

ORDINANCE NO. 0-14-06

AN ORDINANCE TO AMEND SECTION 8-1, BUILDING CODE ADOPTED, AND 8-5, REPAIR AND REHABILITATION, OR DEMOLITION OF UNSAFE STRUCTURES; AND TO ENACT SECTIONS 8-1.1, ENFORCEMENT, 8-1.2, PENALTIES, OF ARTICLE I, IN GENERAL, OF CHAPTER 8, BUILDINGS; AND PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, the City of Covington has adopted the Virginia Uniform Statewide Building Code pursuant to Virginia Code §§ 36-97 et seq., and enforces the Building Code for the construction and rehabilitation of buildings as set forth in Virginia Code § 36-105(A); and

WHEREAS, the Virginia Maintenance Code, Part III of the Virginia Uniform Statewide Building Code, provides regulations to protect occupants of existing buildings and structures from health and safety hazards arising from the improper maintenance and use of existing buildings and structures; and

WHEREAS, pursuant to Virginia Code § 36-105(C), a local government may enforce the Virginia Maintenance Code and may assign enforcement responsibility to a local agency of its choice; and

WHEREAS, it has come to the attention of the City Council of the City of Covington that buildings exist within the City that may present a health and safety hazard to the citizens of the City; and

WHEREAS, the City Council of the City of Covington desires to specifically adopt the Virginia Maintenance Code, as amended from time to time, to be enforced by the City's Inspections Department when a complaint is received or a violation is discovered by the City; and

WHEREAS, the City would also desires to update its ordinance concerning the repair, rehabilitation, and demolition of unsafe structures to conform to Virginia Code § 15.2-906 and provide for the removal of nuisances as provided for by Virginia Code § 15.2-900;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Covington, Virginia, that Article I, In General of Chapter 8, Buildings, sections 8-1, Building code adopted, and 8-5, Repair and rehabilitation, or demolition of unsafe structures, are hereby amended and sections 8-1.1, Enforcement, and 8-1.2, Penalties, are hereby adopted and reenacted as follows:

Chapter 8 – BUILDINGS

ARTICLE I.- IN GENERAL

Sec. 8-1. Building code adopted.

The city hereby adopts the Virginia Uniform Statewide Building Code ("VUSBC"), including the 2009 Virginia Construction Code, the 2009 Virginia Rehabilitation Code, and the 2009 Virginia Maintenance Code, and the provisions and terms of such ~~code~~ Code shall be applicable and in full force and effect within the city.

Sec. 8-1.1. Enforcement.

Enforcement of the VUSBC shall be as set forth in the applicable provisions of the VUSBC and Virginia Code §§ 36-97 et seq., as amended from time to time. The city's building official and/or property maintenance inspector is hereby designated to act as the enforcing agent. The Virginia Maintenance Code shall be enforced when the city receives a complaint or discovers a violation.

Sec. 8-1.2 Penalties.

Whoever violates any provision of the VUSBC, by doing a prohibited act, or failing to perform a required act, or failing to perform permitted acts in the prescribed manner shall be subject to the penalties as specified in the VUSBC.

- (a) *Criminal.* Unless a civil penalty is provided herein, a violation of the VUSBC is a misdemeanor and upon conviction, may be punished as set forth in the VSUBC and Virginia Code § 36-106, as amended from time to time. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate the violation to comply with the VUSBC. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense.
- (b) *Civil.* Pursuant to Virginia Code § 36-106(C), the following civil penalties are hereby established for any violation of the provisions of the Virginia Maintenance Code, Part III of the VUSBC, upon failing to abate the violation as set forth in the notice of violation issued by the city.
 - (1) The penalty shall be \$100 for the initial summons and \$350 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$4,000. Designation of a particular Code violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a misdemeanor.
 - (2) Any person summoned or issued a ticket for a Maintenance Code violation may make an appearance in person or in writing by mail to the department

of finance or the treasurer of the city prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. As a condition of waiver of trial, admission of liability, and payment of a civil penalty, the violator and a representative of the city shall agree in writing to terms of abatement or remediation of the violation within six months after the date of payment of the civil penalty.

- (3) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.
- (4) If the violation concerns a residential unit, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court shall order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate, or otherwise remedy through hazard control, the violation within six months of the date of the assessment of the civil penalty.
- (5) If the violation concerns a nonresidential building or structure, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court may order the violator to abate, or otherwise remedy through hazard control, the violation in order to comply with the Code. Any such violator so ordered shall abate, or otherwise remedy through hazard control, the violation within the time specified by the court.

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Sec. 8-5. Repair and rehabilitation, or demolition of unsafe structures and abatement of nuisances.

