

ORDINANCE NO. 1447

AN ORDINANCE REPEALING PORTIONS OF ORDINANCE NO. 860 RELATING TO DANGEROUS BUILDINGS AND THE ELIMINATION OR REPAIR THEREOF AND ADOPTING A NEW LEGISLATIVE PROCEDURE AS ALLOWED BY *ALA. CODE §11-53B-1 ET SEQ.* CONCERNING THE SAME.

BE IT ORDAINED BY THE CITY OF FAIRHOPE, ALABAMA, AS FOLLOWS:

Section 1. Sections 1 through 8 of Ordinance No. 860 are hereby expressly repealed. These repealed provisions are also described as Sections 7-86 through 7-93 of the Code of Ordinances of the City of Fairhope.

Section 2. FINDINGS AND PURPOSE. The existence of unsafe and dilapidated buildings and structures within the city constitutes a public nuisance, the abatement of which burdens the city treasury and contributes to blight and crime in neighborhoods. *Ala. Code, Section 11-53B-1 et seq.* was enacted on April 17, 2002. It permits the city, after meeting certain notice requirements, to repair or demolish unsafe buildings and to provide an effective means of collecting an assessment lien on the property for the cost of the work involved in abating the nuisance. Implementing the procedures authorized by the new state law will be more efficacious in eliminating these nuisances and will protect the public safety, health and welfare. The purpose of this Ordinance is to adopt the provisions of *Ala. Code §§11-53B-1 through 11-53B-15* as the law governing the repair, removal and/or demolition of dangerous buildings in the corporate limits and the police jurisdiction of the City of Fairhope.

Section 3. DEFINITIONS. Unless the context clearly requires a different meaning, the words used in this ordinance will have the meanings set out below:

Assessment: means the cost incurred to repair or demolish a structure as provided by this chapter.

Building: means any building, structure, part of a building or structure, party wall or foundation used or intended for supporting or sheltering any use or occupancy.

City: means the City of Fairhope, Alabama and its police jurisdiction.

Council: means the city council

Official: means the city's building official or any other municipal employee designated by the mayor to exercise the authority and perform the duties provided in this chapter.

Owner: means the person or persons, firm, association, or corporation last assessing the property who is the record owner of the property for state taxes according to the county tax assessor records or any assignee or grantee of record receiving the property from said person, firm, association, or corporation.

Person: means any natural or legal person including partnerships, corporations, limited liability companies and the like.

Permanent improvements: means all repairs, improvements, appurtenances, buildings, and equipment attached to property as fixtures.

Public nuisance: means any condition that renders a building unsafe and dangerous to the public safety, health or welfare.

Section 4. DANGEROUS BUILDINGS DEFINED. All building or structures which have any or all of the following defects may be deemed dangerous buildings:

1. Those whose interior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
2. Those which, exclusive of the foundation, show thirty-three per cent (33%) or more of the damage or deterioration of the supporting member or members, or fifty per cent (50%) of the damage or deterioration of the non-supporting enclosing or outside walls or covering.
3. Those which have improperly distributed loads upon floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose use.
4. Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals, or the general welfare and health of the occupants or the people of the city.
5. Those having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication.
6. Those which have parts thereof which are so attached that they may fall and injure members of the public or the property.

Section 5. NOTICE. Whenever the official finds that any building situated in the city police jurisdiction is unsafe to the extent that it is a public nuisance, the official shall give the owner and all mortgagees of record notice to remedy the unsafe condition of the building or structure.

a. Notice shall be:

1. Certified or registered mail to the person last assessing the property for county taxes and/or grantees as determined by search of the probate records from last tax assessment record to the present time.
2. To the address of the property; and
3. To all mortgagees of record to the address set forth in the mortgage, or if no address is set forth in the mortgage, to the address determined to be the correct address by the official.
4. By the filing of a notice of proposed lien stating: the status of said lien, the current owner or owners and the legal description of the subject property
5. A yellow sign shall be placed on the property asking anyone who knows anything about who might own the property to call the city.
6. The City web site shall list the address and photographs of all structures being considered for demolition on the City web site ([www.cofairhope.com](http://www.cofairhope.com)).

