

ORDINANCE

An Ordinance to amend Section 16.070 of the Manitowoc Municipal Code regulating the demolition of buildings, and to amend Section 16.080 of the Manitowoc Municipal Code regulating Non-Structural Demolition in the City of Manitowoc.

The Mayor and Common Council of the City of Manitowoc do ordain as follows:

Section 1. Section 16.070 is amended to read as follows:

"16.070. Razing of Buildings.

(1) The purpose of this Ordinance is to regulate the razing or demolition and the removal of scrap and salvageable equipment and materials from vacated buildings without immediate functional replacement. The City of Manitowoc finds that such removal may result in the complete abandonment of property and reduce the chance that such property will in the future be devoted to any productive or enjoyable public or private use, and therefore cause conditions which will create health and safety hazards and aggravate blight, interfere with the enjoyment of and reduce the value of private property, and interfere with the safety and welfare of the public.

(a) **Permit and Definition of "Demolition"**. No person shall raze or demolish any building within the City without first obtaining a permit from the Building Inspector, unless otherwise exempted under this section. For purposes of this ordinance, the terms "demolition" and razing shall be used interchangeably, and shall be defined as a license for the deconstructing, destroying, razing, tearing down, or wrecking of any ~~facility~~**building** including its foundation in an environmentally responsible manner, protective of worker safety. Demolition shall include any partial demolition and any interior demolition affecting more than ten percent of the replacement value of the structure as determined by the Building Inspector. Any demolition work shall include (i) proper disposal of recyclables, solid waste, and hazardous materials pursuant to applicable regulations and approved plans, if any; (ii) the controlled removal of materials to be salvaged or intended to be reclaimed or saved from destruction from the interior of a building including, but not limited machines, wire, conduit, equipment, steel, wood, copper, aluminum, glass, brick, concrete, asphalt material and the like; (iii) termination of utilities serving the premises including permits and final inspections and approvals; (iv) removal of driveways and repair of public sidewalks, as required; ~~and~~ (v) site cleanup and restoration including grading, landscaping and fencing, as required; (vi) compliance with all other applicable building regulations including, but not limited to Section 30.80 of the Wisconsin Uniform Building Code; and (vii) payment to the City of any outstanding taxes, fees, citations, or assessment owed.

(b) **Permit Grant for Properties with Buildings In Excess of 100,000 cubic feet.** Properties ~~in excess~~ with buildings exceeding a total of 100,000 cubic feet require Common Council approval. The Common Council may consider the permit application only after receiving the recommendation of the Licensing, Permits, and Inspections Committee.

Prior to making its recommendation to grant or deny the application, the Licensing, Permits, and Inspections Committee shall consider: (i) the application; (ii) the report, if any, of

the Building Inspector; (iii) the expertise and financial condition of the applicant and/or owner; (iv) the effect of the proposed operation on the surrounding neighborhood; (v) the conditions in which the site and building will be left upon completion of the proposed demolition including the post-demolition plan; (vi) the effect on the City of having a stripped structure remain, if the structure is not proposed to be immediately razed or immediately renovated; (vii) the presentation, if any, of the applicant; (viii) the comments of the public; and (ix) such other matters germane to the decision.

In making a recommendation, the Licensing, Permits and Inspections Committee shall address the following matters: (i) the amount of the Irrevocable Letter of Credit, which shall in no case be less than 120% of the project cost, to be required by the City Attorney of the permittee as a condition of issuance of the permit and as a requirement of operation; (ii) other State or local permits as required by law, rule or regulation that must be obtained as a condition of issuance of the permit or as a condition of operation; (iii) reasonable special operating requirements to be required of the permittee; and (iv) such other matters or limitations as the Public Safety Committee determines is necessary to protect the public interest.

After all conditions of issuance have been satisfied, the Building Inspector shall issue the permit to the applicant, who may then be referred to herein as permittee or permit holder.

