



Legislation Text

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CITY of ALBUQUERQUE
TWENTY-THIRD COUNCIL

COUNCIL BILL NO. O-19-72 ENACTMENT NO. _____

SPONSORED BY: Don Harris

ORDINANCE

Amending §14-20, The “Dilapidated Commercial Buildings And Properties Ordinance” To Implement Permanent Procedures Following The Conclusion Of A 24-Month Pilot Project (Harris)
AMENDING §14-20, THE “DILAPIDATED COMMERCIAL BUILDINGS AND PROPERTIES ORDINANCE” TO IMPLEMENT PERMANENT PROCEDURES FOLLOWING THE CONCLUSION OF A 24-MONTH PILOT PROJECT.

WHEREAS, dilapidated commercial buildings and properties are often vacant and unattended to by responsible parties which tends to hasten further dilapidation if unchecked by the City; and

WHEREAS, dilapidated commercial buildings and properties often exist in highly visible locations because of their past and future potential for commercial viability, and can significantly contribute to blight within the City; and

WHEREAS, dilapidated commercial buildings and properties present general health, safety, and welfare concerns for the City because of dangerous physical deterioration, by providing potential venues for illicit activity, and by negatively impacting surrounding property values and economic development opportunities; and

WHEREAS, monitoring and enforcing existing zoning rules against dilapidated commercial buildings and properties presents several challenges including limited enforcement options and resource constraints; and

WHEREAS, establishing a dilapidated commercial building and property ordinance will help responsible parties and city zoning enforcement alike identify specific requirements for

remediation and work together toward such remediation for the betterment of the community; and

WHEREAS, the City conducted a 24-month pilot project of the Dilapidated Commercial Buildings Ordinance in City Council Districts Six and Nine; and

WHEREAS, 25 buildings over the last 24-months have been brought into compliance by making necessary improvements, ranging from re-paving a parking lot to demolition and construction of a new building; and

WHEREAS, the Planning Department has affirmed in their review of the pilot project this program has been successful over the last 24-months in helping to remediate dilapidated buildings and properties; and

WHEREAS, the changes contained within this ordinance will permanently implement the program in Council Districts Six and Nine; and

WHEREAS, there are minor changes to the program proposed in this ordinance that will help the Planning Department with enforcement of this program.

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

SECTION 1. §14-20 of ROA 1994 is hereby amended as follows:

“§14-20-1 SHORT TITLE.

SECTION §14-20 ROA 1994 shall be known and cited as the “Dilapidated Commercial Buildings and Properties Ordinance”.

§ 14-20-2 INTENT AND PURPOSES.

The intent of this Article §14-20 et seq. is to provide minimum aesthetic standards and maintenance standards for dilapidated nonresidential structures and properties, to prevent such structures and properties from contributing to blight and negatively impacting surrounding property values and redevelopment or economic development efforts.

§ 14-20-3 DEFINITIONS.

DILAPIDATED COMMERCIAL BUILDING OR PROPERTY: For purposes of this Section, any non-residential building or property which exhibits one or more characteristic of dilapidation, including but not limited to:

A. Overgrowth of fugitive plant materials including grasses or invasive trees; or landscaping that is otherwise non-compliant with the requirements of the zoning code, Section §14-16-3-10 (D)(3) and the Albuquerque Weed and Anti-Litter Ordinance, Section 9-8-1 ROA 1994;

- B. Unsecure, loose, or broken building façades, treatments, fixtures, signs (including freestanding signs) or other façade features affecting more than 15% of the façade or sign area;
- C. Peeling or flaking paint, and any other significant deterioration of building surface treatments affecting more than 15% of the facade;
- D. Broken or uncovered glass within any window or door;
- E. Unsecured, loose, or broken features affecting more than 15% of any sign (including freestanding signs);
- F. Broken windows or building entrances, or any other characteristics demonstrating a lack of security or access control to the property, building or buildings at the site;
- G. Unabated vandalism or graffiti;
- H. Outdoor lighting that is no longer compliant with the minimum requirements of the zoning code;
- I. Broken pavement, interior sidewalks or pedestrian connections; unsealed cracks exceeding 2 feet in length and 1 inch in width, or potholes exceeding one (1) square foot in area within off-street parking areas; or
- J. Unabated trespass, or police calls for service that are unrelated to any lawful use or business establishment at the location.

