

ORDINANCE NO. _____

ENTITLED: “AN ORDINANCE CREATING A NEW SECTION 15.50.070, DEMOLITION BY NEGLIGENCE, OF CHAPTER 15.50, HISTORIC DESIGN GUIDELINES, OF TITLE 15, BUILDINGS AND CONSTRUCTION, OF THE CODE OF THE CITY OF CHEYENNE, WYOMING.”

BE IT HEREBY ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHEYENNE WYOMING:

Section 1. That a new Section 15.50.070, Demolition by Neglect, of Chapter 15.50, Historic Design Guidelines, of Title 15, Buildings and Construction, of the Code of the City of Cheyenne, Wyoming, is created as set out in this ordinance.

15.50.070 Demolition By Neglect.

A. Purpose–Authority–General.

1. Owners of certain historic properties are required to maintain their properties and not allow them to fall into disrepair and to prevent gradual deterioration. The requirements of this section are applicable only to certain properties, termed “contributing structures” in this section. That term as used in this section is defined to include designated historic structures and properties identified as “contributing” in designated historic districts or individually listed.

a. 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 section to prevent such an ultimate result for qualifying buildings.

b. 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.

c. 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.

B. Definitions.

1. “Abate” shall mean to bring into compliance, halt, eliminate, or remedy.

2. “Agent” means and includes any person acting on behalf of or in place of a property owner, including tenant, manager, or lessee.

3. “Demolition by neglect” means imminent total or partial destruction of or damage to a historic structure or any portion thereof, due to the failure of the owner(s) to adequately maintain or repair the structure, excepting acts of God or natural or manmade disasters. Exposure to the elements and seasonal weather shall not be considered an act of God or natural disaster.

4. “Historic structure” means all structures contributing to the city’s Contributing Structures List, as well as all structures eligible for listing on the National

Register of Historic Buildings.

5. “Maintenance and repair” mean 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, 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.

6. “Owner” means and includes:

a. Any owner or holder of any legal or equitable estate in real property, including a dominant or servient tenement, except a future or reversionary interest and except the interest of a public trustee, lienholder, mortgagee, or beneficiary of a deed of trust.

b. The owner of record as reflected by the records of the office of the county assessor.

7. “Person” means and includes a natural person, association, corporation, partnership, limited liability company, and any other legal entity capable of owning, using, or occupying real property.

8. “Preservation” means the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a contributing structure.

9. “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 contributing structure 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 contributing structure.

C. Maintenance and Major Repairs Requirements.

1. Duty to maintain. Any qualifying building as defined in this section shall be preserved against material deterioration of exterior features and structural elements, as identified by the factors set forth in subsection 3. below, 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.

2. 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 conditions as listed in subsection 3. below.

3. All contributing structures or eligible structures, shall be preserved against decay and deterioration to prevent demolition by neglect by being kept free from the following structural defects:

a. Deteriorated or inadequate foundation which jeopardizes its structural integrity;

b. Defective or deteriorated floor supports or any structural members of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;

c. Members of exterior walls, partitions, or other vertical supports that split, lean, list, or buckle due to defective material or deterioration which jeopardize its structural integrity;

d. Structural members of ceilings and roofs, or other horizontal

structural members, which sag, split, or buckle due to defective materials or deterioration or are of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;

e. Fireplaces or chimneys which lean, list, bulge, or settle due to defective material or deterioration or are of insufficient size or strength to carry imposed loads with safety which jeopardize its structural integrity;

f. Lack of weather protection which jeopardizes the structural integrity of the walls, roofs, or foundation;

g. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors;

h. Rotting, holes, or other forms of decay;

i. 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;

j. Deterioration that contributes to a hazardous or unsafe condition;

k. Deterioration or crumbling of exterior plasters or mortars; and

l. Damage to or decay of any feature so as to create a fire hazard or other condition hazardous to public safety.

4. The owner or such other person shall repair such building, object, or structure within a specified period of receipt of a written order as outlined below in subsection I. below to correct defects or repairs to any structure as provided by subsection 3. above, so that such structure shall be preserved and protected in accordance with the purposes of this section.

D. Monitoring.

1. Any existing Historical Register nominations or surveys shall serve as the baseline from which any decay and deterioration outlined in subsection C.3. above is determined.

