

**CITY OF OAKLAND**  
**AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2009 FEB 26 PM 3:58

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: March 3, 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 February 3, 2009, regular meeting of the City Council, staff was directed to return in a month with a supplemental analysis of proposed amendments introduced on the floor for a new ordinance which would require vacant buildings to be registered and owners to pay an annual fee.

The ordinance has been amended to address most of the following issues which were raised:

- clarifying public record access to the registration data base;
- clarifying the responsibilities of owners and potential purchasers for paying fees;
- clarifying the anticipated revenue from registration fees for funding dedicated staff;
- clarifying the time period a building may remain vacant before it must be registered;
- clarifying the applicability of penalty assessments by City ordinance and state statute;
- clarifying the requirement for monitoring a vacant building for blight and hazardous conditions;
- clarifying the definitions of "owner", "occupied", "vacant residential property", and "vacant commercial space";
- clarifying when the payment grace period begins for extensions (emergencies), waivers (actively selling/ leasing/ renting), and exemptions (non-profit organizations).

**FISCAL IMPACT**

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

**BACKGROUND**

- Purpose and Scope

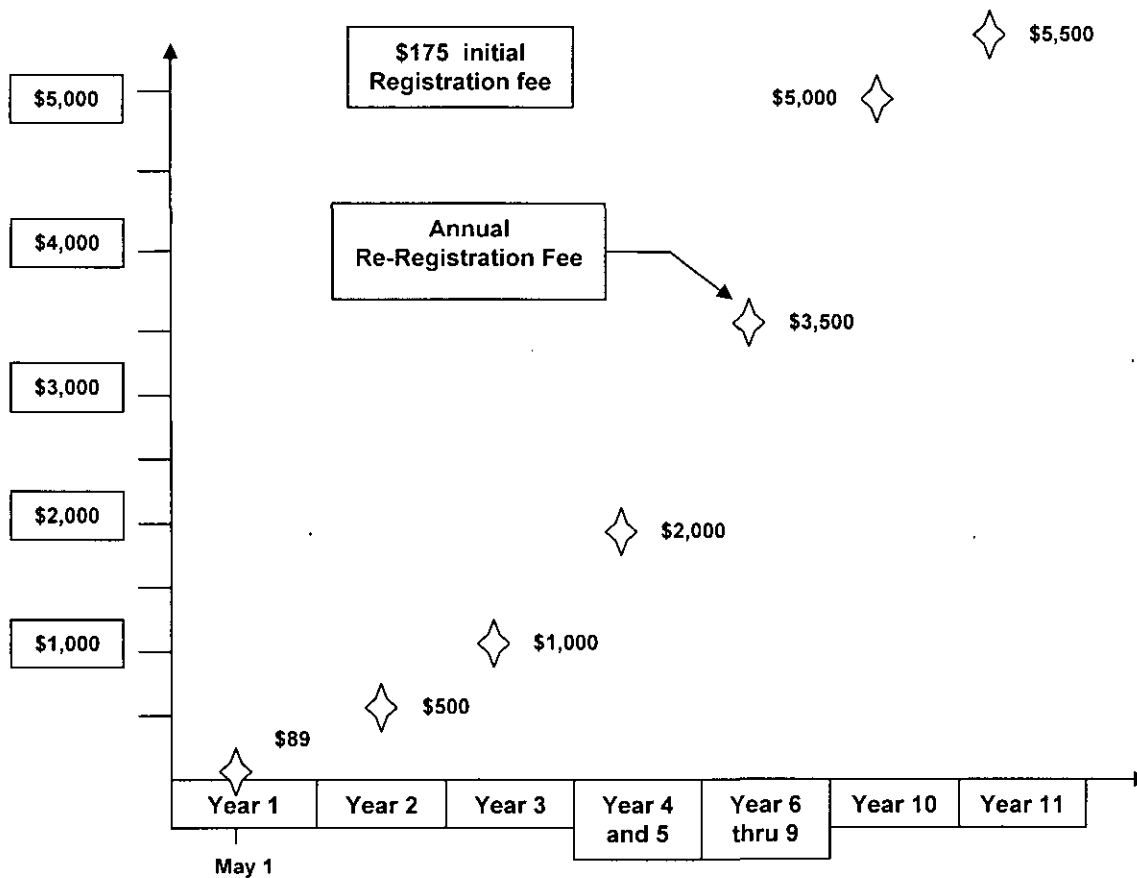
The new Chapter 8.54 is formatted similar to the California Building Code and Housing Law and will be administered by the Community and Economic Development Agency (CEDA). It will be

Item: 15  
City Council  
March 3, 2009

part of Title 8 - Health and Safety - of the Oakland Municipal Code, which also includes the Blight Ordinance (Chapter 8.24) and Smoking Pollution Control Ordinance (Chapter 8.30). Its purpose is to protect and preserve the livability, appearance, and social fabric of the City by requiring owners of vacant property, rather than the neighbors or Code Enforcement staff, to monitor vacant buildings through a registration program. The ordinance applies to vacant residential buildings and ground-floor commercial space.

▪ Registration Fee

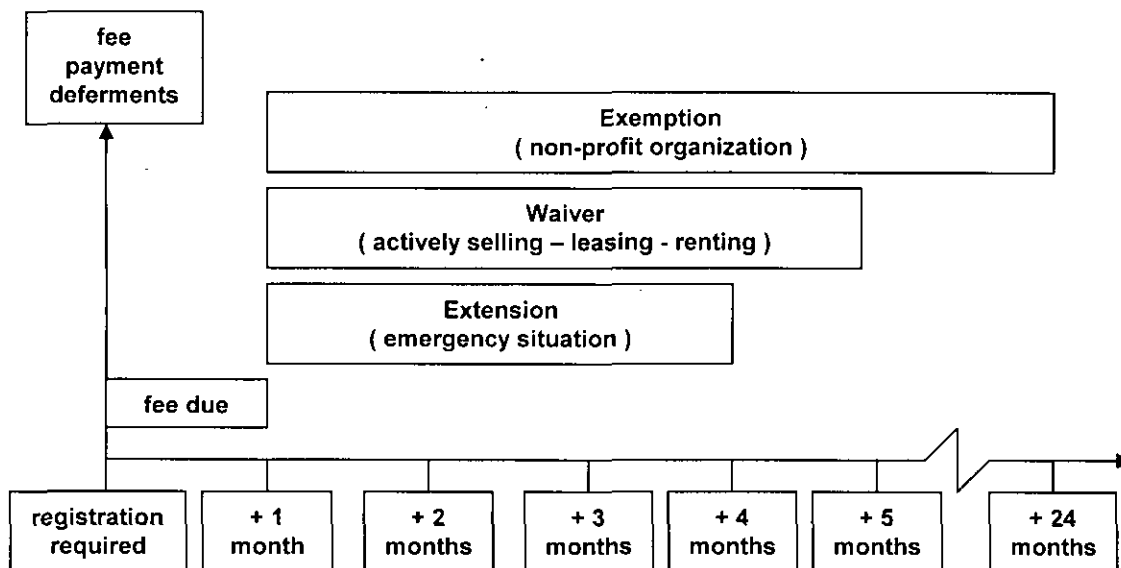
The initial registration fee will be \$175 (\$89 + \$66 filing + records and technology surcharge). An annual re-registration fee will be due each May 1st thereafter while the building remains vacant. The fee increase will average \$500 for each year of vacancy.



Several time extensions beyond the initial one (1) month grace period for paying the registration fee are provided:

- ✓ three (3) additional months for emergency situations,
- ✓ four (4) additional months for actively selling, leasing, or renting,

- ✓ twenty-four (24) additional months for non-profit organizations.



▪ Collections

As with Code Enforcement charges, the ordinance provides several methods for collecting delinquent registration fees and penalties:

- ✓ property liens and property taxes, which are administrative actions and will encumber the property title, and
- ✓ judgment liens, a court action that will attach to the personal assets of the property owner.

The ordinance also explains that state law obligates a property buyer as well as the property seller to pay delinquent fees from the time the lien for the fees is recorded on title. Should the subsequent buyer of a vacant property not be aware of these fees or otherwise be responsible for payment, the City will pursue a collection action against the seller.

▪ Penalties

Penalty Ordinance No.11805 C.M.S. was adopted in 1995 and provides for two (2) levels of penalties for approximately two-thirds (64%) of the chapters in the Oakland Municipal Code (OMC).

