

# CITY OF OAKLAND

## AGENDA REPORT

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2008 DEC 22 AM 11:23

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: January 13, 2009

**RE: A Supplemental Report On Two Proposed Ordinances**

- **Adding Chapter 8.54 To The Oakland Municipal Code Requiring The Registration Of Vacant Buildings, And**
- **Adding Fees To The Master Fee Schedule (Ordinance No. 12880 C.M.S.) For Registering Vacant Buildings**

---

### SUMMARY

At the November 12, 2008, meeting of the Community and Economic Development Committee, the councilmembers considered two (2) companion ordinances which would require private owners to register with the Building Department all residential and non-residential buildings which have been vacant for more than forty-five (45) days and to pay an escalating annual registration fee for so long as a building remains vacant.

The Committee directed staff to return with a supplemental report which addressed the following issues:

- clarification of a time limitation for a fee waiver
- clarification of an exemption for the upper floors of non-residential buildings
- clarification of existing procedures for identifying and abating vacant building
- clarification of penalty assessments and collection actions

### FISCAL IMPACT

The fiscal impact contained in the November 12, 2008 report (Legistar no. 07-1717) is unchanged.

### BACKGROUND

On November 12, 2008, staff presented a report which proposed adding a new chapter to the Municipal Code requiring the registration of vacant residential and non-residential buildings and the payment of an annual fee, which would increase approximately three (3) times for each successive year that a building remained vacant.

Several clarifications were discussed briefly which required a more detailed explanation than time permitted at that meeting.

Item: \_\_\_\_\_

Community and Economic Development Committee  
January 13, 2009

## KEY ISSUES AND IMPACTS

### Fee Waiver - Time Limit

The following additional language (as underlined below) was proposed to the Committee at the meeting to clarify the intent of the Fee Waiver section in the proposed ordinance:

#### **8.54.070 - Fee Waiver, Extension, and Waivers Exemption.**

##### **A. Waiver**

A waiver of the processing fee for the Statement of Registration or the fee for its annual renewal may be granted when the owner provides the following:

1. written application for a waiver which is received by the City within thirty (30) calendar days from the date that said fee shall be paid; and
2. evidence of full payment of all unpaid fees, penalties, costs, and interest owed to the City which are associated with the maintenance of the property and with prior assessments for this Chapter; and
3. one of the following documentations:
  - a. application to the Building Department and payment of fees for a permit to demolish or repair the vacant building and a written estimation from a licensed design professional or contractor of the time duration required to complete the work; or
  - b. satisfactory evidence of active and substantive effort to sell, lease, or rent the vacant building when demolition or repair is not otherwise required by the Building Official.

Whenever a Building remains vacant for more than one hundred twenty (120) calendar days following the granting of a waiver of the processing fee or the annual renewal fee, the waiver shall become void, and the Owner shall submit a Statement of Registration form with the appropriate fees to the Building Department. When the required form and fees have not been received within thirty (30) calendar days following notification to the Owner that the waiver has been voided, the Owner shall be subject to penalties, interest, and collection actions provided herein.

The proposed clarification will establish a reasonable time limit of six (6) months before the registration fee is paid. As proposed, the ordinance also provides a two (2) year fee exemption for non-profit organizations.

### **Vacant Building - Non-Residential Occupancy Exclusion**

The following additional language (as underlined below) was proposed to the Committee at the

Item: \_\_\_\_\_

Community and Economic Development Committee  
January 13, 2009

meeting to clarify the intent of the definition of a vacant non-residential building:

#### **8.54.040 - Definitions**

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 meaning:

**Vacant** shall mean the physical absence of an approved occupancy by the legal or equitable owner or a legally authorized occupant or tenant in a building or portion thereof for more than forty-five (45) consecutive calendar days. Non-residential occupancies located above the ground floor of a Building shall not be considered as vacant for the purposes of this definition.

The proposed clarification will exclude commercial space in basements and the upper floors of a building from the ordinance. The negative effects of vacant commercial space are much more pronounced at street level than elsewhere in a building.

