

COUNCIL COMMUNICATION

Meeting Date: October 12, 2021	Agenda Item: 12A	Agenda Location: Action Items	Goal(s):	Legal Review: <i>TY</i>	<input checked="" type="checkbox"/> 1 st Reading <input type="checkbox"/> 2 nd Reading
Subject: An ordinance amending Chapter 10 of the Thornton City Code by enacting a new Article VI, entitled the Neglected and Derelict Buildings Code, pertaining to preventing nonresidential, multifamily, and common area buildings and spaces within private developments from becoming or remaining neglected or derelict.					
Recommended by: Jeff Coder <i>JBC</i>				Approved by: Kevin S. Woods <i>KW</i>	
Presenter(s): Robin Brown, Senior City Development Analyst				Ordinance previously introduced by: _____	

SYNOPSIS:

Staff has prepared an ordinance to address neglected and derelict properties in the City, which applies to nonresidential properties, multifamily (apartment) buildings, and the common area buildings and spaces within private developments, such as clubhouses, homeowners’ association common areas, and similar. The ordinance includes remedial requirements, property registration and monitoring, hearing and court processes, civil penalties, and other judicial remedies. An effective date of January 1, 2022 has been included in the ordinance to provide time for communicating expectations to affected property owners.

RECOMMENDATION:

Staff recommends Alternative No. 1, approval of the ordinance as drafted, to implement a neglected and derelict buildings ordinance focused on nonresidential and multifamily (apartment) buildings, as well as common area buildings and spaces within private developments. The proposed remedial requirements, property registration and monitoring, hearing and court processes, civil penalties, and other judicial remedies would help to address the current gap in enforcement options between new construction requirements and dangerous buildings.

BUDGET/STAFF IMPLICATIONS:

Existing staff could be used to evaluate buildings and properties for compliance with the proposed ordinance, but there may be costs for expert evaluation of specific types of issues. Additional costs are anticipated if the use of a receiver is required. Complete cost and resource requirements depend upon the specific situation and could vary widely, from a few thousand dollars to \$50,000 or more if it is necessary for the City to fund the corrective work and receiver’s fees. Costs could potentially be recovered through liens or receiver’s certificates, although the timeline could be lengthy depending on the situation.

ALTERNATIVES:

1. Approve the ordinance as drafted to implement a neglected and derelict buildings ordinance focused on nonresidential and multifamily (apartment) buildings, as well as common area buildings and spaces within private developments.
2. Approve the ordinance as drafted to implement a neglected and derelict buildings ordinance focused on nonresidential and multifamily (apartment) buildings, but do not include common area buildings and spaces within private developments in the scope of the ordinance.

3. Amend the ordinance in a manner directed by Council.
4. Do not approve the ordinance.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

The proposed ordinance is another tool to assist with neglected and derelict buildings, which are often unattractive and create quality of life concerns for neighboring business operators and residents. Current regulations do not address many maintenance situations that do not rise to the level of being dangerous or hazardous.

Scope: As drafted, the ordinance addresses all nonresidential properties in the City, including the main and accessory buildings and the associated land. The ordinance also applies to multifamily (apartment) buildings and the common area buildings and spaces within private developments, such as clubhouses, parking lots, and similar. It includes exceptions for designated historic properties.

Definition: Determination that a building is neglected or derelict is based on the Chief Building Official's (CBO's) evaluation of several factors, including but not limited to whether the property is:

- Vacant or illegally occupied for three consecutive months, with no evidence of substantial and ongoing construction activity;
- Wholly or partially boarded up for three consecutive months, with no evidence of substantial and ongoing construction activity;
- Not lawfully occupied, with a history of violation of any provision of City or State law on three separate occasions within a two-year period;
- In continuous violation of a City or State law for six months or longer with no evidence of substantial and ongoing construction work or other corrective activity;
- Not lawfully occupied, and the City utility bill for the premises has been due and unpaid for at least one year;
- Unsafe;
- A neighborhood nuisance, as defined in the ordinance, which includes consideration of factors such as:
 - The length of time that problematic conditions have existed at the property;
 - Overall presence of public health and safety concerns;
 - General interior and exterior conditions, including any vandalism; and
 - If the building is occupied, the owner's failure to complete necessary repairs.

Enforcement: The CBO, or designee, is responsible for enforcing the proposed ordinance. The owner of a property determined to be neglected or derelict, based on the definitions provided in the ordinance, would be notified of the violation(s) and expected corrective actions. Additional aspects of the ordinance are shown below, although some are dependent upon the responsiveness of the owner and the urgency of the violation(s). Owners may also be subject to a municipal summons and complaint for maintaining a property in a neglected or derelict condition.

