

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

CITY CLERK DEPT.
10 APR 19 PM 3:41

DEPARTMENT: City Manager, Development & Infrastructure
AGENDA DATE: April 27, 2010 (Introduction); May 4, 2010 (Public Hearing)
CONTACT PERSON NAME AND PHONE NUMBER:
Patricia D. Aduato, Deputy City Manager, (915) 541-4853
DISTRICT(S) AFFECTED: All Districts

SUBJECT:

An Ordinance amending Title 2 (Administration and Personnel), Chapter 2.38 (Building and Standards Commission), Section 2.38.090 (Urban Nuisance; Repair, Demolition, Vacation, Reduction in Occupancy Load, Relocation, Securing, and Civil Penalties; Hearings; Notice), Subsection N. of the El Paso City Code, to revise the provisions to be in conformity with state law.

BACKGROUND / DISCUSSION:

The Building & Standards Commission is empowered to declare buildings substandard and order that they be secured, repaired or demolished to protect public health and safety. If the property owner fails to timely comply with an Order from the Building & Standards Commission, the City (acting through the Building & Standards Commission) may, following formal notice, repair, demolish or secure the site, and place a lien on the property for the costs of the scope of work. Any lien placed on property is then reimbursed to the City by the title owner at the time of disposition of the property. The Texas Local Government Code states that such a lien is subordinate only to tax liens. In 2005, the El Paso City Code was modified with language that also allows the City's lien to be subordinate to mortgage liens in certain instances. The proposed Code amendment (attached) deletes the language that provides that the City's lien is inferior to any bona fide mortgage lien attached to the real property, and mirrors the provisions of state law as recommended by staff and the City Attorney's Office.

The Texas Local Government Code also states that a municipality may not place a lien on a homestead. The City Code provides that a lien may not be foreclosed if the property is a residential homestead by a person of sixty-five years of age or older. The proposed Code amendment mirrors the provision of state law as recommended by staff and the City Attorney's Office.

PRIOR COUNCIL ACTION:

City Council approved Ordinance 15998 in 2005 that modified this provision of Chapter 2.38 (Building & Standards Commission), which is now proposed to be deleted.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

PAduato

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

ORDINANCE NO. _____

10 APR 19 PM 3:41

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.38 (BUILDING AND STANDARDS COMMISSION), SECTION 2.38.090 (URBAN NUISANCE; REPAIR, DEMOLITION, VACATION, REDUCTION IN OCCUPANCY LOAD, RELOCATION, SECURING, AND CIVIL PENALTIES; HEARINGS; NOTICE), SUBSECTION N, OF THE EL PASO CITY CODE, TO REVISE THE PROVISIONS TO BE IN CONFORMITY WITH STATE LAW.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 2 (Administration and Personnel), Chapter 2.38 (Building and Standards Commission), Section 2.38.090 (Urban Nuisance; Repair, Demolition, Vacation, Reduction in Occupancy Load, Relocation, Securing, and Civil Penalties; Hearings, Notice) Subsection N, of the El Paso City Code, be amended to read as follows.

Section 2.38.090, Subsection N. – Urban nuisance—Repair, demolition, vacation, reduction in occupancy load, relocation, securing, and civil penalties—Hearings—Notice.

N. Any lien placed on the subject property in accordance with subsection G is extinguished if the property owner or another person having interest in the legal title to the property reimburses the city for the expenses. The city manager or his or her designee is authorized to release any lien assessed, subject to full payment of expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which the property is located. Notice of the lien shall be in recordable form and shall be promptly delivered to the city clerk for filing with the county clerk. The notice must contain the name and address of the owner, if that information can be determined with a reasonable effort, a legal description of the real property on which the building was located, the amount of expenses incurred by the city and the balance due.

