DIANE SILVA-MARTINEZ
CHIEF DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
Jan I. Goldsmith
CITY ATTORNEY

1200 THIRD AVENUE, SUITE 700
SAN DIEGO, CALIFORNIA 92101-4103
TELEPHONE (619) 533-5500
FAX (619) 533-5505

September 9, 2010

REPORT TO THE COMMITTEE ON
LAND USE AND HOUSING

ABANDONED PROPERTIES ORDINANCE

INTRODUCTION

On February 3, 2010, this Committee directed staff to draft an "Abandoned Properties Ordinance" which would require the timely rehabilitation of specific problem properties which are public nuisances or attract nuisance activity. The properties identified by the Committee include:

- All unsecured vacant structures;
- Vacant structures that are boarded or otherwise secured;
- Properties with structures that are being remodeled but there has not been diligent progress with the project;
- Vacant lots; and
- Bank-owned properties where the banks have not been responsive.

DISCUSSION

Attached for the Committee's review is a proposed draft ordinance which amends San Diego Municipal Code sections 54.0301 through 54.0321 regulating the abatement of vacant structures which are unsecured or boarded. The proposed ordinance would expand Chapter 5, Article 4, Division 3 of the Municipal Code to make unsecured or boarded structures one subset of a broader definition of "Abandoned Properties" and include the properties listed above. Amending the SDMC in this manner would allow these types of nuisance properties to come under the City's Vacant Property Program which effectively addresses unsecured or boarded structures. The City Attorney Report to the Land Use and Housing Committee dated January 27, 2010 outlined how the Vacant Property Program operates to put vacant structures that are unsecured or boarded to productive use through a combination of administrative and judicial remedies as well as by establishing a dialogue with the owner or Responsible Person for the property.

A key component of the existing Vacant Property program is the requirement that the property owner annually file a Statement of Intent in which the owner must provide specific information regarding the structure and his or her plan for its rehabilitation, and maintenance.

The Statement of Intent is similar to the registration requirement found in vacant property registration ordinances enacted recently by municipalities nationwide that previously did not have regulations to address the increased number of abandoned foreclosed structures. The City, however, does not charge a fee for the filing of Statement of Intent whereas other municipalities in California charge anywhere from $70 to $800 annually for registering vacant properties.

Attached is a diagram of the types of properties which would be regulated by the proposed Abandoned Property ordinance and below is a summary of its major points:

1. The current Vacant Structures Ordinance only applies to vacant commercial and residential structures which are unsecured or boarded. The proposed ordinance would classify as an Abandoned Property any vacant structure, irrespective of whether it is boarded, so long as blight or nuisance activity exists on the property as determined by the Director of the Neighborhood Code Compliance Division (NCCD). Amendments to the current definition of Vacant Structure are recommended to clarify when a commercial structure is deemed vacant to avoid the occasional use or occupancy of the structure as a means to avoid regulation.

2. The proposed ordinance would classify as an Abandoned Property any vacant structure irrespective if there is blight or nuisance activity on the property if the structure has been vacant for over two years.

3. The proposed ordinance would classify as an Abandoned Property any vacant structure which is facing foreclosure or has been the subject of a foreclosure sale. Specifically, to be classified as an Abandoned Property, the property must be under a current Notice of Default, Notice of Trustee's Sale, pending Tax Assessor's Lien Sale, or 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. This amendment is identical to provisions in vacant property registration ordinances nationwide. The amendment would also follow the recommendation of the March 2009 Mayor's Committee on Foreclosures and Neighborhood Stabilization except that the Committee recommended that the definition of Vacant Structures in the Municipal Code only include vacant properties which were already foreclosed, not those with pending foreclosures.

4. The proposed ordinance would classify as an Abandoned Property any construction or demolition project which has not passed an inspection by the City in a 180 calendar day period and no extension by the City has been granted. Staff recommends that amendments be made to SDMC §§ 129.0219 and 129.0510 which outline under what circumstances extensions may be granted to building and demolition permits. The proposed amendments would require that, after a project has been abandoned and no extension is justified, the Responsible Person for the project must obtain a new permit within 90 days from the date of a written notice from the City. The ordinance would require the Responsible Person to then diligently pursue the work to completion, or remove or demolish the building or structure within six months from the date of the written notice. These amendments would address the longstanding remodels or

demolition projects where construction or demolition is halted for years and allow the City to set timeframes for the rehabilitation of the property.

5. The proposed ordinance would classify as an Abandoned Property a vacant lot where there is blight and nuisance activity as determined by the NCCD Director.

6. Existing section 54.0321 requires the demolition or expeditious rehabilitation of a vacant structure which is a public nuisance, mirroring the requirements of California Health and Safety Code section 17980.9(b)(1). The proposed ordinance would expand this requirement to all Abandoned Properties with the exception of vacant lots. Specifically the new language states,

> "It is unlawful for a *Responsible Person* for an *Abandoned Property* who has received notice from the City and who does not meet any of the exceptions in this Division, to fail to rehabilitate, lease, develop, lawfully use, or sell the *Abandoned Property* under a reasonable and expeditious time frame as determined by the City."

