



**Department of Neighborhood Services**  
Inspectional services for health, safety and neighborhood improvement

**Preston D. Cole**  
Commissioner

**Thomas G. Mishefske**  
Operations Manager

September 8, 2017

Grant Langley  
City Attorney  
City of Milwaukee  
200 E. Wells St.  
Milwaukee, WI 53202  
Attn: Adam Stevens

Dear Mr. Langley:

The Department of Neighborhood Services has assisted Alderman Robert Bauman in the development of a "Substitute" ordinance relating to deconstruction of residential buildings (Number 170188).

As the Commissioner, I am requesting a legal opinion as to the provisions outlined in the substitute ordinance (attached). Additionally, this item will be heard by the Joint Committee on Redevelopment of Abandoned and Foreclosed Homes on Monday, September 11, 2017.

I look forward to your response.

Sincerely,

Preston D. Cole  
Commissioner

PDC/md

Cc: Ald. Robert Bauman

File



..Number  
170188  
..Version  
SUBSTITUTE 1  
..Reference

..Sponsor  
ALD. BAUMAN AND KOVAC

..Title  
A substitute ordinance relating to deconstruction of residential buildings.

..Sections  
200-19-2 am  
218-10 cr

..Analysis  
This ordinance creates deconstruction requirements for the removal of Milwaukee's older and more historic primary dwelling structures, for the purposes of:

- a. Maximizing the salvage of valuable building materials, especially old-growth structural lumber, for reuse, thereby supporting the city's goal of being a sustainable community.
- b. Reducing the amount of demolition waste disposed of in landfills, thereby saving city and taxpayer dollars, extending the lives of existing landfills and reducing the need to create new landfills.
- c. Creating employment opportunities for city residents, as the deconstruction process is much more labor-intensive than demolition, which relies on the use of heavy mechanical equipment.
- d. Reducing carbon emissions associated with demolition activity by preserving the embodied carbon and energy of existing building materials and avoiding the creation of greenhouse gasses associated with producing new materials.
- e. Minimizing the adverse impacts associated with building removal by increasing the likelihood of discovering materials containing lead and asbestos for safe removal and disposal.
- f. Reducing the release of dust and other hazardous or potentially hazardous airborne substances associated with mechanical demolition of structures.
- g. Preserving Milwaukee's historic architectural features and building materials.

Specifically, effective January 1, 2018, this ordinance requires deconstruction, rather than demolition, whenever a permit application is filed for demolition of any of the following:

- a. A primary dwelling structure that was built in 1929 or earlier according to building permit records on file with the department of neighborhood services or, if no such permit records exist, according to records of the commissioner of assessments or the Milwaukee county register of deeds.
- b. A primary dwelling structure that has been designated as an historic structure by the common council.
- c. A primary dwelling structure that is located in an historic district designated by the common council.

The following are exempt from the deconstruction requirement, provided the demolition permit applicant files a written request and supporting documentation with the commissioner of neighborhood services:

- a. The moving of a building.
- b. Any primary dwelling structure that the commissioner has determined is unsuitable for deconstruction because either of the following is true:
  - b-1. The structure is structurally unsafe or is otherwise hazardous to the health, safety or welfare of the public.
  - b-2. Most of the material in the structure is not suitable for reuse.

Deconstruction shall be performed by a certified deconstruction contractor in accordance with the requirements of this ordinance, as well as with any rule the commissioner has promulgated under the authority granted to the commissioner by the ordinance.

Penalties for violation of the deconstruction requirements include forfeitures of up to \$3,000 (up to \$20,000 for improper use of heavy machinery), issuance of citations, removal of a contractor from the list of certified deconstruction contractors, or revocation of a contractor's certification as a certified deconstruction contractor. The commissioner may also issue stop-work orders or conduct on-site inspections when necessary.

Whenever a responsible party under this ordinance has been given a written notice or order or has been directed to make any correction, pay a penalty or to perform any act and the responsible party believes the finding of the notice or order was in error, the responsible party may have the notice or order reviewed by the commissioner. If a review is sought, the responsible party will submit a written request to the commissioner within 10 days of the date of the notice or order. The review will be conducted by the commissioner. The responsible party requesting review will be given the opportunity to present evidence to the commissioner. Following a review, the commissioner shall issue a written determination.

..Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 200-19-2 of the cod is amended to read:

**200-19. Penalties.**

2. In addition to other applicable enforcement procedures and pursuant to the authority of s. 66.0113, Wis. Stats., the department may issue citations pursuant to the citation procedure set forth in s. 50-25 to any person violating any provision of ss. 200-11, 200-20-2, 200-21.5, 200-22-5, 200-24, 200-42, 200-51.7, 200-53, 200-61, ch. 207, ch. 214, ss. 218-2, 218-6, 218-9-6, >>218-10,<< 222-11-2, 222-13-1, 222-19-1, ch. 223, ss. 225-2-1, 225-3-4, 225-3-5-a, ch. 236, ch. 240, s. 244-3, ch. 246, s. 252-1, ch. 261, ch. 275, ch. 289, ch. 290, ch. 295 or s. 320-21-11.

Part 2. Section 218-10 of the code is created to read:

**218-10. Deconstruction of Residential Buildings. 1. PURPOSES.** This section provides deconstruction requirements for the removal of Milwaukee’s older and more historic primary dwelling structures. In particular, through the enactment and enforcement of this section, the common council seeks to:

- a. Maximize the salvage of valuable building materials, especially old-growth structural lumber, for reuse, thereby supporting the city’s goal of being a sustainable community.
- b. Reduce the amount of demolition waste disposed of in landfills, thereby saving city and taxpayer dollars, extending the lives of existing landfills and reducing the need to create new landfills.
- c. Create employment opportunities for city residents, as the deconstruction process is much more labor-intensive than demolition, which relies on the use of heavy mechanical equipment.
- d. Reduce carbon emissions associated with demolition activity by preserving the embodied carbon and energy of existing building materials and avoiding the creation of greenhouse gasses associated with producing new materials.
- e. Minimize the adverse impacts associated with building removal by increasing the likelihood of discovering materials containing lead and asbestos for safe removal and disposal.
- f. Reduce the releasing of dust and other hazardous or potentially hazardous airborne substances associated with mechanical demolition of structures.
- g. Preserve Milwaukee’s historic architectural features and building materials.

2. DEFINITIONS. In this section:

- a. "Certified deconstruction contractor" means a contractor that has successfully completed a deconstruction certification program recognized by the department. A firm shall be considered certified if at least one person currently employed by the firm is certified.
- b. "Deconstruction" means the systematic dismantling of a structure, or portion thereof, to maximize the salvage of materials for reuse, in preference over salvaging materials for recycling, energy recovery, or sending the materials to the landfill.
- c. "Primary dwelling structure" means a residential structure containing one to 4 dwelling units based on current permitted occupancy at the time of demolition permit application. This term does not include an accessory building such as a garage or shed.
- d. "Recycling" means the processing of waste materials into new products or material feed stock for products. Materials that can be recycled include, but are not limited to, concrete, metal piping, and asphalt roofing shingles.
- e. "Responsible party" means any owner or person in control of a primary dwelling structure, or that owner or person's authorized agent.
- f. "Reuse" means the use of a product or material that was previously installed for the same or similar function to extend its life cycle. Materials salvageable for reuse include but are not limited to cabinets, doors, windows, hardware, fixtures, flooring, siding, and framing lumber.

