



CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND

2012 FEB -3 PM 12: 39

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: Vacant and Foreclosed Registration

DATE: February 2, 2012

City Administrator

Approval

Date

2/2/12

COUNCIL DISTRICT: Citywide

SUBJECT: An Ordinance Reenacting Oakland Municipal Code Chapter 8.54 Requiring the Registration of Foreclosed and Vacant Residential Buildings

REASON FOR URGENCY

Staff was just informed that the City's current Foreclosed and Vacant Residential Buildings Ordinance sunsets on February 2, 2012. This came to light after the publication of the February 7, 2012 Council agenda. Without the program, the City would not have access to the timely status of properties which are at risk of developing public safety, health, and blight problems, nor would the City obtain the contact information necessary to address such problems. In order to avoid this substantial and adverse impact, staff requests an urgency finding to add this item to the February 7, 2012 Council agenda.

RECOMMENDATION

Staff recommends that Council adopts an Ordinance reenacting Oakland Municipal Code Chapter 8.54 requiring the 1) registration of foreclosed and vacant residential buildings; and 2) payment of an annual fee of about \$500 to offset administrative, inspection, and mitigation costs, without a sunset provision. In addition, staff has removed the provision in the original ordinance regarding the use of prospective liens since Building Services is no longer placing prospective liens on properties.

OUTCOME

Council action would result in the continuation of the City's vacant and foreclosed properties registration program, enabling the City to continue addressing the problems of blight and public health and safety problems associated with vacant and foreclosed properties.

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BACKGROUND/LEGISLATIVE HISTORY

On February 2, 2010, the City Council passed a Council resolution and ordinance amending the Oakland Municipal Code to establish a new chapter, 8.54, requiring the registration of foreclosed and vacant residential buildings and amending the Master Fee Schedule (Ord. No. 12948 C.M.S.) to establish new registration and inspection fees. Residential properties, up to four (4) units, were required to be registered within thirty (30) days from when the property became vacant.

The new registration requirements were established to address the blight and public health and safety problems associated with foreclosed properties, especially vacant ones, and the City's need to know the foreclosure and vacancy status of properties, as well as the appropriate contact person for maintenance and other purposes.

ANALYSIS

The rationale governing the passage of the original registration requirements still exist:

1. Vacant and foreclosed buildings throughout the City of Oakland continue to be significant and unnecessary attractors for blighting conditions that create severe health hazards;
2. These buildings are attractors for trespassers and transient occupants that foster and enable criminal activities;
3. These buildings discourage economic development and contribute to the decline of property values in neighborhoods; and
4. The City continues to expend limited resources and scarce funds investigating vacant buildings, mitigating the detrimental effects of neglected maintenance, curtailing associated criminal activity, and monitoring the recurrence of nuisance activities.

According to a recent information issued by the Urban Strategies Council (USC), "Oakland faces a severe and worsening foreclosure crisis." <http://www.urbanstrategies.org/foreclosure/> There were 8,009 foreclosures from 2006 to 2010, a rate of 1 in 19 households in foreclosure. In 2011, there were 3,337 Notice of Defaults filed and 1,508 completed foreclosures or REOs. See www.foreclosureradar.com. The number of REO properties in Oakland for 2011 marks an increase of 5.56% from 2010 figures.

As demonstrated by the City's blighted foreclosed properties program, significant numbers of properties in the foreclosure process are blighted. For example, the inspection of 181 properties associated with Wells Fargo (received a Notice of Default or in REO) found that 59% of those properties were vacant and blighted, vacant and unregistered, or occupied and blighted.

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Wells Fargo Bank – NOD and REO Residential Properties				
Properties Inspected by CEDA	Violation Notices Sent - May 2011			
	OCA	CEDA		
	SB 1137 Vacant & Blighted	OMC 8.54 Vacant & Unregistered	OMC 8.24 Occupied & Blighted	Total
181	11	15	81	107

With current economic conditions and Oakland’s continuing high unemployment rates, it is unlikely that the foreclosure crisis will improve dramatically in the next year or so.

