**ORDINANCE NO. 541B**

**AN ORDINANCE REGULATING NUISANCES AND OFFENSIVE CONDITIONS AND THE ABATEMENT OF DANGEROUS BUILDINGS WITHIN THE CITY OF CHAMBERLAIN, BRULE COUNTY, SOUTH DAKOTA, AND DESIGNATING PENALTIES FOR VIOLATION THEREOF AND AMENDING ORDINANCE NO. 541**

BE IT ORDAINED BY THE CITY OF CHAMBERLAIN, BRULE COUNTY, SOUTH DAKOTA, THAT ordinance 541 is amended by adding the following sections:

Section 16. PURPOSE AND SCOPE

The purpose of Sections 16 – 43 of this ordinance is to amend Ordinance Number 541 by adding sections to address the abatement of dangerous buildings. It is the intent of this ordinance to provide a just, equitable and practicable method, to be cumulative with and in addition to any other remedy provided or otherwise available by law, whereby buildings or structures which endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants may be required to be repaired, vacated or demolished.

Section 17. ALTERATIONS, ADDITIONS AND REPAIRS

All buildings or structures which are required to be repaired under the provisions of this ordinance shall be subject to the provisions of SDCL 11-10-6.

Section 18. RIGHT OF ENTRY

 When it is necessary to make an inspection to enforce the provisions of this ordinance, or when the Enforcement Officer (as defined in Section 11) has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this ordinance which makes the building or premises unsafe, dangerous or hazardous, the official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this ordinance, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If entry is refused, the official shall have recourse to the remedies provided by law to secure entry.

Section 19. ABATEMENT OF DANGEROUS BUILDINGS

All buildings or portions thereof which are determined after inspection by the Enforcement Officer to be dangerous as defined in this ordinance are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in this ordinance.

Section 20. VIOLATIONS

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this ordinance.

 Section 21. INSPECTION OF WORK

All building or structures within the scope of this ordinance shall be subject to inspection in accordance with and in the manner provided by this ordinance.

Section 22. BOARD OF APPEALS

 In order to hear and decide appeals of orders, decisions or determinations made by the Enforcement Officer relative to the abatement of dangerous buildings, there shall be and is hereby created a Board of Appeals consisting of the City Commission members. The City Finance Officer shall act as secretary to said board but shall have no vote upon any matter before the board. The board shall render all decisions and findings in writing to the appellant, with a duplicate copy to the Enforcement Officer. Appeals shall be requested in writing.

Section 23. DANGEROUS BUILDING

For the purpose of this ordinance, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.

1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit incase of fire or panic.

2. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

3. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is likely to cause a failure in the structure.

4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is likely to result in a failure or collapse of the structure or its members.

5. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

6. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure.

7. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

8. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

10. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.

11. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.

12. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

13. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the zoning regulations of this jurisdiction, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.

14. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the Enforcement Officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the Enforcement Officer or Fire Chief to be a fire hazard.

17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

Section 24. NOTICES AND ORDERS OF ENFORCEMENT OFFICER

1. Commencement of Proceedings. When the Enforcement Officer has inspected or caused to be inspected any building and has found and determined that such building is a dangerous building, Enforcement Officer shall commence proceedings to cause the repair, vacation or demolition of the building.

2. Notice and Order. The Enforcement Officer shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:

a. The street address and a legal description sufficient for identification of the premises upon which the building is located.

b. A statement that the Enforcement Officer has found the building to be dangerous with a brief and concise description of the conditions found to render the building dangerous under the provisions

of this ordinance.

c. A statement of the action required to be taken.

3. Order by Enforcement Officer.

a. If the Enforcement Officer has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefore and the work physically commenced within such time (not to exceed 60 days from the date of the order) and completed within such time as the Enforcement Officer shall determine is reasonable under all of the circumstances.

b. If the Enforcement Officer has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a time certain from the date of the order as determined by the Enforcement Officer to be reasonable.

c. If the Enforcement Officer has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the Enforcement Officer shall determine is reasonable (not to exceed 60 days from the date of the order); that all required permits be secured therefore within 60 days from the date of the order; and that the demolition be completed within such time as the Enforcement Officer shall determine is reasonable.

d. Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the Enforcement Officer (i) will order the building vacated and posted to prevent further occupancy until the work is completed, and (ii) may proceed to cause the work to be done and charge the costs thereof against the property or its

owner.

e. Statements advising (i) that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the Enforcement Officer to the board of appeals, provided the appeal is made in writing as provided in this ordinance and filed with the Enforcement Officer within 30 days from the date of service of such notice and order; and (ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

4. Service.

a. Service of Notice and Order. The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the property; and one copy thereof shall be served on each of the following if known to the Enforcement Officer or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the Enforcement Officer to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section.

b. Method of Service. Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the last equalized assessment roll of the county or as known to the enforcement officer. If no address of any such person so appears or is known to the enforcement officer, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

c. Proof of Service. Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to the copy of the notice and order retained by the enforcement officer.

