

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JUNE 20, 2017 AGENDA

Subject:	Type:	Submitted By:
DISCUSSION – VACANT BUILDING REGISTRATION CODE	RESOLUTION ORDINANCE ◆ RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

SYNOPSIS

At the May 16, 2017 City Council Meeting, the City Council requested information regarding vacant building registration codes.

FISCAL IMPACT

N/A.

RECOMMENDATION

Provide general direction regarding the potential of drafting a Vacant Building registration code.

BACKGROUND

Over the years, there have been several properties which were damaged by fire or collision which became neglected and therefore a concern to neighbors and the Mayor and Council. After researching issues associated with vacant structures, staff has identified example building registration codes which are intended to address this problem. The following is a synopsis of this information.

Vacant Building Registration Codes

Purposes for ordinances

- To ensure owners of vacant properties are known to the city and can be reached if necessary.
- To ensure owners of vacant properties are aware of obligations under relevant codes.
- To ensure owners meet minimum standards of maintenance of vacant properties.

Include the following elements

- Clear definition of which properties and which parties must register.
- Registration requirements and procedures.
- Fee structure.
- Penalties for failing to register.

Example Cities and Ordinances

- Lincoln, Nebraska (see attachments):
 - Applies only to buildings that are determined to be neglected.
 - Notice to repair the property within 30 days or register and pay the resulting fees.

- Wilmington, Delaware: (**see attachments**):
 - Adopted a graduated fee; fee goes up the longer the property remains vacant.
- San Diego, California: (**see attachments**):
 - Requires owner to file a statement of intent, including a plan and timeline for occupancy, rehabilitation, or demolition.
 - Failure to carry out the plan can result in significant penalties.

The examples noted above appeared to be relevant to the issues in this community however there are many other examples if not. Following the discussion regarding options for such a code, Council may provide direction for staff to prepare a draft ordinance.



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Tool 1: Vacant Property Registration Ordinances (VPROs)

The purposes of a vacant property registration ordinance (VPRO) are threefold:

- To ensure that owners of vacant properties are known to the city and other interested parties and can be reached if necessary;
- To ensure that owners of vacant properties are aware of the obligations of ownership under relevant codes and regulations; and
- To ensure that owners meet minimum standards of maintenance of vacant properties.

In addition, the fee structure established in the ordinance may serve additional purposes, including covering costs incurred by the municipality to deal with vacant properties, and under some circumstances, motivating owners to restore and reuse vacant properties.

A vacant property registration ordinance should include the following elements:

- A clear definition of which properties and which parties must register;
- The registration requirements and procedures, including the information required of the owner or lienholder;
- The fee structure;
- The obligations of the owner, with respect to maintaining the property; and
- The penalties for failing to register in timely fashion.

► [Go to Tool 2 for a discussion of the effect of different fee structures on owner behavior](#)

Using the information from registration forms, the city should create a vacant property registry. The registry should be accessible on line, and should provide a means by which individuals can report unregistered vacant properties to the city.

Hundreds of cities, counties and towns in the United States have enacted VPROs.

► [Go to a directory of ordinances, with links to the individual ordinances](#)

► [Go to Tool 2: Motivating Owners to Use Properties](#)



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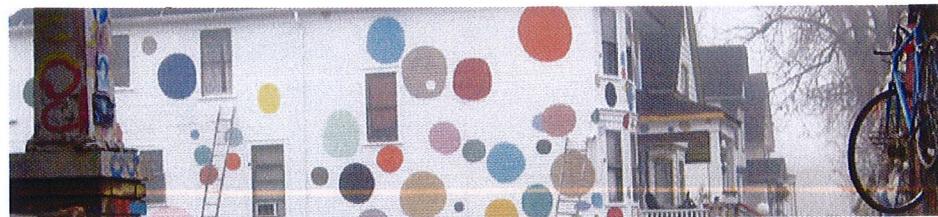
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Tool 2: Motivating Owners to Reuse Properties

While the purpose of a vacant property registration ordinance is to enable the city to track property owners, and to encourage minimum standards of maintenance for vacant properties, a city may want to craft a strategy – either within the VPRO or separately – to more actively encourage owners to restore their properties to productive use. This can be done through fee and tax structures or by creating the threat of public action. **These strategies rarely work except where it makes economic sense for the owner to restore the property.**

Fee structures

Cities may set high fees in their VPROs in order to motivate owners to rehabilitate their properties. Vacant property registration fees in California, for example, range from \$0 to over \$600. The effect of the fee can be enhanced by (1) waiving or deferring the fee for buildings scheduled for rehabilitation; and/or (2) rebating fees paid for the year (or two years) when a vacant building is restored and put back to use. Some cities have set graduated fee schedules: with every year that the building remains vacant and must be re-registered, the fee goes up. This practice was initiated in Wilmington, Delaware.

In addition to making sure that a fee can be legally justified on the basis of the city's costs, cities should evaluate the potential consequences of a high or escalating fee. Under adverse economic conditions, high fees could lead some owners who are paying taxes and at least minimally maintaining their properties to abandon them. Under these circumstances, the municipality should be willing to take responsibility for these properties.

A variation on this approach, where permitted by law, is to establish differential property tax rates for vacant properties. The District of Columbia taxes occupied residential property at \$0.85 per \$100 value, but vacant properties at \$5 per \$100 and blighted property at \$10 per \$100. They are part of a larger strategy, which includes exemptions from the higher rates under certain circumstances. These punitive tax rates may be effective in many parts of Washington DC, where the housing market is fairly healthy. In weaker market cities, however, they risk increasing tax delinquency rather than motivating property improvement.

Administrative action

Many owners would rather improve their properties themselves, rather than risk having the city or a non-profit do it and bill them for the cost, or risk losing the property. Under New Jersey law, cities can create **abandoned property lists**. Once they have done so, the law permits the city to take properties on the list through spot blight eminent domain, a powerful and speedy procedure under New Jersey law. In Newark, where they have used this process, they find that roughly one-third of all of the owners of vacant, abandoned properties rehabilitate them and put them back into use rather than risk having the city take the property.

When Baltimore initiated a concentrated vacant property receivership program in the Patterson Park neighborhood, they found that roughly half of the owners voluntarily improved their properties, in order to avoid the possibility of a receiver being appointed by the court for that purpose.

► [Go to tool 3: Vacant Property Receivership for more information](#)

The City of San Diego requires the owners of vacant, boarded structures to file a Statement of Intent with the city, including "a plan and time line for the lawful occupancy, rehabilitation or demolition of the boarded structure." Failure to carry out the terms of the statement of intent can result in significant financial penalties.

► [Go to Tool 3: Vacant Property Receivership](#)

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Lincoln, Nebraska



New ordinance address problem properties

New ordinance address problem properties

Posted: Jun 19, 2014 9:29 PM CDT
Updated: Jun 27, 2014 4:46 PM CDT

Posted By: Jenn Hatcher
jhatcher@klkntv.com

Mayor Chris Beutler today said passage of a new ordinance to address vacant, neglected residential buildings will continue the City's work to improve all neighborhoods. The proposed ordinance adds a registration requirement, fees and penalties to the process for dealing with problem properties.

This new ordinance will have its first reading at the City Council meeting Monday, July 14, and the public hearing is scheduled for Monday, July 21. The Mayor said it builds on successful ordinances previously adopted to address problem properties. Since 2009, the City has increased the fines for offenses, adopted the International Property Maintenance Code and created a process of performance-based inspections.

"Working with neighborhood associations, homeowners, Realtors and landlords, we have created new tools that protect property values and maintain our high quality of life," Beutler said. "The new processes have led to a vast majority of problem properties being repaired and maintained. But we have identified a need for stronger enforcement language to deal with a small pool of properties that continues to have a substantial negative impact on surrounding residents. These properties fail multiple inspections, have substantial deterioration, are repeatedly unsecured, are boarded up for over 90 days or are uninhabitable for more than two years."

Jon Carlson, manager of the City's Stronger, Safer Neighborhoods Association, said the number of properties in that category fluctuates from 50 to 100, and many have been sent to the Problem Resolution Team (PRT) multiple times. The PRT is a group of City and County agencies that deal with properties that have violations across multiple departments.

"As Co-Chair of the PRT, I've seen that the best solution for vacant neglected properties is often demolition or a change of ownership," said City Council member Doug Emery. "This new ordinance can help get these properties into the hands of new owners who will improve and maintain them or create a lot for a new home."

"A single vacant neglected property can really bring down an entire block by decreasing safety and property values," said Shawn Ryba with NeighborWorks Lincoln. "It's not just the next door neighbors who suffer. Realtors working to sell a home or landlords trying to rent an apartment also find their businesses severely impacted."

- more -

Problem Properties

June 19, 2014

Page Two

Ryba said addressing problem properties has been a top priority of the Lincoln Policy Network (LPN), a group of neighborhood residents, business and residential property owners, Realtors and non-profits. The LPN was formed to identify community issues, formulate solutions and implement plans to change City, County or State policies through new

legislation or the modification of existing laws or ordinances.

The proposed ordinance includes these provisions:

- The City Building and Safety Department can declare a vacant residential building as neglected when it crosses a series of violation thresholds, and the owner fails to respond.
- Once the property is declared neglected, the owner must register the building and pay a \$500 registration fee for each 90-day period the property remains neglected. Registration requires the listing of a registered agent and a timeline for improving, selling or demolishing the building.
- Owners who fail to register face a \$500 civil penalty. The penalty is imposed each 90-day period that the property remains unregistered or the fees unpaid.
- If an owner fails to register, the City can register the building and place a lien on the property for the cost of registration fees and civil penalties.
- If the liens build up and are unpaid without improvements to the property, the City could foreclose against the property and sell the property to a new owner who could demolish or repair the building.

"We will continue to work toward finding solutions that put the financial burden on those creating the problem," Beutler concluded. "Our message is clear: repair or remove these neglected buildings. If you cannot, then sell them so the private market can get them into the hands of owners who will."

