

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
CHAPTER 17.38 OF TITLE 17 OF THE SAN JOSE
MUNICIPAL CODE TO ESTABLISH MANDATORY
REGISTRATION OF VACANT OR ABANDONED
BUILDINGS AND STOREFRONTS IN DOWNTOWN**

WHEREAS, the presence of vacant, neglected, or abandoned buildings and storefronts can lead to neighborhood decline, create an attractive public nuisance, lower property values, and discourage economic development in the area; and

WHEREAS, the presence of vacant, neglected, or abandoned buildings and storefronts acutely affects the vitality and economic development of the downtown area; and

WHEREAS, the responsibilities of maintaining vacant, neglected, or abandoned buildings and storefronts are with the owners or others with property interests in the vacant, neglected, or abandoned properties; and

WHEREAS, certain owners or others with property interests in the vacant, neglected, or abandoned buildings and storefronts have failed to adequately maintain and secure these buildings and storefronts in the City of San José (“City”); and

WHEREAS, the City has an interest to protect its neighborhoods from decline and devaluation; and

WHEREAS, this Ordinance was found to be categorically exempt from environmental review pursuant to the provisions of Section 15308 of the California Environmental Quality Act of 1970, as amended;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 17.38.010 of Chapter 17.38 of Title 17 of the San Jose Municipal Code is hereby amended to read as follows:

17.38.010 Purpose

Neglected vacant or abandoned buildings and storefronts are a major source of blight in the City of San José and pose serious threats to the public's health, safety and welfare. They attract children, vagrants, gang members, and criminal activities. They are also vulnerable to fire set by transients or others using the property illegally. The presence of neglected vacant or abandoned buildings and storefronts can lead to neighborhood decline, create an attractive public nuisance, lower property values, and discourage economic development in the area. Furthermore, the presence of vacant, neglected, or abandoned buildings and storefronts acutely affects the vitality and economic development of the downtown area.

It is the responsibility of property owners, lenders, trustees, or others with possessory, equitable, or legal interests in the neglected vacant or abandoned buildings, including without limitation, historic buildings or structures, to maintain, secure, and prevent these buildings and storefronts from becoming a burden to the neighborhood and community or a threat to the public health, safety and welfare. The purpose of this Chapter is to provide standards for maintaining vacant and abandoned buildings and storefronts and to establish a monitoring program for those that are determined to be neglected or are vacant for longer than thirty days within the downtown area.

SECTION 2. Section 17.38.020 of Chapter 17.38 of Title 17 of the San Jose Municipal Code is hereby amended to read as follows:

17.38.020 Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Chapter.

- A. “Abandoned” means a Property, including a residence, building, structure, or any structural improvement on real property, that is Vacant and is (i) under a current Notice of Default and/or Notice of Trustee’s Sale; (ii) subject to Foreclosure sale where title was retained by the Beneficiary of a Deed of Trust; or (iii) transferred under a Deed In-Lieu of Foreclosure/Sale.

- B. “Beneficiary” means a lender under a note secured by a Deed of Trust.

- C. “Deed In-Lieu of Foreclosure/Sale” means a recorded document that transfers ownership of real property from the Trustor to the holder of a Deed of Trust upon consent of the Beneficiary of the Deed of Trust.

- D. “Deed of Trust” means an instrument by which title to real property is transferred to a third party Trustee as security for a real estate loan. This definition applies to any and all subsequent Deeds of Trusts.

- E. “Default” means the failure to comply or fulfill any contractual obligation under the Deed of Trust.

- F. “Director” means the Director of Planning, Building and Code Enforcement, or designee, or such other director designated by the City Manager to administer this Chapter.

G. "Downtown Registration Area" means that area bounded by the following streets and portions of streets: to the north, Julian Street from Highway 87 to 4th Street, then St. John Street from 4th Street to 10th Street; to the south, Interstate 280 from Highway 87 to 4th Street, then San Fernando Street from 4th Street to 10th Street; to the west, Highway 87 from Julian Street to Interstate 280; and, to the east, 4th Street from Julian to St. John Street, then 10th Street from St. John Street to San Fernando Street.

HG. "Foreclosure" means the process by which real property, placed as security for a real estate loan, is sold at an auction to satisfy the debt when the Trustor (borrower) Defaults on the real estate loan.

IH. "Historic" means any building or structure that is listed on (i) the National Register of Historic Places; (ii) the California Register of Historic Resources; or (iii) the City of San José Register of Historic Landmarks.

JJ. "Neglected Vacant" building or structure means any Vacant building or structure that is not maintained in accordance with this Chapter.

KJ. "Notice of Default" means a recorded notice that a Default has occurred under a Deed of Trust and the Beneficiary intends to proceed with a Trustee's sale of the real property or asserts any of its rights under the Deed of Trust.

LK. "Owner" means any person, partnership, association, company, corporation, entity, financial institutions, or fiduciary having a legal, possessory, or equitable title or any interest in a Property.

ML. “Property” means any improved real property, or portion thereof, situated in the City and includes any residence, building, structure or any other improvement located on the real property.

N. “Storefront” means any area located on the ground floor or street level of a building that may be individually leased or rented for any purpose other than residential use.

OM. “Trustee” means any person, partnership, association, company, corporation, or any other person or entity holding a Deed of Trust on a Property.

