

ORDINANCE NO. 16-0017

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH
ADDING MUNICIPAL CODE CHAPTER 9.70
(ABANDONED PROPERTY ABATEMENT) TO ESTABLISH
PROVISIONS FOR THE ABATEMENT OF ABANDONED
PROPERTIES AND AMENDING CHAPTER 9.68
(NUISANCES) TO REGULATE CONTINUOUS PUBLIC
NUISANCES

THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Title 9 (Building Regulations) of the Municipal Code is hereby amended by adding a new Chapter 9.70 (Abandoned Building Abatement) to read as follows:

**“CHAPTER 9.70
ABANDONED PROPERTY ABATEMENT**

- 9.70.010. Purpose.**
- 9.70.020. Definitions.**
- 9.70.030. Enforcement authority.**
- 9.70.040. Enforcement remedies.**
- 9.70.050. Strict liability offenses.**
- 9.70.060. Abandoned properties regulations.**
- 9.70.070. Administrative procedures and maintenance standards for abandoned properties.**
- 9.70.080. Standards for boarding a vacant structure.**
- 9.70.090. Entry or interference with notice prohibited.**
- 9.70.100. Continuous abatement authority.**
- 9.70.110. Duty to file a statement of intent.**
- 9.70.120. Reinspection fee.**
- 9.70.130. Abandoned property penalty.**
- 9.70.140. Procedures for abandoned property penalty.**
- 9.70.150. Appeal of abandoned property penalty.**
- 9.70.160. Failure to pay penalties.**

9.70.010. Purpose.

The purpose of the Abandoned Property Abatement Ordinance is to supplement the City’s police power and authority to declare a nuisance by providing additional remedies for the abatement of abandoned properties.

9.70.020. Definitions.

Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

A. “Abandoned property” means any property upon which one or more of the following conditions exist:

1. A vacant lot upon which one or more code violations or a public nuisance exists as determined by the Director; or

2. A vacant structure and one or more code violations or a public nuisance exists as determined by the Director; or

3. A vacant structure which is boarded, irrespective of whether one or more code violations or a public nuisance exists at the property; or

4. A vacant structure, and the property is under a current notice of default, notice of trustee's sale, pending tax assessor's lien sale, or it has been the subject of a foreclosure sale where the title was retained by the beneficiary of a Deed of Trust involved in the foreclosure, or has been transferred under a deed in lieu of foreclosure.

B. "Beneficiary" means a lender under a note secured by a Deed of Trust.

C. "Deed in Lieu of Foreclosure" means a recorded document that transfers ownership of a property from the trustor upon consent of the beneficiary of the Deed of Trust.

D. "Deed of Trust" means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan. This definition applies to all deeds of trust regardless of priority.

E. "Default" means the failure to fulfill a contractual obligation, monetary or nonmonetary.

F. "Director" means the Director of Community Development or any other City official authorized by the City Manager and any of their designated agents or representatives.

G. "Foreclosure" means the process by which a property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the trustor defaults.

H. "Graffiti" means any unauthorized inscription, word, figure, picture, or design that is sprayed, marked, posted, pasted or otherwise affixed, drawn, or painted on any surface of public or private property. "Graffiti" does not mean any identification, description, illustration, or device, illuminated or nonilluminated, that is visible from the public right-of-way or is located on private property and exposed to the public and which directs attention to a product, place, activity, person, institution, business, or solicitation, including any permanently installed or situated merchandise with the exception of window displays, or any emblem, painting, banner, pennant, placard, or temporary sign designed to advertise, identify, or convey information.

I. "Legal Interest" means any interest that is represented by a document such as a Deed of Trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien or other similar instrument which is recorded with the County Recorder.

J. "Letter of Agency" means a trespass authorization form signed by a property owner or designated agent which allows the Police Department to act as the owner's agent for purposes of enforcing laws against any person(s) found on private property without the owner's consent or without lawful purpose.