2. The City shall reserve the right to inquire as to the condition of the building on an annual basis to determine compliance with this section.

E. Process for Submitting a Petition Alleging Demolition by Neglect.

1. The initial determination that there is a condition of neglect shall be made by the Cheyenne Historic Preservation Board, after an investigation that is initiated by a petition from any person who is familiar with the subject property, which may include, but not be limited to, a city employee, the Cheyenne Historic Preservation Board, or any citizen.

2. Filing of Petition.

a. Petitions charging that a structure is undergoing demolition by neglect shall be filed with the city.

b. The Cheyenne Historic Preservation Board (CHPB) may file a petition on its own initiative.

c. Any official, commission, or department of the City of Cheyenne, any state agency, or any local or state historical, preservation, or business

association may request in writing to the CHPB that it make a preliminary investigation of a structure to determine whether a basis exists for a determination of demolition by neglect. Such investigation shall be undertaken by the review committee as per subsection E.3. below.

d. Petitions shall be filed in a format determined by the CHPB to clearly describe and illustrate the specific defects citing in each instance the specific standard or standards (as outlined in subsection C.3.) being violated.

e. A petition alleging demolition by neglect may not be filed for the same property more frequently than one petition every one (1) year.

3. Whenever a petition is filed with the building official by either the CHPB, by a resident of the city, or by a city building inspector charging that an historic landmark in any historic district is threatened with demolition by neglect as set out in subsection C.3., or whenever it appears to the building official that any historic landmark is threatened by demolition by neglect, such charge shall be referred by the City of Cheyenne Director of Planning and Development to the CHPB for review. The CHPB shall make a preliminary investigation and finding of the charge within forty-five (45) days of the filing of the petition, applying the standards set forth in subsection C.3. Each CHPB Member shall conduct their preliminary investigations independently.

4. The CHPB shall discuss the petition and findings at the next regularly scheduled CHPB meeting. A finding of a violation of this chapter must be made by motion and passed by a majority of the members of Board. If the CHPB finds a violation of this chapter, the CHPB shall issue and cause to be served upon the owner and parties in interest of the subject property a written complaint stating the charges the CHPB finds has a basis for demolition by neglect, including a copy of the petition and this section of the Cheyenne City Code and a notice that a hearing may be held before the Director, or designee, pursuant to subsection J.1. below.

F. Process for Notifying the Property Owner.

1. On receipt of a petition, the Director, or designee, shall notify the owners in writing of the allegation and the process for making a decision regarding the petition, including any applicable deadlines. The notice shall, among other things:

a. Offer the owner the opportunity to meet in person with the Director, or designee, and to present any relevant information.

b. Notify the owner that the owner shall have thirty (30) days to comply by commencing and diligently pursuing repairs as directed. Unless extended pursuant to the provisions of subsection I., such repairs must be completed no later than one hundred eighty (180) days from the date the notice is received by the owner.

c. Notify the owner that the owner may appeal the complaint by filing a written appeal of the complaint to the Board of Adjustment within ten (10) days of receipt of the notice according to subsection M. If an appeal is filed with the Board of Adjustment within the ten (10) day period, the Board of Adjustment shall consider the appeal in accordance with the provisions of this section. If no appeal is filed within the ten (10) day period, the complaint shall become final which shall not be subject to further review.

d. Notify the owner of their right to a hearing as outlined in subsection J.1.

2. Notice shall be delivered by personal service, or by first class mail, and shall be considered effective if such mail is not returned by the post office within fifteen (15) days of mailing. In case of notice by first class mail, notice shall also be posted on

the property.

3. If the whereabouts of such persons are unknown and the same cannot be ascertained by the Director, or designee, in the exercise of reasonable diligence, then the serving of such notice may be made by publishing the same once each week for two (2) successive weeks in a newspaper or online news publication generally circulated within the city. Where such service is by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

H. Suspension of Process. The above process may be suspended in the event the owner agrees in writing to correct a condition of neglect resulting in a complaint within a time period determined to be reasonable by the Director, or designee. If the condition is not corrected within that time period, the process shall continue where it was suspended.

