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January 27, 2010

REPORT TO THE COMMITTEE ON
LAND USE AND HOUSING

REGULATING "ABANDONED STRUCTURES AND PERPETUAL REMODELS"

INTRODUCTION

The responsibility to regulate public nuisances which negatively impact neighborhoods falls to the Police Department and code enforcement personnel. A number of administrative and judicial remedies exist to address public nuisances, however two problematic violations difficult to regulate are abandoned structures which do not come under the City's Vacant Structures Ordinance as the structures are not boarded, and long standing remodels where the owner has failed to timely rehabilitate the structure. Both constitute blight, become attractive nuisances, lower property values, and are a source of frustration to neighborhoods. Below is a discussion on how both these nuisances might be regulated and what amendments to the San Diego Municipal Code [SDMC] could be enacted to require that these structures be put to productive use in a timely manner. Also included in this Report is a discussion of some of the recommendations of the Mayor's task force regarding foreclosed properties.

DISCUSSION

I. Abandoned Structures Which Are Not Boarded.

SDMC section 54.0302 defines a *Vacant Structure* as "any structure or building that: 1) is unoccupied or occupied by unauthorized persons; and 2) is unsecured or boarded."¹ Boarded vacant structures come under the City's successful "Vacant Properties Program" pursuant to SDMC Chapter 5, Article 4, Division 3 which has been in existence since 1996 and has been replicated by other cities such as Los Angeles, Las Vegas, and Phoenix. The Program requires that the owner of a Vacant Structure file a "Statement of Intent" pursuant to SDMC section 54.0313 in which the owner must state how he or she intends to put the property to productive use, e.g., sell, lease or rehabilitate it. Failure by the owner to make a good faith diligent effort to timely sell, lease, or rehabilitate the structure within a 90 day period may result in administrative penalties of \$1,000 per quarter. Continued noncompliance may result in increased penalties not to exceed \$5,000 per year. The Program, also requires that the owner maintain the premises free of trash, waste, debris, and weeds. (See Attachment 1 - Vacant Properties Ordinance and Flowchart) In addition, the Vacant Properties Coordinator or the Police may also refer the case to the City

¹ As discussed further in this memo, Mayor Sanders' Short Term Foreclosure Housing Advisory Committee Task Force recently recommended that this definition include foreclosures.

Attorney's Office when the owner is uncooperative or there is ongoing crime and nuisance activity which needs to be immediately addressed. Administrative penalties or judicial prosecution is not always pursued, as in most cases the Vacant Properties Coordinator or City Attorney prosecutor will work with the owner to identify the obstacles impeding timely rehabilitation which may include the following: probate; the need for a conservatorship; or to assist with providing information on what permits are needed for rehabilitation and identifying the scope of work as well as to refer the owner to any available redevelopment loans, grants, etc.

Commercial and residential structures which are vacant and secured but with no boards on the windows or doors do not come under the definition of a *Vacant Structure* under the Municipal Code. Some of these structures, however, have been unoccupied anywhere between 5 and 20 years and have been a source of frustration to the surrounding neighborhood. The negative effects of these structures are typically the same as those that are boarded. The overall goal of the Police, the City Attorney, and Neighborhood Code Compliance is to stabilize any nuisance activity at these premises and then require the owner to expeditiously move the property to productive use under acceptable timeframes.

II. Abandoned Remodels

Another problematic "abandoned structure" and resulting public nuisance occurs when a property owner fails to timely complete a remodel or construction project. Some projects might be in the framing stage with no walls, while others look like abandoned boarded homes. In many instances, the owner obtains an initial building permit valid for 2 years, but then never completes the work, letting the permit lapse. In a recent case reviewed by the City Attorney's Office the history of one project is as follows:

- A Combination Permit was issued on December 4, 2004 and was closed on October 28, 2008, having expired by limitation per the Municipal Code. The owner did not call for a first inspection until June 7, 2005, 185 days past the date of issuance of the permit. Between June 7, 2005 and April 29, 2008 a total of 28 inspections were called for, 19 of these inspections were recorded as failed inspections. Seven of the inspections were recorded as Partial Pass, with only two being recorded as actually passing.
- A Combination Permit was issued on October 21, 2006 for the same property and was closed on September 16, 2009, again having expired by limitation. Once again, the owner did not call for a first inspection until May 23, 2007, some 214 days from the date of the issuance of the permit. From May 23, 2007 thru September 16, 2009 a total of 8 inspections were called for.
- Another Combination Permit for the same property was issued on October 28, 2006 but was closed on December 5, 2008 as it expired by limitation. Again the first inspection for this permit did not occur until July 18, 2007, some 263 days from the date of permit issuance. From July 18, 2007 thru April 29, 2008 a total of 18 inspections were recorded, 12 as Failed, 4 as Partial Pass, and only 2 as Passed.

In sum, this owner has had 3 separate permits over a period of almost 5 years. He had a total of 54 inspections, with only 4 inspections recorded as "Passed." 13 inspections were recorded as Partial Pass and the remaining 37 inspections failed. As of September 2009, all 3 of the permits have been expired by limitation.

The community understandably becomes frustrated with the unfinished condition of these "remodels" which can attract crime and constitute blight. Again, these "remodels" do not come under the City's Vacant Properties Program, so absent referring the property to the City Attorney for prosecution as a public nuisance, there are no aggressive tools for City staff to use to motivate the owner and there is no mechanism to require expeditious rehabilitation.

