

ORDINANCE NO. 456

AN ORDINANCE EMPOWERING THE GOVERNING BODY OF THE CITY OF WESTMORELAND, KANSAS TO CAUSE THE REPAIR OR REMOVAL OF UNSAFE OR DANGEROUS STRUCTURES WITHIN SAID CITY; PRESCRIBING A PROCEDURE FOR THE COMPLETION OF SUCH REPAIR OR REMOVAL; PROVIDING FOR A HEARING THEREON AND FOR NOTICE THEREOF; AUTHORIZING THE CITY TO COMPLETE SUCH REMOVAL IN CERTAIN INSTANCES AND PROVIDING A PROCEDURE FOR THE FINANCING AND RECOVERY OF THE COSTS THEREOF; PROVIDING FOR THE IMMEDIATE REMOVAL WITHOUT PRIOR NOTICE OR HEARING OF STRUCTURES WHICH CONSTITUTE AN IMMEDIATE HAZARD; AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTMORELAND, KANSAS:

SECTION 1. PURPOSE. The governing body has found that there exist within the corporate limits of the City of Westmoreland structures which are unfit for human use or habitation because of dilapidation, defects increasing the hazards of fire or accidents, structural defects or other conditions which render such structures unsafe, unsanitary or otherwise inimical to the general welfare of the city, or conditions which provide a general blight upon the neighborhood or surrounding properties. It is hereby deemed necessary by the governing body to require or cause the repair, closing or demolition or removal of such structures as provided in this Ordinance.

SECTION 2. DEFINITIONS. For the purpose of this Ordinance, the following words and terms shall have the following meanings:

- a. Enforcing Officer means the public officer appointed by the City of Westmoreland, or his or her authorized representative.
- b. Last known address includes the address where the property is located, or the address as listed in the tax records.
- c. Parties in interest means any owner or owners of record, judgment creditor, tax purchaser, occupant or other party having any legal or equitable title or interest in the property.
- d. Structure shall include any building, wall, superstructure or other structure which requires location on the ground, or is attached to something having a location on the ground.

SECTION 3. ENFORCING OFFICER; DUTIES. The enforcing officer is hereby authorized to exercise such powers as may be necessary to carry out the purposes of this Ordinance, including the following:

- a. Inspect any structure which appears to be unsafe, dangerous or unfit for human habitation;
- b. Have authority to enter upon premises at reasonable hours for the purpose of making such inspections. Entry shall be made so as to cause the least possible inconvenience to any person in possession of the structure. If entry is denied, the enforcing officer may seek an order for this purpose from a Court of competent jurisdiction;
- c. Report all structures which he or she believes to be dangerous, unsafe or unfit for human habitation to the governing body;
- d. Receive petitions as provided in this Ordinance.

SECTION 4. PROCEDURE; PETITION. Whenever a petition is filed with the enforcing officer by at least five residents charging that any structure is dangerous, unsafe or unfit for human habitation, or whenever it appears to the enforcing officer on his or her own motion that any structure is dangerous, unsafe or unfit for human habitation, he or she shall, if his or her preliminary investigation discloses a basis for such charges, report such findings to the governing body.

SECTION 5. SAME; NOTICE. The governing body upon receiving a report as provided in Section 4 shall by resolution fix a time and place at which the owner, the owner's agent, any lienholder of record and any occupant of the structure may appear and show cause why the structure should not be condemned and ordered repaired or demolished.

SECTION 6. SAME; PUBLICATION.

- a. The resolution shall be published once each week for two consecutive weeks on the same day of each week. At least 30 days shall elapse between the last publication and the date set for the hearing.
- b. A copy of the resolution shall be mailed by certified mail within three days after its first publication to each owner, agent, lienholder and occupant at the last known address and shall be marked "deliver to addressee only."

SECTION 7. SAME; HEARING, ORDER. If, after notice and hearing, the governing body determines that the structure under consideration is dangerous, unsafe or unfit for human use or habitation, it shall state in writing its findings of fact in support of such determination and shall cause the resolution to be published once in the official city newspaper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure within the time stated or fails to diligently prosecute the same

until the work is completed, the governing body will cause the structure to be razed and removed.

