

DATE: February 3, 2011
TO: City of San Diego LU&H Technical Advisory Committee
FROM: TAC Ad Hoc Subcommittee on the Draft Abandoned Properties Ordinance
RE: Recommended Revisions to the Draft Abandoned Properties Ordinance

The TAC Ad Hoc Subcommittee on the Draft Abandoned Properties Ordinance met on November 1, 2010, at 10:00 a.m. and again on November 29, 2010, at 9:00 a.m. at the offices of the San Diego Association of REALTORS® (SDAR) to review and prepare comments on the City's Draft Abandoned Properties Ordinance. The ad hoc subcommittee comprised the following TAC members and guests: Scott Molloy (SDAR Representative on the TAC), John Ziebarth (AIA Representative on the TAC), Michael Nagy (Chamber Representative on the TAC), Ed Smith (Realtor/Broker and REO Specialist with Ed Smith Jr. & Associates), Paul Ruchlewicz (Realtor/Broker and REO Specialist with Pacific Western Realty), Erik Weichelt (Realtor/Broker and REO Specialist with Weichert Elite San Diego), and Rob McNelis (Realtor/Broker and REO Specialist with One Stop Lending and Realty).

The ad hoc subcommittee identified several areas of concern with the draft ordinance. It was not clear to the ad hoc subcommittee members whether this ordinance, either the original ordinance or the proposed revisions, are needed for the city to address code violations and public nuisance issues that may arise with abandoned properties in the city. *The city's challenges with abandoned properties appear to be more a function of the city's lack of code enforcement officers and resources than they do with a lack of code enforcement authority under the existing municipal code.* However, an assessment of whether this is, in fact, the case does not appear to have been conducted prior to the city advancing these municipal code changes. Therefore, as a general comment, the ad hoc subcommittee questions the need for these municipal code changes to address issues with abandoned properties. Based on our assessment, the city appears to have the authority it needs to deal with code violations and public nuisance issues resulting from abandoned properties but instead lacks the human resources.

Additionally, these proposed changes may be found to be inconsistent with an existing city council ordinance, Ordinance O-18451, which establishes the City's goal of eliminating redundancy and contradiction in the city's code. The Abandoned Properties Ordinance arguably could be found to be inconsistent with this goal. *Therefore, we recommend that the apparent lack of identifiable need for the Abandoned Properties Ordinance and the possible redundant nature of the ordinance be resolved prior to the city advancing these municipal code changes any further.*

Presuming that the city can identify gaps in the existing municipal code that preclude the City's Code Enforcement Division from effectively responding and forcing remediation of code

violations and public nuisance issues on abandoned properties, we recommend that the draft amendments be limited to filling those gaps in enforcement authority. In that vein, the TAC Ad Hoc Subcommittee on the Draft Abandoned Properties Ordinance recommends the following revisions to the draft ordinance:

Page 2, Section 54.03.02, Definitions:

- Remove items (1) and (3). There is no basis for classifying idled construction projects or structures vacant for more than 2 years that are otherwise free of code violations as abandoned properties.

Page 3, Section 54.03.02, Definitions:

Revise item (4) to state the following:

"a vacant structure ~~where~~ which has been maintained vacant for less than two years and blight or nuisance violations exist at the property as determined by the Director;"

Page 3, Section 54.03.02, Definitions:

Remove item (5). Taken to its extreme, this item would deem a newly purchased investment property that was not yet ready for occupancy (i.e., minor repairs, touch-up, etc. are required) as "vacant" and therefore "abandoned".

Page 3, Section 54.03.02, Definitions:

Revise item (6), as follows:

"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."

Until a property has been repossessed through the foreclosure process, it is still under the ownership and control of the owner of record, in the case of a property in default, the borrower who is behind in payments. The borrower has the "right to redeem" all the way up until and at the Notice of Trustee Sale. The lender has no legal authority to enter a property or take control of a piece of property, including performing basic maintenance and repairs on the property, regardless of whether the property is abandoned, until they have taken title to the property at the completion of the foreclosure process. With the time frame between the issuance of the NOD to the completion of the foreclosure process now averaging over 500 days, using the Notice of Default as a trigger for the ordinance could lead to excessive fines and liens on properties in default, stigmatizing the city's real estate market and harming home values in already impacted communities. *Additionally, using the NOD as a trigger for this ordinance would appear to add no additional enforcement authority to the city's repertoire of tools to deal with code violations and public nuisances. The city already has the authority under the existing municipal code to respond to violations on properties in default.*

Page 5, Section 54.03.02 Definition of a "Vacant Structure":

Revise the definition of a vacant structure as follows:

"Vacant Structure" means any structure or building that is ~~unoccupied~~ not being used or occupied by the owner or renters, is not for sale or rent, or is 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.~~"

The definition of "vacant structure" without these changes is ambiguous and overly broad and would impact large numbers of both residential and commercial properties in the City that this ordinance is presumably not attempting to target.

Page 9, Section 54.03.07 (h):

Revise this section as follows:

"The Director shall follow the Administrative Abatement Procedures...If however the abatement involves ~~a vacant structure~~ an abandoned property which is a single family dwelling, then the time frame for compliance shall be 45 ~~15~~ calendar days ~~in accordance with California Health and Safety Code section 17980.9 (b) (1).~~"

15 calendar days is simply not enough time for a property owner/responsible party to receive notification from the city, communicate with the city on any issues identified in the city's notification, schedule any repairs and clean-up work that are required, and ensure that such work is completed and complies with the City's abatement procedures. We recommend a more reasonable timeframe of 45 days.

Page 9, Section 54.03.08:

Revise this section to be termed "Standards for Boarding an Abandoned Vacant Structure" and replace the term "vacant structure" with "abandoned property" throughout.

Page 10, Section 54.03.08 (a) (8):

We question the value of requiring the posting of signs on the property notifying the general public that the property is potentially vacant. Rather than serving as a deterrent, signs can instead be an invitation to unauthorized entry by serving as an advertisement that the building is vacant or abandoned.

Page 12, Section 54.0313, Duty to File a Statement of Intent:

It is unclear where this concept came from or why it is proposed here. A "statement of intent" is not a legally valid requirement and, therefore, a responsible party cannot be compelled to provide one. This whole section should be removed from the ordinance. All references to this term should be removed from the ordinance.

SUMMARY OF RECOMMENDATIONS

We conclude that the necessary analyses identified in this report do not appear to have been performed and that the proposed changes to the ordinance venture outside the original purpose and intent of the ordinance. In Summary, we recommend the following:

1. The city should conduct an assessment of the gaps, if any, in the existing municipal code that are limiting or precluding the city from effectively dealing with code violations and public nuisances on this particular category of properties, abandoned properties.
2. The city should analyze whether the existing Abandoned Properties Ordinance as well as the proposed changes conflict with and/or duplicate existing city code enforcement provisions in the municipal code.
3. Provided that the city can identify legitimate gaps in the city's code enforcement provisions in the existing municipal code and that the city can determine that the proposed ordinance does not conflict with or duplicate existing code provisions, the city should amend the draft ordinance to ensure that the ordinance stays within the parameters of the identified gaps in the existing code and that the ordinance amendments are consistent with the purpose and intent of the ordinance, that being to address code violations and public nuisances on abandoned properties. We have provided a series of recommended revisions to the draft ordinance above which we assert accomplishes this goal.