

ORDINANCE NO. F-0197

**AN ORDINANCE AMENDING THE TEXT OF THE WHEATON CITY CODE -
ARTICLE XII, DEMOLITION OF BUILDINGS**

WHEREAS, the City of Wheaton, Illinois ("City"), is an Illinois home-rule municipality pursuant to provisions of Article VII, Section 6, of the Illinois Constitution 1970 and, as such, the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this ordinance pertains to the government and affairs of the City and its residents; and

WHEREAS, the City has determined that residential, commercial, industrial and other structures periodically become damaged, decayed, dilapidated, unsanitary and unsafe to the detriment of the public health, safety, and general welfare of the City and its residents; and

WHEREAS, the City has determined that such structures require expeditious remedial action for the promotion of the health, safety and general welfare of the City and its residents; and

WHEREAS, the evaluation of the reuse of property prior to the demolition of a structure is necessary to ensure proper planning and adherence to the ordinances of the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The Wheaton City Code text is amended by deleting and repealing Article XII, Demolition of Buildings, Chapter 22, in its entirety and replacing it with a new Article as follows:

"Sec. 22-406. Required.

The demolition of any structure shall require a permit which has been reviewed and approved by the department of building and code enforcement in conformance with this Article. Nothing contained within this Article shall limit the authority of the director of

building and code enforcement to order a structure demolished in a life or health threatening emergency situation or as may be otherwise authorized by state statute, other City ordinance, or common law.

Sec. 22-407. Definitions.

(a) For the purposes of this Article, the term "demolition" shall mean the razing and removal of all or substantially all of a structure.

(b) For the purposes of this Article the term "accessory structure" shall mean a structure which is subordinate to and serves a principle structure; is subordinate in area, extent and purpose to the principle structure; contributes or has contributed to the comfort, convenience or necessity of the principle structure, and is located on the same parcel of property as the principle structure.

(c) For the purposes of this Article the term "structure" shall mean any covered structure built for the support, shelter or enclosure of persons, animals, chattels or movable property of any kind, which is affixed to the land.

(d) For the purposes of this Article the term "principal structure" shall mean the building in which the principal or primary use on the lot is conducted.

Sec. 22-408. Application.

(a) Principal structure. In order to obtain a building demolition permit for the demolition of any principal structure, a permit application form must be completed and submitted to the director of building and code enforcement. The building demolition permit application must include the following information:

- (1) Location of property; legal description; legal owner of property.
- (2) Plat of survey for the property.
- (3) Plan identifying structure(s) to be demolished.
- (4) Specific plans for the reuse of the property if the demolition permit is approved. If the reuse plan contemplates construction of a structure, an application shall include building plans and specifications prepared in compliance with the provisions of this chapter for any structure to be built on the subject property. If commencement of construction of such structure is not planned to occur within 60 days after completion of demolition, then the application also shall include a detailed site restoration plan as provided in Section 22-408(a)(5).

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- (5) Site Restoration Plans and Specifications: If commencement of construction of a new structure is not planned to occur within 60 days after completion of demolition, then the application shall include a detailed site restoration and maintenance plan depicting all work required to restore the subject property, within 60 days after completion of demolition, to a safe, clean condition until construction of a new structure has commenced, including without limitation backfilling of any excavation, grading, seeding, fencing, stormwater management, utility disconnections and the like.
 - (6) Stormwater Management Plans: In addition to all other required plans and specifications, the application shall include detailed plans and specifications for stormwater management, soil erosion control, and grading on the subject property. Such plans and specifications shall be on a drawing or drawings separate from all other plans and specifications, labelled as "Stormwater Management Plans." Such plans and specifications shall be made in conformance with the requirements of the City's Stormwater Management Ordinance.
 - (7) Names and addresses of those persons to whom tax bills were sent for the general taxes for the last preceding year on all real estate immediately adjacent to and across the street from the property on which the demolition is requested. The applicant shall file a sworn affidavit with the list of taxpayers certifying that the list is complete and accurate.
 - (8) The building and code enforcement department shall not consider any application for a principal structure unless the applicant furnishes all information required by this Article.
 - (9) A tree preservation plan. A tree preservation plan shall be submitted which identifies all trees with a six-inch diameter or larger trunk located on the property. The plan shall identify any trees which would be removed in consequence of the demolition or reuse of the subject property and provide for their replacement in conformance with the Wheaton Zoning Ordinance.