SECTION 8. DUTY OF OWNER. Whenever any structure within the city shall be found to be dangerous, unsafe or unfit for human use or habitation, it shall be the duty and obligation of the owner of the property to render the same secure and safe or to remove the same.

SECTION 9. SAME; FAILURE TO COMPLY.

- a. If, within the time specified in the order, the owner fails to comply with order to repair, alter, improve or vacate the structure, the enforcing officer may cause the structure to be repaired, altered, improved, or to be vacated and closed.
- b. If, within the time specified in the order, the owner fails to comply with the order to remove or demolish the structure, the enforcing officer may cause the structure to be removed and demolished.

SECTION 10. SAME; MAKE SITE SAFE. Upon removal of any structure, the owner shall fill any basement or other excavation located upon the premises and take any other action necessary to leave the premises in a safe condition. If the owner fails to take such action, the enforcing officer may proceed to make the site safe.

SECTION 11. ASSESSMENT OF COSTS: FINANCE

- a. The cost to the city of any repairs, alterations, improvements, vacating, removal or demolition by the enforcing officer, including making the site safe, shall be reported to the City Clerk
- b. The City shall give notice to the owner of the structure by certified mail of the cost of removing the structure and making the premises safe and secure and the costs of providing notice. The notice shall also state that payment of the cost is due and payable within 30 days following receipt of the notice.
- c. If the costs remain unpaid after 30 days following receipt of notice, the City Clerk may sell any salvage from the structure and apply the proceeds or any necessary portion thereof to pay the cost of removing the structure and making the site safe. Any proceeds in excess of that required to recover such costs and the costs of providing notice shall be paid to the owner of the premises upon which the structure was located.
- d. If the proceeds received from the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 40-3901 et seq., and amendments thereto, are insufficient to recover the above stated costs, or if there is no salvage, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or it shall be assessed as special assessments against the lot or parcel of land on which the structure was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs to the County Clerk who shall extend the same on the tax roll of the

County against such lot or parcel of land and it shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid. The City may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1, 115, and amendments thereto, but only until the full costs and applicable interest has been paid in full.

- e. If there is no salvage material, or if the moneys received from the sale of salvage or from the proceeds of any insurance policy in which the City has created a lien pursuant to K.S.A. 40-3901 et seq., and amendments thereto, are insufficient to pay the costs of the work and the costs of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants.

SECTION 12. IMMEDIATE HAZARD. When in the opinion of the governing body any structure is in such condition as to constitute an immediate hazard requiring immediate action to protect the public, the governing body may direct the enforcing officer to erect barricades or cause the property be vacated, taken down, repaired, shored or otherwise made safe without delay. Such action may be taken without prior notice to or hearing of the owners, agents, lienholders and occupants. The cost of any action under this section shall be assessed against the property as provided in Section 11.

SECTION 13. APPEALS FROM ORDER. Any person affected by an order issued by the governing body under this Ordinance may, within 30 days following service of the order, petition the District Court of the County in which the structure is located for an injunction restraining the enforcing officer from carrying out the provisions of the order pending final disposition of the case.

SECTION 14. SCOPE OF ORDINANCE. Nothing in this Ordinance shall be construed to abrogate or impair the powers of the Courts or of any department of the City to enforce any provisions of its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this Ordinance shall be in addition to and supplemental to the powers conferred by the constitution, any other law or ordinance. Nothing in this Ordinance shall be construed to impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise or to exercise those powers granted specifically by K.S.A. 12-1750:1756f.

SECTION 15. REPEAL OF CONFLICTING ORDINANCES. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 16. This Ordinance shall be in full force and effect from and after its adoption and publication in the official city newspaper.

ADOPTED AND APPROVED by the Governing Body, this 7 day of
April, 2004.

Victor M. Petrus
Mayor

ATTEST:

Leah Smith
City Clerk



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