III. Possible Legal Solutions:

Should the City choose to create enforcement tools to regulate abandoned remodels and structures which are not boarded, the following amendments to the SDMC could be considered:

A. Amend the Current Definition of *Vacant Structure* in the Municipal Code

The current definition of *Vacant Structure* could be amended to include all abandoned structures, whether boarded or not, as well as perpetual remodels. This would then require the owner to file a "Statement of Intent" as described above, and every 90 days show good faith effort and diligence in selling, rehabilitating, or leasing the abandoned structure. In the case of an abandoned remodel, the project could be deemed abandoned when the owner has exhausted all lawful extensions to the applicable permit under the SDMC and there has been no progress to complete the construction project. Language could potentially be added to give the City the authority to require reasonable time frames for rehabilitation and make it unlawful to fail to abide by those time frames, similar to the requirements of California Health and Safety Code section 17980.9 with respect to single family dwellings. (See Attachment 2). Health and Safety Code section 17980.9 is referenced within the City's Vacant Structures Ordinance in SDMC section 54.0321 entitled "Timely Rehabilitation of Vacant Structures" and states, "As authorized by California Health and Safety Code section 17980.9 (b) (1), the Director may require the demolition or expeditious rehabilitation of *Vacant Structures* which are single-family dwellings and deemed to be substandard as determined by an inspection by the Director."

The goal of any amendment to the SDMC would be to declare all vacant structures and remodels with long term vacancy or active nuisance activity to be public nuisances and thereby require expeditious rehabilitation. Any amendments however would have to be reconciled with Chapter 12, Article 9, Division 2 of the Municipal Code dealing with Building Permit procedures. In particular SDMC sections 129.0211 *et seq.* would have to be taken into consideration, as those sections outline under what circumstances extensions to building applications and permits are can be granted. Amendments could potentially also be made to Chapter 12, Article 9, Division 2 to require the expeditious rehabilitation of structures where extensions have already been granted or the project has been abandoned a number of times. For example, Los Angeles Municipal Code section 91.106.4.4.3, entitled "Unfinished Buildings or Structures" has such a requirement. It states:

Whenever the department determines by inspection that work on any building or structure for which a permit has been issued and the work started thereon has been suspended for a period of 180 days or more, the owner of the property upon which such structure is located, or other person or agent in control of said property, upon receipt of notice in writing from the department to do so, *shall, within 90 days from the date of such written notice, obtain a new permit to complete the required work and diligently pursue the work to completion, or shall remove or demolish the building or structure within 180 days from the date of the written notice.* (emphasis added)

B. Enact an “Abandoned Property Ordinance” and Establish a Criteria for When a Property is Deemed Abandoned

Rather than amend the definition of Vacant Structures to be more expansive, an alternative would be to create an overall definition of “Abandoned Property.” Perpetual or abandoned remodels and all vacant structures which meet certain criteria could then come under the definition. The New Jersey “Abandoned Properties Rehabilitation Act” serves as an example. (See Attachment 3 – relevant copies of Act) The definition of an abandoned property under New Jersey law is ... “... 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.”

San Diego could similarly create a criteria of factors deemed reasonable for what is an “Abandoned Structure.” For example, a possible definition could be:

- 1) any structure or building that has been unoccupied or occupied by unauthorized persons for one year, and any of the following conditions exist: a) the property taxes are in arrears; b) blight, maintenance, or nuisance violations exist at the property as determined by the Director; c) the property is a construction or demolition project that has been abandoned for over 180 calendar and no good cause exists for extension of a building or demolition permit; d) the owner has made no attempt to sell, lease, or rehabilitate it; or
- 2) any structure or building that is unoccupied or occupied by unauthorized persons and is unsecured or boarded.”

These structures could then be declared public nuisances and the City would have the authority to impose a reasonable time frame to sell, lease, rehabilitate or occupy the structure and make it unlawful for the owner not to meet those deadlines. In similar fashion as discussed above, any amendments would have to be reconciled with Chapter 12, Article 9, Division 2 of the Municipal Code governing building permits.

IV. Foreclosed Properties

In November 2008 the Mayor convened a short term task force with the objective to review all community activities, efforts, and conditions regarding: 1) the level of assistance required to prevent and slow the level of foreclosures and defaults of residential homes; and 2) to expand and create programs to preserve San Diego's neighborhoods. Members of the taskforce included developers, Bank of America representatives, members of the real estate industry, various non profit counseling agencies and staff from the Redevelopment Agency, Housing Commission, Neighborhood Code Compliance, City Attorney's Office, and other stakeholders.

After a series of meetings and substantial research, a final report of findings and recommendations was issued on March 3, 2009. One of the recommendations of the task force was to amend the Vacant Property Ordinance to include foreclosed vacant properties.