b. The notice shall set forth in detail the basis for the official's finding and shall direct the owner to take either of the following actions:

1. In the case where repair is required, accomplish the specified repairs or improvements within forty-five (45) days of the date appearing on the notice, or if the same cannot be repaired within that time, to provide the official with a written work plan to accomplish the repairs. The work plan shall be submitted within forty-five (45) days of the making of the notice and shall be subject to the city's approval.
2. In the case where demolition is required, demolish the structure within forty-five (45) days of the date appearing on the notice.
3. In the case of either repair or demolition, the notice shall also state that in the event the owner does not comply within the time specified in the notice, the repairs or demolition shall be accomplished by the city and the costs of the repairs or demolition shall be assessed against the property.

- c. The mailing of the certified or registered notice as specified in this section, properly addressed and postage prepaid, shall constitute "Notice" as required herein. A copy of the notice shall also be posted at or within three (3) feet of an entrance to the building. If there is no entrance the notice may be posted at any location upon the building. The notice shall be posted on the building within three (3) days of the date the certified or registered notice was mailed.

Section 6. If the owner fails to take action as directed by the official, the city may take either of the following actions:

- a) In the case where repair is required, repair the building at the expense of the city and assess the expenses of the repair on the land on which the building stands or to which it is attached.
- b) In the case where demolition is required, demolish the building at the expense of the city and assess the expenses of the demolition on the land on which the building stands or to which it is attached.

Section 7. REQUEST FOR HEARING

- (a) Within thirty (30) days from the date appearing on the notice given pursuant to *Section 5*, any person having an interest in the building may file a written request for a hearing before the city council, together with that person's objections to the finding that the building is a public nuisance.
- (b) The filing of the request for a hearing shall hold in abeyance any action on the finding of the official until a determination is made by the council.
- (c) The council shall hold a hearing not less than five (5) nor more than thirty (30) days after the request. In the event no hearing is timely requested, the hearing shall be held no earlier than thirty (30) days from the date the notice is given.
- (d) The council shall determine whether or not the building or structure is unsafe to the extent that it is a public nuisance. If the council finds that the building is a public nuisance, the council shall order the building or structure to be repaired or demolished, as the case may be.
- (e) Any person aggrieved by the council's decision may, within ten (10) days thereafter, appeal to the circuit court upon filing with the clerk of the court notice of the appeal and bond for security of costs in the form and amount to be approved by the circuit clerk.
- (f) Upon filing of the notice of appeal and approval of the bond, the clerk of the court shall serve a copy of the notice of appeal on the city clerk, and the appeal shall be docketed in the court, and shall be a preferred case therein.
- (g) The city clerk shall, upon receiving the notice of appeal, file with the clerk of the court a copy of the council's findings. The proceedings and trials in the circuit court of the county shall be held without jury upon the determination of the council that the building is unsafe to the extent that it is a public nuisance.

Section 8. REPAIR, DEMOLITION AND ASSESSMENT.

- A. The repair or demolition may be accomplished by a contract for the repairs or demolition. The city may sell or otherwise dispose of salvaged materials resulting from any demolition; provided, however, that the proceeds of any monies received from the sale of salvaged materials shall be used or applied against the cost of the demolition. If the building or structure is to be repaired, and the cost to repair is greater than the anticipated cost to demolish, the council shall be notified and determine whether or not the building or structure shall be repaired or demolished.
- B. Upon the demolition or repair of the building, the official shall report to the council the amount of the cost thereof, and shall include an administrative fee in the amount of \$200.00 to offset the cost of administration.