It is critical for the City to have information on which properties are vacant and foreclosed, as well as the appropriate contact information for addressing the maintenance, public safety, and other problems associated with these properties. Without the registration program, this information is not readily available to the City.

PUBLIC OUTREACH/INTEREST

Staff has provided information to the primary community organization that worked on the original ordinance, the Alliance of Californians for Community Empowerment. Information has also been shared with other organizations working on foreclosure prevention and abatement issues, such as OCO, Causa Justa::Just Cause, and the Alameda County Pubhc Health Department.

COORDINATION

Coordination has occurred between Building Services and the City Attorney’s office.

COST SUMMARY/IMPLICATIONS

The current registration program has collected over \$1.2 million in fees and penalties from July 2010. An annual registration fee of \$568 is charged for each apphcable foreclosed property and a \$5,000 citation penalty is issued for properties that were not registered within 30 days of vacancy. The costs recovered from this program is being utilized for the costs associated with City services addressing and interacting with the problems associated with vacant and foreclosed residential properties. Staff estimates that the current program collects about \$35,000 a month in registration fees.

FISCAL/POLICY ALIGNMENT

Continuation of the registration program is in allgnment with the City’s priorities to address the significant problems of blighted foreclosed, especially vacant, properties, as well as to recover costs associated with City inspection services.

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PAST PERFORMANCE, EVALUATION AND FOLLOW-UP

The current registration program has resulted in the registration of over 1,600 properties. With current efforts to improve the City's blighted foreclosed properties abatement program and the state of the foreclosure crisis, staff expects the registration numbers to increase. The registration program is instrumental in the effectiveness of the new blighted foreclosed properties abatement program, which has engaged in over 2,900 inspections of foreclosed properties and since

September 2011 has resulted in the clean-up of all targeted properties by the lenders and direct payment by the lenders of all associated fees and penalties.

SUSTAINABLE OPPORTUNITIES

Economic: The continuation of the ordinance will retard the deterioration of property values and will support future development and assist the economic growth and revitalization of the City.

Environmental: The continuation of the ordinance will reduce blight, including accumulation of garbage, dispersal of pollutants and target-organ toxins, and uncontrolled growth of vector populations.

Social Equity: The continuation of the ordinance will encourage the infusion and recurrence of diverse multi-cultural activities, businesses, and events.

CEQA

This report is not a project under CEQA.

For questions regarding this report, please contact Margaretta Lin, Special Projects Director, at 510-238-6314.

Respectfully submitted,



Fred Blackwell
Assistant City Administrator

Reviewed by:
Ray Deranja, Deputy Director
CEDA Building Services Division

Prepared by:
Margaretta Lin, Special Projects Director
CEDA

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Councilmembers

DRAFT

City Attorney

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

AN ORDINANCE RE-ENACTING OAKLAND MUNICIPAL CODE CHAPTER 8.54 REQUIRING THE REGISTRATION OF FORECLOSED AND VACANT RESIDENTIAL BUILDINGS

WHEREAS, vacant buildings throughout the City of Oakland have been and continue to be significant and unnecessary attractors for blighting conditions that create severe health hazards in neighborhoods, including explosions of vector populations, accumulations and dispersals of pollutants and target-organ toxins, and degradation of air quality, and that adversely impact the quality of life in neighborhoods and deny residents their enjoyment of life; and

WHEREAS, vacant buildings throughout the City also have been and continue to be significant and unnecessary attractors for trespassers and transient occupants that foster and enable criminal activities, including theft, vandalism, prostitution, and the sale and use of narcotics and other controlled substances; and

WHEREAS, vacant buildings throughout the City also have been and continue to be a significant and unnecessary discourager to economic development and contributor to the decline of property values in neighborhoods; and

WHEREAS, the City has expended and continues to expend vast and unnecessary amounts of limited resources and scarce funds investigating vacant buildings, mitigating the detrimental effects of neglected maintenance, curtailing associated criminal activity, and monitoring the recurrence of nuisance activities; and