Recommendations and observations of the task force are summarized below:

- San Diego was fortunate to already have in place a nationally recognized program consisting of *Community Housing Works*, the *Housing Collaborative* and the San Diego Housing Commission which successfully provide foreclosure prevention counseling and assistance and first time homeowner buyer programs funded by substantial federal grants.
- There was a need for more outreach and more accessible information to the public on foreclosures. The City immediately established a separate website, www.foreclosuresandiego.org, to provide resource and assistance to the public.
- Incorporate the 2-1-1 service in the Vacant Properties Program, allowing residents to easily report violations.
- Provide links from the San Diego Association of Realtors, Housing Commission, and other housing related organizations for reporting violations.
- Target top zip codes in the City with an outreach program to inform neighborhoods of the new Program.
- Expand the Neighborhood Watch Programs and use the Retired Senior Volunteer Patrol (RSVP) to assist code enforcement in identifying and monitoring foreclosed properties.
- Laws presently existed to require some basic maintenance on vacant properties, as San Diego's Vacant Structures Ordinance already had maintenance requirements prohibiting graffiti, waste, trash, debris, etc. Similarly, the Municipal Code addressed weeds which were a fire hazard. The County already had an active program to abate stagnant pools and to address concerns regarding West Nile Virus. In addition, California Civil Code 2929.3 was enacted in 2008 (effective until 2013) and allowed for civil fines for "...failure to maintain foreclosed vacant properties." However vacant and/or Foreclosed properties should be required to maintain the property to a neighborhood community standard.
- Enforcement would be "complaint based."
- Property owners would have an opportunity to correct violations without the imposition of a fine.
- Reject amending the Vacant Structure's Ordinance to include a registration requirement for all vacant structures, including foreclosed properties. Strongly influencing this recommendation was the fact that a cooperative relationship existed

between local financial institutions and the City. Enforcement efforts traditionally began with allowing owners the opportunity to comply before imposing penalties and there was a desire not to merely enact an ordinance for the purpose of generating fees or penalties. The requirement to file a "Statement of Intent" under the existing Vacant Structures Ordinance already served many of the same purposes as a registration ordinance, in that the owner must establish a dialogue with the City, maintain the property, and commit to a time frame to put the property to productive use. Registering properties would require additional work by staff when resources were already strained.

- Due to the high number of foreclosures and their negative impact, it was recommended that the City amend San Diego's Vacant Structures Ordinance to also include foreclosed vacant properties.
- Establish with the County Recorder's Office a form similar to the City's "Statement of Intent" that would be filed by financial institutions along with the deed after a Trustee Sale. The San Diego Association of Realtors volunteered to develop the form which would include all contact information, e.g., asset manager responsible for the property, so that citizens, law enforcement and the City can easily identify a responsible person to contact. The form and procedures were recently approved by the County Board of Supervisors.

Some of these recommendations have since been implemented, such as continued outreach by the City in the area of foreclosure outreach and assistance, use of RSVP's to assist with identifying and monitoring vacant properties, and the filing of a form by financial institutions and their agents with the County Recorder after Trustee sales in the unincorporated areas of San Diego County.

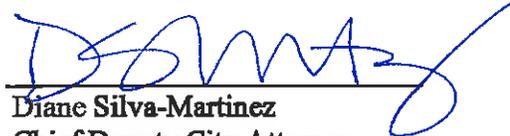
CONCLUSION

Longstanding abandoned structures which are not boarded and "perpetual remodels" that have not been timely rehabilitated are public nuisances as they constitute blight, attract crime, lower property values, and are a source of frustration to neighborhoods. Municipal code amendments could be enacted to require the expeditious rehabilitation of these structures applying the same principles used under the City's current Vacant Properties Program.

Respectfully submitted,

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By


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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 and any of their designated agents or representatives.

"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.

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"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.

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

(Amended 2-7-2006 by O-19460 .S.; effective 3-7-2006.)

§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 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.

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

(Amended 2-7-2006 by O-19460 N.S.; effective 3-27-2006.)

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5	4	3

§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 stored in the yards surrounding the Vacant Structure in violation of the Land Development Code.
- (e) 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.
- (f) 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.
- (g) 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.) (Amended 2-7-2006 by O-19460 N.S.; effective 3-7-2006.)

§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) calendar days of the date the Director determines the structure became boarded. If a Vacant Structure remains in a vacant 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 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
 - (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.
("Duty to File a Statement of Intent" added 5-28-1996 by O-18301 N.S.; corrected 1-23-1998.)
(Amended 2-7-2006 by O-19460 N.S.; effective 3-7-2006.)

§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 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) 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 penalties in the following amounts: one thousand dollars (\$1,000) for the next ninety (90) calendar day period each structure continues to constitute a Vacant Structure; 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 continues to meet the definition of a Vacant Structure. 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.
*("Boarded and Vacant Structure Penalty" added 5-28-1996 by O-18301 N.S.)
(Amended 2-7-2006 by O-19460 N.S.; effective 3-7-2006.)*

§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.)

