

**STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE
COUNCIL MEETING OF FEBRUARY 26, 2008**

FROM: Lynn Tracy Nerland, City Attorney

DATE: February 20, 2008

**SUBJECT: Adopting an Ordinance Amending the Municipal Code Related to
Property Maintenance; Abandoned, Unsecured or Partially
Constructed Buildings; and Vacant Lots Used for Illegal Dumping**

RECOMMENDATION:

To adopt the attached ordinance that was introduced at a regular meeting on February 13, 2008.

BACKGROUND:

The ordinance would update provisions in the Municipal Code regarding property maintenance, including the definitions of public nuisances and a broader definition of a "property owner" to encompass anyone with legal or equitable title to the property including any bank, mortgage company, financial institution or similar entity. The proposed ordinance would also clarify the existing prohibitions on leaving a building in an abandoned, vacant or partially constructed state. The current exception for commercial property that may remain vacant due to economic conditions remains, but the property must not be allowed to become a public nuisance. In addition, the proposed ordinance would impose requirements on an owner of vacant property that is used for illegal dumping, such as the obligation to fence the property following notice.

No changes were made to the ordinance as presented.

FISCAL IMPACT:

It is not expected that the actual adoption of the ordinance will create any additional fiscal impact. However, clearer standards and definitions should allow more successful code enforcement. The extent of enforcement depends on staffing resources and priorities.

OPTIONS:

Staff is presenting no options because the recommendation is consistent with the City Council's action on February 13, 2008.

ATTACHMENTS:

- A. Ordinance amending Title 5, Chapter 2, Articles 1 and 2 of the Municipal Code Related to Property Maintenance; Abandoned, Unsecured or Partially Constructed Buildings; and Vacant Lots Used for Illegal Dumping.

ORDINANCE NO. _____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
AMENDING ARTICLES 1 AND 2 OF CHAPTER 2 OF TITLE 5
OF THE ANTIOCH MUNICIPAL CODE RELATED TO PROPERTY MAINTENANCE;
ABANDONED, UNSECURED OR PARTIALLY CONSTRUCTED BUILDINGS; AND
VACANT LOTS USED FOR ILLEGAL DUMPING**

The City Council of the City of Antioch does ordain as follows:

SECTION 1: Section 5-1.101 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Sec. 5-1.101. Definitions.

For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Abandoned Building. Any building or structure or portion that has been vacant in excess of six months. Lack of utility services and/or boarded windows and doors shall constitute prima facie evidence of the abandonment.

Graffiti. Includes any unauthorized inscription, word, figure, mark or design that is written, marked, etched, scratched, drawn or painted on any real or personal property, as defined in California Government Code section 53069.3.

Junk Yard. Any building, equipment, land, lot, place, premises, or structure where, at, upon which, to which, or from which is abandoned, baled, bartered, bought, brought, bundled, disassembled, disposed of, exchanged, handled, packed, processed, shipped, sold, stored, or transported any junk, as defined by California Streets and Highway Code section 746; or any castoff, damaged, discarded, junked, obsolete, salvaged, scrapped, unusable, worn-out, or wrecked object, thing, or material composed in whole or in part of asphalt, brick, carbon, cement, cotton, dirt, fiber, glass, metal, paper, plaster, plaster of paris, plastic, rubber, terra cotta, wool, wood, or other substance, including, but not limited to, used, discarded, or obsolete batteries, clothing, debris, equipment, floor coverings, garbage, logs, lumber, rags, rope, rugs, trash, vegetation, vehicles, or waste. This definition shall not include any business lawfully engaged in the buying or selling of new or used furniture or usable household equipment, or buying and selling used automobiles in operable condition, or the storage or use of used or salvaged materials in connection with manufacturing operation conducted on the premises, provided such businesses are located within a zone permitting such business and conducted in accordance with all applicable regulations.

Person. Any natural person, firm, association, joint venture, joint stock company, partnership, organization, club, company, corporation, business, entity, trust, or the manager, lessee, agent, servant, officer, trustee, administrator or employee or any of them.

Premises. Includes tracts; lots or parcels of land; easements; single-family residences; town homes; condominiums; multiple-family dwelling; apartment; flat; duplex, boarding or lodging home; restaurant, hotel or motel; commercial or industrial establishment of any type; any structure; any parcel of land upon which a building or business is located; or any unimproved parcel of land.

Property Owner. Any person having legal or equitable title or interest in real property, including but not limited to any bank, mortgage company, financial institution or similar entity or lien holder that has control and dominion over the property.

Vector. Any animal or insect capable of transmitting the causative agent of disease or capable of producing human discomfort or injury, including, but not limited to, mosquitoes, flies, mites, ticks, other arthropods, rodents and other vertebrates.

SECTION 2: Section 5-1.102 is hereby added to the Antioch Municipal Code as follows:

Sec. 5-1.102. Purpose.