(2) Application. The owner of a building to be razed shall sign the permit application. In the alternative, an agent for the owner may sign the permit application upon providing written authorization verifying permission of the owner to apply for the permit. The Building Inspector may require additional information, such as proof the applicant has sufficient financial resources and ability to complete the project, including, but not limited to: (i) identification of materials to be recycled; (ii) a performance schedule; (iii) financial assurances, including a project pro-forma detailing projected revenues and expenses; (iv) environmental assessment, asbestos or other reports regarding hazardous substances; and (v) other State or local permits as required by law, rule or regulation. The owner and demolition contractor/operator shall be joint and severally liable for performance under a permit issued pursuant to this ordinance.

(3) Fees. Permit fees shall be established by resolution of the Common Council.

(4) Irrevocable Letter of Credit or Alternative Forms of Security. Any application for a permit to engage in the razing of buildings within the City shall be accompanied by an Irrevocable Letter of Credit which meets the requirement under Section 15.370 and is issued by a company authorized to do business in the State of Wisconsin, and approved by the City Attorney. The City Attorney has the authority to require a bond of a greater amount, on a case-by-case basis, where deemed necessary, to protect the City. following requirements:

1. In an amount no less than 120% of the estimated project cost;
2. Name the City as a beneficiary;
3. Be irrevocable and unconditional;
4. Be conditioned for payment to the City solely upon presentation of the letter of credit and a sight draft, which shall direct the issuing lending institution to pay the City without any explanation, affidavit or documentation;
5. Expire not earlier than one year after completion of the last act by permittee of demolition or salvage (unless the one year period is waived or modified by the Common Council), or after the expiration of a permit issued under this section to the permittee, whichever is later;
6. Issued by a company certified by the State to conduct such business within Wisconsin.

The Irrevocable Letter of Credit shall be a guarantee of performance by the permittee. The City Attorney shall act as the reviewing authority for the letter of credit. The letter of

credit shall be delivered to the attention of the City Attorney, who may reasonably require a greater amount on a case-by-case basis, where deemed necessary to protect the City. In considering the amount of the Irrevocable Letter of Credit, the City Attorney shall consider: (i) the recommendation, if any, of the Building Inspector; (ii) the expertise of the applicant; (iii) the applicant's work history; (iv) the capitalization of the applicant; (v) the scope of the proposed project; (vi) the possible environmental hazards that could be created or currently exist; (vii) the effect of the proposed operation on the surrounding neighborhood; and (viii) the cost of remediation on the City, should the City have to address any matter due to the unwillingness or inability of the permittee to complete its obligations.

(5) Comprehensive Liability Insurance. An applicant for a permit shall provide proof of comprehensive liability insurance in the amount of \$1,000,000 per occurrence and per person, and \$50,000 property damage. Such coverage shall be maintained for the duration of the project and shall be a condition of a permit issued under this Section. In addition, the permittee shall agree to indemnify and hold the City harmless from any and all claims, demands, actions, judgments, liabilities and obligations of any nature whatsoever arising from the demolition activity or site restoration for which the permit is issued, including any attorneys' fees and costs incurred by the City as a result thereof. In addition to liability insurance, the Building Inspector or City Attorney may require additional coverages including, but not limited to, automobile liability, pollution legal liability or other environmental insurance coverage, and workers' compensation.

(6) Disconnection of Utilities. The owner or agent shall notify all utilities having service connections within a building to be razed, such as water, electric, gas, sewer, telecommunications, and other connections. A permit to demolish or remove a building shall not be issued until the Building Inspector has determined that all appurtenant equipment, such as meters and regulators, have been removed, and service connections are sealed and plugged correctly. No permit to demolish or remove any building shall be issued without written proof of the notification and appropriate removal of appurtenant equipment provided to the Building Inspector.

(7) Sewer and Water Connections. During demolition, sewer pipes shall be protected to prevent entrance of sand, earth or other foreign materials. Upon completion of demolition, the ends of all underground sewer or drain pipes shall be securely stopped with watertight and durable material. The water supply and sewer systems shall be abandoned inside the lot line by a licensed master plumber.

(8) Dropping Materials – Chutes Required. Where a space on the ground or on a floor is railed off and openings in boundary walls closed, materials may be dropped into such space. When a protected or enclosed space cannot be provided, material and debris shall be removed through fully enclosed incline chutes of wood, metal or other approved durable material. Open chutes may be used to lower dismantled falsework or lumber from a height not exceeding 30 feet. The bottom of all chutes shall be equipped with a gate or stop for closing and regulating the flow of materials.