- C. The city clerk shall, by first class mail, give notice of the meeting at which the fixing of the cost is to be considered to the owner, all entities having an interest in the property whose address and interest is determined from the tax assessor's records on the property or otherwise know to the clerk. Any person having an interest in the property may be heard at the meeting as to any objection to the fixing of such costs or the amounts thereof.
- D. The council shall adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition or repair and assessing the same against the property including the \$200.00 administrative fee. The cost fixed by resolution shall constitute a final assessment against the lot or lots, parcel or parcels of land upon which the building was/is located. The final assessment as made and confirmed shall constitute a lien on the property for the amount of the final assessment. Said lien shall be filed with the Office of the Judge of Probate of Baldwin County by the City Attorney.
- E. The lien shall be superior to all other liens on the property except liens for taxes, and except for mortgages recorded prior to the creation of the lien for the final assessment, and shall continue in force until paid.
- F. A certified copy of the resolution fixing the final assessment shall also be recorded in the office of the judge of probate of the county.
- G. The city shall have the power to assess the costs authorized herein against any lot or lots, parcel or parcels of land purchased by the state/county at any sale for nonpayment of taxes, and where such final assessment is made against the lot or lots, parcel or parcels of land, a subsequent redemption thereof by any person authorized to redeem or sale thereof by the state, shall not operate or discharge, or in any manner affect the lien of the city for the assessment, but any redemptioner or purchaser at any sale by the state/county of any lot or lots, parcel or parcels of land upon which final assessment has been levied, whether prior to or subsequent to a sale of the state/county for the nonpayment of taxes, shall take the same subject to the assessment.

Section 9. PAYMENT OF ASSESSMENT.

- A. Any final assessment shall be paid in cash within thirty (30) days after the final assessment.
- B. If the final assessment is greater than ten thousand dollars (\$10,000.00), the owner may, within thirty (30) days of the final assessment, give written notice to the official that the owner elects to pay the final assessment in ten (10) equal annual installments or in thirty-six (36), sixty (60), or one hundred twenty (120) equal monthly installments. The first installment shall be payable within thirty (30) days after the final assessment is determined, and all installments thereof shall be payable to the City Revenue Officer. Installment payments shall bear interest at the rate of twelve percent (12%) per annum. Interest shall begin to accrue upon the expiration of thirty (30) days from the date of the final assessment and the interest shall be due and payable at the time and place the final assessment is due and payable.
- C. Any owner electing installment payments may pay the outstanding balance, together with all accrued interest thereon, at any time during the installment payment schedule.
- D. Upon full payment of the final assessment and accrued interest thereon, the City Attorney shall record a satisfaction of the lien in the office of the judge of probate of the county.

Section 10. DEFAULT SALE PROCEDURES. If the property owner fails to pay the assessment lien within 30 days, or having elected to make installment payments, fails to make any installment payment when due, the whole assessment lien shall immediately become due and payable, and the officer designated by the municipality to collect the assessment lien shall proceed to sell the property against which the assessment lien is made to the highest bidder for cash, but in no event less than the amount of the lien plus interest through the date of default. Prior to the sale, notice shall be given by publication once a week for three consecutive weeks in a newspaper published in the municipality or of general circulation therein, setting forth the date and time of the sale and the purpose for which the same is made, together with a

description of the property to be sold. If the officer shall fail to advertise and sell any property on which the payments are past due, any taxpayer of the issuing municipality shall have the right to apply for a writ of mandamus requiring the official to take such action to any court of competent jurisdiction, and the court shall, on proof, issue and enforce the writ.

Section 11. PAYMENT AND SALE PROCEDURES.

**(a)** Any property owner, notwithstanding his or her default, may pay the assessment lien with interest and all costs if tendered before a sale of the property.

**(b)** The cost of any notice and sale resulting from a default on paying an assessment shall constitute a charge against the property to be sold and shall be retained out of the proceeds of the sale.

**(c)** The officer making the sale shall execute a deed to the purchaser, which shall convey all the rights, title, and interest which the party against whose property the assessment was made had or held in the property at the date of making the assessment or on the date of making the sale. Any surplus arising from the sale shall be paid to the city or municipal treasurer to be kept as a separate fund by the treasurer for the owner upon the responsibility of his or her official bond. The municipality may, by its agents, purchase real estate sold as provided under this article and, in the event of the purchase, the deed for the same shall be made to the municipality.