#### **Vacant Building - Identification and Abatement**

Currently, there are no regulations in the Oakland Municipal Code (OMC) or pro-active mechanisms available to staff for identifying or abating vacant buildings. Internet information available on-line to the public in the Master Listing Service ([www.mlslistings.com](http://www.mlslistings.com)) does not effectively track foreclosed properties or vacant buildings. Code Enforcement staffing is limited, and the Building Department must necessarily rely on complaints from neighbors of deteriorated properties before making inspections of vacant buildings. The Blight Ordinance (OMC Chapter 8.24) and the Building Maintenance Code (OMC Chapter 15.08) were crafted and have been amended to address physical conditions of buildings and the surrounding premises. Vacant buildings which are marginally maintained have an enormous detrimental impact, both short and long term, on commercial corridors and residential neighborhoods throughout Oakland. Current regulations were not designed nor intended to mitigate the indirect economic impacts associated with vacant buildings.

#### **Vacant Building - Penalties and Collections**

The proposed ordinance will allow the Building Official to assess penalties (either \$5,000 or \$350,000 or both) for failure to register a vacant building. Owners may appeal an assessment to a Hearing Examiner, and the City Administrator is subsequently allowed to adjust an assessment when it shall "...serve the best interests of the City". In practice, a penalty assessment will be upheld by the Hearing Examiner only when a clear connection (nexus) is demonstrated by staff that the vacant building is a public nuisance as defined California Civil Code Sections 3479 and 3480:

"... an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life, ... which affects ... an entire neighborhood ..."

Item: \_\_\_\_\_

The threshold standard is high and offers a considerable level of protection against capricious application.

As with other Code Enforcement actions, unpaid fees and penalties may be collected through tax liens, which are recorded on the property title and are transferrable to the County Assessor for collection with the general levy. In a property sale, the seller's proceeds are reduced by the amount of the liens. The sale price is determined by market forces, which are not directly effected by the lien amount, although vacant buildings contribute to the diminished property values in a neighborhood. Sellers, however, characteristically portray code enforcement liens as an insurmountable disincentive for attracting buyers.

### RECOMMENDATIONS

Staff recommends that the Committee accept this supplemental report and forward it along with the agenda report to the City Council for adoption of the proposed ordinances.

### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept the agenda and supplemental reports and adopt the proposed ordinances creating a new chapter in the Oakland Municipal Code for a vacant building registration program and creating new fees in the Master Fee Schedule to implement and sustain the program.

Respectfully submitted,



Dan Lindheim  
Director  
Community and Economic Development Agency

Prepared by:  
Raymond M. Derania  
Interim Building Official  
Building Services Division

APPROVED AND FORWARDED TO THE  
THE COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE:



Office of the City Administrator

Item: \_\_\_\_\_

Community and Economic Development Committee  
January 13, 2009

DRAFT

Introduced by \_\_\_\_\_

REVISED 11/ 12/ 2008

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND Approved for Form and Legality

2008 DEC 22 AM 11:24

\_\_\_\_\_  
Councilmember

\_\_\_\_\_  
City Attorney

## OAKLAND CITY COUNCIL

Ordinance No. \_\_\_\_\_ C.M.S.

### AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ADD A NEW CHAPTER 8.54 REQUIRING THE REGISTRATION OF VACANT BUILDINGS

**WHEREAS**, vacant and unmaintained 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 residential and non-residential 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 and unmaintained 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 and unmaintained buildings throughout the City also have been and continue to be a significant and unnecessary discouragers to economic development and contributors to the decline of property values in residential and non-residential neighborhoods; and

**WHEREAS**, the City has expended and continues to expend vast and unnecessary amounts of limited resources and scarce funds investigating vacant and unmaintained 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 and unmaintained 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 direct or indirect 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 the building is vacant by involving an escalating commitment from Code Enforcement administrative, fiscal, and supervisory staff, and involving a proliferating interaction with other 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 initial fee set by this Ordinance reflects the amounts for the code enforcement costs pertaining to vacant building; 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 and field inspection for a vacant building; and

**WHEREAS**, the increase in the fees for additional years of vacancy reflect this three (3) times the costs of the initial processing and field inspection for a vacant building; and

**WHEREAS**, historically, there are additional citywide costs of said resource requirements in areas of real estate divesture 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 an 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 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) this project is categorically exempted; now, therefore,

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

**Section 1.**

- 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 by owners and others with a financial interest in a property complies with the California Environmental Quality Act.