K. "Liquid waste" includes oil, other petroleum products, paint, chemicals and hazardous Waste or materials.

L. "Litter" means small quantities of waste matter carried on or about the person including, but not limited to, beverage containers and closures, packaging wrappers, wastepaper, newspapers, magazines, or the contents of the containers, closures or wrappers.

M. "Local contact" means a contact located within a distance of 50 driving miles from the abandoned property.

N. "Notice of Default" means a recorded notice that a default has occurred under a Deed of Trust.

O. "Public nuisance" has the same meaning as in Municipal Code Chapter 9.68.

P. "Responsible person" means a person who the Director determines is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or applicable state codes. The term "responsible person" includes but is not limited to a property owner, tenant, person with a legal interest in real property or person in possession of real property.

Q. "Rubbish" means non-functional, nonusable or abandoned material or matter. Rubbish includes ashes, paper, cardboard, tin cans, dirt, cut brush, yard and garden clippings or trimmings, wood, glass, bedding, cloth, clothing, crockery, plastic, rubber by-products, litter, machinery, vehicle parts, junk and other similar items.

R. "Solid waste" means refuse, rubbish, broken concrete or asphalt, piles of rock, dirt and other noncombustible materials, and earth fill material not otherwise authorized by permit or ordinance for land development.

S. "Statement of Intent" means a form filled out by the responsible person for an abandoned property which contains specific information regarding the ownership of the property and the responsible person's plan for its rehabilitation, development, occupancy, and maintenance.

T. "Trustee" means the person, firm or corporation holding a Deed of Trust to a trust on a property.

U. "Trustor" means a borrower under a Deed of Trust, who deeds property to a Trustee as security for the payment of a debt.

V. "Vacant structure" means any structure or building that is unoccupied or occupied by unauthorized persons.

W. "Waste" means material of any nature that constitutes rubbish, solid waste, or liquid waste. Waste also includes abandoned or unidentified personal property that is left unattended on public sidewalks and rights-of-way or other property in which the City has any property interest.

9.70.030. Enforcement authority.

The Director is authorized to administer and enforce the provisions of this chapter.

9.70.040. Enforcement remedies.

Violations of this chapter may be prosecuted as misdemeanors pursuant to Municipal Code Chapter 1.04. The Director may also seek injunctive relief and civil penalties against any person or entity that violates this chapter.

9.70.050. Strict liability offenses.

Violations of this chapter shall be treated as strict liability offenses regardless of intent.

9.70.060. Abandoned properties regulations.

A. An abandoned property where one or more code violations or a public nuisance exists constitutes a public nuisance *per se*, in which case the provisions of Municipal Code Chapter 9.68 apply.

B. A commercial vacant structure which meets the definition of an abandoned property as provided in this chapter shall continue to be deemed a vacant structure until there is a lawfully permitted business operating in the vacant structure on a daily basis. The Director may make an exception based on the nature of the particular business.

C. It is unlawful for any responsible person for an abandoned property to fail to lock, barricade or secure all doors, windows and other openings to any vacant structure on the property in accordance with the standards listed in this chapter.

D. It is unlawful for any responsible person for an abandoned property to fail to remove from the entire property including the interior of any vacant structure, any of the following: litter, waste, rubbish, solid waste, liquid waste, debris, unpermitted vehicles, storage not incidental to the corresponding zoning use for the property, or excessive vegetation as determined by a fire inspector to constitute a fire hazard.

E. It is unlawful for any responsible person for an abandoned property to fail to erect fences, barriers, berms or other suitable means to discourage access and to discourage illegal dumping or littering on the property when requested by the Director.

F. It is unlawful for any owner of an abandoned property or any owner's agent to fail to file a Letter of Agency with the Police Department upon request by the City, or to fail to update the Letter of Agency every six months.

G. It is unlawful for any responsible person for an abandoned property to fail to maintain the property in accordance with the requirements listed in the written notice issued by the Director pursuant to this chapter.

H. It is unlawful for any responsible person for an abandoned property to fail to maintain the property in accordance with the maintenance standards listed in this chapter.