**(d)** No mistake in the notice of sale in the description of the property or in the name of the owner shall vitiate the assessment or the lien and if for any reason, the sale made by the municipality is ineffectual to pass title, it shall operate as an assignment of the lien, and, upon the request of the purchaser, supplementary proceedings of the same general character as required in this chapter may be had to correct the errors in the proceedings for his or her benefit or the lien so assigned to him or her may be enforced by civil action.

Section 12. POST SALE REDEMPTION REQUIREMENTS.

**(a)** Any real property heretofore or hereafter sold for the satisfaction of an assessment lien imposed thereon by the governing body of a municipality may be redeemed by the former owner, or his or her assigns, or other persons authorized to redeem property sold for taxes by the state, within two(2) years from the date of the sale by depositing with the officer designated by the municipality to collect the assessments the amount of money for which the lands were sold, with interest thereon at the rate of twelve percent (12%) per annum from the date of the sale through the date of the payment.

**(b)** In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender the purchaser or his transferee all insurance premiums paid or owed by the purchaser with accrued interest on the payments computed from the date the premiums were paid at twelve percent (12%) per annum through the date of payment.

**(c)** In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender to the purchaser or his transferee the value of all permanent improvements made on the property determined in accordance with this section. As used herein "permanent improvements" shall include, but not be limited to, all repairs, improvements and equipment attached to the property as fixtures. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value of all permanent improvements made on the property since the assessment sale. In response to written demand made pursuant to this section, the purchaser shall within ten (10) days from the receipt of the demand, furnish the proposed redemptioner with the amount claimed as the value of the permanent improvements, and within ten (10) days after receipt of the response, the proposed redemptioner either shall accept the value so stated by the purchaser, or disagreeing therewith, shall appoint a referee to ascertain the value of the permanent improvements. The proposed redemptioner shall in writing (i) notify the purchaser of his or her disagreement as to the value; and (ii) inform the purchaser of the

name of the referee appointed by him or her. Within ten (10) days after the receipt of the notice, the purchaser shall appoint a referee to ascertain the value of the permanent improvements and advise the proposed redemptioner of the name of the appointee. The two referees shall, within ten (10) days after the purchaser has appointed his or her referee, meet and confer upon the award to be made by them. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of the body shall be made within ten (10) days after the appointment of the umpire and shall be final between the parties.

(d) If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection (c), he or she shall pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection (c), the purchaser shall forfeit his or her claim to compensation for the improvements. The failure of the referees or either of them to act or to appoint an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises. In the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of the permanent improvements and enforce the redemption accordingly.

(e) In addition to all other payments provided hereunder, the proposed redemptioner shall also pay interest to the purchaser on the value of all permanent improvements computed from the date the improvements were made at the rate of 12 percent per annum through the date of the payment.

Section 13. TIME EXTENSION. The fixed two-year period of redemption allowed by Section 12 for the redemption of any property heretofore or hereafter sold for the satisfaction of any assessment lien may be extended to a date sixty (60) days after the date of the certificate of warning to redeem provided for in Section 14, but in no event for a longer period than six years from the date of such sale.

Section 14. CERTIFICATE OF WARNING. At any time after an assessment sale deed has been recorded in the office of the judge of probate of the county in which the property therein described lies and after expiration of the fixed two-year period of redemption allowed by Section 12, any person may apply to the judge of probate for the certificate of warning to redeem, which references the recorded volume and page number of the deed to be recorded in the real estate records, in substantially the following form: "I hereby certify that on or prior to the date of this certificate, I mailed a certified copy of the deed here recorded, together with notice that the same is here recorded, and a warning to redeem to each of the one or more persons other than the grantee in said deed, to whom the property therein described was last finally assessed for ad valorem taxation at the address of each such person as shown by said ad valorem tax assessment records. This \_\_\_\_ day of \_\_\_\_, 2\_\_\_\_, Judge of Probate, Baldwin County, Alabama."