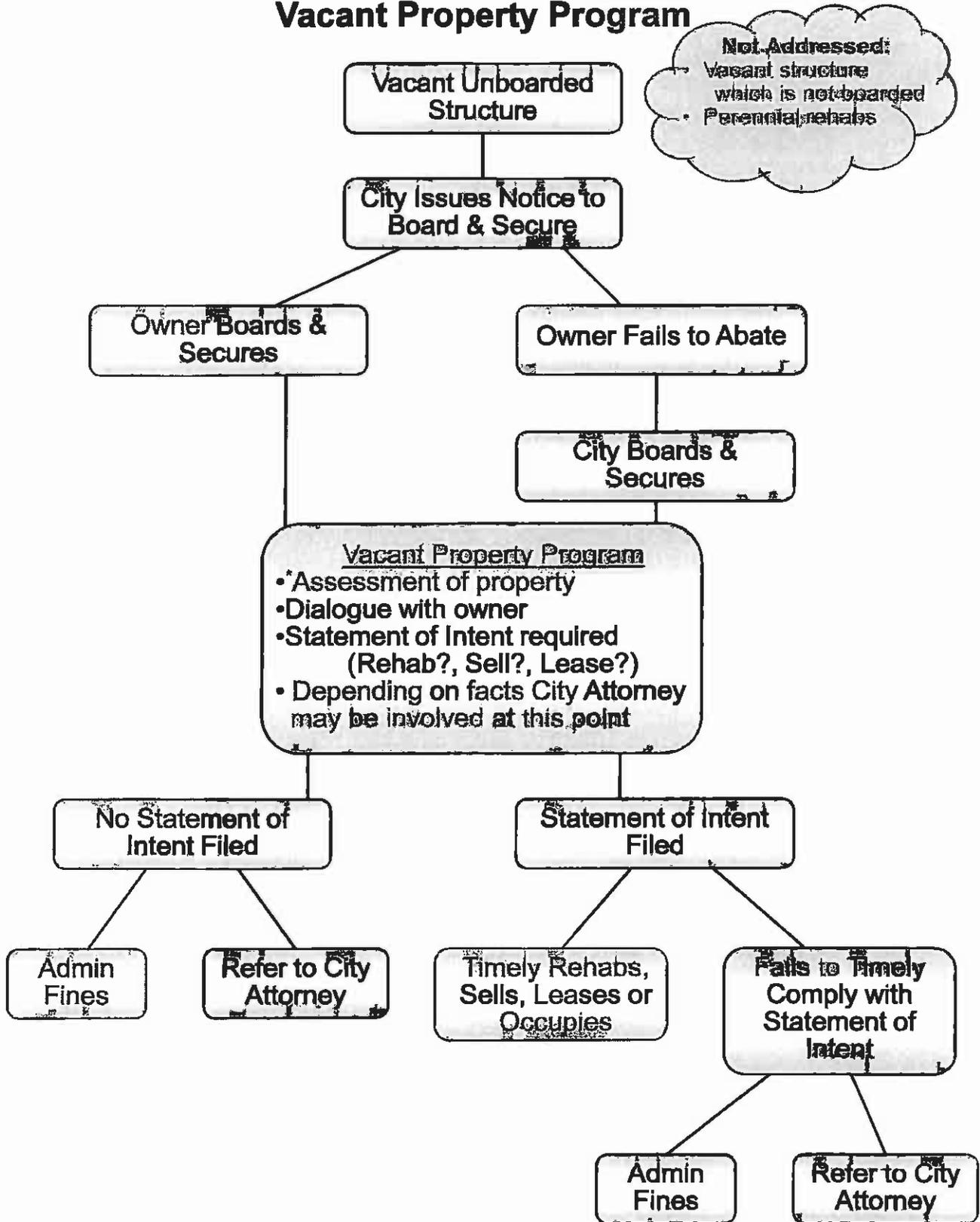
§54.0320 Allocation of Vacant Structure Penalty

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.
*("Allocation of Vacant Building Penalty" added 5-28-1996 by O-18301 N.S.)
(Retitled to "Allocation of Vacant Structure Penalty" and amended 2-7-2006 by O-19460 N.S.; effective 3-7-2006.)*

§54.0321 Timely Rehabilitation of Vacant Structures

- (a) As authorized by California Health and Safety Code section 17980.9 (b)(1), the Director may require the demolition or expeditious rehabilitation of Vacant Structures which are single-family dwellings and deemed to be substandard as determined by an inspection by the Director.
(Added 2-7-2006 by O-19460 N.S.; effective 3-7-2006.)

City of San Diego's Vacant Property Program



HOUSING
Div. 13

Warranties

Selected 1995 California legislation,
19 (1996).

Municipal Corporations §§ 202 to 203,
new state legislation enacted in
B Real Prop L Rep Vol. 14 No. 2 p

Practice Guide: Landlord-Tenant
C. Establishing Breach of Warrant

Practice Guide: Landlord-Tenant
D. Tenant Remedies.
Starr California Real Estate
in General; Actions by Private Per-
son by Tenants for the Appoint-
ment Receiver.

Starr California Real Estate
in General; Actions by Private Per-
sonal Housing Which Does Not
Comply With Code.

Starr California Real Estate
Effect of a Violation of the Statu-

Starr California Real Estate
Tenant's Remedies for Landlord's
the Implied Warranty.
1. Proc. 4th Provisional Remedies
436) Other Actions or Proceed-

(2006) 39 Cal.Rptr.3d 1. Nuisance
actions § 189

Persons were authorized in enforcement
action against homeowner who made
renovations to his home, pursuant
to statute allowed for such fees when a
renovation substantially endangers the health
of residents, notwithstanding that
the person was not living in the house when he
made the renovation. Definition of "residents" included
persons inside building as well as those
outside and therefore, plain meaning of
statute allowed award of fees even if home-
ing was not occupied. City and
County of San Francisco v. Jen (App. 1 Dist
Court Rptr.3d 454, 135 Cal.App.4th 305.
Municipal Corporations § 1040

BLDGS. USED FOR HUMAN HABITATION
Pt. 1.5

§ 17980.9

§ 17980.8. Administrative determination of unsafe or substandard condition; abatement or other exercise of authority; owner exclusive remedy; judicial review standard; application of section

Notwithstanding any other provision of law, if a determination that an unsafe or substandard condition exists in any building, or upon the lot upon which it is situated, has been made in an administrative proceeding conducted under this part, including any code incorporated by Section 17922, the enforcement agency may abate the nuisance as provided in this part or exercise any other authority conferred upon it by this part, subject only to the exclusive remedy of the owner to challenge the administrative determination pursuant to Section 1094.5 of the Code of Civil Procedure. The court may exercise its independent judgment on the evidence to determine whether the findings are supported by the weight of the evidence. This section shall apply only to administrative proceedings commenced on or after January 1, 1990.