9.70.070. Administrative procedures and maintenance standards for abandoned properties.

A. Whenever the Director determines that a property is abandoned, the Director shall provide written notification to the responsible person to take the actions required by this chapter. The written notice shall state that if the actions required by this chapter are not taken by the responsible person, the City will seek all administrative costs, including reasonable attorneys' fees, incurred in connection with any actions required by this chapter. In addition, the notice shall state that if the actions required by this chapter are not taken by the responsible person, such actions may be taken by the City, in which case the costs associated with such actions, including reasonable attorneys' fees incurred in connection with such actions, may constitute a special assessment or a lien against the property.

B. Where applicable, the Director shall also order as part of the written notice that any vacant structure shall be cleaned, secured and boarded. Boarding shall be done pursuant to the standards established in Section 9.70.080 of this chapter.

C. The Director may also require as part of the written notice that the responsible person erect fences, barriers, berms or other suitable means to discourage access to the abandoned property and to discourage illegal dumping or littering on the property. The Director may also require the responsible person to post signs that prohibit trespassing, littering or illegal dumping.

D. The Director may also require as part of the written notice that the responsible person remove any litter, waste, rubbish, solid waste, liquid waste, debris, unpermitted storage, weeds which are over 12 inches in height or excessive vegetation from the abandoned property.

E. The Director may also require as part of the written notice that the responsible person maintain the property free of graffiti and paint over any graffiti with an exterior grade paint that matches the color of the exterior of the vacant structure.

F. The Director may also require as part of the written notice that the responsible person keep any pools or spas on the property in working order so the water remains clear and free of vectors, pollutants and debris, or drained and kept dry.

G. The Director may also require as part of the written notice that the responsible person post a sign on the property. The sign shall be no less than 18" x 24" in size and shall contain lettering of a font size that is legible from a distance of 45 feet. The sign shall include all of the following information:

1. The address of the property;
2. That a Letter of Agency is on file with the Police Department; and
3. The name and telephone number of the responsible person or designee, one of whom must be a local contact, such as the property manager, asset manager, or real estate agent or broker.

9.70.080. Standards for boarding a vacant structure.

Except as provided in subsection 9.70.080(I), the responsible person or Director shall board a vacant structure according to all of the following specifications and requirements:

- A. Remove all waste, rubbish or debris from the interior of the vacant structure;
- B. Remove all waste, rubbish, debris or excessive vegetation from the yards surrounding the vacant structure;
- C. Barricade all unsecured doorways, windows or exterior openings with minimum 1/2-inch thickness exterior grade plywood which shall extend to the molding stops or studs;
- D. Mount at least two wood stocks of minimum 2" x 4" thickness to the reverse face of the plywood with minimum 3/8-inch carriage bolts mated with nuts and two flat washers;
- E. Extend the stock a minimum of eight inches on each side of the interior wall;
- F. Cause all hardware to be galvanized or cadmium plated;
- G. Paint all exterior barricade material the predominant color of the structure;
- H. Post Notice on the Premises. One or more signs shall be posted at or near each entrance to the vacant structure and on fences or walls as appropriate. The signs shall remain posted until the vacant structure is either lawfully occupied or demolished. Signs shall contain the following information: "DO NOT ENTER. It is a misdemeanor to enter or occupy this building or premises or to remove or deface this notice. Trespassers will be prosecuted." The sign shall be of a size of no less than 18" x 24" in size and the lettering shall be of a font size that is legible from a distance of 45 feet.

I. In lieu of requiring the responsible person to board a structure as set forth subsections 9.70.080(A) through (H), the Director may allow the responsible person to board the vacant structure in a manner in which the Director determines adequately prevents unauthorized entry or vandalism. In any event, a responsible person shall post the premises with signs as required by this chapter, including as set forth in subsection 9.70.080(H).

9.70.090. Entry or interference with notice prohibited.

A. It is unlawful for any person to enter or occupy any structure or premises on which a notice has been posted pursuant to subsection 9.70.080(H), except to repair or demolish the structure under proper permit or for a purpose authorized by the owner.

