

1 [Declaring blighted vacant lots to be a nuisance and authorizing DPW to abate such
2 nuisances at the owners' expense following notice and opportunity for hearing.]

3 **Ordinance amending Article 15 of the Public Works Code by adding Sections 735**
4 **through 735.4 to declare blighted vacant lots a public nuisance, require owners to**
5 **abate such nuisances and authorize DPW to abate such nuisances at the owners'**
6 **expense following written notice from DPW and the opportunity for a hearing.**

7 Note: Additions are single-underline italics Times New Roman;
8 deletions are ~~strikethrough italics Times New Roman~~.
9 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. The San Francisco Public Works Code is hereby amended by adding
12 Sections 735 through 735.4, to read as follows:

13 **SEC. 735. BLIGHTED VACANT LOTS AS CONSTITUTING PUBLIC NUISANCE**

14 (a) Definitions. For purposes of sections 735 through 735.4, each of the following terms shall
15 have the following meaning:

16 (1) "Blighted Vacant Lot" means property that:

17 (A) contains no buildings or structures that are occupied, inhabited, used or secured so
18 that the public may not gain entry without consent of the owner; and

19 (B) has any accumulation of filth, garbage, decaying animal or vegetable matter, waste
20 paper, weeds, vegetation overgrowth, dead or decaying trees, litter, trash, unsanitary debris,
21 waste material, animal or human excrement, toxic or otherwise hazardous liquids, substances
22 and/or material residue, residue from the burning of combustible materials or discarded
23 household, industrial or mechanical materials, or is otherwise not kept in a clean and sanitary
24 condition .

25 (2) "City" means the City and County of San Francisco.

1 (3) “Director” means the Director of Public Works or his or her designee.

2 (4) “Property Owner means the owner of record of the property as set forth in the most
3 current records of the Tax Assessor, or the owner’s authorized agent.

4 (b) Declaration of Nuisance. Blighted vacant lots are hereby declared a public nuisance
5 subject to abatement in accordance with Sections 735.1- 735.4.

6 (c) Prohibition. It shall be unlawful for a property owner to maintain a blighted vacant lot in
7 violation of this Article.

8 **SEC. 735.1 VIOLATIONS.**

9 (a) Notice of Violation. Where the Director determines that any property constitutes a
10 blighted vacant lot in violation of Section 735, the Director may issue a notice of violation to the
11 property owner. At the time the notice of violation is issued, the Director shall take one or more
12 photographs of the property showing the blighted conditions, and shall make copies of the photographs
13 available to the property owner upon request. The photographs shall be dated and retained as a part
14 of the file for the violation. The notice shall generally describe the violation, give the owner 15
15 calendar days from the date of the service of the notice to either abate the violation or request a
16 hearing on the notice of violation, and shall set forth the procedure for requesting a hearing on the
17 violation. The notice shall also inform the property owner of his or her right to request an extension of
18 time pursuant to paragraph (b) of this Section in order to abate the violation, and further inform the
19 owner that where the owner fails to either abate the violation or request a hearing within 15 calendar
20 days (plus an extension if applicable) from the date of service of the notice, the Director may initiate
21 proceedings in accordance with Section 735.3 to enter upon the owner’s property and abate the
22 violation at the owner’s expense. In addition, the notice shall inform the owner that the minimum
23 charge for abating the violation is the greater of \$500 or the actual cost to the City, (including
24 overhead and administrative costs, as well as attorneys’ fees where the Director has elected to seek
25 recovery of attorneys’ fees). The Director shall serve the notice of violation as follows:

1 (1) One copy of the Notice shall be posted in a conspicuous place upon a building or
2 the property.

3 (2) One copy of the Notice shall be served upon each of the following:

4 A. The person, if known, in real or apparent charge and control of the premises or
5 property involved;

6 B. The owner of record.

7 (3) The Director may also serve one copy of the notice upon any other parties with a
8 recorded interest.

9 Service required by paragraphs 2 and 3 may be made by personal service or by certified
10 mail.

11 (b) **Extension of time.** A property owner may receive an extension of an additional 15
12 calendar days in which to abate the violation. The Director shall grant an extension if the Director
13 receives such a request by telephone, in writing or by facsimile within the original response period of
14 15 calendar days set forth in subsection (a). The notice of violation issued under subsection (a) shall
15 specify the address, telephone and facsimile numbers for requesting such an extension. An extension
16 under this paragraph shall not affect the deadline for a property owner to request a hearing on a notice
17 of violation.