   This provision would greatly assist Development Services Division field inspectors, Land Development Investigators and the City Attorney's Office to ensure that longstanding vacant structures; vacant structures attracting nuisance activity; and perennial remodels and demolition projects are put to productive use in a timely manner.

7. The proposed ordinance includes additional maintenance requirements important for the upkeep and safety of vacant properties, such as requiring owners to keep any existing pools on the property free of pollutants, to maintain structures graffiti free, and to cut any weeds higher than 12 inches, whether or not they pose a fire hazard. The ordinance would also require the posting of signs with specific information helpful to law enforcement and neighboring residents in the event nuisance activity occurs at the property. The ordinance would also require the owner of an Abandoned Property to file a Letter of Agency giving the police the authority to arrest trespassers and to keep the authorization updated.

8. The proposed ordinance would result in the requirements of the Vacant Property program applying to all Abandoned Properties. The Responsible Person for each property will be required to file a Statement of Intent outlining his or her plans for the rehabilitation and maintenance of the property. Amendments to the ordinance would require banks that own properties or that have filed a Notice of Default to provide detailed information regarding the asset manager or property preservation company servicing the property. This requirement would assist City inspectors who often have difficulty in finding a local contact.

9. Under the proposed ordinance, failure by the Responsible Person to make a good faith diligent effort to timely rehabilitate, sell, lease, develop, or lawfully use the Abandoned Property in a 90 day period may make the Responsible Person liable for administrative civil penalties of $1,000 per quarter. Continued noncompliance may result in increased penalties not to exceed $5,000 per year.

CONCLUSION

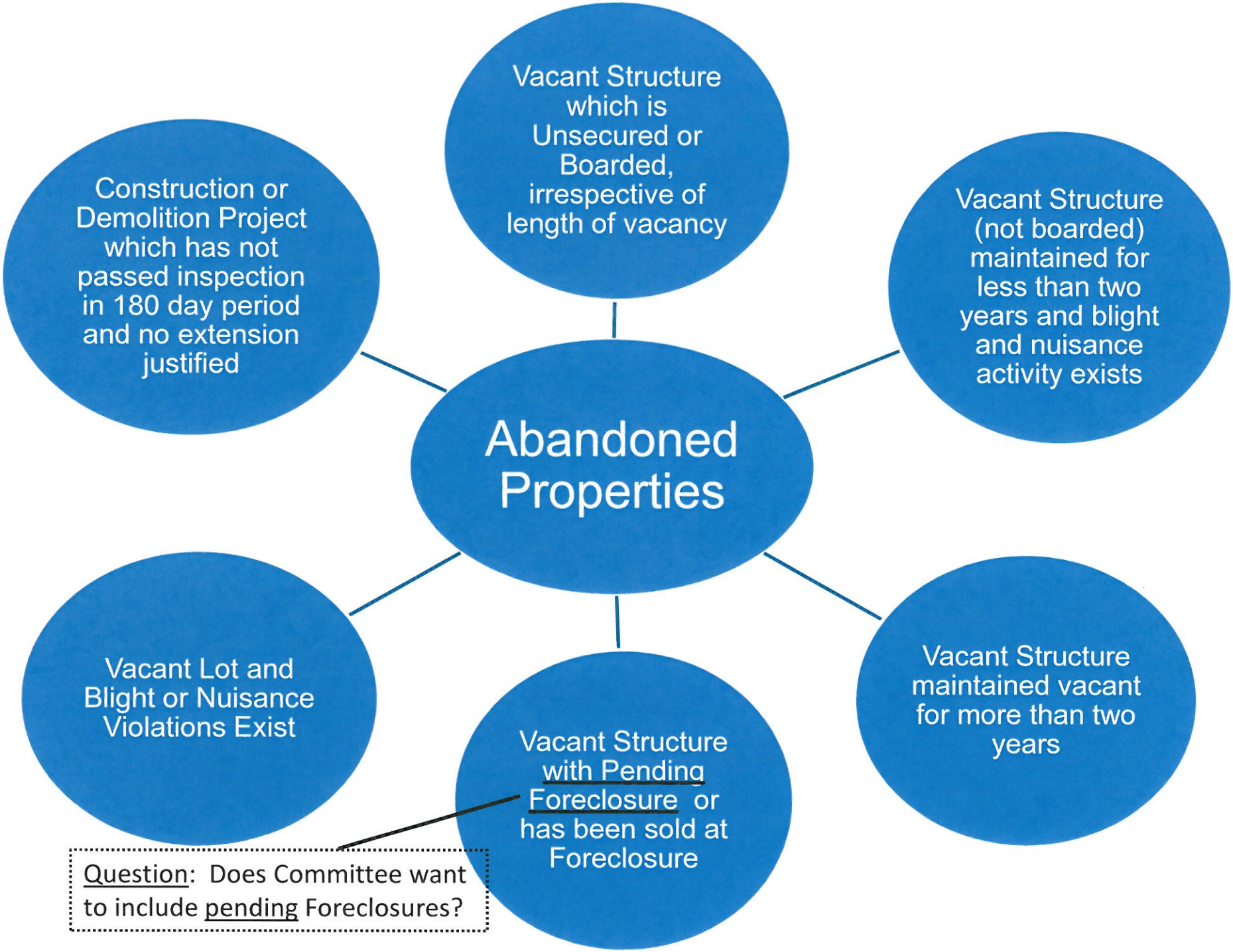
Longstanding abandoned structures, boarded and unsecured structures, vacant lots with blight and nuisance activity, and "perpetual remodels" that have not been timely rehabilitated or demolished are public nuisances. They attract crime, lower property values, and are a source of frustration to the community. The proposed Abandoned Property ordinance would require more accountability by the person responsible for the abandoned property, especially in the case of properties facing foreclosure or bank-owned properties, and increase maintenance requirements. The ordinance would require the expeditious rehabilitation of these structures and bring them under the City's current Vacant Properties Program. The Vacant Properties Program is intended to establish a dialogue with property owners and use a combination of administrative and judicial remedies to move the property to productive use.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney

By _____
Diane Silva-Martinez
Chief Deputy City Attorney

DSM:mac
RC-2010-31
Attachments



Question: Does Committee want to include pending Foreclosures?

(O-2011-21)

'STRIKEOUT ORDINANCE"

OLD LANGUAGE: ~~Struck Out~~
NEW LANGUAGE: Double Underlined

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

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 RETITLING AND AMENDING SECTIONS 54.0306 AND 54.0307; BY AMENDING SECTIONS 54.0308 AND 54.0310; BY RETITLING AND AMENDING SECTION 54.0311; BY AMENDING SECTIONS 54.0312, 54.0313 AND 54.0314; BY RETITLING AND AMENDING SECTIONS 54.0315, 54.0316 AND 54.0317; BY AMENDING SECTIONS 54.0318 AND 54.0319; BY RETITLING SECTION 54.0320; BY RETITILING AND AMENDING SECTION 54.0321; AMENDING CHAPTER 12, ARTICLE 9, DIVISION 2 BY AMENDING SECTION 129.0219; BY AMENDING CHAPTER 12, ARTICLE 9, DIVISION 5 BY AMENDING SECTION 129.0512, ALL RELATING TO THE ABATEMENT AND REHABILITATION OF ABANDONED PROPERTIES.

Division 3: Abatement of ~~Vacant Structures~~ *Abandoned Properties*

§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~~*abandoned properties* attract vagrants, gang members and other criminals as prime locations to conduct illegal criminal activities.

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

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

(d) ~~Structures that are vacant and unsecured or boarded~~ *abandoned properties* 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~~:~~. Defined terms appear in italics.

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

(1) a construction or demolition project which has not passed an inspection by the City in a 180 calendar day period and no extension by the City has been granted for an existing building or demolition permit pursuant to Sections 129.0512 or 129.0219 of this Code; or

(2) a vacant lot upon which blight or nuisance violations exist as determined by the *Director*; or

(3) a *vacant structure* which has been maintained vacant for more than two years; or

(4) a *vacant structure* which has been maintained vacant for less than two years and blight or nuisance violations exist at the property as determined by the *Director;* or

(5) a *vacant structure* which is unsecured or boarded irrespective of length of vacancy; or

(6) 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 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 and/or Sale" 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~~ *Director* of the Neighborhood Code Compliance ~~Department~~ Division or any other ~~Director~~ *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.*

DRAFT

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

"*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.

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

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

"*Responsible Person*" has the same meaning as provided in Division 2, Article 1, Chapter 1 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~~ the *responsible person* for ~~of a boarded structure~~ an *abandoned property* which contains specific information regarding the ownership of the ~~structure~~ property and the ~~owner's~~ *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~~: 1)~~ is unoccupied or occupied by unauthorized persons~~; and 2) is unsecured or boarded~~. A commercial *vacant structure* shall be deemed vacant if there is no lawfully permitted business operating within the structure or building on a daily basis, unless, due to the nature of the business, the *Director* approves its operation on a less frequent basis.

§54.0303 Enforcement Authority

(a) An *abandoned property* constitutes a *public nuisance* per se.

(b) The ~~Director of the Neighborhood Code Compliance Department, or any other Director authorized by the City Manager,~~ *Director* is authorized to administer and enforce the provisions of this Division. The ~~Director~~ *Director* or anyone designated by the ~~Director~~ *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~~ *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

[No change in text.]

§54.0306 Duty to Clean and Secure ~~or Board~~ an Abandoned Property

(a) It is unlawful for any ~~Responsible Person in charge or control of any Vacant Structure~~ *responsible person* for an *abandoned property* to fail to remove any *litter,* ~~waste~~ *waste*, ~~rubbish~~ *rubbish, solid waste, liquid waste,* ~~or~~ debris, unpermitted vehicles, storage or excessive vegetation from the entire property including the interior of ~~the structure~~ any *vacant 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)~~(b) It is unlawful for any ~~Responsible Person in charge or control of any Vacant Structure~~ *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.

(c) 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*.

(d) 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.

