



Legislation Text

File #: 2714-2014, **Version:** 1

BACKGROUND:

In an effort to improve the enforcement of property maintenance and building codes against the blighting and destructive influence of properties that become public nuisances, this code change creates a mechanism for allowing Civil Penalties of up to a \$1,000 per day for the most severe public nuisance properties.

This process is designed to continue to ensure the due process for the property owner while also protecting neighborhoods from the debilitating impact that a blighting, public nuisance property creates. This new code will likely provide for quicker resolution than either the current civil or criminal complaint process allows for, while also being able to address nuisance properties held by corporate entities in a more effective manner. Funds collected through these prescribed fines would be directed into the Land Management Fund to help maintain, stabilize, and acquire blighting properties throughout the city.

While this code change would apply to all properties, both commercial and residential, it would be most effective when commercial properties are involved, or with multi-family apartments, hotels/motels, and landlords that own multiple properties that do not meet code requirements. This process would also serve as a deterrent, and encourage other property owners and landlords to maintain their properties in a code complaint manner and thus prevent other properties from reaching the point of having a blighting influence on their surrounding neighborhood.

FISCAL IMPACT: No funding is required for this legislation.

To amend and enact various sections of the Columbus Building Code and the Columbus Housing Code in order to create and administer civil penalties for owners of properties that fail to comply and correct code violations thus creating public nuisances.

WHEREAS, in an effort to improve the enforcement of property maintenance and building codes against the blighting and destructive influence of properties that become public nuisances, this code change creates a mechanism for allowing Civil Penalties of up to a \$1,000 per day for the most severe public nuisance properties; and

WHEREAS, this process is designed to continue to ensure the due process for the property owner while also protecting neighborhoods from the debilitating impact that a blighting, public nuisance property creates; and

WHEREAS, this new code will likely provide for quicker resolution than either the current civil or criminal complaint process allows for, while also being able to target properties held by corporate entities in a more effective manner; and

WHEREAS, funds collected through these prescribed fines would be directed into the Land Management Fund to help maintain, stabilize, and acquire blighting properties throughout the city; and

WHEREAS, while this code change would apply to all properties, both commercial and residential, it would be most effective when commercial properties are involved, or with multi-family apartments, hotels/motels, and landlords that own multiple properties that do not meet code requirements; and

WHEREAS, this process would also serve as a deterrent, and encourage other property owners and landlords to maintain

their properties in a code complaint manner and thus prevent other properties from reaching the point of having a blighting influence on their surrounding neighborhood; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That existing section 4107.05 of the Columbus City Codes is hereby amended to read as follows:

4107.05 Appeals.

- (a) In the event the building inspector orders work stopped or finds that changes required in his written order to stop work are not complied with or if he refuses to grant any permit required by this Building Code, or if an order is written to correct violations of the Building Code, or if an owner, or purchaser under a land contract fails to comply with an order or notice to repair or demolish an unsafe building, then the persons affected by such action may appeal to the building commission within 30 days from the date he receives notice of the action of the building inspector by filing a written notice with such commission and the building inspector.
- (b) The building commission shall hear such appeal within 30 days from the date the notice is received unless the person appealing agrees to a later hearing.
- (c) After hearing such appeal, the building commission shall render its decision in writing. Such decision shall specifically set forth the reason and facts upon which it is based. The decision of the building commission may reverse, modify or affirm the order and action of the building inspector.
- (d) Any appeal, for any of the reasons listed above, for any building work regulated under the Ohio Basic Building Code shall be to the Ohio Board of Building Appeals. All decisions of that appeals board shall be binding on the building inspector and the building work.
- (e) The building commission shall hear and make decisions related to the more restrictive requirements to the Ohio Basic Building Code that have been enacted by city ordinances. Such actions of the building commission shall only grant variances to the more restrictive ordinances and the building commission shall not approve variances below the minimum standards of the Ohio Basic Building Code.
- (f) The building commission shall hear and resolve any appeal of the more restrictive requirements prior to any appeal to the State Board of Building Appeals for a variance to the Ohio Basic Building Code.
- (g) Appeals to the building commission pursuant to section 4111.90 shall be governed by the procedures set forth in that section.
- (h) The fees for any application for a variance and for an appeal are prescribed in the fee schedule.