(A) It is the intent of the City Council in adopting this chapter to provide a comprehensive method for the identification and abatement of public nuisances within the City to protect the health, welfare and safety of residents and to promote the maintenance of real property to improve the liveability, appearance and social and economic conditions of the City. Public nuisances can create visual blight or lead to neighborhood decline, causing detriment to surrounding properties and depreciating the value of those properties. In addition, as to abandoned, unsecured or partially constructed buildings, the City Council finds that such buildings represent threats to public health, safety and welfare because they invite trespassers, represent fire hazards because a fire can begin unobserved, can become harborage for vectors and rodents, can become littered or dumping ground or can encourage criminal activity because the property is unsupervised.

(B) Provisions of this chapter are supplementary and complementary to all other provisions of the Antioch Municipal Code, state law, and any law cognizable at common law or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the City to abate any nuisance or initiate any action provided for by law.

SECTION 3: Section 5-1.103 is hereby added to the Antioch Municipal Code as follows:

Sec. 5-1.103. Responsibility for proper property maintenance.

(A) Every property owner is required to maintain such property in a manner so as not to violate the provisions of this chapter and such owner remains strictly liable for violations, such property regardless of any contract or agreement with any third party regarding such property or of the identity or relationship of any party responsible for creating the violation. Every successive property owner who fails to abate a continuing nuisance is liable in the same manner as the property owner who created the nuisance.

(B) Every occupant, lessee, tenant, or holder of any interest in property, other than as owner, is required to maintain such property in the same manner as is required of the owner, and the duty imposed by this section on the owner thereof shall in no instance relieve those persons referenced from the similar duty.

SECTION 4: Section 5-1.201 of the Antioch Municipal Code is hereby amended in its entirety to read as follows:

Section 5-1.201. General Nuisances Prohibited

It is unlawful and a public nuisance for any property owner or any person leasing, occupying or having possession or control or dominion of any premises in this City to maintain such premises or to permit, suffer or allow such premises to be maintained in such a manner that any one or more of the conditions or activities described in the following subsections are found to exist:

(A) Any dangerous, unsightly, or blighted condition that is detrimental to the health, safety or welfare of the public;

(B) Any condition in violation of the California Building Code, National Electrical Code, California Mechanical Code, Uniform Housing Code, Health and Safety Code Section 19720.3, California Plumbing Code, Uniform Code of Abatement of Dangerous Buildings, California Fire Code, Uniform Security Code, Title 24 of the California Code of Regulations, or the State Building Standards Code, as adopted by reference in this Code, subject to any amendments, additions or deletions made thereto;

(C) Any condition in violation of any section or subsection of the Antioch Municipal Code or City rule or regulation or permit issued by the City;

(D) Any condition in violation of any rule, regulation, standard or other requirement of the air pollution control district in which the City lies;

(E) Any condition recognized in law or in equity as constituting a public nuisance, including, but not limited to, California Civil Code section 3480, California Penal Code sections 11225-11235, and California Health and Safety Code section 11570; or

(F) Any condition that is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or that unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal or basin, or any public park, square, street or highway.

SECTION 5: Section 5-1.202 of the Antioch Municipal Code is hereby amended in its entirety to read as follows.

Sec. 5-1.202. Specific Nuisances Prohibited

It is unlawful and a public nuisance for any property owner or any person leasing, occupying or having possession or control or dominion of any premises in this City to maintain such premises or to permit, suffer or allow such premises to be maintained in such a manner that any one or more of the conditions or activities described in the following subsections are found to exist, with such list not intended to be exclusive:

(A) Property Inadequately Maintained.

(1) The keeping, storage, depositing or accumulation on the premises of any personal property, including, but not limited to, abandoned, wrecked, dismantled, discarded or inoperable equipment, appliances, furniture, containers, packing materials, scrap metal, wood, building materials, junk, solid waste, rubbish, trash and debris, dirt, sand, gravel, concrete or similar materials that is visible from the public right-of-way and:

- (a) poses a risk of harm to the public, or
- (b) constitutes visual blight or reduces the aesthetic appearance of the neighborhood, or
- (d) is offensive to the senses, or
- (e) is detrimental to the use and enjoyment of nearby properties, or
- (f) reduces nearby property values due to the visibility from the public right of way.

