ENGROSSED HOUSE
BILL NO. 2639

By: Steele and Adkins of the House

and

Aldridge of the Senate

(cities and towns - amending 11 O.S., Section 22-112 - condemnation of dilapidated buildings - appeals procedure - codification - effective date)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 2001, Section 22-112, is amended to read as follows:

Section 22-112. A. A municipal governing body may cause dilapidated buildings within the municipal limits to be torn down and removed in accordance with the following procedures:

1. At least ~~ten (10)~~ thirty (30) days' notice that a building is to be torn down or removed shall be given to the owner of the property before the governing body holds a hearing. A copy of the notice shall be posted on the property to be affected. In addition, a copy of the notice shall be sent by mail to the property owner at the address shown by the current year's tax rolls in the office of the county treasurer. Written notice shall also be mailed to any mortgage holder as shown by the records in the office of the county clerk to the last-known address of the mortgagee. At the time of mailing of notice to any property owner or mortgage holder, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the

name and address of the mailee. However, if neither the property owner nor mortgage holder can be located, notice may be given by posting a copy of the notice on the property, or by publication as defined in Section 1-102 of this title. The notice may be published once not less than ~~ten (10)~~ thirty (30) days prior to any hearing or action by the municipality pursuant to the provisions of this section;

2. A hearing shall be held by the governing body to determine if the property is dilapidated and has become detrimental to the health, safety, or welfare of the general public and the community, or if the property creates a fire hazard which is dangerous to other property;

3. Pursuant to a finding that the condition of the property constitutes a detriment or a hazard and that the property would be benefited by the removal of such conditions, the governing body may cause the dilapidated building to be torn down and removed. The governing body shall fix reasonable dates for the commencement and completion of the work. The municipal clerk shall immediately file a notice of dilapidation and lien with the county clerk describing the property, the findings of the municipality at the hearing, and stating that the municipality claims a lien on the property for the destruction and removal costs and that such costs are the personal obligation of the property owner from and after the date of filing of the notice. The agents of the municipality are granted the right of entry on the property for the performance of the necessary duties as a governmental function of the municipality if the work is not performed by the property owner within dates fixed by the governing body;

4. The governing body shall determine the actual cost of the dismantling and removal of dilapidated buildings and any other expenses that may be necessary in conjunction with the dismantling and removal of the buildings, including the cost of notice and

mailing. The municipal clerk shall forward a statement of the actual cost attributable to the dismantling and removal of the buildings and a demand for payment of such costs, by mail to the property owner. In addition, a copy of the statement shall be mailed to any mortgage holder at the address provided for in paragraph 1 of this subsection. At the time of mailing of the statement of costs to any property owner or mortgage holder, the municipality shall obtain a receipt of mailing from the postal service, which receipt shall indicate the date of mailing and the name and address of the mailee. If a municipality dismantles or removes any dilapidated buildings, the cost to the property owner shall not exceed the actual cost of the labor, maintenance, and equipment required for the dismantling and removal of the dilapidated buildings. If dismantling and removal of the dilapidated buildings is done on a private contract basis, the contract shall be awarded to the lowest and best bidder; ~~and~~

5. When payment is made to the municipality for costs incurred, the municipal clerk shall file a release of lien, but if payment attributable to the actual cost of the dismantling and removal of the buildings is not made within six (6) months from the date of the mailing of the statement to the owner of such property, the municipal clerk shall forward a certified statement of the amount of the cost to the county treasurer of the county in which the property is located. Once certified to the county treasurer, payment may only be made to the county treasurer except as otherwise provided for in this section. The costs shall be levied on the property and collected by the county treasurer as are other taxes authorized by law. Until finally paid, the costs and the interest thereon shall be the personal obligation of the property owner from and after the date of the notice of dilapidation and lien is filed with the county clerk. In addition the cost and the interest thereon shall be a lien against the property from the date the notice of the lien is

filed with the county clerk. The lien shall be coequal with the lien of ad valorem taxes and all other taxes and special assessments and shall be prior and superior to all other titles and liens against the property. The lien shall continue until the cost is fully paid. At the time of collection, the county treasurer shall collect a fee of Five Dollars ($5.00) for each parcel of property. The fee shall be deposited to the credit of the general fund of the county. If the county treasurer and the municipality agree that the county treasurer is unable to collect the assessment, the municipality may pursue a civil remedy for collection of the amount owing and interest thereon including an action in personam against the property owner and an action in rem to foreclose its lien against the property. A mineral interest, if severed from the surface interest and not owned by the surface owner, shall not be subject to any tax or judgment lien created pursuant to this section. Upon receiving payment, the municipal clerk shall forward to the county treasurer a notice of such payment and shall direct discharge of the lien; and

6. An appeal from the order of the municipal governing body may be taken by any person or persons, jointly or severally aggrieved, to the district court in the county in which the situs of the municipality is located. The appeal shall be filed within ten (10) working days from the order. The appeal shall be heard and tried on the record in the district court. Upon filing the notice of appeal, the city clerk shall immediately transmit to the court clerk the original, or certified copies, of all papers constituting the record in the case, together with the order, decision, or ruling of the municipal governing body.