ADMINISTRATIVE CITATION		CIVIL PENALTY	
day 1	\$ 100	day 1 thru 365	\$ 1,000
day 2	\$ 150		
day 3	\$ 250		
day 4 thru 12	\$ 500		
maximum total	\$ 5,000	maximum total	\$ 365,000

Item: \_\_\_\_\_  
 City Council  
 March 3, 2009

PENALTY ORDINANCE APPLICABILITY			
OMC	DESCRIPTION	SAMPLE CHAPTERS	
Chapter 4.24	Transient Occupancy Tax		
Chapter 5.34	Hotel Rates and Registration		
Title 6	Animals	6.08	Vicious Dogs
Title 8	Health & Safety	8.24	Blight
Title 9	Public Peace, Morals, and Welfare	9.36	Weapons
Title 10	Vehicles and Traffic	10.64	Abandoned Vehicles
Title 12	Streets, Sidewalks, and Public Places	12.36	Protected Trees
Chapter 13.16	Creek Protection and Storm Water		
Title 14	Signs		
Chapter 15.04	Building Code		
Chapter 15.08	Housing Code		
Chapter 15.12	Fire Code		
Chapter 15.16	Fire Damaged Hills Area		
Chapter 15.64	Bedroom Window Security Bar		
Title 17	Planning Code		

OMC penalties may be assessed against property, by recorded liens, or against persons, by court judgments, and may be appealed to an independent Hearing Officer upon notice of assessment.

PENALTY	APPLICABILITY FOR ASSESSMENT
Administrative Citation (OMC 1.12) Civil Penalty (OMC 1.08)	<ol style="list-style-type: none"> <li>Designated violations of the Oakland Municipal Code.</li> <li>Anything which is injurious to health, including the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.</li> <li>The occurrence of a public nuisance as determined by case law.</li> <li>The violation of any state or federal law or regulation for a public nuisance.</li> </ol>

The City Attorney has previously provided a confidential legal opinion to the City Council concerning the assessment of the two (2) different penalties to different categories of Owners.

**KEY ISSUES AND IMPACTS**

**Amendments Forwarded By The CED Committee - January 23, 2009**

At the February 3, 2009, regular meeting of the City Council, the supplemental report presented

Item: \_\_\_\_\_  
 City Council  
 March 3, 2009

the following amendments to the ordinance, which had been forwarded from the Community and Economic Development (CED) Committee:

SECTION	AMENDMENTS FORWARDED BY THE CED COMMITTEE
8.54.040	Vacant definition changed to exclude basements and upper floors from commercial space
	Owner definition changed to clarify fee simple ownership and include mortgagers
8.54.060	Explanation added to clarify the legal obligation of property buyers to pay delinquent fees
8.54.070	4 month limit added for delayed payment due to actively selling, leasing, or renting property
	Grace period for delayed payment increased to 45 days before penalty action may commence
8.54.100	Port of Oakland excluded from the ordinance

### Amendments Proposed By The City Council - February 3, 2009

▪ Section 8.54.040 - Definitions

1. Vacant Building

Two (2) changes were proposed:

- a. deleting the phrase “or portion thereof”, which would eliminate a perceived inconsistency with the definition of Occupied building.
- b. increasing the time period a building could remain vacant before being subject to the registration program from forty-five (45) days to ninety (90) days, which would more closely align the ordinance with the average time required to sell a residential property.

The ordinance has been amended to reflect these proposals (annotated with double-underline).

2. Occupied Building

Three (3) changes were proposed:

- a. a residential building would be occupied if one or more dwelling units are occupied;
- b. ground-floor commercial space would be vacant if one or more tenant spaces are vacant;
- c. ground-floor commercial spaces would not be considered as occupied solely if utilities and taxes have been paid.

The ordinance has been amended to reflect these proposals (annotated with double-underline).

Item: \_\_\_\_\_  
City Council  
March 3, 2009

### 3. Owner

A change was proposed to delete the phrase “directly or indirectly”. The definition in the ordinance is otherwise consistent with terms contained in California Civil Code Section 2929.3 (residential foreclosure civil fines) and necessarily includes entities other than the property owner to assure that there will be someone who is responsible for registering, inspecting, and monitoring a vacant building in the event the owner is unmotivated, missing, incapacitated, deceased, etc.

The ordinance has been amended to reflect this proposal (annotated with double-underline).

- Section 8.54.050 - General Requirements

A change was proposed to require the Owner to perform an inspection of a vacant building and premises and provide a plan and identify the responsible person or party for periodically monitoring the property for blighted and hazardous conditions.

The ordinance has been amended to reflect this proposal (annotated with double-underline).

- Section 8.54.060 - Assessments

A clarification was requested for the responsibility of potential buyers of vacant buildings for paying delinquent registration fees. An explanation of state law requirements for actual and constructive notice both to owners and other interested parties was included in the amendments forwarded by the CED Committee.

Two (2) further clarifications were requested for the assessment of penalties authorized by the Oakland Municipal Code and the California Civil Code for foreclosed residential properties:

1. OMC Chapters 1.08 and 1.12

A summary of the Penalty Ordinance is provided on pages 3 and 4 of this report. Unlike the Civil Code amendments, OMC penalties will apply to vacant residential and non-residential properties, whether or not a foreclosure action has commenced. Penalties for non-compliance have to do with an owner’s failure to register, whereas penalties under Civil Code Section 2929.3 have to do with failure to maintain property similar to Oakland’s Blight Ordinance. Penalties collected under Civil Code Section 2929.3 could not also be collected under Oakland’s Blight Ordinance. The proposed Vacant Building Registration Ordinance, however, is a separate statute all together and is not preempted by Civil Code Section 2929.3

2. Civil Code Section 2929.3

The new state statute authorizes the assessment of \$1,000 per day penalties against the purchaser of a foreclosed residential property for failing to maintain or prevent trespassers from remaining on the premises. Collected fines must be directed to a local nuisance abatement program. The statute does not preempt Oakland’s Blight Ordinance.

- Section 8.54.070 - Fee Waiver, Extension, and Exemption

A clarification was requested detailing when the time period for the three (3) types of payment deferrals would begin. A graphical representation is presented on page 3 of this report. Language is provided in subparagraph A of this section and is intended to apply to Subparagraphs B and C, which provides a thirty (30) day grace period for submitting substantiating documentation before the various deferrals begin.

The ordinance has been amended to reflect this clarification.

- Public Records Act

Pursuant to California Government Code Section 6251, et seq., all information collected from the Statements of Registration and Code Enforcement actions are public records and may be accessed and reviewed by the public.

- Staffing

As proposed in the companion ordinance amending the Master Fee Schedule, revenue derived from registration fees will be deposited in Building Service's Code Enforcement account. It is not possible at this time to forecast with any precision the anticipated funds which will be generated by this program. Consequently, staff has not requested an increase in authorized staffing (FTE) to administer this program during the next biennial budget cycle (FY 2009 – 2011).

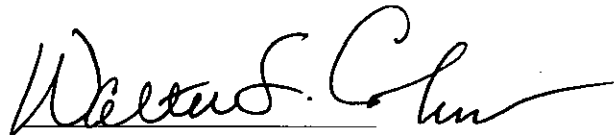
**ACTIONS REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council 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 with the following amendments:

SECTION	PROPOSED AMENDMENTS
8.54.030	delete reference to building being vacant for 45 days
8.54.040	change Occupied definition to include one or more living units in residential buildings
	change Occupied definition to require that all commercial spaces are occupied
	change Occupied definition to exclude commercial space if utilities and taxes are paid
	change Occupied definition to clarify residential and commercial occupancies
8.54.040	change Owner definition to clarify fee simple ownership and include mortgagors
	change Owner definition to exclude "direct and indirect" from control
	change Vacant definition to increase vacancy grace period from 45 days to 90 days

8.54.040	change Vacant definition to exclude basement and upper-floors from commercial space
	change Vacant definition to clarify residential and commercial occupancies
	add Vacant Date definition
8.54.050	add requirement to Statement of Registration for building inspection and monitoring plan
8.54.060	split reference to Civil Penalties and Administrative Citations into two sections
8.54.060	add explanation to clarify the legal obligation of property buyers to pay delinquent fees
8.54.070	add 4 month limit for delayed payment due to actively selling, leasing, or renting property
	add 45 day grace period for delayed fee payment before penalty action may commence
	add 30 day grace period to Extension and Exemption for submitting qualifying documentation
8.54.080	add clarification for appealing registration fees
8.54.100	add exclusion from the program for the Port of Oakland