1. *Emergency abatement or corrective action.* The ordinance provides an option for immediate corrective action by the City if the property is an imminent hazard to life, health, property, or public welfare, with costs assessed to the owner.

2. *Remedial plan.* Owners must submit a reasonable plan for correcting the violations at their property, including the anticipated time for doing so. The CBO may accept or reject the remedial plan.
3. *Placement on the Neglected and Derelict Buildings List (NDBL).* Owners with properties in violation are required to register with the City and provide a local contact to represent them, which includes acceptance of all forms of service, such as summonses and other documents. The ordinance includes a civil penalty for failure to register of up to \$500 per day, up to a maximum total of \$15,000. Properties on the NDBL must also pay an annual fee to cover the City's costs for regular inspection and monitoring. Staff recommends an annual fee of \$1,000, which is consistent with the City and County of Denver, and a late fee, if applicable. Council must establish the fee by resolution. If this ordinance is approved on first reading, staff will present the proposed fees as a resolution for Council's consideration prior to implementation of the ordinance.
4. *Appeals.* Owners may appeal violation notices to a hearing officer designated by the City Manager. The hearing officer's decision may be appealed to the District Court pursuant to the Colorado Rules of Civil Procedure.
5. *Show Cause Hearing:* A show cause hearing may be held if the owner does not submit a remedial plan as required, or if the plan is rejected by the CBO, or if the owner does not comply with the approved remedial plan. The hearing officer will determine whether the CBO's required corrective actions are appropriate and specify a deadline for compliance.
6. *Civil Penalties:* The ordinance authorizes the hearing officer to assess a civil penalty of not more than \$999.00 per day for each day the owner is found to have violated the ordinance or any related permits or regulations. The hearing officer may consider the history of violations, whether the owner was deliberate or negligent, whether the neglected or derelict property is a historic property, the gravity of the violation, and the demonstrated good faith of the owner in attempting to achieve timely compliance after notification of a violation. Additionally, when the neglected or derelict property is lawfully used for commercial purposes, the hearing officer may consider the effect of civil penalties on the owner's ability to continue the business.
7. *Court Actions or Judicial Enforcement:* If an owner fails to comply with the hearing officer's final order or an approved remedial plan, an affected party may bring legal action in the District Court. Affected parties could include the City, a neighboring landowner, or any other person who has suffered damages due to the condition of the property and otherwise has legal standing to bring legal action. This could result in a wide variety of actions against the property owner, including, for example, potential monetary judgments and resultant collection actions against the individual and/or the real estate, or court orders to remedy the problem. Affected parties, including the City, could also petition the District Court for the issuance of a preliminary or permanent injunction, with the goal of preventing further violations. The ordinance also authorizes affected parties to request the District Court to appoint a receiver, which is an independent officer of the Court, to assume responsibility for resolving any outstanding violations at the property.

Effective Date: An effective date of January 1, 2022 has been included in the ordinance to provide time for communicating expectations to affected property owners. This is similar to the process followed after passage of the *South Thornton Urban Renewal Authority Non-Residential Property Maintenance Code* in 2016.

Existing Standards

The City utilizes the adopted International Building Codes, with local amendments, as the foundation for ensuring that all construction and remodeling is safe. However, property maintenance standards and expectations are included in several parts of the City Code, and in some cases, are coordinated by other entities such as the Tri-County Health Department (TCHD) and the Colorado Department of Public Health and Environment (CDPHE). These requirements are minimum standards intended to meet basic health and safety needs.

Prior Discussions

Council reached consensus regarding this item at a Planning Session on July 6, 2021, directing staff to proceed with preparing an ordinance for Council's future consideration. Council previously discussed this item at a Planning Session on January 5, 2021.

INTRODUCED BY: _____

AN ORDINANCE AMENDING CHAPTER 10 OF THE THORNTON CITY CODE BY ENACTING A NEW ARTICLE VI, ENTITLED THE NEGLECTED AND DERELICT BUILDINGS CODE, PERTAINING TO PREVENTING NONRESIDENTIAL, MULTIFAMILY, AND COMMON AREA BUILDINGS AND SPACES WITHIN PRIVATE DEVELOPMENTS FROM BECOMING OR REMAINING NEGLECTED OR DERELICT.

