

DILAPIDATED BUILDING AND MISCELLANEOUS DEBRIS ORDINANCE

PURPOSE

The purpose of the ordinance is to prevent, reduce, or eliminate the accumulation of miscellaneous debris or the occurrence of dilapidated buildings which threaten the public health, safety and general welfare of persons throughout the City of Tolna by limiting, restricting or prohibiting the storage of, placement of, or unreasonable accumulation of materials which are no longer safely or properly usable for the purpose for which they intended and as they are defined below, in order to prevent injury or the threat of injury to residents or others throughout the City.

SECTION 1. DEFINITIONS. The following definitions shall apply to the interpretation and enforcement of this ordinance:

1. "Person" as used in the ordinance shall mean and include one or more persons of either sex, corporations, associations, clubs, partnerships or entities of any other kind.
2. "Miscellaneous debris" is defined to mean materials of any kind which are no longer safely or properly useable for the purpose for which they were intended, or which are stored or allowed to remain in open unsheltered space anywhere within the City in a manner which tends to create a hazard to the health, safety or welfare of the public. "Miscellaneous debris" shall include, but not be limited to: scrap metal, cans, bottles, wire, tires, glass appliances, machinery, building materials, unlicensed vehicles, semi-trucks.
3. "Basement" shall mean a story of a building located partly underground, but having less than two-thirds of its clear foot-to-ceiling height below outside grade.
4. "Ceiling" shall mean the interior overhead surface of a room.
5. "Cellar" shall mean a story of a building located partly or wholly underground and having more than two-thirds of its clear foot-to-ceiling height below outside grade.
6. "City Building Inspector" shall mean the legally designated building authority of the City or authorized representative.
7. "Dwelling" shall mean any building, structure, or parts thereof used and occupied for human habitation, or intended to be so used, and includes appurtenances (accessories) and utilities belonging thereto or usually enjoyed therewith
8. "Dwelling Unit" shall mean any room or group of rooms located within a building and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating purposes.
9. "Outbuilding" shall mean a building, such as a shed, or garage, on the same property but separate from a more important one, such as a house.
10. "Extermination" shall mean the control and elimination of insects, rodents, or any wild or feral animal by eliminating their harboring places, by depriving or making inaccessible materials that may serve as their food, by poisoning, spraying, fumigating, trapping, or any other recognized and legal pest elimination methods approved by the City Health Officer.
11. "Family" shall mean one or more persons occupying a dwelling or dwelling unit and living as a single nonprofit unit.
12. "Garbage" shall mean the animal and vegetable wastes resulting from handling, preparation, cooking, and consumption of food.
13. "Habitable" shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes.
14. "Infestation" shall mean the presence within or around a dwelling, of any insects, rodents or any wild or feral animals.

15. "Multiple Dwelling" shall mean any structure or building containing more than one dwelling unit.
16. "Occupant" shall mean any person, over one year of age, living, sleeping, cooking, eating in, or having actual possession of a dwelling or dwelling unit.
17. "Owner" shall mean any person who alone, jointly, or severally with others:
 - a. Shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
 - b. Shall have charge, care, or control of any dwelling or dwelling unit, as owner or agent of owner, as an executor, executrix, administrator, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this ordinance, and of the rules and regulations adapted pursuant thereto, to the same extent as if he were the owner.
18. "Repair" shall mean to restore to adequate condition, as determined by the City Building Inspector.
19. "Substandard" shall mean any dwelling, dwelling unit, or premises violating and provisions of this ordinance.
20. "Dilapidated building" shall mean any structure that has physical deterioration that is no longer habitable or useful for any purpose for which it may have been intended.
 - a. Any structure or part of a structure which, because of fire, wind, other natural occurrence or physical deterioration is no longer habitable not useful for any other purpose for which it may have been intended; or
 - b. Whenever the building or structure, or any portion thereof has been wrecked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to natural elements than is required in the case of similar new construction; or
 - c. Whenever the building or structure, or any portion or member or appurtenance thereof is likely to fail, or become detached or dislodged, or to collapse and thereby injure person or damage property; or
 - d. Any partially completed structure, unless such structure is in the course of construction within one year and not more than two one-year extensions for completion

SECTION 2. INSPECTION OF DWELLINGS, DWELLING UNITS, AND PREMISES.

1. The City Building Inspector is hereby authorized and directed to make inspections to determine the conditions of all dwellings, dwelling units, and premises located within the City in order that he may perform his duty of safeguarding the health and safety of the occupants of such dwellings and of the general public.
2. For the purpose of making such inspections, the City Building Inspector, is hereby authorized to enter, examine, and survey, at reasonable times, all dwellings, dwelling units, and premises.