Section 25. RECORDATION OF NOTICE AND ORDER

If compliance is not had with the order within the time specified therein, and no appeal has been properly and timely filed, the Enforcement Officer shall file in the office of the county recorder a certificate describing the property and certifying (i) that the building is a dangerous building and (ii) that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a dangerous building on the property described in the certificate, the Enforcement Officer shall file a new certificate with the county recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer dangerous, whichever is appropriate.

Section 26. REPAIR, VACATION AND DEMOLITION

The following standards shall be followed by the Enforcement Officer (and by the board of appeals if an appeal is taken) in ordering the repair, vacation or demolition of any dangerous building or structure:

1. Any building declared a dangerous building under this ordinance shall be made to comply with one of the following:

a. The building shall be repaired in accordance with the current building code as established by SDCL 11-10-6; or

b. The building shall be demolished at the option of the building owner; or

c. If the building does not constitute an immediate danger to the life, limb, property or safety of the public it may be vacated, secured and maintained against entry.

2. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated.

Section 27. NOTICE TO VACATE

1. Every notice to vacate shall, in addition to the notice requirements prescribed in Section 24 - 3, include a notice posted at or upon each exit of the building and shall be in substantially the following form:

**DO NOT ENTER**

**UNSAFE TO OCCUPY**

**It is a Class 2 misdemeanor to occupy this building, or to remove or deface this notice.**

**Enforcement Official of City of Chamberlain**

2. Compliance. Whenever such notice is posted, the Enforcement Officer shall include a notification thereof in the notice and order reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been so posted, except that entry may be made to repair, demolish or remove such building under permit. No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal have been completed.

Section 28. APPEAL

1. Form of Appeal. Any person entitled to service under Section 24 may appeal from any notice and order or any action of the Enforcement Officer under this ordinance by filing at the office of the Enforcement Officer a written appeal containing:

a. A heading in the words: "Before the board of appeals of the City of Chamberlain"

b. A caption reading: "Appeal of ," giving the names of all appellants participating in the appeal.

c. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.

d. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.

e. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.

f. The signatures of all parties named as appellants and their official mailing addresses.

g. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

The appeal shall be filed within 30 days from the date of the service of such order or action of the enforcement officer; provided, however, that if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted accordingly, such appeal shall be filed within 10 day s from the date of the service of the notice and order of the enforcement officer.

2. Processing of Appeal. Upon receipt of any appeal filed pursuant to this section, the Enforcement Officer shall present it at the next regular or special meeting of the board of appeals.

3. Scheduling and Noticing Appeal for Hearing. As soon as practicable after receiving the written appeal, the board of appeals shall fix a date, time and place for the hearing of the appeal. Such date shall not be less than 10 days nor more than 60 days from the date the appeal was filed with the enforcement officer. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing to each appellant by the secretary of the board either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.

Section 29. EFFECT OF FAILURE TO APPEAL

Failure of any person to file an appeal in accordance with the provisions of Section 28 shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof.

Section 30. SCOPE OF HEARING ON APPEAL

Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

Section 31. STAYING OF ORDER UNDER APPEAL

Except for vacation orders, enforcement of any notice and order of the Enforcement Officer issued under this ordinance shall be stayed during the pendency of an appeal therefore which is properly and timely filed.

Section 32. PROCEDURES FOR CONDUCT OF HEARING APPEALS

1. General

a. The board may appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted to the board for decision.

b. A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the board.

c. The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefore. Such fees may be established by the board, but shall in no event be greater than the cost involved.

d. The board may grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances may be granted except by the examiner for good cause shown so long as the matter remains before the examiner.

e. In any proceedings under this chapter, the board, any board member, or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

f. The board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

Section 33. FORM OF NOTICE OF HEARING

The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before (the board of appeals or name of hearing examiner) at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the day of \_\_\_\_\_\_\_\_\_\_\_\_\_, at the hour \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefore with (board of appeals or name of hearing examiner)."

 Section 34. SUBPOENAS

1. The board or examiner may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefore which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in possession or under control. A subpoena need not be issued when the affidavit is defective in any particular.

2. In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.

3. Any person who refuses without lawful excuse to attend any hearing or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a Class 2 misdemeanor.

