



WESTMINSTER

COLORADO

CITY COUNCIL MEETING

AUGUST 14, 2023 at 7:00 PM

- A. First Reading of Councillor's Bill No. 37 Re: Proposed Amendments to Section 11-9-2(E) of the Westminster Municipal Code Concerning Unsafe Buildings, Structures, and Equipment



Agenda Memorandum

Agenda Item – 10.A.

City Council Meeting
August 14, 2023



Strategic Priority 2: Proactive Public Safety

Enhance public safety to emphasize both prevention and enforcement, engage the community through education and outreach and provide the resources necessary to ensure safety and well-being throughout Westminster.

Subject: First Reading of Councillor's Bill No. 37 Re: Proposed Amendments to Section 11-9-2(E) of the Westminster Municipal Code Concerning Unsafe Buildings, Structures, and Equipment

Prepared By: Aric Otzelberger, Operations Manager
Dave Horras, Chief Building Official

Recommended City Council Action:

Pass Councillor's Bill No. 37 on first reading to amend Section 11-9-2(E) of the Westminster Municipal Code concerning unsafe buildings, structures, and equipment.

Summary Statement:

- Following notable nuisance property challenges, Staff has worked on opinions to strengthen and clarify the City's authority regarding unsafe buildings, structures, and equipment as outlined in the Westminster Municipal Code (W.M.C.).
- With engagement and input from the City Manager's Office, City Attorney's Office, Community Development, Police, and Fire, proposed amendments to Section 11-9-2(E), W.M.C. concerning unsafe buildings, structures, and equipment have been drafted and are presented in Attachment 1.
- The 2018 International Property Maintenance Code (IPMC) was utilized to guide proposed amendments regarding requirements and standards for properties, along with administration and enforcement authority.

- The proposed W.M.C. amendments establish timelines for repair or demolition activities, require specific barriers or fencing, clarify the Chief Building Official's authority, and provide for civil nuisance abatement procedures in Municipal Court when voluntary compliance cannot be achieved.

Fiscal Impact:

\$0 in expenditures.

Source of Funds:

Not applicable.

Policy Issue(s):

Should City Council pass Councillor's Bill No. 37 on first reading to amend Section 11-9-2(E), W.M.C. concerning unsafe buildings, structures, and equipment?

Alternative(s):

City Council could choose to deny the proposed Ordinance. This is not recommended, as proposed amendments to Section 11-9-2(E), W.M.C. would provide additional authority and clarity in addressing future nuisance property challenges.

Background Information:

Following notable nuisance property challenges, Staff has worked on options to strengthen and clarify the City's authority regarding unsafe buildings, structures, and equipment as outlined in W.M.C. With engagement and input from the City Manager's Office, City Attorney's Office, Community Development, Police, and Fire, proposed amendments to Section 11-9-2(E), W.M.C. concerning unsafe buildings, structures, and equipment have been drafted and are presented in Attachment 1.

The 2018 IPMC was utilized to guide proposed amendments regarding requirements and standards for properties, along with administration and enforcement authority. These proposed amendments address challenges from neglect, abandonment, vandalism, and deterioration. Amendments include:

- 6-month abandonment of a structure or building can constitute an attractive nuisance or hazard to the public
- 2-year cessation of normal construction activity can invoke City abatement procedures
- Fencing or barriers can be explicitly required to secure structures during repair, rehabilitation, or demolition processes
- Elimination of an existing provision that an owner of an unsafe building can vacate, secure, and maintain against entry until a time when the building could be demolished or repaired. This provides an existing challenge, as it does not provide a time limit and can allow a somewhat

open-ended, indefinite period where a property can be secured, but not repaired or demolished

- Clarification of placarding and abatement authority to secure unsafe buildings or structures
- Clarification of the Chief Building Official's ability to order disconnection of utility services of unsafe buildings or structures
- Clarification of the Chief Building Official's summary abatement authority when "imminent" danger exists
- Authority to pursue civil nuisance abatement procedures in Municipal Court (this replaces existing language regarding an administrative ad hoc Building and Fire Code Appeals Committee)

City Council received a presentation on these amendments in Study Session on July 31, 2023 and provided direction to proceed with formal consideration of the proposed Ordinance.

The City's Strategic Plan priority of Proactive Public Safety is met by strengthening and clarifying authority for the City's prevention and enforcement activities regarding nuisance properties and structures.