RESPONSIBLE PARTY The owner(s) of any building or property subject to this Ordinance, or any other party responsible for such building or property by way lawful tenancy, management, agency, or otherwise.

§ 14-20-4 DILAPIDATED COMMERCIAL BUILDINGS PROHIBITED.

- A. No responsible party shall permit any building or property to become or remain a dilapidated commercial building or property within the area of the City covered by this Article.

§ 14-20-5 COMPLIANCE & REMEDIATION.

A. Initial Focus. The Planning Department shall identify dilapidated buildings or properties within the area of the City covered by this Article and perform an inspection to itemize the conditions that constitute a dilapidated commercial building or property as proscribed by this Article. Initial inspections should be prioritized to address the largest and/or most dilapidated buildings or properties first.

B. Remediation. The responsible party shall remediate or abate the conditions identified in an initial written notice within 60 days (such 60-day period hereafter shall be referred to as “Compliance Period”). This Compliance Period may be reduced or eliminated by the Planning

Department should it appear to be a matter of public necessity for health and safety reasons, and the Department is authorized to take immediate action to abate such reasons.

C. If it is not possible, or if the responsible party declines or is unsuccessful in fully remediating or abating the conditions creating a dilapidated commercial building or property within the Compliance Period set forth in Section 2 above, the responsible party shall:

1. Register the building or property with the Planning Department through forms provided by the Department within 20 days of expiration of the Compliance Period. The registration form shall at a minimum require a description of the location and address of the building, and the name, street address and telephone number of the responsible party. The Planning Department shall collect a registration fee of \$500 for each initial registration, but the Planning Director may reduce or waive this fee if it is determined that substantial efforts have been made to bring the property into compliance; and

2. Provide a written plan for how the property will be brought into compliance with this ordinance within a 90 day period, or longer if deemed appropriate by the Planning Director or designee. The Planning Department shall make property owners aware of incentives and fee reductions (e.g. impact fee waivers for redevelopment, façade improvement programs) that are enabled in Metropolitan Redevelopment Areas under the Metropolitan Redevelopment Act, if applicable.

D. The Planning Department shall reinitiate the process prescribed by this subsection as necessary at any time or move directly to the enforcement and penalties procedures described in Section 14-20-6, or otherwise take enforcement action as authorized by any Section of the Zoning Code.

§ 14-20-6 ENFORCEMENT AND PENALTIES.

A. If the building or property is not successfully remediated or made compliant pursuant to the process set forth in Section 14-20-5 above, the responsible party is subject to:

1. The penalty provisions set forth in § 1-1-99 of this code of ordinances; each day of violation is considered a separate offense; and

2. Instead of or in addition to the penalty provision set forth in § 1-1-99, the City acting through the City Attorney, is hereby authorized to file an action in a court of competent jurisdiction as a means of compelling compliance with this Ordinance, including compliance with those sections cross referenced within the Zoning Code, to:

- a. Enjoin any person from violating or threatening to violate the terms,

conditions and restrictions of this ordinance;

b. Collect civil assessments against the property of \$500 per day for every day the property remains or remained in violation of this Section after the expiration of the Compliance Period or any extensions granted by the Planning Department identified in the written notice(s) sent by the Department; and

c. Recover damages from the owner of a building or property in an amount of money adequate for the City to undertake any construction remediation, cleanup, or other activity necessary to bring about compliance with this ordinance.