PN. “Trustor” means a borrower under a Deed of Trust who deeds Property to a Trustee as security for the payment of a debt.

QE. “Vacant” means any building or structure which has remained unoccupied for a period of more than thirty (30) ~~calendar~~ days or which has been occupied by any unauthorized person for any length of time. A building or structure is not deemed to be Vacant for purposes of this Chapter if ~~any of the following circumstances exist:~~

~~1. C~~construction, alteration, improvements, rehabilitation, or repair is in progress pursuant to a valid, unexpired building permit; with inspections occurring at least every six (6) months.

SECTION 3. Section 17.38.340 of Chapter 17.38 of Title 17 of the San Jose Municipal Code is hereby amended to read as follows:

17.38.340 Fees

- A. The Owner of a Vacant or Abandoned ~~building or structure~~Property or Storefront subject to registration shall pay the Neglected Vacant or Abandoned Building and Storefront Monitoring Program ~~registration~~ fee as set forth in the schedule of fees adopted by resolution of the City Council. Payment of the ~~registration~~monitoring program fee shall be made to the City at the same time the Owner submits the registration form to the City.
- B. The fee shall be calculated on a quarterly basis and the entire fee shall be due and owing at the time of registration. Registration fees will not be prorated.

SECTION 4. Section 17.38.350 of Chapter 17.38 of Title 17 of the San Jose Municipal Code is hereby amended to read as follows:

17.38.350 Appeals

- A. The Appeals Hearing Board shall have jurisdiction to hear appeals of the following:
1. The placement of the Vacant or Abandoned Property ~~building or structure~~ into the Neglected Vacant or Abandoned Building Monitoring Program; or
 2. The requirement to pay fees under this Chapter.
- B. A determination which is appealable under 17.38.350(A) may be appealed by the Owner of the Property to the San José Appeals Hearing Board by filing written notice of appeal with the Director within ten (10) days of the action for

which the appeal is taken. When a notice of appeal has been received by the Director for filing:

1. The Director shall, within ten (10) days after receipt of the notice of appeal, file it with the Secretary of the Board.
 2. The Secretary of the Board shall set the date for hearing and determination by the Board which date shall not be less than ten (10) days nor more than sixty (60) days after the date on which the copy of the notice of appeal was filed with the Secretary of the Board.
- C. Within a reasonable time after the Board has concluded its hearing, it shall by resolution set forth its findings and decision. The decision of the Board shall be final. The Secretary of the Board shall notify the Director of the decision and shall mail a copy of the decision to the appellant at the address shown for such purpose on the notice of appeal.

SECTION 5. Chapter 17.38 of Title 17 of the San Jose Municipal Code is hereby amended by adding a Part to be numbered and entitled and to read as follows:

Part 4

Vacant or Abandoned Property or Storefront

Downtown Registration Area

17.38.400 Obligation to Register

The Owner of a Vacant or Abandoned Property or Storefront located within the Downtown Registration Area shall, within thirty (30) days after it has become Vacant or Abandoned, whichever occurs first, register the Property or Storefront, as applicable, in

the Neglected Vacant or Abandoned Building Monitoring Program. The Owner shall be registered in accordance with the requirements set forth in Sections 17.38.310 through 17.38.340.

17.38.410 Notice and Appeal

A. If the Director determines that a Property or Storefront, as applicable, within the Downtown Registration Area is Vacant or Abandoned and has not been registered as required by Section 17.38.400, the Director shall send a notice and require the Owner of any Vacant or Abandoned storefront, building or structure to register the Property into the Neglected Vacant or Abandoned Building Monitoring Program within ten (10) calendar days of the date of the notice to register.

B. The Owner of a Vacant or Abandoned Property may appeal the Director's decision to place the storefront, building, or structure into the Neglected Vacant or Abandoned Building Monitoring Program by filing a notice of appeal with the Director within ten (10) days of the date of the notice. Appeals shall be scheduled and conducted in accordance with Section 17.38.350.

17.38.420 Removal from Monitoring Program

The Owner of a Vacant or Abandoned Property or Storefront in the Downtown Registration Area may apply to be relieved from the obligation to register the Property into the Neglected Vacant or Abandoned Building Monitoring Program if the Owner demonstrates that the Property or Storefront, as applicable, either:

A. Ceases to be Vacant and the Owner provides satisfactory evidence of physical occupancy of the Property or Storefront, as applicable; or

B. Has not been in violation of this Code for at least six (6) consecutive months and also meets one of the following:

1. Construction, alteration, improvements, rehabilitation, or repair is in progress at the Property or Storefront, as applicable, pursuant to a valid, unexpired building permit with inspections occurring at least every six (6) months;
2. The Owner provides satisfactory evidence that the Property or Storefront, as applicable, is actively being offered for sale, lease, or rent. Satisfactory evidence shall include, but is not limited to, evidence that the Owner has hired a real estate agent or other rental agent who advertises and promotes the property for rent, lease or sale, or proof that the property if offered for sale on the Multiple Listing Service or any other comparable real estate listing service.

17.38.430 Maintenance Standards

All requirements listed in Part 2 of this Chapter shall also apply to a Vacant or Abandoned Property or Storefront, within the Downtown Registration Area. Additionally, a Vacant or Abandoned Property within the Downtown Registration Area shall have exterior lighting continuously lit from dusk to dawn.

PASSED FOR PUBLICATION of title this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk