

(First published in the Western Butler County Times ^{October} September 7, 1971)

ORDINANCE NO. 161

FINDING THAT THERE EXISTS WITHIN THE CITY OF ANDOVER, KANSAS, STRUCTURES UNFIT FOR HUMAN USE OR HABITATION WHICH ARE INIMICAL TO THE WELFARE OF THE RESIDENTS OF THE CITY IN THAT THEY HAVE A BLIGHTING INFLUENCE ON PROPERTIES IN THEIR AREA OR DEFECTS WHICH RENDER THEM DETRIMENTAL TO THE HEALTH OF THE RESIDENTS OF THE CITY: ESTABLISHING A PROCEDURE FOR CAUSING THE REPAIR, CLOSING, DEMOLITION OR REMOVAL OF SUCH UNFIT STRUCTURES AND ASSESSING THE COST THEREOF: PROVIDING FOR NOTICE, A PUBLIC HEARING AND RECOURSE TO THE DISTRICT COURT FOR THE OWNERS OF SUCH STRUCTURES: AND DESIGNATING A "PUBLIC OFFICER" TO ENFORCE THE PROVISIONS OF THIS ORDINANCE AND PRESCRIBING HIS DUTIES AND AUTHORITY CONCERNING SUCH STRUCTURES AND PROVIDING APPELLATE AND OTHER PROCEDURES RELATING THERETO.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANDOVER, KANSAS:

Section 1. WHEREAS, The Governing Body of the City of Andover, Kansas, has found that there exists within the corporate limits of the City structures which are unfit for human use or habitation due to delapidation, defects increasing the hazards of fire, accidents or other calamities, or other conditions including those set forth in Section 4 hereof, which renders such structures unsafe, unsanitary, or other wise inimical to the welfare of the residents of said City, and it is hereby deemed necessary by said Governing Body to require or cause the repair, closing or demolition or removal of such structures in the manner hereinafter provided.

Section 2. For the purpose of this ordinance, certain terms and words are hereby defined as follows:

- (1) Structures: Anything constructed or erected which requires location on the ground or attached to something having a location on the ground.
- (2) Residential structures: Any building, dwelling or structure, or part thereof, used and occupied for human habitation or intended to be used and including any appurtenances belonging thereto or usually enjoyed therewith.
- (3) Non-residential structures: Any structures used for other than residential purposes, or a part of such structure, or a structure a part of which is used for other than non-residential purposes, and where applicable, the premises on which such structures are situated.
- (4) Public Officer: The Building Inspector.

Section 3. Whenever it appears to the Public Officer that any structure is unfit for human use or habitation, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner, every mortgagee of record, and all parties in interest in such structure (including persons in possession) a complaint stating the charges in that respect. Such complaint shall contain a notice that a hearing will be held before the Public Officer at a place therein fixed not less than ten (10) days nor more than thirty (30) days after the serving of said complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Public Officer.

That if, after such notice and hearing, the Public Officer determines that the structure under consideration is unfit for human use or habitation, he shall state in writing his findings of facts in support of such determination and shall issue and cause to be served upon the owner thereof an order which,

- (a) If repair, alteration or improvement of the said structure can be made at a reasonable cost in relation to the value of the structure, which cost shall not exceed 50% of the fair market value of such structure, the owner of the said structure shall within the time specified in the order, repair, alter or improve such structure to render it fit for human use or habitation or shall vacate the structure and close until conformance with this ordinance is met; or
- (b) If the repair, alteration or improvement of the said structure cannot be made at a reasonable cost in relation to the value of the structure, that is to say, 50% of the fair market value or less of such structure, which percentage is hereby deemed to be a reasonable standard by which to require either repair, alteration or improvement, or removal or demolition, the owner shall within the time specified in said order remove or demolish said structure.

That if the owner fails to comply with an order to repair, alter or improve, or to vacate and close the structure, the Public Officer may cause such structure to be repaired, altered or improved, or to be vacated and closed.

That if the owner failed to comply with an order to remove or demolish the structure, the Public Officer may cause such structure to be removed or demolished.

That the amount of cost of such repairs, alterations or improvements or vacating and closing, or removal or demolition by the Public Officer, shall be a lien against the real property upon which such cost was incurred and such lien, including as part thereof, allowance of his costs and the necessary attorney fees, and may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property, or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located, and the City Clerk shall at the time of certifying other city taxes certify the unpaid portion of the aforesaid costs and the County Clerk shall extend the same on the tax rolls of the County against said lot or parcel of land. If the structure is removed or demolished by the Public Officer, he shall sell the materials of such structure and shall credit the proceeds of such sale against the cost of the removal or demolition, if there be any balance remaining, it shall be paid to the parties entitled thereto as determined by proper judicial proceedings instituted by the Public Officer after deducting the costs of such judicial proceedings, including his necessary attorney fees incurred therein, as determined by the Court.