1. If the notice is given and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by this chapter, the lien is a privileged lien subordinate only to tax liens;
2. A lien assessed under this chapter accrues interest at the rate of ten percent a year from the assessment until paid in full;
3. The city's right to the assessment may not be transferred to third parties;

- 4. Expenses incurred by the city under this chapter may not be assessed as a lien against the property if the property on which the repairs were made is a homestead protected by the Texas Constitution;
- 5. Seizure and sale of foreclosed property shall be conducted in accordance with Texas Local Government Code Section 214.004.
(Ord. 15998 § 1 (part), 2005)

Section 2. Except as expressly herein amended, Title 18 (Building and Construction) of the El Paso City Code shall remain in full force and effect.

Section 3. This ordinance shall take effect on _____.

ADOPTED this _____ day of _____, 2010.

CITY OF EL PASO

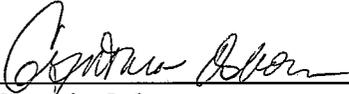
John F. Cook
Mayor

10 APR 19 PM 3:41
 CITY CLERK DEPT.

ATTEST:

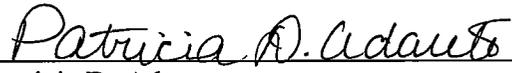
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



Patricia D. Adauto
Deputy City Manager

ORDINANCE NO.

Redline

CITY CLERK DEPT.
10 APR 19 PM 3:41

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.38 (BUILDING AND STANDARDS COMMISSION), SECTION 2.38.090 (URBAN NUISANCE; REPAIR, DEMOLITION, VACATION, REDUCTION IN OCCUPANCY LOAD, RELOCATION, SECURING, AND CIVIL PENALTIES; HEARINGS; NOTICE), SUBSECTION N, OF THE EL PASO CITY CODE, TO REVISE THE PROVISIONS TO BE IN CONFORMITY WITH STATE LAW.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 2 (Administration and Personnel), Chapter 2.38 (Building and Standards Commission), Section 2.38.090 (Urban Nuisance; Repair, Demolition, Vacation, Reduction in Occupancy Load, Relocation, Securing, and Civil Penalties; Hearings, Notice) Subsection N, of the El Paso City Code, be amended to read as follows.

Section 2.38.090, Subsection N. – Urban nuisance—Repair, demolition, vacation, reduction in occupancy load, relocation, securing, and civil penalties—Hearings—Notice.

- N. Any lien placed on the subject property in accordance with subsection G is extinguished if the property owner or another person having interest in the legal title to the property reimburses the city for the expenses. The city manager or his or her designee is authorized to release any lien assessed, subject to full payment of expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which the property is located. Notice of the lien shall be in recordable form and shall be promptly delivered to the city clerk for filing with the county clerk. The notice must contain the name and address of the owner, if that information can be determined with a reasonable effort, a legal description of the real property on which the building was located, the amount of expenses incurred by the city and the balance due.
1. If the notice is given and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by this chapter, the lien is a privileged lien subordinate only to tax liens;
 2. ~~The city's lien is inferior to any previously recorded bona fide mortgage lien attached to the real property if the mortgage lien was filed for record with the county clerk before the date the repair, removal or demolition is begun by the city. The city's lien is superior to all other previously recorded judgment liens;~~
 3. A lien assessed under this chapter accrues interest at the rate of ten percent a year from the assessment until paid in full;

Inserted: 2

4. The city's right to the assessment may not be transferred to third parties;

Inserted: 3

5. ~~A lien acquired by the city under this chapter for repair expenses may not be foreclosed if the property on which the repairs were made is a residential homestead by a person sixty-five years of age or older;~~

Inserted: 4

Inserted: Expenses incurred

Inserted: be assessed as a lien against the property

6. Seizure and sale of foreclosed property shall be conducted in accordance with Texas Local Government Code Section 214.004.

Inserted: protected by the Texas Constitution

(Ord. 15998 § 1 (part), 2005)

Inserted: 5

Section 2. Except as expressly herein amended, Title 18 (Building and Construction) of the El Paso City Code shall remain in full force and effect.

Section 3. This ordinance shall take effect on _____.

ADOPTED this _____ day of _____, 2010.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Cynthia Osborn
Assistant City Attorney

Patricia D. Adauto
Deputy City Manager