



ws 2b

**DATE:** January 13, 2009  
**TO:** Mayor and City Council  
**FROM:** Fran David, Assistant City Manager  
**SUBJECT:** Proposed Ordinance on Residential Abandoned, Foreclosed Properties

### **RECOMMENDATION**

That Council receives and comments on the proposed attached draft Ordinance.

### **BACKGROUND**

As a result of the precipitous drop in the economy across the Bay Area, there are currently several hundred foreclosed, vacant, residential properties in the City of Hayward. This number is expected to increase as the next wave of foreclosures hit our residents, likely as a direct result of the increasing unemployment rate and business closures.

When a property is foreclosed or enters any kind of legal process involving Notice of Default/Notice of Trustee's Sale or Foreclosure or Tax Lien Sale, it generally sits vacant for long periods of time. During this period, it is "owned" by a financial institution physically located away outside of the Hayward community; and one that is struggling to deal with large numbers of loan defaults from homeowners in multiple locations.

Through painful experience, staff has learned that these vacant properties often sink into a state of disrepair and/or become attractive nuisances in a neighborhood; and even become sites of homeless squatting or criminal activity. At the very least, landscaping is not maintained, trash may be left behind by the previous occupants and grow as others also dump at the same location, windows eventually get broken, and fences breached. These then become Council referrals from concerned neighbors and the communities in which the properties are located.

City staff has a difficult time enforcing our Community Preservation Ordinance because it is extremely difficult to identify, locate, and communicate with the "owner" (i.e., the financial institution holding the title to the property.) Often the original mortgage has been sold in whole or in parts many times over as part of the flow of real estate mortgages in our financial and investment systems. Any connection that once existed between the original lender and the property owner has long since ceased to be thereby breaking any direct or personal-interest ties that might have once existed between the title holder and the physical property or the community in which it is located.

Council has expressed deep concern about finding a way to deal more productively with this growing issue and the negative impacts it has, and will continue to have, on our community. As a result, staff has been in discussion with other jurisdictions seeking various ideas on a positive and effective way to manage the situation given our available resources.

In reviewing various Ordinances, staff selected the Ordinance from the City of Placentia as a strong model for a Hayward approach. Attached is a rough draft of a possible Ordinance the City of Hayward might implement. Staff is seeking direction from Council on the following:

1. Is this a continuing priority for Council?
2. Does the attached draft Ordinance take an approach acceptable to and supported by Council?
3. Does Council want staff to continue the development and implementation of this or similar Ordinances given the full scope of Council priorities?
4. If so, what concerns or questions does Council have about the specific elements of the proposed Ordinance including approach, changes, deletions, or additions?

## **DISCUSSION**

To address the continuing detrimental effects of foreclosures on its communities, California enacted SB 1137 as an urgency measure, effective July 8, 2008. SB 1137 requires the legal owner of residential property acquired through foreclosure to maintain that property. The new law also authorizes cities to impose fines of up to \$1,000 per day for failing to maintain the foreclosed-upon property.

SB 1137 requires that cities give notice of the violation, including a description of the conditions giving rise to the violation, as well as notice of the intent to impose a fine if the violation is not corrected within a stated time period. Under SB 1137, "failure to maintain" means the failure to care for the exterior of the property, including, but not limited to, permitting the growth of excess foliage, failing to take action to prevent trespassing or failing to take action to prevent mosquito larvae or any other condition that creates a public nuisance. Fines and penalties collected under SB 1137 shall be directed to local nuisance abatement programs.

There are two difficult elements affecting staff's ability to conduct enforcement on abandoned residential properties: (1) knowing when a property has been vacated and (2) knowing who the current owner is along with knowing who their authorized representative might be and how to effectively and timely communicate with him/her. Therefore the primary purpose of this draft Ordinance is to establish an abandoned residential property registration program.

*Definition of "Abandoned"*: The Ordinance specifies that a building or property shall not be allowed to be vacant for more than ninety (90) days (except under specified conditions); that it shall be ready for occupancy within ninety (90) days of being vacated as a result of a foreclosure or similar process; and that violations of these and other provisions of the Ordinance will cause the property to be declared a public nuisance.