**3. AUTHORITY OF COMMISSIONER.** a. The commissioner shall administer and enforce the provisions of this section.

b. The commissioner shall adopt rules, procedures, and forms to implement the provisions of this section, provided:

b-1. Any rule adopted pursuant to this paragraph shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. The notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

b-2. During the public review, the commissioner shall hear testimony or receive written comment concerning the proposed rules. The commissioner shall review the recommendations, taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. Unless otherwise stated, all rules shall be effective upon adoption by the commissioner and shall be filed in the office of the commissioner and with the legislative reference bureau.

c. The commissioner may temporarily suspend or modify the requirements of this section based on a determination that such requirements are temporarily infeasible due to economic or technical circumstances. The commissioner's determination to temporarily suspend or modify shall be filed as a communication report to the common council. The commissioner's determination shall be effective immediately upon the common council placing on file the communication from the commissioner.

**4. REGULATIONS. a. Scope.** The deconstruction requirements of this section apply to any demolition permit application under this chapter for any of the following:

a-1. A primary dwelling structure that was built in 1929 or earlier according to building permit records on file with the department or, if no such permit records exist, according to records of the commissioner of assessments or the Milwaukee county register of deeds.

a-2. A primary dwelling structure that has been designated as an historic structure by the common council under s. 320-21.

a-3. A primary dwelling structure located in an historic district designated by the common council under s. 320-21.

**b. Requirements. b-1. General.** Primary dwelling structures shall be deconstructed in accordance with the provisions of this section and associated administrative rules. Salvaged material may be sold, donated, or reused on- or off-site. Every deconstruction project shall achieve a documented 85% landfill diversion rate by weight, unless otherwise approved by the commissioner.

b-2. **Demolition Permit Application.** An application for a demolition permit under this chapter for any primary dwelling structure shall not be considered complete unless it is accompanied by a completed pre-deconstruction form provided by the commissioner, including a list of targeted salvageable materials and final destinations.

b-3. **Certified Deconstruction Contractor.** Deconstruction shall only be performed by a certified deconstruction contractor. At least one certified employee of the contractor shall be present on the job site when activities related to deconstruction are underway. The department shall maintain and make available to the public a list of currently-certified deconstruction contractors.

b-4. **Site Posting.** Prior to commencement of deconstruction activity, a yard sign approved by the commissioner shall be posted on each street frontage of the site. The sign shall:

b-4-a. Indicate that the structure is being deconstructed

b-4-b. Provide department of neighborhood services contact information for questions or concerns.

b-4-c. Remain in place throughout the course of deconstruction.

b-4-d. Be posted within 5 feet of a street lot line, be visible to pedestrians and motorists, and not be posted in a public right-of-way.

b-5. Heavy Machinery. Heavy machinery may be used in deconstruction to assist in the salvage of materials for reuse or to remove material not required to be salvaged for reuse. Heavy machinery may not be used in deconstruction to remove or dismantle components of buildings in ways that render building components unsuitable for salvage. For purposes of this section, heavy machinery includes, but is not limited to, track hoes, excavators, skid steer loaders, and forklifts.

b-6. Documentation. The demolition permit holder shall maintain receipts for donation, sale, recycling, and disposal of all materials for any deconstruction project. Materials intended for reuse on site shall be documented with photographs. The commissioner may ask that the permit holder produce the receipts or photographs for inspection any time until the demolition permit is closed.

b-7. Closing of Demolition Permit. A completed post-deconstruction form and all documentation required in subd. 6. shall be submitted to the department before a department inspector may approve a demolition permit as closed.

c. Exemptions. The following are exempt from the requirements of this section:

c-1. The moving of a building, provided it occurs in accordance with s. 218-2..

c-2. Any primary dwelling structure that the commissioner has determined is unsuitable for deconstruction because either of the following is true:

c-2-a. The structure is structurally unsafe or is otherwise hazardous to the health, safety or welfare of the public.

c-2-b. Most of the material in the structure is not suitable for reuse.

d. Request for an Exemption. An applicant may request an exemption from the requirements of this section under par. c by submitting a written request for exemption, together with supporting evidence, when submitting a demolition permit application.

e. Determination of an Exemption. The commissioner shall make the final determination of exemption based on evidence submitted by the applicant as well as an inspection to confirm conditions and unsuitability. The demolition permit shall not be issued until the final determination is made on the exemption request. If the applicant disagrees with the final determination, the determination may be appealed by the applicant under sub. 6.