A copy of the proposed ordinance is available at lincoln.ne.gov (keyword: safer).

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From: John F. Boies [mailto:jboies@lincoln.ne.gov]
Sent: Wednesday, December 16, 2015 5:14 PM
Subject: RE: Vacant Property Registration Lincoln, NE

The Neglected Building Registry that was recently passed by the City Council of Lincoln, NE is unique in a few ways. This is not the typical vacant building registry that requires all or even a class of buildings to be registered because they are vacant. This ordinance requires that the building be determined by the City to be neglected (after it meets the definitions) and then the owner is sent a notice. The notice allows the owner to either repair the property within 30 days or register it and pay the resulting fees for the registration. With this type of requirement, we do not make the registration available to anyone except the owner who has had their property declared neglected.

I hope that helps makes it clear to you why the registration form is not provided to banks, property management companies, or others who deal with properties that are vacant but have not been declared to be neglected. Our office would be repeatedly contacting individuals on improperly registered property.

Sincerely,

John Boies
Chief Housing Inspector
Building and Safety Department
Office (402)-441-6429
Fax(402)-441-8214

Chapter 21.09

REGISTRATION OF NEGLECTED BUILDINGS

Sections:

- 21.09.010 Purpose.**
- 21.09.020 Public Nuisance.**
- 21.09.030 Director of Building and Safety Responsible for Enforcement.**
- 21.09.040 Violation Not Exclusive.**
- 21.09.050 Inspection of Property.**
- 21.09.060 Definitions.**
- 21.09.070 Duty to Register Neglected Building.**
- 21.09.080 Registration Fee.**
- 21.09.090 Resident Agent.**
- 21.09.100 Registration Penalty; Lien on Property; Assessment Process.**
- 21.09.110 Procedures for Registration; Notice; Penalty.**
- 21.09.120 Reinspection.**
- 21.09.130 Removal from Registration List.**
- 21.09.140 Registration Non-transferable.**
- 21.09.150 Appeals to Housing Advisory and Appeals Board.**
- 21.09.160 Failure to Reimburse Registration Fees or Pay Civil Penalties.**
- 21.09.165 Collection and Distribution of Fees and Penalties.**
- 21.09.170 Criminal Violations; Penalties.**

21.09.010 Purpose.

Vacant and neglected buildings are the single biggest source of urban blight in both residential and non-residential neighborhoods. Owners who fail to maintain their properties create eyesores that lead to increased crime, declining property values, and the disappearance of legal and legitimate commercial activity in the area. It is the responsibility of property owners to prevent buildings from becoming a burden to the neighborhood and community and a threat to the public health, safety, and welfare.

Such buildings constitute a nuisance. The establishment and enforcement of a registration system to monitor such buildings and to develop a means to decrease the number of neglected buildings within the city is necessary to adequately protect the public health, safety, and welfare of the citizens of Lincoln. (Ord. 20058 §1; August 11, 2014).

21.09.020 Public Nuisance.

Neglected buildings shall constitute a public nuisance. (Ord. 20058 §2; August 11, 2014).

21.09.030 Director of Building and Safety Responsible for Enforcement.

The Director of the Department of Building and Safety or his or her designees are designated to administer and enforce this chapter. (Ord. 20058 §3; August 11, 2014).

21.09.040 Violation Not Exclusive.

Violations of this chapter are in addition to any other violations enumerated within the ordinances of the Lincoln Municipal Code. This chapter in no way limits the penalties, actions, or abatement procedures which may be taken by the City for a violation of this chapter which is also a violation of any other ordinance of the City of Lincoln or statute of the State of Nebraska. (Ord. 20058 §4; August 11, 2014).

21.09.050 Inspection of Property.

(a) All personnel of the City authorized to enforce this chapter are hereby authorized and directed to make complaint-initiated inspections to determine the condition of property located within the city or within three miles of the corporate limits of the city and outside of any other organized city or village, in order that he or she may perform his/her duty of safeguarding the welfare and safety of the general public and in order that he/she may ascertain that property as set forth in this title is maintained as required herein.

(b) Any officer or employee of the City charged with the enforcement of this title shall not, in the discharge of his/her duties, thereby render himself/herself liable personally. Any suit brought against an officer or employee of the City because of such act performed by him or her in the enforcement of any of the provisions of this title shall be defended by the City Law Department until the final termination of the proceedings therein. (Ord. 20058 §5; August 11, 2014).

21.09.060 Definitions.

For purposes of this chapter, the following definitions shall apply:

Boarded up shall mean that some or all of the building's doors or windows have been covered with plywood, wood, or metal sheeting, paneling, or other similar materials, for the purpose of preventing entry into the building by persons, animals, or the elements of weather.

Building shall mean a building, accessory structure, or other structure used or intended to support permanent or continuous occupancy or use for residential purposes.

Building and Safety shall mean the Department of Building and Safety for the City of Lincoln, Nebraska.

City shall mean the City of Lincoln, Nebraska.

Deterioration shall mean to weaken, disintegrate, corrode, rust or decay, and lose effectiveness. The lowering in quality of the condition or appearance of a building, structure or parts thereof characterized by holes, breaks, rot, crumbling, peeling, rusting, or any other evidence of physical decay or neglect or excessive use or lack of maintenance over a substantial or widespread area as opposed to a limited or concentrated area.

Director shall mean the Director of the Department of Building and Safety or his or her designee.

Dwelling shall mean any building or structure that contains one or more dwelling units used, intended or designed to be built, used, rented, leased, let, or hired out to be occupied for living purposes. This includes, but is not limited to, single family houses, duplexes, and other similar buildings or structures.

Dwelling unit shall mean a single unit, with one or more rooms, providing complete independent living facilities for one or more persons, including, but not limited to, permanent living, sleeping, eating, cooking, bathing, showering, toilet, and other sanitation facilities.

LMC shall mean the Lincoln Municipal Code, including, but not limited to, all related building, construction, fire, plumbing, electrical, mechanical, and property maintenance codes.

Neglected building shall mean an unoccupied dwelling wherein one or more of the following events have occurred:

- (a) Within the last six months, the property is the subject of two or more notices of violation of the provisions of Chapters 5.38, 8.22, 8.26, 8.46, or 21.05 of the LMC;
- (b) The dwelling is repeatedly unsecured for 30 days or more;
- (c) The dwelling has sustained significant fire, wind, or water damage and is uninhabitable and no visible signs of consistent efforts to repair, rehabilitate, demolish, or remove the building are evident within 90 days after the occurrence resulting in the damage described herein;
- (d) The dwelling has been declared a nuisance pursuant to Neb. Rev. Stat. §18-1722 or LMC Chapter 8.26;
- (e) The dwelling has been boarded up for a period of more than ninety (90) days;
- (f) The dwelling has been declared and placarded by Building and Safety as an unsafe structure pursuant to LMC Sections 21.05.160 or 21.05.190 for more than two years;
- (g) The dwelling has sustained substantial deterioration due to lack of maintenance and the owner has failed to comply with a previous notice to correct a violation of the LMC;
- (h) The owner has failed to appear and a warrant has been issued in the County Court of Lancaster County, Nebraska for a violation of Chapters 5.38, 8.22, 8.26, or 21.05 of the LMC regarding an unoccupied building or structure with violations in said chapters;
- (i) The owner has refused to accept service of notices of violations of Chapters 5.38, 8.22, 8.26, or 21.05 of the LMC, when proper service has been attempted.

A vacant dwelling shall not be deemed neglected if such dwelling is compliant with the LMC, except that water, electric, or other utilities have been disconnected at the request of the owner.

Occupancy shall mean the purpose for which a building or portion thereof is utilized or occupied.

Owner shall mean any person who is a holder of any legal or equitable interest in the premises, and alone or jointly or severally with others:

- (a) Has record legal title to any dwelling or dwelling unit with or without accompanying actual possession thereof; or
- (b) Has charge, care or control of any dwelling or dwelling unit and has an interest in a structure, or as personal representative, trustee, or guardian of the estate of the owner. This shall not include resident agents.

Person, as used in this chapter, shall mean any individual, firm, association, corporation, company, syndicate, partnership, or other legal entity, or a natural person.

Premises shall mean a lot, plot, or parcel of land including the neglected building located thereon.

Resident agent shall mean a person residing within Lancaster County, Nebraska, or a company or agency with a manager or agent who resides in Lancaster County, Nebraska, who is authorized to conduct transactions, lease property, collect rents, make or order repairs, order or oversee service to dwellings and dwelling units, or receive notices on behalf of the owner.

Unoccupied building shall mean a building that is unattended and is not actively used as a dwelling.

Unsecured shall mean that access to the building may be obtained through open, unlocked, broken, or missing doors or windows of such building in such a manner that access may be gained with little or no damage to any portion of the building. (Ord. 20058 §6; August 11, 2014).

21.09.070 Duty to Register Neglected Building.

(a) The owner of a neglected building shall be required, after written notification from Building and Safety, to register such neglected building with Building and Safety within thirty days of the date of the notice from Building and Safety. Written notification sent pursuant to Section 21.09.110(c) shall be deemed good service. If the owner is a non-resident of Lancaster County, Nebraska, such notice shall be sent by regular first class U. S. mail to the last known address of the owner and shall be deemed good service upon deposit with the United States Postal Service. Service on a resident agent shall be deemed good service on the owner.

(b) The registration shall include the following information:

(1) The correct legal description and address of the premises;
(2) The names, addresses, telephone numbers, and email addresses of the owner or owners;

(3) The names, addresses, and telephone numbers of all known lienholders and all other parties with a legal or equitable interest in the building;

(4) The name, address, telephone number, and email address of the resident agent designated to act on behalf of the owner, except if the owner will be the resident agent;

(5) The period of time the building is reasonably expected to remain unoccupied under the circumstances;

(6) A plan and timetable to bring the building into compliance with Chapters 5.38, 8.22, 8.26, 8.46, or 21.05 of the LMC. Building plans are not necessary for the registration; and

(7) If the owner does not intend to sell, repair, or rehabilitate the building(s), then the owner shall provide a plan for removal or demolition of all buildings and structures, including a reasonable timeline for completion.