*Registration & Inspection:* The Ordinance requires that within ten (10) consecutive calendar days of the purchase and/or transfer of a loan/deed of trust secured by residential property, the new beneficiary/trustee shall record, with the Alameda County Recorder's Office, an Assignment of Rents, or similar document, that lists the name of the corporation, and/or individual, the mailing address and contact phone number of the new beneficiary/trustee responsible for receiving payments associated with the loan/deed of trust. The "registration" would be filed with the designated Enforcement Officer.

If the foreclosed or defaulted property is occupied, but distressed, the Ordinance calls for the trustee and beneficiary or a designee to inspect the property on a monthly basis until the default is remedied or the property vacated; and then, it requires the continual inspection as long as the property is vacant.

These sections dealing with property registration are consistent at the moment with draft vacant property registration currently being fast-tracked by the State Legislature. If the City goes forward with this draft Ordinance, these sections will be adjusted to support and coincide with any similar legislation ultimately passed and signed into law at the State level.

*Maintenance:* The proposed draft Ordinance requires maintenance of the property according to "neighborhood standards". It specifies such things as "...kept free of weeds; dry brush; dead vegetation; trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state, or local law; discarded personal items including but not limited to, furniture and clothing, large and small appliances; printed material; or any other items that give the appearance that the property is abandoned."

*Security:* The proposed Ordinance requires that properties subject to this Ordinance shall "...be maintained in a secure manner so as not to be accessible to unauthorized persons." It defines what "secure" means.

*Local Property Management Required:* The draft Ordinance requires that if the property is owned by a corporation and/or out-of-area beneficiary/trustee/ owner, a local property management company must be contracted to perform weekly inspections to verify that the maintenance requirements of proposed Ordinance, and any other applicable laws, are being met. It also requires that the property be posted with the contact name and other information of the local firm.

*Sanctions:* The proposed Ordinance identifies that violations may be enforced through Administrative Citation or other administrative processes as well as the possibility of legal prosecution.

*Fees, Fines, and Penalties:* Staff intends to include fees for registration as well as fines and penalties for non-compliance. The specific levels of these have not yet been determined although the suggested fine for violation reflected in the draft Ordinance is \$1,000; and the suggested penalties range from \$2,500 to \$5,000. If Council directs staff to proceed with this project, staff will continue research in this area to assure that fees cover all associated costs and that fines and penalties are appropriate and consistent with the market area.

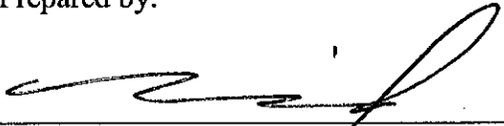
## **FISCAL IMPACT**

The fiscal impact of either the potential revenue from fees, fines, and/or penalties or the costs of prosecution and/or administrative enforcement have not yet been defined. These will be included in any further iterations of the Ordinance brought before council.

## **NEXT STEPS**

If Council directs staff to continue with this process and complete the Ordinance for adoption, staff will proceed immediately to do that. It is assumed that a more complete Ordinance, fee/fine/penalty schedules, and a proposed administrative & enforcement processes will be brought back to Council in late Spring after staff has completed their work and after communication has occurred with real estate, financial, and title companies in the Hayward area.

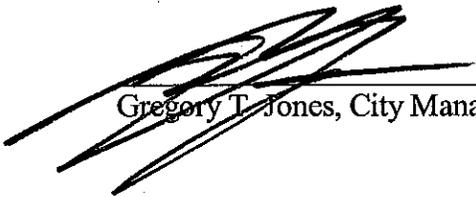
Prepared by:



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Fran David, Assistant City Manager

Approved by:



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Gregory T. Jones, City Manager

Attachment: Draft Proposed Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HAYWARD AMENDING  
\_\_\_\_\_ OF THE HAYWARD MUNICIPAL CODE BY  
ADDING

\_\_\_\_\_ RELATING TO THE MAINTENANCE,  
REHABILITATION, REGISTRATION, AND MONITORING  
OF VACANT RESIDENTIAL PROPERTIES

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES HEREBY  
ORDAIN AS FOLLOWS:

Section 1. Findings and Purpose. This Ordinance establishes owner responsibilities for vacant, residential properties acquired through foreclosure; establishes the failure to maintain and/or rehabilitate said properties as a public nuisance; provides a requirement to register all said properties with the City and to obtain local property management to manage each such property; and provides for an administrative program to monitor said properties, including the imposition of fees and civil penalties in furtherance of the program, administrative review and appeal opportunities.

