

#5006

ORDINANCE AMENDING CHAPTER 10, ARTICLE II TO CREATE A NEW SECTION TO BE ENTITLED “UNSAFE NONRESIDENTIAL BUILDINGS OR STRUCTURES”

BE IT ORDAINED by the Winston-Salem City Council as follows:

Section 1: Section 10-36-Unsafe Nonresidential Buildings or Structures. is hereby created to read as follows:

“Section 10-36. Unsafe Nonresidential Buildings or Structures.

Sec. 10-36.1. Duty to condemn.

(a) Unsafe nonresidential buildings or structures under G.S. 160A-426 (a)

The building inspector shall declare unsafe any nonresidential building or structure or part thereof, partially destroyed or otherwise, which is found by the building inspector to be in such dilapidated state of disrepair or other substandard condition as to be dangerous to life, health or other property, or to constitute a fire or safety hazard or a public nuisance. Such unsafe condition may be caused by defective construction, overloaded floors, decay, susceptibility to fire, bad condition of walls, unsafe wiring or heating systems, inadequate means of egress or any other hazardous conditions or circumstances.

(b) Unsafe nonresidential buildings or structures under G.S. 160A-426 (b)

The building inspector shall declare unsafe any nonresidential building or structure within a community development target area that meets both of the following conditions:

- (1) It appears to be vacant or abandoned and
- (2) It appears to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazards, to be a danger to children or tends to attract persons intent on criminal activities or other activities that constitute a nuisance.

For purposes of this ordinance, the term “community development target area” means an area that has characteristics of: (i) an urban progress zone under G.S. 143B-437.09; (ii) a “nonresidential redevelopment area” under G.S. 160A-503(10); or (iii) an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens.

(c) The building inspector shall have authority and it shall be his duty, to declare the buildings or structures meeting the criteria or conditions set forth above in (a) or (b) unsafe and thereby a public nuisance and to take appropriate action to have the conditions repaired in said building or structure or to have the same demolished and removed. Such declaration by the building inspector shall constitute an order of condemnation for the purposes of this section.

Sec. 10-36.2. Finding. Special need of revitalization.

Before the building inspector declares a building or structure unsafe pursuant to section 10-36.1(b) based upon the community development target area meeting the definition of (iii) above, the building inspector shall first prepare for the city council's consideration the following regarding the area to be designated by city council as being in special need of revitalization for the benefit and welfare of its citizens:

- (a) a map depicting the boundaries of the area; and
- (b) a report that: (i) contains exterior pictures of the building or structures; (ii) indicates the approximate age of the buildings or structures in the area to be so designated; (iii) generally describes any unsafe or unsanitary conditions, the deterioration or dilapidation of the buildings or structures; (iv) describes the impact or potential impact of the buildings or structures on the community surrounding the area to be so designated and (v) provides, if available, a general description of the area's history in terms of police and fire service calls.

The city council shall consider the information presented and any other information that supports the designation of the proposed area as being in special need of revitalization for the benefit and welfare of its citizens. The city council, after considering the information presented by the building inspector and such additional information deemed by it to be relevant, may adopt a resolution, with appropriate findings, that designates the area or a portion thereof as being in special need of revitalization for the benefit and welfare of its citizens. Consistent with said resolution, the building inspector shall proceed to inspect the buildings and structures in the area so designated and declare unsafe any and all the buildings and structures that meet the conditions set forth above in section 10-36.1(b)(1) and (2).

Sec. 10-36.3. Duty of owner to comply order: repair or demolish and building or structure.

Whenever any building or structure has been declared unsafe pursuant to the provisions herein by the building inspector, the owner or owners of such building or structure shall be ordered to repair the conditions or demolish and remove the same under the regulations and procedures herein provided. In the event such owner fails or refuses to abide by said order within the prescribed time directed by the building inspector or by the city council in the event of an appeal of the inspector's decision as hereinafter provided, the city council may, in its judgment, cause the same to be repaired or demolished and removed or take such other action as it may find necessary to suppress and abate the nuisance and remove the unsafe conditions found to exist and assess the cost and expense of doing such work against the lot or parcel of land on which the building or structure is located.

Sec. 10-36.4. Notice and hearing.