(9) Permit Conditions. All permits shall be subject to the following conditions:

(a) Permit Term. The razing or demolition of a building shall be completed 90 consecutive calendar days after the permit is issued. The Building Inspector may at his/her discretion extend the permit term for cause, on terms and conditions acceptable to the parties and recorded in writing. "Cause" shall mean the inability of the permittee to act due to circumstances beyond permittee's reasonable control and upon the exercise of due diligence.

(b) Inspection of Work. During the entire period of any demolition project, employees and agents of the City shall have the ability to enter onto the property, at any time, without notice, for inspections. Such ability shall be a condition of the demolition

permit. Work authorized by the permit is subject to inspection by the Building Inspector who shall have the authority to order corrective work. Failure to follow the orders of the Building Inspector, or to complete the raze in accordance with the MMC, shall give the Building Inspector authority to seek restitution from the Letter of Credit or alternative security, by any remedies available at law.

(c) Foundation of Razed Building. Whenever a building has been razed, the foundation thereof, if any, shall be removed to at least two foot below adjacent grade and filled in with clean fill material approved by the Building Inspector with the top two feet of fill material being of dirt or sand. No combustible material may be used for the fill material.

(d) Driveway Approaches, Sidewalks and Slabs. Remaining driveway approaches shall be removed and replaced with curb and gutter; damaged public sidewalks shall be replaced; and driveway aprons, remaining slabs and private sidewalks shall be removed from the site pursuant to any permits for replacing curb and gutters, driveway approaches and public sidewalks obtained from the Department of Public Infrastructure.

(e) Restoration of Site. Prior to the issuance of a permit under this Section by the Building Inspector to a contractor licensed in Wisconsin, the contractor may be required to provide a sufficient level of detail regarding the post-demolition activities, condition and use of the property. The Building Inspector reserves the right to require the property owner or its agent to ~~file~~submit (prior to commencement of any demolition activity) a site plan pursuant to MMC 15.370(2) for the property upon which the structure to be demolished is located. All debris, rubbish and other materials not used for fill shall be removed from the site upon completion of demolition work, and the site leveled and graded to provide proper drainage to conform with the grade of adjoining premises, or fenced in with a temporary solid barrier fence not less than four feet high to safeguard the public. The foundation walls shall be removed a minimum of 2 feet below adjacent grade, and the basement floor broken up to allow free flow of water to its natural grade. The site shall be left in a dust-free and erosion-free condition. Excavations shall be filled with a minimum of three inches of clean, solid fill to match lot grade within five consecutive calendar days of removal of the structure. The contractor shall be responsible for the repair and replacement of any public sidewalk, curb, gutter or street damaged in this process. Any excavation shall be protected with appropriate fences, barriers and/or lights.

(f) Disposal of Debris. Except for recycled or salvaged materials, the permit holder shall dispose of all building debris in a licensed landfill in a manner compliant with Wisconsin Department of Natural Resources requirements. At any time, the permit holder shall provide to the Building Inspector receipts and/or an itemized list of debris disposed of by dumping or salvage. There shall be no burning of any structure or demolition waste.

(g) Site Safety and Security. The permit holder shall, during the razing process, maintain the site in a safe and secure condition, and shall promptly report any personal injury and property damage to the Building Inspector.

1. All building materials which produce dust or other flying debris shall be sufficiently dampened during removal to minimize floating or blowing into the street or adjoining property. All adjacent streets, sidewalks or other public areas shall be protected by fences and/or scaffolds. The Building Inspector may require additional safety and security methods, including fencing and gating, as deemed necessary to protect the site and restrict access to the public.
2. The structural elements of a building or structure shall be taken down one story at a time, beginning from the top, unless a different method is approved by the Building Inspector. All structural parts of each story shall be lowered to the

ground by means of approved equipment or devices except as hereinafter provided. No material shall be placed or allowed to fall in such a manner so as to overload any part of the structure which may be caused to fall because of such practice.