(c) A neglected building shall not be deemed registered until all requirements of registration have been satisfied to a reasonable degree as determined by the Director. The Director shall have the authority to deny a registration for the following reasons:

(1) The information supplied by the owner is incomplete, false, fictitious, or inaccurate;
(2) The timetable for bringing the building into compliance is unreasonably long;
(3) The plan for repairs and bringing the building(s) into compliance does not address or correct the violations or deficiencies identified by Building and Safety;

(4) More than two years have passed since the first notice of registration has been served or delivered to the owner or resident agent.

(d) In the event a registration is denied, the Director shall refer the matter to the City Attorney for consideration of further action. The City Attorney may take any reasonable action necessary to enforce this chapter.

(e) In addition to any other remedy permitted in this chapter, in the event an owner fails to timely register a neglected building as required herein, the City may register the building and the registration fees, all penalties, and other consequences that may or shall apply to the owner of the premises due to the owner's failure to register shall be equally enforceable when the building is registered by the City. In the event the City registers a neglected building, such registration shall only require the information set forth in subsections 21.09.070(b)(1), (b)(2) and (b)(3) herein. Notice of such registration by the City shall be sent to the owner and resident agent in the same manner as set forth in Section 21.09.110.

(f) A copy of the notice under Section 21.09.070(a) shall be recorded by the Director in the records of the Register of Deeds for Lancaster County, Nebraska and indexed against the premises.

(g) The owner of any dwelling that has been placarded as an unsafe structure for 21 months or more as of the date of passage of this section shall have 90 days from said date of passage to correct violations and otherwise bring the building(s) into compliance with the LMC.

(h) The Director shall maintain a registration list identifying all properties currently registered with Building and Safety and describing all actions taken with respect to each registered building.

(i) Each registration shall expire at the end of 90 days unless removed from the registration list. If the building has not been removed from the registration list at the expiration of a registration herein, the owner or City shall re-register the building pursuant to this section. (Ord. 20058 §7; August 11, 2014).

21.09.080 Registration Fee.

A registration fee of \$500.00 per neglected building shall be collected, at the time of registration, by Building and Safety. In the event the City registers or re-registers a neglected building, the registration fee shall be paid by the City and shall be a cost for which owner is liable and shall become a lien on the premises as set forth in Section 21.09.100. Accrual of reimbursable registration fees shall be separate from and in addition to any civil penalties permitted in this chapter. The process for accounting for expenses and assessing a lien shall be pursuant to Section 21.05.100. Once registered, a new fee of \$500.00 shall be due and payable for each additional 90-day period thereafter, or portion thereof, as though registered for the first time, until the building is removed from the list or such fee is reduced or waived by the Director. Fees for each additional 90-day period shall become a lien on the premises as set forth in Section 21.09.100. (Ord. 20058 §8; August 11, 2014).

21.09.090 Resident Agent.

(a) The owner of any neglected building which is subject to the registration requirements of Section 21.09.070 shall designate a resident agent for the building. Any owner who lives within Lancaster County, Nebraska may designate himself or herself as the resident agent.

(b) The owner of a neglected building who lives outside of Lancaster County shall name a resident agent who lives within or whose place of business is within Lancaster County, Nebraska.

(c) The designation of resident agent shall constitute an authorization by the owner for the resident agent to act on behalf of the owner with regard to all requirements under this chapter to accept all notices, including all notices pursuant to the LMC, all notices of proposed abatements and all court orders, compliance orders, and administrative orders. Except as described herein, the owner shall be solely responsible for the actions or inactions of the resident agent and may incur criminal and/or civil liability for such actions or inactions of the resident agent. The resident agent shall be responsible for and may incur criminal and/or civil liability to the City pursuant to this chapter only in the event of knowingly providing false or inaccurate information to the City in applications, plans, or other documents provided to the City under this chapter.

(d) The owner's designation of a resident agent shall not relieve the owner of any obligation to comply with the provisions of this chapter or any other provisions of the LMC or laws of the State of Nebraska.

(e) Notices required by this section sent pursuant to Section 21.09.110(c) shall be deemed good service. (Ord. 20058 §9; August 11, 2014).

21.09.100 Registration Penalty; Lien on Property; Assessment Process.

(a) In addition to reimbursing the City for all registration fees paid by the City, any owner who fails to timely register a neglected building, as required by this chapter, shall be liable for a civil penalty not to exceed \$500.00 as determined by the Director.

(b) Each civil penalty herein shall automatically renew for an additional 90 days unless the neglected building is removed from the registration list as set forth in this chapter with new fees assessed as set forth in Section 21.09.080.

(c) If a building continues to meet the definition of a neglected building for a period of more than 90 calendar days after notice is given, or has been registered, and the owner fails or refuses to register or re-register the neglected building after the initial registration expires, or if the City has not been reimbursed for any portion of registration fees paid by the City, or an assessed civil penalty is not paid, the Director may continue to assess a penalty not to exceed \$500.00 for each 90- calendar-day period, or portion thereof, the neglected building continues to be unregistered or the registration fees or civil penalties are not paid. At no time shall the amount of unreimbursed registration fees, civil penalties, and assessments exceed \$4,000.00 per building in a calendar year, but shall be cumulative in following years. The Director may reduce, waive, or stay the imposition of a civil penalty herein for good cause shown by the owner in efforts to comply with this section or an approved plan.

(d) All registration fee reimbursements and civil penalties assessed shall be payable directly to Building and Safety.

(e) The owner of the property at the time any notice under Section 21.09.070 is issued shall be personally liable for all unreimbursed registration fees and unpaid civil penalties and any unreimbursed fees and penalties shall also be a lien on any real property upon which the neglected building is wholly or partially located, from the date of assessment of fees and civil penalties. Interest as allowed by applicable Nebraska law shall also accrue unless reduced, waived or stayed by the Director.

(f) The Director shall develop policies and procedures for the implementation of this penalty.

(g) The Director shall keep an itemized account of the expenses incurred by the City pursuant to this section. For assessment of unpaid fees and civil penalties hereunder, the Director shall prepare and file with the City Clerk a report specifying the actions taken, the itemized and total cost of the actions, a description of the real property upon which the building or structure is or was located, and the names and addresses of the owners of the property.

(h) Upon receipt of said report, the City Clerk shall present it to the City Council for consideration. The City Council shall fix a time, date, and place for hearing said report and any protests or objections thereto. The City Clerk shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in the City, and served by regular first class U.S. mail, postage prepaid, addressed to the owner of said property as the owner's name and address appears on the last equalized assessment roll of the county, if such so appears, or as known to the clerk. Deposit of the notice with the United States Postal Service shall be deemed good service. Such notice shall be given at least ten days prior to the date set for the hearing and shall specify the day, hour, and place the Council will hear and pass upon the Director's report, together with any objection or protests which may be made thereto, and assess such property with such cost. Such assessment shall be a lien upon such property from the date of assessment, shall become delinquent thirty days after the date of assessment, and shall draw interest from said date until paid at the same rate as provided by law for delinquent general real estate taxes. Foreclosure on a lien shall be pursuant to Nebraska law. (Ord. 20058 §10; August 11, 2014).

21.09.110 Procedures for Registration; Notice; Penalty.

(a) Whenever the owner of a neglected building fails to timely register or re-register such building or if the City registers or re-registers a neglected building, a Notice of Registration Penalty shall be issued to the owner within 10 days after the date for registration or re-registration.

(b) A separate Notice of Registration Penalty shall be issued for each subsequent registration fee or civil penalty that may be assessed.

(c) The Notice of Registration Penalty shall be sent to the owner or resident agent by regular first class U.S. mail or personal service and shall be deemed good service upon deposit with the United States Postal Service, if first class mail is used. Service upon the resident agent shall be deemed to be good service upon the owner.

(d) All Notices of Registration Penalty shall be recorded in the offices of the City Clerk and the Register of Deeds for Lancaster County, Nebraska and indexed against the premises. (Ord. 20058 §11; August 11, 2014).

21.09.120 Reinspection.

The Director may periodically reinspect neglected buildings to ensure compliance with this chapter and all applicable court or administrative orders. (Ord. 20058 §12; August 11, 2014).

21.09.130 Removal from Registration List.

(a) A neglected building shall be removed from the registration list and requirements of this chapter by the Director upon such building meeting one or more of the following:

(1) Achieving compliance with all health and safety standards set forth in Chapters 8.22, 8.26, 8.46, and 21.05 of the LMC and all registration fees and penalties have been paid in full;

(2) Removal or demolition by the owner;

(3) Removal or demolition by the City of Lincoln;

(4) Discharge of assessed registration fees and penalties and/or liens upon the property through a foreclosure or other legal process; or

(5) The building is determined to be a dangerous building under LMC Chapter 21.05.

(b) Removal from the registration list shall not result in the reduction, waiver, discharge, release, or other modifications to fees and penalties assessed to the premises except as may be ordered by a court of law with competent jurisdiction or as may be modified by the Director herein.

(c) Upon compliance with the requirements of this chapter and in the event a Notice of Registration Penalty has been recorded with the Register of Deeds for Lancaster County, Nebraska, the Director, within 30 days of the building becoming compliant with the LMC, shall record a Notice of Compliance with the Register of Deeds stating that, as of the date of the Notice of Compliance, the property complies with the LMC.

(d) The Director may remove a neglected building from the list in the event the Director determines that the interests of the City and the purpose of this ordinance are best served by removal. Such a finding or determination shall be in writing and approved by the City Law Department before becoming effective. All such findings or determinations shall be recorded with the City Clerk. (Ord. 20058 §13; August 11, 2014).