WHEREAS, neglected or derelict buildings and properties are detrimental to the health, safety, and general welfare of the people of the communities and neighborhoods where they exist and to the economic welfare of the City due to the consequential impairment of taxable values upon which, in part, municipal revenues depend; and

WHEREAS, it is necessary to rehabilitate neglected and derelict buildings and prevent properties from becoming or remaining neglected or derelict in order to preserve the existing property values of other real properties within or adjacent to such neglected or derelict buildings or properties and preserve the taxable value of the real property in the City; and

WHEREAS, the regular inspection of properties that are or are likely to become neglected or derelict is essential to mitigate the blighting impacts of these properties, and assessing fees to cover the costs incurred by the City in the running of this program on those properties and owners who have and maintain any neglected or derelict property is appropriate; and

WHEREAS, Chapter 10 of the Thornton City Code constitutes the City's Building Code; and

WHEREAS, this ordinance amends Chapter 10 to enact the Neglected and Derelict Buildings Code, pertaining to nonresidential, multifamily, and common area buildings and spaces within private developments; and

WHEREAS, the Neglected and Derelict Buildings Code is intended to prevent these properties from becoming or remaining neglected or derelict, and further includes remedial requirements, property registration and monitoring, hearing and court processes, civil penalties, and other judicial remedies; and

WHEREAS, this ordinance is necessary to promote the health, safety, and general welfare of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. A new Article VI of Chapter 10 of the Thornton City Code is hereby enacted to read as follows:

ARTICLE VI. – NEGLECTED AND DERELICT BUILDINGS CODE.

DIVISION 1. – SCOPE AND APPLICATION

Sec. 10-300. General.

- (a) *Title.* These regulations shall be known as the Neglected and Derelict Buildings Code of the City of Thornton, hereafter referred to as “this code.”
- (b) *Scope.* The provisions of this code shall apply to all nonresidential and multifamily structures and properties, any associated accessory structures, and to structures, accessory structures, any building or space considered common area within a private development, and properties under common ownership by a homeowners' association, metropolitan district or similar, located in the city.
- (c) *Legislative intent.* The city council finds and declares that neglected or derelict buildings and properties, as defined in this code, are detrimental to the health, safety, and general welfare of the people of the communities where they exist and to the economic welfare of the city overall due to the consequential impairment of taxable values upon which, in part, municipal revenues depend. In order to improve and maintain the general character of the city, it is necessary to rehabilitate such neglected or derelict buildings and properties. The intent of this code is to ensure the public health, safety and welfare by preventing properties within the scope of these provisions from becoming or remaining neglected or derelict, as that term is defined in this code; to mitigate the blighting impacts of these properties; to provide for the regular inspection of properties that are or are likely to become neglected or derelict; to preserve the existing property values of other real properties within or adjacent to such neglected or derelict buildings or properties; to preserve the taxable value of the real property in the city; and to assess fees to cover the costs incurred by the city in the running of this program on those properties and owners who have and maintain any neglected or derelict property.
- (d) *Severability.* If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

Sec. 10-301. Applicability.

- (a) *General.* Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.
- (b) *Referenced building codes and standards.* The building codes and standards referenced in this code shall be those listed in Article IV of this chapter. These shall be considered part of the requirements of this code to the prescribed extent of each such reference.

- (c) *Application of other codes.* Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the adopted building code, as amended. Nothing in this code shall be construed to cancel, modify or set aside any provision of the City Code.
- (d) *Existing remedies.* The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure that is dangerous, unsafe and insanitary.
- (e) *Historic buildings.* The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare.
- (f) *Other laws.* The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

Secs. 10-302-305. Reserved.

DIVISION 2. – DEFINITIONS

Sec. 10-306. General.

- (a) *Scope.* For the purposes of this code, all terms shall have the meanings shown in this division unless otherwise expressly stated.
- (b) *Interchangeability.* Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.
- (c) *Terms defined in other codes.* Where terms are not defined in this code and are defined in the building code or adopted standards, or elsewhere in the City Code, such terms shall have the meanings ascribed to them as stated in those codes.
- (d) *Terms not defined.* Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

Sec. 10-307. Definitions.

As used in this code, the following definitions apply unless the context requires otherwise.

- (a) *Abate or abatement* means to make the neglected or derelict property compliant with the building code and all rules and regulations adopted pursuant to them; provided however, that for a property only cited under Section 10-307(g)(3), compliant with the City Code means compliant with

the underlying city or state law giving rise to the violation of Section 10-307(g)(3). The closing or boarding up of a building that is found to be neglected or derelict is not an abatement.