Vacant residential properties are a major cause and source of blight, especially when the property owner fails to actively maintain and manage the building to ensure that it does not become a liability to the neighborhood. Vacant properties discourage economic development and retard appreciation of property values. Vacant properties are potential fire hazards and can jeopardize the ability of owners of neighboring property from securing or maintaining affordable fire insurance. It is the responsibility of property owners to prevent their property from becoming a burden to the neighborhood and community and a threat to the public health, safety or welfare. It is the purpose and intent of the City Council, through the adoption of this Ordinance, to define the responsibilities of residential owners of properties subject to foreclosure and to establish registration and monitoring programs for vacant residential properties.

Section 2. Chapter \_\_\_\_\_ Article \_\_\_\_\_ is hereby added to read in full as follows:

“REGISTRATION AND MAINTENANCE OF  
RESIDENTIAL VACANT BUILDINGS

SECTIONS

Definitions.

Owner Responsibilities.

Registration Requirement for Vacant Properties

Registration Fees.

Monitoring Program-Purpose.  
Monitoring Program-Departmental Responsibility and Fees.  
Security  
Local Property Management Requirement.  
Administrative Penalty.  
Administrative Hearing Procedure.

SECTION DEFINITIONS.

In construing the provisions of this Article, the following definitions shall apply:

“Beneficiary” means a lender participating in a real property transaction that holds a secured interest in the real property in question identified in a deed of trust.

“Building” means any residential structure approved for occupancy on either a lot of record or within a project approved by the City.

“Buyer” means any person, partnership, association, corporation, fiduciary or other legal entity that agrees to transfer anything of value in consideration of real property.

“Deed of Trust” means an instrument whereby an owner of real property, as trustor, transfers a secured interest in the real property in question to a third party trustee, said instrument relating to a loan issued in the context of a real property transaction. This definition applies to any and all subordinate deeds of trust.

“Default” means the material breach of a legal or contractual duty arising from or relating to a deed of trust, such as trustor’s failure to make payment when due.

“Distressed” means any residential building, structure, or real property that is subject to a notice of default and/or notice of trustee’s sale, pending tax assessor’s lien sale, and/or any real property conveyed by a foreclosure sale resulting in the acquisition of title by an interested beneficiary of a deed of trust, and/or any real property conveyed by a deed in lieu of foreclosure or sale, regardless of vacancy or occupancy by a person with no legal right of occupancy.

“Enforcement Officer” means the Director of Library and Neighborhood Services and his or her designee.

“Evidence of Vacancy” means any residential real property condition that independently, or in the context of the totality of circumstances relevant to that real property, would lead a reasonable person to believe that a property is vacant or occupied by a person without a legal right of occupancy. Such real property conditions include, but are not limited to, overgrown or dead vegetation; accumulation of newspapers, circulars, flyers, or mail; past due utility notices or disconnected utilities; accumulation of trash, junk or debris; the absence of window coverings such as curtains, blinds or shutters; the absence of furnishings or personal items consistent with residential habitation;

and/or statements by neighbors, passersby, delivery agents, government employees that the property is vacant.

“Foreclosure” means the process by which real property subject to a deed of trust is transferred to the beneficiary of a deed of trust or sold to satisfy the debt of a defaulting trustor, i.e., borrower.

“Hearing Officer” means an individual or board as designated by the City Manager to conduct hearings, including appeal hearings, and make decisions as provided in this Article.

“Local” means less than forty (40) driving miles from the real property in question.

“Notice of Default” means a recorded instrument that reflects and provides notice that a default has taken place with respect to a deed of trust and that a beneficiary intends to proceed with a trustee’s sale.

“Out of Area” means forty (40) driving miles or more from the real property in question.

“Owner” means any person, partnership, association, corporation, fiduciary or other legal entity having a legal or equitable title or any interest in real property.

“Property” means any residential real property or portion thereof situated in the City, including the building or structures located on the property regardless of condition.