B. It is unlawful for any person to remove or deface any notice posted pursuant to subsection 9.70.080(H) until the required repairs or demolition have been completed or a Certificate of Occupancy has been issued.

9.70.100. Continuous authority.

A. If a vacant structure previously secured pursuant to this chapter again becomes unsecured and open to unauthorized entry, the Director may, without further notice to the responsible person, take all necessary steps to secure the structure and recover costs as provided for in this chapter.

B. If an abandoned property again contains debris, rubbish, waste, or excessive vegetation, the Director may, without further notice to the responsible person, take all necessary steps to clean the property and recover costs as provided for in this chapter.

9.70.110. Duty to file a statement of intent.

A. The Director shall create and make available a form entitled Statement of Intent to be completed by the responsible person for an abandoned property.

B. The responsible person for an abandoned property shall complete the information required on the Statement of Intent and submit the statement to the City within 30 days of the date the Director determines the property meets the definition of abandoned property as provided in this chapter. If an abandoned property remains in an abandoned state for more than 365 days from the date the first Statement of Intent was submitted, then a new Statement of Intent must be submitted, and annually thereafter until the property no longer meets the definition of an abandoned property as provided in this chapter.

C. The Director shall determine whether a submitted Statement of Intent is complete and may require the responsible person to provide more complete information.

D. When a submitted Statement of Intent does not meet with the Director's approval due to it not containing adequate information as required by this Section, the responsible person shall immediately correct and resubmit the Statement of Intent.

E. The Statement of Intent shall include the following information:

1. Expected period of vacancy;
2. A plan for regular maintenance during the period of vacancy;

3. A plan and time line for the lawful occupancy, rehabilitation or demolition of the vacant structure;

4. A plan for the development or sale of the vacant lot if the abandoned property is a vacant lot;

5. Complete ownership information and all contact information for persons responsible for the property including the name, telephone number and street address for any corporation, individual, beneficiary or trustee responsible for receiving payments associated with any loan or Deed of Trust. The Statement of Intent shall also include information regarding the property management company, servicing company, asset manager, or property preservation company responsible for the security, maintenance and marketing of the property; and

6. Any additional information required by the Director.

F. It is unlawful for a responsible person to:

1. Fail to submit a Statement of Intent within the time period specified by Section 9.70.110(B);

2. Fail to submit a Statement of Intent annually as required by Section 9.70.110(B); or

3. Submit a Statement of Intent which does not comply with the requirements of this chapter.

9.70.120. Compliance fees.

A. Reinspection Fee. The Director may periodically reinspect an abandoned property to ensure compliance with the provisions of this chapter and all applicable court and administrative orders. The Director may assess a reinspection fee against the responsible person for the actual costs of each reinspection and continuous monitoring of the structure and premises as is reasonably necessary to determine compliance with the standards and procedures in this chapter.

B. Administrative Costs for Non-Compliance. If the responsible person does not adequately comply with this chapter, the Director will seek all administrative costs, including reasonable attorneys' fees, incurred in connection with any actions required by this chapter.

C. Fees Set by Resolution. Any fees imposed pursuant to this Chapter shall be set by resolution.

9.70.130. Abandoned property penalty.

A. If an abandoned property is left in an abandoned state for 90 consecutive days, the City may issue an administrative citation to the property's responsible person, unless:

1. A Statement of Intent has been filed and approved by the Director;
and

2. One of the following applies:

a. A vacant structure exists on the property and it is the subject of an active building permit for repair or rehabilitation and the responsible person is proceeding diligently in good faith to complete the repair or rehabilitation;

b. A vacant structure exists on the property and it is maintained in compliance with this chapter and is actively being offered for sale, lease or rent;

c. The abandoned property is a vacant lot and there has been no recurring code violations or nuisance activity; or

d. The responsible person can demonstrate that he or she made a diligent and good faith effort to implement the actions set forth in the approved Statement of Intent within the time line contained within the Statement of Intent.