- (b) *Building* means any building or structure located in the city, as these are defined in the building code. The term “building” shall be construed as though followed by the words “or any part thereof.”
- (c) *Building code* means the code adopted in Section 10-3, along with all primary and secondary codes adopted by reference, as amended.
- (d) *Building official* means the city's designated Chief Building Official or designee.
- (e) *Hearing officer* means a person retained by the city to hear and decide all issues raised in a hearing.
- (f) *Historic property* means a structure that has been designated for preservation in accordance with Chapter 19 of the City Code; or a structure within a designated historic district in accordance with Chapter 19 of the City Code; or a structure listed in the National Register of Historic Places or the Colorado State Register of Historic Places; or a structure within a historic district listed in the National Register of Historic Places or the Colorado State Register of Historic Places.
- (g) *Interested person* means an owner, mortgagee, lienholder, or other person or entity that possesses an interest of record or an interest otherwise provable in property that becomes subject to the provisions of this code. The city and any appointed receiver pursuant to this code are interested persons.
- (h) *Neglected or derelict property* means any building, structure, utility, or property upon which any one or more of the following circumstances exist, as determined by the building official:
 - (1) The property is unsafe, however this factor shall be considered only in the following circumstances:
 - a. In combination with one or more of the circumstance listed in subsections (2) through (6), below; or
 - b. When the term “property” references a utility or parcel of land.
 - (2) The property is, for three consecutive months:
 - a. Not lawfully occupied;
 - b. Wholly or partially boarded up; and
 - c. Does not show evidence of substantial and ongoing construction activity;
 - (3) The property is not lawfully occupied and has been in violation of any provision of city or state law on three separate occasions within a two-year period;

- (4) The property has been in continuous violation of a city or state law for six months or longer with no evidence of substantial and ongoing construction work or other corrective activity;
 - (5) The property is not lawfully occupied and any city utility bill for the premises has been due and unpaid for a period of at least one year; or
 - (6) The property is a neighborhood nuisance as that term is defined in this section.
- (i) *Neighborhood landowner* means an owner of property or neighborhood group that represents the owner of property that is located within 500 feet of property that becomes subject to the provisions of this code.
 - (j) *Neighborhood nuisance* means a property that, by reason of inadequate maintenance, dilapidation, obsolescence or other similar reason, is a danger to the public health, safety or welfare; is structurally unsafe or unsanitary; is not provided with adequate safe egress; constitutes a fire hazard; is otherwise dangerous to human life; or in relation to the existing use constitutes a danger to the public health, safety or welfare. To determine whether a property is a neighborhood nuisance, as appropriate, the building official shall consider:
 - (1) Whether there have been or are City Code violations or violations of other ordinances or statutes;
 - (2) Whether the property is vacant;
 - (3) Whether the grounds are maintained;
 - (4) Whether a building's interior is sound;
 - (5) Whether the property has been vandalized or subject to other destructive activity;
 - (6) The length of time any of the above conditions have existed;
 - (7) In the case of an occupied building, whether an owner obligated by law or lease to provide services, make repairs, purchase fuel or other needed supplies, or pay utility bills has failed to do so; and
 - (8) Other relevant factors as the building official determines.
 - (k) *Not lawfully occupied* means property that is unoccupied or uninhabited; property that is posted as unsafe, regardless of whether occupied; property that has been ordered vacated pursuant to the building code; or property that is occupied only by trespassers or transients seeking temporary hiding or shelter.
 - (l) *Owner* means a person or entity with a legal interest in property or any person or entity that obtains a legal interest in property. Owner shall specifically include any person or entity that subsequently takes title to a property that is subject to this ordinance.

- (m) *Property* means any building, utility, parcel of land, or real property.
- (n) *Substantial and ongoing construction activity* means construction activity that will result in the property being in compliance with all provisions of the City Code, including the building code; conducted under and pursuant to a valid building permit, if a permit is required for the work; and that has received an inspection approval in accordance with the building code within 60 days of an inspection conducted under Section 10-314 of this code.
- (o) *Unsafe* means any property determined to be unsafe based on the criteria and definitions in the building code.

Secs. 10-308 – 10-310. Reserved.

DIVISION 3. – ADMINISTRATION AND ENFORCEMENT

Sec. 10-311. Neglected or derelict buildings or property prohibited.

It shall be unlawful for any person to permit any property to be neglected or derelict.

Sec. 10-312. Administrative actions for enforcement and abatement.

- (a) *Emergency abatement or corrective action.* Whenever the building official determines that a violation of this code is an imminent hazard to life, health, property, or public welfare, the building official may order the owner to immediately abate or correct the condition causing the imminent hazard or may abate or correct the condition causing the imminent hazard. Buildings and structures determined to be unsafe may also be addressed using the provisions in the Uniform Code for the Abatement of Dangerous Buildings, if applicable. Within 20 days of abating the imminent hazard, the building official shall notify the owner:
 - (1) That the city took an abatement or corrective action;
 - (2) The fee of the abatement or corrective action; and
 - (3) That under Section 10-312(d) of the City Code, the owner may appeal the building official's decisions and the fee for any abatement or corrective action the city took.
- (b) *Notice of violation.* Except as provided in subsection (a) of this section, whenever the building official finds that any owner has violated or is violating this code, or any rules and regulations established hereunder, the building official may issue a written notice to the owner stating the nature of the violation, the possible penalties, any required remedial action, and referring to the appeal process under Section 10-312(d).