Before any building or structure may be ordered to be repaired or demolished and removed as provided herein, the building inspector shall notify the owner or owners thereof in writing that the

building or structure is unsafe and appears to meet one of more of the following conditions: (i) constitutes a fire or safety hazard; (ii) is dangerous to life, health or other property; (iii) is likely to cause or contribute to blight, disease, vagrancy or danger to children or (iv) is considered by the city to have a tendency to attract persons intent on criminal activities or other activities that would constitute a public nuisance in accordance with G. S. 160A-428 by: (i) certified or registered mail to the last-known address of such owner; or (ii) personal service of such notice by the building inspector or his assistant; or (iii) publication as indicated below and in accordance with G. S. 160A-428 if the identity of the owner or whereabouts of the owner is unknown. The notice shall apprise the owner that a hearing will be held before the building inspector at a designated place and at a time not less than ten (10) days after the date of such written notice, at which time and place the owner shall be entitled to be heard in person or by counsel regarding all legal or factual questions relating to the matter and shall be entitled to offer such evidence which is relevant or material to the questions sought to be determined or the remedies sought to be effected. If the name or whereabouts of the owner cannot, after due diligence, be discovered, the notice herein referred to shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least ten (10) days prior to the date fixed for the hearing and a notice of the hearing is published one time in a newspaper having general circulation in the city at least 10 days prior to the date fixed for such hearing. Such notice shall state the address or location of the building or structure and the time, place and purpose of the hearing.

Upon the issuance of a complaint and notice of hearing or order pursuant thereto, a notice of lis pendens, with a copy of the complaint and notice of hearing or order attached thereto, may be filed in the office of the clerk of superior court of the Forsyth County. A copy of this notice of lis pendens shall be served upon the owners and parties of interest in the building or dwelling at the time of filing. From the date and time of indexing, the complaint and notice of hearing or order shall be binding upon the successors and assigns of the owners of the parties of interest in the building or dwelling. The notice of lis pendens shall remain in full force and effect until cancelled. The clerk of superior court shall cancel the notice of lis pendens upon receipt of notice from the city regarding such cancellation.

Sec. 10-36.5. Order to repair or demolish and remove building or structure.

If, upon completion of the hearing process, the building inspector shall find that the building or structure in question is in such a dilapidated or substandard state of disrepair as to constitute a fire or safety hazard or to be dangerous to life, health or other property, or is a public nuisance by causing or contributing to blight, disease, vagrancy, fire or safety hazard, or be a danger to children or tends to attract persons intent on criminal activities or other activities that constitute a public nuisance, he shall make an order in writing, directed to the owner of the building or structure, requiring the owner to remedy such conditions so found to exist by repairing or demolishing and removing the building or structure or taking such other steps as may be necessary to abate the nuisance and remove the hazards, within such period as the building inspector may prescribe, but not less than sixty (60) days,.

Sec. 10-36.6. Appeal; finality of order not appealed.

The owner of any building or structure ordered by the building inspector to be repaired or demolished and removed, or who is directed by the building inspector to take any other steps to abate a nuisance or remove hazards found by the building inspector to exist, shall have the right of appeal from such orders to the city council; provided, such owner gives written notice of appeal to the building inspector at the time of the hearing at which the order is made, or, provides written notice within ten (10) days after the issuance of said order to the issuing building inspector. Notice of appeal shall state the grounds therefor. Unless an appeal is taken within the time and in the manner herein prescribed, the action of the building inspector shall be deemed final, subject only to such action as the city council may take as herein or elsewhere provided. Where an appeal has been properly taken and notice thereof given in accordance with the provisions of this section, it shall be the duty of the building inspector to report the same to the city manager, who shall cause the matter to be placed on the agenda for action by the city council at its next regular meeting. The city council shall have the right to continue the hearing of the appeal from time to time, in its discretion.

Sec. 10-36.7. Report to city manager when owner fails to comply with order.

In the event the owner does not appeal from the final order or direction of the building inspector requiring that the building or structure be repaired or demolished and removed or the taking of such other steps as may be required to abate the nuisance and remove the hazards, and fails or refuses to comply with such order and direction, it shall be the duty of the building inspector to file a written report thereof with the city manager, who shall cause such report to be placed on the agenda for action by the city council at its next regular meeting or to some subsequent meeting to which the city council may continue the same. The building inspector shall mail a copy of the report by certified or registered mail to the owner at his last-known address, or have a copy of the report delivered to the owner. The report shall specify the date of the meeting of the city council for which the matter will be docketed for action.

