

## EMERGENCY

MSS

-2023

**MODIFYING** the provisions of Chapter 1101, “Administration,” of Title XI, “Cincinnati Building Code,” of the Cincinnati Municipal Code by **ORDAINING** new Section 1101-62, “Emergency Correction of Essential Building Facilities Within Residential Rental Buildings,” to authorize the Director of Buildings and Inspections to remediate the failure of essential building facilities, such as heat, electrical, and fire safety exiting facilities, within residential rental buildings on an emergency basis; **AMENDING** Section 1101-64, “Recovering Total Cost of Correcting Hazardous Condition of Building and/or Abating Nuisance,” to provide for recovery of the costs of emergency remediation under Section 1101-62; and **ESTABLISHING** Fund 346, “Emergency Remediation of Defects in Rental Housing,” into which shall be deposited revenue from the total costs of remediation and abatement recovered under Section 1101-64 to be used for expenses related to emergency remediation and abatement of failed essential building facilities within residential rental housing expended in enforcement of Section 1101-62.

WHEREAS, Council is concerned with securing and maintaining the viability of safe and accessible rental housing within the City of Cincinnati; and

WHEREAS, Council finds that many residential rental dwelling units are unsafe because building owners or others responsible for property maintenance fail to provide properly functioning essential building facilities such as plumbing, heating, electrical, structural, or fire safety exiting facilities; and

WHEREAS, residents of such rental units frequently have no practical options other than to live in unsafe conditions, without timely remediation of such conditions or the ability to secure alternative housing, because they lack the means either to afford alternative housing or to cause the repair of essential building facilities themselves and utilize available procedures to recoup the costs of doing so; and

WHEREAS, Council has authorized the Department of Buildings and Inspections to repair and stabilize structures that are in a dangerous condition when property owners fail to do so and the property presents an immediate hazard, with the cost of such repairs and stabilization recovered from property owners; and

WHEREAS, this authority has proven to be a vital and necessary tool in ameliorating such conditions on an emergency basis, providing for the safety of the community and preventing buildings from falling into further disrepair; and

WHEREAS, rental dwelling units and buildings lacking properly functioning essential facilities pose an immediate and emergent threat to the health, safety, and welfare of residents; and

WHEREAS, residential rental property owners are responsible for providing properly functioning essential building facilities and should bear the cost of maintaining such facilities and providing emergency remediation when they fail, but may be unwilling or unable to do so; and

WHEREAS, Sections 715.26, 715.261, and 715.29 of the Ohio Revised Code authorize the City to regulate unsanitary and unsafe conditions, compel their remediation, and recover the costs of remediation from property owners when the City is required to remediate such conditions because of the owner's or person in charge's failure to do so; and

WHEREAS, Council intends through this ordinance to provide tools to the Director of the Department of Buildings and Inspections to expeditiously resolve unsafe living conditions caused by emergency situations related to essential building facilities in residential rental properties and to recover the costs of doing so from the property owners; and

WHEREAS, it is desirable to establish a dedicated fund to provide resources for the Department of Buildings and Inspections' remediation and abatement activities authorized by this ordinance, into which the recovered costs of remediation and abatement shall be deposited for the continued enforcement of the provisions of this ordinance; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Section 1101-62, "Emergency Correction of Essential Building Facilities Within Residential Rental Buildings," of Chapter 1101, "Administration," of the Cincinnati Municipal Code is ordained as follows:

**Sec. 1101-62. – Emergency Correction of Essential Building Facilities Within Residential Rental Buildings.**

1101-62.1 *Definitions:* For the purposes of this section, the following words and phrases shall have the following meaning:

*Emergency Condition:* "Emergency condition" means any condition resulting from the failure of essential building facilities that is dangerous or injurious to the health or safety of the occupants of the dwelling unit or building, or occupants of a neighboring dwelling unit or building. It includes, but is not limited, to the following:

- (1) A mechanical failure of a ventilation or heating system, including failure by such system to maintain a minimum temperature of 60 degrees Fahrenheit inside the dwelling unit;
- (2) Lack of adequate water supply, including an adequate supply of hot water, to the dwelling unit or building due to mechanical failures of pipes or appliances such as boilers or hot water heaters;

- (3) A structural, mechanical, or electrical defect that creates a substantial and serious risk of fire, accident, injury to health or safety, or other calamity;
- (4) Lack of adequate and properly functioning sanitary facilities in the dwelling unit; or
- (5) A failure of fire safety exiting devices to function properly.