(c) *Remedial plan.*

- (1) Whenever the building official issues a notice of violation under subsection (b), the owner shall submit a written remedial plan, in a form acceptable to the city, within the time specified in the notice, which shall be no longer than 30 days. The remedial plan shall identify and include all work necessary to abate the violation and corresponding deadlines for completing each listed task. The remedial plan shall also contain a provision for addressing and correcting any new violations that are identified or arise during the remediation process.
- (2) A remedial plan for a historic property proposing to demolish or alter the exterior of a historic structure requires a written recommendation from TASHCO. Said recommendation is not binding, but shall be considered by the building official when reviewing the remedial plan.
- (3) Except for placement on the neglected and derelict building list in accordance with Section 10-314(b) and the requirements under Section 10-316, all further enforcement action under this code shall be stayed if the building official approves the remedial plan and the owner:
 - a. Complies with the approved remedial plan;
 - b. Complies with all property related provisions of the City Code with regard to that property; and
 - c. Pays all fees and penalties related to or arising out of any violation of Section 10-311.
- (4) *Determinations eligible for appeal.*
 - a. The following are ministerial acts or requirements that may be considered as part of a determination eligible for appeal, but are not a separate basis for filing an appeal:
 1. Placement on the neglected and derelict building list;
 2. Assessment of the neglected and derelict building fees; and
 3. The requirements to designate an agent and file a registration statement under Section 10-316.
 - b. The owner may appeal the following:
 1. The notice of violation;
 2. The requirement to post no trespassing signs;
 3. The rejection of a remedial plan;
 4. The building official's determination that the owner has failed to comply with an approved remedial plan; and

5. The building official's determination to order or take emergency abatement action.
- (d) *Order to show cause; appeals.*
- (1) The building official may order any owner of the neglected or derelict property to show cause before a hearing officer why the proposed enforcement action should not be taken:
 - a. If the owner does not submit a remedial plan within the time period set forth in the notice; or
 - b. If the owner submits a remedial plan within the prescribed time but the building official rejects it; or
 - c. The owner does not comply with the approved remedial plan.
 - (2) If the owner appeals the emergency abatement or corrective action taken under Section 10-312(a), the hearing officer shall conduct a hearing to review the building official's decisions and the fee for any abatement or corrective action the city took, based on the requirements of Section 10-312(a). The hearing officer shall issue a final order and determination in accordance with Section 10-312(i).
 - (3) If the owner appeals the civil penalty imposed by the building official for failing to register the property in accordance with Section 10-316, the hearing officer shall conduct a hearing.
 - a. The hearing officer shall consider:
 1. The building official's evaluation of the history of all City Code violations concerning the property for which the owner has been noticed;
 2. Whether the owner was negligent, the gravity of the violation, effect of the failure to register on enforcement action; and
 3. Whether the owner has demonstrated good faith in attempting to achieve rapid compliance after notification of a violation.
 - b. When the property is lawfully used for commercial purposes, the hearing officer may also consider the effect of civil penalties on the property owner's ability to continue the business.
 - c. The hearing officer shall issue a final order and determination in accordance with Section 10-312(i).
 - (4) If the owner appeals the notice of violation, requirement to post signs, rejection of the remedial plan, or a determination that the owner has not complied with an approved remedial plan, the hearing officer may consolidate the hearing on the appeal and the show cause hearing

and issue a decision determining all issues under this code raised at the hearing.

(e) *Notice of show cause hearing.* Notice of show cause hearing shall be served on the owner specifying:

- (1) The time and place of a hearing regarding the violation;
- (2) The reasons the action is to be taken; and
- (3) The proposed enforcement action.

The notice shall direct the owner to show cause, why the proposed enforcement action should not be taken. If the hearing officer consolidates the show cause hearing and an appeal, the notice shall indicate that the hearings have been consolidated.

