

AMENDMENT TO ORDINANCES SECTION NO. 570

AN ORDINANCE DEALING WITH SUBSTANDARD BUILDINGS
IN THE CITY OF WHEATON

Findings.

1. The Wheaton Code of Ordinance contains provisions for dealing with substandard and dilapidated buildings and structures.
2. The Wheaton City Council does not believe that the existing Ordinance contains adequate procedures to deal with handling these substandard and dilapidated buildings and structures.
3. The Wheaton City Council believes that it is in the best interests of the residents of the City of Wheaton to amend the existing Ordinance dealing with substandard and dilapidated buildings and structures in order to allow better abatement procedures.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHEATON ORDAINS AS
FOLLOWS:**

1. That the existing provisions of Section 570 are hereby repealed.
2. That Section 570 of the Wheaton City Ordinance is hereby amended to read as follows:

“570.01 Declaration of nuisance. Buildings, fences and other structures that have been so poorly maintained that their physical condition and appearance detract from the surrounding neighborhood are declared to be public nuisances because they (a) are unsightly, (b) decrease adjoining landowners and occupants’ enjoyment of their property and neighborhood, and (c) adversely affect property values and neighborhood patterns. Additionally, these buildings, fences, and other structures, because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment constitute a fire hazard or a hazard to public safety or health.

570.02 Hazards.

- (1) Structural Hazards.
 - (a) Any stress in any material, element, member or portion thereof, due to all dead and live loads, which is greater than the working stresses deemed reasonable and safe by the Building Official.
 - (b) Damage to any portion of a building by earthquake, wind, fire, flood, or by any other cause, in such a manner that the structural ability or strength thereof is appreciably less than the minimum requirements set forth in existing codes for a new building or structure of similar size, construction, location, and purpose.
 - (c) Likelihood of any portion or member or appurtenance of a building to fall, or become dislodged or detached, or to collapse, and thereby cause bodily injury or property damage.
 - (d) Settling of any building or portion thereof to such an extent that walls or other structural portions have been displaced or distorted and rendered

structurally unstable or dangerous, or that the basic function of such element has been impaired.

- (e) The building or structure, or any portion thereof, because of dilapidation, deterioration, decay, faulty construction, or because of the removal or movement of some portion of the ground necessary for the purpose of supporting such building or structure or portion thereof, or other cause, is likely to partially or completely collapse, or some portion of the foundation or underpinning is likely to fall or give way.
 - (f) The building or structure, or any portion thereof, is for any reason whatsoever manifestly unsafe for the purpose for which it is used or intended to be used.
 - (g) The exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity of that wall or structural member does not fall inside the middle third of the base.
 - (h) The building or structure, exclusive of the foundation, shows 33% or more of damage or deterioration to the member or members, or 50% of damage or deterioration of a non-supporting enclosing or outside wall covering.
 - (i) The building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated, from any cause whatsoever, as to become an attractive nuisance to children who might play therein to their danger, or as to afford a harbor for vagrants, criminals, or as to enable persons to resort thereto for the purpose of committing nuisances or unlawful acts.
 - (j) Any building or structure which has been constructed or now exists or is maintained in violation of a specific requirement or prohibition, applicable to such building or structure, of the building code provisions of the city or of any law or ordinance of this state or city relating to the location, use and physical condition of buildings or structures.
 - (k) Any building or structure which, whether or not erected in accordance with all applicable laws and this code, because of dilapidation, deterioration, damage, or other cause is so weakened or defective as to have in any non-support part, member or portion less than 50%, or in a supporting member less than 66%, of the strength or fire-resistive qualities or characteristics or weather-resistive qualities or characteristics required by law or ordinance in the case of a newly constructed building or structure of similar size, purpose and location.
 - (l) Any chimney, antennae, air vent, or other similar projections that is structurally unsound and not in good repair (i.e., the projections are not secured properly, where applicable, to an exterior wall or exterior roof).
- (2) *Hazardous wiring.* All wiring except that which conformed with all applicable

laws in effect at the time of installation and which has been maintained in good condition and is being used in a safe manner.

- (3) *Hazardous plumbing.* All plumbing except that which conformed with all applicable laws in effect at the time of installation and which has been maintained in operating condition and which is free of cross-connections and siphonage between fixtures.
- (4) *Hazardous mechanical equipment.* All mechanical equipment, including vents, except that which conforms to all applicable laws in effect at the time of installation and which has been maintained in safe condition.
- (5) *Faulty weather protection.*
 - (a) Broken, rotted, split, or buckled exterior walls or roof coverings.
 - (b) Unsecured and/or improperly hung roof drainage system.
- (6) *Inadequate fire protection.* All buildings which are not provided with the fire-resistive construction required by the Minnesota State Building Code except those buildings which conformed to all applicable laws at the time of their construction and whose fire-resistive integrity has been adequately maintained or improved.