*Essential Building Facilities:* “Essential building facilities” means the devices and systems that must be fully functional to allow for the safe and healthy habitation of a legal residential dwelling unit or building, including but not limited to:

- (1) Heating System, including boilers and furnaces, and associated delivery systems and facilities providing fuel sources or air handling necessary to utilize such system;
- (2) Plumbing System, including drinking, bathing, and sanitary fixtures and pipes, and all facilities necessary to utilize such system;
- (3) Structural System, including foundational and structural support systems necessary to stabilize and support the envelope of the building and structures supporting the prescribed emergency exiting path within the building;
- (4) Electrical System, including panels, outlets, wiring, service lines, and all facilities necessary to utilize such system; or
- (5) Fire Safety System, including fire escapes, fire exit stairs, and emergency doors.

1101-62.2 *Limitation on Repair of Essential Building Facilities.* Whenever the director determines that an emergency condition exists, the director may act according to the provisions of this section unless the director estimates the cost of proceeding under this section to exceed forty percent of the assessed improvement value of the subject building as determined from the records of the Hamilton County Auditor. If the director may not proceed under this section because the cost of remediation exceeds this threshold, the director may utilize any other remedy available under law as the director deems appropriate to ameliorate the emergency condition.

1101-62.3 *Emergency Repair of Essential Building Facilities.* If the director determines that an emergency condition exists and elects to proceed under this section, the director shall issue an order pursuant to Section 1101-61 specifying the condition requiring correction, the timeframe in which remedial action must be taken, and the consequences of failure to comply with the order. The director shall issue the order promptly to the property owner or person in control of the property responsible for the maintenance, operation, and repair of such structures, equipment, or systems. After such order has been served pursuant to Section 1101-61, the director may enter upon the premises pursuant to Section 1101-45 and repair or cause to be repaired such condition,

in a workmanlike manner by a licensed and registered contractor. All costs of proceeding under this section shall be recoverable as total cost under Section 1101-64.

1101-62.4 *Fund for Repair of Essential Building Facilities*: Total cost, as defined in Section 1101-64, recovered pursuant to Sections 1101-62.3 and 1101-64 shall be paid to the city treasurer and credited to a fund established for the purpose of making resources available for the continued enforcement of this section. The director may use such resources as are in the fund, in addition to other resources available, to aid in the enforcement of this section. The director shall make all reasonable attempts to recover the total cost incurred in proceeding under this section for crediting to the fund.

Section 2. That Section 1101-64, “Recovering Total Cost of Correcting Hazardous Condition of Building and/or Abating Nuisance,” of Chapter 1101, “Administration,” of the Cincinnati Municipal Code is amended as follows:

**Sec. 1101-64. – Recovering Total Cost of Correcting Hazardous Condition of Building Conditions, Abating Emergency Conditions Related to Essential Building Facilities, and/or Abating Nuisance-Nuisances.**

- (a1) The director may collect the total cost of abatement activities from the property owner or person in control of a property ~~whose~~ when the property has benefitted from the abatement activity using one or more of the following methods ~~prescribed in division (a)(1-4) of this section;~~
- (1a) The director may invoice the property owner or person in control of the benefitted property ~~pursuant to the quarterly fee schedule established pursuant to Section 1101-85;~~
- (2b) The director may place a lien on the benefitted property in accordance with the process set forth in Ohio Revised Code Sections 715.26, 715.261, and 731.54 or any successor sections;
- (3c) The city solicitor may commence a civil action ~~to recover the total costs, including from against~~ the property owner or person in control of the benefitted property at the time the costs were incurred;
- (4d) The director may file a lien against and pursue a foreclosure of the benefitted property in accordance with the process set forth in Ohio Revised Code Sections 323.65 to 323.79, and 715.261(B)(3) or any successor sections; or