18 (c) **Public Property.** Where the property is owned by a public entity other than the City, the
19 Director shall cause removal of the blighted condition only after securing the consent of an authorized
20 representative of the public entity that has jurisdiction over the property. The Director shall use all
21 reasonable efforts to minimize blighted vacant lots on City-owned property, but City-owned property
22 shall not otherwise be subject to the requirements of this Article.

23 **SEC. 735.2. REQUEST FOR HEARING; HEARING.**

24 (a) **Request for Hearing.** A property owner may request a hearing in order to
25 contest the notice of violation issued in accordance with Section 735.1 by filing with the Director within

1 15 calendar days from the date of the notice of violation, a request for hearing that specifies in detail
2 the basis for contesting the notice of violation.

3 (b) **Notice for and Scheduling of Hearing.** Whenever a hearing is requested
4 pursuant to this Section, the Director shall, within seven calendar days of receipt of the request, notify
5 the property owner of the date, time, and place of the administrative review hearing by certified mail.
6 Such hearing shall be held no later than 45 calendar days after the Director receives the request,
7 unless time is extended by mutual agreement of the affected parties.

8 (c) **Submittals for Hearing.** At least five City business days prior to the hearing, the
9 property owner and the City shall submit to the hearing officer and exchange with one another, written
10 information including, but not limited to, the following: a statement of the issues to be determined by
11 the hearing officer, a statement of the evidence to be offered at the hearing and the identity of any
12 witnesses to appear at the hearing.

13 (d) **Hearing Procedure.** The hearing shall be conducted by a neutral hearing officer
14 from outside the Department of Public Works, appointed by the Director of Administrative Services.
15 The burden of proof to establish that the property is a blighted vacant lot shall be on the City. The
16 owner shall be entitled to present evidence and demonstrate that his or her property is not a blighted
17 vacant lot. The property owner shall also be entitled to present evidence and demonstrate that
18 requiring the owner to abate the violation would result in an unfair hardship. All testimony shall be
19 under oath, and witnesses may be cross-examined. The hearing officer shall ensure that a record of the
20 proceedings is maintained. The determination of the hearing officer after the hearing shall be final and
21 not appealable.

22 (e) **Decision.** The hearing officer shall issue a decision including a summary of the
23 issues and the evidence presented, and findings and conclusions, within ten calendar days of the
24 conclusion of the hearing. A copy of the decision shall be served upon the property owner by certified
25 mail. The decision shall be the City's final administrative determination. An aggrieved party may seek

1 judicial review of the decision pursuant to California Code of Civil Procedure Sections 1094.5 and
2 1094.6.

3 **SEC. 735.3. ABATEMENT BY DIRECTOR**

4 (a) Following the hearing if the City sustains its burden of proof, or if the property owner does
5 not request a hearing and fails to remedy the violation within 15 calendar days (plus the extension
6 under Section 735.1(b), if applicable), from the date of the notice of violation the Director may
7 immediately order that the violation be abated. Unless the Director has obtained written consent from
8 the property owner to enter the property and abate the violation, before such abatement may take
9 place, the Director shall obtain a court order authorizing the Department of Public Works to enter
10 upon the property and abate the violation, and give written notice of the abatement (Abatement Order)
11 served in accordance with Section 735.1(a).

12 (b) If the hearing officer determines that a hardship exists, the Director is authorized to
13 abate the violation at no cost to the property owner, provided that the owner agrees to hold the City
14 harmless from any liability arising from the abatement by providing the Director with a signed waiver
15 of liability. The Director may develop forms for this purpose.