WHEREAS, a critical and immediate need therefore exists to safeguard life and limb, health, property, and public welfare and to reduce the substantial and unnecessary economic toll on the business community and the citizens of Oakland resulting from the effects of vacant buildings by implementing a program for identifying and monitoring these properties; and

WHEREAS, the costs to the City for implementing and sustaining such a program for vacant buildings should be born by the property owners and those mortgagees, vendees, assignees, trustees, lessees, agents, firms, companies, corporations, partnerships, and similar entities who otherwise have control of or financial interest in the property, rather than the citizens of Oakland; and

WHEREAS, said costs may be recovered from the property owners and others having control of or financial interest in the properties by imposing and collecting necessary and equitable fees and interest; and

WHEREAS, historically, the resource requirements for monitoring vacant buildings increases with the time that building remains vacant by involving an escalating commitment from Code Enforcement administrative, fiscal, and supervisory staff, and involving a proliferating interaction with other City departments and agencies, including Real Estate, Finance, City Attorney, Fire, and Police and by City officers and officials; and

WHEREAS, historically, Code Enforcement has tracked its costs, through its computerized accounting system, for processing complaints of vacant buildings, for field monitoring of vacant buildings, and for interacting with property owners and the public concerning vacant buildings; and

WHEREAS, the registration and inspection fees set by ordinance in the City of Oakland's Master Fee Schedule reflects the amounts for the Code Enforcement costs pertaining to vacant buildings; and

WHEREAS, historically, said Code Enforcement costs have increased with each successive year that a building remains vacant at a rate not less than three (3) times the costs associated with the initial processing of a complaint for a vacant building and inspecting the property; and

WHEREAS, historically, there are additional citywide costs of said resource requirements in areas of real estate divestiture and acquisition, fire prevention and suppression, neighborhood revitalization, nuisance and criminal activities, hazardous material identification and disposal, litigation, liens and collections, degradation of the general tax levy, and public notification and hearings; and

WHEREAS, vacant buildings impose additional financial burdens on neighbors, prospective purchasers, and the business community in the City of Oakland; and

WHEREAS, pursuant to California Government Code section 50076, setting the initial fee and applying said rate-of-increase to the initial implementation costs of a registration program in order to establish fees to sustain such a program is a reasonable, fair, and equitable methodology, the results of which would be proportionately representative and would not exceed the estimated direct costs incurred for services provided by Code Enforcement nor the estimated indirect costs incurred by other City departments, agencies, officers, and officials; and

WHEREAS, the City Council previously enacted Chapter 8.54 on February 2, 2010 with a provision that the Chapter sunset two years after its effective date (February 2, 2012);

WHEREAS, over the two years in which Chapter 8.54 was in effect it proved to be successful in obtaining critical information necessary for getting lenders to reduce the blight of vacant, foreclosed properties;

WHEREAS, the foreclosure crisis that led the City Council to adopt Chapter 8.54 has continued and shows no signs of abating, and, therefore, Chapter 8.54 should be reenacted without a sunset provision;

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act: City of Oakland, have been satisfied, and that in accordance with CEQA Guidelines Section 15301 (existing facilities) and Section 15061(b)(3), this project is categorically exempted; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals

- A. The Council of the City of Oakland finds and determines that the foregoing recitals are true and correct and hereby incorporates them as part of this ordinance.
- B. The Council of the City of Oakland further finds and determines that the adoption of an ordinance requiring the registration with the City of vacant buildings complies with the California Environmental Quality Act.

SECTION 2. Regulations

Chapter 8.54, entitled “Vacant Building Registration”, is hereby added to Title 8 – Health and Safety of the Municipal Code of the City of Oakland as follows:

Chapter 8.54 - Vacant Building Registration

Article I - Intent

Section 8.54. 010 - Title

This chapter and the provisions herein shall be know as the “Vacant Building Registration” program and may be cited as such, and will be referred to herein as “this Chapter”.