Respectfully submitted,



WALTER S. COHEN, Director  
Community and Economic Development Agency

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

APPROVED AND FORWARDED  
TO THE CITY COUNCIL

  
Office of the City Administrator

Attachment A – Program Summary Pamphlet

Item: 15  
City Council  
March 3, 2009



**Municipal Code Regulations**

www.oaklandnet.com

CHAPTER	DESCRIPTION
1.08	Administrative Citations
1.12	Civil Penalties
5.05	Business Tax
6.04	Animal Control
8.12	Hazardous Materials
8.24	Property Blight
10.04	Abandoned Vehicles
12.04	Sidewalk Maintenance
12.36	Protected Trees
13.08	Building Sewers
15.04	Building Construction
15.08	Building Maintenance
15.12	Fire Code
15.64	Bedroom Window Bars

**Contacts**

DEPARTMENT	TELEPHONE
Zoning	510/ 238-3911
Business Tax	510/ 238-3704
Fire Prevention	510/ 238-3851
Code Enforcement	510/ 238-3381
Vehicle Abatement	510/ 777-8538
County Hazardous Waste Disposal	800/ 606-6606

**Permit Center - Registration Program**

information - 510/ 238-3891

facsimile - 510/ 238-2263

WEEKDAY	BUSINESS HOURS
Mon - Tues - Thurs - Fri	8:00 am - 4:00 pm
Wed	9:30 am - 4:00 pm

**City of Oakland**

**Community and Economic  
Development Agency**

**Vacant Building  
Registration Program**

Oakland Municipal Code  
Chapter 8.54

**DRAFT**

Attachment A

Building Services  
Dalziel Administration Building  
Permit Center - 2nd floor  
250 Ogawa Plaza  
Oakland, CA 94612  
510/ 238-3891  
www.oaklandnet.com

**Registration Program**

Oakland Municipal Code Chapter 8.54 applies to residential and non-residential buildings which have been vacant for more than 90 days. Property owners, trustees, mortgagers, executors, etc. are responsible for registering vacant buildings, paying fees annually, and monitoring the property for blight, hazardous conditions, and trespassing.

**Program Purpose**

The purpose of the program is to protect and preserve the livability, appearance, and social fabric of the City by requiring owners and others who may control a property, rather than neighbors or Code Enforcement staff, to inspect vacant buildings periodically and maintain them.

**Statement of Registration**

A Statement of Registration form must be filed at the Permit Center after a building has been vacant for 90 days and when ownership of a vacant building changes. An inspection report of the premises exterior and building interior must be submitted with the Registration form. Re-inspections of the property must also be done periodically to assure that the yard and building facade are maintained (Chapter 8.24) and the building remains secured (Chapter 15.08).

**Registration Fees**

Registration fees are due with the filing of a Statement of Registration (unless a postponement is granted) and on May 1st each year thereafter for as long as the building remains vacant.

DUE	AMOUNT
Initial filing	\$ 175
year 1	\$ 89
year 2	\$ 500
year 3	\$ 1,000
year 4	\$ 2,000
year 6	\$ 3,500
year 10	\$ 5,000

Fees are subject to increase at any time.

**Payment Of Fees**

Owners may apply for a postponement for paying fees for the following reasons:

CATEGORY	REASON	TIME
extension	emergency	3 months
waiver	actively selling, leasing, or renting	4 months
exemption	non-profit organization	24 months

A written request must be submitted with the Statement of Registration. Supporting documentation must be submitted within 30 days. If a postponement is granted, the additional time will start at the end of the 30 day submittal period.

**Vacant and Occupied**

**Residential Buildings**

The program does not apply to residential buildings unless all of the dwelling units in a building are vacant. A dwelling unit will be considered occupied if a tenant or the owner is paying all utilities, garbage service, and taxes for the unit.

**Commercial Buildings**

The program does not apply to commercial tenant space which is above or below the ground floor. All partitioned spaces in non-residential occupancies must be occupied, or the building will be considered vacant.

**Collections**

Unpaid fees (and penalties) and accruing interest are subject to the following collection actions:

**Lien** - A special assessment for unpaid amounts can be recorded on the property title and will be superior to all other recorded liens and deeds of trust.

**Taxes** - Unpaid amounts can be transferred to the Assessor for inclusion with the general levy (tax bill).

**Garnishee** - A judgment action can be filed in Superior Court to attach wages and assets of owners and others having control of the vacant building.

**Maintenance Plan**

The person or firm who will be responsible for monitoring a vacant building must be identified on the Statement of Registration. A plan must be included which describes the means, methods, and time frames for re-inspecting the property.