- (e) The director may invoice the property owner or person in control of the benefitted property pursuant to the quarterly fee schedule established under Section 1101-85 of this chapter.
- (b2) For the purposes of this section, the following words and phrases shall have the following meaning:
- (1a) “Abatement activity” means each instance of any of the following:
- (A) Removing, repairing, or securing insecure, unsafe, structurally defective, abandoned, deserted, or open and vacant buildings or other structures;
- (B) Making emergency corrections of hazardous conditions;
- (C) Abatement of any nuisance condition by the director as authorized by the Ohio Revised Code; ~~and~~
- (D) All code enforcement activity undertaken to abate a nuisance condition that exists for more than sixty days following the director’s issuance of orders describing the nuisance condition including, but not limited to, inspections and attempts to achieve code compliance; or
- (v) Correction, abatement, or remediation of emergency conditions related to essential building facilities within residential buildings.
- (b) “Emergency condition” has the same meaning as in Section 1162.1
- (c) “Essential building facilities” has the same meaning as in Section 1162.1.
- (2d) “Nuisance condition” means any violation of a building code, housing code, zoning code, quality of life code, and any other codes under the jurisdiction of the director.
- (3e) “Total cost” means the sum of the following costs incurred or borne by the city in pursuit of abatement activity authorized under this chapter: any costs incurred due related to the use of employees, materials, or equipment of the city; any accrued quarterly code enforcement monitoring fees resulting from abatement activities associated with Section 1101-64(2)(a)(iv); any costs arising out of related to contracts for labor, materials, or equipment; and any costs of related to issuance or service of notice or publication as required under Chapter 11 of the Cincinnati Municipal Code this chapter. “Total cost” includes, but is not limited to, any attorney’s fees, costs of inspection, administrative and support staff fees, property maintenance costs, court costs, title search fees, process

server fees, and skip tracing expenses;; any costs of police, fire, and medical services provided to abate the nuisance conditions;; any costs of collection or prosecution, including discovery and deposition expenses, ~~incurred under this section relating~~ related to the demolition, repair, alteration, securing or boarding of a building or structure or for abating any other nuisance condition; and any costs of providing emergency temporary housing authorized by the Cincinnati Municipal Code related to abatement activity.

- (e3) The director may suspend the obligation to pay the total cost of abatement activities for a period of up to one year provided that the property owner or person in control of the benefitted property demonstrates to the satisfaction of the director that the person requesting the suspension:
  - (1a) has a bona fide and viable plan to correct the conditions that gave rise to the abatement activity;
  - (2b) has the financial capacity to implement the plan or is making a bona fide effort to obtain the financial resources to implement the plan;
  - (3c) will suffer an undue burden if required to pay the costs of abatement activity prior to implementation of the plan; and
  - (4d) ~~demonstrates that the subject~~ maintains the benefitted property in a condition that does not pose an unreasonable hazard to emergency personnel and the health and safety of the public, including trespassers.
- (d4) All suspensions issued under subsection (e3) of this section are subject to the following conditions:
  - (1a) The ~~subject~~ benefitted property must be maintained in a manner that does not pose an unreasonable hazard to emergency personnel and the health and safety of residents or the public, including trespassers;
  - (2b) Any condition that arises or is discovered during the suspension period that poses an unreasonable hazard to emergency personnel and the health and safety of residents or the public, including trespassers, must be repaired promptly, as required by the director;
  - (3c) The condition or conditions giving rise to the abatement activity must be corrected prior to the expiration of the suspension period; and
  - (4d) The director shall be permitted to inspect the interior and exterior of the ~~subject~~ benefitted property based on an inspection schedule established by the director as necessary to ensure ongoing compliance with applicable laws and conditions.

- (e5) The director may impose additional conditions on a suspension issued under subsection (e3) to the extent necessary to ensure that the subject-benefitted property is maintained in a manner that does not pose an unreasonable hazard to emergency personnel and the health and safety of the public, including trespassers, during the suspension period.
- (f6) The director may approve the assignment of an existing suspension to a subsequent purchaser or person in control of the subject-benefitted property upon determining that they meet the same standards on-pursuant to which the suspension was granted. Upon approval, the purchaser or person in control of the benefitted property shall have the same rights and responsibilities as the initial petitioner to whom the suspension was granted.
- (g7) The director may terminate a suspension at any time and levy all suspended costs upon determining that the petitioner knowingly violated applicable law or a condition imposed on the suspension. Costs reinstated under this section shall be a debt due and payable to the city within 30 days of the decision and shall be collectible as a total cost as provided for in this section.
- (h8) The director shall certify that any costs suspended during the period are permanently waived upon correction of the conditions that gave rise to the abatement activity.
- (9) The director is authorized to promulgate rules and regulations to carry out the purposes of this section.

Section 3. That the establishment of Fund 346, “Emergency Remediation of Defects in Rental Housing,” is authorized, into which shall be deposited revenue from the total costs of remediation and abatement recovered under Section 1101-64 to be used for expenses related to emergency remediation and abatement of failed essential building facilities within residential rental housing expended in enforcement of Section 1101-62.

Section 4. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Sections 1 through 3.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is

the need to implement the property maintenance programs and policies adopted as soon as possible to ensure that the Department of Buildings and Inspections is fully authorized to implement the program.

Passed: \_\_\_\_\_, 2023

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Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

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New language underscored. Deleted language indicated by strikethrough.