DRAFT

(e) 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.*

(f) 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 ~~Vacant and Unsecured Structures~~ and Maintenance Standards for Abandoned Properties

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

(b) The ~~Director~~ *Director* may also require as part of ~~the~~ an Abatement Notice and Order or other written notice, that the ~~Responsible Person~~ *responsible person* erect fences, barriers, berms or other suitable means to discourage access to the ~~Vacant Structure~~ *abandoned property* and to discourage illegal dumping or littering on the ~~yards surrounding the Vacant Structure~~ property. The ~~Director~~ *Director* may also require the ~~Responsible Person~~ *Responsible Person* to post signs that prohibit trespassing, littering or illegal dumping.

(c) The ~~Director~~ *Director* may also require as part of the Abatement Notice and Order or other written notice, that the ~~Responsible Person~~ *Responsible Person* remove any ~~litter~~ *litter*, ~~waste~~ *waste*, ~~rubbish~~ *rubbish*, ~~solid waste~~ *solid waste*,

~~liquid waste~~ *liquid waste*, debris, unpermitted vehicles, storage, weeds which are over twelve inches in height, or excessive vegetation from ~~or yards surrounding the Vacant Structures~~ the *abandoned property*.

(d) The ~~Director~~ *Director* may also require as part of the Abatement Notice and Order or other written notice, that the ~~Responsible Person~~ *responsible person* remove any vehicles or items stored ~~in the yards surrounding the Vacant Structure~~ on the *abandoned 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 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 indicating 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 such as the property manager, asset manager, or real estate agent or broker.

~~(e)~~(h) The ~~Director~~ *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. If however the abatement involves a *vacant structure* which is a single family dwelling, then the time frame for compliance shall be 15 calendar days in accordance with California Health and Safety Code section 17980.9 (b) (1).

~~(f)~~(i) If the ~~Responsible Person~~ *responsible person* does not comply with the Abatement Notice and Order, and no appeal is filed, the ~~Director~~ *Director* may: 1) clean and board ~~the~~ any unsecured ~~Vacant Structure~~ *vacant structure*; 2) remove all ~~litter~~ *litter*, ~~waste~~ *waste*, ~~rubbish~~ *rubbish*, ~~solid waste~~ *solid waste*, ~~liquid waste~~ *liquid waste*, debris or excessive vegetation from the ~~yards surrounding Vacant Structures~~ *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.

~~(g)~~(j) If the ~~Director~~ *Director* boards ~~the structure~~ any *vacant structure*, all barricade materials supplied by the City shall become the property of the ~~Responsible Person~~ *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~~ *responsible person* or ~~Director~~ *Director* shall board a ~~Vacant Structure~~ *vacant structure* according to all of the following specifications and requirements:

(1) ~~r~~Remove all ~~waste~~ *waste*, ~~rubbish~~ *rubbish* or debris from the interior of the structure; ~~and~~

(2) ~~r~~Remove all ~~waste~~ *waste*, ~~rubbish~~ *rubbish*, debris or excessive vegetation from the yards surrounding the ~~Vacant Structure~~ *vacant structure*; ~~and~~

(3) ~~b~~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) ~~m~~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) ~~e~~Extend the stock a minimum of eight (8) inches on each side of the interior wall; ~~and~~

(6) ~~e~~Cause all hardware to be galvanized or cadmium plated;~~ and~~

(7) ~~p~~Paint all exterior barricade material the predominant color of the structure; ~~and~~

(8) ~~p~~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~~ *responsible person* to board a structure as set forth in Sections 54.0308(a)(1) through (~~7~~*8*), the ~~Director~~ *Director* may allow the ~~Responsible Person~~ *responsible person* to board the ~~Vacant Structure~~ *vacant structure* in a manner in which the ~~Director~~ *Director* determines adequately prevents unauthorized entry or vandalism. In any event, a ~~Responsible Person~~ *responsible person* shall post the premises ~~as set forth in Section 54.0308(a)(8)~~ with signs as required by this Division.

§54.0309 Entry or Interference with Notice Prohibited

(a) [No change in text.]

(b) [No change in text.]

§54.0310 Continuous Abatement Authority

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

(b) If ~~the yards surrounding a Vacant Structure~~ an *abandoned property* again contains debris, ~~rubbish~~ *rubbish*, ~~waste~~ *waste* or excessive vegetation, the ~~Director~~ *Director* may, without further notice to the ~~Responsible Person~~ *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~~ *Director* continuous ~~abatement~~ *abatement* authority to: 1) abate a ~~Vacant Structure~~ *vacant structure* which again becomes unsecured and open to unauthorized entry; or 2) abate ~~the yards surrounding a Vacant Structure~~ *an abandoned property* if the ~~yards~~ property again contains debris, ~~rubbish~~ *rubbish*, ~~waste~~ *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~~ *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~~ *abandoned property* that was originally ~~secured~~ abated by the ~~Responsible Person's~~ *responsible person's* voluntary actions or pursuant to judicial or administrative order may be declared a permanent public nuisance by the ~~Director~~ *Director* if the property again contains debris, *rubbish, waste* or excessive vegetation or any structure continues to remain open and unsecured on a periodic basis, thereby requiring additional reinspections ~~and~~, clearing of the lot or resecuring of the structure. The ~~Director~~ *Director* may seek demolition of ~~this~~ a *vacant structure* that becomes a continuous public nuisance by seeking a court order or follow*ing* any of the administrative abatement procedures found in this Code.