570.03 Inspections and Orders; Appeals.

- (1) Inspection responsibilities of official. Whenever it shall come to the attention of the Building Official by written complaint of any person or agency, or otherwise, that a building or structure is a dangerous or substandard building, the Official shall cause a preliminary examination to be made of the building or structure and premises. In the execution of the inspection, the Official shall avail to the services of such other agencies, employees, departments and officers of the city as the Official deems necessary. Upon completion of the inspection, if it then appears that the building or structure is a dangerous or substandard building, the city shall issue a written order to the owner or occupant requiring repair, removal, demolition or compliance. If no appeal is filed within ten days of the order, the order shall be deemed final.
- (2) Appeal of order. Any person who deems to be aggrieved by any such order may appeal the order of the city to the City Council by filing a written appeal with the Clerk within ten days of such order being served. Such appeal shall fully state the order appealed from, the date thereof, and the facts of the matter. Upon such an appeal being filed, the Official also shall make a written report, supplemented by written reports from the other agencies, employees, departments and officials called upon by the Official in the execution of the inspection, and submit the reports to the Council.

570.04 Appeal Procedure.

- (1) Council to Call Hearing. The Council shall examine the report of the Official, and if there is probable cause to believe that the building or structure is a

dangerous or substandard building, shall have the matter set for hearing.

- (2) **Notice of Hearing.** The Council shall hear the appeal not later than 30 days after the date the appeal is filed. Notice of the hearing shall be given in a form prescribed by the Council. It shall set forth the street address and legal description sufficient for identification of the premises upon which the building or structure is located. It shall contain a brief statement of the conditions mentioned in the report of the Official which show probable cause to believe that the building or structure is a nuisance within the meaning of this section. It shall also state the date, hour and place of the hearing and shall order all interested parties who desire to be heard in the matter to appear before the Council to show cause why the building or structure should not be ordered repaired, vacated and repaired, removed, or demolished.
- (3) **Service of Notice.**
 - (a) *Person to whom notice is served.* One copy of the notice shall be served upon the person, if any, in real or apparent charge and control of the premises involved; the record owner, the holder of any mortgage, trust, deed or other lien or encumbrance of record; the owner or holder of any lease of record; and the record holder of any other estate or interest in or to the building or structure or and upon which it is located.
 - (b) *Posting of notice.* One copy of the notice shall be posted in a conspicuous place upon the building or structure or premises involved.
 - (c) *Date of serving and posting notice.* The notice of hearing shall be posted and served at least ten days prior to the date set for the hearing.
 - (d) *Notice sent by certified mail.* The notice of hearing shall be served upon all persons entitled thereto either personally or by certified mail. Service by certified mail shall be effective on the date of mailing if a copy of such notice is so mailed, postage prepaid, return receipt requested, to each such person at the address of such person as it appears on the last equalized assessment roll of the County or as known to the Clerk. If no such address so appears or is known to the Clerk, then a copy of the notice shall be addressed to such person at the address of the building or structure involved in the proceedings. The failure of any owner or other person to receive such notice shall not affect in any manner the validity of any of the proceedings taken.
 - (e) *Affidavit of notice served.* The officer or employee upon serving the notice as provided herein shall file an affidavit thereof with the Clerk certifying to the time and manner in which such notice was served. The officer or employee shall also file therewith any receipt which may have been returned to the officer or employee in acknowledgment of the receipt of such notice by certified mail.

570.05

Hearing Procedure.

- (1) **Hearing and considering evidence.** The Council shall, at such hearing, hear and

consider any evidence offered by the person or persons having any estate or interest in such building or structure pertaining to the matter set forth in the report of the Official.

- (2) Conclusion of hearing. After hearing the oral and written views of all interested persons, the Council shall make its decision at the same meeting or at a specified future meeting.

570.06 Order to Repair, Vacate and Repair, Remove or Demolish. If the Council finds that the building or structure involved is a dangerous or substandard building within the terms of this section, then it shall issue an order:

- (1) That the building or structure must be repaired, or vacated and repaired, or removed or demolished.
- (2) That the occupant, lessee, or other person in possession must vacate the building, or that the occupant, lessee, or other person may remain in possession while repairs are being made.
- (3) That any mortgage, beneficiary under deed of trust, or any other person having an interest or estate in said building may, at their own risk, repair, vacate and repair, remove or demolish said building or structure according to existing law and code provisions.

570.07 Order to Be Served. Copies of the order to repair, or vacate and repair, or remove or demolish shall be served upon the individuals and in the manner as prescribed in §570.04(3). A copy of the order shall also be posted in a conspicuous place upon the building or structure as prescribed in said subsection.