Respectfully Submitted,

Mark A Freitag

Mark A. Freitag
City Manager

Attachments:

Attachment 1 – Councillor's Bill No. 37 Re: Proposed Amendments to Section 11-9-2(E) of the Westminster Municipal Code Concerning Unsafe Buildings, Structures, and Equipment

BY AUTHORITY

ORDINANCE NO. **4209**

COUNCILLOR'S BILL NO. **37**

SERIES OF 2023

INTRODUCED BY COUNCILLORS

A BILL

FOR AN ORDINANCE AMENDING TITLE XI, CHAPTER 9, SECTION 2 (E) CONCERNING
UNSAFE BUILDINGS, STRUCTURES AND EQUIPMENT

THE CITY OF WESTMINSTER ORDAINS:

Section 2 (E). Title XI, Chapter 9 is hereby AMENDED to read as follows:

(E) *Unsafe Buildings, Structures and Equipment:*

(1) *Unsafe buildings, structures, and equipment.* Any building, structure, or equipment ~~regulated by the Building Codes~~ which ~~is~~ ~~are~~ structurally unsafe, unsanitary, ~~or~~ not provided with adequate egress, ~~or~~ not provided with adequate light and ventilation, or which constitutes a fire or health hazard or is otherwise dangerous to human life, health, property, or the public welfare, or which involve illegal or improper occupancy is deemed unsafe.

(a) Any building or structure which has any ~~or~~ all of the conditions or defects herein described shall be deemed to be an unsafe building, provided that such condition or defects exist to the extent that life, health, property or safety of the public or its occupants are endangered.

(i) 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 ~~egress~~~~exit~~ in case of fire or panic.

(ii) 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 ~~egress~~~~exit~~ in case of fire or panic.

(iii) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.

(iv) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism 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 less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.

(v) 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.

(vi) 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 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 such buildings.

(vii) 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.

(viii) 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.

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

(x) 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.

(xi) 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 non-supporting members, enclosing or outside walls or coverings.

(xii) Whenever the building or structure has been so damaged by fire, wind, earthquake, neglect 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 a nuisance or unlawful or immoral acts.

(xiii) 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 building regulations of this jurisdiction, as specified in the Building Code or Rental Housing Maintenance Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.

(xiv) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting 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.

(xv) 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, ventilation ~~air~~ or sanitation facilities, or otherwise, is determined by the health officer or Building Official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

(xvi) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, fire protection system, faulty electric wiring, gas connections, plumbing system or heating apparatus, the accumulation of trash, inadequate maintenance or other cause, is determined by the fire marshal or Building Official to be a fire hazard or threat to life or health.

(xvii) 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.

(xviii) 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.~~

(xix) A vacant structure that is not secured against entry shall be deemed unsafe.

(xx) 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.

(b) In addition to the above unsafe conditions, any use of buildings, structures, or equipment constituting a hazard to safety, health, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment is an unsafe use. Parapet walls, cornices, spires, towers, tanks, statuary, and other appendages or structural members which are supported by, attached to, or part of a building and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified in the Building Code are deemed unsafe building appendages.

(2) *Abatement of unsafe buildings.* All buildings or portions thereof which are determined after inspection by the Building Official to be unsafe as defined in this section are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in section 11-9-2(E)(3) of this Code this section, including any necessary steps to secure the building from public access by fencing or similar barrier.

(a) Any building declared an unsafe building shall be made to comply with one of the following:

(i) The building shall be repaired in accordance with the current Building Code or other current code applicable to the type of substandard conditions requiring repair, including any necessary steps to secure the building from public access by fencing or similar barrier. If requested, the owner shall, at the owner's expense, provide to the Building Official a remedial plan for the corrective work and information necessary to determine whether the remedial work can be completed within the time stated in the order;

or

(ii) The building shall be demolished; ~~or~~

(iii) ~~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 until such time as the building is demolished or repaired in accordance with the current Building Code or other current code applicable to the type of substandard conditions requiring repair.~~

(b) If the building is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public and its occupants, it shall be ordered to be vacated and the Building Official may take all actions necessary to summarily abate the dangerous or unsafe condition pursuant to ~~Section 8-4-5~~ Title VIII, Chapter 4, of the Westminster Municipal Code.

(c) Any occupied structure deemed unsafe and placarded by the Building Official shall be vacated as ordered by the Building Official.

(d) If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the Building Official is authorized to post the property as unsafe and order the structure secured from any potential public access so as not to be an attractive nuisance. Upon failure of the owner or owner's authorized agent to so secure the premises within the time specified in the order, the Building Official shall cause the premises to be abated pursuant to Title VIII, Chapter 4, of the Westminster Municipal Code.

(i) The Building Official shall have the authority to authorize disconnection of utility service to the building, structure or system in case of emergency where necessary to eliminate an immediate hazard to life or property or where such utility connection has been made without approval. The Building Official shall notify the serving utility and, whenever possible, the owner or owner's authorized agent and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner, owner's authorized agent or occupant of the building structure or service system shall be notified in writing as soon as practical thereafter.

(e) Any structure which, in the Building Official's judgment, is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure; or where there has been a cessation of normal construction of any structure for a period of more than two years, the Building Official may pursue abatement in accordance with Title VIII, Chapter 4 of the Westminster Municipal Code, to obtain an order from the Municipal Court to compel the owner or owner's authorized agent to complete the construction within a specified and reasonable period of time, or an order to compel the owner or owner's authorized agent to demolish and remove such structure.

(3) Summary abatement; Notice to Abate; Action to Abate an Unsafe Building~~Notice and orders.~~ When the Building Official has inspected or caused to be inspected any building and has found and determined that such building is unsafe, the Building Official shall commence proceedings to cause the repair, vacation or demolition of the building.

