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ARTICLE VII. DEMOLITION BY NEGLIGENCE OF BUILDING OR STRUCTURES <sup>[7]</sup>

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**Sec. 6-171. Purpose.**

The purpose of this article is to regulate and prohibit the demolition by neglect of any building or structure located in an H-1 historic overlay district or an NC-1 neighborhood conservation district or any building or structure listed in the National Register of Historic Places (hereinafter "qualifying building") where such demolition results from the neglect and deterioration of the exterior features or structural elements of such building or structure. The gradual deterioration of such exterior features or structural elements, through the neglect of the owners of the qualifying building will ultimately result in the de facto demolition of the qualifying building or its being too deteriorated to be reasonably saved from demolition. It is the purpose of this article to prevent such an ultimate result for qualifying buildings.

It is a further purpose of this article to protect the health, safety, and welfare of the citizens of the city by reducing the risks associated with neglected and deteriorating buildings or structures, especially during the process of gradual deterioration.

It is the further purpose of this section to provide a just, equitable and practicable method to require the owner of record of the real property on which the qualifying building is located or other person or persons who may have legal possession, custody or control of such building or structure (hereinafter the "owner") to commence and complete necessary corrective action to repair and stabilize the qualifying building and to authorize the city to perform such corrective action if the owner fails to commence or complete such corrective action and recover the costs of such corrective action from the owner.

[Ord. No. 17, 1993, § 1, 1992]

**Sec. 6-172. Scope; definitions.**

The provisions of this article shall apply to any qualifying building, defined as any building or structure located in an H-1 historic overlay district or in an NC-1 neighborhood conservation district, or any building or structure that is listed in the National Register of Historic Places. Such qualifying buildings are automatically subject to the provisions of this article.

As used in this article, the term "owner" means the owner of the real property upon which a qualifying building is located. Where more than one (1) person or legal entity owns such real property, the term "owner" includes all persons or legal entities with an ownership interest.

The provisions of this article shall not be construed to change, amend, or limit the applicable zoning of the property upon which the qualifying building is located. Subject to any other limitations or restrictions imposed by law, the owners of such property may continue to use the property and the qualifying buildings thereon for all uses and purposes permitted by the applicable zoning during the pendency of any proceedings described herein.

*(Ord. No. O-427-03 § 2.12-1-03)*

### **Sec. 6-173. Demolition by neglect.**

- (a) *Duty to maintain.* Any qualifying building as defined in this article shall be preserved against material deterioration of exterior features and structural elements, as identified by the factors set forth in subsection (b), by the owner of such qualifying building, and it shall be the duty of the owner to maintain and repair the qualifying building in a manner that prevents such deterioration.
- (b) *Duty to repair.* The owner of a qualifying building shall, upon written notice of violation from the city as described herein, repair such exterior features or structural elements of the qualifying building if any such exterior features or structural elements are materially deteriorating or if the condition of any such features or elements is contributing to material deterioration of the qualifying building, including but not limited to any of the following conditions, processes or defects (the "violations"):
- (1) Damage to or decay of foundations, flooring, or floor supports that cause leaning, sagging, splitting, listing or buckling;
  - (2) Damage to or decay of walls or other vertical supports that causes leaning, sagging, splitting, listing or buckling;
  - (3) Damage to or decay of ceilings, roofs, and their support systems, or other horizontal members, that causes leaning, sagging, splitting, listing or buckling;
  - (4) Damage to or decay of fireplaces or chimneys that causes leaning, sagging, splitting, listing or buckling;
  - (5) Damage to, decay or crumbling of exterior stucco, wood, brick, mortar or any other exterior element that causes loss of unique architectural features or structural integrity;
  - (6) Decay, damage or removal of windows, window frames and doors;
  - (7) Rotting, holes and other forms of decay of any exterior elements;
  - (8) Any fault, defect, or condition of the qualifying building which renders it structurally unsafe or not properly watertight (including but not limited to lack of roofing, lack of roof covering, lack of weather protection, or separation or removal of building components which allows moisture to penetrate the structure);
  - (9) Damage or decay that has a detrimental effect upon the special character of an H-1 historic overlay district or an NC-1 neighborhood conservation district as a whole or the unique attributes and character of a qualifying building;
  - (10) Damage to or decay of any feature so as to create a fire hazard or other condition

- hazardous to public safety; and
- (11) Removal or demolition of significant architectural features.

### Sec. 6-174. Enforcement; authority.

- (a) *Public officer; authority.* The mayor of the city shall designate an employee of the city as a public officer (hereinafter the "public officer") to exercise the powers conferred under this article and to enforce this article whenever the public officer determines that a qualifying building is subject to demolition by neglect as set forth in section 6-173. The public officer is hereby authorized to initiate and conduct investigations, to inspect qualifying buildings or buildings, to issue notices of violation and to file complaints pursuant to the standards and procedures set forth in this article and the building code.
- (b) *Better building board; authority.* Except as otherwise provided herein, the better building board, as selected pursuant to section 6-141 of the City Code (hereinafter the "board"), shall exercise the powers conferred under this article and enforce this article as provided hereunder. The board is hereby authorized to initiate or receive complaints or petitions, conduct investigations, hold hearings, administer oaths, and issue determinations and orders as a result of its findings. The authority and orders of the board shall be based on the standards and procedures set forth in this article and the building code, as appropriate.

### Sec. 6-175. Administrative determination and action.

- (a) *Notice of violations.* Whenever it appears to the public officer that a qualifying building is undergoing demolition by neglect, the public officer shall conduct a preliminary investigation. If such preliminary investigation discloses evidence of demolition by neglect, as defined in section 6-173, the public officer shall issue and cause to be served upon the owner of the subject property a notice of violation (NOV) stating the violations causing the demolition by neglect. The NOV shall notify the owner that the owner shall have thirty (30) days to comply by commencing and diligently pursuing repairs as directed in the NOV. Unless extended pursuant to the provisions of section 6-173(b), such repairs must be completed no later than one hundred eighty (180) days from the date the NOV is received by the owner(s). The NOV shall also notify the owner that the owner may appeal the NOV by filing a written appeal of the notice of violations to the board within ten (10) days of receipt of the notice if the owner disputes the decision of the public officer. If an appeal is filed with the board within the ten-day period, the board shall consider the appeal in accordance with the provisions of this article. If no appeal is filed within the ten-day period, the NOV shall become final (a "final notice") which shall not be subject to further review.
- (b) *Compliance.* If, as determined by the public officer, the owner complies with the NOV by commencing and diligently pursuing and completing the repair of the violations as directed within the specified time, the public officer will take no further action at that time in regard to the NOV or the final notice, and the owner will not be subject to the remedies and penalties provided in herein. Such repairs must be completed no later than one hundred eighty (180) days from the date the NOV is received by the owner unless a written request for an extension is submitted to and approved by the public officer prior to the running of the one hundred eighty-day period. Absent extraordinary circumstances, as determined in the sole discretion of the public officer, no extension shall be for more than ninety (90) additional days.

If the public officer determines at any time that the owner has not commenced and diligently pursued the repairs of the violations within the specified time or has thereafter failed to diligently pursue or

complete the repairs, the public officer shall file a complaint with the board seeking an order requiring the owner to take corrective action.

- (c) *Hearing and order.* Whenever a complaint is filed with the board, the board shall provide notice to the owner that a hearing will be held before the board not less than ten (10) business days after the serving of the complaint. The owner shall be entitled to one continuance of fifteen (15) days as a matter of right. A hearing shall be held by the board to determine if the owner has failed to commence, diligently pursue, or complete the repairs of the violations within the time specified in the NOV or final notice, as applicable. Such hearing shall be public, and the owner shall have a right to file a response to the complaint prior to the public hearing. At the hearing, the owner or the owner's attorney shall have the opportunity to call and to cross-examine witnesses, to submit evidence to the board, and to make an argument before the board, subject to any reasonable procedural rules that the board has adopted or shall adopt hereafter. Rules of evidence prevailing in the courts of law and equity shall not be controlling at such hearing.
- (d) *Determination.* If the board finds that the owner has failed to commence, diligently pursue, or complete the repairs of the violations within the time specified in the NOV or final notice, as applicable, the board shall make a written determination of its findings and serve a copy of the determination on the owner or the owner's attorney. In addition, the board shall order the owner to take corrective action to commence and complete the repair of such building or structure within such time period as the board determines to be reasonable for completion of the repairs (a "final order").
- (e) An appeal may be taken pursuant to the provisions of section 6-177

*(Ord. 110-2012, § 6-177, 2012)*

## **Sec. 6-176. Petition and determination.**

As an alternative to the administrative process involving the issuance of a notice of violations by the public officer set forth in section 6-175, the provisions of this article may be enforced as provided hereunder.

- (1) *Initiation of process.* The mayor, the better building board or the historic zoning commission (petitioners) may file a petition with the board seeking a determination that a qualifying building is subject to demolition by neglect. Such petition shall request that the board act under the following procedures to require the owner to correct the deterioration or to make corrective repairs to such qualifying building so that it shall be preserved and stabilized in accordance with the purposes of this article.
- (2) *Notice.* Whenever a petition is filed with the board charging that a qualifying building is subject to demolition by neglect, the board shall provide notice to the owner that a hearing will be held before the board not less than ten (10) business days after the serving of notice. The notice shall include a copy of the petition.
- (3) *Hearing.* A hearing shall be held by the board upon at least ten (10) business days' written notice to the owner and petitioners. The owner shall be entitled to one (1) continuance of fifteen (15) days as a matter of right. The process and procedures for the hearing shall be the same as those established in subsection 6-176(3), except that petitioners shall submit to the board any evidence of demolition by neglect. The owner shall have all the rights and remedies provided in subsection 6-175(c).
- (4) *Intervention.* Nothing herein shall preclude the city from seeking to intervene in the action prior to the hearing before the board. The city shall be permitted to intervene if a motion to intervene is filed with the board at least three (3) days prior to the hearing accompanied by an affidavit from the public officer that at least one violation of section

6-174 has occurred. If the city is permitted to intervene, the city shall have the opportunity to submit additional evidence to the board of demolition by neglect after the petitioners have completed their proof. The owner shall have all the rights and remedies provided in subsection 6-176(3).

- (5) *Determination.* If the board finds that the structure which is the subject of the petition is (i) a qualifying building and (ii) subject to demolition by neglect, the board shall make a written determination of its findings and serve a copy of the determination on the owner or the owner's attorney. In addition, the board shall order the owner to take corrective action to commence and complete the repair of such building or structure within such time period as the board determines to be reasonable for completion of the repairs (also a "final order").
- (6) An appeal may be taken pursuant to the provision of section 6-177

*(Ord. No. C-177-03 § 6, 11-10-03)*

### **Sec. 6-177. Appeals.**

Any person aggrieved by any final decision of the board as to demolition by neglect may have such final decision reviewed by the courts by the procedure of statutory certiorari, as provided in Tennessee Code Annotated, title 27, chapter 8. Such appeal shall be filed within thirty (30) days of the receipt of the final decision of the board.

*(Ord. No. E-177-03 § 7, 11-10-03)*

### **Sec. 6-178. Service of notice.**

All complaints, petitions, notices and orders (notice) provided for in this article shall be served upon all owners by posting the notice on the property which is the subject of the notice in a conspicuous place, and by one (1) of the following methods:

- (1) Personally delivering the notice to the owner; or
- (2) Mailing the notice to the last known address of each owner by certified United States mail, return receipt requested.

Notice shall be given to all persons identified as owners of the subject property in the records of the register's office of the county. If the whereabouts of the owner are unknown and cannot be ascertained by the agent of the board in the exercise of reasonable diligence, and the agent makes an affidavit to that effect, then the serving of such notice shall be made by publishing the notice once per week for two (2) consecutive weeks in a daily newspaper of general circulation printed and published in the city. In every instance, a copy of such notice shall also be filed in the register's office of the county, and such filing of the notice shall have the force and effect as other notices as provided by law. Upon the appearance of an attorney for the owner in any proceeding herein, subsequent complaints, petitions, notices, and orders may be served upon the attorney by personal service or first class, United States mail.

*(Ord. No. E-177-03 § 8, 11-10-03)*

### **Sec. 6-179. Nature of repairs.**

The repairs which may be required pursuant to any final notice or final order shall be limited to such repairs as are reasonably necessary to stabilize and prevent further demolition by neglect of the qualifying building and shall not include complete restoration of the qualifying building. Any repairs shall be consistent with the guidelines for the H-1 or NC-1 district in which the qualifying building is located.

## Sec. 6-180. Safeguards from economic hardship.

- (a) *Claim of economic hardship.* When a claim of economic hardship owing to the effects of this article is made in writing by the owner within fifteen (15) days of service of the NOV or petition, the board shall schedule a hearing on the claim to be held within thirty (30) days of receipt of a claim of economic hardship. For the purposes of this article, when a claim of economic hardship is made, the owner must prove the following:
- (1) The qualifying building is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
  - (2) The qualifying building cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
  - (3) Diligent efforts to find a purchaser interested in acquiring the qualifying building and preserving it have failed;
- (b) *Information to determine economic hardship.* The owner shall present information provided for under subsection (d) to the board. The board may require that the owner furnish such additional information that is relevant to its determination of economic hardship. The board shall also state which form of financial proof it deems relevant and necessary to a particular case.
- (c) *Failure to provide information.* In the event that any of the required information is not reasonably available to the owner and cannot be obtained by the owner, the owner shall describe the reasons why such information cannot be obtained.
- (d) *Circumstances of economic hardship.* When the owner claims economic hardship due to the effects of this article, the owner shall provide evidence during the hearing upon the claim, describing the circumstances of economic hardship. Evidence may include, but is not limited to:
- (1) Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control;
  - (2) Cost of repairs;
  - (3) Assessed value of the land and improvements;
  - (4) Real estate taxes for the previous two (2) years;
  - (5) Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance;
  - (6) Annual debt service, if any, for previous two (2) years;
  - (7) Any listing of the property for sale or rent, price asked, and offers received, if any; and
  - (8) Any insurance proceeds received.
- For income-producing properties:
- (9) Annual gross income from the property for the previous two (2) years;
  - (10) Itemized operating and maintenance expenses for the previous two (2) years, including proof that adequate and competent management procedures were followed; and
  - (11) Annual cash flow, if any, for the previous two (2) years.
- (e) *Finding of economic hardship.* Within thirty (30) days of the board's hearing on the claim, the board shall make a finding of economic hardship or no economic hardship and shall enter the reasons for such finding into the record. If a finding of no economic hardship is made, the board shall serve upon the owner or the owner's attorney a final notice ordering the owner to

make such corrective repairs as specified therein subject to the provisions of this article. Such notice shall be made as provided in section 6-178

- (f) *Relief.* In the event of a finding of an economic hardship, the board shall seek alternative methods, permitted by state law, for preserving the building or structure. Such alternatives may include but are not limited to property tax relief to the extent allowed under state law; loans, grants, or other financial incentives from private, nonprofit, or public sources (including the federal government, the state, the city, and the county); repairs by the city as set forth in section 6-180 of this article; acquisition by purchase or eminent domain; or modifications of discretionary deadlines and requirements sufficient to mitigate the economic hardship upon the owner. The board shall not require the owner to perform and the city shall not perform any repairs the cost of which will exceed the value, as appraised for property tax purposes, of the qualifying building and land on which it is located.