(10) Exception. After consideration of the factors in this section, the Building Inspector may grant an exception to (9)(a), (9)(b) and (9)(c) for any property for which the City will be taking title or for which a related redevelopment plan has been approved by the City. In the exercise of discretion in granting an exception, the Building Inspector shall consider the following factors:

- (a) Type of contamination that may be on the property or the larger, integrated site associated with the building to be razed;
- (b) Suspected level of contamination on the property based on best evidence available;
- (c) Possible vectors of migrations from the property;
- (d) Any known migration of contamination from the property;
- (e) Reasonableness of other means of remediation or containment;
- (f) Any communication from the state or federal government suggesting the necessity or adequacy of maintaining the foundation, or portion thereof, for environmental protection.

(11) Exemption.

(a) Residential Remodeling. This section shall not be construed to apply to contractors or homeowners doing demolition work on part of a one- or two-family residential building which is necessary in the course of ~~building construction~~ remodeling work being conducted under a building permit. The Building Inspector may exempt contractors or homeowners from the Irrevocable Letter of Credit provisions using the same criteria used to establish whether a permit should be granted.

(b) Accessory Buildings and Detached Garages. This section shall not apply to demolition of accessory buildings or detached garages less than 500 square feet in area as measured by the exterior dimensions of the structure.

(12) Special Assessment. The Building Inspector shall recover all costs of enforcement and legal fees through special assessments to be levied and collected as a delinquent tax against the real estate upon which the building is located. Such special assessment shall be a lien upon the real estate. An administrative fee as set forth by resolution of the Common Council shall be added to the special assessment against the benefited property.

Section 2. Section 16.080 is amended to read as follows:

“16.080. Salvage and Non-Structural Demolition.

(1) Definition of “Salvage”. For purposes of this ordinance, the terms “salvage” shall be defined as the controlled removal of materials intended to be reclaimed or saved from destruction of a building including, but not limited to machines, wire, conduit, equipment, steel, wood, copper, aluminum, glass, brick, concrete, asphalt material, tangible property that is man-made and detachable from the real property such as fixtures, and the like. Salvage activities shall require the issuance of a demolition permit under MMC Section 16.070, and all demolition permits will require the structure to be removed as described in the approved permit. There shall be no salvaging of any structure without demolition.

Vacated Building. This ordinance is effective for a building or structure having a total ~~square footage~~**volume**, as measured by the exterior dimensions of the building or structure, of 25,000 cubic feet or greater that had a principal industrial or commercial use as its most recent use allowed by the MMC, which principal industrial or commercial use has ceased.

(2) Permit. No person may salvage from a vacated building unless the work is performed under a demolition permit issued to the applicant by the Building Inspector. Buildings over 100,000 cubic feet require approval by the Common Council after review by the Common Council, and all requirements and procedures of Section 16.070(1) (b) shall apply.

(3) Permit Application.

(a) Who May Apply. The applicant may be the owner of the real estate, or the contractor hired by the owner. Under all circumstances, the applicant, if other than the owner, and the owner, shall be jointly and severally responsible for compliance with the terms of the permit and this ordinance.

(b) Form. Application for a permit, whether initial or renewal, shall be filed with the Building Inspector on forms created by the Building Inspector. The application for a permit shall at a minimum comply with Section 30.050 of the Wisconsin Uniform Building Code. The Building Inspector may require additional information of a specific applicant and property including, but not limited to environmental assessment reports; and reports quantifying asbestos, lead-based paint, mercury and other hazardous substances.

(4) Fees. A permit fee must accompany the application. Permit fees shall be established by resolution of the Common Council.