**Maintenance Standards**

**Premises** - Trash, debris, unregistered/ inoperative vehicles, tires, etc. must be removed. Landscaping must be trimmed and grass cut (6" maximum height). Fencing must be repaired. Pools must be drained. Feral pets, insects, rodents, etc. must be removed.

**Building** - Graffiti, posters, etc. must be removed. Broken glazing, doors, guardrails, and signs and leaking roofs must be repaired. Sewer traps must be primed or capped. Gas appliance valves must be turned off. Deteriorated exterior paint must be restored.

**Trespassers** - Breached openings must be boarded and painted to City specifications. Utility meters must be removed.

**Hazardous Material** - Pesticides, herbicides, solvents, caustics, flammables, paints, etc. must be removed (County Hazardous Waste Disposal - 2100 E 7th St).

**Penalties**

Penalties may be assessed against owners or others having control of a vacant building for failing to register, pay fees, or maintain the premises (Chapters 1.08 & 1.12).

PENALTY	AMOUNT
Administrative Citation	\$ 500 per day up to \$ 5,000
Civil Penalty	\$ 1,000 per day up to \$ 365,000

Penalty assessments may be appealed to an independent Hearing Officer when the Notice of Assessment is issued.

Attachment A

**DRAFT**

Introduced by

**AMENDED**

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

2009 FEB 26 PM 3:58

City Attorney

\_\_\_\_\_  
Councilmember

**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

15-1  
ORACOUNCIL

MAR 03 2009

**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 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**, 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 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 ninety (90) 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.

**Occupancy** shall mean occupied.

**Occupied** shall mean Occupied – Commercial and Occupied – Residential, as applicable.

**Occupied – Commercial** shall mean the physical operation for non-residential purposes on a continuous and non-transient basis within all portions of a Building 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.

**Occupied – Residential** shall mean the physical occupancy for residential purposes 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). Acceptable evidence may be provided to substantiate that a building or portion thereof is occupied for 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.

**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 fee simple owner of the premises or any lesser estate therein; a mortgagor 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 controls a building or portion thereof.

**Ownership** shall mean Owner.

**Vacant** shall mean Vacant – Commercial and Vacant – Residential, as applicable.

**Vacant - Commercial** shall mean the physical absence of commercial occupancy by the Owner or a legally authorized occupant or tenant located on the ground floor of a Building for more than ninety (90) consecutive calendar days.

**Vacant - Residential** shall mean the physical absence of a residential occupancy by the Owner or a legally authorized occupant or tenant in a Building for more than ninety (90) consecutive calendar days.

**Vacancy Date** shall mean the ninety-first (91st) consecutive calendar day that a Building is vacant.

#### **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 (Vacancy Date). 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 for each vacant building.

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.
4. Written results of an interior and exterior inspection of the premises and a written plan detailing the means, methods, time frames, and the persons or parties responsible for periodic re-inspections to assure compliance with subparagraph B of this section.

## **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.

### **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 the Statement of Registration. 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. Civil Penalties**

The assessment of civil penalties as provided in Chapter 1.08 of the Oakland Municipal Code shall apply to the enforcement of this Chapter.

**C. Administrative Citations**

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

**D. Interest**

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

**E. 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.

### **4. Actual and Constructive Notice of Assessment**

Pursuant to state law, actual notice of the assessment of registration fees and penalties and citations 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 of registration fees and penalties and citations to all other interested parties shall be established on the date a lien is recorded by the Office of the Alameda County Clerk-Recorder. A subsequent Owner of a vacant building without actual or constructive notice of the assessment of registration fees and penalties and citations under this Chapter shall not be liable for such assessment.

The City may recover from the Owner 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 Exemption.**

#### **A. Waiver**

A waiver of the registration fees 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 fees 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 or commercial space 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 or commercial space 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 date a waiver of the registration fees or the annual renewal fee is granted, the waiver shall become void, and the Owner shall submit the required fees to the Building Department. When the required fees have not been received by the City within forty-five (45) calendar days following the City's notification to the Owner that the waiver has been voided, the Owner shall be subject to penalties, interest, and collection actions as provided herein.