Section 35. CONDUCT OF HEARING

1. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

2. Oral evidence shall be taken only on oath or affirmation.

3. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

4. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

5. Irrelevant and unduly repetitious evidence shall be excluded.

6. Each party shall have these rights, among others:

a. To call and examine witnesses on any matter relevant to the issues of the hearing;

b. To introduce documentary and physical evidence;

c. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

d. To impeach any witness regardless of which party first called the witness to testify;

e. To rebut the evidence; and

f. To be represented by anyone who is lawfully permitted to do so.

7. Official Notice.

a. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the board or departments and ordinances of the city or rules and regulations of the board.

b. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

c. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the board or hearing examiner.

8. The board or the hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing, provided that (i) notice of such inspection shall be given to the parties before the inspection is made, (ii) the parties are given an opportunity to be present during the inspection, and (iii) the board or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn there from. Each party then shall have a right to rebut or explain the matters so stated by the board or hearing examiner.

Section 36. METHOD AND FORM OF DECISION

1. When a contested case is heard before the board itself, a member thereof who did not hear the evidence or has not read the entire record of the proceedings shall not vote on or take part in the decision.

2. If a contested case is heard by a hearing examiner alone, the examiner shall within a reasonable time (not to exceed 90 days from the date the hearing is closed) submit a written report to the board. Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations. The report also shall contain a proposed decision in such form that it may be adopted by the board as its decision in the case. All examiner's reports filed with the board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the board.

3. The board shall fix the time, date and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not less than five days prior to the date fixed, unless it is otherwise stipulated by all of the parties.

4. Not later than two days before the date set to consider the report, any party may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision together with written argument in support of such decision. By leave of the board, any party may present oral argument to the board.

5. The board may adopt or reject the proposed decision in its entirety, or may modify the proposed decision.

6. If the proposed decision is not adopted as provided in Section 36-5, the board may decide the case upon the entire record before it, with or without taking additional evidence, or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, the examiner shall prepare a report and proposed decision as provided in Section 36-2 hereof after any additional evidence is submitted. Consideration of such proposed decision by the board shall comply with the provisions of this section.

7. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested.

8. The effective date of the decision shall be as stated therein.

Section 37. ENFORCEMENT OF THE ORDER OF THE ENFORCEMENT OFFICER OR THE BOARD OF APPEALS

 1. COMPLIANCE

a. After any order of the Enforcement Officer official or the board of appeals made pursuant to this ordinance shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a Class 2 misdemeanor.

b. If, after any order of the Enforcement Officer or board of appeals made pursuant to this ordinance has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Enforcement Officer may (i) cause such person to be prosecuted under Section 37-1-a or (ii) institute any appropriate action to abate such building as a public nuisance.

c. Whenever the required repair or demolition is not commenced within 30 days after any final notice and order issued under this ordinance becomes effective:

(1). The Enforcement Officer official shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

**DANGEROUS BUILDING**

**DO NOT OCCUPY**

**It is a Class 2 misdemeanor to occupy this building, or to remove or deface this notice.**

**Enforcement Officer**

**of**

**City of Chamberlain**

 (2). No person shall occupy any building which has been posted as specified in this section. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the Enforcement Officer have been completed.

 (3). The Enforcement Officer may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble and debris there from removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this ordinance. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

Section 38. EXTENSION OF TIME TO PERFORM WORK

Upon receipt of an application from the person required to conform to the order and by agreement of such person to comply with the order if allowed additional time, the Enforcement Officer may grant an extension of time, not to exceed an additional 120 days, within which to complete said repair, rehabilitation or demolition, if the Enforcement Officer determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The enforcement officer's authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect the time to appeal the notice and order.

Section 39. INTERFERENCE WITH REPAIR OR DEMOLITION WORK PROHIBITED

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of this jurisdiction or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this ordinance; or with any person to whom such building has been lawfully sold pursuant to the provisions of this ordinance, whenever such officer, employee, contractor or authorized representative of this jurisdiction, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building, pursuant to the provisions of this ordinance, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this ordinance.

Section 40. PERFORMANCE OF WORK OF REPAIR OR DEMOLITION

 1. GENERAL

a. When any work of repair or demolition is to be done pursuant to Section 37-1.c.(3). of this ordinance, the Enforcement Officer shall issue an order and the work shall be accomplished by personnel of this jurisdiction or by private contract. Plans and specifications therefore may be prepared by an architectural or engineering firm on a contract basis as deemed reasonably necessary. If any part of the work is to be accomplished by private contract, standard public works contractual procedures shall be followed.

b. The cost of such work shall be paid from the repair and demolition fund, and may be made a special assessment against the property involved, or may be made a personal obligation of the property owner, whichever the legislative body of this jurisdiction shall determine is appropriate.