§54.0313 Duty to File a Statement of Intent

(a) The ~~Director~~ *Director* shall create and make available a form entitled ~~"Statement of Intent"~~ *Statement of Intent* to be completed by the ~~owner of a Vacant Structure~~ *responsible person* for an *abandoned property*.

(b) The ~~owner of a Vacant Structure~~ *responsible person* for an *abandoned property* shall complete the information required on the standard ~~Statement of Intent~~ *Statement of Intent* and submit the statement to the City within thirty (30) calendar days of the date the ~~Director~~ *Director* determines the ~~structure became boarded~~ property to have become abandoned. If ~~a Vacant Structure~~ an *abandoned property* remains in ~~a vacant~~ an abandoned state for more than three hundred sixty-five (365) calendar days from the date the first ~~Statement of Intent~~ *Statement of Intent* was submitted, then a new ~~Statement of Intent~~ *Statement of Intent* must be submitted, and annually thereafter until the ~~structure is no longer a Vacant Structure~~ property no longer constitutes an *abandoned property*.

(c) The ~~Director~~ *Director* shall determine whether a submitted ~~Statement of Intent~~ *Statement of Intent* is complete and may require ~~an owner~~ the *responsible person* to provide more complete information.

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

(e) The ~~Statement of Intent~~ *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~~ any *vacant structure*;

(4) a plan for the development of any 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 property management company, servicing company, asset manager, or property preservation company responsible for the security, maintenance and marketing on the property; *and*

~~(4)~~(6) any additional information required by the ~~Director~~ *Director*.

(f) It is unlawful for a *responsible person* to:

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

(2) fail to submit a ~~Statement of Intent~~ *Statement of Intent* annually as required by Section 54.0313(b); or

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

§54.0314 Reinspection Fee

The ~~Director~~ *Director* may periodically reinspect an ~~Vacant Structures~~ *abandoned property* to ensure compliance with the provisions of this Division and all applicable court and administrative orders. The ~~Director~~ *Director* may

assess a reinspection fee against the ~~Responsible Person~~ *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~~ *Director* shall follow the reinspection procedures found in Division 1, Article 3 of Chapter 1 of this Code.

§54.0315 ~~Boarded and Vacant Structure~~ Abandoned Property Penalty

(a) ~~Any owner of a structure which meets the definition of Vacant Structure as provided in this Division~~ If an *abandoned property* is left in an abandoned state for ninety (90) consecutive calendar days, the *responsible person* for an *abandoned property* may be liable for a civil penalty in the amount of five hundred dollars ($500) per structure, not to exceed five thousand dollars ($5,000) per structure in a calendar year unless:

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

(2) one of the following applies:

(A) a *vacant structure* exists on the property and the structure is the subject of an active building permit for repair or rehabilitation and the ~~owner~~ *responsible person* is proceeding diligently in good faith to complete the repair or rehabilitation; ~~or,~~

(B) a *vacant structure* exists on the property and the structure is maintained in compliance with this Division and is actively being offered for sale, lease or rent; ~~or,~~

(C) a construction or demolition project exists on the property and the *responsible person* is proceeding diligently in good faith to complete the construction or demolition; or,

(D) the *abandoned property* is a vacant lot and there has been no recurring nuisance activity or blight; or

~~(C)~~(E) the ~~property owner~~ *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~~ *Statement of Intent* within the time line contained within the ~~Statement of Intent~~ *Statement of Intent*.

(b) If the ~~structure~~ property continues to meet the definition of ~~Vacant Structure~~ *abandoned property* as provided in this Division beyond the initial ninety (90) calendar days, and if the ~~owner~~ *responsible person* does not meet any of the exceptions set forth in this Section, the ~~Director~~ *Director* may continue to assess penalties in the following amounts: one thousand dollars ($1,000) for the next ninety (90) calendar day period ~~each structure~~ the property continues to constitute an ~~a Vacant Structure~~ *abandoned property*; 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 ~~each structure~~ the property continues to meet the definition of an ~~Vacant Structure~~ *abandoned property*. At no time may the amount of the civil penalty exceed five thousand dollars ($5,000) 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.

§54.0316 Procedures for ~~Boarded and Vacant Structure~~ Abandoned Property Penalty

(a) Whenever a ~~Director~~ *Director* determines that a ~~structure~~ property meets the definition of ~~a Vacant Structure~~ *abandoned property* ~~as provided in this Division~~ for more than ninety (90) consecutive calendar days, and the ~~owner~~ *responsible person* does not meet any of the exceptions set forth in Section ~~54.0515~~*54.0315*, a Notice of ~~Boarded and Vacant Structure~~ *Abandoned Property* Penalty may be issued to the ~~owner of~~ *responsible person* for the structure.