570.08 Standards for Repair, Vacation and Repair, Removal or Demolition. The following standards shall be followed in substance and spirit by ordering the repair, vacation and repair, removal or demolition of any building or structure. Any order to remove or demolish, rendered pursuant to this section, shall not indicate an alternative permission to repair; however, an order to repair may be satisfied by removal or demolition.

- (1) Repairing building. If the dangerous or substandard building can reasonably and economically be repaired so that it will no longer exist in violation of the provisions of this section, it shall be ordered repaired. For the purposes of this section, the term REPAIR shall include any improvements necessary to make such building comply with the applicable provisions of this code.
- (2) Vacating building. If the dangerous or substandard building is in such condition as to make it dangerous to the health, moral, safety, or general welfare of its occupants, it shall be ordered to be vacated.
- (3) Damaged buildings. In any case where a dangerous building is 50% or more damaged, decayed, or deteriorated, it shall be ordered to be removed or demolished.
- (4) Unrepairable buildings. In all cases where a dangerous or substandard building cannot be repaired, with reasonable economy, so that it will no longer exist in

violation of the terms of this section, it shall be ordered to be vacated and removed or demolished.

- (5) Fire hazardous buildings. In all cases where a dangerous or substandard building is a fire hazard, whether existing or erected in violation of the provisions of this code, or state law, and cannot reasonably and economically be repaired pursuant to M.S.A. §470.08, it shall be ordered demolished.
- (6) Particulars of order. The order shall set forth the street address of the building or structure and a legal description of the premises sufficient for identification. It shall contain a statement of the particulars which render the building or structure a dangerous or substandard building, and a statement of the things required to be done. The order shall state the time within which the work required must be commenced, the time being not earlier than ten days and no later than 30 days after the issuance of the order, and the order shall further specify a reasonable time within which the work shall be completed.

The time for completion may, by action of the council, be extended for just causes and such authority for extended time shall be given in writing by the Council upon written application of any interested party or parties.

570.09 Penalty for Disregarding, Defacing or Destroying Order; Council May Order Work.

- (1) Penalty.
 - (a) The owner or other person having charge and control of the building or structure cited in the order who shall fail to comply with any order to repair, or vacate and repair, or remove or demolish said building or structure shall be subject to the penalties as provided by §10.99 of the code.
 - (b) The occupant or lessee in possession cited in the order who shall fail to comply with any order to vacate said building or structure in accordance with any order given as provided for in this section shall be subject to the penalties provided by §10.99 of the code.
- (2) Defacing or destroying order. Any person who removes or defaces or destroys a notice or order posted as required in this section shall be subject to the penalties provided by §10.99 of the code.
- (3) Council may order repair or removal. The Council may order the repair or removal of the building or structure cited in the order and obtain enforcement of the order and entry of judgment by the district court shall be in accordance with M.S.A. §§463.15 to 463.26 where such statutory provisions apply, which statutes are hereby adopted and incorporated into this chapter by reference and made a part of this chapter.

570.10 Limitation on liability. The City of Wheaton, the Building Official, a law enforcement officer and/or any employee charged with the enforcement of this Ordinance, shall not be liable for any damage that may occur to persons or property as a result of any act required of the Building Official, a law enforcement officer, or any employee of the City of

Wheaton or by reason of any act or omission of the Building Official, law enforcement officer, or any such employee

570.11 Emergency procedure; summary enforcement. In cases of emergency, where delay in abatement required to complete the notice and procedure requirements set forth in this section will permit a continuing nuisance to unreasonably endanger public health safety or welfare, the City Council may order summary enforcement and abate the nuisance.

- (1) To proceed with summary enforcement, the Building Official or law enforcement officer shall determine that a public nuisance exists or is being maintained on premises in the city and that delay in abatement of the nuisance will unreasonably endanger public health, safety or welfare.
- (2) The Building Official or law enforcement officer shall notify in writing the occupant or owner of the premises of the nature of the nuisance and of the city's intention to seek summary enforcement and the time and place of the City Council meeting to consider the question of summary enforcement.
- (3) The City Council shall determine whether or not the condition identified in the notice to the owner or occupant is a nuisance, whether public health, safety or welfare will be unreasonably endangered by delay in abatement required to complete the procedure set forth in this section, and may order that the nuisance be immediately terminated or abated.
- (4) If the nuisance is not immediately terminated or abated, the City Council may order summary enforcement and abate the nuisance.

570.12 Immediate abatement. Nothing in this section shall prevent the city, without notice or other process, from immediately abating any condition which poses an imminent and serious hazard to human life or safety.”

PASSED AND ADOPTED this 27th day of July, 2023.

WHEATON CITY COUNCIL

Jacob Veldhouse, Mayor

ATTEST:

Amy Olson, City Administrator