B. The penalty for the first violation is \$500. If the property continues to meet the definition of abandoned property as provided in this chapter beyond the initial 90 days, and if the responsible person does not meet any of the exceptions set forth in this Section, the Director may continue to assess penalties in the following amounts: \$1,000 for the next 90-day period the property continues to meet the definition of an abandoned property as provided in this chapter, and \$1000 for each 90-day period thereafter that the property continues to meet the definition of an abandoned property as provided in this chapter.

C. The City Manager shall develop policies and procedures for the implementation of this penalty.

9.70.140. Procedures for abandoned property penalty.

A. Whenever the Director determines that a property meets the definition of abandoned property as provided in this chapter for more than 90 consecutive days, and the responsible person does not meet any of the exceptions set forth in subsection 9.70.130(A)(2), a Notice of Abandoned Property Penalty may be issued to the responsible person for the property. The notice may also address response costs.

B. A separate Notice of Abandoned Property Penalty shall be issued for each subsequent penalty that may be assessed pursuant to Section 9.70.130.

C. The Notice of Abandoned Property Penalty shall be served upon the responsible person by any one of the methods of service listed in Section 1.08.100 of this Code.

9.70.150. Appeal of abandoned property penalty.

A. Any person subject to a Notice of Abandoned Property Penalty pursuant to this chapter shall have the right to request an administrative hearing before an

impartial Hearing Officer within 20 days of notice of the imposition of fines and/or response costs under this chapter. To request such a hearing, the person requesting the hearing shall notify the City Clerk's Office in writing by the close of business of the 30th day from the date of issuance of the notice.

B. The Hearing Officer shall only consider evidence that is relevant to the following issues:

1. Whether the property meets the definition of abandoned property as provided in this chapter for 90 consecutive days;

2. Whether a Statement of Intent has been filed and approved by the Director; and

3. Whether any of the exceptions set forth in subsection 9.70.130(A)(2) have been met.

C. The Hearing Officer may assess administrative costs.

9.70.160. Failure to pay fees or penalties.

A In addition to any other enforcement permitted by Municipal Code Chapters 1.04 and 1.06, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter. In any civil action brought pursuant to this Section, a court of competent jurisdiction may award reasonable attorneys fees and costs to the prevailing party.

B. Any costs incurred by the City in connection with the enforcement of this chapter may constitute a special assessment or a lien against the parcel of land on which the abandoned property is located."

SECTION 2. Municipal Code Section 9.68.120 of Chapter 9.68 (Nuisances) relating to failure to comply to nuisances is hereby amended by (1) changing the title to "Failure to comply; abatement by the City; and continuous public nuisances", (2) lettering the existing paragraph as "A" and (3) adding a subsection B titled "Continuous public nuisance" to read as follows:

"B. Continuous public nuisances.

Any property that was abated by the owner, lessee or occupant's voluntary actions or pursuant to a judicial or administrative order may be declared a permanent public nuisance by the Director of Community Development if the property again contains debris, rubbish, waste, excessive vegetation or other conditions creating a public nuisance. Any vacant structure that was originally abated by the owner, lessee or occupant's voluntary actions or pursuant to a judicial or administrative order and continues to remain open and unsecured on a periodic basis, thereby requiring additional reinspections, clearing of the lot, or resecuring of the vacant structure, may be declared a permanent public nuisance by the Director. The Director may seek the abatement of any lot and the demolition of any vacant structure that become a

permanent public nuisance by seeking a court order or following any of the administrative abatement procedures found in this Code.”

SECTION 3. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the prohibitions established hereby, may have a significant effect on the environment, because the Ordinance will only impose greater limitations on activities in the City, and will thereby serve to eliminate potentially significant adverse environmental impacts. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. A Notice of Exemption will be prepared.

SECTION 4. Severability. If any sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentence, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 5. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Government Code Section 36933.

SECTION 6. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

PASSED, APPROVED AND ADOPTED _____, 2016.

AYES:
NOES:
ABSENT:
ABSTAIN:

Tony D’Errico
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney