

**CITY OF SHIVELY
ORDINANCE NO. 11, SERIES 2023
CERTIFIED SUMMARY**

**AN ORDINANCE ENACTING AND ADOPTING THE PROVISIONS OF KRS 99.700
TO 99.730 RELATING TO BLIGHTED OR DETERIORATED AREAS IN THE CITY
OF SHIVELY AND THE ESTABLISHMENT OF A VACANT PROPERTY REVIEW
COMMISSION**

I hereby certify that the foregoing ordinance provides for the adoption and enactment of the provisions of KRS 99.700 to 99.730 relating to blighted or deteriorated properties in the City of Shively and the establishment of and procedural requirements for a Vacant Property Review Commission in the City of Shively upon whose certification may lead to eminent domain proceedings for blighted or deteriorated properties as instituted by the Shively City Council.

The complete text of said ordinance may be read at the office of the Shively City Clerk, Shively City Hall, 3920 Dixie Highway, Shively, Kentucky 40216.

Finn Cato
CATO LAW OFFICE PLLC
2950 Breckenridge Lane, Suite No. 3
Louisville, KY 40220
Shively City Attorney

**CITY OF SHIVELY
ORDINANCE NO. 11, SERIES 2023**

**AN ORDINANCE ENACTING AND ADOPTING THE PROVISIONS OF KRS
99.700 TO 99.730 RELATING TO BLIGHTED OR DETERIORATED AREAS IN
THE CITY OF SHIVELY AND THE ESTABLISHMENT OF A VACANT
PROPERTY REVIEW COMMISSION**

WHEREAS the City of Shively has determined that there exist within the city blighted and deteriorated properties in neighborhoods which cause deterioration of those and contiguous neighborhoods and constitute a serious and growing menace which is injurious to the public health, safety, morals and general welfare of the residents of the city and are beyond remedy and control solely by regulatory process in the exercise of the police power of the city, and

WHEREAS the existence of blighted and deteriorated properties within neighborhoods, and the growth and spread of blight and deterioration or the threatened deterioration of other neighborhoods and properties contribute substantially and increasingly to the spread of disease and crime and to losses by fire and accident, necessitate expensive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, and punishment, for the treatment of juvenile delinquency, for the maintenance of adequate police, fire and accident protection, and for other public services and facilities, constitute an economic and social liability, substantially impair or arrest the sound growth of the community, retard the provision of decent, safe and sanitary housing accommodations, depreciate assessable values, cause an abnormal exodus of families from these city neighborhoods, are detrimental to the health, the well-being and the dignity of many residents of these neighborhoods, and

WHEREAS the above menace of blighted and deteriorated properties cannot be effectively dealt with by private enterprise without the aids provided herein, and

WHEREAS the benefits which would result from eliminating the blighted properties that cause the blight and deterioration of neighborhoods will accrue to the inhabitants of the neighborhoods in which these conditions exist, and

WHEREAS it is the policy of the City of Shively to protect and promote the health, safety and welfare of the people of Shively by eliminating the blight and deterioration of neighborhoods through the elimination of blighted and deteriorated properties and further that the elimination of such blight and deterioration and the preparation of properties for sale or lease, for development or redevelopment, constitute a public use and purpose for which public money may be expended and private property acquired and are governmental functions in the interest of health, safety and welfare of the people of Shively, now therefore:

BE IT ORDAINED BY THE CITY OF SHIVELY:

SECTION 1. A new Sub-chapter 36.06 of the City of Shively Codified Ordinances entitled Vacant property Review Commission is hereby created and adopted as follows:

SECTION 2. The City of Shively hereby finds and declares that there exist within the City of Shively blighted or deteriorated properties and that there is a need for the exercise of powers, functions, and duties conferred by KRS 99.700 to 99.730 within the City of Shively.

SECTION 3. The City of Shively hereby adopts the provisions of KRS 99.700 to 99.730 and incorporates by reference KRS 99.700 to 99.730 in its entirety.

SECTION 4. DEFINITIONS:

- (1) "Blighted" or "deteriorated" property means any vacant structure or vacant or unimproved lot or parcel of ground in a predominantly built-up neighborhood:
 - (a) Which because of physical condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the housing, building, plumbing, fire, nuisance, or related codes; or
 - (b) Which because of physical condition, use, or occupancy is considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences or structures; or
 - (c) Which, because it is dilapidated, unsanitary, unsafe, vermin-infested, or lacking in the facilities and equipment required by the housing or nuisance code of the local government in which it is located, has been designated by the department responsible for enforcement of the housing or nuisance code as unfit for human habitation; or
 - (d) Which is a fire hazard, or is otherwise dangerous to the safety of persons or property; or
 - (e) From which the utilities, plumbing, heating, sewerage, or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use; or
 - (f) Which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin; or
 - (g) Which has been tax delinquent for a period of at least three (3) years; or
 - (h) Which has not been brought into compliance with the housing, building, plumbing, electrical, fire, or nuisance code of the local government within which it is located within the time constraints placed upon the owner by the appropriate code enforcement agency;

- (2) "Redevelopment" means the planning or replanning, design or redesign, acquisition, clearance, development, and disposal or any combination of these, of a property in the preparation of such property for residential, commercial, public, or related uses, as may be appropriate or necessary.
- (3) "Local government" means any city, county, urban-county government, consolidated local government, unified local government, or charter county.
- (4) "Nuisance code" means an ordinance or ordinances adopted by a local government pursuant to KRS 65.8801 to 65.8839 or a similar ordinance or ordinances adopted by a local government pursuant to any other authority.
- (5) "Residential and related use" shall mean residential property for sale or rental, and related uses including but not limited to, park and recreation areas, neighborhood community services and neighborhood parking lots.
- (6) "Vacant Property Review Commission" means a vacant property review commission established under KRS 99.710 and this ordinance to review vacant properties and to make a written determination of blight and deterioration.

SECTION 5. Vacant Property Review Commission Establishment. The City of Shively hereby establishes a vacant property review commission, which shall certify properties as blighted or deteriorated to the legislative body and further elects to assign all the existing powers and duties conferred upon the vacant property commission in KRS 99.700 to 99.730 to the City of Shively Code Enforcement Board created and established pursuant to KRS 65.8801 to 65.8839 and City of Shively Codified Ordinances Section 41.02. The membership, appointments, terms, vacancies, removals, oaths, alternate membership, organization, meetings, quorum, conflict of interest and jurisdiction of the vacant property review commission shall be the same of the City of Shively Code Enforcement Board as set forth in City of Shively Codified Ordinances Sections 41.03 to 41.07.

SECTION 6. Compensation. Members of the vacant property review commission shall be reimbursed for actual expenses and compensated in the amount of twenty-five dollars (\$25.00) per month per meeting. This compensation shall be in addition to members' compensation received for service on the Shively Code Enforcement Board pursuant to Shively Codified Ordinance Section 41.03.

SECTION 7. Purpose. The purpose of the vacant property review commission shall be:

- a) To certify to the Shively City Council properties within the City of Shively that are blighted or deteriorated in the manner and form set forth in this ordinance and pursuant to KRS 99.700 to 99.730.
- b) To fulfill all the duties provided in the City of Shively Code of Ordinances pertaining to abandoned urban properties.

- c) To assist the Shively City Council in identifying properties of any classification or use that are abandoned, blighted, deteriorated, or otherwise in a condition of non-productive use; and
- d) To perform other duties as may be assigned to it by the Shively City Council that are consistent with the general purpose of this ordinance.

SECTION 8. Powers and Duties.

- (a) The Shively City Council shall not institute eminent domain proceedings pursuant to KRS 99.705 to 99.730 unless the vacant property review commission has certified that the property is blighted or deteriorated.
- (b) A property which has been referred to the vacant property review commission by a local government or government agency as blighted or deteriorated may only be certified to the Shively City Council as blighted or deteriorated after the vacant property review commission has determined:
 - (1) That the owner of the property, as determined by reference to the current tax assessment roll in the office of the property valuation administrator, or the owner's designated agent, has been notified through a notice or order by the local government or local government agency to eliminate the conditions which are in violation of local codes or law;
 - (2) That the property is vacant;
 - (3) That the property is blighted and deteriorated;
 - (4) That the vacant property review commission has notified the property owner or the owner's designated agent that the property has been determined to be blighted or deteriorated and the time period for correction of such condition has expired and the property owner or agent has failed to comply with the notice;
 - (5) That the property owner has been afforded the opportunity to a hearing before the vacant property review commission with regard to the finding of blight;
 - (6) That the reuse of the property for residential and related uses is in keeping with the comprehensive plan.
- (c) The findings required by subsection (b) of this section shall be in writing and included in the report to the Shively City Council.
- (d) Upon making an initial determination of blight or deterioration and prior to the above certification to the Shively City Council, the vacant property review commission shall notify the owner of the property or the owner's designated agent that a determination of blight or deterioration has been made and that failure to

eliminate the conditions causing the blight shall render the property subject to condemnation by the City of Shively pursuant to this ordinance and KRS Chapter 99. This notice shall include the statement that the owner may request a hearing before the review commission to dispute the determination of blight or deterioration and the process by which such a hearing must be requested. Notice shall be mailed to the owner by certified mail, return receipt requested, at the owner's last known address as recorded with the Jefferson County property valuation administrator or to the owner's designated agent. However, if address of the owner or designated agent is unknown and cannot be ascertained by the vacant property review commission in the exercise of reasonable diligence, copies of the notice shall be posted in a conspicuous place on the property affected.

- (e) The written notice sent to the property owner or the owner's designated agent or posted on the property shall describe the conditions that render the property blighted or deteriorated and shall demand abatement of the conditions within ninety (90) days of the receipt of such notice. This notice shall include the statement that the owner may request a hearing before the review commission to dispute the determination of blight or deterioration and that such a request must be made in writing within twenty (20) days of the date of the notice from the review commission. If the notice is returned as not deliverable, the ninety (90) days shall commence upon the posting of the notice on the property. An extension of the ninety-day period may be granted by the vacant property review commission if the owner or his designated agent demonstrates that such period is insufficient to correct the conditions cited in the notice.

SECTION 9. Appeal of Determination or Valuation.

- (a) The owner or the owner's designated agent of a property initially declared by the vacant property review commission to be blighted or deteriorated shall have the right to a hearing before the vacant property review commission for purposes of contesting the finding of blight or deterioration. Such hearing, if one is requested, shall be held by the vacant property review commission prior to any certification to the Shively City Council regarding the property.
- (b) The owner or other party in interest of any abandoned urban property, as determined pursuant to City of Shively ordinances pertaining to abandoned urban property taxes, who believes that the property has been incorrectly classified, may appeal such classification to the vacant property review commission. Appeal to the vacant property review commission may only be made on the basis that the property was incorrectly classified as abandoned urban property in that it did not meet the criteria established in City of Shively ordinances pertaining to abandoned urban property taxes as of January 1 of that tax year. Such appeal shall be in writing and must be received by the vacant property review commission within thirty (30) days of the date the notice was mailed.
- (c) If a hearing is requested by the property owner or his or her designated agent pursuant to subsection (a), above, he or she shall notify the vacant property review

commission in writing, within twenty (20) days of the date of the notice from the vacant property review commission. The request must state the name, address and phone number of the property owner, the address of the property for which the hearing is requested, and a brief statement of the grounds for appeal. The government shall make available forms for such appeals.

- (d) The vacant property review commission shall attempt to schedule and hear all matters within thirty (30) days of the receipt of the written request.

SECTION 10. Conduct of Hearing.

- (a) Upon receipt of a request for hearing, the vacant property review commission shall set a time and place for hearing and shall give the appellant written notice thereof. The hearing shall be commenced within thirty (30) days after a request has been filed. At such hearing, the appellant shall be given an opportunity to be heard and to show cause why the notice appealed from should be modified or withdrawn. The failure of the appellant or a legal representative to appear and participate in the hearing, shall have the same effect as if no request was filed.
- (b) The vacant property review commission shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing.
- (c) To the extent necessary for the full disclosure of all relevant facts and issues, the vacant property review commission shall afford all parties the opportunity to respond, present documentary or tangible evidence, conduct cross-examination, and submit rebuttal evidence.
- (d) Any party to a hearing may participate in person or may be represented by counsel.
- (e) If a party fails to attend or participate in a hearing, the vacant property review commission may adjourn the proceedings and issue a default order upholding the notice.
- (f) All testimony shall be made under oath or affirmation. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. All testimony shall be accurately and completely recorded. Any person, upon request, may receive a copy of the recording, provided, however, that the party making the request shall be responsible for the cost of any transcript or copy.
- (g) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party, or if such practice is authorized by statute. Any party shall have the right, upon reasonable request, to inspect the documentary or tangible evidence relating to a hearing, either in person or through counsel. Copies of documentary evidence may be obtained by parties upon the payment of a fee, except where disclosure is protected by state or federal law.

(h) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(i) The vacant property review commission may take official notice of any matter of which a court of the Commonwealth of Kentucky may take such notice.

(j) After a hearing, the vacant property review commission may sustain, modify, or withdraw the notice appealed from by a majority vote, and the appellant shall be notified in writing by certified mail of such action.

SECTION 11. Eminent Domain Proceedings.

(a) The Shively City Council may institute eminent domain proceedings pursuant to KRS Chapter 416 against any property which has been certified as blighted and/or deteriorated by the vacant property review commission pursuant to this ordinance, provided that, in addition, the Shively City Council finds:

(1) That such property has deteriorated to such an extent as to constitute a serious and growing menace to the public health, safety and welfare;

(2) That such property is likely to continue to deteriorate unless corrected;

(3) That the continued deterioration of such property may contribute to the blighting or deterioration of the area immediately surrounding the property;
and

(4) That the owner of such property has failed to correct the deterioration of the property.

(b) The City of Shively may acquire by eminent domain pursuant to KRS Chapter 416, any property determined to be blighted or deteriorated pursuant to this ordinance, and shall have the power to hold, clear, manage, develop or dispose of the property so acquired, for residential and related uses pursuant to the provisions of this ordinance and KRS chapter 99.

SECTION 12. Acquisition by Employees Prohibited; Disclosure Required.

(a) Pursuant to KRS 99.730, no member of the vacant property review commission or officer or employee of the City of Shively who in the course of his or her duties is required in any way to participate in the determination of property blight or deterioration or the issuance of notices of code violations which might lead to a determination of blight or deterioration, shall acquire any interest in any property which has been declared to be blighted or deteriorated by the vacant property review commission.

(b) If any such member, officer or employee owns or has a financial interest, direct or indirect, in any property at the time it is certified to be blighted or deteriorated by the vacant property review commission, he or she shall immediately disclose, in

writing, such interest to the vacant property review commission and to the Shively City Council and such disclosure shall be entered in the minutes of the vacant property review commission and Shively City Council. Failure to so disclose such interest shall constitute misconduct. No payment shall be made to any member, officer or employee for any property or interest therein acquired by the City of Shively from such member, officer or employee unless the amount of such payment is fixed by court order in eminent domain proceedings or unless payment is unanimously approved by the Shively City Council.

SECTION 13. Severability. If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect the other provisions that can be given effect without the invalid provision or application.

SECTION 14. This ordinance shall take effect upon its adoption by the Shively City Council and publication as required by law.

First reading: September 5, 2023

Second reading: SEPTEMBER 18, 2023

Passed and approved: SEPTEMBER 18, 2023

Introduced by: Ms. Wakaba

Maria D. Johnson

Attest: *Mitzi R. Kasitz*

Maria Johnson, Mayor

Mitzi R. Kasitz, City Clerk

Council	Yea	Nay
Ms. Bizzle	<u>ABSENT</u>	—
Ms. Burton-McBroom	<u>✓</u>	—
Mr. Gibson	<u>✓</u>	—
Ms. Thompson	<u>✓</u>	—
Mr. Vincent	<u>✓</u>	—
Ms. Wakaba	<u>✓</u>	—