(f) *Service of notices.*

- (1) A notice of violation, placement on the neglected and derelict building list under Section 10-314(b), and the show cause hearing shall be served upon the owner and the occupant of the real property, if different from the owner, by personal service. If diligent efforts to serve any notice personally is unsuccessful, it shall be deemed sufficient notice if written notice is mailed by first class mail to the owner of real property, as shown by the Adams County Assessor's Office, and to the occupant at the property address. For property owners who do not reside in Colorado, notice shall also be sent by certified mail. If notice is mailed, a copy of the notice shall also be posted in a conspicuous place on the premises that are subject to said notice. Notice may also be served by the methods provided in the Colorado Rules of Civil Procedure. Service of any of these notices by mail shall be addressed to the owner as shown in the records of the Adams County Assessor's Office. Any notice of violation or notice of show cause hearing shall be served at least ten days before the compliance date or the date of the hearing, whichever is relevant. No further notice shall be necessary.
- (2) A notice of violation and notice of placement on the neglected and derelict building list that is mailed in accordance with the above requirements is complete upon placement in the mail. A notice of the show cause hearing that is mailed in accordance with the above requirements is considered served on the date mailed unless it is returned as undeliverable. For purposes of this code, unclaimed or refused mail is not undeliverable.
- (3) If service of the notice of show cause hearing cannot be accomplished by any of the above methods, service may be made by posting it in a conspicuous place on the property and publishing it on the city's website in accordance with Section 2-1(a)(1) for at least ten days before the hearing.

- (g) *Show cause hearing.* The hearing shall be conducted in accordance with rules and regulations issued by the hearing officer. If the notice of show cause hearing has been served in compliance with Section 10-312(f), the hearing shall take place regardless of whether the owner appears.
- (h) *Presumption.* The owner has the burden of proving the correctness of its position by a preponderance of the evidence. All of the building official's determinations and findings are presumed to be correct until sufficient evidence is introduced that would support a contrary finding.
- (i) *Determination/final order.* The hearing officer shall:
 - (1) Make a determination, which shall be reduced to a written final order and sent to the owner within 15 days of the hearing. The determination is reviewable under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
 - a. Each party may file a motion for correction to or clarification of the order, which shall be filed within seven days of the date the order is issued.
 - b. Unless a motion for correction or clarification is timely filed, the time period to file an appeal under Rule 106(b) commences on the date the final order is issued. If a motion for clarification or correction is filed, that time period commences on the date the correction or clarification to the final order is issued.
 - (2) Include in the final order:
 - a. Findings of fact and a determination as to whether any violation has occurred and the required remedial action;
 - b. Identification of any mitigating or aggravating circumstances;
 - c. The amount of any civil penalty, fee, cost, or combination thereof assessed under Sections 10-312, 10-314, 10-315, and 10-316, and the costs of the hearing;
 - d. A provision for addressing and correcting any new violations that are identified or arise during the remediation process; and
 - e. A deadline for any required abatement action to be performed.
- (j) *Service of the written determination and final order.* The written determination and final order shall be sent to the owner by first class mail, postage prepaid, and via email, if the owner provides such contact information.
- (k) *Civil penalties.* The hearing officer may assess a civil penalty in accordance with Section 1-8 of not more than \$999.00 per day for each day the owner is found to have violated this code, any order issued by the authority of this code, any rules and regulations adopted by the building official, or permit issued for work related to an approved remedial plan.

- (1) In imposing any civil penalty for a violation of Section 10-311, the hearing officer may consider:
 - a. The history of violations;
 - b. Whether the owner was deliberate or negligent;
 - c. Whether the neglected or derelict property is a historic property;
 - d. The gravity of the violation; and
 - e. The demonstrated good faith of the owner in attempting to achieve timely compliance after notification of a violation.
 - (2) When the neglected or derelict property is lawfully used for commercial purposes, the hearing officer may also consider the effect of civil penalties on the owner's ability to continue the business.
 - (3) Unless otherwise expressly stated in the final order, civil penalties assessed under this code are due and payable within thirty days of date of invoice, which shall be sent first-class mail, postage prepaid, to the address shown in the records of the Adams County Assessor's Office or the address the owner provides to the city, including under Section 10-316. If mail sent to either of these addresses is returned as undeliverable, the invoice may be sent to an address for the owner that the city discovers through its own efforts or to the owner's email address, when the owner provides such information to the city.
- (l) *Judicial enforcement.* In addition to all other remedies set forth in this code, the city may petition the district court for the issuance of a preliminary or permanent injunction, or both, restraining any person from continued violation of this code. In that action, the city may seek recovery of any unpaid civil penalties, abatement costs, and other fees and costs provided for in this code.
 - (m) *Posting of no trespassing signs and other warning signs.* Upon or after issuing a notice of violation under Section 10-311, the city may, or may require the owner to, post a sign near each possible access point to the property prohibiting trespassing and warning the public of danger. If a sign is required to be posted under this code, the owner shall post the sign(s) within the time period required by the building official and shall provide written authorization to the city allowing the arrest of any trespassers.

Sec. 10-313. Court actions for abatement.

