

Ralph W. Wood
CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE No. 11359 C. M. S.

AN ORDINANCE AMENDING CHAPTER 18 OF THE OAKLAND MUNICIPAL CODE, AS ADOPTED BY ORDINANCE NO. 11217 C.M.S., TO PROVIDE MINIMUM STANDARDS AND REGULATIONS GOVERNING THE SECURING OF HISTORIC BUILDINGS DAMAGED BY EARTHQUAKE

WHEREAS, the City of Oakland desires to preserve important, historic building assets that may be difficult to replicate; and

WHEREAS, the primary purpose of this Ordinance is to provide minimum standards and regulations governing the securing of historic structures damaged by earthquake; and

WHEREAS, failure to provide such minimum standards and regulations may lead to environmental blight, public nuisances and the destruction or loss of the City's historical building stock; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, and the provisions of the Statement of Objectives for Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of CEQA have been satisfied and that, in accordance with Section 15301 (d) of the California Code of Regulations, this project is exempt from the provisions of CEQA.

THEREFORE, the Council of the City of Oakland does ordain as follows:

Section 1. Existing Sections 18-1.04 (A) through (P) of Chapter 18, Article 1, of the Oakland Municipal Code are respectively renumbered to be Sections 18-1.04 (B) through (Q).

Section 2. A new Section 18-1.04 (A) is added to Chapter 18, Article 1, of the Oakland Municipal Code to read as follows:

" (A) Abandoned Historic Structure. As used herein, the word "Abandoned Historic Structure" shall mean an earthquake-damaged historic structure that has been posted "unsafe" or "limited entry" by the Building Official and is a structure that is not occupied, inhabited, or used for its intended purposes, and is unsecured. For purposes of this Chapter, an abandoned historic structure is unsecured when it is unprotected from unauthorized entry by members of the public or from damage and deterioration caused by the effects of environmental elements."

Section 3. A new Section 18-4.02 is added to Chapter 18, Article 2, of the Oakland Municipal Code to read as follows:

"SEC. 18-4.02 SECURING EARTHQUAKE-DAMAGED HISTORIC STRUCTURES. Notwithstanding any other law, procedure, regulation or provision of this Chapter, this Article shall govern the duty of owners and other interested parties of record to secure earthquake-damaged historic structures. The procedures, including appellate procedures, set forth in this Article shall govern over any conflicting procedures contained in any other law, procedure or regulation.

A. Duty To Secure. It shall be unlawful for any owner or other interested party of record to maintain or to allow an earthquake-damaged historic structure to be maintained as an abandoned historic structure. It shall be the duty of the owner and other interested parties of record of each earthquake-damaged historic structure to secure each such structure to prevent unauthorized entry by members of the public and to prevent damage and deterioration caused by the effects of environmental elements. It shall be unlawful for the owner or interested party of record of any earthquake-damaged historic structure to fail to secure such structure pursuant to the requirements of this Article.

B. Order To Secure. The Building Official, upon determining that an earthquake-damaged historic structure is being maintained as an abandoned historic structure, shall provide the owner with an Order To Secure. The Order To Secure shall be in writing and shall be delivered personally or by certified mail to the property owner and any other party of record with an equitable or legal interest in said property. The Order shall set forth those factors which, in the opinion of the Building Official, causes the structure to be an abandoned historic structure. The Order shall provide that, within five days from the date set forth in the Order, the owner shall begin and prosecute to completion the work of securing the structure pursuant to the terms of the Order and of this Article. The Order shall include a date by which the work must be completed. The Building Official, in establishing such date, shall take into consideration the condition of the structure and the amount of work that must be done to secure it.

The decision of the Building Official determining that an earthquake-damaged historic structure is an abandoned historic structure may be appealed to the Director of Public Works or his designee by the property owner or any other interested party of record. Any such appeal shall be in writing and shall indicate the basis of error by the Building Official and shall be hand-delivered to the Building Official within five days of the date set forth in the Building Official's Order. Failure to appeal within the required five day period shall constitute a waiver of the right to appeal to the Director of public Works and the Building Official's determination and Order shall stand as final. An appeal that is properly and timely filed shall cause the Building Official's determination and Order to be suspended until such time as the matter is heard and resolved by the Director of Public

Works.