“Trustee” means any person, partnership, association, corporation, fiduciary or other legal entity holding a deed of trust securing an interest in real property.

“Trustor” means any owner/borrower identified in a deed of trust, who transfers an interest in real property to a trustee as security for payment of a debt by that owner/borrower.

## SECTION                      OWNER RESPONSIBILITIES

(a) No person, corporation or other entity shall allow a building or property to be vacant for more than ninety (90) days, unless the owner establishes by substantial evidence to the reasonable satisfaction of the Enforcement Officer that one of the following applies:

- (1) The property is the subject of an active building permit for repair or rehabilitation, and the owner is progressing diligently to complete the repair or rehabilitation;
- (2) The building meets all applicable codes, is actively maintained, is ready for occupancy, and is actively being offered for sale, lease, or rent;
- (3) The building does not contribute to and is not likely to contribute to blight,

because the owner is actively maintaining and monitoring the building. Active maintenance and monitoring shall include:

- i. Maintenance of landscaping and plant materials in good condition;
- ii. Maintenance of the exterior of the building, including, but not limited to, keeping paint and finishes in good condition;
- iii. Regular removal of all exterior trash, debris and graffiti;
- iv. Maintenance of the building in compliance with all applicable codes and regulations;
- v. Prevention of criminal activity on the premises, including, but not limited to, use and sale of controlled substances, prostitution and criminal street gang activity;
- vi. Screening windows with opaque material that prevents the interior space of the building from being visible from public rights of way or public property; and
- vii. Securing the property in a manner so as not to be accessible to unauthorized persons, including, but not limited to, the replacement of broken windows and the closing and locking of windows, doors (walk-through, sliding and garage), gates and any other opening that may allow access to the interior of the property.

(b) The property owner of any vacant building shall cause the building to be rehabilitated for occupancy within ninety (90) days after the building is vacated and shall comply with the provisions of subsection (a) of this section.

(c) It is declared a public nuisance for any person, partnership, association, corporation, fiduciary, or other legal entity that owns leases, occupies, controls or manages any building or property subject to this Article to cause, permit, or maintain such building or property in violation of subsections (a) or (b) of this section.

SECTION \_\_\_\_\_ REGISTRATION REQUIREMENT FOR VACANT PROPERTIES.

(a) Each beneficiary and trustee, who holds a deed of trust on a property located within the City of Hayward, shall perform an inspection of the property in question prior to recording a notice of default or similar instrument with the Alameda County Recorder's Office. If the property is found to be vacant or shows evidence of vacancy, as defined by this Article, the beneficiary and trustee must register the property with the designated Enforcement Officer within ten (10) days of identification of the vacant property.

(b) If the property is occupied but distressed, the trustee and beneficiary or a designee shall inspect the property on a monthly basis until:

- (1) The trustor or another party remedies the default; or
- (2) The property is found to be vacant, or shows evidence of vacancy and is rendered subject to section \_\_\_\_\_.

(c) The registration pursuant to section \_\_\_\_\_ shall contain the identity of the beneficiary and trustee, the direct mailing address of the beneficiary and trustee and, in the case of a corporate or out of area beneficiary or trustee, the local property management company responsible for security, maintenance and marketing of the property in question.

(d) The registration pursuant to section \_\_\_\_\_ shall be renewed annually.

(e) An annual registration fee, adopted in conformance with section \_\_\_\_\_, shall accompany the submission of each registration form. The fee and registration shall be valid for one (1) year from the date of registration. Registration fees will not be prorated.

(f) Properties subject to this Article shall remain subject to the annual registration requirement, security and maintenance standards of this Article so long as they remain vacant.

(g) Any person, partnership, association, corporation, fiduciary, or other legal entity that has registered a property under this Article must make a written report to the Enforcement Officer of any change of information contained in the registration within ten (10) days of the change.

(h) The duties/obligations specified in this section \_\_\_\_\_ shall be joint and several among and between all trustees and beneficiaries and their respective agents.

#### SECTION \_\_\_\_\_ REGISTRATION FEES.

The fee for registering and re-registering a vacant property shall be set, from time to time, by resolution of the City Council. The amount of the fee charges shall not exceed the reasonable estimated cost of administering the provisions of this Article.