B. In addition to judicial remedies, any expenditure by the City to bring the building or property into compliance, or any damages or assessments are recoverable through the imposition of a municipal lien on the parcel under NMSA 1978, § 3-36-1 to 3-36-5. To the extent that monetary penalties are recovered as a result of enforcement under this Section, any funds so recovered shall be used exclusively for the purpose of funding enforcement activities under this Section.

§ 14-20-7 EXEMPTIONS. Buildings or properties which are on the National Register of Historic Places, have been designated as Contributing Properties to a Historic District on the National Register of Historic Places, or have been designated by the City as City Landmarks are exempt from the requirements of this ordinance.

§ 14-20-8 APPEAL

(A) General.

(1) Form of Appeal.

(a) Any person entitled to appeal under this code may do so by filing at the Office of the City Clerk a written appeal containing:

1. The names of all appellants participating in the appeal.
2. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the appeal.
3. A brief statement in ordinary and concise language of that specific order or action protested along with a copy of the order, notice, or action together with any material facts claimed to support the contentions of the appellant.
4. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
5. The signatures of all parties named as appellants and their official mailing

addresses.

6. The verification, by declaration under penalty of perjury, of at least one (1) appellant as to the truth of the matters stated in the appeal.

(b) The appeal shall be filed prior to the effective date of the order.

(2) Processing of Appeal. Upon receipt of any appeal filed pursuant to this section, the City Clerk or their staff shall file and stamp the appeal then deliver by mail or electronic means a copy of it to the party responsible for issuing the order, notice, or action under appeal as well as a copy to the Office of the City Attorney.

(3) Scheduling and Noticing Appeal for Hearing. The Office of Administrative Hearings shall schedule the hearing to a date and time not to exceed fifteen (15) business days from the date of the filing of the appeal. Written notice of the time and place of the hearing shall be given at least ten (10) business days prior to the date of the hearing to each appellant either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.

(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 his right to an administrative hearing and adjudication of the notice and order or to any portion thereof.

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

(D) 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.

§ 14-20-9 PROCEDURES FOR CONDUCT OF HEARING APPEALS

(A) Form of Notice of Hearing. The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before the City of Albuquerque Office of Administrative Hearings at _____ on the ____ day of _____, 20____, at the hour of _____, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by legal counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you."

(B) Conduct of Hearings.

(1) **Disclosure.** The Hearing Officer may require that the parties provide, prior to the hearing, a written statement of all issues to be addressed, a list of proposed witnesses, a brief statement of the nature of each witness' testimony, and copies of all documentary evidence to be introduced, which material shall be available for inspection and copying by all parties.

(2) **Evidence.**

(a) The Hearing Officer shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant, immaterial and unduly repetitious evidence shall be excluded.

(b) The Hearing Officer may impose reasonable limits on the number of witnesses heard and on the nature and length of the testimony or questioning.

(c) Hearsay testimony is admissible subject to the other limitations on admissibility contained in these rules.

(d) The Hearing Officer shall base its decision on substantial evidence. The decision must be supported by at least some evidence which is admissible in a court of law.

(3) **Hearing Procedure.**

(a) The Hearing Officer shall preside over the hearing. The hearing shall be recorded by an audio recording device. The Hearing Officer shall swear in all witnesses who are anticipated to testify. The Hearing Officer may ask for opening and closing statements from the parties. The Appellant shall proceed first with its case in chief, followed by the City-Appellee unless otherwise ordered by the Hearing Officer. Rebuttal testimony may be entertained by the Hearing Officer.

(4) **Decision.** All decisions of the Hearing Officer shall be in writing, mailed or delivered by electronic means to all the parties to the appeal, and made within ten (10) days of the close of the hearing unless otherwise so stipulated to by the parties. The Hearing Officer may affirm the decision of the City, reverse the decision of the City, or modify the decision of the City in a manner which is not arbitrary, capricious, contrary to law, or unsupported by substantial evidence.

SECTION 2. 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 3. COMPILATION. SECTION 1 of this Ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect five days after publication by title and general summary.

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