

**COUNCIL ORDINANCE No. 2180**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE (MMC) 15.04.180 DANGEROUS OR UNSAFE BUILDINGS AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Milwaukie adopts various State Specialty Codes that regulate building and construction on private property; and

**WHEREAS**, Milwaukie Municipal Code (MMC) 15.04.180 provides for local administration of the requirements of these codes; and

**WHEREAS**, language in MMC 15.04.180 needs to be updated due to new information or technologies.

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. MMC Chapter 15 Buildings and Construction is amended as described in Exhibit A – clean amendments.

Section 2. Emergency. The City desires that the revised MMC 15.04.180 should be in effect immediately and therefore declares an emergency to exist and this ordinance shall become effective upon the date of its adoption.

Read the first time on **September 17, 2019** and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on **September 17, 2019**.

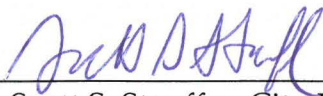
Signed by the Mayor on 9-24-19.



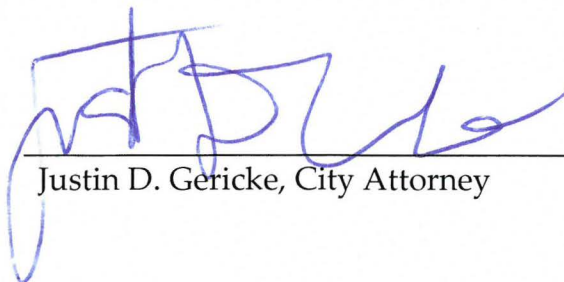
Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder



Justin D. Gericke, City Attorney

**15.04.180 DANGEROUS OR UNSAFE BUILDINGS****A. Definitions**

For the purposes of this section "Building Official" means the Building Official of the City of Milwaukee, or that person's designee.

**B. Dangerous Buildings**

Any building, structure or property, whether improved or unimproved, which has any of the conditions or defects described in this section will constitute a "dangerous building," provided these conditions or defects endanger the health, safety or welfare of the public or occupants of the building structure or property in question:

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 in case of fire or other emergency necessitating evacuation;
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 other emergency necessitating evacuation;
3. Whenever the stress in any materials, member or portion thereof, due to dead or live loads, is more than one-and-one-half times the working stress or stresses allowed in the currently adopted Oregon Specialty Codes for new buildings of similar structure, purpose and location;
4. Whenever any portion of the building, structure or property has been damaged by fire, earthquake, wind, flood or by any other cause, whether natural or human, to the extent that the structural strength or stability is materially less than it was before the catastrophe and is less than the minimum requirements of the currently adopted Oregon Specialty Codes for new buildings of similar structure, purpose or location;
5. Whenever any portion, member or appurtenance of the building, structure or property is likely to fail, to become detached or dislodged, or to collapse, and potentially injure persons or damage property;
6. Whenever any portion, member, appurtenance or ornamentation on the exterior of the building, structure or property 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 of one-half of that specified in the building code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the building code for new buildings;
7. Whenever any portion of the building, structure or property has wracked, warped, buckled or settled to the extent that walls or other structural members have materially less resistance to winds or earthquakes than is required of similar new construction;
8. Whenever any portion of the building, structure or property, because of:
  - a) dilapidation, deterioration or decay;
  - b) faulty construction;
  - c) the removal, movement or instability of any portion of the ground necessary to the support of the building;

d) the deterioration, decay or inadequacy of its foundation; or (e) any other cause, is likely to partially or completely collapse;

9. Whenever, for any reason, any portion of the building, structure or property 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 the extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base;

11. Whenever a building or structure, exclusive of the foundation, shows thirty-three percent (33%) or more damage or deterioration of its supporting member or members, or fifty percent (50%) damage or deterioration of its nonsupporting members as required by law for newly constructed buildings of like area, height or occupancy in the same location;;

