

ORDINANCE

C/S Administrative Demolition Of Unsafe Commercial Buildings, Unsafe Accessory Structures, Or Dwellings Unfit For Human Habitation, Adopting A New Article In Chapter 14, And Amending The Uniform Housing Code, Chapter 14, Article 3 (Bassan, by request)

WHEREAS the City Council finds that unsafe commercial buildings, and dwellings unfit for lawful occupancy and/or human habitation, and any other unsafe accessory structures are a safety hazard to occupants and to the surrounding community; and

WHEREAS the City Council finds that unsafe commercial buildings, and dwellings unfit for lawful occupancy and/or human habitation, and any other unsafe accessory structures, constitute an alluring and dangerous attractive nuisance to the surrounding community; and

WHEREAS the City Council finds that unsafe commercial buildings, and dwellings unfit for lawful occupancy and/or human habitation, and any other unsafe accessory structures are prone to illegal entry by trespassers and arsonists; and

WHEREAS the City Council finds that unsafe commercial buildings, and dwellings unfit for lawful occupancy and/or human habitation, and any other unsafe accessory structures can constitute a fire hazard; and

WHEREAS the City Council finds that unsafe commercial buildings, and dwellings unfit for lawful occupancy and/or human habitation, and any other unsafe accessory structures are dangerous to first responders; and

WHEREAS the City Council finds that unsafe buildings, and dwellings unfit for lawful occupancy and/or human habitation, and any other unsafe accessory structures create blight to the surrounding neighborhood; and

WHEREAS the City Council finds that when property owners are either absent, unidentifiable, or incapable, and unresponsive to a request to properly maintain a property and then fail to make repairs to render a property safe, the unsafe building or dwelling unfit for lawful occupancy and/or human habitation or other unsafe accessory structure needs to be demolished by the City to protect the health, safety and welfare of the public; and

WHEREAS the City Council finds there is a need to demolish unsafe commercial buildings, and dwellings unfit for lawful occupation and/or human habitation, and any other unsafe accessory structures through an efficient and effective administrative hearing procedure.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. An new article, Chapter 14, Article 23 of the Revised Ordinances of Albuquerque is hereby enacted as follows:

[Administrative Demolition of Unsafe Commercial Buildings, Unsafe Accessory Structures, or Dwellings Unfit for Human Habitation

§ 14-23-1. SHORT TITLE.

This article shall be known and may be cited as the “Administrative Demolition Ordinance.”

§ 14-23-2. INTENT.

The purpose of this article is to allow for the administrative demolition of unsafe commercial buildings, unsafe accessory structures, or dwellings unfit for lawful occupancy and/or human habitation, due to dilapidation; defects increasing the hazards of fire, accidents or other calamities; or other conditions, rendering commercial buildings, accessory structures, or dwellings unsafe and therefore dangerous or detrimental to the public health, safety, morals or welfare of the residents of the City of Albuquerque.

§ 14-23-3. DEFINITIONS.

For the purpose of this article, certain terms, phrases, words and their derivatives shall be construed as specific in either this article or as specified in the Uniform Housing Code or the Uniform Administrative Code. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used.

Accessory structure. A structure detached from and located on the same lot as a primary building, customarily used with and clearly incidental and subordinate to the primary building or use. Accessory structures include but are not limited to shade structures such as covered patios, sheds, work-shops, detached garages, gazebos, pergolas, ramadas, or similar structures.

Commercial Building. A building or portion thereof not designed or not being used for human habitation.

Department. The department tasked by the Mayor with the administration and enforcement of this Ordinance.

Dwelling. One or more connected rooms and a kitchen designed to be occupied by no more than one family for living and sleeping purposes, meeting the requirements of the Uniform Housing Code and the Uniform Administrative Code, as of the date of the unit’s construction. This term includes any structure being used as a dwelling unit, as defined herein, for human habitation.

Unfit for lawful occupancy or human habitation. Any commercial building or dwelling in which there exists any of the following conditions: structural defects, dilapidation, defects or materials

increasing the hazards of fire, accidents or other calamities; or other conditions, rendering commercial buildings or dwellings unsafe and therefore dangerous or detrimental to public health, safety, morals or welfare of the residents of the City of Albuquerque.

Unsafe building. Buildings or structures that are structurally inadequate or compromised or which constitute a fire hazard, or are otherwise dangerous to human life, pursuant to the Uniform Administrative Code and Technical Codes.

§ 14-23-4. PROCEDURES

(A) Inspection. The Department may enter the premises with the consent of the property owner or lawful occupant for the purpose of making safety inspections, provided that the entry shall be made in a manner as to cause the least possible inconvenience to property owner or the person in lawful possession. If consent to enter is denied, the Department shall obtain a warrant from a court with jurisdiction.