(a) Summary abatement. When an unsafe building and nuisance exists that presents imminent danger of serious injury to persons or property, the Building Official can take summary abatement action pursuant to Section 8-4-4 (A).

(b) ~~Notice to Abate and order.~~ When an unsafe building or nuisance does not require summary abatement, the Building Official shall issue a Notice to Abate and order directed to the record owner of the building in accordance with Section 8-4-4 (B), W.M.C. The Notice to Abate and order shall contain:

(i) The street address and legal description of the property that the unsafe building is located.

(ii) A statement that the Building Official has found the building to be unsafe with a brief and concise description of the conditions found to deem the building unsafe under the provisions of this section.

(iii) A statement of action required to be taken and the time period allowed for such action.

(iv) A statement advising that if action is not taken within the time specified, an action may be brought in Municipal Court to abate the nuisance and that the costs of abatement may be assessed against the person found by the court to have caused, allowed to be caused or allowed to continue the unsafe building and public nuisance, and such costs may become a lien upon the property on which the abatement was performed.

~~(iv) — Statements advising that if the required action 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 charged the costs thereof against the property or its owner.~~

~~(v) — A statement advising that any person having any record title or legal interest in the building may appeal the notice and order or any action of the Building Official to the Building and Fire Code Appeals Committee, provide that the appeal is made in writing as provide in this Code within 30 days from the date of service of such notice and order and that failure to appeal will constitute a waiver of all rights to an administrative hearing and determination of the matter.~~

(c) Municipal court summons and enforcement of orders~~Service.~~ When the unsafe building and nuisance has not been voluntarily abated within the time specified in the Notice to Abate, the Building Official may bring action in Municipal Court pursuant to Section 8-4-4 (C). The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the building affected by such notice. The Building Official may serve additional such notice and order on any parties that may have interest in the property. The failure of the Building Official to serve any person required to be served shall not invalidate any proceedings herein or relieve any person from any duty or obligation imposed by the provisions of this Code.

~~(c) — Method of service.~~ Service of the notice and order shall be deemed properly served if a copy thereof is delivered to the owner personally or sent by first class mail to the owner of the subject property at the address shown in the county assessor records for the county in which the property is located. Notice shall be deemed served on the date of receipt by the owner, if personally served, or upon the fifth day after mailing of the notice and order.

~~(d) — Recordation of notice and order.~~ If compliance is not had with the notice and order within the specified time, and no appeal has been properly filed, the Building Official may file in the office of the county recorder a certificate describing the property and certifying that the building is unsafe and the owner has been so notified.

~~(e) — Notice to vacate.~~ Every notice to vacate shall, in addition to being served as required in this section, be posted at or upon each exit of the building. 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 posting until the required repairs, demolition or removal have been completed.~~

~~(4) — *Appeal and procedure for conduct of hearing appeals.* Appeals shall be made to the Building and Fire Code Appeals Committee. Appeals and hearings shall be as set forth in Chapter 10 of Title II of the Westminster Municipal Code.~~

~~(a) — *Effects of failure to appeal.* Failure of any person to file an appeal in accordance with the provisions of this Code shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof.~~

~~(b) — *Scope of hearing on appeal.* Only those matters or issues raised by the appellant shall be considered in the hearing of the appeal.~~

~~(c) — *Staying of orders of appeal.* Except for vacation orders, enforcement of any notice and order of the building official issued under this Code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.~~

~~(5) — *Enforcement of orders.* After any order of the Building Official or the Building and Fire Code Appeals Committee made pursuant to this Code 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 such order is guilty of a misdemeanor.~~

~~(a) — *Failure to obey order.* If, after any order of the Building Official or the Building and Fire Code Appeals Committee made pursuant to this Code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Building Official may (i) cause such person to be prosecuted per section Chapter 4 of Title VIII, or (ii) institute any appropriate action to abate such building as a public nuisance.~~

~~(b) — *Failure to commence work.* Whenever the required repair or demolition is not commenced within the specified time as required in the notice and order the Building Official may cause the building to be vacated.~~

~~(c) — *Extension of time.* 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 Building Official may grant an extension of time, not to exceed 120 days, within which to complete said repair, rehabilitation, or demolition, if the Building Official determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The Building Official'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.~~

~~(d) — *Interference with repair or demolition.* No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the City 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 Code, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this Code.~~

~~(6) — *Performance of work.* When any work of repair or demolition is to be done pursuant to this Code, the Building Official shall issue his order therefor and the City may decide to delay the work, perform the work with City personnel, or contract with a private entity to do the work. Plans and specification therefor may be prepared by the City or outside consultants under contract with the City.~~

~~(dg) — *Costs.* The costs of such work may be collected pursuant to the provisions of Section 8-4-5 of the Westminster Municipal Code.~~

Section 2. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED
PUBLISHED this 14th day of August, 2023.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED
this 28th day of August, 2023.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office