

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 090762

Amending Chapter 56, Code of Ordinances, by adding a new Article VII, Vacant building receiver.

WHEREAS, the increasing number of vacant properties and properties in the process of foreclosure have created serious concerns on the national and local levels; and

WHEREAS, the presence of vacant properties discourages potential home buyers in areas adjacent to or in neighborhoods with such properties; and

WHEREAS, in many instances, the owners fail to adequately maintain and secure these vacant properties; and

WHEREAS, the presence of vacant properties contributes to the decline of neighborhoods, creating an attractive public nuisance and contributing to lower property values; and

WHEREAS, the City of Kansas City, Missouri desires to protect residential neighborhoods from decline and devaluation; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 56, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by adding a new Article VII, Vacant building receiver, to read as follows:

**ARTICLE VII.
VACANT BUILDING RECEIVER**

Sec. 56-600. Purpose.

The purposes of this article are:

- (1) To enable the city to petition a court for the appointment of a receiver to rehabilitate a vacant nuisance property, to demolish it, or to sell it to a qualified buyer.
- (2) To protect neighborhoods from vacant nuisance buildings or structures which constitute a blight or pose a threat to the health, safety or welfare of the public.

Sec. 56-601. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a

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different meaning, and any words not defined here but defined elsewhere in this chapter shall have the meaning ascribed to them previously:

Director means the director of the neighborhood and community services department or his/her designee.

Nuisance means any property which because of its physical conditions or use is a public nuisance or any property which constitutes a blight on the surrounding area or any property which is in violation of Chapter 48 or Article V of Chapter 56 of the Code of Ordinances for the City of Kansas City, Missouri such that it constitutes a threat to the life, health, or safety of the public.

Party in interest and *Parties in interest* means any owner or owners of record, lessee, mortgagee, trustee, trustor, property trust trustee, personal representative, agent, or other party having an interest in the property as shown by the land records of the recorder of deeds of the county in which the building or structure is located.

Vacant means a property which is lacking constant presence of human beings who have a legal right to be on the property, or at which substantially all lawful business operations or residential occupancy has ceased. In determining whether a property is vacant, it is relevant to consider, among other factors, the percentage of the overall square footage of any building on the property to the occupied space, the condition and value of any items in the property and the presence of rental or for sale signs on the property; provided that multi-family residential property containing five (5) or more dwelling units shall be considered vacant when the majority of all of the dwelling units become unoccupied and a majority remain unoccupied.

Sec. 56-602. Authority.

(a) When the director of the neighborhood and community services department finds that any vacant building or structure is a public nuisance, the director may request that the city attorney petition the circuit court in the county in which the building or structure is located for appointment of a receiver to rehabilitate a vacant nuisance property, to demolish it, or to sell it to a qualified buyer.

(b) The director is authorized to select a receiver for recommendation to the court. Preference will be given to non-profit corporations that apply to be the receiver. Additional criteria that the director shall consider when recommending a receiver include:

- (1) Whether the potential receiver has the capacity to carry out a rehabilitation plan.
- (2) Whether the potential receiver's plan for the property leads to owner-occupancy or a lease-to-purchase arrangement before the receivership ends.

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- (3) Whether the potential receiver has demonstrated success with similar projects.
- (4) Whether the neighborhood association representing the area in which the project is located, if one exists, recommends the potential receiver.

Sec. 56-603 Notice to interested parties.

At least 60 days prior to the filing of a petition for appointment of a receiver, the director shall give written notice by United States regular mail to the last known residential or business address or by personal service to all parties in interest or by posting at the property, if reasonable efforts do not disclose a residential or business address for each party in interest, which states the City's intent to file the petition and provides the following information:

- (1) The common street address or legal description of the property;
- (2) A description of the nuisance condition(s), and the citation(s) to the ordinances those conditions violate, that must be abated, remedied or repaired giving rise to the City's intention to file a petition for the appointment of a receiver;
- (3) The name, address and telephone number of the division(s) of the department where additional information can be obtained concerning the violations and the City's requirements for their abatement, remedy or repair; and
- (4) The date after which the director has the right to file with the court for the appointment of a receiver if each such nuisance condition is not abated, remedied or repaired by that date.

Sec. 56-604. Contents of petition.

If, after 60 days from the last of the dates that written notice was mailed or personally served to any of the parties in interest or the written notice is posted at the property, the nuisance conditions are not abated, remedied or repaired, the director may request that the city attorney file a petition for appointment of a receiver to rehabilitate, demolish, and/or sell the property in the circuit court of Missouri in the county in which the property is located. The petition for appointment of a receiver must be verified by the director, or his/her designee, and include the following information:

- (1) For each defendant, the date and manner of service of the notice of nuisance conditions and intent to file the receivership petition;
- (2) The legal description or common street address of the property;

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- (3) A description of the nuisance condition(s), and the citation(s) to the ordinances those conditions violate, as stated in the notice of intent to file a receivership;
- (4) A description of those nuisance condition(s) which were not abated, remedied or repaired within the time(s) required by the notice of intent to file a receivership;
- (5) That those nuisance condition(s) have not yet been abated, remedied or repaired as of the date of the filing of the petition; and
- (6) The name of the proposed receiver and its qualifications for the position.