However, wood and building materials being used or to be used for a project of repair or renovation for which a valid and current building permit has been obtained may be stored for such period of time as is necessary expeditiously to complete the project not to exceed one year;

(2) Premises on which overgrown, dead or decayed trees, weeds or other vegetation pose a risk of harm to the public, or constitute visual blight or

reduce the aesthetic appearance of the neighborhood, or are offensive to the senses, or are detrimental to the use and enjoyment of nearby properties, or reduce nearby property values due to its visibility from the public right of way;

(3) Any swimming pool, pond or other body of water which is abandoned, unattended, unfiltered or otherwise not maintained, resulting in the water becoming polluted by excess bacterial growth or by the presence of garbage, refuse, debris, papers or any other foreign matter or material which creates an unhealthy or unsafe condition;

(4) Maintenance of premises in such a manner that matter, including, but not limited to, smoke, odors, dust, dirt, paint spray, or debris, is permitted to be transported by wind or water or otherwise upon any street, course, alley, sidewalk or other public property or onto neighboring or adjacent properties so as to pose a risk of harm to the public, or to create a condition which is offensive to the senses, or detrimental to the use and enjoyment of nearby properties, or reduces nearby property values;

(5) Failure to install or to maintain landscaping required by this Code or other requirements of the City or Antioch Development Agency. Required landscape maintenance under this subsection includes, but is not limited to, providing adequate watering to maintain and prevent dead and dying lawns or other landscaping plantings in all residential districts when any residential lawn or landscaping planting has been installed and is visible from the public right of way, except in the event that water rationing measures have been imposed;

(6) Storage of solid waste, green waste or recyclable containers, receptacles or bins in front or side yards that are visible from the public right of way in excess of 48-hours, unless the City Manager grants an exception because the layout or configuration of the premises would impose a substantial hardship upon the property owner seeking to comply with this section, with such determination not subject to an appeal;

(7) Premises on which any condition poses a potential fire hazard;

(8) The placement, use or maintenance of any clothesline in any front yard area of any premises visible from the public right of way;

(9) Any vacant or undeveloped lot on which there is an accumulation of trash, rubbish, garbage, or debris;

(a) Upon written notice to the owner of record, by mail to the last mailing address as listed in the county or City records, that the lot or parcel is the site of illegal dumping or contains trash, rubbish or garbage, the owner shall remove all such trash, rubbish, garbage or debris within the time stated in the notice.

(b) Upon two (2) or more violations of this subsection within a twenty-four (24) month period, the property owner shall, at the owner's

expense, erect a 6-foot cyclone fence with posts in the ground, unless some other type of fence is approved by the Community Development Director, around the vacant lot or parcel to prevent illegal dumping and/or the unlawful accumulation of trash, rubbish, garbage, or debris and/or unauthorized entry within thirty (30) days of the second notice of violation. The second notice of violation shall include a notice that a fence is required under this section.

(c) If the property owner, after being given written notice that a fence is required, fails to erect such fence within thirty (30) days of date of the written notice, the City may apply for an abatement warrant to erect such fence, and upon obtaining the warrant may erect the fence. All costs of obtaining the warrant (including attorneys' fees) and erecting the fence shall, at the City's sole election, be placed on the property as a special assessment lien or collected as a debt against the property owner.

(d) It is unlawful for any person or entity to remove, damage, breach or in any way interfere with a fence erected under this section. The property owner shall at all times properly maintain such fence, including repair or replacement, in the event of damage or deterioration.

(e) The property owner may apply in writing to the City Manager to remove a fence erected under this section in the event the lot is being developed and all necessary grading or building permits have been obtained. Such permission shall not be withheld if such permits have been issued or if the lot or parcel is no longer vacant.

(B) Buildings or Structures in a State of Disrepair.

(1) Any building or other structure, including, but not limited to, walls, fences, signs or retaining walls, which are broken, deteriorated, or substantially defaced (including defacement by markings commonly referred to as graffiti) so that the disrepair poses a risk of harm to the public, or constitutes visual blight or reduces the aesthetic appearance of the neighborhood, or is offensive to the senses, or is detrimental to the use and enjoyment of nearby properties, or reduces nearby property values due to its visibility from the public right of way;

(2) Any building or structure having dry rot, warping or termite infestation or any building or structure on which the condition of the exterior finish has become so deteriorated as to permit decay, excessive checking, cracking, peeling, chalking, dry rot, warping or termite infestation so that the disrepair poses a risk of harm to the public, or constitutes visual blight or reduces the aesthetic appearance of the neighborhood, or is offensive to the senses, or is detrimental to the use and enjoyment of nearby properties, or reduces nearby property values;

(C) Abandoned, Unsecured or Partially Constructed Buildings

(1) Any vacant building, structure or other property that is unlocked or unsecured or has broken or missing doors or windows or other unsecured openings allowing unauthorized access by trespassers, or constituting a

potential attraction to children or a harbor for vagrants, criminals, or other unauthorized persons, or so as to enable persons to resort to committing nuisance or other criminal activities;

(a) Except as provided below in subsection (b), no building or structure shall be left in a boarded up and/or vacant condition in excess of six (6) months unless a valid building permit has been issued and work under that permit is taking place to facilitate reoccupation of the building or to demolish it. In any event, the vacant structure must be maintained in compliance with this Code to prevent a blighted appearance of the premises.