(b) Accessory structure. Demolition permit applications for accessory structures must be submitted to the director of building and code enforcement. Demolition permit applications for accessory structures must be submitted along with information identified in Section 22-408(a) 1-5, and 9.

(c) Interior demolition. Demolition permit applications for interior demolition (except singly family structures) must include a description of the demolition work and a floor plan identifying the location demolition including any structural components scheduled for demolition.

Sec. 22-409. Hazardous structure.

Whenever the Director of Building and Code Enforcement, the City Manager, or other City official designated to be in charge of enforcing the City's building code, determines that a residential, commercial, industrial, or other structure is so damaged, decayed, dilapidated, unsanitary, unsafe or vermin-infested ("hazardous structure") that it creates a serious hazard to the health and safety of the community, then that City official may placard the hazardous structure with a notice of demolition, repair or enclosure. The notice shall be dated as of the date of the posting and shall state that unless the hazardous structure is demolished, repaired, or enclosed, or unless any garbage, debris, and other hazardous, noxious, or unhealthy substances or materials ("hazardous materials") are removed so that the serious hazard to the health and safety of the community no longer exists, then the hazardous structure may be demolished, repaired, or enclosed, or any hazardous materials may be removed by the City. Such notice shall be posted on the front of the hazardous structure and must be at least two feet by two feet (2' x 2') in size.

(a) Notice. Within thirty (30) days of the posting of the notice of demolition, repair or enclosure, the City shall:

- (1) Send a notice by certified mail, return receipt required, to all owners of record of the property, to the beneficial owners of any Illinois land trust having title to the property, and to all lienholders of record in the property, stating that it is the intent of the City to demolish, repair, or enclose the hazardous structure or remove any hazardous materials if that action is not taken by the owner or owners; and
- (2) Provide constructive notice by publishing notice in a newspaper published or circulated in the City setting forth (i) the permanent tax index number and the address of the hazardous structure; (ii) a statement that the property constitutes a serious hazard to the health and safety of the community; and (iii) a statement that the City intends to demolish, repair, or enclose the hazardous structure or remove any hazardous materials if the owner or owners or lienholders of record fail to do so. This notice shall be published for three (3) consecutive days.

(b) Objection. A person objecting to the proposed actions of the City may file his or her objection in an appropriate forum in the Eighteenth Judicial Circuit Court, Wheaton, Illinois.

(c) Demolition or remedial action. If the hazardous structure is not demolished, repaired, or enclosed, or if the hazardous materials are not removed within thirty (30) days of mailing the notice to the owners of record, to the beneficial owners of any Illinois land trust having title to the property, and to all lienholders of record in the property, or within thirty

(30) days of the last day of publication of the notice, whichever is later, the City shall have the right and power, but not the obligation, to demolish, repair, or enclose the hazardous structure or to remove any hazardous materials.

The City may proceed to demolish, repair, or enclose a hazardous structure or remove any hazardous materials under this ordinance anytime within a ninety (90) day period following the date of the mailing of the notice. If any person seeks a judicial hearing and has served a copy of the complaint on the City before the City proceeds with the authorized actions set forth in this ordinance, then the City shall not proceed with the demolition, repair, enclosure, of the hazardous structure or removal of hazardous materials until the Court issues an order authorizing the City to do so.

(d) Lien. Following the demolition, repair, or enclosure of a hazardous structure, or the hazardous materials under this ordinance, the City may file a notice of lien against the real estate for the cost of the demolition, repair, enclosure or removal within one hundred eighty (180) days after the repair, demolition, enclosure, or removal occurred, for the cost and expense incurred, including attorney's and consultant fees, in the Office of the DuPage County Recorder of Deeds.

The notice of lien shall consist of a sworn statement setting forth (i) a description of the real estate such as the address or other description of the property, sufficient for its identification; (ii) the expenses incurred by the City in undertaking the remedial actions authorized under this ordinance; (iii) the dates the expenses were incurred by the City; (iv) a statement by the City official responsible for enforcing the building code that the structure constituted a serious hazard to the health and safety of the community; (v) a statement by the City official that the required sign was posted on the structure, that notice was sent by certified mail to the owners of record, and that constructive notice was published in accordance with this ordinance; and (vi) a statement as to when and where the notice was published."

Sec. 22-410. Emergency demolition.