Sec. 56-605. Named defendants.

The petition for appointment of a receiver must name as defendants all parties in interest of the property which can be identified by using means reasonably calculated, under all the circumstances, to identify those parties in interest. The summons shall be issued and service had as in other civil cases.

Sec. 56-606. Effect of failure to name a party in interest.

Failure to name a party in interest does not prevent the action from going forward, but does prevent the receiver's lien for expenses incurred in rehabilitating, demolishing, or selling the vacant nuisance building from having priority over that party's lien interest, if any exists.

Sec. 56-607. Notice of pendency of suit.

(a) The City shall file for record, with the recorder of deeds of the county in which the building or structure is located, a written notice of the pendency of the suit pursuant to the requirements of section 527.260 RSMo. From the time of filing such notice, the pendency of the suit shall be constructive notice to persons thereafter acquiring an interest in the building.

(b) A copy of the written notice of the pendency of the suit shall be posted to the building or structure.

Sec. 56-608. Appointment of party in interest.

(a) A party in interest may be appointed to rehabilitate, demolish, or sell the building if that person:

- (1) Requests the appointment;

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- (2) Demonstrates the ability to complete the rehabilitation, demolition, or sale within a reasonable time;
- (2) Agrees to comply with a specified schedule for rehabilitation, demolition, or sale; and
- (3) Posts bond, in an amount determined by the court, as security for performance of the required work in compliance with the specified schedule.

(b) If it appears to the City that the party in interest appointed is not proceeding with due diligence or in compliance with the court-ordered schedule, the City may apply to the court for immediate revocation of that person's appointment and for appointment of a receiver. The bond posted under this section must then be applied to the subsequently appointed receiver's expenses in rehabilitating, demolishing, or selling the vacant nuisance building.

Sec. 56-609. Appointment of receiver.

(a) If no qualified party in interest is appointed to rehabilitate or demolish the property, or if an appointee is dismissed, the court may then appoint a receiver of the property for the purpose of rehabilitating and managing the property, demolishing the property, or selling it to a qualified buyer. Any proposed receiver shall submit to the court a plan for the rehabilitation, demolition, or sale of the building or structure and present evidence that the receiver has adequate resources to execute his/her plan and thereafter manage the property.

(b) On appointment of a receiver to rehabilitate, demolish, or sell the property, all parties to the case are divested of any authority to act in furtherance of those goals.

(c) If it appears to the City that the receiver appointed is not proceeding with due diligence or in compliance with the court-ordered schedule, the City may apply to the court for immediate revocation of that receiver's appointment and for appointment of a new receiver.

Sec. 56-610. Powers of receiver.

A receiver appointed by the court, in addition to all necessary and customary powers, has the right of possession of the property with authority, subject to court approval, to:

- (1) Contract for necessary labor and supplies for rehabilitation, demolition, or sale;

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- (2) Borrow money for rehabilitation, demolition, or sale from an approved lending institution or through a government agency or program, using the receiver's lien against the property as security;
- (3) Enter into leases or other agreements in relation to the property and apply the rent received to current operating expenses and to repayment of outstanding rehabilitation expenses;
- (4) Pay all expenses associated with the operation and conservation of the property, including, but not limited to, all utility, fuel, custodial, repair and insurance costs;
- (5) Pay all accrued property taxes, penalties, assessments, and other charges imposed on the property by a unit of government, as well as any charge of like nature accruing during the pendency of receivership;
- (6) Dispose of all abandoned personal property found on the property;
- (7) Sell the property to a qualified buyer via a court administrator's deed in one of the following manners:
 - a. Sell the property to the high bidder at public auction, following the same presale notice by publication provisions that apply to a foreclosure under RSMo 443.320; or
 - b. Sell the property privately, after following the same presale notice by publication provisions that apply to a foreclosure under RSMo 443.320, for fair market value if no party to the receivership objects to the amount and procedure;
- (8) Foreclose on the receiver's lien or accept a deed in lieu of foreclosure;
- (9) Demolish the building or structure; and
- (10) Exercise any other power deemed appropriate by the court.

Sec. 56-611. Sale Requirements.

- (a) In cases in which the receiver is to sell the property:
 - (1) Notice of auction. In the notice of public auction, it is sufficient to describe the property by a street address and by legal description on the title deed last recorded in the recorder of deeds for the county in which the property is situated.

