



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: April 23, 2010

Approved Paul Krutz Date 4/26/10

COUNCIL DISTRICT: Citywide
SNI AREA: All

**SUBJECT: APPROVAL OF AN ORDINANCE AMENDING CHAPTER 17.38 -
NEGLECTED VACANT HOUSES ORDINANCE**

RECOMMENDATION

Approval of an ordinance amending San José Municipal Code Chapter 17.38, Neglected Vacant Houses Ordinance, to:

- 1) Change the title of the Chapter from "Neglected Vacant Houses" to "Maintenance and Rehabilitation of Neglected Vacant or Abandoned Buildings" and expand the provisions of the existing ordinance to include any neglected vacant or abandoned buildings;
- 2) Require all vacant or abandoned buildings to be rehabilitated within 180 calendar days after the building is vacant, unless the building meets certain maintenance or other requirements specified in the ordinance;
- 3) Require all vacant or abandoned historic buildings or structures listed on the National Register of Historic Places, California Register of Historic Resources, or City of San José Register of Historic Landmarks to install and maintain an operating alarm system approved by the City's Fire Marshall; and
- 4) Make other clarifying changes to the ordinance as described in this memorandum.

OUTCOME

In adopting the proposed ordinance, property owners of all vacant or abandoned buildings will be required to provide enhanced security and property maintenance for buildings that have been deemed neglected pursuant to the provisions of Chapter 17.38. In addition, once deemed neglected, the property owner will be required to register the vacant or abandoned building into the Neglected Vacant Housing Monitoring Program, which will allow the City of San José to recover costs associated with routine inspections of the property. Further, the Municipal Code

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amendments will include enhanced protection requirements for buildings that have been classified as historic.

BACKGROUND

The San José City Council adopted San José Municipal Code Chapter 17.38, Neglected Vacant Houses Ordinance (“Ordinance”) in January 1994 for the purpose of establishing security and property maintenance standards for vacant houses. In addition, the Ordinance required a property owner found in violation of the security and maintenance standards to register the vacant house into the Neglected Vacant House Monitoring Program, which allowed the City to recover staff costs for monitoring the property for a minimum of six months. In amending the Ordinance, staff will now require that property owners of neglected vacant buildings be held to the same standards as property owners of neglected vacant houses. In addition, the amendment sets forth specific standards and protections to assist in the preservation of San José’s vacant historic structures.

ANALYSIS

In adopting the Neglected Vacant Houses Ordinance, the City Council set forth specific security and property maintenance standards to ensure that vacant houses would not create a public nuisance. Many of the requirements currently set forth in Chapter 17.38 would apply to commercial, industrial and historic buildings in the proposed amended Ordinance, namely:

- The building(s) must be maintained in a secure manner so as to prevent unauthorized entry;
- The building(s) shall be maintained in a manner that does not create an unreasonable risk of fire, including the removal of weeds or other hazardous materials;
- The exterior of the property must be maintained free of debris, combustible materials, garbage and litter; and
- The property landscaping must be maintained, and graffiti must be removed promptly.

The proposed amended Ordinance would require that the property owner of any neglected vacant or abandoned structure maintain the property in “a manner, which minimizes the appearance of vacancy...” Further, the proposed Ordinance emphasizes that the property shall be kept in such condition as not to create the appearance of an unsecured, unoccupied structure or hazard to public safety.

Any person, which may include: (i) the property owner, (ii) a designated responsible party, should the property owner live more than sixty miles from the subject property, or (iii) any person that has an equitable, financial or fiduciary interest in the property (e.g., mortgage lender) that fails to maintain the property in accordance with the security and maintenance standards would be required to register the building as a Neglected Vacant Building. These individuals would be billed by the City of San José for inspection costs incurred by the Code Enforcement

Division for ensuring compliance with the security/maintenance standards set forth in the proposed amended Ordinance.

In addition, the amended Ordinance has been expanded to include the following additional features for vacant or abandoned buildings:

- Property owners will be required to maintain all vacant or abandoned buildings on the property in a secure manner, including garages, sheds and other accessory structures;
- Property owners of vacant or abandoned buildings may not have a building vacant longer than 180 calendar days unless an active building permit has been issued, the property is offered for sale, lease or rent, or is routinely monitored by the property owner or designated responsible agent and maintained in compliance with the security and maintenance standards;
- The definition of "Owner" is clarified to include any person, partnership, association, company, corporation, entity, financial institution, or fiduciary possessing a legal, promissory or equitable title or interest in the subject property;
- It requires that the property owner maintain any existing fire sprinkler systems and private fire hydrants unless allowed to be removed pursuant to written authorization by the City of San José's Fire Marshall;
- In an effort to minimize the blight effect of boarded windows and doors, visible from the public rights-of-way, property owners will be required to replace/repair broken windows and doors visible from the public rights-of-way;
- The property owner/responsible party will be required to post the name and phone number of the person(s) responsible for maintaining the property;
- All buildings that are vacant or abandoned and not maintained in accordance with the proposed amended Ordinance will be required to be registered into the Neglected Vacant House Monitoring Program.

Historic Property Protections

In an effort to safeguard San José's vacant and abandoned historic structures, in addition to the requirements described above, requirements have been added to the proposed amended Ordinance to preserve these buildings. Historic buildings have been defined as "any building or structure that is listed on (1) the National Register of Historic Places, (2) the California Register of Historic Resources, or (3) the City of San José Register of Historic Landmarks." In addition to the security and maintenance standards previously identified, vacant or abandoned historic buildings or structures would be required to have the following protections:

- The building or structure shall maintain an existing operating alarm system or install an operating alarm system within the property; and
- All operating alarm systems or installed alarm systems must be reviewed and approved by the City of San José's Fire Marshall.

Examples of alarm systems that may be required include security alarm systems, fire alarm systems, visual alarm systems, smoke detectors, or similar types of alarm systems as approved by the Fire Marshall.

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The City of San José shall have the authority to require the property owner/responsible party to implement additional maintenance, security, fire prevention or other corrective or preventive measures as may be required to ensure that the building or structure does not constitute a public nuisance.

Review by Historic Landmarks Commission

On April 7, 2010, staff presented the proposed amended Ordinance to the City of San José's Historic Landmarks Commission (HLC). The Commissioners were pleased that the proposed amended Ordinance included additional protections for vacant and abandoned historic structures. The Commissioners provided a number of suggestions for Council consideration not currently in staff's recommendations, as follows:

- 1) Define "historic" buildings to include those not currently listed on the City of San Jose's Register of Historic Landmarks, such as "Structures of Merit," those in "Historic Districts," and those in "Conservation Areas;"
- 2) Allow individuals to identify properties not currently listed on the City of San José's Historic Inventory and proactively appear before the HLC to include them in the Neglected Vacant House Monitoring Program; and
- 3) Require that electronic monitoring and sprinklers be installed in all "historic" properties.

Staff is proposing the expansion of the City's Neglected Vacant Houses Ordinance to include all buildings, and believes that Structures of Merit (that have not been formally designated as historic at the federal, state or local level) will be adequately protected through the other amendments to Chapter 17.38 being proposed by staff.

Staff further believes that requiring electronic monitoring and a sprinkler system would also necessitate that the water and electrical systems are operating sufficiently to adequately protect the structures. Staff believes that the discretion provided to the Fire Marshall in reviewing and permitting the alarm systems, as proposed by the property owner, provides sufficient discretion to safeguard these structures utilizing appropriate measures.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or

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a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

As mentioned above, the proposed ordinance was discussed by the Historic Landmarks Commission. Members of the public had an opportunity to comment, as well.

This memorandum will be posted on the City's website, on the pending ordinance website, on the front page of the Code Enforcement Division webpage, and on the City's Historic Preservation Website. These postings allow property owners and other interested persons an opportunity to send comments to staff and participate in the Council meeting. The proposed ordinance was also emailed to groups and individuals on the Department's various email interest lists.

COORDINATION

This memorandum was coordinated with the Office of the City Attorney, the Fire Department and the Budget Office.

CEQA

Exempt, CEQA Guidelines Section 15308, Actions by Regulatory Agencies for the Protection of the Environment.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Michael Hannon, Code Enforcement Official, at (408) 277-4703.