C. Hearing. At the time of receiving a valid appeal, the Building Official shall schedule an appeal hearing before the Director of Public Works. The appellant shall be notified of the date, time and place of the hearing at the time the appeal is filed. The hearing shall be held as soon as practicable.

At the hearing, the appellant shall have the right to call witnesses, submit evidence and to cross-examine the witnesses of the City. All witnesses shall be sworn. A record of the entire proceeding shall be made by tape recording. Any relevant evidence may be admitted regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in the courts of this State.

At the close of the hearing, the Director of Public Works or his designee shall act to either uphold, overrule or modify the determination and Order of the Building Official. The determination and Order of the Building Official shall be upheld, unless the Director or his designee finds, based upon submitted evidence in the record, that the Building Official erred in determining that the subject structure is an abandoned historic structure. The decision of the Director or his designee must be made within two days and may be given orally or in writing. If given orally, the decision shall be memorialized in writing and served upon the appellant within five days of the date of the oral decision.

If the Director or his designee upholds the decision of the Building Official, the property owner or other interested party of record shall be ordered to secure the structure within the time set forth in the decision by the Director or his designee. If the Building Official is determined to have erred, his determination and Order shall be vacated. The decision of the Director or his designee shall be final on the date it is rendered.

D. Specifications for Securing Earthquake-damaged Historic Structures. All openings, including, but not limited to, doorways, windows, cracks, gaps, holes and other apertures, shall be secured to meet the following minimum standards so as to prevent unauthorized entry by members of the public and to prevent damage and deterioration caused by the effects of environmental elements:

1. securing of earthquake-damaged historic structures shall consist of emplacement of one-half inch exterior grade plywood, on the exterior side with paint matching the predominate color of the structure, across all openings on the ground level floor and floor immediately accessible to entry, other than

those where mechanical assistance would be required to effect entry. Plywood shall be cut to the size of the opening and fastened by means of 2"x4" strongback placed on the inside of the building and attached with metal bolts. There shall be no nailing of the plywood to the window frame or sash. At least one door providing entry to each unit of the structure shall be secured by means of one-half inch exterior grade plywood cut to the door opening size and fastened by means of hinges and secured with a hasp and padlock. The lock shall be a MASTER-3NKA or equivalent. Broken windows on upper floors shall be secured by one-half inch exterior grade plywood, painted on the exterior side with paint matching the predominate color of the structure. Plywood shall be cut to the size of the opening and placed on the interior side of the window and shall be fastened by means of 2"x4" strongback placed on the inside of the structure and attached with metal bolts;

2. All doors and windows not secured as set forth in Section 18-4.02(A)(1) of this Article, shall be kept closed and locked.
3. All other openings, including cracks, gaps, holes and other apertures, which either may be used to gain unauthorized entry or may allow environmental elements to invade the interior portions of the structure shall be secured with appropriate building materials, with the exterior portions of the materials, being painted the color matching the predominate color of the structure that surrounds the secured opening.
4. All secured areas, in compliance with applicable codes and regulations, shall be kept free of graffiti, bills, posters and litter.

E. Penalties. It shall be unlawful for the owner or any other interested party of record to maintain, or cause to be maintained, an abandoned historic structure, or to fail to comply with an Order to Secure imposed by the Building Official, the Director of Public Works or his designee. After written notice from the City to the Owner or other interested party of record, the following penalties shall be imposed upon owners who fail to comply with the provisions of this Article:

1. Except as otherwise provided herein, a \$500.00 penalty shall be imposed upon the owner or other interested party of record of each abandoned historic structure for each day, or partial day, such structure is maintained as an abandoned historic structure. For purposes of this Article, each day, or partial day, that a structure remains an abandoned historic structure shall be considered a separate violation of this Article.
2. If the work of securing the structure is completed by the City or its contractors, the penalty imposed upon the owner or other interested party of record shall be a penalty which either equals the amount required by Section 18-4.02 (E)(1) of this Article or 10% of the actual costs incurred by the City in securing or having the structure secured pursuant to the provisions of this Article, whichever is greater.
3. The penalties imposed pursuant to this Article shall be assessed in the manner and pursuant to the procedures set forth in Section 18-1.09 (B) of this Chapter. In addition, the penalties shall be a personal obligation of the owner of the subject real property.