(Added by Stats.1989, c. 376, § 1.)

Historical and Statutory Notes

Another § 17980.8 was renumbered Health and Safety Code § 17980.10 and amended by Stats.2003, c. 474 (A.B.1034), § 6.

Cross References

"Building" defined for purposes of this Part, see Health and Safety Code § 17920.
"Enforcement" defined for purposes of this Part, see Health and Safety Code § 17920.
"Nuisance" defined for purposes of this Part, see Health and Safety Code § 17920.

Library References

Health § 392.
Westlaw Topic No. 198H.

C.J.S. Health and Environment §§ 35, 51 to 54, 56 to 64.

Research References

Encyclopedias

CA Jur. 3d Building Regulations and Development § 220, Obtaining Jurisdiction to Abate.
CA Jur. 3d Building Regulations and Development § 221, Determination to Abate and Review of Determination.
CA Jur. 3d Building Regulations and Development § 222, Assessment of Agency Expenses.

Treatises and Practice Aids

Rutter, Cal. Practice Guide: Landlord-Tenant Ch. 3-D, D. Tenant Remedies.
Miller and Starr California Real Estate § 22:29, in General; Actions by Private Persons - Rental Housing Which Does Not Comply With Code.
Miller and Starr California Real Estate § 19:118, Effect of a Violation of the Statutory Duty.

§ 17980.9. City of Los Angeles or City of San Diego; inspection of vacant single-family dwellings; action to correct violations or abate nuisances; tax notice; reimbursement of costs

Notwithstanding Section 17980, whenever the enforcement agency inspects any vacant single-family dwelling within the City of Los Angeles or the City of San Diego pursuant to this chapter, all of the following shall apply:

(a) If a nuisance exists in any vacant single-family dwelling or upon the lot on which it is situated, the enforcement agency shall, after 15 days' notice to abate the nuisance, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the nuisance.

§ 17980.9

HOUSING Div. 13

(b)(1) Whenever the enforcement agency has inspected or caused to be inspected any vacant single-family dwelling and has determined that the building is a substandard dwelling, the enforcement agency shall, after giving 15 days' notice to the owner, commence proceedings to abate the violation by repair, rehabilitation, or demolition of the building. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. The enforcement agency may require demolition or may itself repair, demolish, or institute any other appropriate action or proceeding, if any of the following occur:

(A) The repair work is not done as scheduled.

(B) The owner does not make a timely choice of repair or demolition.

(C) The owner selects an option that cannot be completed within a reasonable period of time, as determined by the department, for any reason, including, but not limited to, an outstanding judicial or administrative order.

(2) In deciding whether to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 50 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element.

(c) All notices issued by the enforcement agency to correct violations or to abate nuisances shall contain a provision notifying the owner that, in accordance with Sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year.

(d) The enforcement agency may charge the owner of the building for its postage or mileage cost for sending or posting the notices required to be given by this section.

(Added by Stats.1997, c. 55 (A.B.943), § 2. Amended by Stats.2001, c. 594 (A.B.1467), § 2.)

Historical and Statutory Notes

Stats.2001, c. 594 (A.B.1467), in the first paragraph, inserted "or the City of San Diego"; rewrote subd. (a); and in subd. (b)(1), inserted ", after giving 15 days' notice to the owner," in the first sentence. Prior to amendment, subd. (a) had read:

"(a) If any vacant single-family dwelling is constructed, altered, converted, or maintained in violation of any provision of, or of any order or notice giving a reasonable time to correct that violation issued by an enforcement agency pursuant to this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part, or if a nuisance exists in any single-family dwelling or upon the lot on which it is situated, the enforcement agency

shall, after 30 days' notice to abate the nuisance, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance."

Section 4 of Stats.2001, c. 594 (A.B.1467), provides:

"SEC. 4. Due to the unique circumstances of the City of Los Angeles and the City of San Diego with respect to substandard housing, the Legislature hereby finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in Section 2 of this act is necessarily applicable only to the City of Los Angeles and the City of San Diego."

BLDGS. USED FOR HUMANA Pt. 1.5

"Building" defined for purposes of title 24
"Department" defined for purposes of title 24
"Enforcement" defined for purposes of title 24
"Nuisance" defined for purposes of title 24

Health Code § 377.
Inspection Code § 3.

Treatises and Practice Aids

Rutter, Cal. Practice Guide: Land Use & Planning
Ch. 3-D, D. Tenant Remedies.