If the owner has failed to abate a violation or comply with abatement deadlines in the hearing officer's final order or in an approved remedial plan, the city, an affected neighboring landowner, or any other person who has suffered damages due to the condition of the property and otherwise has legal standing to bring legal action, may commence an action in the district court pursuant to Rule

65 or 66 of the Colorado Rules of Civil Procedure for abatement under this code. These actions may request:

- (a) An injunction ordering the owner of property to take whatever action the court considers necessary or appropriate to abate the violation.
- (b) The court to appoint a receiver to exercise any of the powers listed below:
 - (1) Take possession and control of the property, operate and manage the property, establish and collect rents and income, lease and rent the property, and evict tenants. An existing violation of the building code does not restrict the receiver's authority pursuant to this subsection.
 - (2) Pay all expenses of operating and conserving the property including the cost of electricity, gas, water, sewerage, heating fuel, repairs and supplies, custodian services, taxes, assessments, and insurance premiums and to hire and pay reasonable compensation to a managing agent.
 - (3) Pay pre-receivership mortgages and other liens and installments of pre-receivership mortgages and other liens.
 - (4) Perform or enter into contracts for the performance of work and the furnishing of materials necessary to abate the violations and obtain financing for the abatement of violations.
 - (5) Pursuant to court order, remove and dispose of personal property that is abandoned, stored, or otherwise located on the property, that creates a dangerous or unsafe condition, or that constitutes a violation of the building code or other City Code requirements.
 - (6) Enter into agreements and take actions necessary to maintain and preserve the property and to comply with the building code and other City Code requirements.
 - (7) Give the custody of the property and the opportunity to abate the violation and operate the property to the owner or to a mortgagee or lienholder of record.
 - (8) Issue notes or receiver's certificates and secure the same by deeds of trust on the property on terms, conditions, and at interest rates all as approved by the court.
 - (9) Obtain mortgage insurance for a receiver's mortgage.
 - (10) Any other action that the court considers appropriate.
- (c) That all costs, including the costs of the receivership, expenses, penalties, and all fees, be assessed against the owner and made a lien against the property, taking precedence over and being superior to all other liens of record except liens for general taxes and special assessments.

- (d) That, at the request of the party that applied for the receivership, the court discharge the receiver.
- (e) That if repair and rehabilitation of the property are not found to be feasible, upon the written request of all known interested persons who have appeared in the action, to have the property or portions of the property demolished, the court order the demolition of all or part of the property. The court may require the receiver to determine the cost of demolition of the property or the portions of the property that constitute the violation, and after court approval, the receiver shall arrange for demolition in accordance with state laws, the City Code, including the building code and any historic preservation requirements, and any permit issued under these authorities. However, demolition shall not be ordered unless the requesting persons have guaranteed or underwritten the costs of demolition, have paid the costs of the receivership, and have paid all notes and mortgages of the receivership. Nothing in this code or a court order arising out of a court action authorized under this section limits the city's right to demolish any property that the city is authorized to demolish pursuant to the provisions of the building code.
- (f) Nothing in this code limits or prohibits the city from exercising or using other remedies or procedures to enforce this code, the building code, or other provisions of the City Code.

Sec. 10-314. Inspection and fees.

- (a) *Inspection.* Whenever the building official has reason to believe that a property is neglected or derelict, as defined in this code, the building official shall inspect the property to determine if it complies with this code and all other applicable laws and codes, including rules and regulations pursuant to them. If, after inspection, the building official finds that a property is neglected or derelict, the building official may issue a written notice of violation and proceed under Section 10-312 of this code.
- (b) *Neglected and derelict building list.* If the building official issues a notice of violation pursuant to Section 10-312(b), the property shall be placed on the neglected and derelict building list maintained by the building official. The building official shall issue a notice of placement on the neglected and derelict building list to the owner. The notice shall include:
 - (1) The property's address and a legal description of the property;
 - (2) A concise statement as to the basis of the building official's determination; and
 - (3) A brief explanation about assessment of fees under this section.
- (c) *Quarterly inspection.* The building official shall conduct, at a minimum, quarterly inspections of neglected or derelict properties to ensure compliance with applicable codes.

- (d) *Compliance.* When all violations of this code have been abated and a neglected or derelict property has been legally reoccupied, or when the building has been demolished and the lot cleared in accordance with provisions of this code, the property shall be removed from the neglected and derelict building list.
- (e) *Assessment of fees.*
 - (1) The neglected and derelict building list fee shall not be assessed against the owner so long as the owner meets all of the requirements below. Upon failure to meet any of the three conditions below, however, a nonrefundable annual fee, as established by resolution of the city council, shall be assessed against the owner. The initial fee shall be assessed upon failure to:
 - a. Submit an approvable remedial plan in accordance with Section 10-312(c) or failure to comply with any of the deadlines set forth in an approved remedial plan;
 - b. Comply with any property related provision of the City Code; or
 - c. Pay all other fees and penalties related to or arising out of any violation of Section 10-311 within the prescribed time period.
 - (2) Once the fee has been assessed, for each subsequent 12-month period or part thereof that the property remains on the neglected and derelict building list, the fee shall be assessed on the anniversary date of the initial assessment. The fee shall be due and payable 30 days from the date of the invoice unless it is paid in quarterly installments. For quarterly payments, the first payment shall be due and payable 30 days from the date of the invoice and the remaining payments are due and payable on a quarterly basis calculated from the date of the initial assessment. If any annual or quarterly payment is more than 30 days past due, a late fee shall be assessed, in an amount established by resolution of the city council.