Section 8.54. 020 - Purpose

The purpose of this Chapter is to promote the health, safety, and general welfare of the residents, workers, visitors, owners, and proprietors of the City of Oakland and the economic stability and viability of businesses, industries, and neighborhoods in the City by requiring the registration and monitoring of vacant buildings. This program will protect and preserve the livability, appearance, and social fabric of the City and will also protect the public from health and safety

hazards and the impairment of property values resulting from the neglect and deterioration of real property and improvements.

Section 8.54.030 - Scope

The provisions of this Chapter shall apply solely to a building that:

- has been foreclosed upon, and
- contains only residential Groups R-2, R-3, and R-7 occupancies, as set forth in the Oakland Building Construction Code, with or without attached storage and automobile parking facilities, and
- contains not more than four (4) dwelling and live-work units, all of which are vacant.

Section 8.54.040 - Authority

The Building Official and his or her designees are authorized to enforce the provisions of this Chapter.

Section 8.54.050 - Exclusions

The provisions of this Chapter shall not apply to properties owned by the United States of America, the State of California, the County of Alameda, the City of Oakland (including any properties owned by the former Oakland Redevelopment Agency), or to any of their respective agencies or political subdivisions; nor shall it apply to properties owned by the Oakland Housing Authority.

Article II - Definitions

Section 8.54.100 - Construed Meanings

For the purposes of this Chapter, certain words and phrases are defined and certain provisions shall be construed as set forth herein, unless it shall be apparent from the context that they have different meanings. Words in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

BLIGHTED has the same meaning as set forth in Chapter 8.24 of the Oakland Municipal Code.

BOARDED means the partial or full covering, securing, or reinforcing with plywood, lumber, or comparable materials of windows, skylights, doors/ sidelights/ transoms, underfloor access, and similar exterior openings in buildings or portions thereof which is intended to dissuade, mitigate, and prevent vandalism and unauthorized entry.

BUILDING means a roofed structure that exceeds one-hundred twenty (120) square feet in gross floor area (orthogonal planer projection) for which the Building Official is authorized to determine and assign an occupancy classification as set forth in the Oakland Building Construction Code.

BUILDING DEPARTMENT has the same meaning as set forth in the Oakland Building Construction Code or any successor department.

BUILDING - MIXED-USE means a building which contains both residential and non-residential occupancies, as set forth in the Oakland Building Construction Code, except for attached storage and automobile parking facilities.

BUILDING - NON-RESIDENTIAL means a building which does not contain a residential occupancy, as set forth in the Oakland Building Construction Code.

BUILDING OFFICIAL has the same meaning as set forth in the Oakland Building Construction Code, or any successor position.

BUILDING - RESIDENTIAL means a building which only contains a residential occupancy, as set forth in the Oakland Building Construction Code, except for attached storage and automobile parking facilities.

FORECLOSED means the property has been sold at a judicial or non-judicial (trustees) foreclosure sale pursuant to the power of sale under a mortgage or deed of trust, or the mortgagee or beneficiary of the deed of trust has acquired the property through a deed in lieu of foreclosure.

HABITABLE SPACE has the same meaning as set forth in Chapter 15.08 of the Oakland Municipal Code.

LOCAL means having a current Business Tax Certificate issued by the City of Oakland and having business office space located within twenty-five (25) driving miles of the City of Oakland.

OAKLAND BUILDING CONSTRUCTION CODE means Chapter 15.04 of the Oakland Municipal Code, as may be amended from time to time.

OCCUPANCY has the same meaning as set forth in Chapter 2 of the California Building Code.

OCCUPANT means one or more individuals having legal tenancy in a building or portion thereof

OCCUPIED means the physical presence of an occupant on a continuing and non-transient basis.

OPEN means a window, skylight, door/ sidelight/ transom, underfloor access, or similar exterior opening in a building which is broken; or cannot be fully closed; or has an improperly functioning, unapproved, or missing securing device; or is partially or fully missing; or any combination of these conditions.

OWNER means any person, co-partnership, association, corporation, limited liability company or fiduciary having a legal or equitable title or any interest in the vacant building.

OWNERSHIP means owner.