*Ord. No. 0-457-05, § 10, 1-19-11*

### **Sec. 6-181. Remedies and penalties upon noncompliance with final notice.**

- (a) *Enforcement.* If the owner refuses or fails to commence, diligently pursue, and complete the necessary repairs within the time period as specified in the final notice or final order, the city is hereby authorized to have performed and to complete the necessary remedial work to prevent further demolition by neglect and to defray the cost thereof as provided herein.
- (b) *Expenditures for repair work.* The city may elect to pay for the repair work and charge to the owner of such qualifying building the expenses incurred in doing such work or having such work done. If such work is performed at the expense of the city, such expenses shall be assessed as a lien on the real estate, lot, or lots improved by the qualifying building where the expense was incurred. Subject to compliance with applicable law, the city and its authorized assistants, employees, agents, or other representatives are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of completing repairs necessary for the repair of a qualifying building. The Knox County Chancery Court shall have the authority to issue all orders necessary to enforce this provision.
- (c) *Establishment of lien.* The city or an agent authorized to act on behalf of the city shall file a statement of such expenses eligible for recording by filing the amount of such expenses and the date on which the work was done with the register's office of the county. The city shall have a mechanics' or materialman's lien on such lot or lots or real estate improved by the qualifying building upon which the work was done to secure the expenditures. The lien amount shall bear a ten (10) percent interest per annum from the date that the statement was filed, or up to the amount allowed by law. For any such expenditures and interest, suit may be instituted and recovery and foreclosure of the lien may be had in the name of the city against the owner. The statement of expenses shall be prima facie proof of the amount expended for such work or improvements.
- (d) *Release of lien.* The lien granted by this section shall be extinguished and released upon the payment to the city of all amounts owing hereunder, upon a finding that the lien was placed in error, or by the operation of law. The lien granted by this section may also be forgiven and released by agreement of the directors of the public service and law departments for extraordinary cause upon approval of the better building board, in the following situation: Upon a showing, by a prospective purchaser for value of the real property encumbered by a lien or liens, that the aggregate value of such liens against the property exceeds the appraised value of the property and that the purchaser will purchase the lot if the liens are forgiven or reduced. Such action shall be at the sole discretion of the directors of the public service department and the law department, subject to the approval of the better building board. It shall be the burden of any person seeking the forgiveness or reduction of any such liens to prove to the

satisfaction of the directors of the public service and law departments that the applicable conditions have been satisfied.

- (e) *Penalties.* a failure to comply with any final order of the board shall be deemed a violation of this article, conviction thereof shall result in the penalties of a mandatory fine not to exceed fifty dollars (\$50.00) for each day the violation continues and the repayment of administrative costs incident to the correction of the violation, up to the amount allowed by law. Each day any violation of this article or a final order shall continue shall constitute a separate offense.
- (f) *Cumulative remedies.* The procedures and remedies provided herein shall be cumulative with and in addition to any other remedy provided in this article or in the building code, housing code or otherwise available at law or in equity.

*Ord. No. 24-000-10-01*

### Sec. 6-182. Waiver.

The owner of the qualifying building subject to the provisions of this article may admit in writing at any time that such qualifying building has suffered demolition by neglect within the meaning of this article, waive notice, hearing, findings of fact, order, and service of process, and consent that the qualifying building may be repaired, and the cost thereof charged against the property. If the owner agrees to such waiver, the city is authorized to enter an order of demolition by neglect and to repair such qualifying building, to charge the cost of such repair against the owner and to establish a lien against the property in accordance with the provisions herein.

*Ord. No. 0-120-03-01-12-9-01*

### Sec. 6-183. Other purposes not limited.

- (a) *No limitation of powers.* No part of this article shall be construed in any way to impair or limit any powers of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.
- (b) *Unfit buildings; other ordinances.* No part of this article shall be construed in any way to impair or limit the applicability of any other applicable ordinance of the city, including the unfit buildings ordinance (Code section 6-136 et seq.), whose purpose is to protect occupants and the public from serious hazards created by certain buildings and structures. In cases in which a qualifying building may be considered as creating such a serious hazard and also is subject to demolition by neglect, the procedures and policies specified in either or both provisions shall apply, as appropriate, as determined in the sole discretion of the board.

*Ord. No. 0-477-01-01-01-00001*

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#### FOOTNOTE(S):

1. This section was adopted by Ord. No. 24-000-10-01, adopted January 1, 2014, and amended by Ord. No. 24-000-10-01, adopted January 1, 2014, and Ord. No. 24-000-10-01, adopted January 1, 2014. The purpose of this section is to provide for the repair of buildings that have been demolished by neglect. The purpose of this section is to provide for the repair of buildings that have been demolished by neglect. The purpose of this section is to provide for the repair of buildings that have been demolished by neglect. [\(Back\)](#)