I. Compliance.

1. If, pursuant to subsection E.3., CHPB determines demolition by neglect has occurred and issues a complaint, the owner shall commence with any and all repairs that are necessary to satisfy the complaint. Such repairs must be completed no later than one hundred eighty (180) days from the date the notice is received by the owner unless a written request for an extension is submitted to and approved by the Director, or designee, prior to the running of the one hundred eighty (180) day period. Absent extraordinary circumstances, as determined in the sole discretion of the Director, or designee, no extension shall be for more than ninety (90) additional days.

2. If, as determined by the Director, or designee, the owner complies with the complaint by commencing and diligently pursuing and completing the repair of the violations as directed within the specified time, the Director, or designee, will take no further action at that time in regard to the notice or the final notice and the owner will not be subject to the remedies and penalties provided herein.

J. Right to Hearing.

1. Pursuant to subsection F.1.c., if CHPB's written determination indicates a basis for demolition by neglect, within fourteen (14) days of the determination of the CHPB, the Director, or designee, shall issue and cause to be served upon the property owner, as may be determined by reasonable diligence, a complaint stating the charges in that respect, including a copy of the petition and this section of the Cheyenne City Code. Pursuant to the Rules of the BOA, (i) the complaint shall contain a notice that, should the property owner appeal the complaint, a hearing may be held at the property owner's written request before the City of Cheyenne Board of Adjustment (BOA) no less than thirty (30) days nor more than forty-five (45) days after the serving of such complaint, and (ii) that the property owners shall be given a right to testimony at the place and time fixed in the complaint. The CHPB shall also be given notice of the hearing.

2. The purpose of the hearing is to receive evidence concerning the charge of deterioration and to ascertain whether the property owner wishes to make a claim of undue economic hardship.

3. Right to a hearing:

a. Allegation of lack of compliance. A hearing may be held by the BOA to determine if the owner has failed to commence, diligently pursue, or complete the repairs of the violations within the time specified in the notice or final notice, as applicable. Such hearing shall be public, and the owner shall have a right to file a response to the allegation prior to the public hearing. The hearing shall be subject to any reasonable procedural rules that the BOA has adopted or shall adopt hereafter.

b. Determination of Demolition by Neglect. If the property owner

disagrees with the determination that the subject property is in a state of “Demolition by Neglect”, the property owner shall have a right to appeal that determination in accordance with the rules of this section. Such hearing shall be public, and the owner shall have a right to file a response to the allegation prior to the public hearing. The hearing shall be subject to any reasonable procedural rules that the BOA has adopted or shall adopt hereafter.

c. Determination of Undue Economic Hardship. Determinations made by the CHPB and the Plan for Relief of Economic Hardship prepared by the CHPB may be appealed to the BOA. To perfect such an appeal, the appeal must be filed by an aggrieved party with the BOA within ten (10) days following receipt of the determination or the order for repair of the property.

4. A record of the entire hearing shall be made by tape recording or by other means of permanent recording determined appropriate. A recording of the proceedings shall be made available to all parties upon request and upon payment of a fee established by the City.

5. Oral evidence shall be taken only on oath or affirmation.

6. Irrelevant and unduly repetitious evidence shall be excluded.

7. Each party shall have the following rights, among others:

a. To call and examine witnesses on any matter relevant to the issues of the hearing;

b. To introduce documentary and physical evidence;

c. To cross examine opposing witnesses on any matter relevant to the issue of the hearing;

d. To refuse the evidence against the party; and

e. To representation by counsel.

L. Economic Hardship.

1. The property owner is entitled to make a claim of undue economic hardship if the owner claims to be unable to make needed repairs to the property because it is economically unfeasible. Enforcement of the review committee’s determination shall be stayed until after the CHPB’s determination regarding the claim.

2. When a claim of economic hardship owing to the effects of this section is made in writing by the owner within fifteen (15) days of service of the notice of complaint, the CHPB 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 section, when a claim of economic hardship is made, the owner must prove the following:

a. The qualifying building is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

b. 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

c. Diligent efforts to find a purchaser interested in acquiring the qualifying building and preserving it have failed.

3. Findings of economic hardship. Based on the information presented at the

hearing, and within no more than thirty (30) days following, the CHPB shall make a finding of economic hardship or no economic hardship and shall enter the reasons for such finding into the record.

a. If a finding of no economic hardship is made, the CHPB shall serve upon the owner or the owner's attorney a final notice ordering the owner to make repairs, improvements, or correction of defects pursuant to subsection I.1. In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship.

4. Plan to Relieve Economic Hardship.

a. A recommended plan to relieve the economic hardship shall include, but is not limited to:

- i. Loans or grants from the city, the county, or other public, private, or nonprofit sources;
- ii. Acquisition by purchase;
- iii. Changes in building code modifications, applicable zoning regulations, or relaxation of the provisions of this section sufficient to mitigate the undue economic hardship; and
- iv. Capital expenditure by the property owner.

b. The CHPB 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.

c. The Director, or designee, shall issue an order regarding the time period during which the property should be repaired, improved, or defects corrected, taking into account the provisions of the recommended plan.

5. Other City Powers; City's Election of Remedies.

a. Nothing contained within this section shall diminish the city's power to declare a building unsafe or in violation of the minimum housing code or any other applicable statute or code. In addition, the procedures described herein are mandatory only for determinations being made solely under the authority of this section. Where other sections of the Cheyenne City Code apply, the city may, in its discretion, choose to process any action regarding the property under such other provisions alone, or under such provisions along with these provisions concurrently, or solely under these provisions. The city may also suspend the procedures of this section at any time if an action has been initiated under other applicable law.

M. Enforcement Provision.

1. Penalties and Remedies.

a. Enforcement of this section shall be any one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

- i. Equitable Remedy. The city may apply for any appropriate equitable remedy to enforce the provisions of this section.
- ii. Order for Compliance. The city can apply for and the

court may issue an order directing that improvements or repairs be made or that any other action be taken that is necessary to bring the property into compliance with this section. Whenever the party is cited for contempt by the court and the city has executed the order of abatement, the city shall have a lien on the property for the cost of executing the order of abatement.

iii. Civil Penalty. Civil penalties can be assessed for failure to comply with a final administrative determination or an un-appealed CHPB review committee decision under the provisions and guidelines for assessing such penalties for zoning code violations. Prior to imposing a civil penalty, the Planning and Development Department shall deliver a written notice by personal service or by registered mail or by certified mail, return receipt requested, to the person responsible for the violation indicating the nature of the violation and ordering corrective action. Where the violation is the failure to remedy a condition of neglect within the time periods provided by the Director, or designee, or the CHPB, no additional time period for compliance need be given. The notice shall include information regarding the possible assessment of civil penalties and other possible enforcement actions. If this notice is appealed to the BOA, the CHPB shall not rehear any issue that was heard by the CHPB or could have been so heard had an appeal to the CHPB been made. Rather, the BOA shall limit the scope of its review to whether there has been compliance with the Director's, or designee's, determination or the CHPB's determination, as applicable.

2. Enforcement Alternatives.

a. In addition to the penalties authorized by subsection M.1., a violation which is intentional, or occurs through gross negligence, shall be subject to the following provisions:

i. No permit, administrative approval, or land use application relating to the real property which is the subject of the alleged violation shall be issued under Title 15 of the Cheyenne City Code for any alteration or new construction affecting such property for a period of five (5) years, or if ownership changes, following the last date of the violation, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the CHPB that the violation has been corrected, any remaining portion of the five (5) year prohibition on issuance of a permit may be waived.

3. 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.

4. 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 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 Planning and Development Department shall have the authority to issue all orders necessary to enforce this provision.

5. 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 mechanic's or materialman's lien on such real estate, lot, or lots 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. The county 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 or county to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

a. Each day during which any person commits, or allows to remain unabated, any of the actions specified as unlawful in this section shall constitute a separate offense. Multiple violations of this section may be included on a single notice to abate or a single summons and complaint.

6. 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 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 Planning and Development Department and the city attorney's office, subject to the approval of the CHPB, it shall be the burden of any person seeking the forgiveness or reduction of any such liens to prove to the satisfaction of the Planning and Development Department that the applicable conditions have been satisfied.

Section 2. That the current Section 15.50.070, Appeal, is renumbered to Section 15.50.080, and that the current Section 15.50.080, Violation–Penalty, is renumbered to Section 15.50.090.

Section 3. That this ordinance shall be in full force and effect upon its approval and publication.

FIRST READING: _____
SECOND READING: _____
THIRD AND FINAL READING: _____

Patrick Collins, Mayor

(SEAL)
ATTEST:

Kristina F. Jones, City Clerk

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