SHALL/ WILL means a definitive directive which includes the ordinary accepted meaning of the word "must".

VACANT means the absence of occupants for thirty (30) consecutive calendar days or longer.

Section 8.54.110 - Accepted Meanings

Where terms are not defined in this Chapter, they shall have their ordinary accepted meanings within the context with which they are used.

Article III - Registration

Section 8.54.200 - Filing a Statement of Registration

The owner of a building shall file a Statement of Registration with the City on an approved form within thirty (30) calendar days following the date that the building meets the requirements under to Section 8.54.030 of this Chapter. A separate filing shall be required for each building.

The following information shall be provided with a Statement of Registration:

- Street address of the building as designated by the City and parcel number of the real property as designated by the Alameda County Assessor.
- Name, mailing address, and telephone number of the building owner and when applicable, the agent of the owner; the executor of the estate and its trustees, grantors, and beneficiaries; the partners with a financial interest exceeding ten percent (10%) of the assessed value of the building; the principals of an unincorporated association; and the agent for service of process on file with the California Secretary of State for a firm, corporation, limited liability company, or limited partnership.
- Other relevant information that the City may determine is necessary for the identification of a property or an owner or for the enforcement of the provisions of this Chapter.
- Written report in an approved format of an interior and exterior inspection of the premises by an approved local individual or firm attesting to the conditions of the property, including

exterior blight, interior habitability, utility service, and secured openings, and a written plan detailing the means, methods, and times for periodic inspections and the local individual or firm who shall be responsible for assuring compliance with the provisions of this Chapter.

Section 8.54.210 - Contact

The owner shall immediately and prominently post on the vacant building, in a form acceptable to the City, contact information identifying the local individual or firm who shall be responsible for periodically inspecting the premises, maintaining the exterior free of blight, securing the building against unauthorized entry, and responding immediately to contacts from emergency responders and the public. This information shall be continuously updated.

Section 8.54.220 - Fees

Fees for filing and processing a Statement of Registration and for inspecting vacant buildings shall be as established in the Master Fee Schedule. Fees shall be fully paid at the time of submitting the Statement of Registration to the City and annually thereafter on the anniversary date of submittal, unless a subsequent ordinance of the City Council to amend the Master Fee Schedule otherwise specifies.

Section 8.54.230 - Status

The owner shall immediately advise the City in writing of a material change in the status of a vacant building, including, but not limited to, becoming blighted, unsecured, fire damaged, hazardous, or inhabitable; becoming occupied; or having a change in ownership.

Article IV - Enforcement

Section 8.54.300 - Compliance

The owner of a vacant building shall comply fully and in all instances with the provisions of this Chapter and with all other applicable requirements of ordinances of the City of Oakland, regulations of the Oakland Municipal Code, statutes of the State of California and the United States Code of Regulations, and decisions, rulings, and orders of courts of competent jurisdiction.

Section 8.54.310 - Violations

A. General

The failure of an owner to comply fully with the provisions of this Chapter shall be a separate violation which shall be immediately subject to abatement actions and fees, assessment of penalties and fines, and collection actions provided herein. Each and every day a violation of any provision of this Chapter exists shall constitute a separate and distinct offense. The owner shall remain liable for any violation of this Chapter even though the owner, by agreement, has imposed such duties on another individual, group, firm, or other entity.

B. Remedies

Remedies provided in this Chapter for violations are in addition to and do not supersede or limit any other remedies, whether civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

C. Notification

The owner shall be notified of a violation in accordance with the provisions for Notification for Abatement of Violations, as set forth in Article II of Chapter 15.08 of the Oakland Municipal Code.

Section 8.54.320 - Assessments

A. Penalties and Fines

Pursuant to California Civil Code Section 2929.3 (e), the assessment of penalties as set forth in Chapter 1.12 of the Oakland Municipal Code or fines as set forth in Section 2929.3 of the California Civil Code shall apply to the enforcement of the provisions of this Chapter.

B. Interest

Unpaid amounts shall be subject to the assessment of accruing interest as established in the Master Fee Schedule.