**5. ENFORCEMENT AND PENALTIES.** a. General. a-1. A first violation of this section may be subject to a penalty of up to \$1,000.

a-2. A second violation of this section committed by the same person or firm may be subject to a penalty of up to \$2,000.

a-3. Third and subsequent violations of this section by the same person or firm may be subject to a penalty of up to \$3,000.

a-4. Penalties may be imposed on a per-month, per-day or per-incident basis, or such other basis as the commissioner may determine appropriate based upon the criteria in par. e.

a-5. Any person receiving a notice of violation shall, within 10 days of issuance of the notice, either pay to the city the stated penalty amount or appeal the penalty under sub. 6.

b. Heavy Machinery. b-1. Improper use of heavy machinery in violation of this section may be subject to a penalty of up to \$20,000.

b-2. Any person receiving a notice of violation shall, within 10 days of issuance of the notice, either pay to the city the stated penalty amount or appeal the penalty under sub. 6.

c. Additional Enforcement Actions for Certified Deconstruction Contractors. The commissioner may impose the following additional remedies on a certified deconstruction contractor:

c-1. A first violation of this section may result in removal from the list of certified deconstruction contractors for up to 6 months.

c-2. A second violation of this section may result in removal from the list of certified deconstruction contractors for up to 12 months.

c-3. A third or subsequent violation of this section may result in revocation of the contractor's certification as a certified deconstruction contractor. The contractor may not apply for recertification for a period of 18 months.

c-4. Temporary removal from the list of certified deconstruction contractors shall expire immediately following the end of the term of removal, and shall not require further action by the commissioner.

d. Stop Work Orders. When necessary to obtain compliance with this section, the commissioner may issue a stop work order requiring that all work, except work directly related to elimination of the violation, be immediately and completely stopped. If the commissioner issues a stop work order, activity subject to the order may not be resumed until such time as the commissioner gives specific approval in writing. The stop work order will be in writing and posted at a conspicuous location at the site. When an emergency condition exists, a stop work order may be issued orally, followed by a



written stop work order. It is unlawful for any person to remove, obscure, mutilate or otherwise damage a stop work order.

e. Criteria. The commissioner shall use the following criteria in determining the type and magnitude of penalties or remedies to impose under this subsection:

e-1. The nature and extent of the person's involvement in the violation.

e-2. Whether the person was seeking any benefits, economic or otherwise, through the violation.

e-3. Whether the person has committed similar violations in the past.

e-4. The length of time since any prior violations.

e-5. Whether the violation was isolated and temporary, or repeated and continuous.

e-6. The magnitude and seriousness of the violation.

e-7. The costs of investigating and remedying the violation.

e-8. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

f. Inspections. The commissioner may conduct inspections whenever necessary to enforce any provisions of this section, to determine compliance with this section or whenever the commissioner has reasonable cause to believe there exists any violation of this section. If the responsible party is at the site when the inspection is occurring, the commissioner will first present proper credentials to the responsible party and request entry.

**6. RIGHT OF APPEAL.** Whenever the responsible party has been given a written notice or order pursuant to this section or has been directed to make any correction, pay a penalty or to perform any act and the responsible party believes the finding of the notice or order was in error, the responsible party may have the notice or order reviewed by the commissioner. If a review is sought, the responsible party will submit a written request to the commissioner within 10 days of the date of the notice or order. Such review will be conducted by the commissioner. The responsible party requesting such review will be given the opportunity to present evidence to the commissioner. Following a review, the commissioner shall issue a written determination.

Part 3. This ordinance is effective January 1, 2018.

..LRB  
APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau  
Date: \_\_\_\_\_

..Attorney  
IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

\_\_\_\_\_  
Office of the City Attorney  
Date: \_\_\_\_\_  
..Requestor

..Drafter  
LRB168356-2  
Jeff Osterman  
08/31/2017