SECTION 2. That existing section 4111.90 of the Columbus City Codes is hereby amended to read as follows:

4111.90 Procedure for finding a public nuisance.

- ~~(A) Whenever the chief building official determines that a public nuisance exists, the chief building official may:
 - (1) Demolish the unsafe building pursuant to Chapter 4509; or
 - (2) Cause to be filed in the environmental division of the Franklin County municipal court a civil complaint for injunctive relief seeking abatement of the public nuisance. The procedures to be followed will be pursuant to the Ohio Rules of Civil Procedure; or
 - (3) Cause to be filed in the environmental division of the Franklin County municipal court a misdemeanor criminal complaint. The procedures to be followed will be pursuant to the Ohio Rules of Criminal Procedure.~~

A. Whenever the director determines that there exists a public nuisance, as defined in section 4101.16, he or she shall issue a notice of violation to the owner of the structure setting forth the conditions that cause the structure to be a public nuisance and advising the owner that the public nuisance must be abated. If the conditions that cause the structure to be a public nuisance include violations of Chapter 4109 of City Code, excepting Section 4109.08, then prior to declaring a public nuisance under this Section the Director shall confirm that appropriate notices have been issued in accordance with Chapter 4109 and shall document non-compliance with said notices. Such notice of violation shall:

 - 1. Be in writing;
 - 2. Describe the structure alleged to be a public nuisance;
 - 3. Identify the sections of the Ohio Revised Code or the Building Code of which the structure is in violation and specific conditions which are the basis for the determination that the structure is a public nuisance;

4. Order the owner to abate the public nuisance and identify the specific conditions that must be corrected in order to constitute abatement;
5. Specify a reasonable time for compliance with the order to abate;
6. Advise the owner of the right to appeal the notice of violation to the building commission.
7. Advise the owner that if the order to abate the conditions indicated in the notice of violation is not complied with by the specified date of compliance, the director may do any, or all of, the following:
 - a. Initiate a civil and/or criminal action against the owner to enforce the order;
 - b. Cause the conditions indicated in the notice of violation to be corrected by city personnel or private contractor and charge the costs of such correction as a lien upon the owner's structure or land, including but not limited to correction by demolition of the structure;
 - c. Assess a civil penalty against the owner pursuant to section 4111.995 of \$1,000.00 for each calendar day that the owner fails to comply with the order to abate the public nuisance by the specified date as required in the notice of violation.

B. When a notice of violation is served it shall be served upon the owner by any one of the following methods:

1. Personal service;
2. Certified mail, return receipt requested;
3. Residence service at the owner's address by leaving a copy of the notice of violation with a person of suitable age and discretion then residing therein;
4. Publication in a newspaper of general circulation in Franklin County:
 - a. The notification shall be published a minimum of once per week for three (3) consecutive weeks, and
 - b. A copy of the newspaper with a copy of the notice marked, shall be mailed to the party at the last known address and the notice shall be deemed received as of the date of the last publication;
5. Regular mail service to an address that is reasonably believed to be a place of residence of the owner or a location at which the owner is reasonably believed to receive mail regularly;
6. Posting of the notice of violation on the structure, except that if the structure is vacant, then the notice shall be posted on the structure and one of the above methods of service shall also be used.

C. When the notice of violation has been served as provided herein, it shall be effective as to any person having any interest in the structure whether recorded or not at the time the order was issued, and shall be effective against any subsequent owner as long as the conditions specified in the notice of violation remain and the public nuisance has not been abated as ordered.

D. Written or oral acknowledgement by the owner of receipt of a notice of violation, or appeal of the notice by the owner to the building commission, shall be evidence that the owner received the notice.

E. Right of appeal to the building commission.

1. A notice of violation issued pursuant to this section may be appealed to the building commission by the filing of a notice of appeal with the department within fifteen (15) days of service of the notice of violation.
2. Upon the filing of a timely notice of appeal, the building commission shall conduct a hearing on the appeal within forty-five (45) days unless a continuance is requested by either party and granted by the chair of the commission. At such hearing, the burden shall be on the director to prove by the preponderance of substantial, reliable, and probative evidence that the structure identified in the notice of violation is a public nuisance. The building commission shall render its decision in writing, including conclusions of fact and law, within five (5) days of the date of the hearing. The decision of the building commission may reverse, modify or affirm the order and action of the director.
3. Decisions of the building commission issued pursuant to this section may be appealed to the environmental division of the Franklin County Municipal Court pursuant to Ohio Revised Code Chapter 2506.

F. Nothing in this section shall be construed to prohibit the director from pursuing the enforcement of any provision of this Building Code or the Ohio Revised Code through any other remedy available by law, including but not limited to causing to be filed in the environmental division of the Franklin County Municipal Court a civil complaint for injunctive relief or a criminal misdemeanor complaint.