(B) Commencement of Proceedings. Whenever the Department has inspected or caused to be inspected any commercial building or any dwelling or accessory structure and has found and determined that such commercial building or accessory structure is unsafe or that such dwelling is unfit for lawful occupancy and/or human habitation, the Department shall commence proceedings to cause the closing, demolition or removal of the building or dwelling.

(1) Serving Notice. The Department shall serve notice by personal service or by registered mail to the owner of record on file with the county assessor, every mortgagee of record, and all parties of interest of record. If the whereabouts of these persons is unknown and cannot be ascertained by the Department in exercising reasonable diligence and the Department makes an affidavit to that effect, the serving of the notice upon said persons shall be made by publishing the notice once a week for two consecutive weeks in a newspaper printed and published in the City of Albuquerque. A copy of the notice shall be posted in a conspicuous place on the property. A copy of the notice shall be filed and recorded with the County Clerk. A recorded notice shall have the same force and effect as other lis pendens notices provided by law. The recorded notice runs with the property, and subsequent purchasers or grantees shall be deemed notified through the recorded notice in existence at time of conveyance. Subsequent purchasers or grantees acquire the property at their own risk of the contemplated administrative action in the recorded notice, and no further notice shall be due.

(2) Notice of Hearing. The Notice shall inform the parties of interest of the hearing. The Notice shall contain the following statements:

(a) The street address and a legal description sufficient for identification of the premises upon which the building or dwelling or accessory structure is located.

(b) A statement that the Department has found the dwelling to be unfit for human habitation with a brief and concise description of the conditions found to render the dwelling in need of immediate abatement or a statement that the Department has found the commercial building or accessory structure to be unsafe pursuant to the City of Albuquerque's Uniform Administrative Code and Technical Codes.

(c) A statement of the action required to be taken as determined by the Department, including whether the building or structure must be closed or demolished.

(d) A statement that a hearing will be held by the Independent Hearing Officer and shall be heard in accordance with the provisions in the Independent Hearing Officer Ordinance, Chapter 2, Article 7, Part 8.

(e) A statement that the owner may file an appeal of the Independent Hearing Officer's order by filing an appeal in district court, pursuant to NMSA 1978 § 39-3-1.1.

(C) Hearing.

(1) The hearing officer shall determine whether the commercial building or accessory structure is unsafe or the dwelling is unfit for human habitation and shall state findings of fact in support of the determination.

(2) A commercial building or accessory structure is unsafe and a dwelling is unfit for human habitation if any of the following conditions exist:

(a) the commercial building or accessory structure or dwelling is hazardous, dangerous or injurious to the health, safety, or morals of the occupants and those who enter the premises;

(b) the commercial building or accessory structure or dwelling has a blighting influence on properties in the area; or

(c) the commercial building or accessory structure or dwelling has defects or combustible materials increasing the hazards of fire, accidents, or other calamities; or has other poor conditions such as the lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; or any violation of health, fire, building regulations or any other laws relating to the safe use and occupancy of buildings and improvements.

(3) A hearing shall be conducted by the Independent Hearing Officer in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

(4) The hearing shall be held not less than ten days and not more than thirty days after

serving the Notice.

(5) If the hearing officer determines that the commercial building or accessory structure is unsafe or that the dwelling under consideration is unfit for human habitation, the hearing officer shall state in writing the following:

(a) findings of facts in support of the determination; and

(b) the premises must be vacated and secured at all times; and

(c) the owner shall be required to secure the property within 48 hours, and then either repair and bring it into compliance with City codes to eliminate the blighted condition or demolish the building or structure within ninety (90) days, unless an extension is agreed to by the Department.

(6) The hearing officer shall issue and serve an order that advises the owner of the owner's right to file an appeal of the hearing officer's decision in district court, pursuant to NMSA 1978 § 39-3-1.1.

(D) Enforcement of Order.

(1) If the owner fails to comply with an order to secure the property and then remove or demolish the commercial building or dwelling, the City may cause the commercial building or dwelling to be removed or demolished;

(2) the amount of the cost of removal or demolition by the City shall be filed as a lien against the property. If the commercial building or dwelling is removed or demolished by the City, the City shall sell the salvageable materials. The City shall credit the proceeds of such sale, if applicable, against the cost of the removal or demolition. Any surplus balance remaining shall be deposited in the district court and shall be secured in the manner as directed by the court and shall be disbursed by the court to the person found to be entitled to any balance by an order or decree of the court.