#### SECTION \_\_\_\_\_ MONITORING PROGRAM - PURPOSE.

(a) Vacant buildings are a major cause and source of blight, especially when the property owner fails to maintain and manage the building to ensure that it does not become a liability to the neighborhood. Vacant buildings often attract transients and criminals, are frequently used as dumping grounds for junk and debris and are often overgrown with weeds and grass.

(b) Because of the potential economic and public health, welfare and safety problems

caused by vacant buildings, the City needs to monitor vacant buildings, so that they do not become attractive nuisances; are not used by trespassers; are properly maintained; and do not become a blighting influence in the neighborhood. City departments involved in such monitoring include the Police Department, the Development Services Department, the Library and Neighborhood Services Department and the Public Works Department. There is a substantial cost to the City for monitoring vacant buildings, which should be borne by the property owner. The fees for a monitoring program pursuant to the provisions of this Article shall be separate from and in addition to any registration fees or administrative penalties required or otherwise assessed pursuant to the provisions of this Article.

SECTION MONITORING PROGRAM - DEPARTMENTAL  
RESPONSIBILITY AND FEES.

- (a) The Enforcement Officer shall be responsible for developing and administering a program for identifying and monitoring the maintenance of vacant property in the City.
- (b) The purpose of the monitoring program shall be:
  - (1) To identify buildings that become vacant;
  - (2) To order vacant buildings that are open and accessible to be secured against unlawful entry;
  - (3) To refer the property to the appropriate City department to initiate proceedings against the owner of any vacant building found to be substandard or a nuisance under any other provision of the Hayward Municipal Code;
  - (4) To maintain surveillance over vacant buildings so that timely code enforcement proceedings are commenced in the event a building becomes substandard or a nuisance; and
  - (5) To establish and enforce rules and regulations for the implementation and compliance with the provisions of section \_\_\_\_\_
- (c) There is imposed upon every owner of a vacant building monitored pursuant to this Article an annual vacant building monitoring fee in an initial amount as the City Council may establish by resolution, provided that the fee shall not exceed the estimated reasonable cost of monitoring the vacant building. The fee shall be payable as to any property which is vacant for more than ninety (90) days for any reason.
- (d) The vacant building monitoring fee shall be waived upon a showing by the property owner that:
  - (1) The owner has obtained a building permit and is progressing diligently to rehabilitate the premises for occupancy; or

- (2) The building meets all applicable codes and is actively being offered for sale, lease, or rent; or
- (3) Imposition of the fee would impose a substantial economic hardship on the owner or would hinder the rehabilitation of the building.

(e) The vacant building monitoring fee shall be billed to the owner of the property and mailed to the owner's address as set forth on the last equalized assessment roll of the Alameda County Assessor. Any owner billed may apply for a waiver on the grounds set forth in subsection (d) of this section by submitting a written statement of the grounds for the waiver and the owner's daytime telephone number to the Enforcement Officer within thirty (30) days after the billing is mailed to the owner. The owner shall provide substantial evidence in support of the owner's statement of the grounds for the waiver. The Enforcement Officer shall review the written statement and all related evidence and may contact the owner to discuss the application for waiver. The Enforcement Officer shall prepare a written decision which shall be mailed to the owner and shall set forth the reasons for the decision.

(f) Any owner aggrieved by the decision of the Enforcement Officer relating to an application for waiver may appeal the Enforcement Officer's decision to the City Council by filing with the City Clerk a written notice of appeal within ten (10) days of the decision. The City Council shall set a time and place for a hearing of such appeal, and notice of such hearing shall be mailed, postage prepaid, to the owner at his last known address at least ten (10) days prior to the date set for the hearing. The decision and order of the City Council on such appeal shall be final and conclusive.

(g) If the fee is not paid within sixty (60) days after billing, or within sixty (60) days after the decision of the Enforcement Officer or the City Council, the City Council may thereupon order that the fee be specially assessed against the property involved. If the City Council orders that the fee be specially assessed against the property, it shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxes are applicable to the special assessment.

(h) The City Council may also cause a notice of lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of the property, set forth the last known address of the record owner or possessor, a description of the real property subject to the lien, and the amount of the fee.