~~**(5) Irrevocable Letter of Credit.** As a condition of issuance by the Building Inspector of the permit, the permittee shall post an Irrevocable Letter of Credit pursuant to MMC 15.370(2)(l) with the City in an amount required by the Common Council and in a form approved by the City Attorney. The Irrevocable Letter of Credit must be issued by a financial institution certified by the State to conduct such business within Wisconsin, allowing for direct draw by the City on demand without court action and without approval by permittee, to complete work or to repair damage that was the obligation of the permittee. The Irrevocable Letter of Credit must contain a provision that it remain as an obligation to the City for no less than one year after completion of the last act by permittee of salvage (unless the one year period is waived or modified by the Common Council), or after the expiration of a permit issued under this section to the permittee, whichever is later. In considering the amount of the Irrevocable Letter of Credit, the City Attorney shall consider: (i) the recommendation, if any, of the Building Inspector; (ii) the expertise of the applicant; (iii) the applicant's work history; (iv) the capitalization of the applicant; (v) the scope of the proposed project; (vi) the possible environmental hazards that could be created; (vii) the effect of the proposed operation on the surrounding neighborhood; and (viii) the cost of remediation to the City, should the City have to address any matter due to the unwillingness or inability of the permittee to complete its obligations. As a condition of issuance by the Building Inspector of the permit, the permittee shall post an Irrevocable Letter of Credit as required by MMC § 16.070(4).~~

(6) Insurance Requirements.

Comprehensive Liability Insurance. An applicant for a permit shall provide proof of comprehensive liability insurance in the amount of \$1,000,000 per occurrence and per person, and \$50,000 property damage. Such coverage shall be maintained for the duration of the project and shall be a condition of a permit issued under this Section. In addition, the permittee shall agree to indemnify and hold the City harmless from any

and all claims, demands, actions, judgments, liabilities and obligations of any nature whatsoever arising from the demolition activity or site restoration for which the permit is issued, including any attorneys' fees and costs incurred by the City as a result thereof. In addition to liability insurance, the Building Inspector or City Attorney may require additional coverages including, but not limited to, automobile liability, pollution legal liability or other environmental insurance coverage, and workers' compensation.

(7) Permit Term.

(a) Initial Term. Permits issued under this section shall be valid for a period of not more than 180 consecutive calendar days from the date of issue.

(b) Renewal Term. A permit issued to an owner or the applicant is personal to the applicant and limited to the term granted. The permittee may not have an expectation in the renewal of the permit. The permits may be renewed at the discretion of the Building Inspector upon application of a permit holder, filed with the Building Inspector prior to expiration of the initial term or any renewal terms. Each renewal may be granted for up to 60 additional consecutive calendar days.

(8) General Operating Requirements. The following general operating requirements shall apply to all demolition and salvage permittees, or those working for permittees, subject to terms of the permit in accordance with the provisions of Section 16.070 MMC, and this ordinance:

(a) The permit issued pursuant to this ordinance shall be plainly displayed on the premises upon which the building is located.

(b) The building and premises shall, at all times, be maintained in a clean, neat and sanitary of a condition as such premises will reasonably permit.

(c) No garbage, refuse or other waste liable to give off a foul odor or attract vermin shall be kept on the premises, except for domestic garbage which shall be kept in containers which are, in the opinion of the Building Inspector, rodent-proof and removed from the premises as often as it necessary to provide a sanitary environment.

(d) Work done under this permit is subject to inspection by the Building Inspector.

(e) Permittees shall have the responsibility to maintain proof of insurance policies as required in Section (7), naming the City as an additional insured for all entities or natural persons doing work on a property or associated with the work under the permit.

(f) No scrap salvage or debris which is temporarily stored on the premises shall be allowed to rest or protrude over any public street, walkway or curb, or become scattered about or blown off the premises.

(g) No mechanized process whatsoever shall be utilized on premises to reduce salvageable material or debris in volume after such salvageable material has been detached from the real property, unless authorized by the Building Inspector. Such prohibited mechanized processes include, but are not limited to, crushers or shredders. In addition, there shall be no burning or brick cleaning on the site.

(h) There shall be strict compliance with Section 14.140 of the MMC, "Loud Noise".

(i) No premises or building subject to a permit shall be allowed to become a public nuisance to adversely affect the public health, safety or welfare.

(j) There shall be full compliance with all City codes as well as State and federal laws, rules or regulations which may be applicable. Compliance with Chapter 6 MMC,

Fire Department and Fire Prevention, which adopts the entire NFPA, including NFPA 241, is of particular importance for demolition permits.

(k) The permit holder shall, during the salvage process, maintain the work site in a safe and secure condition.

(l) Except for recycled or salvaged materials, the permit holder shall dispose of building debris in a licensed landfill in a manner compliant with Wisconsin Department of Natural Resources requirements. At any time, the permit holder shall provide to the Building Inspector receipts and/or an itemized list of debris disposed of by dumping or salvage.