SECTION 3. That the Columbus City Codes, 1959, are hereby supplemented by the enactment of a new section

4111.995 and reading as follows:

4111.995 Civil penalty; effect of appeal.

A. In addition to any other remedy or penalty provided in this Building Code or the Ohio Revised Code, an owner who fails to comply with a notice of violation issued pursuant to section 4111.90 by the date specified in the notice may incur a civil penalty of \$1,000.00 for each calendar day thereafter that the owner fails to comply with the order to abate the public nuisance as required in the notice of violation. The director shall provide notice to the owner prior to the assessment of a civil penalty as provided herein. Such notice shall state the date on which the assessment of a civil penalty will commence and shall be served on the owner as provided in section 4111.90(B). The director must document non-compliance with the notice of violation and abatement order for each day for which a civil penalty is to be assessed against the owner under this section. The Director shall also document that prior to the issuance of the notice of Civil Penalty he or she has personally conferred or attempted to confer with the owner in an effort to establish a reasonable period of time for the owner to comply and abate the hazard and the owner either did not comply or refused to meet or was unavailable.

B. In addition to any other remedy available by law, the director may file a civil action in the environmental division of the Franklin County Municipal Court seeking a court order to recover any accumulated civil penalties.

C. Upon the owner appealing a notice of violation to the building commission pursuant to 4111.90, any enforcement action seeking compliance with the ordered abatement, including the collection of civil penalties pursuant to this section, shall be stayed until the building commission issues its decision on the appeal. However, civil penalties assessed pursuant to this section shall continue to be assessed and to accrue during the pendency of any appeal to the building commission and any subsequent court appeals, and shall be subject to collection upon a final judgment on the appeal.

SECTION 4. That existing section 4505.04 of the Columbus City Codes is hereby amended to read as follows:

4505.04 Duties Powers of interpretation.

~~The property maintenance appeals board shall interpret the intent of the Health, Sanitation and Safety Code, this Housing Code and any rules or regulations adopted pursuant thereto.~~

A. The property maintenance appeals board shall hear and decide appeals from any persons affected by any order, requirement, decision or determination made in the administration or enforcement of the Health, Sanitation and Safety Code, this Housing Code, and as specifically provided in any other provision of the Columbus City Codes.

B. The property maintenance appeals board may permit a reasonable minimum variance from the applicable section of the Housing Code upon appeal if:

1. A literal application of the pertinent code section(s) would cause an unnecessary financial hardship; and
2. The public health, safety, or welfare; the health, safety or welfare of any occupant of the dwelling; or the living environment of the community may not reasonably be expected to be materially threatened by failure to correct the violation(s) being appealed.

All decisions to permit a variance under this section shall require at least the affirmative vote of four (4) members of the board.

SECTION 5. That existing section 4509.90 of the Columbus City Codes is hereby amended to read as follows:

4509.90 Procedures for finding a public nuisance.

~~Whenever the director determines that there are reasonable grounds to believe that a public nuisance exists, or when notices issued pursuant to Sections 4509.02 or 4513.07 do not alleviate such determination, the director may:~~

~~(A) Cause to be filed in the environmental division of the Franklin County municipal court a civil complaint for injunctive relief seeking abatement of the public nuisance. The procedures to be followed will be pursuant to the Ohio Rules of Civil Procedure; or~~

~~(B) Cause to be filed in the environmental division of the Franklin County municipal court a misdemeanor criminal complaint. The procedures to be followed will be pursuant to the Ohio Rules of Criminal Procedure; or~~

~~(C) Notify the Chairman of the Board of Nuisance Abatement, who shall cause a hearing to be held by the Board of Nuisance Abatement on the question of the existence of a public nuisance pursuant to Chapter 4701~~

A. Whenever the director determines that there exists a public nuisance, as defined in section 4501.275, or when notices

issued pursuant to Sections 4509.02 or 4513.07 do not alleviate such determination, he or she shall issue a notice of violation to the owner of the structure setting forth the conditions that cause the structure to be a public nuisance and advising the owner that the public nuisance must be abated. If the conditions that cause the structure to be a public nuisance include violations of the Housing Code, then prior to declaring a public nuisance under this Section the Director shall confirm that appropriate notices have been issued in accordance with Sections 4509.02 or 4513.07 and shall document non-compliance with said notices. Such notice of violation shall:

1. Be in writing;
2. Describe the structure alleged to be a public nuisance;
3. Identify the sections of the Ohio Revised Code or the Housing Code of which the structure is in violation and specific conditions which are the basis for the determination that the structure is a public nuisance;
4. Order the owner to abate the public nuisance and identify the specific conditions that must be corrected in order to constitute abatement;
5. Specify a reasonable time for compliance with the order to abate;
6. Advise the owner of the right to appeal the notice of violation to the property maintenance appeals board.
7. Advise the owner that if the order to abate the conditions indicated in the notice of violation is not complied with by the specified date of compliance, the director may do any, or all of, the following:
 - a. Initiate a civil and/or criminal action against the owner to enforce the order.
 - b. Cause the conditions indicated in the notice of violation to be corrected by city personnel or private contractor and charge the costs of such correction as a lien upon the owner's structure or land, including but not limited to correction by demolition of the structure.
 - c. Assess a civil penalty against the owner pursuant to section 4509.995 of \$1,000.00 for each calendar day that the owner fails to comply with the order to abate the public nuisance by the specified date as required in the notice of violation.