#### SECTION SECURITY REQUIREMENTS.

Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons. Secure manner includes, but is not limited to, the closure and locking of windows, doors (walk-through, sliding and garage), gates, and any other opening of such size that it may allow an adult, a child, or nuisance animals to access the interior of the property and or structure(s). In the case of broken windows, securing means the reglazing or boarding of the

window.

SECTION LOCAL PROPERTY MANAGEMENT REQUIREMENT.

(a) If a property is determined to be vacant and the property is owned by a corporation and/or out of area beneficiary, trustee, or owner, a local property management company shall be contracted to perform weekly inspections to verify that the requirements of this Article and any other applicable laws are being met.

(b) The property shall be posted with the name and 24-hour contact by phone number of the local property management company. The posting shall be no less than 18" x 24", shall be of a font that is legible from a distance of forty-five (45) feet, and shall contain the following verbiage: "THIS PROPERTY MANAGED BY \_\_\_\_\_ AND TO REPORT PROBLEMS OR CONCERNS CALL (name and phone number)".

(c) The posting shall be placed on the interior of a window facing the street to the front of the property so it is visible from the street or secured to the exterior of the building/structure facing the street of the front of the property so it is visible from the street. If no such area exists, the posting shall be on a stake of sufficient size to support the posting, in a location that is visible from the street to the front of the property and, to the extent possible, not readily accessible to potential vandalism. Exterior posting must be constructed of and printed with weather resistant materials.

(d) The local property management company shall inspect the property on a weekly basis to determine if the property is in compliance with the requirements of this Article. If the property management company determines the property is not in compliance, it is the company's responsibility to bring the property into compliance.

(e) The duties/obligations specified in this section shall be joint and several among and between all trustees and beneficiaries and their respective agents.

SECTION ADMINISTRATIVE PENALTY.

(a) Any violation of this Article shall be treated as a strict liability offense; a violation shall be deemed to have occurred regardless of a violator's intent.

(b) Any person, partnership, association, corporation, fiduciary, or other legal entity that owns any building or property subject to this Article and causes, permits, or maintains a violation of this Article as to that property, shall be liable for administrative penalties as follows:

- (1) On the administrative penalty due date, as determined by a hearing officer as described in subsection (c) of this section, the property owner shall pay an administrative penalty of one thousand (\$1,000.00) dollars.
- (2) In the event that a violation of this Article addressed by an order of a hearing officer has not been abated, cured, remedied, and/or eliminated to the

reasonable satisfaction of the Enforcement Officer by the thirtieth (30<sup>th</sup>) day after the administrative penalty due date, the property owner shall pay supplemental administrative penalty of two thousand five hundred dollars (\$2,500.00).

- (3) In the event that a violation of this Article addressed by an order of a hearing officer has not been abated, cured, remedied, and/or eliminated to the reasonable satisfaction of the Enforcement Officer by the sixtieth (60) day after the administrative penalty due date, the property owner shall pay a second supplemental administrative penalty of five thousand dollars (\$5,000.00) for each calendar month, or portion thereof, the building is in violation of the provisions of this Article.
- (4) The administrative penalty shall be imposed by a hearing officer upon the recommendation of the Enforcement Officer after the property owner has been afforded a hearing before the hearing officer. The hearing shall be conducted in accordance with the provisions of section \_\_\_\_\_. In setting the penalty, the hearing officer shall consider the severity of the blighting conditions of the property and the owner's efforts, or lack thereof, to remedy the problem. The decision of the hearing officer shall be final.
- (5) The administrative penalty shall be due and payable within thirty (30) days after the decision of the hearing officer. If the penalty is not paid within forty five (45) days after the decision of the hearing officer, the City Council may thereupon order that the penalty be a personal obligation of the property owner or that it be specially assessed against the property involved. If the City Council orders that the penalty be specially assessed against the property, it shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxed are applicable to the special assessment.
- (6) The City Council may also cause a notice of lien to be recorded. The notice shall, at a minimum, identify the record owner of the property and set forth the last known address of the record owner, the date on which the penalty was imposed, a description of the real property subject to the lien, and the amount of the penalty.