(m) The permit holder shall be responsible for disconnections of utilities, including plumbing and electrical, necessary for the salvaging process, and shall provide evidence that the necessary disconnections have been accomplished.

(n) The Irrevocable Letter of Credit imposed as a condition of issuance of the permit shall be maintained.

(o) Permittee shall comply with all orders of the Building Inspector imposed at the granting of the permit or at any other time.

(p) Permittee must provide to the Building Inspector a current list of contractors doing work at a site that is subject to a permit issued pursuant to this Section, including evidence of insurance as required in Section (7) of this ordinance. As used herein, the phrase "maintain current" means that the list filed with the Building Inspector is updated by the permittee prior to the contractor commencing work pursuant to the permit.

(9) Inspections. Permit holders and property owners shall permit authorized representatives of any department of the City having enforcement powers to inspect the premises proposed to be permitted, with or without advanced notice, as often as may be required to permit said departments to perform their duties and assure compliance with this ordinance, without first obtaining a special inspection warrant. Inspections shall, to the fullest extent possible, be made during normal hours of business operation in the absence of emergency circumstances which require prompt action to protect the public health, safety and welfare, or to preserve evidence of noncompliance with this ordinance. The unreasonable failure to permit inspections shall be grounds for permit denial, suspension or revocation.

(10) Summary Suspension. If, in the opinion of the Building Inspector, the public is subject to imminent danger due to a violation by the permittee of any one or combination of more than one of the requirements in Section (9), the Building Inspector shall issue an order to the permittee requiring immediate cessation of those operations implicating the imminent danger. Pursuant to such order, the permittee shall cause such operations to cease as directed by the Building Inspector. Failure to maintain insurance as required, to maintain the Letter of Credit as required, or to permit inspection as required are each per se violations implicating imminent danger to the public necessitating an order to cease all operations.

In the event that an order to the permittee requiring immediate cessation is issued by the Building Inspector, such order shall be considered by the Public Safety Committee of the Common Council no later than at its next regular meeting. The Public Safety Committee, after hearing from the Building Inspector, the permittee, and the public, shall affirm the order, reverse the order, or modify the order. The decision of the Public Safety Committee may be appealed to the Common Council by either the Building Inspector or the permittee.

(11) Non-renewal or Revocation Disciplinary Hearings. Disciplinary hearings, including non-renewal, suspension and revocation hearings, shall be held before the Licensing, Permits, and Inspections Committee, which shall submit a report to the Common Council, including "Findings of Fact", "Conclusions of Law" and a recommendation as to what action, if any, the Common Council should take with respect to the permit. The Licensing, Permits, and Inspections Committee shall provide the Building Inspector and the permittee with a copy of

the report. Either the Building Inspector or permittee may make an objection, orally or in writing, to the report, and shall have the opportunity to present arguments supporting the objection to the Common Council. The Common Council shall determine whether the arguments shall be presented orally or in writing, or both. If the Common Council, after considering the Committee's report and any arguments presented by the Building Inspector and permittee, finds the complaint to be true, or if there is no objection to a report recommending a suspension, revocation or non-renewal, the ~~permittee~~permit shall be suspended, revoked, or not renewed. If the Common Council finds the complaint untrue, the proceedings shall be dismissed without cost to the accused. The City Clerk shall give notice of each suspension, revocation or non-renewal to the party whose permit is affected.

(12) Transferability. Permits issued hereunder are personal to the applicant, and are not transferrable to any other party. Permits issued hereunder are issued to a particular site and are not transferable to any other site.

(13) Enforcement. The Building Inspector shall have the primary responsibility to enforce this ordinance.

(14) Severability. If any term, condition or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective."

Section 3. This Ordinance shall take effect the day after publication.

Introduced MAR 16 2015 _____

Adopted _____

Approved _____

Justin M. Nickels, Mayor

Fiscal Impact: \$0
Funding Source: n/a
Finance Director Approval: /sc
Approved as to form: /kmm

This instrument drafted by Kathleen M. McDaniel, City Attorney