

## CITY OF SAN DIEGO CONSIDERS SWEEPING NEW 'ABANDONED PROPERTY ORDINANCE'

By Evelyn F. Heidelberg.  
*Procopio, Cory, Hargreaves & Savitch LLP*

The City of San Diego is poised to adopt amendments to little-known provisions of the Land Development Code requiring owners of certain vacant structures to file a statement of intent indicating how the owner intends to put the property to productive use, and to impose penalties for failing to file such statements or failing to comply with statements of intent that are filed.

The proposed amendments, which would dramatically expand the properties to which these provisions apply, are expected to be considered by City Council's Land Use and Housing Committee and then by the full City Council within the next several months.

Those who own undeveloped lots or properties with structures that are vacant, or who have purchased property through deeds in lieu of foreclosure, among others, would have to file statements of intent and – even if their property does not violate applicable codes – may be subject to administrative, civil or even criminal liability, should the proposed "Abandoned Properties Ordinance" be adopted in its current form.

Presently, owners of vacant commercial and residential structures are required to secure or board them, and remove waste, litter, other debris and excessive vegetation, or the City may, after notifying the owner of its obligation to do so, clean and board the property and recover the costs from the owner. The owner of an unsecured or boarded vacant structure must file a Statement of Intent, to include information as to



EVELYN F. HEIDELBERG

the expected period of vacancy, a plan and time line for the re-occupancy, rehabilitation or demolition of the structure. If an unsecured or boarded structure remains in that condition, the owner must file a new statement each year. Failure to timely submit a statement – or to make a good faith, diligent effort to timely sell, lease, or rehabilitate the structure within 90 days – can subject the owner to administrative penalties of up to \$5,000 per year, or to criminal prosecution. In addition, under state law providing special powers only to the Cities of San Diego and Los Angeles, the City presently has authority to require an owner of any substandard single-family dwelling to bring it into compliance or to demolish it, and if the owner fails to comply, to itself repair or demolish the home.

The referenced provisions of the City's Land Development Code and state law have been in existence for at least a decade, preceding the wave of residential foreclosures that began in about 2007. Notwithstanding these considerable enforcement powers, the City Attorney's office is

seeking far broader authority to address purported gaps in enforcement powers.

Under the proposed "Abandoned Properties Ordinance" – which received initial approval by the City Council's Land Use and Housing Committee in September 2010 – the City's Neighborhood Code Compliance unit would be granted sweeping new enforcement powers, both civil and criminal, that may be used against structures that are not in violation of any regulation, but which simply have been vacant for more than two years, or a construction or remodel project that has been stalled, or any vacant structure that is subject to a notice of default – all of which are defined as "abandoned properties."

The proposed Abandoned Properties Ordinance would subject owners of structures vacant for at least two years, owners of construction or remodel projects that have been temporarily idled, owners of vacant lots, and those who have acquired property by means of a Deed in Lieu of Foreclosure, among others, to the requirements to file statements of intent indicating the expected period of vacancy, a plan for regular maintenance during the period of vacancy, a plan and time line for the occupancy, rehabilitation or demolition of any vacant structure, and a plan for the development of any vacant lot. Failure to submit a statement of intent subjects the owner to administrative or civil penalties of up to \$5,000 per year. Failure to rehabilitate, lease, develop or use the abandoned property (with the exception of a vacant lot) under a reasonable and expeditious time frame as determined by the City, would also subject the owner to

administrative, civil or criminal penalties.

Perhaps the most sweeping provision of the proposed ordinance is its declaration that an abandoned property, as broadly defined, constitutes a public nuisance *per se*. As a consequence of this legislative finding, if the proposed ordinance were adopted, for example, simply by virtue of owning a structure that has been vacant for two years, or by having a remodel project stalled for more than half a year due to difficulty securing additional financing, or having purchased a property by means of a Deed in Lieu of Foreclosure and the structure is vacant, the City could bring criminal misdemeanor charges against the owner for maintaining a public nuisance.

As noted, the City Council's Land Use and Housing Committee already gave its stamp of approval to the proposed ordinance last September, recommending its consideration by

the full Council once the City's Technical Advisory Committee ("TAC") has weighed in. Last month, both the TAC and the Housing Committee of the San Diego Regional Chamber of Commerce considered the proposed "Abandoned Properties Ordinances" and raised concerns, foremost among which was whether there is a demonstrated need for the ordinance, in view of existing legal authorities the City presently has to address vacant structures and undeveloped lots.

The Council's Land Use Committee – under new Chair Sherri Lightner – has decided to reconsider the proposed Abandoned Properties Ordinance in April or May, perhaps with suggested modifications that may be offered by the City Attorney's Office in response to issues raised by the TAC and the Chamber's Housing Committee. In many respects, the proposed Abandoned Properties Ordinance as voted out of the Council's Land Use and Housing

Committee last fall may be a solution in search of a problem and raises significant legal and public policy issues. Additional public vetting of this or a substitute proposal, with input by property owners and managers, should serve to improve the subsequent decision by City Council.

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*Ms. Heidelberg is a Partner and member of the firm's Real Estate and Environmental Law Team, and she chairs the firm's Environmental and Land Use Practice Group. Ms. Heidelberg's practice focuses on real estate, environmental and land use litigation and administrative enforcement proceedings, as well as land use entitlements. In addition, she defends lenders and mortgage servicers against predatory lending and wrongful foreclosure claims. Reach her at 619.525.3804 or [evelyn.heidelberg@procopio.com](mailto:evelyn.heidelberg@procopio.com).*