F. Occupancy Permit Revocation. In addition to imposing the penalties set forth in Section 18-4.02 (E) of this Article, the Building Official, following the procedures set forth in Section 18-1.09 (C) of this Chapter, may revoke the occupancy permit for any abandoned historic structure for which an owner fails to satisfy the requirements of this Article. The procedures and regulations governing appellate review of the Building Official's revocation decision shall be as set forth in Section 18-1.09 (C) of this Chapter.

G. Right Of Entry. Whenever an Order to Secure of the Building Official, Director of Public Works or his designee is not complied with within the time set forth in the Order, the Building Official, Director of Public Works or his designee, whichever is applicable, shall be authorized to enter the structure and to secure it pursuant to the requirements set forth in Section 18-4.02 (D) of this Chapter. Instead of using City forces to perform the work, the Building Official, Director of Public Works or his designee, subject to the City's contracting regulations, may order the work to be performed by contractors. Contractors hired by the City, in prosecuting the work authorized by this Article, shall have the same rights of entry accorded the Building Official,

Director of Public Works or his designee.

H. Costs Of Securing. All costs and expenses incurred by the City, including staff costs resulting from the contracting process, shall become a personal obligation of the owner of the related real property and, in addition, shall become a special assessment against the property.

At the time the Building Official, Director of Public Works or his designee, orders security work to be done by the City or the City's contractors, the Building Official shall record a notice of prospective lien against the subject property. Such notice shall include a description of the proposed security work and an estimate of its costs.

Immediately upon the completion of any work of securing an abandoned historic structure by City forces or City Contractors, the Building Official shall prepare a report of assessment. Said report shall describe the work performed, the dates on which it was performed and the costs incurred by the City. The Building Official shall cause a copy of the report to be served on the subject property owner and all other interested parties of record. Said report shall be accompanied by a notice of the date, time and place of the confirmation hearing before the Oakland City Council. Said notice shall provide the owner or other interested party with at least five working days prior notice of said confirmation hearing.

The notice and report shall be placed in a sealed envelope, postage prepaid, addressed to the owner or other interested party at his/her last known address as the same appears on the last equalized assessment roles of the City of Oakland, and deposited, registered or certified mail, return receipt requested in the United States mail. Service shall be deemed complete at the time of deposit in the United States mail.

A copy of the report of the assessment shall be posted in the office of the City Clerk at least three days prior to the time when the report will be submitted to the City Council.

At the time set forth in the notice, the City Council shall hear the matter and either modify and confirm the assessment report. The Council shall confirm the report as presented by the Building Official, unless the Council, after a review of the evidence in the record, finds that either the work assessed was not performed or that there was an error made in calculating the amount owed. After the assessment is made and confirmed, it shall be a lien on said property, until said sum, with interest at the maximum legal rate per annum, has been paid in full. Interest shall begin to run on the date the amount is confirmed.

Such lien shall attach upon recordation in the Office of the County Recorder, Alameda County, by certified copy of the resolution of confirmation. After confirmation of the report, a certified copy shall be filed with the County Auditor, Alameda County, on or before August 10. The description of the parcel reported shall be that used for the same parcel as the County Assessor's map books for the current year. The County Assessor shall enter each assessment on the County tax roll opposite the parcel of land. The amount of the assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedures for foreclosure and sale in case of delinquencies as provided for ordinary municipal taxes.

SECTION 5. the City Council makes the following findings in support of the adoption of this Ordinance:

1. the adoption of this Ordinance complies with CEQA;
2. the protection of earthquake-damaged historic structures is a compelling governmental interest, because of the number of such structures in existence, the effect of their existence on the economy, and the health, safety and welfare risks posed by the structures;
3. this Ordinance is necessary to preserve the health, safety, peace and welfare of the public; and,
4. the recitals set forth in the opening paragraphs of this Ordinance are true and correct.

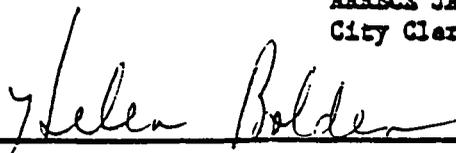
SECTION 6. This ordinance shall become effective on the date of its adoption and shall supersede the provisions of any other conflicting law, ordinance or regulation.

SECTION 7. The Review Officer is directed to file a notice of exemption with the Alameda County Clerk.

I certify that the foregoing is a full, true and correct copy of an Ordinance passed by the City Council of the City of Oakland, California on
JUL 16 1991

ARRECK JAMESON
City Clerk

Per



, Deputy.