§ 17980.10. Jurisdiction removal; enforcement

(a) An enforcement agency shall, after giving notice required by Section 17980.9, and, using the notice required by Section 17980.9, confirm the violation. The enforcement board shall be deemed to have approved the repair or causing to have repaired the dwelling or in removing the dwelling or in

(b) The enforcement agency shall, after giving notice required by Section 17980.9, and, using the notice required by Section 17980.9, confirm the violation. The enforcement board shall be deemed to have approved the repair or causing to have repaired the dwelling or in removing the dwelling or in the dwelling was razed or removed. The enforcement agency shall be verified by the officer of work, showing the reasonable cost of the razing or removal of the dwelling, together with the statement shall be submitted to the enforcement agency for approval. If the enforcement agency, this statement shall be submitted to the enforcement agency, as specified in Chapter 1 of Part 1 of Title 24

(c) At the meeting the enforcement agency shall consider any objection to the enforcement agency property owner liable to be the enforcement agency. If the enforcement agency, those costs shall be paid to the public entity that

(d) Notwithstanding any other provision to this section shall be conducted by the enforcement agency that are

(UPDATED THROUGH P.L. 2009, ch. 206, and JR 13)

TITLE 55 TENEMENT HOUSES AND PUBLIC HOUSING

55:19-78. Short title

55:19-78. Short title

1. This act shall be known and may be cited as the "Abandoned Properties Rehabilitation Act."

L.2003,c.210,s.1.

55:19-79. Findings, declarations relative to abandoned properties

2. The Legislature finds and declares that:

- a. Abandoned properties, particularly those located within urban areas or in close proximity to occupied residences and businesses, create a wide range of problems for the communities in which they are located, fostering criminal activity, creating public health problems and otherwise diminishing the quality of life for residents and business operators in those areas.

- b. Abandoned properties diminish the property values of neighboring properties and have a negative effect on the quality of life of adjacent property owners, increasing the risk of property damage through arson and vandalism and discouraging neighborhood stability and revitalization.

- c. For these reasons, abandoned properties are presumptively considered to be nuisances, in view of their negative effects on nearby properties and the residents or users of those properties.

- d. The continued presence of abandoned properties in New Jersey's communities acts as a significant barrier to urban revitalization and to the regeneration of the State's urban centers.

- e. Abandonment is a local problem that must be addressed locally and the most important role of State government is to provide local governments, local community organizations, citizens, and residents with the tools to address the problem.

- f. The responsibility of a property owner to maintain a property in sound condition and prevent it from becoming a nuisance to others extends to properties which are not in use and 'demolition by neglect', leading to the deterioration and loss of the property, or failure by an owner to comply with legitimate orders to demolish, stabilize or otherwise repair his or her property creates a presumption that the owner has abandoned the property.

- g. Many abandoned buildings still have potential value for residential and other uses and such buildings should be preserved rather than demolished, wherever feasible, particularly buildings that have historic or architectural value, or contribute to maintaining the character of neighborhoods or streetscapes, or both, as the case may be.

L.2003,c.210,s.2.

55:19-80 Definitions relative to abandoned property.

3. As used in sections 1 through 25 of P.L.2003, c.210 (C.55:19-78 through C.55:19-102) and section 3 of P.L.2006, c.24 (C.55:19-107):

"Department" means the New Jersey Department of Community Affairs.

"Lienholder" or "mortgage holder" means any person or entity holding a note, mortgage or other interest secured by the building or any part thereof.

"Municipality" means any city, borough, town, township or village situated within the boundaries of this State and shall include a qualified rehabilitation entity that may be designated by the municipality pursuant to section 13 of P.L.2003, c.210 (C.55:19-90) to act as its agent to exercise any of the municipality's rights pursuant thereto.

"Owner" means the holder or holders of title to an abandoned property.

"Property" means any building or structure and the land appurtenant thereto.

"Public officer" means the person designated by the municipality pursuant to section 3 of P.L.1942, c.112 (C.40:48-2.5) or any officer of the municipality qualified to carry out the responsibilities set forth in P.L.2003, c.210 (C.55:19-78 et al.) and designated by resolution of the governing body of the municipality, except that in municipalities organized under the "mayor-council plan" of the Optional Municipal Charter Law, P.L.1950, c.210 (C.40:69A-1 et seq.), the public officer shall be designated by the mayor.

"Qualified rehabilitation entity" means an entity organized or authorized to do business under the New Jersey statutes which shall have as one of its purposes the construction or rehabilitation of residential or non-residential buildings, the provision of affordable housing, the restoration of abandoned property, the revitalization and improvement of urban neighborhoods, or similar purpose, and which shall be well qualified by virtue of its staff, professional consultants, financial resources, and prior activities set forth in P.L.2003, c.210 (C.55:19-78 et al.) to carry out the rehabilitation of vacant buildings in urban areas.

"Utility" means any electric or natural gas public utility that is regulated under the jurisdiction of the Board of Public Utilities.

L.2003,c.210,s.3; amended 2005, c.118, s.12; 2006, c.24, s.2.

(UPDATED THROUGH P.L. 2009, ch. 208, and JR 13)
TITLE 55 TENEMENT HOUSES AND PUBLIC HOUSING
55:19-81 Determination that property is abandoned.

55:19-81 Determination that property is abandoned.

4. Except as provided in section 6 of P.L.2003, c.210 (C.55:19-83), any property that has not been legally occupied for a period of six months and which meets any one of the following additional criteria may be deemed to be abandoned property upon a determination by the public officer that:

a. The property is in need of rehabilitation in the reasonable judgment of the public officer, and no rehabilitation has taken place during that six-month period;

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 the date of a determination by the public officer pursuant to this section;

c. At least one installment of property tax remains unpaid and delinquent on that property in accordance with chapter 4 of Title 54 of the Revised Statutes as of the date of a determination by the public officer pursuant to this section; or

d. The property has been determined to be a nuisance by the public officer in accordance with section 5 of P.L.2003, c.210 (C.55:19-82).

A property which contains both residential and non-residential space may be considered abandoned pursuant to P.L.2003, c.210 (C.55:19-78 et al.) so long as two-thirds or more of the total net square footage of the building was previously legally occupied as residential space and none of the residential space has been legally occupied for at least six months at the time of the determination of abandonment by the public officer and the property meets the criteria of either subsection a. or subsection d. of this section.

L.2003,c.210,s.4; amended 2005,c.118,s.3.

55:19-82. Determination of property as nuisance

5. A property may be determined to be a nuisance if:

a. The property has been found to be unfit for human habitation, occupancy or use pursuant to section 1 of P.L.1942, c.112 (C.40:48-2.3);

b. The condition and vacancy of the property materially increases the risk of fire to the property and adjacent properties;

c. The property is subject to unauthorized entry leading to potential health and safety hazards; the owner has failed to take reasonable and necessary measures to secure the property; or the municipality has secured the property in order to prevent such hazards after the owner has failed to do so;

d. The presence of vermin or the accumulation of debris, uncut vegetation or physical deterioration of the structure or grounds have created potential health and safety hazards and the owner has failed to take reasonable and necessary measures to remove the hazards; or

e. The dilapidated appearance or other condition of the property materially affects the welfare, including the economic welfare, of the residents of the area in close proximity to the property, and the owner has failed to take reasonable and necessary measures to remedy the conditions.

A public officer who determines a property to be a nuisance pursuant to subsections b. through e. of this section shall follow the notification procedures set forth in P.L.1942, c.112 (C.40:48-2.3 et seq.).

L.2003,c.210,s.5.

55:19-83 Property not to be placed on abandoned property list; conditions.

6. a. If an entity other than the municipality has purchased or taken assignment from the municipality of a tax sale certificate on a property that has not been legally occupied for a period of six months, that property shall not be placed on the abandoned property list pursuant to section 36 of P.L.1996, c.62 (C.55:19-55) if (1) the owner of the certificate has continued to pay all municipal taxes and liens on the property in the tax year when due; and (2) the owner of the certificate takes action to initiate foreclosure proceedings within six months after the property is eligible for foreclosure pursuant to either subsection a. or subsection b. of R.S.54:5-86, as appropriate, and diligently pursues foreclosure proceedings in a timely fashion thereafter.

b. A property which is used on a seasonal basis shall be deemed to be abandoned only if the property meets any two of the additional criteria set forth in section 4 of P.L.2003, c.210 (C.55:19-81).

c. A determination that a property is abandoned property under the provisions of P.L.2003, c.210 (C.55:19-78 et al.) shall not constitute a finding that the use of the property has been abandoned for purposes of municipal zoning or land use regulation.

d. Upon the request of a purchaser or assignee of a tax sale certificate seeking to bar the right of redemption on an abandoned property pursuant to subsection b. of R.S.54:5-86, the public officer or the tax collector shall, in a timely fashion, provide the requester with a certification that the property fulfills the definition of abandoned according to the criteria set forth in sections 4 and 5 of P.L.2003, c.210 (C.55:19-81 and C.55:19-82).

L.2003,c.210,s.6; amended 2005, c.118, s.4

- (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

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 following any of the administrative abatement procedures found in this Code.

§54.0313 Duty to File a Statement of Intent

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

(b) The *responsible person* for an *abandoned property* shall complete the information required on the 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, *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

(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*

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.

- (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].

- (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

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 RETITLING 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

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

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

Jan I. Goldsmith
CITY ATTORNEY

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.