12. Whenever a building, structure or property has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become:

- a) an attractive nuisance to children;
- b) a harbor for vagrants, or criminals; or as to
- c) enable persons to resort thereto for the purpose of committing unlawful acts;

13. Whenever a building, structure or property has been constructed, exists, is used, or is maintained in violation of any specific requirement, prohibition or permit condition applicable to the building provided by any provision of this code, the currently adopted Oregon Specialty Codes, or state law;

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

15. Whenever a building, structure or property, 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 Building Official to be unsanitary, unfit for human habitation or in a condition that is likely to cause sickness or disease;

16. Whenever a building, structure or property, 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 Building Official to be a fire, life or safety hazard;

17. Whenever a building, structure or property is in a condition that constitutes a public nuisance known to the common law or equity jurisprudence or the City of Milwaukie Municipal Code;

18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure so as to qualify any portion of the building an attractive nuisance or hazard to the public.

C. Administration

1. Building Inspections. The Building Official is authorized to make inspections, take actions, and make interpretations of this chapter as may be required to enforce the provisions of this chapter.

2. Right of Entry. Whenever necessary to make an inspection to enforce any provision of this code, or whenever the Building Official has reasonable cause to believe that any of the dangerous building conditions mentioned in Section 15.04.180.B exist, the Building Official may enter the building, structure or property at all reasonable times to inspect the same or to carry out any provision of this chapter.

(a) Occupancy

i. Occupied Building

If the building or premises is occupied, the Building Official must first present proper credentials and request entry of the property owner or person in charge.

ii. Unoccupied Building

If the building or premises are unoccupied, the Building Official must first make a reasonable effort to locate the owner or person in charge of the building or premises and request entry.

(b) Refusal or Unlocatable

If entry is refused, or the owner or person in charge is unlocatable, the Building Official will seek an appropriate warrant from municipal or circuit court authorizing entry.

3. Enforcement Upon Inspection

All buildings, structures or properties, whether improved or unimproved, which are determined after inspection by the Building Official to be dangerous as defined in this chapter are declared to be public nuisances and will constitute a civil infraction.

4. Posting of Property and Restriction of Access.

The Building Official, upon a finding that a building, structure or property constitutes a dangerous building may post the property with a notice. The Building Official may also delimit the area of danger and prohibit all persons from entering onto, occupying or inhabiting the dangerous building area. Notice must include at least the following:

- a) that the Building Official, upon inspection, has determined the structure to be dangerous and a hazard to the public health, safety or welfare; and
- b) that the property is not to be entered upon or occupied by anyone without specific authority of the Building Official; and
- c) that any person found to be occupying or otherwise upon the property without authority will be subject to citation and arrest for trespass.

5. Violation of Posting.

Violation by any person of notice and access restriction will constitute trespass, a misdemeanor offense under this code. Notwithstanding Section 15.04.180.I, any person who enters or remains in or on a building, structure or property that the Building Official has posted

under authority of this section commits the crime of criminal trespass and may be subject to arrest or prosecution under ORS 164.245 or 164.255, whichever is applicable under the circumstances.

D. Emergency Enforcement

Notwithstanding any other section of this chapter, the Building Official may require immediate remedial action to enforce the provisions of this chapter, in accordance with Chapter 1.08 of this code.

E. Action Required

1. Corrective Action Required. When the Building Official has inspected or caused to be inspected any building and has found and determined that the building is a dangerous building, the Building Official must require corrective action by repair, vacation, and/or demolition.

2. Contents of Notice. The Building Official will issue a notice and order directed to the record owner or owners of the building, structure or property. The notice and order must 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 Building Official has found the building, structure or property to be a dangerous building, with a brief description of the conditions found to render the building dangerous under the provisions of Section 15.04.180.B.
- c) A statement of the action required to be taken as determined by the Building Official.
  - i. Repair Required. A statement advising that if the Building Official has determined that the building must be repaired, that all required permits will be secured and the work physically commenced within such time (not to exceed sixty (60) days from the date of the order) and completed within such time as the Building Official will determine reasonable under all of the circumstances.
  - ii. Vacation Required. A statement advising that if the Building Official has determined that the building must be vacated, that the building or structure will be vacated within a time certain from the date of the order as determined by the Building Official to be reasonable.
  - iii. Demolition Required. A statement advising that if the Building Official has determined that the building or structure must be demolished, the building must be vacated within such time as the Building Official will determine is reasonable (not to exceed sixty (60) days from the date of the order), that all required permits be secured therefor within sixty (60) days



from the date of the order, and that the demolition be completed within such time as the Building Official will determine is reasonable.

- iv. Repair or Demolition Required Without Vacation. Statements advising that if any required repair or demolition work without vacation also being required is not commenced within the time specified, the Building Official will order the building vacated and posted to prevent further occupancy until the work is completed; and may proceed to cause the work to be done and charge the costs thereof against the property or its owner

- d) A statement advising that any person having any record title or legal interest in the building may be issued a citation and be ordered to appear in municipal court.

3. Service of Notice. The notice and order (and any amended or supplemental notice and order) will be served upon each of the following if known to the Building Official or disclosed from official public records:

- a) the record owner, and
- b) the holder of any mortgage, deed of trust or other lien or encumbrance of record, and
- c) the owner or holder of any lease of record, and
- d) the holder of any other estate or legal interest of record in or to the building or the land on which it is located.

4. Failed Delivery of Notice. The failure of the Building Official to serve any person required to be served will not invalidate any proceedings as to any other person duly served or relieve any person from any duty or obligation imposed by the provisions of this section.

5. Methods of Service.

a. Location Known. Service of the notice and order must be made upon all persons, either personally or by mailing a copy by certified mail, postage prepaid, to each person at their address as it appears in the Clackamas County tax records, or as otherwise known to the Building Official.

b. Location Unknown. If no address appears or is known to the Building Official, then a copy of the notice and order must be mailed and addressed to the address of the building involved in the proceedings.

6. Failed Reception of Notice. The failure of any person to receive notice will not affect the validity of any proceedings taken under this section.

7. Date of Service. Service by certified mail will be effective on the date of mailing.

8. Proof of Service. Proof of service of the notice and order must be certified 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 must be affixed to the copy of the notice and order retained by the Building Official.

#### H. Repair, Vacation, and Demolition

The following standards will be followed by the Building Official in ordering repair, vacation, or demolition of any dangerous building or structure:

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

- a) The building must be repaired in accordance with the currently adopted Oregon Specialty Code or other current code applicable to the type of substandard conditions requiring repair;
- b) The building must be demolished at the option of the building owner; or
- c) If the building does not constitute an immediate danger to the health, safety, or welfare of the public it may be vacated, secured and maintained against entry.

2. If the condition of a building or structure makes it immediately dangerous to the health, safety, or welfare of the public or its occupants, it will be ordered to be vacated.

#### I. Abandoned Structure

If a Dangerous Building remains for 180 days from the date of declaration it will be deemed an abandoned structure. An Abandoned Structure will be deemed a nuisance and is subject to enforcement and abatement according to Chapter 8.04 of this code.

#### J. Violation—Penalty

1. Any person who performs an act prohibited by this chapter, or who fails to perform an act required by this chapter, commits a violation.

2. No person will cause, create, construct, maintain, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, occupy, or otherwise use any dangerous building or cause or permit any dangerous building to be in violation of this chapter.

3. Violations under this title are enforceable under Title 1 of the Milwaukie Municipal Code. The maximum penalty for any violation under this chapter is a fine of one thousand dollars (\$1,000.00) per day. Each day that the violation exists will constitute a separate offense. (Ord. 2068 § 1, 2013; Ord. 1814 § 2, 1997)