Sec. 10-315. Collection of assessments; liens.

- (a) The civil penalties provided for in Sections 10-312, 10-314, and 10-316 are cumulative as are the assessment of any costs and fees under this code. Failure to pay any civil penalty, cost, or fee, including the interest thereon, assessed under this code within 30 days of the date of the invoice is unlawful. If a civil penalty, cost, or fee, including the interest thereon, is not paid in accordance with this code within 30 days of the date of the invoice, without limiting any other remedy the city has at law or in equity, the city may:
 - (1) Send the matter to collection; and

- (2) File for injunctive relief in district court under section 10-312 of this code.
- (b) Additionally, if an owner fails to pay the civil penalty, costs, or fee, including the interest thereon, within the specified 30-day period, the assessment shall become a lien on the property. The lien perfects automatically and has priority over all other liens except general taxes and prior special assessments.
- (c) If an assessment of a civil penalty, cost, or fee, including the interest thereon, converts into a lien, the building official is responsible for collecting the assessment, together with any costs associated with the assessment process.
- (d) Until a civil penalty, cost, or fee, including interest thereon, assessed under this code that is not pending appeal has been paid in full, the city shall not issue or renew any license or permit to the owner.
- (e) Failure to pay any outstanding civil penalty, cost, or fee, including interest thereon, assessed under this code that is not pending appeal is grounds for suspension or revocation of any license issued by the city until fully paid.

Sec. 10-316. Registration of property owners and agents.

- (a) Any owner to whom a notice of violation has been issued under this code shall designate a person meeting the qualifications in Section 10-316(a)(2) to accept all forms of service for any notice, order, citation, summons, complaint, and all other documents relating to or arising out of enforcement of this code for violations concerning the property cited under this code, and to accept service of process in any civil action in which the owner is alleged to be liable based upon ownership of the property or upon transactions related to rental of it. The owner shall file a registration statement on a form acceptable to the city within 30 days of service of a notice of violation.
 - (1) The registration statement shall include:
 - a. A description of the property by street address and parcel number, in such a manner as to enable the building official to locate it;
 - b. The name and current address of the owner of record, and if the owner is a business entity, the statement shall also contain the name and address of its registered agent; and
 - c. The name and business address of the agent designated to accept service for the matters in Section 10-316(a).
 - (2) The agent designated shall be a natural person 18 years of age or older who is customarily present in an office located within 50 miles of the property for the purpose of transacting business, or whose primary residence is within the city.

- (b) Penalties:
- (1) Any owner who fails to designate an agent to accept service or who fails to file a registration statement as required by this section is subject to a separate civil penalty of not more than \$500.00 per day for each day the owner has failed to designate an agent or remains unregistered, up to a maximum total of \$15,000.00. If the owner is in compliance with this section at the time of a hearing as provided in subsection (e)(2) below, and it is the first time that the owner has failed to comply with this section, this penalty shall not exceed \$500.00.
 - (2) In assessing the civil penalty, the building official may consider the history of all City Code violations concerning the property for which the owner has been noticed, whether the owner was negligent, the gravity of the violation, effect of the failure to register on enforcement action, and whether the owner has demonstrated good faith in attempting to achieve rapid compliance after notification of a violation. Additionally, when the property is lawfully used for commercial purposes, the building official may consider the effect of civil penalties on the property owner's ability to continue the business. The assessment of the civil penalty may be appealed under Section 10-312(d).
- (c) The owner shall notify the building official of any change in the designated authorized agent or ownership no later than ten days after the change.
- (d) The registration of owners filed with the building official under this section is confidential, subject to the provisions of the Colorado Open Records Act.
2. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.
 4. The repeal or amendment of any provision of the Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

5. This ordinance shall take effect on January 1, 2022.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on _____, 2021.

PASSED AND ADOPTED on second and final reading on _____, 2021.

CITY OF THORNTON, COLORADO

Jan Kulmann, Mayor

ATTEST:

Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

Tami Yellico, City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, and Thornton Active Adult Center after first and second readings.

Published on the City's official website after first reading on _____, 2021, and after second and final reading on _____, 2021.