(E) Civil Abatement Action. Nothing in this article shall be construed to abrogate or impair the powers of the courts or of any department to enforce any other City ordinance to prevent or punish violations. The powers conferred by this article shall be in addition to, and supplemental to, powers conferred by any other law.]

Section 2. § 14-3-5-3 of the Uniform Housing Code is hereby amended as follows:

(A) *General.*

(1) **Commencement of Proceedings.** Whenever the Department has inspected or caused to be inspected any building and has found and determined that such building is a substandard

building, he shall commence proceedings to cause the repair, rehabilitation, vacation, ~~[demolition]~~ or securing of the building.

Section 3. §14-3-5-3(A)(2)(c) of the Uniform Housing Code is hereby amended as follows:

3. If the Department has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the Department shall determine reasonable, not to exceed 30 days from the effective date of the order; that all required permits be secured therefor within 60 days from the date of the order, and that the demolition be completed within such time as the Department shall determine is reasonable. Failure to comply with the order to demolish the building or structure within such time as the Department shall determine reasonable, not to exceed 30 days from the effective date of the order, will result in a ~~[Resolution of Condemnation being presented to the City Council on a specified date pursuant to § 3-18-5 NMSA 1978.]~~ [Notice of Administrative Demolition of Dwellings Unfit for Human Habitation pursuant to ROA 1994, Chapter 14, Article 23.]

Section 4. § 14-3-5-4 of the Uniform Housing Code is hereby amended as follows:

~~[(B) Appeal of Council Action. Any person aggrieved by the finding of the City Council that a building, structure or premise is so ruined, damaged and dilapidated that it is such a menace to the public comfort, health, peace or safety so as to require the removal from the municipality of the building, structure, ruins, rubbish, wreckage or debris, may file a written objection with the City Clerk within ten days of the receipt of a copy of the Resolution of Condemnation, asking for a hearing before the City Council. After receiving a valid written objection the City Council shall hold a hearing as provided for in Section 3-18-5, NMSA 1978]~~

~~[(B) Effect of Failure to Appeal. Failure of any person to file an appeal in accordance with the provisions herein shall constitute a waiver of their right to an administrative hearing and adjudication of the notice and order or to any portion thereof.~~

~~[(D) Scope of Hearing Appeal. Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.~~

~~[(E) Staying of Order Under Appeal. Enforcement of any notice and order of the Department issued under this code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.~~

Section 5. §14-3-5-6(A)(3) of the Uniform Housing Code is hereby amended as follows:

(c) The Department may, in addition to any other remedy herein provided cause the building to be repaired to the extent necessary to correct the conditions which render the building

substandard as set forth in the notice and order. [~~or, if the resolution of the City Council requires demolition, to cause the building to be demolished, and the materials, rubble and debris therefrom removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code or in the manner provided in §§ 3-36-1 through 3-36-6 NMSA 1978.~~]

[(d) Whenever the Building and Safety Division of the Planning Department determines that a substandard building is unsafe because it is structurally inadequate or compromised or which constitute a fire hazard, or are otherwise dangerous to human life, pursuant to the Uniform Administrative Code and Technical Codes, the Department shall commence proceedings to cause the closing, demolition or removal of the building or dwelling in the manner provided in the Administrative Demolition Ordinance, Chapter 14, Article 23.]

Section 6. §14-3-5-12 of the Uniform Housing Code is hereby amended as follows:

All buildings or portions thereof which are determined to be substandard as defined in this code are hereby declared to be nuisances and shall be abated by repair, rehabilitation, demolition, removal or securing all accessible openings and entrances to building in accordance with the procedure as provided herein.

~~[Any building that has been determined to be substandard and which has been abated by securing all accessible openings and entrances shall be repaired, rehabilitated, demolished or removed within 12 months of being secured. The failure to repair, rehabilitate, demolish or remove such building within 12 months shall be prima facie evidence that the building is a menace to the public comfort, health, peace or safety and should be condemned. At the first City Council meeting following the 12 month period the administration may present the City Council with a Resolution of Condemnation as provided for in Section 3-18-5 NMSA 1978 and proceed with condemnation as provided for under that statute.]~~

[Whenever the Building and Safety Division of the Planning Department determines that a substandard building is unsafe because it is structurally inadequate or compromised or which constitute a fire hazard, or are otherwise dangerous to human life, pursuant to the Uniform Administrative Code and Technical Codes, the Department shall commence proceedings to cause the closing, demolition or removal of the building or dwelling in the manner provided in the Administrative Demolition Ordinance, Chapter 14, Article 23.]

SECTION 7. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by

any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 8. COMPILATION. Sections 1 through 6 of this Ordinance shall amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 9. EFFECTIVE DATE. This Ordinance shall take effect ten (10) days after publication by title and general summary.