21.09.140 Registration Non-transferable.

If the neglected building is required to be registered pursuant to this chapter, a new registration shall be required for each change of ownership of the building. The seller of a neglected building, which is registered with Building and Safety pursuant to this chapter, shall notify Building

and Safety within ten business days after the sale or other transfer or conveyance of any registered property. The Director may waive the requirement of a registration following a conveyance if there is sufficient evidence or reason to believe that action will be taken shortly after the sale to bring the building back into compliance with the LMC or remove or demolish the neglected building. (Ord. 20058 §14; August 11, 2014).

21.09.150 Appeals to Housing Advisory and Appeals Board.

- (a) Appeals from any decision or action of the Director of Building and Safety related to this chapter may be made by requesting a hearing before the Housing Advisory and Appeals Board.
- (b) The appeal process and time for appeal shall be governed by LMC Section 21.05.210.
- (c) Enforcement of any decision or action of the Director shall be stayed in the event a timely appeal is requested pursuant to LMC Section 21.05.210 and shall continue until the administrative appeal process therein is completed. (Ord. 20058 §15; August 11, 2014).

21.09.160 Failure to Reimburse Registration Fees or Pay Civil Penalties.

In the event that any person fails to reimburse the City for registration fees or pay civil penalties assessed herein, the City Law Department is authorized to seek the recovery of all such registration fees and civil penalties by any means allowed by law. In the event the City Law Department intends to foreclose on any liens assessed under Section 21.09.100, notice shall be given to the owner, pursuant to Section 21.09.110, at least 30 days prior to commencement of the foreclosure. This notice provision is waived in the event that such notice would result in the City Law Department being unable to prosecute such foreclosure. (Ord. 20058 §16; August 11, 2014).

21.09.165 Collection and Distribution of Fees and Penalties.

Any collection or reimbursement of fees and costs incurred due to the registration of a neglected building by the City shall be deposited in the General Fund and appropriated to the Problem Resolution Team line item. Any penalties collected herein shall be deposited in the General Fund and distributed pursuant to applicable law. (Ord. 20141 §1; January 26, 2015).

21.09.170 Criminal Violations; Penalties.

Any person upon whom a duty is placed by the provisions of this title who shall fail, neglect, or refuse to perform such duty, or who shall violate a provision of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed \$500.00 or be imprisoned in the county jail for a period not to exceed six months, or both, except that each person so convicted shall be fined in a sum of not less than \$200.00 for the first offense, not less than \$300.00 for a second offense, and not less than \$400.00 for the third offense and each offense thereafter. The penalty herein provided shall be cumulative with and in addition to the revocation, cancellation, or forfeiture of any license, permit, or right elsewhere provided for or as provided by law. Each day that a violation of this title continues shall constitute a separate and distinct offense and shall be punishable as such. (Ord. 20058 §17; August 11, 2014).

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 20 of the Lincoln Municipal Code, the
2 Building Code, by adding a new Chapter 20.02, entitled Neglected Building Registration, to
3 require registration of neglected, deteriorated and/or abandoned buildings, to require the filing of
4 plans for restoration or demolition of abandoned buildings, and to establish penalties for
5 violations thereof.

6 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

7 Section 1. That Title 20 of the Lincoln Municipal Code be amended by adding a
8 new section numbered 20.02.010 to read as follows:

9 **20.02.010 Purpose.**

10 Neglected buildings are a major cause and source of blight in both residential and non-
11 residential neighborhoods, especially when the owner of the building fails to actively maintain
12 and manage the building to ensure that it does not become a liability to the neighborhood.
13 Neglected buildings discourage economic development and negatively impact property values. It
14 is the responsibility of property owners to prevent buildings from becoming a detriment to the
15 neighborhood and community and a threat to the public health, safety, and welfare.

16 Neglected buildings constitute a nuisance, and to adequately protect public health, safety
17 and welfare, the establishment and enforcement of a registration system to monitor such
18 buildings and to develop a means to decrease the number of neglected buildings within the city is
19 necessary. Therefore, the City Council authorizes the Director to administer and enforce this

1 chapter within the city and within three miles of the corporate limits of the city and outside of
2 any other organized city or village.

3 Section 2. That Title 20 of the Lincoln Municipal Code be amended by adding a
4 new section numbered 20.02.020 to read as follows:

5 **20.02.020 Public Nuisance.**

6 Neglected buildings shall constitute a public nuisance.

7 Section 3. That Title 20 of the Lincoln Municipal Code be amended by adding a
8 new section numbered 20.02.030 to read as follows:

9 **20.02.030 Enforcement of Chapter; Applicability of Chapter.**

10 The Director of the Department of Building and Safety or his or her authorized
11 representative is designated to administer and enforce this chapter.

12 Section 4. That Title 20 of the Lincoln Municipal Code be amended by adding a
13 new section numbered 20.02.040 to read as follows:

14 **20.02.040 Violation Not Exclusive.**

15 Violations of this chapter are in addition to any other violations enumerated within the
16 Lincoln Municipal Code. This chapter in no way limits the enforcement of, penalties, actions or
17 abatement procedures which may be taken by the City for any action or inaction which is also a
18 violation of any section of the Lincoln Municipal Code.

19 Section 5. That Title 20 of the Lincoln Municipal Code be amended by adding a
20 new section numbered 20.02.050 to read as follows:

21 **20.02.050 Inspection of Buildings.**

22 All officers authorized to enforce this chapter are hereby authorized and directed to make
23 inspections to determine the condition of buildings as may be required by this chapter for the

1 purpose of safeguarding the welfare and safety of the general public and to ascertain that
2 buildings as set forth in this chapter are properly maintained.

3 Section 6. That Title 20 of the Lincoln Municipal Code be amended by adding a
4 new section numbered 20.02.060 to read as follows:

5 **20.02.060 Definitions.**

6 **Building** shall mean a building or structure or any part thereof used or intended for
7 supporting or sheltering any use or occupancy for residential, public, institutional, business,
8 industrial or storage purposes.

9 **City** shall mean the City of Lincoln.

10 **Deterioration** shall mean a lowering in quality of the condition or appearance of a
11 building, structure or parts thereof characterized by holes, breaks, rot, crumbling, cracking,
12 peeling, rusting or any other evidence of physical decay or neglect or excessive use or lack of
13 maintenance over a substantial or widespread area as opposed to a limited or concentrated area.

14 **Director** shall mean the Director of the Department of Building and Safety of the City of
15 Lincoln or his or her authorized representative.

16 **Neglected building** shall mean a neglected occupied building and a neglected
17 unoccupied building.

18 **Neglected occupied building** shall mean an occupied building in which one or more of
19 the following events have occurred within the preceding eighteen months:

20 (a) The building is the subject of two or more notices of violation of the provisions of
21 this chapter or Chapters 20.04 and/or 21.01 of the Lincoln Municipal Code, and the owner has
22 failed to demonstrate that due diligence is being exercised in abating the violation;

1 (b) The owner has failed to appear and a warrant has been issued in county court for a
2 violation of this chapter or Chapters 20.04 and/or 21.01 of the Lincoln Municipal Code.

3 (c) The owner has refused to accept service of notices of violations of the provisions
4 of this chapter or Chapters 20.04 and/or 21.01 of the Lincoln Municipal Code.

5 (d) The building has sustained deterioration.

6 **Neglected unoccupied building** shall mean an unoccupied building (whether or not
7 boarded) in which one or more of the following events have occurred within the preceding
8 eighteen months:

9 (a) The property is the subject of two or more notices of violation of the provisions of
10 this chapter or Chapters 20.04 and/or 21.01 of the Lincoln Municipal Code, and the owner has
11 failed to demonstrate that due diligence is being exercised in abating the violation;

12 (b) The building has been boarded for a period of more than ninety days.

13 (c) The building has sustained deterioration.

14 (d) The owner has failed to appear and a warrant has been issued in county court for a
15 violation of this chapter or Chapters 20.04 and/or 21.01 of the Lincoln Municipal Code; or

16 (e) The owner has refused to accept service of notices of violations of this chapter or
17 Chapters 20.04 and/or 21.01 of the Lincoln Municipal Code.

18 **Occupancy** the purpose for which a building or portion thereof is utilized or occupied.

19 **Operator** shall mean any person who has charge, care or control of a building, or part
20 thereof, in which dwelling units or rooming units are let.

21 **Owner** shall mean any person who is a holder of any legal or equitable interest in the
22 premises, and alone or jointly or severally with others.

1 (a) Has record legal title to any dwelling or dwelling unit with or without
2 accompanying actual possession thereof; or
3 (b) Has charge, care or control of any dwelling or dwelling unit which may include
4 all persons who have an interest in a structure and any who are in possession or control thereof
5 as owner or agent of the owner, contract purchaser, or as executor, executrix, administrator,
6 administratrix, trustee or guardian of the estate of the owner. Any person thus representing the
7 actual owner shall be bound to comply with the provisions of this chapter, and the rules and
8 regulations adopted pursuant hereto, to the same extent as if he or she were the owner.

9 In the absence of substantial evidence to the contrary, records of the County Clerk's
10 Office, Register of Deeds, certified copies of court records or judgments of any court, copies of
11 lease agreements, contracts for deed, mortgages, tax records, rental agreements and other
12 financial documents related to the property shall be conclusive evidence of the ownership of the
13 property.

14 **Person**, as used in this chapter, shall mean any individual, firm, association, company,
15 syndicate, partnership, or other legal entity, or a natural person for the purposes of the occupancy
16 standards hereof.

17 **Premises** shall mean a lot, plot or parcel of land including the buildings and structures
18 located thereon.

19 **Resident Agent** shall mean a natural person residing within the City of Lincoln, or a
20 company or agency with a manager or agent who resides in the City of Lincoln who is
21 authorized to make or order repairs, to order or oversee service to a building or buildings, and to
22 receive notices on behalf of the owner.