3. The owner or occupant of every dwelling or dwelling unit, or the persons in charge thereof, shall give the City Building Inspector access to such dwelling, dwelling unit, and its premises, at reasonable times for purposes of inspection.
4. Each occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employees, access to any part of such dwelling, dwelling unit, or its premises, at reasonable times for the purposes of making such repairs and/or alterations as are necessary to effect compliance with the provisions of this or any lawful order issued pursuant to the provisions of this ordinance.

SECTION 3. DWELLING UNIT UNFIT FOR HUMAN HABITATION. The City Building Inspector shall determine that a dwelling is unfit for human habitation or a building is substandard if he finds that any of the following conditions exist:

1. Building supporting members which show thirty-three percent (33%) or more damage or deterioration.
2. Buildings that have interior or outside walls or coverage which shows fifty percent (50%) or more damage or deterioration.
3. Buildings which have floors or roofs with improperly distributed loads, which are overloaded, or which have insufficient strength to be reasonably safe for the purpose used or such framing members deflect over 1/360 of a span.
4. Buildings which have been damaged by fire, wind, or other causes that endanger the lives, safety, or welfare of the occupants or other people of the City.
5. Buildings which are dilapidated decayed, unsanitary, or in disrepair which are likely to cause sickness or disease, or to cause injury to the health, safety, or welfare of the occupants or to other people of the City.
6. Buildings in which each living unit does not have safe and unobstructed means of egress leading to a safe and open space at ground level as required by the City Building Code.
7. Buildings which have defects, therein increasing the hazards of fire, accidents, or other calamities such as lack of adequate ventilation, lighting, heating, heating, or sanitary facilities as endangering the health, morals, safety, or general welfare of the occupants or other residents of the City.
8. Buildings which are in violation of any provisions of the building regulations, fire prevention, or ordinances of the City.
9. Buildings in which the interior walls, ceilings, and floors of all habitable rooms are not of durable material, in good repair, and well painted.
10. Buildings in which the exterior walls are not covered with an approved type of sheathing, stucco, brick, or other recognized type of material in good repair, as determined by the city building inspector.
11. Buildings or premises that violate any ordinance of the City relating to sanitation and safety.
12. Dwelling units in which the bedrooms or bathrooms are not available through hallways or other means to assure the privacy of the occupants.

SECTION 4. RESPONSIBILITY OF OWNERS AND OCCUPANTS.

1. Every owner of a dwelling or dwelling unit containing two or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises.
2. Every occupant of a dwelling or building shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit, and premises thereof which he occupies and controls.
3. Every occupant of a dwelling or dwelling unit shall dispose of all rubbish in a clean and sanitary manner by placing it in the rubbish containers as required by the City ordinance.
4. No owner shall occupy or let to any other occupant any vacant dwelling unit unless it is clean, sanitary, fit for human habitation, and not in violation with this ordinance.
6. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other wild or feral animals therein or on his premises; and every owner of a dwelling or building containing more than one dwelling unit shall be responsible for such extermination whenever a dwelling unit within such building shall become infested.

SECTION 5. DUTIES OF OCCUPANTS.

It shall be the duty of every occupant of a dwelling to:

1. Keep the dwelling unit and grounds pertaining to it in a clean and sanitary condition, free from fire hazards, free of rodents, household pests, wild and feral animals
2. Keep all plumbing in reasonably good working order and free of obstruction.
3. Provide sound and tight garbage, rubbish, and ash containers when the same are not supplied by the owner, and keep all containers by whoever supplied in a clean and sanitary condition.
4. Comply with the requirements of this ordinance when the duties mentioned therein falls on the occupants.

SECTION 6. REGULATIONS-NUISANCE

No person shall store, place, park or otherwise allow "miscellaneous debris" or "dilapidated buildings" on residential property within the City of Tolna for a continuous period of 30 days or more.

Any parking, storage, placement of materials, or buildings upon properties in the City of Tolna in violation of the regulation and definitions as set forth above, is hereby declared to be a public nuisance which may be enjoined or which may subject the violator to penalties as described below.

SECTION 7. ENFORCEMENT

Any person who violates any of the provisions of this Ordinance shall be subject to the following provisions for enforcement:

1. This Ordinance shall be enforced by the person or persons as designated by the Tolna City Council.
2. Any person who is found to have violated the provisions of this Ordinance shall be advised of such violation by written notice and such person shall be given 30 days from receipt of notice to remove or cure such violation. Notice shall be considered to have been validly effected by delivery of such written statement by first class mail to the owner or occupant of the property upon which the violation is stated to have occurred. Notice shall also be given in similar fashion to any party holding an interest in the property as may be reflected in the records of the County Recorder, a mortgagee by way of example. Said Notice, in addition to advising the owner or occupant of the nature of the violation, shall state that the owner or

occupant may make a written request for hearing before the City Council by delivering such written request to the City Auditor within 15 days of the receipt of the written Notice.

