

ORDINANCE NO. 302

Be it ordained by Council of the City of Max, North Dakota.

AN ORDINANCE RELATING TO **DANGEROUS AND ABANDONED BUILDINGS** AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

- 5-0201. Definitions
- 5-0202. Standards for Repair, Vacation, or Demolition.
- 5-0203. Dangerous Buildings — Nuisances.
- 5-0204. Duties of Building Administrator.
- 5-0205. Duties of City Council.
- 5-0206. Owner Absent from the City.
- 5-0207. Appeal.
- 5-0208. Disregarding Notice of Violation
- 5-0209. Penalty.
- 5-0210. Rights Cumulative.
- 5-0211. No Personal Liability

5-0201. DEFINITIONS.

1. "Dangerous Buildings" shall include all buildings or structures which have any or all of the following defects:
 - (a) Those whose interior walls or Other vertical structural members lean, list or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
 - (b) Those which, exclusive of the foundation, show thirty-three percent or more of damage or deterioration of the supporting member or members, or fifty percent of damage or deterioration of the non-supporting enclosing or outside walls or covering.
 - (c) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonable safe for the purpose used.
 - (d) Those which have been damaged by fire, wind, or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the city,
 - (e) Those which have become, or are, so dilapidated, decayed, unsafe or unsanitary or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause or aggravate sickness or disease, so as to work injury to the health, morals, safety, or general welfare of those living therein.
 - (f) Those having light, air, and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live or may live therein.
 - (g) Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways elevators, fire escapes, or other means of communication.
 - (h) Those which are damaged, destroyed or deteriorated to the extent that the health and safety of persons in or about the building may be imperiled. Examples of such perils include, but are not limited to, the following:
 - (i) Parts of the building might come loose and fall in such a manner as to injure persons or property;
 - (ii) Broken and jagged glass in windows or elsewhere, or other materials having sharp and irregular edges, project in such a manner that persons might become injured thereby; or

- iii. Banisters or railings might give way while being used in an ordinary manner.
- iv. Those which because of their condition are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city.
- v. Those buildings existing in violation of any provision of the Building Code, zoning ordinances, any provision of the Fire Prevention Code or other ordinances of this city.

2. "Dangerous Condition" is one which, if left unattended or uncorrected, will, to a reasonable degree of certainty, result in a building becoming a dangerous building within six (6) months.

3. "Owner" includes, but is not limited to a:

- a. Fee simple title owner;
- b. A contract vendee;
- c. A holder of a sheriff's certificate pursuant to a judicial sale; or
- d. A mortgagee or contract vendor.

4. "Person in Charge of" a dangerous building or dangerous condition, shall include but is not limited to:

- a. Lessee;
- b. Agent of an owner;
- c. Receiver or trustee in bankruptcy; or
- d. Any other person in possession claiming lawfully to be in possession who is not an owner.

5-0202. STANDARDS FOR REPAIR, VACATION, OR DEMOLITION.

The following standards shall be followed in substance by the Board of City Council in ordering repair, vacation, or demolition:

- (a) If the dangerous building or dangerous building can reasonably be repaired so that it will no longer exist in violation of the terms of this chapter, it shall be ordered repaired.
- (b) If the dangerous building or dangerous condition is such as to make it dangerous to the health, morals, safety, or general welfare of its occupants it shall be ordered to be vacated.
- (c) In any case where a dangerous building is fifty percent damaged, decayed, or deteriorated from its original value or structure, it shall be demolished, and in all cases where a building cannot be repaired so that it will no longer be in violation of the terms of this chapter, it shall be demolished. In all cases where a dangerous building or dangerous condition is a fire hazard existing or erected in violation of the terms of this chapter or any ordinance of this city or statute of the state of North Dakota, it shall be demolished.

5-0203. DANGEROUS BUILDINGS AND DANGEROUS CONDITIONS - NUISANCES.

All dangerous buildings and dangerous conditions within the terms of Section 50201 are hereby declared to be public nuisances and shall be repaired, vacated, or demolished as hereinbefore and hereinafter provided.

5-0204. DUTIES OF BUILDING ADMINISTRATOR.

The building administrator shall:

- (a) Inspect any building, wall, or structure about which complaints are filed by any person to the

effect that a building, wall, or structure is or may be existing in violation of this chapter.

(b) Inspect any building, wall, or structure reported (as hereinafter provided for) by any agent of the City as probably existing in violation of the terms of this chapter.