(d) The administrative penalty shall be waived if the Enforcement Officer or hearing officer finds that imposition of the penalty would work a substantial economic hardship on the owner or would hinder the rehabilitation of the building.

(e) This section provides a civil penalty remedy that is in addition to all other legal

remedies, criminal or civil, which may be pursued by the City to address any violation of this Article. The administrative penalty imposed pursuant to the provisions of this section shall be in lieu of the administrative citation penalties imposed pursuant to the provisions Article 7 of Chapter 1 of this Code.

SECTION ADMINISTRATIVE HEARING PROCEDURE.

(a) The City Manager, or his or her designee, shall designate a hearing officer to conduct a hearing on any administrative penalty recommended by the Enforcement Officer pursuant to section \_\_\_\_\_. The hearing officer shall not be a Hayward City employee. The employment, performance evaluation, compensation and benefits of the hearing officer, if any, shall not be directly or indirectly conditioned upon the amount of administrative penalties imposed, upheld, reduced or overturned by the hearing officer. Each hearing officer shall be subject to the provisions of the Political Reform Act of 1974 and all other laws, ordinance, or regulations of the state of the city relating to conflicts of interest. The City Manager or his or her designee shall establish all appropriate administrative regulations for implementing this Article, including the conduct of hearing and rendering of decisions.

(b) Upon determining that any person, partnership, association, corporation, fiduciary, or other legal entity that owns, leases, occupies, controls or manages building or property subject to this Article has caused, permitted, or maintained a violation of this Article and is subject to an administrative penalty pursuant to section \_\_\_\_\_, the Enforcement Officer shall furnish written notice to such owner of the reasons for such determination and the date of the hearing before the hearing officer. The notice shall describe the conditions that gave rise to the violation of this Article and the intent of the City to assess a civil penalty if action to correct the violation is not commenced within a period of not less than 14 days and completed within a period of not less than 30 days. Such notice shall be mailed to by certified mail, postage prepaid, to the last known business or residence address of each owner as the same appears in the public records of the City or other records pertaining to the building or property, and shall be posted on the building or property, at least fifteen (15) calendar days prior to the date of the hearing. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

(c) The hearing officer shall only consider evidence that is relevant to whether the violation alleged by the Enforcement Officer occurred and whether the property owner or his or her agents have caused, permitted, or maintained the violation. In setting the penalty, the hearing officer shall consider the severity of the blighting conditions of the property and the property owner's efforts, or lack thereof, to remedy the problem. The property owner contesting the notice of violation shall be given the opportunity to testify and present witnesses and evidence concerning the violation. The failure of any recipient of a notice of violation and hearing pursuant to this section to appear at the administrative penalty hearing shall constitute a failure to exhaust their administrative remedies. At least ten (10) days prior to the hearing, copies of all notices, citations, reports and other documents submitted or relied upon by the Enforcement Officer shall be served on each owner by mail at least ten (10) days prior to the date of the hearing in the manner set forth in subsection (c) of this section. No other discovery is permitted. Formal rules of evidence shall not apply. The hearing officer may continue the hearing and request additional information from the

Enforcement Officer or the owner or other responsible party prior to issuing a written decision.

(d) After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision within ten (10) days of the hearing and shall list in the decision the reasons for that decision. The hearing officer has the authority to reduce, conditionally reduce, or increase the amount of any penalties, subject to the penalty amount or limits provided in this Article. The hearing officer may impose conditions and deadlines for correction of violations or payment of outstanding penalties. The decision of the hearing officer shall be final. The party served with the notice of violation and hearing pursuant to subsection (b) of this section shall be served with a copy of the hearing officer's written decision. The copy of the decision may be served by certified mail, postage prepaid, to said party at the last known business address or residence address of such party, as the same appears in the public records of the City or other records of the City or other records pertaining to the building or property. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

(e) Any person aggrieved by an administrative decision of a hearing officer pursuant to this Article may obtain review of the administrative decision by filing a petition for review with the Alameda County Superior Court in accordance with the time lines and provisions set forth in California Government Code 53069.4.”

Section 3. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 5. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective thirty days after adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ATTEST: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:  
Mayor of the City of Hayward

DATE:

ATTEST:  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

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City Attorney of the City of Hayward