3. If any person who receives such Notice of violation makes a written request for hearing and delivers such written request to the City Auditor within fifteen (15) days of the receipt of such Notice, they shall be granted a hearing by the City Council to hear such appeal. At such hearing, the City Council shall consider the arguments presented by the person requesting the appeal in defense of the Notice of violation. A majority of the Council may affirm, modify, or reverse, in whole or in part, such Notice of violation or issue a written Order for action.

The City Council shall serve upon the owner, occupant, mortgagee, lessee, and all other persons having an interest in any such building so ordered repaired, vacated, or demolished, a copy of its Order or such Notice to be served upon such owner, occupant, mortgagee, or lessee within ten (10) days after the issuance of such an Order. Such owner, occupant, mortgagee or lessee shall thereafter have thirty (30) days from the date of the service of such Order upon such person in which to appeal from such Order to the District Court of Nelson County, North Dakota, or to take such other legal steps to enjoin the enforcement of such Order as the owner, occupant, mortgagee or lessee may deem proper.

4. Should said owner or occupant fail to conform with the provisions of this ordinance and the provisions of the Notice or within the time limit therein or in such further timeframe as may be provided by the City Council through the issuance of its Order, it shall The City Auditor and Mayor shall keep an accurate account of the expenses incurred in so doing with respect to each parcel of land entered upon and shall make a Sworn Statement of said account and deliver same to the City Council. The City Auditor shall also, by first class mail, serve a copy thereof upon the owner and/or occupant of the premises. Upon receipt of the account, the City Council shall audit said account and, if correct, all such account shall be paid from the General Fund of the City. The Sworn Statement shall give the date or dates when such miscellaneous debris and all other nuisances were removed, and name and last known address of the owner and description of the lands involved and the costs of such labor. When such accounts shall be audited, allowed, and paid as above provided, it shall be the duty of the City Auditor to certify them forthwith to the County Auditor. All expenditures represented by said accounts shall be levied on the lands in which such expenditures were made and collected as an assessment in the same manner as other taxes and paid into the General Fund. In carrying out the above functions, the City Council may do so either through City personnel or by means of employing an independent contractor. Said independent contractor shall not be an employee of the City, but shall be authorized by order of the City Council to remove the debris or other nuisances from the premises described in the Notice to the owner referred to above.

SECTION 8: PENALTY

1.. The owner of any substandard house or outbuilding who shall fail to comply with any Notice or Order to repair, vacate, or demolish said building given by any person authorized by this article to give such Notice or Order shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not exceeding five hundred dollars (\$500.00) for each offense. Every day subsequent to such Notice in which the said owner shall fail to comply with any Notice or Order as above stated shall be deemed a separate offense

2. The occupant or lessee in possession who fails to comply with any Notice to vacate and/or who fails to repair said building in accordance with any Notice given as provided for in this article shall be guilty of misdemeanor and, upon conviction thereof, shall be fined an amount not exceeding five hundred dollars (\$500.00) for each offense. Every day subsequent to such Notice for failure to comply with any Notice or Order as above stated shall be deemed a separate offense.

SECTION 9: IMMUNITY

No officer, agent, or employee of the City of Tolna shall be rendered personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of the duties of this article. Any suit brought against any officer, agent, or employee of the City of Tolna as a

result of any act required or permitted in the discharge of said person's duties under this article shall be defended by the city attorney until the final determination of the proceedings therein.

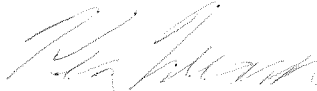
SECTION 10: SAVINGS CLAUSE

The provisions of the Ordinance are hereby declared to be severable and if any clause, word, section or provision is declared void or unenforceable for any reason by any competent jurisdiction, it shall not affect any portion of the Ordinance other than said part or portion thereof.

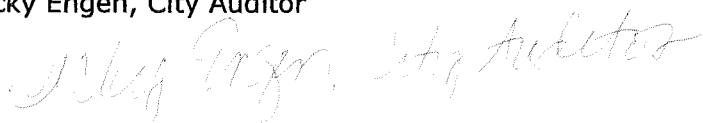
Attest:

Approved:

Vicky Engen, City Auditor



Ken Quam, Mayor



First Reading: August 28, 2013

Final Reading and Passage: September 11, 2013

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