1 **Unoccupied building** shall mean a building that is unattended and is not actively used as
2 a place of residence or business, or is frequently open or unsecured so that unauthorized
3 admittance may be gained without damaging any portion of the property.

4 **Unsecured** shall mean that access to the building may be obtained through open,
5 unlocked, broken or missing doors or windows of such building.

6 Section 7. That Title 20 of the Lincoln Municipal Code be amended by adding a
7 new section numbered 20.02.070 to read as follows:

8 **20.02.070 Duty to Register Neglected Building.**

9 (a) The owner or operator of a neglected building shall be required, after written
10 notification from the Director, to file a registration of such neglected building with the
11 Department of Building and Safety within thirty (30) calendar days of the date of notification
12 from the Director. Such notification shall be served on the owner or resident agent by personal
13 service or by certified mail, return receipt requested. If the owner is a non-resident, such notice
14 shall be sent by certified mail, return receipt requested, to the last known address of the owner.
15 If no address is known to the Director or if attempts to serve notification by personal service or
16 certified mail are unsuccessful, then notice shall be served by posting the notice on the property.
17 The date of said posting shall then be considered the date of notification from the Director.

18 (b) The registration shall include the following information:

19 (1) A description of the premises, including correct street address and
20 occupancy, as defined in Section 20.02.060;

21 (2) The names and addresses of the owner or owners;

22 (3) The names and addresses of all known lienholders and all other parties
23 with a legal or equitable ownership interest in the building;

(4) The name and address of the resident agent designated to act on the behalf of the owner to accept legal processes and notices and to authorize repairs as required, accompanied by a notarized statement signed by the resident agent consenting to the designation; and

(5) If such building is unoccupied, the period of time the building is expected to remain unoccupied and/or a plan and timetable to comply with applicable city codes.

Section 8. That Title 20 of the Lincoln Municipal Code be amended by adding a new section numbered 20.02.080 to read as follows:

20.02.080 Registration Fee.

A registration fee of \$25.00 per building shall be collected, at the time of application, by the Director.

Section 9. That Title 20 of the Lincoln Municipal Code be amended by adding a new section numbered 20.02.090 to read as follows:

20.02.090 Resident Agent.

(a) The owner or operator of any neglected building, which is subject to the registration requirements of Section 20.02.070 shall designate a resident agent for the building.
The owner or operator shall obtain from the resident agent a notarized statement, accepting the designation. Any owner who lives within the City of Lincoln may designate himself or herself as the resident agent.

(b) The owner of any neglected building who lives outside of the City of Lincoln shall name a resident agent who lives within or whose place of business is within the City of Lincoln.

1 (c) The designation of resident agent shall constitute an authorization by the owner to
2 act on behalf of the owner with regard to all requirements under this chapter including, but not
3 limited to, acceptance of all notices, including all notices pursuant to the Lincoln Municipal
4 Code, all notices of proposed abatements and all compliance orders and administrative orders.

5 (d) The owner's designation of a resident agent shall not relieve the owner or
6 operator of any obligation to comply with the provisions of this chapter or any other provisions
7 of this code.

8 Section 10. That Title 20 of the Lincoln Municipal Code be amended by adding a
9 new section numbered 20.02.100 to read as follows:

10 **20.02.100 Reinspection.**

11 The Director may periodically reinspect neglected buildings to ensure compliance with
12 the provisions of this chapter and all applicable court and administrative orders.

13 Section 11. That Title 20 of the Lincoln Municipal Code be amended by adding a
14 new section numbered 20.02.110 to read as follows:

15 **20.02.110 Removal from Registration.**

16 A neglected building shall be removed from the registration requirements of this chapter
17 by the Director upon such building:

18 (a) Being brought into compliance with all applicable standards set forth in the
19 Lincoln Municipal Code.

20 (b) Being removed or demolished;

21 Section 12. That Title 20 of the Lincoln Municipal Code be amended by adding a
22 new section numbered 20.02.120 to read as follows:

1 **20.02.120 Registration Nontransferable.**

2 If the neglected building is required to be registered pursuant to Section 20.02.070, a new
3 registration shall be required for each change of ownership of the building. The owner or
4 operator of a neglected building which is registered with the Department of Building and Safety
5 pursuant to this chapter, shall notify the Department of Building and Safety within ten (10)
6 business days of the sale or transfer of any registered property. The notice shall contain the name
7 and address of each purchaser of the registered neglected building sold by the owner or operator.

8 Section 13. That Title 20 of the Lincoln Municipal Code be amended by adding a
9 new section numbered 20.02.130 to read as follows:

10 **20.02.130 Duty to File Statement of Intent for Neglected Buildings.**

11 (a) The Director shall create and make available a form entitled "Statement of Intent"
12 to be completed by the owner, operator or resident agent of any neglected unoccupied building
13 required to be registered pursuant to this chapter.

14 (b) The owner, operator or resident agent of a neglected unoccupied building shall
15 complete the information required on the standard Statement of Intent and submit the Statement
16 to the Department of Building and Safety within thirty (30) calendar days of the date the Director
17 orders that the structure be registered.

18 (c) The Director shall determine whether a submitted Statement of Intent is complete,
19 and if not shall return said Statement to the owner for more complete information.

20 (d) When a submitted Statement of Intent has been returned by the Director for lack
21 of information, the owner or registered agent shall, within ten business days, correct and
22 resubmit the Statement of Intent.

23 (e) The Statement of Intent shall include information as to:

(1) expected period that the building will remain unoccupied;

(2) a schedule for maintenance during the period that the building is unoccupied, including, but not limited to, maintenance to be performed, frequency of maintenance to be performed, person responsible for performing each maintenance item, and maintenance person contact information; and

(3) a reasonable plan and time line for the lawful occupancy, rehabilitation or demolition of the building; and

(4) any additional information required by the Director.

(f) The provisions of this section shall not be applicable to neglected occupied buildings.

Section 14. That Title 20 of the Lincoln Municipal Code be amended by adding a new section numbered 20.02.140 to read as follows:

20.02.140 Violations; Penalties.

Any person who shall violate any provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum not to exceed \$500.00, or be imprisoned in the county jail for a period not to exceed six months, or by both such fine and imprisonment, except that each person so convicted shall be fined in a sum of not less than \$200.00 for the first offense, not less than \$250.00 for the second offense, and not less than \$300.00 for the third offense and each offense thereafter. Each day such violation is committed or permitted to continue shall constitute a separate violation and shall be punishable as such hereunder.

1 Section 16. That this ordinance shall take effect and be in force from and after its
2 passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ____ day of _____, 2007:

Mayor

Wilmington, Delaware

Topic:

ABANDONMENT OF PROPERTY; MUNICIPAL ORDINANCES; BUILDINGS (GENERAL);
REAL PROPERTY; MUNICIPALITIES;

Location:

PROPERTY;



January 25, 2007

2007-R-0141

WILMINGTON VACANT PROPERTY ORDINANCE

By: Kevin E. McCarthy, Principal Analyst

You asked for a summary of a Wilmington, Delaware, ordinance that requires owners of property that has been vacant for more than one year to pay a registration fee to the city. You also wanted to know whether municipalities in Connecticut could adopt a similar ordinance.

SUMMARY

The ordinance requires owners of buildings that have been vacant for more than 45 days to register with the city. It requires owners of buildings that have been vacant for one year or more to pay an annual registration fee, which increases with the length of time the building has been vacant. It provides a one-year fee waiver (two years in the case of building owned by a non-profit organization) if the owner demonstrates that he is rehabilitating the building or trying to sell or lease it.

It does not appear that current Connecticut law allows municipalities to adopt similar ordinances. But, municipalities can use several mechanisms to address vacant buildings that are blighted or considered nuisances.

WILMINGTON VACANT BUILDING ORDINANCE

The ordinance (§ 125.0 of the Wilmington municipal code, attached) requires the owners of all vacant buildings to register with the city's Department of Licenses and Inspection. The requirement applies to (1) residential buildings that contain one or more units that have been vacant for more than 45 days and (2) non-residential

buildings that have been vacant for more than 45 days. A building is considered vacant if there is no one there who lawfully lives in the building or conducts a lawfully licensed business there. The requirement applies whether the building is open (e.g., has broken windows) or secure. But it does not apply to buildings owned by federal, state, or city agencies.

The registration must list the name and address of the building's owners. The registration form also must include a person who will serve as a contact in case of an emergency and as agent for service of process and other notices. A property owner can file one registration for all of his vacant buildings.

If the property has been vacant for one or more, the owner must pay an annual registration fee that increases with the amount of time the building has been vacant. The registration fee is:

1. \$500 for buildings that have been vacant for one to two years;
2. \$1,000 for buildings that have been vacant for two to three years;
3. \$2,000 for buildings that have been vacant for three to five years;
4. \$3,500 for buildings that have been vacant for five to ten years; and
5. \$5,000 for buildings that have been vacant for ten years.

The fee increases by \$500 for each year beyond ten that the building has been vacant.

The city can grant the building owner a one-year fee waiver if he:

1. demonstrates that he is demolishing, rehabilitating, or repairing the building and the amount of time that this will take; or
2. shows that he is actively attempting to sell or lease the property.

In the case of a building owned by a non-profit (501c) organization, the waiver is for two years.

According to the ordinance, the purposes of the registration and fee requirements are to:

1. help the city protect public health, safety, and welfare;
2. monitor the number of vacant buildings, particularly in the downtown area;
3. assess the effects of vacant buildings on nearby properties, particularly with regard to fire hazards and illegal occupancy by transients; and
4. promote efforts to rehabilitate the vacant buildings.

ADOPTING SIMILAR ORDINANCES IN CONNECTICUT

It does not appear that current Connecticut law allows municipalities to adopt ordinances similar to Wilmington's. Municipalities only have those powers granted to them by statute or special act, or that are implied as necessary to carry out expressly granted powers. The law allows municipalities to deal with problems often associated with vacant property.