C. Collection

The City may serve a demand (invoice) to the owner for payment of fees, costs, penalties, and accruing interest by mailing with regular postage to the address identified on the Statement of Registration, or when such Statement has not been filed, to the address as it appears on the last equalized assessment roll of the Alameda County Assessor, or as otherwise may be known to the City. Whenever such amounts are not fully paid within fourteen (14) calendar days of service, the City may recover unpaid amounts by all available legal means including, but not limited to, civil and small claims court action, and may undertake collection by one or more of the following means:

- **Priority Lien**

The City may file a Priority Lien with the Alameda County Clerk-Recorder for recordation on the property title which shall remain as a financial encumbrance until such unpaid amounts with accrued interest have been fully paid. The amount of such lien shall draw interest thereon at a rate as established in the Master Fee Schedule or such higher rate as may be established by the Alameda County Assessor for collection of municipal and county taxes from and after the date of service of such Demand. The statute of limitations shall not run against the right of the City of Oakland to enforce payment.

- **Special Assessment of the General Levy**

The City may transmit such unpaid amounts with accrued interest to the Alameda County Assessor, who shall thereupon enter a Special Assessment of the General Levy Taxes on the County Assessment Book opposite the description of the particular lot or parcel of land, and such Special Assessment shall be collected together with all other taxes levied against the property. Such Special Assessment shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale, in the case of delinquency, as provided for all other municipal and county taxes against the property, and all laws applicable to the levy, collection, and enforcement of general property taxes are hereby made applicable to such special assessment.

- **Nuisance Abatement Lien**

The City may file a Nuisance Abatement Lien with the Alameda County Clerk-Recorder for recordation on the property title which shall, from the date of recordation, have the force, effect, and priority of a Judgment Lien. Such Nuisance Abatement Lien may be foreclosed by an action brought by the City of Oakland for a money judgment.

The City may recover from the owner the costs incurred for processing such Demands and liens and non-sufficient funds checks, recording such liens, transferring such special assessments, providing notice for court, collection or foreclosure actions, for other recovery actions, and for reasonable attorneys' fees.

Section 8.54.330 - Actual and Constructive Notice

Pursuant to state law, actual notice of the assessment of fees, penalties, and fines shall be established on the date the City notifies the owner of such assessment. Constructive notice of the pendency of a collection action for an assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder. A subsequent owner of a vacant building without actual or constructive notice of the assessment under this Chapter shall not be liable for such assessment.

Article V - Appeal

Section 8.54.400 - Appeal

The owner may appeal a notice of a violation or the assessment of fees for the abatement of a violation in accordance with the provisions for Appeals of Deteriorated Conditions, as set forth in Article II of Chapter 15.08 of the Oakland Municipal Code. Appeals of the assessment of penalties shall be in accordance with the provisions set forth in Chapter 1.12 of the Oakland Municipal Code.

Section 8.54.410 - Review of Appeal

The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petitioners seeking judicial review of administrative determinations.

SECTION 3. Applicability

A. Construction and Severability

Should any article, section, subsection, sentence, clause, or phrase of this ordinance or exhibit be held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

B. Authority

This ordinance is enacted by the Council of the City of Oakland pursuant to the police powers accorded to the City by and through section 106 of the Charter of the City of Oakland and Article XI of the Constitution of the State of California.

C. Effective Date

Upon final adoption or approval of a reconsideration by sufficient votes of the Council of the City of Oakland, this ordinance shall be effective on and after the day established in section 216 of the Charter of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2012

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

NOTICE AND DIGEST

**AN ORDINANCE RE-ENACTING OAKLAND MUNICIPAL CODE
CHAPTER 8.54 REQUIRING THE REGISTRATION
OF FORECLOSED AND VACANT RESIDENTIAL BUILDINGS**

This ordinance will re-enact a program requiring the annual payment of fees, totaling approximately \$500, and the registration of foreclosed residential buildings with not more than four (4) dwelling units which have been vacant for thirty (30) days or longer.