B. When a notice of violation is served it shall be served upon the owner by any one of the following methods:

1. Personal service;
2. Certified mail, return receipt requested;
3. Residence service at the owner's address by leaving a copy of the notice of violation with a person of suitable age and discretion then residing therein;
4. Publication in a newspaper of general circulation in Franklin County:
 - a. The notification shall be published a minimum of once per week for three (3) consecutive weeks, and
 - b. A copy of the newspaper with a copy of the notice marked, shall be mailed to the party at the last known address and the notice shall be deemed received as of the date of the last publication;
5. Regular mail service to an address that is reasonably believed to be a place of residence of the owner or a location at which the owner is reasonably believed to receive mail regularly;
6. Posting of the notice of violation on the structure, except that if the structure is vacant, then the notice shall be posted on the structure and one of the above methods of service shall also be used.

C. When the notice of violation has been served as provided herein, it shall be effective as to any person having any interest in the structure whether recorded or not at the time the order was issued, and shall be effective against any subsequent owner as long as the conditions specified in the notice of violation remain and the public nuisance has not been abated as ordered.

D. Written or oral acknowledgement by the owner of receipt of a notice of violation, or appeal of the notice by the owner to the property maintenance appeals board, shall be evidence that the owner received the notice.

E. Right of appeal to the property maintenance appeals board.

1. A notice of violation issued pursuant to this section may be appealed to the property maintenance appeals board by the filing of a notice of appeal with the department within fifteen (15) days of service of the notice of violation.
2. Upon the filing of a timely notice of appeal, the property maintenance appeals board shall conduct a hearing on the appeal within forty-five (45) days unless a continuance is requested by either party and granted by the chair of the board. At such hearing, the burden shall be on the director to prove by the preponderance of substantial, reliable, and probative evidence that the structure identified in the notice of violation is a public nuisance. The property maintenance appeals board shall render its decision in writing, including conclusions of fact and law, within five (5) days of the date of the hearing. The decision of the property maintenance appeals

board may reverse, modify or affirm the order and action of the director.

3. Decisions of the property maintenance appeals board issued pursuant to this section may be appealed to the environmental division of the Franklin County Municipal Court pursuant to Ohio Revised Code Chapter 2506.

F. Nothing in this section shall be construed to prohibit the director from pursuing the enforcement of any provision of this Housing Code or the Ohio Revised Code through any other remedy available by law, including but not limited to causing to be filed in the environmental division of the Franklin County Municipal Court a civil complaint for injunctive relief or a criminal misdemeanor complaint.

SECTION 6. That the Columbus City Codes, 1959, are hereby supplemented by the enactment of a new section 4509.995 and reading as follows:

4509.995 Civil penalty; effect of appeal.

A. In addition to any other remedy or penalty provided in this Housing Code or the Ohio Revised Code, an owner who fails to comply with a notice of violation issued pursuant to section 4509.90 by the date specified in the notice may incur a civil penalty of \$1,000.00 for each calendar day thereafter that the owner fails to comply with the order to abate the public nuisance as required in the notice of violation. The director shall provide notice to the owner prior to the assessment of a civil penalty as provided herein. Such notice shall state the date on which the assessment of a civil penalty will commence and shall be served on the owner as provided in section 4509.90(B). The director must document non-compliance with the notice of violation and abatement order for each day for which a civil penalty is to be assessed against the owner under this section. The Director shall also document that prior to the issuance of the notice of Civil Penalty he or she has personally conferred or attempted to confer with the owner in an effort to establish a reasonable period of time for the owner to comply and abate the hazard and the owner either did not comply or refused to meet or was unavailable.

B. In addition to any other remedy available by law, the director may file a civil action in the environmental division of the Franklin County Municipal Court seeking a court order to recover any accumulated civil penalties.

C. Upon the owner appealing a notice of violation to the property maintenance appeals board pursuant to 4509.90, any enforcement action seeking compliance with the ordered abatement, including the collection of civil penalties pursuant to this section, shall be stayed until the property maintenance appeals board issues its decision on the appeal. Civil penalties incurred pursuant to this section shall continue to be assessed during the pendency of any appeal to the property maintenance appeals board and any subsequent court appeals, and shall be subject to collection upon a final judgment on the appeal.

SECTION 7. That prior existing sections 4107.05, 4111.90, 4505.04, 4505.05, and 4509.90 of the Columbus City Codes, 1959, are hereby repealed.

SECTION 8. That this ordinance shall take effect and be in force from and after the earliest period provided by law.