

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF KINGSPORT, TENNESSEE, SECTION 114 ARTICLE III RELATING TO DEMOLITION BY NEGLIGENCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I. That Section 114, Article III, of the Code of Ordinances, City of Kingsport, Tennessee, is hereby amended to read as follows:

**ARTICLE VIII. DEMOLITION BY NEGLIGENCE**

**Sec. 114-650. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Building* means any occupied or vacant walled or roofed structure or part thereof used for human occupation or intended to be so used and includes any garages, outbuildings, and appurtenances belonging thereto or usually enjoyed therewith.

*Commission* means the historic zoning commission established pursuant to section 114-240.

*Demolition by neglect* means neglect in maintaining, repairing, or securing a structure in an established historic district that results in deterioration of an exterior feature of the building, or the loss of the structural integrity of the building, including the existence of any defect listed in section 114-654. The term "demolition by neglect" also includes any act or process which destroys, in part or in whole, any building in an established historic district.

*Maintenance and repair* means any work, for which a building permit is not required by law, where the purpose and effect of such work is to correct any deterioration, decay of, or damage to a structure or any architecturally significant part thereof and to restore or replace, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.

*Owner* means any person who, alone or jointly or severally with others, shall have legal or equitable title to any premises in fee simple and every mortgagee of record.

*Parties in interest* means all individuals, associations, or corporations who have interests of record in a building, or parcel of land or who have actual possession thereof.

*Premises* means a lot, plot, or parcel of land, including any buildings thereon.

*Preservation* means the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a Building.

*Undue economic hardship* means the inability of the owner and parties in interest to obtain a reasonable return or a reasonably beneficial use from the building that is the subject of demolition by neglect, or the inability of the owner and parties in interest to finance the required repairs to the building.

**Sec. 114-651. Declaration of findings, policy and purpose.**

(a) The board of mayor and aldermen find that some buildings in the historic districts in the city are or may be allowed to be essentially demolished by neglecting repair to such buildings and that such neglect is detrimental to the protection, preservation, and enhancement of historic sites and buildings in such districts, to property values in the districts, and to the health, safety and welfare of the city and its residents. It is further found that, to prevent such demolition by neglect, T.C.A. § 13-7-407(b) authorizes the governing body of a municipality to enact an ordinance governing demolition by neglect of any building within an established historic district. The board further finds that population growth and development may result in the destruction, impairment or drastic alteration of the buildings, structures and areas important to the city's cultural, historic and architectural heritage. It is further found that the prevention of needless destruction and impairment and the attendant preservation of the city's cultural, historic and architectural heritage are essential to the public health, safety and welfare. The intent of this article is to create a reasonable balance between private property rights and the public interest in preserving the city's historic character and culture. It is also the intent of this chapter not to preserve every old building in the city, but rather to prevent the

destruction of historic and architecturally significant sites, buildings, and structures in established historic districts.

(b) The purpose of this article is to promote the public health, safety and welfare through:

(1) The protection, enhancement, perpetuation and use of buildings, structures, sites and areas that are reminders of past eras, events and persons important in local, state or national history, or that provide significant examples of architectural styles of the past, or that are unique and irreplaceable assets to the city and its neighborhoods, or that provide for this and future generations examples of the physical surroundings in which past generations lived;

(2) The development and maintenance of appropriate settings and environments for such buildings and structures, and in such sites and areas;

(3) The enhancement of property values, the stabilization of neighborhoods in historic districts, the increase of economic and financial benefits to the city and its inhabitants, and the promotion of tourist trade and interest;

(4) The preservation and enhancement of varied architectural styles, reflecting the distinct phases of the city's history; and

(5) The provision of educational opportunities and to increase the appreciation of the city's history.

**Sec. 114-652. Enforcing official.**

The building official is designated as the public officer who shall exercise the powers prescribed in this article, except as otherwise provided in this article.

**Sec. 114-653. Powers of building official.**

The building official is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and requirements of this article, including the following powers, in addition to others granted in this article:

(1) Investigate conditions in the historic districts of the city in order to determine which buildings are subject to demolition by neglect, except as otherwise provided in this article.