Section 4. The Public Officer may determine that a structure is unfit for human use or habitation if he finds that conditions exist in or near such structure which are dangerous or injurious to the health, safety or morals of the occupants of such buildings or other residents of the City, or which have a blighting influence on properties in the area. Such conditions may include the following, without limitations: defects therein or near a structure increasing the hazard of fire, accident, or other calamities; air pollution; delapidation; structural defects; uncleanliness; overcrowding, dead and dying

trees, limbs or other unsightly natural growth, unsightly appearances that constitute a blight to adjoining property, the neighborhood or the City; unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof; vermin infestation; inadequate drainage; open unattended excavations; or any violation of health, fire, building or zoning regulations or any other laws or regulations relating to the use of the land and the use and occupancy of buildings and improvements now in effect or hereafter duly approved by the Governing Body.

Section 5. Complaints or orders issued by the Public Officer pursuant to this ordinance shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons is unknown and the same cannot be ascertained by the Public Officer in the exercise of reasonable diligence, and the Public Officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) consecutive weeks in the official city newspaper. A copy of such complaint or order shall also be posted in a conspicuous place on the premises affected by the complaint or order, and another copy of such complaint or order shall also be filed with the Clerk of the District Court of Butler County, Kansas, and such filing of the complaint or order shall have the same force and effect as other lis pendens orders provided by law.

Section 6. In all events the Public Officer charged herewith with any of the responsibilities in any of the sections of this ordinance shall, if he believes a violation exists under the terms of this ordinance which effects either the public or individual health of the citizens of Andover, Kansas, shall not make any findings to such effect without first having obtained an investigation by and concurrence in such findings by the duly appointed Board of Health of the City of Andover, Kansas, and upon the referral of any matter by the Public

Officer to said Board of Health, the Board of Health shall have a reasonable length of time to investigate and conduct hearings in relation thereto, furnishing reasonable notice to any and all persons who are or may be affected by any decision of such Board of Health of any such hearings.

Section 7. Any person affected by an order by the Public Officer may petition to the District Court of Butler County, Kansas, for an injunction restraining the Public Officer from carrying out the provisions of the order, and the Court, may upon such petition, issue a temporary injunction restraining the Public Officer, pending the final disposition of the cause; provided however, that such person shall petition such Court within thirty (30) days after the posting and service of the order of the Public Officer. Hearing shall be had by the District Court on such petitions as provided by K.S.A. 17-4759 as amended. The remedies herein provided shall be exclusive remedies, and no person affected by an order of the Public Officer shall be entitled to recover any damages for action taken, pursuant to any order of the Public Officer or because of the compliance by such person with any order of the Public Officer.

Section 8. That notwithstanding the provisions in Section 7 hereinabove relating to the rights of any aggrieved person to bring an action in the District Court of Butler County, Kansas, such person shall have the additional right, within thirty days of any final order from the Public Officer, to appeal such decision to the Governing Body of the City of Andover, Kansas. Notice of such appeal shall be served in writing within said thirty day period upon the City Clerk of said City. The Governing Body shall hear such appeal as an administrative trial de novo at the earliest possible date commensurate with permitting the Parties adequate notice and opportunity to appear as each individual circumstances shall warrant. It is expressly declared that the additional administrative remedy provided in this section shall be optional on the part of the aggrieved party, and no complaint can be made that the aggrieved party failed to exercise any administrative remedy by failure to bring proceedings under this section.

Section 9. The Public Officer is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this ordinance, including the following powers in addition to others herein granted:

- (1) To investigate the structure conditions in the City in order to determine which structures therein are unfit for human use or habitation;
- (2) To administer oaths, affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examinations provided that such entry shall be made in such a manner as to cause the least possible inconvenience to the persons in possession and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;
- (4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purpose of this ordinance.

Section 10. Nothing in this ordinance shall be construed to abrogate or impair the powers of the Courts or of any department of the City of Andover, Kansas, to enforce the other provisions of its ordinances or regulations, nor to prevent or punish violations thereof; and the powers enforced by this ordinance shall be in addition to and supplemental to the powers conferred by the constitution, any other law or ordinance. Nothing in this ordinance shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise or to exercise those powers granted specifically by K.S.A. 12-1750 through K.S.A. 12-1756, both sections inclusive, as amended.

Section 11. If any part or parts of this ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this ordinance if it had known that such part or parts thereof would be declared invalid.

Section 10. This ordinance is adopted by authority of and under the provisions of K.S.A. 1967 Supp. 17-4759, 17-4759a and Article 12, Section 5 (b) and (d) of the Constitution of Kansas.

Section 11. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

The above and foregoing ordinance duly passed and adopted by the Governing Body of the City of Andover, Kansas, this 28 day of September, 1971.

Eugene Miller
Eugene Miller, Mayor

ATTEST:

(Seal)

Patricia M. Stuenkel
Patricia M. Stuenkel, City Clerk