For example, CGS § 7-147 allows municipalities to adopt ordinances to (1) define, prohibit, and abate nuisances and (2) prevent housing blight. The nuisance ordinances can allow the municipality to bill the owner of properties that are nuisances for the abatement of the nuisance. The blight ordinances can require owners to maintain their property and can impose fine of up to \$100 per day that a violation continues. However, a vacant building is not necessarily a nuisance or blighted. Moreover, it is not clear that a municipality can impose a fee on building that is vacant, as distinct from imposing fines on blighted buildings or recovering its costs in abating nuisances.

OLR Report [2000-R-0567](#) describes several mechanism municipalities can use in addressing blighted property, including the creation of neighborhood revitalization zones and urban homesteading programs. OLR Reports [2003-R-0771](#) and [2002-R-0255](#) discuss blight ordinances, including ordinances in Farmington and Middletown, which specifically address vacant buildings.

KM:dw

WILMINGTON, DELAWARE

- **CHAPTER 1 SCOPE AND ADMINISTRATION** is amended by adding new Section 119 and shall read as follows:

Section 119.0. Authorizations of improvements to exteriors of vacant buildings or structures; procedures; liens for the costs incurred.

(a)

Authorization. The Department of Licenses and Inspections is authorized to initiate the making of improvements to the exteriors of vacant buildings or structures in accordance with this section and pursuant to the provisions of 25 Del. C. ch. 29 (§ 2901 et seq.) and 25 Del. C. ch. 46 (§ 4601 et seq.).

1.

Eligible buildings or structures. If the owner has failed to rehabilitate or demolish:

(1)

A building that is vacant or abandoned and deemed to be unsafe, or

(2)

Any other building or structure that is vacant and amendable to rehabilitation if made secure, the commissioner of licenses and inspections may recommend that exterior improvements be made or caused to be made to such building or structure so as to render the building or structure safe and secure and to prevent further structural damage from rain and other natural causes, and that a lien be duly recorded in order that the city may recover the costs incurred by public expenditure for the same.

2.

Types of improvements. Exterior improvements, authorized herein, may include, but are not limited to: Repairs to or replacement of any of the structural components of such buildings or structures, sidewalks in the right-of-way or on the lot on which the building or structure is located, steps, porches, railings, columns, windows, doors, exterior painting, brick pointing and roofing, and any other repairs or replacements deemed appropriate to protect and secure the structural integrity of the building or structure and to prevent further damage that would render the building or structure unsafe. The costs incurred by the city for any such improvements shall be referred to as "exterior improvement costs." Such exterior improvement costs incurred by the city shall be recorded by lien in accordance with the provisions of 25 Del. C. ch. 46 (§ 4601 et seq.).

3.

Approval and certification of improvements to be made. The commissioner of licenses and inspections, his duly authorized designee, the director of real estate and housing and the director of planning, or the duly authorized designee of each of the same, shall by majority approval of a written authorization certify that specific exterior improvements shall be made to a building or structure, identified by street address and tax parcel number, in accordance with this subsection. Such written authorization shall be forwarded to the procurement and records division and to the finance director with specifications prepared for the particular improvements authorized to be made and for no other improvements. In an emergency affecting the public safety as determined by the commissioner of licenses and inspections or his designee, the rendering of exterior improvements to secure the structure may be expedited in lieu of the requirements of this certification subsection.

4.

Notice to owner. When exterior improvements have been authorized as aforesaid and specifications for the same have been prepared, the department of licenses and

WILMINGTON, DELAWARE

inspections shall provide notice to the record owner or owners of the subject building or structure and to any record lien holders that such exterior improvements will be undertaken and the date of commencement of the same. For purposes of this subsection, the mailing of a certified letter, return receipt requested, at least 30 days prior to the commencement of the exterior improvements, to the last known address of the record owner, owners or lien holders and notifying same of the address of the property to be improved, the tax parcel number, the condition of the property and the legal right of the city to obtain a judgment against the owner and a lien against the property after completion of the exterior improvements, shall be deemed to be sufficient notice.

(b)

Costs incurred as debt owing to city. Whatever expenses are incurred in relation to authorized exterior improvements pursuant to this subsection shall be paid by the city treasurer out of monies in the treasury and the owner or owners shall be jointly and severally liable to the city for the full amount so expended. Whenever exterior improvement costs have been incurred as aforesaid, the expenditure of public funds for exterior improvements to any vacant or abandoned building deemed to be unsafe or any other vacant building or structure, following notice to the owners, being the costs so incurred, with legal interest thereon from the date of expenditure, shall be reimbursed to the city, on demand, by the person or persons who were the owner or owners of such building or structure at the time such work of exterior improvement commenced. The city may maintain an action of law in debt or assumpsit against the owner or owners to recover the sums of money so expended, plus lawful interest and cost. When any person is found guilty, whether by trial or admission, of violating any provision of sections 119.1, or 119.5, or 119.6, or any combination of the same, in any instance in which such person, at the time of sentencing for such violation, also has not reimbursed the city for the costs incurred by the city in making or causing to be made any exterior improvements, pursuant to this subsection, to any building or structure regarding which such person or persons have been found guilty, as provided, the municipal court shall order such person or persons to make full restitution to the city for such exterior improvement costs in addition to and not in lieu of any fines which the court may impose.

(c)

Entering of lien. When the city expends public funds for the purpose of exterior improvements to any vacant or abandoned building or structure deemed to be unsafe or any other vacant building or structure within the city, after such notice as aforesaid, the city may enter a lien for the amount so expended, with interest accrued thereon, on the lands and premises on which such work of exterior improvements was performed by means of the department of finance and the city solicitor forwarding directions to the prothonotary for New Castle County for the entering of such exterior improvement liens in a docket for the same.

(d)

Satisfaction. When the department of finance and the city solicitor have determined the exterior improvement costs and interest, the entering of the lien shall be done by forwarding to the prothonotary the information as aforesaid. Whenever any such lien is satisfied by payment, the department of finance and the city solicitor may so advise the prothonotary in order that there shall be entered in the prothonotary's records the date of final payment and the words 'satisfied in full' pursuant to 25 Del. C. § 4603(d).

(e)

Rules and regulations. The department of licenses and inspections may adopt rules and regulations as deemed necessary and proper for the administration of this subsection, subject to approval by the administrative board.

WILMINGTON, DELAWARE

CHAPTER 1 SCOPE AND ADMINISTRATION is amended by adding new Section 120 and shall read as follows:

Section 120.0. Annual registration of vacant buildings and registration fees.

(a)

Purpose. The purpose of this section requiring the registration of all vacant buildings, including dwellings that are subject to [chapter 34](#) as referenced below, and the payment of registration fees is to assist the city government, particularly the department of licenses and inspections (DLI) in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the city, particularly those that are located in the downtown business district (from Second to 16th, and Walnut to West Streets), to assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, and to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of this chapter, the health and sanitation code, and any other applicable provisions of the Wilmington City Code.

(b)

Definitions and applicability; registration statement and fees.

(1)

Definitions. For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:

(A)

Boarded: A building or structure subject to the provisions of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.

(B)

Exterior maintenance and major systems: The phrase "exterior maintenance and major systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, drive-way, if any, area of the lot, as applicable and as enforced by the DLI, particularly in connection with subsections 119.01 (building maintenance) and 124 (exterior improvements) of this section of this code.

(C)

Occupied: Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, nontransient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and sewer services; a valid city business license, or the most recent, federal, state, or city income tax statements indicating that the subject property is the official business or

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residence address of the person or business claiming occupancy; or proof of pre-rental inspection.

(D)

Occupancy ready: Any building that is vacant, but has been recently rehabilitated and a certificate of occupancy or certificate of completion has been issued by the DLI allowing the building to be lawfully occupied, or if the property has not been recently rehabilitated, the property meets all minimum code requirements and may be immediately occupied. Whether a building is "occupancy ready" shall be determined by DLI through an inspection of the building. The classification "occupancy ready" shall only apply to the vacant registration requirements of this section, and does not apply to any other section of the code.

(E)

Open: A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and, or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.

(F)

Owner: An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section, and as set forth below.

(G)

Vacant: A building or structure shall be deemed to be vacant if no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, nontransient basis.

(2)

Applicability. The requirements of this section shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 45 consecutive days and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant for more than 45 consecutive days. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, as hereinafter described, and any other information deemed necessary by the DLI. The registration fee(s) as required by subsection (b)(3) of this section shall be billed by the DLI and shall be paid by January 1 of each year. For purposes of this section, the following shall also be applicable:

(A)

If the owner is a corporation, the registration statement shall provide the names and residence addresses of all officers and directors of the corporation and shall be accompanied by a copy of the most recent annual franchise tax report filed with the secretary of state;

(B)

If an estate, the name and business address of the executor of the estate;

(C)

If a trust, the name and address of all trustees, grantors, and beneficiaries;

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- (D) If a partnership, the names and residence addresses of all partners with an interest of ten percent or greater;
- (E) If any other form of unincorporated association, the names and residence addresses of all principals with an interest of ten percent or greater;
- (F) If an individual person, the name and residence address of that individual person.

(3) *Registration statement and fees; local agent.* If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith. Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open, vacant and boarded, or occupancy ready and shall be required whenever any building has remained vacant for 45 consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner so registering. The owner of the vacant property as of November 1 of each calendar year shall be responsible for the payment of the non-refundable registration fee, except buildings deemed "occupancy ready" by the DLI and actively for sale or lease shall be exempt from imposition of the annual registration fee. However, buildings deemed "occupancy ready" by the DLI shall only be exempt from imposition of the annual registration fee for no more than 2 consecutive billing cycles. Except as provided in subsection (b)(3)(A) below, said fee shall be billed by the DLI and based on the duration of the vacancy as determined by the following scale:

- (i.) No fee for properties that are vacant for less than one year;
- (ii.) \$500.00 for properties that are vacant for at least one year but less than two years;
- (iii.) \$1,000.00 for properties that are vacant for at least two years but less than three years;
- (iv.) \$2,000.00 for properties that are vacant for at least three years but less than five years;
- (v.) \$3,500.00 for properties that are vacant for at least five years but less than ten years; and
- (vi.) \$5,000.00 for properties that are vacant for at least ten years, plus an additional \$500.00 for each year in excess of ten years.