(2) Administer oaths and affirmations, examine witnesses, and receive evidence.

(3) Enter upon premises for the purposes of making examinations, provided that such entries shall be made in such manner as to cause the least possible inconvenience to persons in possession.

(4) Designate such other employees to perform duties as may be necessary to the enforcement of this article

**Sec. 114-654. Prevention of demolition by neglect.**

(a) The exterior features of any building located in any historic district shall be preserved against decay and deterioration, and kept free from structural defects by the owner thereof or parties in interest and shall not be permitted to suffer demolition by neglect. It shall be unlawful and an offense for owners or parties in interest of buildings, in established historic districts, to allow any of the following defects to exist and the owner or parties in interest shall repair such exterior features if they are found to be deteriorating, or if their condition is contributing to deterioration, including but not limited to the following defects:

(1) Deterioration of exterior walls or other vertical supports rendering such components incapable of carrying imposed load, or that causes leaning, sagging, splitting, listing or buckling.

(2) Deterioration of roofs, roof supports, joists or other horizontal components rendering such components incapable of carrying imposed loads, or that causes leaning, sagging, splitting, listing or buckling.

(3) Deterioration, leaning or settling of chimneys.

(4) Deterioration or crumbling of exterior stucco, mortar or masonry surfaces.

(5) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings and architectural details that causes delamination, instability, loss of shape and form, or crumbling.

(6) Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors.

(7) Defective protection or lack of weather protection for exterior wall and roof coverings, with apparent evidence of deterioration.

(8) Rotting, holes, and other forms of decay.

(9) Unsafe electrical or mechanical conditions constituting a fire or safety hazard.

(10) Deterioration of any component so as to create a hazardous condition that could lead to a claim that demolition is necessary for public safety.

(11) Deterioration of any exterior features so as to create or permit the creation of any hazardous or unsafe condition to life, health, or other property.

(b) The preventive measures outlined in subsection (a) of this section are for structural conditions leading to dilapidation of the structure only. This shall not be construed to include cosmetic repair or maintenance.

**Sec. 114-655. Institution of action and notification of hearing.**

(a) Whenever a writing is filed with the building official by either a minimum of five residents of the city, or by a city building inspector charging that a building in any historic district is threatened with demolition by neglect as set out in section 114-654, or whenever it appears to the building official or the historic zoning commission that any building, in an established historic district, is threatened by demolition by neglect, the historic zoning commission shall make a preliminary investigation of the charge applying the standards set forth in section 114-654. If such preliminary investigation discloses a basis for the charge, the historic zoning commission shall issue and cause to be served upon the owner and parties in interest of such building, as the same may be determined by reasonable diligence, a complaint stating the charges the committee finds have a basis for demolition by neglect and a notice that a hearing will be held before the building official at a time and place therein fixed.

(b) The complaint shall contain a notice that a hearing will be held before the building official at a time and place therein fixed, not less than ten days or more than 30 days after the service of the complaint. The notice shall also state that the owner and parties in interest shall have the right to file an answer to the complaint, appear in person, or otherwise, and to give testimony at the time and place fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the building official.

**Sec. 114-656. Hearing procedure.**

(a) A record of the entire hearing shall be made by tape recording or by other means of permanent recording determined appropriate by the building official. A recording of the proceedings shall be made available to all parties upon request and upon payment of a fee established by the board of mayor and aldermen.

(b) Oral evidence shall be taken only on oath or affirmation.

(c) Hearsay evidence is admissible and may be used to support a finding.

(d) Any relevant evidence shall be admitted if it is the type of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction of this state.

(e) Irrelevant and unduly repetitious evidence shall be excluded.

(f) Each party shall have the following rights, among others:

(1) To call and examine witnesses on any matter relevant to the issues of the hearing;

(2) To introduce documentary and physical evidence;

(3) To cross examine opposing witnesses on any matter relevant to the issue of the hearing;

(4) To refute the evidence against the party; and

(5) To representation by counsel.