Section 15. CERTIFICATION PROCEDURES. At the time of application for entry of the certificate of warning to redeem, the applicant shall deliver to the judge of probate three certified copies of the recorded deed and shall pay to the judge of probate a fee of one dollar (\$1). Copies of the deed need not include any certificate of acknowledgment. The applicant shall also deliver to the judge of probate a certified copy of the ad valorem tax assessment records of the county containing the name of the person or persons other than the grantee in the deed to whom the property described in the deed was last finally assessed for ad valorem taxation, together with the address of each person as shown by the tax assessment records, or an affidavit that there is no one else. The judge of probate shall promptly mail to each person at such address one of the aforesaid certified copies of the deed, together with an attached warning to redeem in substantially the following form: "Take notice that there is recorded in my office in Deed Book \_\_\_\_ at page \_\_\_\_ a deed of which the attached is a correct copy. You are warned that unless you, or those claiming under you, take prompt steps to redeem from those claiming under the deed, all rights of redemption may be lost. This \_\_\_\_ day of \_\_\_\_, 2\_\_\_\_, Judge of Probate, \_\_\_\_\_ County, Alabama."

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Promptly upon or after mailing the notice or notices and certified copy or copies of the deed, it shall be the duty of the judge of probate to record in the real estate records the signed and dated certificate of warning substantially as prescribed by Section 15. At the expiration of sixty (60) days after the date of the certificate all rights to redeem from the sale shown by the deed shall cease and desist.

Section 16. REDEMPTION PROCEDURES.

Redemption may be effected after expiration of the fixed two-year (2) period of redemption allowed or provided by Section 12 and before the extended period of redemption has expired in the same manner and at the same redemption price as is provided in Section 11-53B-10; provided, that if the judge of probate has made the certificate of warning to redeem as provided in Section 15, said redemption price shall be increased by one dollar (\$1).

Section 17. EMERGENCY ACTION.

Notwithstanding any other provisions of this article, the official may initiate immediate repair or demolition of a building when, in the opinion of the official so designated, such emergency action is required due to imminent danger of structural collapse endangering adjoining property, the public right -of-way or human life or health. The cost of the emergency action shall be fixed by the council and shall be assessed as provided in this chapter.

Section 18. APPLICABILITY. The provisions of this chapter shall also apply to all assessment liens for demolition or repair of record as of the effective date of this article.

Section 19. In addition to the notice requirements set forth in Section 5, the appropriate city official shall give notice to any persons or entities having an interest in the subject property as determined by a search of the probate records for the three years immediately preceding the date of the notice.

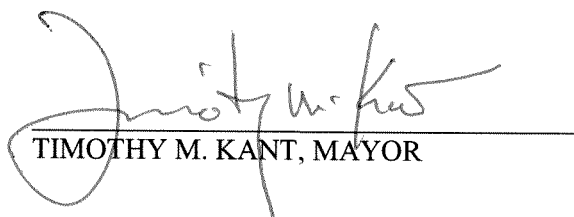
Section 20. The city shall file a Notice of Proposed Lien to be placed on the subject property in the records of the Judge of Probate and list the property by address on the section of the municipal web site where structures being considered for demolition are listed.

Section 21. All ordinances heretofore adopted by the City Council of the City of Fairhope, Alabama, which conflict with the provisions of this Ordinance are hereby expressly repealed.

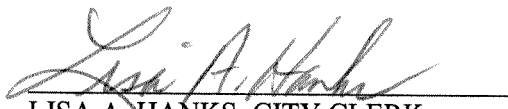
Section 22. If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

Section 23. This Ordinance shall become effective immediately upon due adoption and publication as required by law.

ADOPTED THIS 28TH DAY OF MARCH, 2011

  
TIMOTHY M. KANT, MAYOR

ATTEST:

  
LISA A. HANKS, CITY CLERK

Ord. No. 1447 Published in  
FAIRHOPE COURIER  
on Friday, April 8, 2011  
Lisa A. Hanks City Clerk