- (a) *Duty to remove, repair or secure unsafe structure.* It shall be unlawful and constitute a nuisance for the owner or occupant of any land or lot in the city to permit any structure, house or dwelling place thereon to be habitually kept or maintained in such a manner as to be unsafe, unsanitary or otherwise dangerous to human life, or which, in relation to existing use, constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment. Owners of real property, agents of owners and/or persons in control of buildings, within the city shall remove, repair or secure any building, wall or

any other structure or portion thereof which might endanger the public health or safety of other residents of the city. The city is hereby authorized, in addition to all other remedies provided by law, to take action to require the removal and repair of buildings as set forth in Virginia Code § 15.2-906 and to cause the abatement or removal of nuisance as set forth in § 15.2-900.

(b) *Unsafe structures; procedures.* The following procedures shall apply ~~with regard to unsafe structures~~ if an owner fails to comply with his duty set forth in subsection (a) above:

- (1) *Notice to owner and lienholder.* When the building official or his designee identifies any unsafe structure, ~~he may give~~ written notice shall be provided to the owner, agent of the owner, or person in control of such building, and any lienholder of record, of his obligations under this section. This notice shall require the owner, agent for the owner or person in control of such building within a stated time to complete improvements or demolish or remove the building, structure or portion thereof. For purposes of this section, reasonable notice shall include a written notice:
 - a. Sent by certified mail, return receipt requested, to the last known address of the property owner; and
 - b. Published once a week for two successive weeks in a newspaper having general circulation in the city.
- (2) *Time limit for action by owner.* No action shall be taken by the building official to remove, repair or secure any building, wall or any other structure for at least 30 days following the later of the return of the receipt or newspaper publication, except that the city may take action to prevent unauthorized access to the building within seven days of such notice if the structure is deemed to pose a significant threat to public safety and such fact is stated in the notice.
- (3) *Procedure when owner fails to comply.* If the owner, agent for the owner, or person in control of such building has failed to comply with all requirements of the notice and this section, then the city through its own agents or employees may remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of the city. Repair of the structure may include maintenance work to the exterior of a building to prevent deterioration of the building or adjacent buildings.

- (4) *Costs and expenses recoverable.* In the event the city, through its own agents or employees removes, repairs or secures any building, wall or any other structure pursuant to this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the city as taxes and levies are collected.
- (5) *Lien of charges authorized by this section.* Every charge authorized by ~~this section~~ Virginia Code §§ 15.2-900 and 15.2-906 with which the owner of any unsafe structure or nuisance shall have been assessed and which remains unpaid, whether or not reduced to judgment, shall constitute a lien against the parcel on which the unsafe structure or nuisance is situated, ~~which~~ and such lien shall rank in parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 (Code of Virginia, § 58.1-3940 et seq.) and 4 (Code of Virginia, § 58.1-3965 et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia, 1950, as amended.
- (6) *Penalty.* Except as otherwise specifically provided, a violation of ~~any provision of this chapter shall constitute a misdemeanor punishable by fine or not more than \$2,500.00; additionally, if the violation concerns a residential unit and if the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction~~ this section shall be subject to a civil penalty of \$100.00 per day, not to exceed a total of \$1,000.00, for each day the violation continues past the time provided in the written notice of violation to the owner for abatement.
- (c) *Building code not superseded.* Nothing herein shall be construed to limit the authority of the city or of its building official as set out in general law or in the Virginia Uniform Statewide Building Code.

EFFECTIVE DATE OF THIS ORDINANCE:

This ordinance shall be effective upon passage on second reading. If any part of this ordinance is deemed unlawful by a court of competent jurisdiction all remaining parts shall be deemed valid. Ordinances or parts of any ordinances of the City of Covington whose provisions are in conflict herewith are hereby repealed.

*ADOPTED BY AFFIRMATIVE VOTES OF THE COUNCIL OF THE CITY OF COVINGTON,
VIRGINIA ON TWO READINGS, AS EVIDENCED BY THE FOLLOWING RECORDED VOTES:*

FIRST READING: 10/14/14 VOTE: 5 FOR; 0 AGAINST

Mayor Thomas H. Sibold, Jr. FOR

V. Mayor William B. Zimmerman, Jr. FOR

Stephanie R. Clark FOR

David S. Crosier FOR

S. Allan Tucker FOR

SECOND READING: 11/11/14 VOTE: 5 FOR; 0 AGAINST

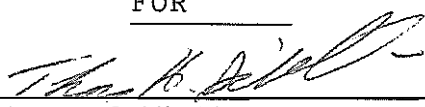
Mayor Thomas H. Sibold, Jr. FOR

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Thomas H. Sibold, Jr., Mayor

Attest:



Edith S. Wood, City Clerk