STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

HOUSE BILL 3241 By: Scott

AS INTRODUCED

An Act relating to cities and towns; declaring legislative intent; designating certain buildings to constitute public nuisance; providing procedures for governing body to abate public nuisance; providing for petition process after certain determination; authorizing governing body to designate administrative officer to perform duties; defining terms; providing exceptions; providing for exemptions from liability for certain person; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Oklahoma Legislature hereby declares that one or more vacant buildings constitute a public nuisance in any city.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 112.1.1 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. A vacant building shall constitute a public nuisance if:

1. It is detrimental to the public health, safety, or welfare of the inhabitants of and visitors to the city;

2. It causes increased municipal regulatory costs and increased municipal police and fire protection costs; and

3. It devalues abutting and nearby real properties.

B. A municipal governing body may abate the public nuisance caused by any vacant building within the municipal limits in accordance with the following procedures:

1. At least ten (10) days' notice that a vacant building is to be abated pursuant to the procedures for abatement set forth in this section shall be given to the owner of the property before the governing body holds a hearing. A copy of the notice shall be sent by mail to the owner as defined by this section. 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 city 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 Title 11 of the Oklahoma Statutes. Such notice shall be published once not less than ten

(10) days prior to any hearing or action by the city pursuant to the provisions of this section;

2. A hearing shall be held by the governing body to determine if the property is a vacant building as defined by this section;

3. Pursuant to a determination that the building is a vacant building, the governing body may order the agents of the city to pursue abatement of the public nuisance caused by the building and shall order the municipal clerk to place the building on a vacant building list to be maintained by the clerk. At any time after such determination and order, the agents of the city may cause the public nuisance to be abated as authorized in this section, and such abatement may continue until such time as the building is removed from the vacant building list in accordance with the procedures set forth in subsection C of this section;

4. Abatement of the vacant building by the city may include any or all of the following:

a. any lawful municipal regulatory or municipal police and fire protection action in relation to the vacant building or the owner of such building necessary or appropriate for the protection of inhabitants in and visitors to the city. The agents of the city are granted the right of entry onto the property for the performance of any such action as a governmental function of the city,

b. the quarterly assessment against the property on which the vacant building is located and against the owner of the vacant building of the actual costs of any municipal regulatory action taken in relation to the vacant building or the owner of such building as authorized above,

c. the quarterly assessment against the property on which the vacant building is located and against the owner of the vacant building of the actual costs of any municipal police or fire protection action taken in relation to the vacant building or the owner of such building as authorized above, and

d. an assessment for any other actual expenses incurred by the city in relation to the vacant building, including but not limited to the cost of notices, mailings, and publications;

5. After a determination that a building is a vacant building, and before commencement of any of the abatement actions authorized by paragraph 3 of this subsection, the municipal clerk shall file a notice of lien with the county clerk describing the property, the findings of the governing body at the hearing, and stating that the city claims a lien on the property for all abatement costs and that such costs shall also constitute the personal obligation of the property owner from and after the date of filing of the notice;

6. On a quarterly basis, from and after the determination that a building is a vacant building, and continuing until such time as the building is removed from the vacant building list in accordance with the procedures set forth in subsection C of this section, the municipal clerk shall determine the actual quarterly abatement costs for the abatement procedures authorized by paragraph 3 of this subsection. After such determination, the municipal clerk shall mail a statement of the actual quarterly abatement costs for the abatement procedures authorized by paragraph 3 of this subsection to the property owner and demand the payment of such costs by the 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 municipal clerk 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; and

7. When full payment is made to the municipal clerk for actual quarterly abatement costs incurred and billed in accordance with paragraph 6 of this subsection, the municipal clerk shall send the property owner and any mortgage holder a receipt for such payment; but if payment attributable to the actual quarterly costs of such abatement 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 such costs to the county treasurer to be collected as are 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 the notice of lien was 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 lien was filed with the county clerk. Said 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 ten percent (10%) of the amount collected for each parcel of property. The fee shall be deposited to the credit of the general fund of the county. At any time prior to collection as provided for in this paragraph, the city may pursue any 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 lien created pursuant to this section. Upon receiving full payment, the municipal clerk shall forward to the county treasurer a notice of such payment. The collection process set forth in this paragraph may be pursued by the

city in relation to any quarterly assessment of abatement costs made by the municipal clerk on behalf of the city.

C. Any owner or mortgage holder of any building determined by the governing body of the city to be a vacant building pursuant to this section may petition the governing body in writing at any time after such determination for removal of such building from the vacant building list maintained by the municipal clerk. Any such petition shall be filed with the municipal clerk. Within thirty (30) days after such petition is filed with the municipal clerk, the governing body shall hold a hearing to determine if the building is no longer a vacant building. Upon such a determination, the governing body shall order the building removed from the vacant building list. The municipal clerk shall comply with such order by removing the building from the vacant building list and shall file a release of the notice of lien filed in the county clerk's office within ten (10) days after such order; provided, the real property on which the vacant building is located and the owner of such building shall remain liable for payment of any and all abatement costs incurred by the city prior to the determination and order by the governing body that the building should be removed from the vacant building list. Until fully paid, any such prior costs shall remain subject to collection by the city or the county treasurer as provided for by this section.

D. The governing body may designate, by ordinance, an administrative officer or administrative body of the city to carry out any or all of the duties of the governing body specified in this section. The property owner shall have the right of appeal to the governing body from any order of the administrative officer or administrative body. Such appeal shall be taken by filing a written notice of appeal with the municipal clerk within ten (10) days after the administrative order is delivered or mailed to the owner.

E. For purposes of this section:

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

2. "Vacant building" means any building or portion thereof located within the city that, regardless of its structural condition, is not currently occupied and to which any one of the following conditions apply:

a. the building has been declared unsecured or dilapidated pursuant to Section 22-112 or 22-112.1 of Title 11 of the Oklahoma Statutes and remains in such condition,

b. the water or electric service to the building has been shut off for more than sixty (60) days, or

c. the building is the subject of a foreclosure action.

F. Nothing in the provisions of this section shall prevent the governing body from otherwise exercising its police power to protect

the health, safety, or welfare of the general public in relation to a vacant building.

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

H. The officers, employees or agents of the city shall not be liable for any damages or loss of property due to the abatement of the public nuisance caused by a vacant building performed pursuant to the provisions of this section or as otherwise provided by law.

SECTION 3. This act shall become effective November 1, 2014.

54-2-9030 LRB 12/31/13