

## ORDINANCE NO. 7,622-N.S

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 12.92 TO SPECIFY THAT VACANCY AFTER A GIVEN PERIOD IN A RESIDENTIAL BUILDING IS A CONDITION OF UNLAWFUL NUISANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Purpose: The purpose of this ordinance is to promote healthy neighborhoods and protect and preserve the livability and appearance of the City by specifying that vacancy after a given period in a residential building is a condition of unlawful nuisance.

Section 2. That Berkeley Municipal Code Section 12.92.030 is amended to read as follows:

**BMC Section 12.92.030 Unlawful nuisance--Inadequately maintained property.**

This section shall not be applicable to a single dwelling, intended for use by one family, where the dwelling is located by itself on a single parcel of property which is occupied by the owner(s) thereof. This exemption shall apply even where the owner is temporarily absent therefrom during the period necessary to complete needed repairs to such dwelling. This exemption shall only be applicable if the owner intends to return to occupy such dwelling upon completion of such repairs.

Except as exempted above, it shall be an unlawful nuisance for any person owning, leasing, renting, occupying or having charge or possession of any commercial and/or residential property to maintain or allow to be maintained such property in such manner that at least two or more of the following conditions, A through F, are found to exist thereon and where, with respect to conditions A through E, such conditions are visible from a public right-of-way and/or neighboring property and such conditions have both a significant adverse visual impact on the neighborhood and substantially contribute to the dilapidated or deteriorated appearance of the neighborhood.

A. Property which is not kept substantially clean and free from accumulations including, but not limited to, overgrown, dead or decayed trees, weeds or other vegetation, rank growth, rubbish, junk, garbage, litter, debris, flyers or circulars.

B. Buildings or structures which are unpainted or the exterior paint is substantially worn off, provided, however, that nothing in this section shall be construed to require an owner to paint a building where the architectural style indicates it was intended to be unpainted, such as a brown shingle building.

C. Buildings or structures or significant sections thereof including, but not limited to, exterior stairs, roof, foundation, walls, fences, signs, retaining walls, driveways, or walkways which are substantially broken, deteriorated, or defaced, or windows which are missing or broken. For the purposes of this section "defaced" includes, but is not limited

to, writings, inscriptions, figures, scratches, or other markings commonly referred to as "graffiti."

D. Property used or intended to be used for residential purposes which contains, in the outdoor area, any refrigerator, washing machine, sink, stove, heater, boiler, tank or any other household equipment, machinery, furniture, or item, appliance or appliances, boxes, lumber, dirt or debris, trash, garbage or refuse cans, or any items other than those commonly stored outdoors, or any parts of such items, for a period of time in excess of seventy-two consecutive hours. This subsection does not prohibit machinery installed in the rear setback areas for household or recreational use, furniture designed and used for outdoor activities, trash cans in the front yard during the twenty-four hour period allowed for garbage pick-up and garbage bins when employed in construction for which a valid building permit has been issued by the City.

E. Where property is vacant and otherwise required to be boarded up, the boarding shall be done in a manner approved by the building official and which does not itself have a significant adverse visual impact on the neighborhood nor substantially contribute to the dilapidated or deteriorated appearance of the neighborhood. To the extent feasible, the boarding up shall cause the property to have the appearance of an occupied residence as determined by the building official.

F. Buildings designed for residential use that stand vacant for more than 120 consecutive days, unless the city manager finds in writing that any of the following applies:

1. The building is the subject of an active zoning or building permit application or permit for repair or rehabilitation and the owner is progressing diligently to obtain such zoning or building permit or to complete the repair or rehabilitation.
2. The building meets all codes, is ready for occupancy, and is actively being offered for sale, lease, or rent.
3. The City Manager may grant an extension of the 120 day period of vacancy to one year for properties inherited or under probate.
4. The City may waive the time limit to remedy a blighted building in cases where an event such as such as fire, flood, or earthquake interferes with the owner's ability to complete the corrective action within the specified time.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on July 10, 2018, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