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(A)

The vacant registration fee billed to a housing provider meeting the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code and who receives a vacant building directly from the city or who receives public funds from the city for the acquisition, rehabilitation or redevelopment of a vacant building shall not be based on the duration of the vacancy prior to the non-profit housing provider receiving the vacant building from the city or receiving the funds from the city, but rather from the time it received the vacant building or funds from the city. This provision shall be retroactive to May 1, 2003.

(4)

Appeal rights. The owner shall have the right to appeal the imposition of the registration fees to the Licenses and Inspection Review Board, upon filing an application in writing with the applicable \$50.00 non-refundable filing fee to the Department of Licenses and Inspections no later than 30 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy, as defined in **125.0**(b)(1)(C).

(5)

One time waiver of registration fee. A one-time waiver of the registration fee, or an extension of a waiver for up to 12 months from the date of the billing statement immediately following the waiver, may be granted by the Commissioner of Licenses and Inspections upon application of the owner and upon review and advice of the law department, within 30 calendar days from the date of the bill for the registration fee, if the owner

(i.)

Demonstrate with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and

(ii.)

Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or

(iii.)

Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period.

(6)

Four-year waiver. Upon application by the owner and satisfaction of subsection (b)(5) above, the commissioner may, upon advice and review of the law department, grant a one-time four year waiver of the registration fee, or an extension of a waiver for up to 12 months from the date of the billing statement immediately following the waiver, if the owner meets the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code. With regard to an extension of a waiver only, the time period of the extension shall commence from the date of the billing statement (November 1 of the applicable calendar year) and, in no event, shall the extension exceed 12 months. An extension of a waiver shall only be granted once.

(7)

Delinquent registration fees as a lien. After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal pursuant to subsection (b) (4) above, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the city, and the city may commence a civil action to collect such the unpaid debt.

(c)

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Duty to amend registration statement. If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, responsible party or agent for the same to contact the department of licenses and inspections within 30 days of the occurrence of such change and advise the department in writing of those changes.

(d)

Exceptions. This section shall not apply to any building owned by the United States, the state, the city, nor to any of their respective agencies or political subdivisions.

(e)

Violations; penalties.

(1)

The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building or to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due, shall constitute a violation punishable upon conviction thereof by a fine in the amount of not less than \$100.00 nor more than \$500.00 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of \$100.00 is imposed, it shall not be subject to suspension or reduction for any reason.

San Diego, California



The City of San Diego Vacant & Boarded Structures STATEMENT OF INTENT

Owners of vacant and boarded structures are required to file a written Statement of Intent with the City which proposes a rehabilitation plan and timeline to bring structures back into productive use. Your failure to submit a Statement of Intent for approval will result in the assessment of a quarterly civil penalty per structure (San Diego Municipal Code Section 54.0315).

Mail or fax the completed Statement of Intent form to: Vacant Properties Coordinator,
1222 First Avenue, Fifth Floor, MS 511, San Diego, CA 92101-4101. Fax number (619) 236-5920.

PROPERTY INFORMATION

Property Address: _____

Parcel Number: _____ Date Boarded: _____

OWNERSHIP INFORMATION

Property Owner

Name: _____

Address: _____

Telephone: (_____) _____ Day (_____) _____ Evening

Responsible Party (check one) Owner, *listed above* Other, *see below*

The Responsible Party is the person in charge or control of the structure who is not the owner (i.e. property manager, conservator, trustee, etc.)

Name: _____

Address: _____

Telephone: (_____) _____ Day (_____) _____ Evening

Lien Information

Lien Holder(s): _____

Loan Number: _____

PLAN & TIMELINE FOR STRUCTURE

Please use the space below to describe the specific actions to be taken, completion date/timeline and regular maintenance plan during the period of vacancy. Add additional sheets as necessary.

REHABILITATION PLAN

Building Permit #: _____ Completion Date/Timeline: _____

DEMOLITION PLAN

Building Permit #: _____ Completion Date/Timeline: _____

PLAN TO ACTIVELY SELL OR LEASE THE STRUCTURE

Listing Date: _____ Asking Price: _____

Agent Phone: _____ Asking Price: _____

Appraised Value: _____ *(if appraised value is not available, please give purchase price and time of purchase)* _____

Please check the appropriate box(es):

I give the City permission to provide interested parties with the listing information.

Property is in escrow and is anticipated to close on:

OTHER

I hereby represent and warrant that the information provided in the Statement of Intent is true, complete and accurate to the best of my knowledge. Should any of the information contained in this Statement of Intent change, **I will notify the City of San Diego within 15 days of the change**. I also understand that it is my responsibility to regularly monitor the property while it is vacant and boarded to keep it clean, secure and free from graffiti, trash, weeds and debris.

Signature of Property Owner/Responsible Party

Date

Print Name of Property Owner/Responsible Party

Article 4: Public Hazards and Public Nuisances

Division 3: Abatement of Abandoned Properties

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

(Retitled to “Abatement of Vacant Structures” 8-10-1993 by O-17957 N.S.)

(Retitled to “Abatement of Abandoned Properties” and amended 10-10-2012 by O-20203 N.S.)

§54.0301 Declaration of Purpose

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

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

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

(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§54.0302 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Statement of Intent means a form filled out by the *responsible person* for an *abandoned property* which contains specific information regarding the ownership of the property and the *responsible person's* plan for its rehabilitation, development, occupancy, and maintenance.

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

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

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

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

(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.)

(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§54.0303 Enforcement Authority

The *Director* is authorized to administer and enforce the provisions of this Division. The *Director* or anyone designated by the *Director* to be an Enforcement Official may exercise any enforcement powers as provided in Division 1, Article 2 of Chapter 1 of this Code.

(“*Enforcement Authority*” added 5-28-1996 by O-18301 N.S.)
(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§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.)
(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§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 Abandoned Properties Regulations

- (a) An *abandoned property* where code or public nuisance violations exist constitutes a *public nuisance* *per se*.
- (b) In determining whether a *vacant structure* or vacant lot meets the definition of *abandoned property*, the *Director* shall consider the length of vacancy as a factor contributing to the existence of a *public nuisance*.
- (c) A commercial *vacant structure* which meets the definition of an *abandoned property* as provided in this Division, shall continue to be deemed a *vacant structure* until there is a lawfully permitted business operating in the *vacant structure* on a daily basis. The *Director* may make an exception based on the nature of the particular business.
- (d) It is unlawful for any *responsible person* for an *abandoned property* to fail to lock, barricade or secure all doors, windows and other openings to any *vacant structure* on the property in accordance with the standards listed in this Division.

- (e) It is unlawful for any *responsible person* for an *abandoned property* to fail to remove from the entire property including the interior of any *vacant structure*, any of the following: *litter, waste, rubbish, solid waste, liquid waste, debris, unpermitted vehicles, storage not incidental to the corresponding zoning use for the property, or excessive vegetation as determined by a fire inspector to constitute a fire hazard.*
- (f) It is unlawful for any *responsible person* for an *abandoned property* to fail to erect fences, barriers, berms or other suitable means to discourage access and to discourage illegal dumping or littering on the property when requested by the *Director*.
- (g) It is unlawful for any owner of an *abandoned property* or any owner's agent to fail to file a *Letter of Agency* with the San Diego Police Department or to fail to update the *Letter of Agency* every six months.
- (h) It is unlawful for any *responsible person* for an *abandoned property* to fail to maintain the property in accordance with the abatement requirements listed in an Abatement Notice and Order or other written notice issued by the *Director*.
- (i) It is unlawful for any *responsible person* for an *abandoned property* to fail to maintain the property in accordance with the maintenance standards listed in this Division.

(“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.)

(Retitled to “Abandoned Properties Regulations” and amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§54.0307 Administrative Abatement Procedures and Maintenance Standards for Abandoned Properties

- (a) Whenever the *Director* determines that an *abandoned property* exists within the City of San Diego upon which code or *public nuisance* violations exist, an Abatement Notice and Order may be sent to the *responsible person* directing the abatement of any *vacant structure* by cleaning and securing or boarding the *vacant structure* and removing conditions creating a *public nuisance* on the property or directing the abatement of any vacant lot by removing conditions creating a *public nuisance*. Boarding shall be done pursuant to the standards established in Section 54.0308 of this Division.-

- (b) The *Director* may also require as part of an Abatement Notice and Order or other written notice that the *responsible person* erect fences, barriers, berms or other suitable means to discourage access to the *abandoned property* and to discourage illegal dumping or littering on the property. The *Director* may also require the *responsible person* to post signs that prohibit trespassing, littering or illegal dumping.
- (c) The *Director* may also require as part of the Abatement Notice and Order or other written notice that the *responsible person* remove any *litter, waste, rubbish, solid waste, liquid waste*, debris, unpermitted storage, weeds which are over twelve inches in height or excessive vegetation from *the abandoned property*.
- (d) The *Director* may also require as part of the Abatement Notice and Order or other written notice that the *responsible person* remove any vehicles or additional items not listed in subsection (c) which are stored on the property in violation of the Land Development Code.
- (e) The *Director* may also require as part of the Abatement Notice and Order or other written notice, that the *responsible person* maintain the property free of *graffiti*, and paint over any *graffiti* with an exterior grade paint that matches the color of the exterior of the *vacant structure*.
- (f) The *Director* may also require as part of the Abatement Notice and Order or other written notice, that the *responsible person* keep any pools or spas on the property in working order so the water remains clear and free of pollutants and debris or drained and kept dry. Pools or spas must comply with the fencing requirements contained in Division 31, Article 5, Chapter 14 of this Code.
- (g) The *Director* may also require as part of the Abatement Notice and Order or other written notice, that the *responsible person* post a sign on the property. The sign shall be no less than 18" x 24" in size and shall contain lettering of a font size that is legible from a distance of 45 feet. The sign shall include all of the following information:
 - 1) the address of the property;
 - 2) that a *Letter of Agency* is on file with the San Diego Police Department; and
 - 3) the name and telephone number of the *responsible person* or designee, one of whom must be a *local contact*, such as the property manager, asset manager, or real estate agent or broker.