Sec. 10-36.8. Special notice required in certain cases before city council may take action.

In cases in which the building inspector has been unable to give the owner actual notice of hearing in the manner hereinabove provided and has given such notice by posting and publishing the same as authorized in section 10-36.4, and the owner has failed or refused to comply with the order or direction of the building inspector to repair or demolish and remove the building or structure or take such other remedial action as will remove the hazards, and such case is referred to the city council for action, the city council shall before taking such action, cause to be posted on the outside of the building or structure in question at least ten (10) days prior to the date fixed for the hearing, and published one (1) time in a newspaper having general circulation in the city at least one (1) week prior to the date fixed for such hearing, a written notice stating the address or location of the building or structure involved and the time, place and purpose of the hearing, and such other information as the governing body may deem advisable. The city council shall hear and render a decision on an appeal within a reasonable time. The city council may affirm, modify and affirm, or revoke the order.

Sec. 10-36.9. Order of city council; assessment of costs.

(a) Lien. In all cases referred to in this section which reach the city council for action, either upon appeal of the owner from the ruling of the building inspector or upon report of the building inspector that the owner fails or refuses to comply with his order or direction, the city council shall hear the matter, and if it finds and determines that the building or structure in question is in such a dilapidated or substandard state of disrepair as to constitute a fire or safety hazard, or to be dangerous to life, health or other property, or is a public nuisance, and that the owner of the building or structure has failed or refused to abate the nuisance and has failed or refused to have the building or structure repaired or demolished and removed or has failed or refused to take such other steps as may be necessary to abate the nuisance and remove the hazards found to exist, it may cause the repair or demolition and removal of such building or structure to be done, or effect such other remedies as may be necessary to abate the nuisance and remove the hazards, and specially assess the cost of such work against the lot or parcel of land on which the building or structure was situated; and such assessment shall constitute a specific lien upon the lot or parcel of land, which may be enforced by an action instituted in the name of the city in the nature of an action to foreclose a mortgage as provided by General Statutes, Section 105-414 in the case of ad valorem taxes and local improvement assessments.

(b) Additional Lien. The amounts incurred by the city in connection with the removal or demolition shall also be a lien against any other real property owned by the owner of the building or structure and located within the municipal limits or within one mile of the municipal limits. However, this additional lien is inferior to all prior liens and shall be collected as a money judgment.

(c) Salvageable materials. If the building or structure is demolished and removed by the city, the city may sell the salvageable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure. The city shall credit the proceeds of the sale against the cost of the demolition and removal. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

Sec. 10-36.10. Presumption of danger to public.

In all cases in which the city council, under authority of this chapter, causes the repair or demolition and removal of any building or structure to be carried out, or directs such other remedial steps to be taken as may be necessary to abate the nuisance and remove the hazards, it shall be conclusively presumed that the public nuisance and the fire and safety hazard and danger to life, health or other property, created and maintained by the continued presence of such building or structure in such condition as is found to exist, constitute a clear and present danger amounting to a situation of emergency involving the public health, safety and general welfare which requires entry upon private property for the summary abatement and removal of such danger, in the public interest.

Sec. 10-36.11. Willful failure or refusal to comply with order prohibited; penalty.

It shall be unlawful for any person to willfully fail or refuse to comply with any final order or direction of the building inspector or city council made by virtue and in pursuance of this section,

and any person violating this section shall, upon conviction, be punished as provided by G.S. 14-4 and every day such person shall willfully fail or refuse to comply with any final order or direction of the building inspector or city council made by virtue and in pursuance of this chapter shall constitute a separate and distinct offense.

Sec. 10-36.12. Removing notice from condemned building.

If any person shall remove any notice that has been affixed to any building or structure by a city zoning enforcement officer or fire inspector and that states the dangerous character of the building or structure, he shall be guilty of a Class 1 misdemeanor.

Sec. 10-36.13. Administrative search warrant.

If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or made with the permission of the owner, the owner's agent, a tenant or other person legally in possession of the premises.

Sec. 10-36.14. Responsibility for enforcement.

A department(s) of the city that has state certified building inspectors shall be responsible for the enforcement of any ordinances or codes adopted by the city council relating to the repair, demolition and removal of unsafe nonresidential buildings or structures, pursuant to G.S. 160A-426 et. al.”

Section 2. This ordinance shall become effective upon adoption.