**Section 2.** 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**

**8.54.010 - Title**

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

**8.54.020 - Purpose**

The purpose of this Chapter is to promote the health, safety, and general welfare of the citizens of Oakland and the economic stability and viability of businesses, industries, and residential neighborhoods in the City by requiring the monitoring of vacant residential, commercial, and industrial buildings and structures which will protect and preserve the livability, appearance, and social fabric of the City and which will also protect the public from the health and safety hazards and the impairment of property values resulting from the neglect and deterioration of property.

**8.54.030 - Scope**

The requirements of this Chapter shall be applicable to all residential and non-residential buildings or portions thereof that have remained unoccupied for their intended and authorized use for more than forty-five (45) consecutive calendar days.

**8.54.040 - Definitions**

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 meaning:

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

**Building** shall mean an unattached roofed structure that exceeds one-hundred twenty (120) square feet in floor area (orthogonal planer projection) for which the Building Official is authorized to determine and assign an occupant classification (group and division) in accordance with the provisions of the California Building Code and Chapter 15.04 of the Oakland Municipal Code.

**Building Department** shall have the same meaning as defined in Chapter 15.04 of the Oakland Municipal Code.

**Building Official** shall have the same meaning as defined in Chapter 15.04 of the Oakland Municipal Code.

**Occupied** shall mean both the

- physical occupancy on a continuing and non-transient basis within a building or portion thereof by one or more individuals who are the legal or equitable owner(s), occupant(s), or tenant(s), and the
- physical operation on a continuous and non-transient basis within a building or portion thereof of an authorized, licensed, and otherwise certified business, occupation, or related activity by one or more individuals, firms, corporations, limited liability companies, limited partnerships, or similar entities, whether as an owner or tenant.

Acceptable evidence may be provided to substantiate that a building or portion thereof is occupied for residential purposes or a business, occupation, or related activity is operating for non-residential purposes and shall include, but is not limited to, the regular delivery and receipt of mail by the US Postal Service; continuous payment of utility bills for telephone, electric, natural gas, potable water, garbage, sanitary sewer, and cable television subscriber services; a valid City business tax certificate; and the continuous payment of federal and state income taxes.

**Occupancy** shall mean occupied.

**Open** shall mean a window, skylight, exterior door/ sidelight/ transom that is broken; or cannot be fully closed; or has an improperly functioning, unapproved, or missing securing device; or is partially or fully missing from its exterior opening; or any combination of these conditions.

**Owner** shall mean the freeholder of the premises or any lesser estate therein; and a mortgagee, vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or another person, firm, limited liability company, limited partnership, corporation, and other type of organization that directly or indirectly controls a building or portion thereof.



**Ownership** shall mean owner.

**Vacant** shall mean the physical absence of an approved occupancy by the legal or equitable owner or a legally authorized occupant or tenant in a building or portion thereof for more than forty-five (45) consecutive calendar days. Non-residential occupancies located above the ground floor of a Building shall not be considered as vacant for the purposes of this definition.

## **8.54.050 - General Requirements**

### **A. Registration**

The owner of a vacant 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 becomes vacant. A separate filing shall be required for each vacant building. A new filing shall be required within thirty (30) calendar days following a change of ownership.

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

1. Street address of the vacant building as designated by the City and parcel number of the real property as designated by the Alameda County Assessor.
2. Name(s), mailing address(es), and telephone number(s) of the owner of the vacant building including, but not limited to, the agent of the owner; the executor of an estate; the trustee(s), grantor(s), and beneficiary(ies); the partner(s) with a financial interest exceeding ten percent (10%) of the assessed value of the building; the principal(s) of an unincorporated association; an individual person(s); 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.
3. Other relevant information that the City may determine is necessary for the identification of a property or an owner or for the enforcement of this Chapter.

### **B. 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, regulations of the United States Code of Regulations, and decisions, rulings, and orders of courts of competent jurisdiction.

### **C. 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 open, boarded, or occupied, as defined in this Chapter; becoming blighted, as defined in Chapter 8.24 of the Oakland Municipal Code; becoming inhabitable, as defined in Chapter 15.08 of the Oakland Municipal Code; becoming

fire damaged; and becoming hazardous, as defined in Chapter 15.12 of the Oakland Municipal Code.