(a) Immediate danger. Where the Director of Building and Code Enforcement, the City Manager or other City official designated to be in charge of enforcing the City's Building Code determines that a residential, commercial or industrial structure has been so damaged by a catastrophic event as to constitute an immediate danger or threat to persons or adjacent properties, and further determines that it would be impractical to enclose the structure itself to eliminate the immediate danger or threat, City official shall placard the structure with either a Notice of Perimeter Enclosure or Demolition and undertake reasonable steps to promptly notify the owner of the necessity of the erection of a perimeter enclosure or demolition. A perimeter enclosure shall mean the erection of a cyclone or similar fence on the lot on which the damaged structure is located which is of sufficient strength, permanency and location to stop the entry of unauthorized persons to the lot and/or the structure pending further action. If the owner cannot be found, or refuses to erect the perimeter enclosure so as

to eliminate the immediate danger or threat to persons or adjacent properties or cannot be found within a reasonable period of time due to the nature of the danger or threat the City Official shall have the right and power, but not the obligation, to eliminate the immediate danger or threat by erecting a perimeter enclosure as described by this ordinance or if such perimeter enclosure is not adequate to respond to the eminent danger or threat to persons or adjacent properties the City Official may demolish the structure. If any person seeks a judicial hearing and has served a copy of the complaint on this City before the City proceeds with authorized actions set forth in this Section then the City shall not proceed with the secure perimeter enclosure or demolition until a court issues an order that authorizes the City to do so.

(b) Lien. Following the erection of perimeter enclosure or demolition the City may file a Notice of Lien against the real estate for the cost of the erection of the perimeter enclosure or demolition within one hundred eighty days after the erection of the perimeter enclosure or demolition of the structure for any and all costs and expenses incurred by the City attorneys and consultants fees in the office of the DuPage County Recorder of Deeds.

The notice of lien shall consist of a sworn statement setting forth (i) a description of the real estate such as the address or other description of the property, sufficient for its identification; (ii) the expenses incurred by the City in undertaking the remedial actions authorized under this ordinance; (iii) the dates the expenses were incurred by the City; (iv) a statement by the City Official responsible for enforcing the Building Code that the structure constituted an eminent danger or threat to persons or adjacent properties; (v) a statement by the City Official that the required sign was posted on this structure and a description of service of the notice or the attempts to serve notice upon the owners.

Sec. 22-411. Procedures for permit approval.

(a) Application review. The building and code enforcement department will be responsible for the processing and review of any building demolition permit application. As part of the review process, an inspection of the property may be performed by the building and code enforcement department.

(b) Notification. Within five (5) working days of receipt of a complete building demolition permit application for a principal structure, the building and code enforcement department shall notify the owners of the real estate immediately adjacent to and across the street from the property which is the subject of the demolition of the application. A general notification sign shall be placed on the subject property by the City.

(c) Permit issuance. The building and code enforcement department shall not issue a demolition permit for a principle structure less than thirty (30) from the receipt of the structure demolition permit application.

(d) Other application processing. The demolition of a principal and/or accessory structure may also be processed as part of an annexation, subdivision, zoning, or special use permit application. Any such application which includes the proposed demolition of a structure must include the permit application information referenced in Section 22-408.

Sec. 22-412. Review standards, requirements.

(a) General standards. The building and code enforcement department will review all building demolition permit applications in accordance with this Article and the ordinances of the City, together with the following standards:

- (1) The granting of a permit shall not be detrimental to the public health, safety, and general welfare of the community.
- (2) Adequate utilities, accessways, drainage, and other necessary facilities must be provided in order for a permit to be granted.
- (3) The granting of the permit should promote the policies contained in the City's comprehensive plan, and the use of the subject property should be consistent with the designated comprehensive plan land use.
- (4) Any new structure or use to be constructed on the subject property must conform to the applicable requirements of this Code and the City Zoning Ordinance, except as may be varied in accordance with zoning ordinance regulations.

The building and code enforcement department may also impose such conditions and restrictions upon the issuance of the permit as may be necessary in order to comply with the standards recited in this Article.

(b) General requirements. If a building demolition permit application is approved by the building and code enforcement department, any demolition which takes place must be done in accordance with the provisions of the BOCA National Building Code in force at the time, and any additional requirements or conditions as placed on the applicant by the building and code enforcement department. The applicant will also be required to provide proof of disconnection of utilities.