**Sec. 114-657. Determination of and further notice by building official.**

(a) If, after such notice and hearing as provided for in section 114-655, the building official determines that the building in question has suffered demolition by neglect, the building official shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the owner, and/or parties in interest, an order requiring repairs, improvements, and/or correction of defects, within the time specified, of those elements of the building that are deteriorating, contributing to deterioration, or deteriorated. Any repairs, improvements, and/or correction of defects instituted in compliance with this section shall be made in conformance with the zoning and building codes.

(b) In the event the owner, and/or other parties in interest desire to petition for a claim of undue economic hardship, the order of the building official shall be stayed until after a determination in accordance with the procedures of section 114-658.

(a) The building official may exempt a building from a demolition by neglect order if the building official finds that the owner and parties in interest have proven the order to repair creates undue economic hardship on the owner and parties in interest. An application for a determination of undue economic hardship by the owner and parties at interest shall be made, on a form prepared by the building official, not more than 30 days after delivery of the order finding demolition by neglect. The application must include photographs of the building, information pertaining to the historic significance of the site, if any, and all information required by the building official. All owners and parties in interest must submit the application under oath. The burden of proof of the undue economic hardship is on the owner and parties in interest.

(b) The application shall include the information specified in subsection (a) of this section, and the building official may require that an owner and parties in interest furnish such additional information the building official deems relevant to a determination of undue economic hardship.

(c) In the event any of the required information is not reasonably available to the owner and parties in interest, and cannot be readily obtained, the owner and parties in interest shall describe the reasons why such information cannot be obtained.

(d) The building official shall hold a hearing on the application within 30 days of the timely receipt of such application. Notice will be given and hearing procedures followed in the same manner as set forth in sections 114-655(b) and 114-656. The owner and parties in interest may submit such relevant information they deem appropriate to prove undue economic hardship, but at a minimum shall submit to the building official for his review at least the following information:

- (1) Nature of ownership, legal possession, custody, and control;
- (2) Financial resources of the owner and parties in interest;
- (3) Cost of the repair or correction with supporting documentation from licensed contractors;
- (4) Valuation of the land and improvements;
- (5) Real property taxes for each of the previous two years and the appraised value of the property for those years established by the property assessor for property tax purposes;
- (6) Amount paid for the property, date of purchase, and party from whom purchased, including a description of any relationship between the grantor and grantee, or other means of acquisition of title, such as by gift or inheritance;
- (7) Annual debt service on the property, if any, for previous two years;
- (8) The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and price asked and offers received, if any, within the previous two years. This should include testimony and relevant documents regarding:
  - a. Any real estate broker or firm engaged to sell or lease the property;
  - b. Reasonableness of the price or rent sought by the applicant; and
  - c. Any advertisements placed for the sale or lease of the property;
- (9) If the property is commercial or income producing property, the annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years as claimed as deductions on United States tax returns; and debt service, if any on the property, if not including as an operating or maintenance expense;
- (10) Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed;
- (11) All appraisals obtained within the previous two years by the owner or parties in interest or others in connection with the purchase, financing, attempted sale, or ownership of the property;
- (12) Federal income tax returns filed by persons or parties claiming an undue economic hardship for the previous two years; and
- (13) Any other information the building official deems relevant to the determination of undue economic hardship.

(e) Undue economic hardship does not include self-created hardships, willful or negligent acts of the owner or parties in interest, purchase of the property for substantially more than the market value, failure to perform normal maintenance and repairs, failure to diligently solicit and retain tenants, or failure to provide normal tenant improvements.

(f) Within 30 days of the hearing on the application, the building official shall make a written finding of whether undue economic hardship exists, and shall enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the building official shall issue an order for repair, improvements, or correction of defects within the time specified. In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but not be limited to loans or grants from the city, county, state, or other public, private, or non-profit sources, acquisition by purchase or eminent domain, changes in applicable zoning regulations, or relaxation of the provisions of this article sufficient to mitigate the undue economic hardship.