(c) Notify in writing the owner and/or person in charge of said building, as shown by the records in the office of the register of deeds of the county of McLean, of any building found by the building administrator to be a dangerous building or dangerous condition within the standards set forth in Section 5-0201 of this chapter, that:

i. The owner and/or person in charge of a dangerous building or dangerous condition must vacate, or repair, or demolish said building in accordance with the terms of the notice and this chapter;

ii. The owner and/or person in charge of a dangerous building or dangerous condition must vacate said building or may have it repaired in accordance with the notice and remain in possession. Provided, that any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding sixty (60) days, as may be necessary to do, or have done, the work or act required by the notice provided for herein.

(d) Set forth in the notice provided for in subsection (c) hereof a description of the building, or structure deemed unsafe, a statement of the particulars which make the building or structure a dangerous building or what condition constitutes a dangerous condition.

(e) Provide a written order setting forth the minimum remedial work required to eliminate the danger and put in such condition as to comply with the terms of this ordinance within a reasonable length of time, which time shall not exceed sixty (60) days. Such remedial work may include one (1) or more of the following and may be stated in the alternative:

i. Repair by reconstruction or replacement;

ii. Additional protective construction, including, for example, boarding up windows, doors or floor openings or the construction of braces, buttresses, and additional support members or elements;

iii. Fumigation or pest eradication; or

iv. Demolition in whole or in part.

A. The following standards apply to determinations regarding required remedial work for a dangerous building or dangerous condition:

B. If the building can reasonably be repaired to eliminate the violation or violations, repair shall be ordered;

C. If the building is in such condition that in the opinion of the building official no single or combination of other remedies is adequate to eliminate violations and protect occupants, visitors and the public, demolition shall be ordered; and

D. If the building is sixty (60) per cent or more damaged, decayed or deteriorated from its former value or structure, it may be presumed that the building may not reasonably be repaired and the building official may order demolition.

(f) Report to the City Council any noncompliance with the "notice" provided for in subsection (c) and (d) hereof.

(g) Appear at all hearings conducted by the City Council and testify as to the condition of dangerous buildings and dangerous conditions.

(h) Place a notice on all dangerous buildings or buildings in or on which there is found to be a dangerous condition reading as follows: "This building has been found to be a 'dangerous building' or to be the location of a 'dangerous condition' by the building administrator. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner and/or person in charge of this building and

all other persons having an interest in said building as shown by the records of the register of deeds of the county of McLean. It is unlawful to remove this notice until such notice is complied with."

5-0205. DUTIES OF CITY COUNCIL.

The City council shall:

- (a) Upon receipt of a report of the building administrator as provided for in Section 5-0204. Subsection (e), give written notice to the owner and/or person in charge of said building as shown by the records of the register of deeds of the county of McLean to appear before it on the date specified in the notice to show cause why the building or structure reported to be a dangerous building or dangerous condition should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the building administrator's notice provided for herein in Section 5-0204, subsection (d).
- (b) Hold hearing and hear such testimony as the building inspector or the owner and/or person in charge of said building as shown by the records of the register of deeds of the county of McLean shall offer relative to the dangerous building or dangerous condition.
- (c) Make written findings of fact from testimony offered pursuant to subsection (b) as to whether or not the building in question is a dangerous building or dangerous condition within the terms of Section 5-0201.
- (d) Issue an order based upon findings of fact made pursuant to subsection (c) hereof commanding the owner and/or person in charge of said building as shown by the records of the register of deeds of the county of McLean to repair, vacate, or demolish any building found to be a dangerous building or dangerous condition with the terms of this chapter and provided that any person so notified, except the owners, shall have the privilege of either vacating or repairing said dangerous building or dangerous condition.
- (e) If the owner and/or person in charge of said building fails to comply with the order provided for in subsection (d) hereof, with sixty (60) days, the City Council shall cause such building or structure to be repaired, vacated or demolished as the facts may warrant, under the standards, hereinbefore provided for in Section 5-0202 of this chapter. The cost to the City of Max of demolishing, repairing or removing any building or structure under this chapter shall be determined by the City to the County Auditor as a special assessment levied upon the described property and to be spread upon the taxes against said property.
- (f) Report to the city attorney the names of all persons not complying with the order provided for in subsection (d) of this section.

5-0206. OWNER ABSENT FROM THE CITY.

All notices or orders provided for herein shall be sent by certified mail to such owner and/or person in charge of said building, to the last known address of each, and a copy of such notice shall be posted in a conspicuous place on the dangerous building or dangerous condition to which it relates. Such mailing and posting shall be deemed adequate service.

5-0207. APPEAL.

An appeal from an order of the building official under Section 5-0205 shall be held according to the following procedures:

- (a) An owner or owner's representative who receives an order under Section 5-0204 may appeal. The owner or owner's representative shall file a written notice of appeal with the city within ten (10) days of service or receipt of the order.

(b) Filing a timely notice of appeal automatically stays the order for thirty (30) days, provided an order requiring immediate vacation of the building shall remain in effect pending the appeal hearing.

(c) A hearing on the appeal shall take place within thirty (30) days of the filing of the notice of appeal, at the next regular meeting of the city council following the appeal or at a special meeting called by the mayor, unless the city and owner or owner's representative agree to postpone the hearing and stay of the order to a later date.

(d) At the hearing, city officials shall first present evidence, including testimony or documentary evidence, in support of the order and the owner or owner's representative shall then present evidence regarding objections to the order or why the order should not be enforced. Each party shall have an opportunity to make a closing statement. The mayor may establish reasonable limits on time allowed for each party. Upon conclusion of the hearing, the city council may, based on evidence presented at the hearing, decide to affirm, modify or reverse the order.

5-0208. DISREGARDING NOTICE OF VIOLATION

(a) If the owner or person in charge of a dangerous building or dangerous condition neglects or refuses to accomplish the required remedial work within the time specified in the notice of violation, or if service of a notice of violation has been made by mail as permitted herein and the mailing is returned without being delivered or claimed, then the city shall have a right of entry upon the premises in question in order that its agents, employees or contractors may undertake necessary remedial work or demolition.

(b) The city shall solicit bids for the required remedial work or demolition in a manner reasonably designed to produce a fair contract price and full competition among prospective bidders. A contractual provision to withhold all payments until the completion of the contract may be used in lieu of requiring a contract bond. The contract shall be awarded to the lowest and best bidder. The solicitation for bids may provide that specific remedial work will be performed or in the alternative that the building be demolished, even though the original order entered by the building official may not have required demolition.

(c) After performance of the contract, the cost of the remedial work or demolition performed under the contract shall be confirmed at a hearing held by the city council for that purpose. Once confirmed the cost shall be certified by the city auditor to the county auditor for collection as a special assessment against the property in question.

(d) The owner or person in charge of the dangerous building or building in which is found a dangerous condition shall be given reasonable notice of the city council meeting at which bids are considered and at which the hearing is held to confirm the special assessment provided for herein, unless the notice of violation has been mailed as provided for herein and returned undelivered or unclaimed.

(e) The willful refusal to perform or to arrange the performance of remedial work by a person having the right to do so shall be an unlawful act punishable as provided in Section 5-0209 of the Code of Ordinances. Moreover, the city may bring appropriate judicial proceedings to enforce the dangerous building article of the Code of Ordinances, notwithstanding the availability or use of the sanctions provided for in Section 5-0209.

5-0209. PENALTY.

Any person violating any section of this chapter shall be guilty of an infraction and shall be subject to a fine of \$50. Each day the violation continues shall be considered a separate offense.

5-0210. RIGHTS CUMULATIVE.

The rights asserted by the city under these sections shall be considered to be cumulative to and not in derogation of the rights asserted under other provisions of the Code of Ordinances, such as those relating to fire or health and sanitation.

5-0211. NO PERSONAL LIABILITY

To the extent permitted under state law including home rule powers, the city, its officials, employees, agents and contractors assume no liability arising out of the execution of the provisions of this article including by way of example and not by way of limitation:

- (a) Liability premised on the concept that the city should have discovered and rectified a dangerous building or dangerous condition; or
- (b) Liability premised on the concept that the city erroneously and negligently certified that an unsafe building or unsafe condition had been rectified when in fact it has not; or
- (c) Liability premised upon the concept that the city erroneously accomplished the demolition of a building on the grounds that it was dangerous when in fact it was not

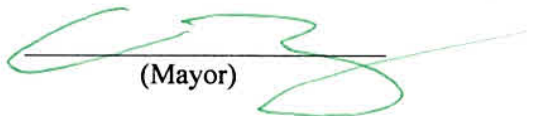
EFFECTIVE DATE

This ordinance shall take effect after its passage, approval, and publication.

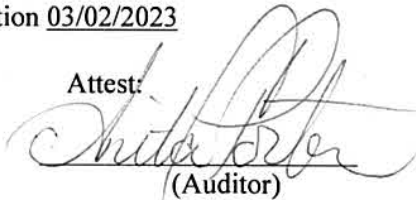
Date of 1st Reading 02/06/2023

Date of 2nd reading, final passage, and adoption 03/02/2023

Approved:


(Mayor)

Attest:


(Auditor)