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- (2) Buyer qualifications. Ten (10) days before any sale, the applicants to bid in a public sale or the proposed buyer in a private sale must demonstrate to the director the ability and experience needed to rehabilitate the property within a reasonable time if the rehabilitation has not been completed.
 - (3) Application of sale proceeds. After deducting the expenses of the sale, the amount of outstanding taxes and other government assessments, and the amount of the receiver's lien, the receiver must apply any remaining proceeds of the sale, first to the petitioner's costs and expenses, including reasonable attorney's fees, then to the liens against the property in order of priority, and then to the owner(s) of record.
- (b) Within 30 days of completion of sale of the property, the receiver must:
- (1) File with the court a final accounting; and
 - (2) At the same time, file a motion with the court to dismiss the action.

Sec. 56-612. Tenure of receiver appointed to rehabilitate.

The tenure of a receiver appointed to rehabilitate a vacant building may extend no longer than one year after rehabilitation. Anytime after rehabilitation, any party to the receivership may file a motion to dismiss the receiver upon payment of the City's outstanding costs, fees and expenses, including attorney's fees, and the receiver's outstanding costs, fees, and expenses.

Sec. 56-613. Record Keeping.

(a) The receiver shall keep all income generated from the property and any other monies received in relation to the property in a separate account, designated specifically for this purpose.

(b) The receiver shall keep a record of all moneys received and expended and all costs and obligations incurred in performing the abatement, rehabilitation, management, demolition, and/or sale of the property. Records shall be kept in a form agreed upon by the receiver and the director or ordered by the court, and copies shall be provided to the director upon request.

(c) The receiver shall file with the court a quarterly report of its rehabilitation and use of the property, including a statement of all expenditures made by the receiver and all income and receipts from the property for the preceding quarters, unless otherwise directed by the court.

Sec. 56-614. Final accounting.

Within 30 days of the end of the receiver's tenure, the receiver must file a final accounting with the court.

Sec. 56-615. Receiver's lien for costs.

Any costs or fees incurred by the receiver are a lien against the property until paid. The receiver's lien has priority over all other liens and encumbrances, except taxes or other government assessments or as provided in Section 56-606. The receiver must allow the City's costs and expenses, including reasonable attorney's fees, to be paid to the extent that the proceeds of a sale or rental permit.

Sec. 56-616. Restoration of possession, compensation.

If the property has not been sold, the owner, within the one-year period following entry of an order granting temporary possession of the property to the receiver, may file a motion with the court for restoration of possession of the property and, upon due notice to the City and the receiver, for a hearing on such petition. If the court determines that the rehabilitation work has been completed by the receiver or that the owner has the capacity and the resources to complete the rehabilitation, the court may then determine proper compensation to the receiver for its expenditures, including management fees, based on the receiver's reports to the court. After the owner pays the compensation to the receiver as determined by the court, the owner shall resume possession of the property, subject to all existing rental agreements, whether written or verbal, entered into by the receiver.

Sec. 56-617. Expiration of Restoration period.

If an owner does not regain possession of the property pursuant to Sec. 56-616 in the one-year period following entry of an order granting temporary possession of the property to the receiver,

(a) the receiver may foreclose on the lien by a sale of the property at public auction, following public notice and notice to interested parties in the manner of a mortgage foreclosure. After deducting the expenses of the sale, the receiver must apply the proceeds of the sale to the liens against the property, in order of priority, or

(b) the receiver may file a petition for judicial deed and, upon due notice to the named interested parties, an order may be entered granting a quitclaim judicial deed to the receiver. A conveyance by judicial deed shall operate to extinguish all existing ownership interests in, liens on, and other interest in the property, except tax liens. Any party in interest of the property shall present any claim for compensation prior to the entering of the court order conveying title to the receiver.

Sec. 56-618. Termination of Receivership.

The receivership authorized pursuant to this article shall terminate only by an order of the court after:

- (1) A showing by a party in interest or the receiver that the abatement, rehabilitation, demolition or sale of the property has been completed and the costs and obligations incurred due to the abatement, rehabilitation, demolition or sale of the property and receivership have been paid by a party in interest and the party in interest will manage the property in conformance with this Code; or
- (2) Sale of the property; or
- (3) Foreclosure of the receiver's lien; or
- (4) Conveyance of the property by judicial deed.

Sec. 56-619. Possession, control and ownership by the city.

Any action taken pursuant to this article shall not constitute an act of possession or control of the building or structure by the city, unless the city applies to be and is appointed receiver of the building or structure. Any action taken pursuant to this article shall not constitute an act of ownership of the building or structure by the city, unless the city accepts a deed transferring ownership.

Approved as to form and legality:

Katherine James
Assistant City Attorney