

FILED  
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OAKLAND  
Introduced by

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Mr. Reid, Ms. Quan, Ms. Kaplan  
Councilmembers

AMENDED

Approved for Form and Legality

  
City Attorney

## OAKLAND CITY COUNCIL

Ordinance No. 12991 C.M.S.

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### AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ESTABLISH A NEW CHAPTER 8.54 REQUIRING THE REGISTRATION OF FORECLOSED AND VACANT RESIDENTIAL BUILDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 1. Recitals**

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

**SECTION 2. Regulations**

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

**Chapter 8.54 - Vacant Building Registration**

**Article I - Intent**

**Section 8.54. 010 - Title**

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

**Section 8.54. 020 - Purpose**

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

**Section 8.54. 030 - Scope**

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

- has been foreclosed upon, and
- contains only residential Groups R-2, R-3, and R-7 occupancies, as set forth in the Oakland Building Construction Code, with or without attached storage and automobile parking facilities, and

- contains not more than four (4) dwelling and live-work units, all of which are vacant.

#### **Section 8.54.040 - Authority**

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

#### **Section 8.54.050 - Exclusions**

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

### **Article II - Definitions**

#### **Section 8.54.100 - Construed Meanings**

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

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

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

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

**BUILDING DEPARTMENT** has the same meaning as set forth in the Oakland Building Construction Code.

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

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

**BUILDING OFFICIAL** has the same meaning as set forth in the Oakland Building Construction Code.

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

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

**INHABITABLE** has the same meaning as set forth in Chapter 15.08 of the Oakland Municipal Code.

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

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

**OCCUPANCY** has the same meaning as set forth in Chapter 3 of the Oakland Building Construction Code.

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

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

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

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

**OWNERSHIP** means owner.

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

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

### **Section 8.54.110 - Accepted Meanings**

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

## **Article III - Registration**

### **Section 8.54.200 - Filing a Statement of Registration**

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

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

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

### **Section 8.54.210 - Contact**

The owner shall immediately and prominently post on the vacant building, in a form acceptable to the City, contact information identifying the local individual or firm who shall be responsible for periodically inspecting the premises, maintaining the exterior free of blight, securing the

building against unauthorized entry, and responding immediately to contacts from emergency responders and the public. This information shall be continuously updated.

#### **Section 8.54.220 - Fees**

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

#### **Section 8.54.230 - Status**

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

### **Article IV - Enforcement**

#### **Section 8.54.300 - Compliance**

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

#### **Section 8.54.310 - Violations**

##### **A. General**

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

##### **B. Remedies**

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

##### **C. Notification**

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

## **Section 8.54.320 - Assessments**

### **A. Penalties and Fines**

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

### **B. Interest**

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

### **C. Collection**

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

#### **▪ Prospective Lien**

The City may file a Prospective Lien with the Alameda County Clerk-Recorder for recordation on the property title. The subsequent filing of a notice of the satisfactory discharge of such lien shall be contingent upon fulfillment of Conditions of Compliance, pursuant to the provisions of this Chapter, including, but not limited to, full payment of unpaid amounts with accrued interest.

#### **▪ Priority Lien**

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



- **Special Assessment of the General Levy**

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

- **Nuisance Abatement Lien**

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

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

### **Section 8.54.330 - Actual and Constructive Notice**

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

## **Article V - Appeal**

### **Section 8.54.400 - Appeal**

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

### **Section 8.54.410 - Review of Appeal**

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

**SECTION 3. Applicability**

**A. Construction and Severability**

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

**B. Authority**

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

**C. Effective Date**

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

**D. Sunset Date**

This ordinance shall cease to be operative on the date two (2) years in the future following its effective date, unless the Council of the City of Oakland enacts legislation before this sunset date to continue this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 02 2010, 2010

PASSED BY THE FOLLOWING VOTE:


AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, ~~XXXX~~  
AND PRESIDENT BRUNNER - 7

NOES -

ABSENT -

ABSTENTION -

Excused - Reid - 1

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

DATE OF ATTESTATION: 2/8/10

## **NOTICE AND DIGEST**

### **AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ESTABLISH A NEW CHAPTER 8.54 REQUIRING THE REGISTRATION OF FORECLOSED AND VACANT RESIDENTIAL BUILDINGS**

This ordinance will establish a new program requiring the annual payment of fees, totaling approximately \$500, and the registration of foreclosed residential buildings with not more than four (4) dwelling units which have been vacant for thirty (30) days or longer. This ordinance shall automatically sunset in two (2) years unless it is extended by the City Council.