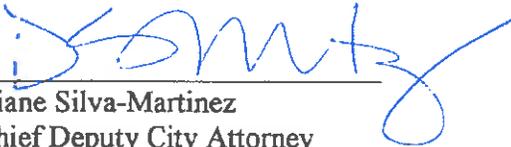
CONCLUSION

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,

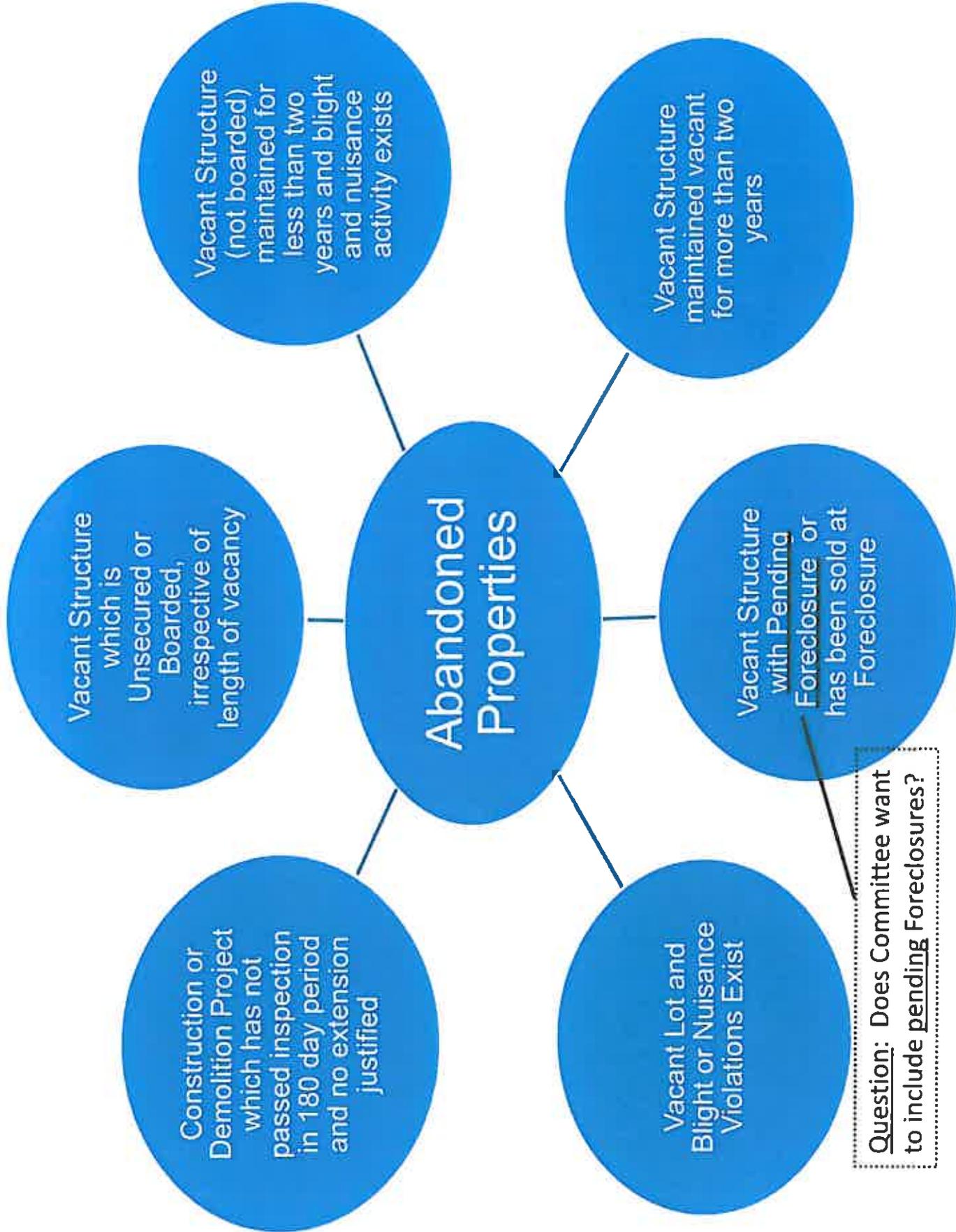
JAN I. GOLDSMITH, City Attorney

By



Diane Silva-Martinez
Chief Deputy City Attorney

DSM:mac
RC-2010-31
Attachments



Question: Does Committee want to include pending Foreclosures?

the 1990s, the number of people with a disability in the United States has increased by 25% (U.S. Census Bureau, 2000).

As a result of the increase in the number of people with disabilities, the need for accessible information has become more acute. The Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12181) requires that information be accessible to people with disabilities.

The ADA defines information as any material, regardless of the form or medium, that is disseminated to the public.

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'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 RETITLING 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.

"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, 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.~~
- (e)(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.

- (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)(i) 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~~**R**emove all ~~waste~~ waste, ~~rubbish~~ rubbish or debris from the interior of the structure; ~~and~~
- (2) ~~r~~**R**emove all ~~waste~~ waste, ~~rubbish~~ rubbish, debris or excessive vegetation from the yards surrounding the ~~Vacant Structure~~ vacant structure; ~~and~~
- (3) ~~b~~**B**arricade 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~~**M**ount 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~~**E**xtend the stock a minimum of eight (8) inches on each side of the interior wall; ~~and~~
- (6) ~~e~~**C**ause all hardware to be galvanized or cadmium plated; ~~and~~
- (7) ~~p~~**P**aint all exterior barricade material the predominant color of the structure; ~~and~~
- (8) ~~p~~**P**ost 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 following 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

~~(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~~ 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 ~~(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),~~
~~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

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 RETITLING 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

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

- (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.

"*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

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

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

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

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

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

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*;

Legislative History - Abandoned Properties Ordinance

- **February 3, 2010** – at request of Chair of Committee on Land Use and Housing (LU & H), City Attorney delivered Report dated 1/27/2010. A specific concern of the Committee was to address loopholes in present Vacant Property Ordinance. LU & H Committee directed City Attorney to draft Abandoned Properties Ordinance to specifically address:
 - 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

- **September 15, 2010** - LU & H Committee reviews draft ordinance. See City Attorney Report to LU & H dated September 9, 2010. Committee approves draft ordinance and directs matter to proceed to Council. Committee directs staff to include pre-foreclosures as part of ordinance, not just foreclosed properties; include all vacant lots including commercial lots; charge a cost recovery fee for filing a Statement of Intent. Asks staff to meet with TAC to hear concerns.

- **November 2010** – meeting with Building Official, City Attorney's Office and NCCD regarding proposed amendments regulating perennial remodels. Decision to incorporate amendments regarding remodels in the upcoming adoption of the 2010 California Building Code rather than the Abandoned Properties Ordinance.

- **February 2011** – met with TAC

- **April 29, 2011** – item scheduled for Land Use and Housing Committee for status report. Committee passed motion to move staff recommendation to the full City Council, with direction to the City Attorney to review Technical Advisory Committee's recommendations dated February 3, 2011 and incorporate those deemed appropriate.