#### **B. Extension**

An extension of ninety (90) calendar days may be granted for payment of the registration fees accompanying the Statement of Registration or the annual renewal fee upon receipt by the City of a written application from the Owner within thirty (30) calendar days from the date that said fee shall be paid satisfactorily demonstrating exigent circumstances beyond the control of the Owner.

#### **C. Exemption**

An exemption of the registration fees 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 within thirty (30) calendar days from the date that said fee shall be paid 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 registration fees in accordance with the provisions for appealing Deteriorated 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 petitioners 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, Port of Oakland, the City of Oakland, nor to any of their respective agencies or political subdivisions.

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

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

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

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

151  
ORA/COUNCIL  
MAR 03 2009

**DRAFT**

Introduced by

**AMENDED**

FILED  
APPROVED BY THE CITY CLERK  
OF THE CITY OF OAKLAND

2009 FEB 26 PM 3:58  
City Attorney

\_\_\_\_\_  
Councilmember

**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

15-1

**ORACOUNCIL**

**MAR 03 2009**

**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 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 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)~~ ninety (90) 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.

Occupancy shall mean Occupied.

Occupied shall mean Occupied – Commercial and Occupied – Residential, as applicable.

**Occupied - Commercial** shall mean both the physical operation for non-residential purposes on a continuous and non-transient basis within all portions of 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.

**Occupied – Residential** shall mean the physical occupancy for residential purposes 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). 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 fee simple owner of the premises or any lesser estate therein; a mortgagor 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 Vacant – Commercial and Vacant – Residential, as applicable.

**Vacant - Commercial** shall mean the physical absence of an approved commercial occupancy by the legal or equitable Owner or a legally authorized occupant or tenant in a located on the ground floor of a Building or portion thereof for more than forty five (45) ninety (90) consecutive calendar days. Non residential occupancies located above or below the ground floor of a Building shall not be considered as vacant for the purposes of this definition.

**Vacant – Residential** shall mean the physical absence of residential occupancy by the Owner or a legally authorized occupant or tenant in a Building for more than ninety (90) consecutive calendar days.

**Vacancy Date** shall mean the ninety-first (91st) consecutive calendar day that a Building is vacant.

## **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 (Vacancy Date). 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 for each vacant building.

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.

4. Written results of an interior and exterior inspection of the premises and a written plan detailing the means, methods, time frames, and persons or parties responsible for periodic re-inspections to assure compliance with subparagraph B of this section.

## **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 the Statement of Registration. 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. Civil Penalties**

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

**C. Administrative Citations**

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

**~~D~~ D. Interest**

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

**~~D~~ E. 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.

### **4. Actual and Constructive Notice of Assessment**

Pursuant to state law, actual notice of the assessment of registration fees and penalties and citations 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 of registration fees and penalties and citations to all other interested parties shall be established on the date a lien is recorded by the Office of the Alameda County Clerk-Recorder. A subsequent Owner of a vacant building without actual or constructive notice of the assessment of registration fees and penalties and citations under this Chapter shall not be liable for such assessment.

The City may recover from the Owner 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 registration fees 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 fees 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 or commercial space 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 or commercial space when demolition or repair is not otherwise required by the Building Official.

Whenever a Building or ground floor commercial space remains vacant for more than one hundred twenty (120) calendar days following the granting of date a waiver of the registration fees or the annual renewal fee is granted, the waiver shall become void, and the Owner shall submit the required fees to the Building Department. When the required fees have not been received by the City within forty-five (45) calendar days following the City's notification to the Owner that the waiver has been voided, the Owner shall be subject to penalties, interest, and collection actions as provided herein.

### **B. Extension**

An extension of ninety (90) calendar days may be granted for payment of the registration fees ~~for~~ accompanying the Statement of Registration or the annual renewal fee upon receipt by the City of a written application from the Owner within thirty (30) calendar days from the date that said fee shall be paid satisfactorily demonstrating exigent circumstances beyond the control of the Owner.

### **C. Exemption**

An exemption of the registration fees 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 within thirty (30) calendar days from the date that said fee shall be paid 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 registration 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 petitioners 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 or ground floor commercial space owned by the United States, the State of California, the County of Alameda, Port of Oakland, the City of Oakland, nor to any of their respective agencies or political subdivisions.

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

**PASSED BY THE FOLLOWING VOTE:**

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

**NOES -**

**ABSENT -**

**ABSTENTION -**

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

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

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

**15-1  
ORACOUNCIL  
MAR 0 3 2009**