#### **D. Violation and Enforcement**

##### **1. General**

The failure of an owner to comply fully with a provision of this Chapter shall be a separate violation which shall be immediately subject to enforcement, penalty, 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, or entity.

##### **2. Authority**

The Building Official and his or her designees are authorized to enforce the provisions of this Chapter. For such purposes, they shall have the powers of a law enforcement officer.

##### **3. Remedies**

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

#### **8.54.060 - Assessments**

##### **A. Fees**

Fees for filing and processing a Statement of Registration shall be as established in the Master Fee Schedule. Fees for an initial State of Registration shall be fully paid at the time of filing. Fees for an annual renewal of a Statement of Registration shall be fully paid not later than the first day of May of the calendar year following the year of the initial filing and on each succeeding first day of May thereafter.

##### **B. Penalties**

The assessment of civil and administrative citations as provided in Chapters 1.08 and 1.12 of the Oakland Municipal Code shall apply to the enforcement of this Chapter.

##### **C. Interest**

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

##### **D. Collection**

The City may serve a Demand 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 Tax Assessor, or as otherwise may be known to the City. Whenever such amounts are not fully paid on or before the day set forth in this Chapter and a waiver, extension, or exemption of payment has not been granted, 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:

### **1. 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 Tax 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.

### **2. Special Assessment of the General Levy**

The City may transmit such unpaid amounts with accrued interest to the Alameda County Tax Assessor, who shall thereupon enter a Special Assessment of the General Tax Levy 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.

### **3. 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 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 attorneys' fees.

## **8.54.070 - Fee Waiver, Extension, and Waivers Exemption.**

### **A. Waiver**

A waiver of the processing fee for the Statement of Registration or the fee for its annual renewal may be granted when the owner provides the following:

1. written application for a waiver which is received by the City within thirty (30) calendar days from the date that said fee shall be paid; and
2. evidence of full payment of all unpaid fees, penalties, costs, and interest owed to the City which are associated with the maintenance of the property and with prior assessments for this Chapter; and
3. one of the following documentations:
  - a. application to the Building Department and payment of fees for a permit to demolish or repair the vacant building and a written estimation from a licensed design professional or contractor of the time duration required to complete the work; or
  - b. *satisfactory evidence of active and substantive effort to sell, lease, or rent the vacant building when demolition or repair is not otherwise required by the Building Official.*

Whenever a Building remains vacant for more than one hundred twenty (120) calendar days following the granting of a waiver of the processing fee or the annual renewal fee, the waiver shall become void, and the Owner shall submit a Statement of Registration form with the appropriate fees to the Building Department. When the required form and fees have not been received within thirty (30) calendar days following notification to the Owner that the waiver has been voided, the Owner shall be subject to penalties, interest, and collection actions provided herein.

#### **B. Extension**

An extension of ninety (90) calendar days may be granted for payment of the processing fee for the Statement of Registration or the annual renewal fee upon receipt by the City of a written application from the owner satisfactorily demonstrating exigent circumstances beyond the control of the owner.

#### **C. Exemption**

An exemption of the processing fee for the Statement of Registration and the fee for annual renewals up to two years of vacancy may be granted when the owner provides evidence that it meets the criteria set forth in section 501(c)(3) of the Internal Revenue Code.

#### **8.54.080 - Appeal.**

The owner may appeal the assessment of fees in accordance with the provisions for appealing Deteriorated Conditions and the assessment of penalties in accordance with the provisions for appealing Hazardous Conditions as set forth in Chapter 15.08 of the Oakland Municipal Code.

#### **8.54.090 - Review of Appeal.**

The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petition filers seeking judicial review of administrative determinations made by a Hearing Examiner.

**8.54.100 - Exclusions.**

This Chapter shall not apply to any vacant building owned by the United States, the State of California, the County of Alameda, the City of Oakland, nor to any of their respective agencies or political subdivisions.

**Section 3. Applicability**

**A. Construction and Separability**

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, \_\_\_\_\_, 2009**

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

DATE OF ATTESTATION: \_\_\_\_\_