**Sec. 114-658. Service of complaints or orders.**

Complaints or orders issued by the building official under this article shall be served upon persons, either personally or by certified mail, return receipt requested, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the building official in the exercise of reasonable diligence, and the building official shall make an affidavit to that effect, then the serving of such complaints or orders upon such persons may be made by publishing the same once each week for two consecutive weeks in a newspaper printed and published in the city. A copy of such complaints or orders shall be posted in a conspicuous place on the premises affected by the complaint or order. In addition, a copy of such complaints or orders shall also be filed for record in the register's office of the county in which the building is located, and such filing shall have the same force and effect as other lis pendens notices provided by law.

**Sec. 114-659. Remedies.**

If the owner, and/or parties in interest, fail or refuse to comply with the order of the building official within the time specified, the city may apply for appropriate equitable remedies to enforce the provisions of this article, including an order directing that improvements or repairs be made, or that

other action be taken that is necessary to bring the property in compliance with this article, and if the city shall make the repairs it shall have a lien as set out in section 114-661.

**Sec. 114-660. Creation of lien and payment into court.**

The amount of the cost of such repairs or corrections ordered by the court and made or procured by the building official shall upon the filing of the notice with the office of the register of deeds of the county in which the property lies, be a lien in favor of the city against the real property on which such cost was incurred, second only to liens of the state, county and city for taxes; any lien of the city for special assessments; and any valid lien, right or interest in such property duly recorded or duly perfected by filing, prior to the filing of such notice. The city tax collector shall collect these costs at the same time and in the same manner as property taxes are collected and shall include penalties and interest calculated as if it were overdue property taxes. However, nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

**Sec. 114-661. Appeals from decision of building official.**

(a) The aggrieved party, against whom the decision of the building official is made, may have a review of the decision by petition for a common law writ of certiorari, addressed to either the city law court or chancery court. Such petition shall be filed within 60 days from the date the decision or order of the building official is made and written notice thereof given the aggrieved party.

(b) Immediately upon the grant of the common law writ of certiorari and service thereof, the building official shall cause to be made, certified, and forwarded to such court a complete transcript of the proceedings in the cause by the building official.

(c) The action may be reviewed by the court in which the petition for certiorari is filed and shall be heard solely upon the transcript of the proceedings before the building official, and neither party shall be entitled to introduce new evidence in such court.

(d) Any party dissatisfied with the decree of the court hearing the cause may, upon giving bond as required by law, take an appeal, as is made and provided by law, where the case shall be heard upon the transcript of the record from the court in which the cause is heard.

**Sec. 114-662. Rules.**

The board of mayor and aldermen may make rules and regulations necessary for the administration and enforcement of this article.

**Sec. 114-663. Penalty and enforcement.**

Any person violating any section of this article shall be guilty of an offense and upon conviction shall be penalized not less than \$1.00 and not more than \$50.00 for each offense. Each day a violation continues shall constitute a separate offense. The imposition of a penalty under this section shall be supplemental to any other action or penalty and shall not prevent the revocation of any permit or license, the taking of any remedial or injunctive action, or seeking any other legal or equitable relief or enforcement.

**Sec. 114-664. Powers conferred are supplemental.**

Nothing in this article shall be construed to abrogate or impair the powers of the city with regard to the enforcement of the provisions of its Charter or any other ordinances or regulations, nor to prevent or punish violations thereof, and the powers conferred by this article shall be in addition and supplemental to the powers conferred by the Charter and other laws. Nothing contained within this article shall diminish the power of the city to declare a building unsafe or a violation of any building or housing code of the city.

SECTION IV. That this ordinance shall take effect from and after the date of its passage and publication, as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.

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PATRICK W. SHULL, MAYOR

ATTEST:

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ANGELA MARSHALL, DEPUTY CITY RECORDER

APPROVED AS TO FORM:

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RODNEY B. ROWLETT, III, CITY ATTORNEY

PASSED ON 1ST READING \_\_\_\_\_

PASSED ON 2ND READING \_\_\_\_\_