16 (c) The following procedures shall apply to actions by the Director to abate and recover
17 costs for abatement of violations of Section 735:

18 (1) **Abatement Action.** After obtaining a court order, the Director shall implement
19 the Abatement Order. The Director may enter upon the property and cause the removal or other
20 abatement of the conditions causing the violation. Where the Director abates a violation of Section
21 735, the owner shall pay the greater of either \$500 or the actual cost (including overhead and
22 administrative costs, as well as attorneys' fees where the Director has elected to seek recovery of
23 attorneys' fees) of abating the violation. The Director shall provide an accounting to the owner of the
24 costs of the abatement action (Abatement Accounting) on a full cost recovery basis not later than 30
25 days from the date the abatement action is completed. The Abatement Accounting shall include all

1 administrative costs incurred by the City in abating the violation. The total amount set forth in the
2 Abatement Accounting shall be due and payable by the owner within 30 days from the date of mailing
3 of the Abatement Accounting. Property owners seeking to challenge the amount of the Abatement
4 Accounting may do so at the hearing authorized under Chapter 10, Article XX of the Administrative
5 Code.

6 (2) **Recovery of Attorneys' Fees.** At the time the abatement action is filed, the
7 Director may elect to seek recovery of attorneys' fees incurred in an abatement action under this
8 Section. In a case where the Director makes this election, the prevailing party shall be entitled to
9 recover attorneys' fees. In no event shall the award of attorneys' fees to a prevailing party exceed the
10 amount of reasonable attorneys' fees incurred by the City in the action.

11 (3) **Lien.** If all or any portion of the amount set forth in the Abatement Accounting
12 remains unpaid after 30 days of the mailing of the Abatement Accounting, such portion shall constitute
13 a proposed lien on the property which was the subject matter of the Abatement Action. Except as
14 otherwise specified in this subparagraph, such liens shall be imposed in accordance with Chapter 10,
15 Article XX of the Administrative Code.

16 (A) In addition to the requirements imposed under Section 10.232 of the San Francisco
17 Administrative Code, the notice to the property owner of the hearing on the proposed lien shall be
18 served in the same manner as a summons in a civil action in accordance with Article 3 (commencing
19 with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the California Code of Civil Procedure.
20 Where, after diligent search, the owner of record cannot be found, the notice may be served by posting
21 a copy in a conspicuous place upon the property for a period of ten days and publication thereof in a
22 newspaper of general circulation.

23 (B) Any lien authorized by this Section shall specify the amount of the lien, the name of
24 the department initiating the abatement proceeding, the date of the abatement order, the street address,

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1 legal description and assessor's parcel number of the parcel on which the lien is imposed, and the
2 name and address of the recorded owner of the parcel.

3 (C) Where a lien authorized by this Section is discharged, released or satisfied, either
4 through payment or foreclosure, the Tax Collector shall record a notice of the discharge containing the
5 information specified in subparagraph (B). Any such notice of discharge shall be subject to the Release
6 of Lien Fee imposed pursuant to Section 10.237 of the San Francisco Administrative Code.

7 (4) **Special Assessment.** Notwithstanding anything to the contrary in Article XX of
8 Chapter 10, pursuant to Section 38773.5 of the California Government Code, the Board of Supervisors
9 may order that the amount of the lien be specially assessed against the parcel. Upon such an order, the
10 entire unpaid balance of the costs, including any penalty and interest payments on the unpaid balance
11 to the date that the Director reports to the Board shall be included in the special assessment lien
12 against the property. The Director shall report charges against delinquent accounts to the Board of
13 Supervisors at least once each year. At the time the special assessment is imposed, the Director shall
14 give notice to the property owner by certified mail, and shall inform the property owner that the
15 property may be sold by the Tax Collector for unpaid delinquent assessments after three years. The
16 assessment may be collected at the same time and in the same manner as ordinary municipal taxes are
17 collected, and shall be subject to the same penalties and procedure and sale in case of delinquency as
18 provided for ordinary municipal taxes. All tax laws applicable to the levy, collection and enforcement
19 of ordinary municipal taxes shall be applicable to the special assessment. However, if any real
20 property to which a cost of abatement relates has been transferred or conveyed to a bona fide
21 purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches
22 thereon, prior to the date on which the first installment of taxes would become delinquent, then the cost
23 of abatement shall not result in a lien against the real property but instead shall be transferred to the
24 unsecured roll for collection.

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SEC. 735.4. LIMITATION OF LIABILITY.

By adopting this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
DAVID A. GREENBURG
Deputy City Attorney