has been determined to constitute a violation of this Code, or
- (h) uncut vegetation or physical deterioration of the structure or grounds has created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards.

§XXXXX Duty to Timely Rehabilitate Abandoned Structures

(a) Notwithstanding Section 129.0219 of the Land Development Code and Article 4, Division 3, Section 5 of this Code governing the abatement of *Vacant Structures*, the Director may, through proper and timely notice require the expeditious rehabilitation of an *Abandoned Structure*.

(b) Once notice is received from a Director to timely and expeditiously rehabilitate an *Abandoned Structure*, it is unlawful for an owner of the structure or Responsible Person to fail to rehabilitate the *Abandoned Structure* within the time frame determined by the Director.