(b) The City Council hereby finds that economic conditions can reasonably cause commercial buildings to remain vacant in excess of six (6) months. However, the vacant commercial structure shall be maintained in such a manner so as to not create a public nuisance. This shall include, but is not limited to, maintaining the exterior of the structure in good repair, maintaining the landscaping, keeping the property free of litter, trash and graffiti, and in securing the property in compliance with subsection (2) above. Due to the demand for housing, the Council finds that there generally is not a similar real estate justification for residential dwellings to remain vacant in excess of six (6) months.

(2) Any building or structure permitted to remain in a state of partial construction, reconstruction or demolition, whether the partial demolition is due to man-made or natural causes such as fire or earthquake, so that it poses a risk of harm to the public, or constitutes visual blight or reduces the aesthetic appearance of the neighborhood, or is offensive to the senses, or is detrimental to the use and enjoyment of nearby properties, or reduces nearby property values;

(a) No partially constructed, reconstructed or demolished structure shall be considered in a state of partial construction if there exists a valid and current building or demolition permit and substantial work has been done pursuant to such permit within the immediately preceding ninety (90) days.

(b) No building permit shall be extended or renewed beyond one (1) year of the date of the issuance of the original permit, unless the Building Official has made a good cause determination that additional time is necessary due to the scope of the construction and the delay is due to circumstances beyond the control of the owner or contractor, not including financial considerations. In no event shall any structure be permitted to remain in a partial state of construction in excess of two (2) years.

(D) Parking and Storage of Vehicles and Equipment.

(1) Any outdoor parking or storage of any inoperable, wrecked, dismantled, salvaged, abandoned vehicle, or parts thereof, including watercraft so that it is within the view from the public right of way;

(a) Any vehicle that is not currently registered with the California Department of Motor Vehicles to operate legally on a public street is deemed inoperable for purposes of this section.

(b) Lawfully operating junkyards are exempt from subsection 5-1.201(5)(A) provided such businesses are located within a zone permitting such business and conducted in accordance with all regulations applicable thereto.

(2) Parking or storage of motor vehicles or other mobile equipment in any area not designated as a parking space on the approved site plan or on any unpaved surface including, but not limited to, dirt, grass or any other surface that is not concrete or a similar paving material;

(3) Parking or storage of construction equipment or machinery or other industrial or commercial equipment or machinery in any area zoned for residential uses so that it is within the view from the public right-of-way except while excavation, construction or demolition operations covered by an active building or demolition permit are in progress on the property;

(E) Hazardous and Attractive Nuisances.

(1) Any building, object or condition, whether natural or man-made, which due to its accessibility to the public or potential attraction to children poses a hazard, including, but not limited to, abandoned, unsecured, unused or neglected motor vehicles, machinery, appliances or equipment, abandoned or unprotected wells, shafts, foundations, or basements, hazardous or unprotected pools, ponds, construction sites, or excavations, and stored chemicals, gas, oil, or toxic or flammable substances;

(2) Erosion, subsidence, or surface water drainage problems which are hazardous or injurious to the public or to adjacent properties whether caused by grading operations, excavations or fill or as a result of the topography, geology or configuration of the land in its natural state;

(3) Any unlawful storage or release of hazardous materials or wastes.

(F) Control of Vectors including Insects and Rodents.

(1) Any artificial alteration of premises, excluding water, from its natural condition, resulting in it supporting the development, attraction, or

harborage of vectors, with the presence of vectors in their developmental stages on premises being prima facie evidence that the premises is a public nuisance;

(2) Any water that is a breeding place for vectors, with the presence of vectors in their developmental stages in the water being prima facie evidence that the water is a public nuisance;

(3) Any activity or condition that supports the development, attraction, or harborage of vectors, or that facilitates the introduction or spread of vectors;

(G) Any condition or maintenance of property in a manner that is unreasonably offensive to the senses or that substantially detracts from the aesthetic or economic values of neighboring properties, including but not limited to painting in a garish manner or obscene paintings or signs.

SECTION 6. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions are severable.

SECTION 7. This Ordinance is not a project subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 15061(b)(3) because it can be seen with certainty that there is no possibility that it may have a significant effect on the environment. If there is any effect, it would be a positive one for the protection of the environment and thus exempt under CEQA Guideline 15308.

SECTION 8: This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption and shall be published once within fifteen (15) days upon passage and adoption in the East County Times, a newspaper of general circulation printed and published in the City of Antioch.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was introduced at a regular meeting of the City Council of the City of Antioch, held on the ____ day of _____, 2008, and passed and adopted at a regular meeting thereof, held on the ____ day of _____, 2008.

AYES:

NOES:

ABSENT:

MAYOR OF THE CITY OF ANTIOCH

ATTEST:

CITY CLERK OF THE CITY OF ANTIOCH