(b) A separate Notice of ~~Boarded and Vacant Structure~~ *Abandoned Property* 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~~ *Abandoned Property* Penalty shall be served upon the ~~owner~~ *responsible person* 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~~ Abandoned Property Penalty

An appeal of ~~a vacant boarded structure~~ 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 ~~structure~~ property meets the definition of ~~Vacant Structure~~ *abandoned property* as provided in this Division for ninety (90) consecutive calendar days;

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

(3) whether any of the exceptions set forth in section 54.0315(a)(2)(A) through (~~C~~*E*) 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~~ *Abandoned Property* Penalty" may result in the ~~Director~~ *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 Structure~~ Abandoned Property Penalty

[No change in text.]

§54.0321 Timely Rehabilitation of ~~Vacant Structures~~ Abandoned Properties

(a) ~~As authorized by California Health and Safety Code section 17980.9 (b)(1), t~~The ~~Director~~ *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~~ *an abandoned property*.

(b) It is unlawful for a *responsible person* for an *abandoned property* who has received notice from the City and who does not meet any of the exceptions in

this Division, to fail to rehabilitate, lease, develop, or lawfully use the *abandoned property* under a reasonable and expeditious time frame as determined by the City. This section does not apply to an *abandoned property* which is a vacant lot.

§129.0219 Extension of Time for a Building Permit

(a) [No change in text.]

(b) [No change in text.]

(c) [No change in text.]

(d) [No change in text.]

(e) If no extension is granted, and the history of the project or an inspection of the property shows that work has been suspended for a period of 180 calendar days or more, the *applicant* for the project, shall, within 90 days from the date of a written notice from the City, obtain a new permit to complete the required work and diligently pursue the work to completion, or remove or demolish the building or structure within 180 calendar days from the date of the written notice. Failure to do so may be prosecuted administratively or judicially pursuant to San Diego Municipal Code section 121.0311.

§129.0512 Extension of Time for a Demolition/Removal Permit

(a) [No change in text.]

(b) [No change in text.]

(c) [No change in text.]

(d) [No change in text.]

(e) If no extension is granted, and the history of the project or an inspection of the property shows that work has been suspended for a period of 180 calendar

days or more, the *applicant* for the project, shall, within 90 days from the date of a written notice from the City, obtain a new permit to demolish or remove the building or structure within 180 calendar days from the date of the written notice. Failure to do so may be prosecuted administratively or judicially pursuant to San Diego Municipal Code section 121.0311.

DSM:mac
8/25/2010
Rev. 9-9-2010
Or.Dept:CA
O-2011-21

DRAFT

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

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 RETITLING AND AMENDING SECTIONS 54.0306 AND 54.0307; BY AMENDING SECTIONS 54.0308 AND 54.0310; BY RETITLING AND AMENDING SECTION 54.0311; BY AMENDING SECTIONS 54.0312, 54.0313 AND 54.0314; BY RETITLING AND AMENDING SECTIONS 54.0315, 54.0316 AND 54.0317; BY AMENDING SECTIONS 54.0318 AND 54.0319; BY RETITLING SECTION 54.0320; BY RETITILING AND AMENDING SECTION 54.0321; AMENDING CHAPTER 12, ARTICLE 9, DIVISION 2 BY AMENDING SECTION 129.0219; BY AMENDING CHAPTER 12, ARTICLE 9, DIVISION 5 BY AMENDING SECTION 129.0512, ALL RELATING TO THE ABATEMENT AND REHABILITATION OF ABANDONED PROPERTIES.

WHEREAS, abandoned properties lower property values, constitute blight, attract nuisance activity and crime, constitute fire hazards, and have detrimental effects on neighborhoods, endangering the health and safety of residents; and

WHEREAS, abandoned properties are often not maintained adequately and can be the site for illegal dumping, weeds, trash, debris, junk, vehicles, and trespassers; and

WHEREAS, a structure which has been maintained vacant for more than two years, or a structure maintained vacant less than two years and blight or nuisance violations exist at the property upon which it is located, constitutes an Abandoned Property and a public nuisance per se; and

DRAFT

WHEREAS, many of the vacant structures existing throughout the City are those facing foreclosure or that have been the subject of a foreclosure sale, and maintenance requirements are necessary to prevent blight and crime. These structures also constitute Abandoned Properties and are public nuisances per se; and

WHEREAS, a construction or demolition project which has not passed an inspection by the City in a 180 calendar day period and no extension by the City has been granted constitutes an abandoned property and a public nuisance per se; and

WHEREAS, a vacant lot upon which blight or nuisance violations exist constitutes an abandoned property and a public nuisance per se; and

WHEREAS, the City of San Diego has an interest in protecting San Diego's neighborhoods by requiring that owners of abandoned properties adhere to maintenance standards to prevent crime and blight as well as responsible time frames for the rehabilitation of these properties so they are put to productive use in a timely manner;

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) *abandoned properties* attract vagrants, gang members and other criminals as prime locations to conduct illegal criminal activities.

(b) *abandoned properties* are extremely vulnerable to being set on fire by unauthorized persons.

(c) *abandoned properties* are a blight and cause deterioration and instability in neighborhoods.

(d) *abandoned properties* 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. Defined terms appear in italics.

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

(1) a construction or demolition project which has not passed an inspection by the City in a 180 calendar day period and no extension by the City has been granted for an existing building or demolition permit pursuant to Sections 129.0512 or 129.0219 of this Code; or

(2) a vacant lot upon which blight or nuisance violations exist as determined by the *Director*; or

(3) a vacant *structure* which has been maintained vacant for more than two years; or

DRAFT

(4) a vacant *structure* which has been maintained vacant for less than two years and blight or nuisance violations exist at the property as determined by the *Director;* or

(5) a vacant *structure* which is unsecured or boarded irrespective of length of vacancy; or

(6) 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 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 and/or Sale" 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 Neighborhood Code Compliance Division or any other *Director* authorized by the City Manager and any of their designated agents or representatives.

DRAFT

"*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 provided in Division 4, Article 4, Chapter 5 of this Code.

"*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.

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

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

"*Responsible* Person" has the same meaning as provided in Division 2, Article 1, Chapter 1 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 *responsible person* for an *abandoned property* which contains specific information regarding the

DRAFT

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~~: 1)~~ is unoccupied or occupied by unauthorized persons. A commercial *vacant structure* shall be deemed vacant if there is no lawfully permitted business operating within the structure or building on a daily basis, unless, due to the nature of the business, the *Director* approves its operation on a less frequent basis.

§54.0303 Enforcement Authority

(a) An *abandoned property* constitutes a *public nuisance* per se.

(b) 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.

DRAFT

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

§54.0306 Duty to Clean and Secure an Abandoned Property

(a) It is unlawful for any responsible person for an abandoned property to fail to remove any litter, waste, rubbish, solid waste, liquid waste, debris, unpermitted vehicles, storage or excessive vegetation from the entire property including the interior of any vacant structure.

(b) It is unlawful for any r*esponsible 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.

(c) 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.

(d) 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 fail to update the *Letter of Agency* every six months.

(e) It is unlawful for any *responsible person* for an a*bandoned 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*.

DRAFT

(f) 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, 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. 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 vehicles, 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

DRAFT

vehicles or items stored on the *abandoned 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 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 indicating 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 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. If however the abatement involves a *vacant structure*

which is a single family dwelling, then the time frame for compliance shall be 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.

Section 4. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by amending sections 54.0308 and 54.0310, to read as follows:

§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 all of the following specifications and requirements:

(1) Remove all *waste*, *rubbish* or debris from the interior of the structure;

(2) Remove all *waste*, *rubbish*, debris or excessive vegetation from the yards surrounding the *vacant structure*;

(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;

(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;

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

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

(7) Paint all exterior barricade material the predominant color of the structure;

(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. 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 (*8*), 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

DRAFT

event, a *responsible person* shall post the premises with signs as required by this Division.

§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 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 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.

Section 5. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by retitling and amending section 54.0311 to read as follows:

§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.

Section 6. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by amending sections 54.0312, 54.0313, and 54.0314, to read as follows:

§54.0312 Continuous Public Nuisances

Any *abandoned property* that was originally abated 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 property again contains debris, *rubbish, waste* or excessive vegetation or any structure continues to remain open and unsecured on a periodic basis, thereby requiring additional reinspections, clearing of the lot or resecuring of the structure. The *Director* may seek demolition of a *vacant structure* that becomes a continuous public nuisance by seeking a court order or follow*ing* 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 a*bandoned property*.

(b) The *responsible person* for an *abandoned property* shall complete the information required on the standard *Statement of Intent* and submit the statement to the City within thirty (30) calendar days of the date the *Director* determines the property to have become abandoned. 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 constitutes an *abandoned property*.

(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, the *responsible person* 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;

(3) a plan and time line for the lawful occupancy, rehabilitation or demolition of any *vacant structure*;

(4) a plan for the development of any 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, b*eneficiary* or *trustee* responsible for receiving payments associated with any loan or *deed of trust.* The property management company, servicing company, asset manager, or property preservation company responsible for the security, maintenance and marketing on the property; *and*

DRAFT

(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 meet with the approval of the *Director* or otherwise 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.

Section 7. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by retitling and amending sections 54.0315, 54.0316, and 54.0317, to read as follows:

§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 an *abandoned*

property may be liable for a civil penalty in the amount of five hundred dollars ($500) per structure, not to exceed five thousand dollars ($5,000) per structure 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 the structure 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 the structure is maintained in compliance with this Division and is actively being offered for sale, lease or rent;

(C) a construction or demolition project exists on the property and the *responsible person* is proceeding diligently in good faith to complete the construction or demolition; or,

(D) the *abandoned property* is a vacant lot and there has been no recurring nuisance activity or blight; or

(E) 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*

DRAFT

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 constitute an *abandoned property*; 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*. At no time may the amount of the civil penalty exceed five thousand dollars ($5,000) per structure in a calendar year.

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

(d) The City 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* 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 structure.