B. The municipality may designate, by ordinance, an administrative officer or administrative body to carry out the duties of the governing body specified in this section. The property owner shall have the right of appeal to the municipal

governing body from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written notice of appeal with the municipal clerk within ten (10) days after the administrative order is rendered.

C. For the purposes of this section:

1. "Dilapidated building" means:

a. a structure which through neglect or injury lacks necessary repairs or otherwise is in a state of decay or partial ruin to such an extent that the structure is a hazard to the health, safety, or welfare of the general public,

b. a structure which is unfit for human occupancy due to the lack of necessary repairs and is considered uninhabitable or is a hazard to the health, safety, and welfare of the general public,

c. a structure which is determined by the municipal governing body or administrative officer of the municipal governing body to be an unsecured building, as defined by Section 22-112.1 of this title, more than three times within any twelve-month period,

d. a structure which has been boarded and secured, as defined by Section 22-112.1 of this title, for more than thirty-six (36) consecutive months, or

e. a structure declared by the municipal governing body to constitute a public nuisance; and

2. "Owner" means the owner of record as shown by the most current tax rolls of the county treasurer.

D. Nothing in the provisions of this section shall prevent the municipality from abating a dilapidated building as a nuisance or otherwise exercising its police power to protect the health, safety, or welfare of the general public.

E. The officers, employees or agents of the municipality shall not be liable for any damages or loss of property due to the removal of dilapidated buildings performed pursuant to the provisions of this section or as otherwise prescribed by law.

F. The provisions of this section shall not apply to any property zoned and used for agricultural purposes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 43-109.1 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. Any suit or appeal from any action, decision, ruling, judgment, or order of the municipal governing body may be taken by any person or persons, jointly or severally aggrieved, or any taxpayer to the district court in the county in which the situs of the municipality is located.

B. The suit or appeal shall be filed with the district court within thirty (30) working days with notice to the municipal clerk. The notice shall specify the grounds for the suit or appeal. No bond or deposit for costs shall be required for the suit or appeal.

C. Upon filing the notice of suit or appeal, the municipal clerk shall immediately transmit to the court clerk the original, or certified copies, of all papers constituting the record in the case, together with the order, decision, or ruling of the board.

D. Costs shall not be allowed against the municipal governing body unless it appears to the district court that the body acted with gross negligence or in bad faith or with malice in making the decision appealed from. An appeal shall lie from the action of the district court as in all other civil actions.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 45-106 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. Any suit or appeal from any action, decision, ruling, judgment, or order of the municipal planning commission may be taken

by any person or persons, jointly or severally aggrieved, or any taxpayer to the district court in the county in which the situs of the municipality is located.

B. The suit or appeal shall be filed with the district court within thirty (30) working days with notice to the municipal clerk. The notice shall specify the grounds for the suit or appeal. No bond or deposit for costs shall be required for the suit or appeal.

C. Upon filing the notice of suit or appeal, the municipal clerk shall immediately transmit to the court clerk the original, or certified copies, of all papers constituting the record in the case, together with the order, decision, or ruling of the board.

D. Costs shall not be allowed against the municipal planning commission unless it appears to the district court that the body acted with gross negligence or in bad faith or with malice in making the decision appealed from. An appeal shall lie from the action of the district court as in all other civil actions.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 46-105 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. Any suit or appeal from any action, decision, ruling, judgment, or order of the regional planning commission may be taken by any person or persons, jointly or severally aggrieved, or any taxpayer to the district court in the county in which the situs of the municipality is located.

B. The suit or appeal shall be filed with the district court within thirty (30) working days with notice to the municipal clerk. The notice shall specify the grounds for the suit or appeal. No bond or deposit for costs shall be required for the suit or appeal.

C. Upon filing the notice of suit or appeal, the municipal clerk shall immediately transmit to the court clerk the original, or certified copies, of all papers constituting the record in the case, together with the order, decision, or ruling of the board.

D. Costs shall not be allowed against the regional planning commission unless it appears to the district court that the body acted with gross negligence or in bad faith or with malice in making the decision appealed from. An appeal shall lie from the action of the district court as in all other civil actions.

SECTION 5. This act shall become effective November 1, 2004.

Passed the House of Representatives the 26th day of February, 2004.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2004.

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Presiding Officer of the Senate