 Section 41. REPAIR AND DEMOLITION FUND

1. The legislative body of this jurisdiction shall establish a special revolving fund to be designated as the repair and demolition fund. Payments shall be made out of said fund to defray the costs and expenses which may be incurred by this jurisdiction in doing or causing to be done the necessary work of repair or demolition of dangerous buildings.

2. The legislative body may at any time transfer to the repair and demolition fund, out of any money in the general fund of this jurisdiction, such sums as it may deem necessary in order to expedite the performance of the work of repair or demolition, and any sum so transferred shall be deemed a loan to the repair and demolition fund and shall be repaid out of the proceeds of the collections hereinafter provided for. All funds collected under the proceedings hereinafter provided for shall be paid to the Finance Officer of this jurisdiction who shall credit the same to the repair and demolition fund.

Section 42. RECOVERY OF COST OF REPAIR OR DEMOLITION

1. The Enforcement Officer works shall keep an itemized account of the expense incurred by this jurisdiction in the repair or demolition of any building Upon the completion of the work of repair or demolition, said Enforcement Officer shall prepare and file with the finance officer of this jurisdiction a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located, and the names and addresses of the persons entitled to notice.

2. Upon receipt of said report, the clerk of this jurisdiction shall present it to the legislative body of this jurisdiction for consideration. The legislative body of this jurisdiction shall fix a time, date and place for hearing said report and any protests or objections thereto. The Finance Officer of this jurisdiction shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in this jurisdiction, and served by certified mail, postage prepaid, addressed to the owner of the property as the owner's name and address appears on the last equalized assessment roll of the county, if such so appears, or as known to the Finance Officer. Such notice shall be given at least 10 days prior to the date set for the hearing and shall specify the day, hour and place when the legislative body will hear and pass upon the enforcement officer's report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

3. Any person interested in or affected by the proposed charge may file written protests or objections with the Finance Officer of this jurisdiction at any time prior to the time set for the hearing on the report of the enforcement officer. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. The Finance Officer of this jurisdiction shall endorse on every such protest or objection the date of receipt. The Finance Officer shall present such protests or objections to the legislative body of this jurisdiction at the time set for the hearing, and no other protests or objections shall be considered.

4. Upon the day and hour fixed for the hearing, the legislative body of this jurisdiction shall hear and pass upon the report of the Enforcement Officer together with any such objections or protests. The legislative body may make such revision, correction or modification in the report or the charge as it may deem just; and when the legislative body is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified) together with the charge, shall be confirmed or rejected. The decision of the legislative body of this jurisdiction on the report and the charge, and on all protests or objections, shall be final and conclusive.

5. Personal obligation or special assessment

a. The legislative body of this jurisdiction may thereupon order that said charge shall be made a personal obligation of the property owner or assess said charge against the property involved.

b. If the legislative body of this jurisdiction orders that the charge shall be a personal obligation of the property owner, it shall direct the attorney for this jurisdiction to collect the same on behalf of this jurisdiction by use of all appropriate legal remedies.

c. If the legislative body of this jurisdiction orders that the charge shall be assessed against the property, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien upon the property.

6. The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within 30 days after the assessment is

placed upon the assessment roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected within 30 days after the entry of such judgment.

7. The legislative body of this jurisdiction, in its discretion, may determine that assessments in amounts of $500.00 or more shall be payable in not to exceed five equal annual installments. The legislative body's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof shall be by a resolution adopted prior to the confirmation of the assessment.

8. Lien of assessment

a. Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

b. All such assessments remaining unpaid after 30 days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of 7 percent per annum from and after said date.

9. After confirmation of the report, certified copies of the assessment shall be given to the assessor and the tax collector for this jurisdiction, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes.

10. If the county assessor and the county tax collector assess property and collect taxes for this jurisdiction, a certified copy of the assessment shall be filed with the county auditor on or before August 10th. The descriptions of the parcels reported shall be those used for the same parcels on the county assessor's map books for the current year.

11. The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.

If the legislative body of this jurisdiction has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary property taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provided for ordinary property taxes.

12. All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the Finance Officer of this jurisdiction, who shall credit the same to the repair and demolition fund.

Adopted this 12 day of October, 2015

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Mayor

ATTEST

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Finance Officer

(Seal)

First Reading: September 7, 2015

Second Reading & Adoption: October 5, 2015

Publication: October 14, 2015

Effective Date: November 4, 2015

Published once at the approximate cost of \_\_\_\_\_\_\_\_\_.