DRAFT

(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 Section 11.0301 of Chapter 1 of this Code.

§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.

Section 8. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by amending sections 54.0318 and 54.0319, to read as follows:

§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 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 (E) 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 9. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by retitling section 54.0320, to read as follows:

§54.0320 Allocation of Abandoned Property Penalty

[No change in text]

Section 10. That Chapter 5, Article 4, Division 3 of the San Diego Municipal Code is hereby amended by retitling and amending section 54.0321, to read as follows:

§54.0321 Timely Rehabilitation of Abandoned Properties

(a) The *Director* may require the demolition or expeditious rehabilitation of an *abandoned property*.

(b) It is unlawful for a *responsible person* for an *abandoned property* who has received notice from the City and who does not meet any of the exceptions in this Division, to fail to rehabilitate, lease, develop, or lawfully use the *abandoned property* under a reasonable and expeditious time frame as determined by the City. This section does not apply to an *abandoned property* which is a vacant lot.

Section 11. That Chapter 12, Article 9, Division 2 of the San Diego Municipal Code is hereby amended by amending section 129.0219, to read as follows:

§129.0219 Extension of Time for a Building Permit

(a) [No change in text].

DRAFT

(b) [No change in text]

(c) [No change in text]

(d) [No change in text]

(e) If no extension is granted, and the history of the project or an inspection of the property shows that work has been suspended for a period of 180 calendar days or more, the *applicant* for the project, shall, within 90 days from the date of a written notice from the City, obtain a new permit to complete the required work and diligently pursue the work to completion, or remove or demolish the building or structure within 180 calendar days from the date of the written notice. Failure to do so may be prosecuted administratively or judicially pursuant to San Diego Municipal Code section 121.0311.

Section 12. That Chapter 12, Article 9, Division 5 of the San Diego Municipal Code is hereby amended by amending section 129.0219, to read as follows:

§129.0512 Extension of Time for a Demolition/Removal Permit

(a) [No change in text].

(b) [No change in text].

(c) [No change in text].

(d) [No change in text]

(e) If no extension is granted, and the history of the project or an inspection of the property shows that work has been suspended for a period of 180 calendar days or more, the *applicant* for the project, shall, within 90 days from the date of a written notice from the City, obtain a new permit to demolish or remove the building or structure

DRAFT

within 180 calendar days from the date of the written notice. Failure to do so may be prosecuted administratively or judicially pursuant to San Diego Municipal Code section 121.0311.

Section 13. 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 14. 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

DSM:mac
8/25/2010
Rev. 9/8/2010
Or.Dept:CA
O-2011-21

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

ELIZABETH S. MALAND
City Clerk

By_____
Deputy City Clerk

Approved: _____ (date)

_____
JERRY SANDERS, Mayor

Vetoed: _____ (date)

_____
JERRY SANDERS, Mayor

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

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 RETITLING AND AMENDING SECTIONS 54.0306 AND 54.0307; BY AMENDING SECTIONS 54.0308 AND 54.0310; BY RETITLING AND AMENDING SECTION 54.0311; BY AMENDING SECTIONS 54.0312, 54.0313 AND 54.0314; BY RETITLING AND AMENDING SECTIONS 54.0315, 54.0316 AND 54.0317; BY AMENDING SECTIONS 54.0318 AND 54.0319; BY RETITLING SECTION 54.0320; BY RETITILING AND AMENDING SECTION 54.0321; AMENDING CHAPTER 12, ARTICLE 9, DIVISION 2 BY AMENDING SECTION 129.0219; BY AMENDING CHAPTER 12, ARTICLE 9, DIVISION 5 BY AMENDING SECTION 129.0512, ALL RELATING TO THE ABATEMENT AND REHABILITATION OF ABANDONED PROPERTIES.

This ordinance amends Chapter 5, Article 4, Division 3 of the San Diego Municipal Code to establish a definition of abandoned properties which includes: (1) unsecured vacant structures; (2) boarded or secured vacant structures that have been maintained vacant for more than two years; (3) construction or demolition projects that have not passed inspection by the City within an 180 day period and no extensions by the City have been granted; (4) vacant lots on which there is blight or nuisance activity; (5) vacant structures that are under a current Notice of Default, Notice of a Trustee's Sale, pending Assessor's Lien Sale or has been the subject of a foreclosure sale. The ordinance classifies all abandoned properties as nuisances per se and makes it unlawful for the responsible person for an abandoned property who has received notice from

the City and who does not meet any of the exceptions in the ordinance to fail to rehabilitate, lease, develop, or lawfully use the abandoned property under a reasonable and expeditious time frame as determined by the City. The ordinance makes all abandoned properties subject to existing code sections relating to vacant properties and expands maintenance requirements and other requirements designed to assist police and code inspectors in monitoring the property and responding to nuisance activity.

Finally, this ordinance makes non-substantive changes to conform the formatting to current, standard San Diego Municipal Code conventions and to make the subsections more consistent with one another.

This ordinance contains a notice that a full reading of the ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

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

A complete copy of this ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, California 92101.

DSM:mac
9/9/2010
Or.Dept:CA
O-2011-21