- (h) The *Director* shall follow the Administrative Abatement procedures for Time Frame One as provided in Division 6 of Article 2 of Chapter 1 of this Code. However, if the abatement involves a *vacant structure* which is a single family dwelling, then the time frame for compliance shall be fifteen (15) calendar days in accordance with California Health and Safety Code section 17980.9(b)(1).
- (i) If the *responsible person* does not comply with the Abatement Notice and Order, and no appeal is filed, the *Director* may: 1) clean and board any unsecured *vacant structure*; 2) remove all *litter, waste, rubbish, solid waste, liquid waste*, debris or excessive vegetation from the *abandoned property*; 3) remove all vehicles and items stored in violation of the Land Development Code; and 4) recover all costs pursuant to the procedures found in Division 6, Article 2 of Chapter 1 of this Code.
- (j) If the *Director* boards any *vacant structure*, all barricade materials supplied by the City shall become the property of the *responsible person* upon payment of all costs to the City.

*(“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.)
(Retitled to “Administrative Abatement Procedures and Maintenance Standards for Abandoned Properties” and amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)*

§54.0308 Standards for Boarding a Vacant Structure

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

- (a) Remove all *waste, rubbish* or debris from the interior of the *vacant structure*;
- (b) Remove all *waste, rubbish*, debris or excessive vegetation from the yards surrounding the *vacant structure*;
- (c) Barricade all unsecured doorways, windows or exterior openings with minimum 1/2 inch thickness exterior grade plywood which shall extend to the molding stops or studs;
- (d) Mount at least two wood stocks of minimum 2 x 4 inch thickness to the reverse face of the plywood with minimum 3/8 inch carriage bolts mated with nuts and two flat washers;

- (e) Extend the stock a minimum of eight (8) inches on each side of the interior wall;
- (f) Cause all hardware to be galvanized or cadmium plated;
- (g) Paint all exterior barricade material the predominant color of the structure;
- (h) Post the premises. One or more signs shall be posted at or near each entrance to the *vacant structure* and on fences or walls as appropriate. The signs shall remain posted until the *vacant structure* is either lawfully occupied or demolished. Signs shall contain the following information: DO NOT ENTER. It is a misdemeanor to enter or occupy this building or premises or to remove or deface this notice. Trespassers will be prosecuted. The sign shall be of a size of no less than 18" x 24" in size and the lettering shall be of a font size that is legible from a distance of 45 feet.
- (i) In lieu of requiring the *responsible person* to board a structure as set forth in Sections 54.0308(a) through (h), the *Director* may allow the *responsible person* to board the *vacant structure* in a manner in which the *Director* determines adequately prevents unauthorized entry or vandalism. In any event, a *responsible person* shall post the premises with signs as required by this Division, including as set forth in Section 54.0308(h).

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

(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

§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(h), 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(h) until the required repairs or demolition have been completed or a Certificate of Occupancy has been issued.

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

(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

§54.0310 Continuous Abatement Authority

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

(b) If an *abandoned property* again contains debris, *rubbish*, *waste*, or excessive vegetation, the *Director* may, without further notice to the *responsible person*, proceed to abate the *public nuisance* and recover costs as provided for in this Division.

(c) An Enforcement Hearing Officer may issue an Administrative Enforcement Order that would give the *Director* continuous abatement authority to: 1) abate a *vacant structure* which again becomes unsecured and open to unauthorized entry; or 2) abate an *abandoned property* if the property again contains debris, *rubbish*, *waste* or excessive vegetation. The Hearing Officer may establish notice requirements as may be reasonable.

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

(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§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.)
(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)*

§54.0312 Continuous Public Nuisances

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

*(“Continuous Public Nuisances” renumbered from Sec. 54.0313 on 5-28-1996 by O-18301 N.S.)
(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)*

§54.0313 Duty to File a Statement of Intent

- (a) The *Director* shall create and make available a form entitled *Statement of Intent* to be completed by the *responsible person* for an *abandoned property*.
- (b) The *responsible person* for an *abandoned property* shall complete the information required on the *Statement of Intent* and submit the statement to the City within thirty (30) calendar days of the date the *Director* determines the property meets the definition of *abandoned property* as provided in this Division. If an *abandoned property* remains in an abandoned state for more than three hundred sixty-five (365) calendar days from the date the first *Statement of Intent* was submitted, then a new *Statement of Intent* must be submitted, and annually thereafter until the property no longer meets the definition of an *abandoned property* as provided in this Division.
- (c) The *Director* shall determine whether a submitted *Statement of Intent* is complete and may require the *responsible person* to provide more complete information.
- (d) When a submitted *Statement of Intent* does not meet with the *Director*'s approval as it does not contain adequate information as required by this Section, the *responsible person* shall immediately correct and resubmit the *Statement of Intent*.
- (e) The *Statement of Intent* shall include the following information:
 - (1) expected period of vacancy;
 - (2) a plan for regular maintenance during the period of vacancy;
 - (3) a plan and time line for the lawful occupancy, rehabilitation or demolition of the *vacant structure*;
 - (4) a plan for the development or sale of the vacant lot if the *abandoned property* is a vacant lot;

- (5) complete ownership information and all contact information for persons responsible for the property including the name, telephone number and street address for any corporation, individual, *beneficiary* or *trustee* responsible for receiving payments associated with any loan or *Deed of Trust*. The *Statement of Intent* shall also include information regarding the property management company, servicing company, asset manager, or property preservation company responsible for the security, maintenance and marketing of the property; and
- (6) any additional information required by the *Director*.

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

- (1) fail to submit a *Statement of Intent* within the time period specified by Section 54.0313(b); or
- (2) fail to submit a *Statement of Intent* annually as required by Section 54.0313(b); or
- (3) submit a *Statement of Intent* which does not comply with the requirements of this Division.

(“*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.)

(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§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.

(“*Reinspection Fee*” renumbered from Sec. 54.0311 on 5-28-1996 by O-18301 N.S.)
(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§54.0315 Abandoned Property Penalty

(a) If an *abandoned property* is left in an abandoned state for ninety (90) consecutive calendar days, the *responsible person* for that *abandoned property* may be liable for a civil penalty in the amount of five hundred dollars (\$500) per property, not to exceed five thousand dollars (\$5,000) per property in a calendar year unless:

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

(2) one of the following applies:

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

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

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

(D) the *responsible person* can demonstrate that he or she made a diligent and good faith effort to implement the actions set forth in the approved *Statement of Intent* within the time line contained within the *Statement of Intent*.

- (b) If the property continues to meet the definition of *abandoned property* as provided in this Division beyond the initial ninety (90) calendar days, and if the *responsible person* does not meet any of the exceptions set forth in this Section, the *Director* may continue to assess penalties in the following amounts: one thousand dollars (\$1,000) for the next ninety (90) calendar day period the property continues to meet the definition of an *abandoned property* as provided in this Division; one thousand five hundred dollars (\$1,500) for the next ninety (90) calendar day period; and two thousand dollars (\$2,000) for the next ninety (90) calendar day period that the property continues to meet the definition of an *abandoned property* as provided in this Division. At no time may the amount of the civil penalty exceed five thousand dollars (\$5,000) per property in a calendar year.
- (c) All penalties assessed shall be payable directly to the City Treasurer.
- (d) The City Manager shall develop policies and procedures for the implementation of this penalty.

(“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.)
(Retitled to “Abandoned Property Penalty” and amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§54.0316 Procedures for Abandoned Property Penalty

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

(“Procedures for Boarded and Vacant Structure Penalty” added 5-28-1996 by O-18301 N.S.)
(Retitled to “Procedures for Abandoned Property Penalty” and amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§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.

(“*Appeal of Boarded and Vacant Structure Penalty*” added 5-28-1996 by O-18301 N.S.)

(Retitled to “*Appeal of Abandoned Property Penalty*” and amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§54.0318 Administrative Enforcement Hearing

- (a) The appeal hearing shall follow the enforcement hearing procedures set forth in Division 4, Article 2 of Chapter 1.
- (b) The Enforcement Hearing Officer shall only consider evidence that is relevant to the following issues:
 - (1) whether the property meets the definition of *abandoned property* as provided in this Division for ninety (90) consecutive calendar days;
 - (2) whether a *Statement of Intent* has been filed and approved by the *Director*; and
 - (3) whether any of the exceptions set forth in Section 54.0315(a)(2)(A) through (D) have been met.
- (c) The Enforcement Hearing Officer may assess administrative costs.

(“*Administrative Enforcement Hearing*” added 5-28-1996 by O-18301 N.S.)
(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§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.

(“*Failure to Pay Penalties*” added 5-28-1996 by O-18301 N.S.)
(Amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§54.0320 Allocation of Abandoned Property 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.)*

(Retitled to “Allocation of Abandoned Property Penalty” 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)

§54.0321 Timely Rehabilitation of Abandoned Properties

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

(“Timely Rehabilitation of Vacant Structures” added 2-7-2006 by O-19460 N.S.; effective 3-7-2006.)

(Retitled to “Timely Rehabilitation of Abandoned Properties” and amended 10-10-2012 by O-20203 N.S.; effective 11-9-2012.)