(c) IEPA approval. If the application includes demolition of a principal structure and if the Illinois Environmental Protection Agency (the "IEPA") has promulgated regulations applicable to such demolitions, then the application shall include a certificate or letter of approval of the proposed work by the IEPA or a letter from the IEPA stating that IEPA approval is not required.

(d) Airborne particles. The applicant shall include provisions for controlling dust and other airborne particles from the subject property, including without limitation a source of water and spraying equipment and any other measures to be taken to control airborne particles.

(e) Safety fencing. The applicant shall cause safety fence to be installed around the perimeter of the subject property, in a location and manner approved by the director of building and code enforcement.

(f) Restoration. If construction of a new structure has not commenced within sixty (60) days of demolition, the applicant shall immediately restore the subject property to a safe, clean condition until construction of a new structure has commenced. Restoration of the subject property shall include without limitation backfilling of any excavation, grading, seeding, fencing, stormwater management, utility disconnections and the like.

(g) Demolition bond. The applicant shall post with the City, at time of issuance of permit for the demolition of a principal structure, a Cash Demolition Bond or a letter of credit in the form as attached as Exhibit A and incorporated herewith, in the amount of three percent (3%) of the cost of demolition or \$5,000 whichever is greater. Such Bond shall be in addition to all other application and processing fees, costs, escrows, bonds, and performance securities required by codes or ordinances of the City.

- (1) The City shall have the right at all times, at its option, to draw on the Cash Demolition Bond for the costs, including legal fees and administrative expenses, incurred or to be incurred by the City in exercising any of its rights under this Article in the event the applicant undertakes any work in violation of any provisions of this Article or of any permit issued or plan approved pursuant to this Article, or the applicant fails or refuses to complete any work authorized by any permit issued under this Article in accordance with all plans approved in connection with said permit.
- (2) Replenishment of Bond. If the City draws on the Bond, then the applicant shall replenish the Bond to the full amount required by this Subsection g immediately after demand therefor is made to the applicant in writing by the City. Any failure of the applicant to replenish the bond shall result in cancellation of the related permit, which permit shall not be reissued thereafter except after the filing of a new application therefor, payment of the permit fee, and establishment of a new Bond.
- (3) Return of Unused Bond. The City shall return any unused portion of the Bond to the applicant, without interest, as follows:
 - (a) If the permit authorizes only demolition work, and no construction work

is scheduled to take place within 30 days after completion of demolition, then the City shall return the Bond within 30 days after final inspection of the restoration of the subject property and approval of the work by the Director of Building & Code Enforcement Department.

- (b) If the permit authorizes any work in addition to demolition work, then the City shall return the money within 30 days after issuance of a final certificate of occupancy.

Sec. 22-413. Fees.

A nonrefundable fee of \$300.00 shall be required for a building demolition permit, and the fee must be submitted with the building demolition permit application required by Section 22-408. The permit fee for a demolition permit not involving a principal structure shall be \$50.00. Permit fees as required by other codes and ordinances of the City may also be required.

Sec. 22-414. Penalty for violation of Article.

If any structure is demolished without the owner of the subject property complying with this Article:

- (1) The owner of the subject property shall be subject to a fine of not less than \$1,000 or more than \$5,000; and
- (2) No building permit shall be issued for the construction of any improvement on the subject property until the owner thereof complies with all of the provisions of this Article."

Section 2: The Wheaton City Code text is amended by deleting and repealing Section B-10, Building, moving and wrecking fees, Article II, Appendix B, Fee Schedule, in its entirety and replacing it with a new section as follows:

"Sec. B-10. Building, moving and demolition fees.

- (1) Building moving permit \$50.00
- (2) Accessory demolition permit \$50.00
- (3) Interior demolition permit \$50.00
- (4) Principal structure demolition permit \$300.00"

Section 3: In all other aspects, the terms and provisions of the Wheaton City Code, as amended, are ratified and remain in full force and affect.

Section 4: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 5: This section shall become effective from and after its passage, approval and publication in pamphlet form in a manner prescribed by law.

Attested by:

Emily M. Censalajo
City Clerk

Mayor

James Carr

Ayes:

Roll Call Vote:

Councilman Gresk

Mayor Carr

Councilman Johnson

Councilman Mork

Councilwoman Davenport

Councilman Eckhoff

Nays:

None

Absent:

Councilwoman Johnson

Motion Carried Unanimously

Passed: December 15, 1997

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