

ORDINANCE NUMBER \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF BALLINGER, TEXAS, ESTABLISHING CHAPTER 8, ARTICLE IV. SUBSTANDARD BUILDINGS, OF THE CODE OF ORDINANCES REGULATING SUBSTANDARD BUILDINGS AND STRUCTURES; REPEALING THE PREVIOUS PROVISIONS OF CHAPTER 8, ARTICLE IV. AND ALL PRIOR ORDINANCES OR ORDINANCE PROVISIONS IN CONFLICT WITH THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR A CRIMINAL PENALTY NOT TO EXCEED \$2,000 FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY OF THE PROVISIONS OF THIS ORDINANCE; PROVIDING AN OPEN MEETINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND PUBLICATION OF THE CAPTION OF THIS ORDINANCE.**

**WHEREAS**, the City of Ballinger (the “City”) is a home-rule municipality and is authorized to adopt and enforce ordinances necessary to preserve good government, order, and security to the City and its inhabitants as authorized in Texas Local Government Code Chapter 51, Chapter 54, and Chapter 214; and

**WHEREAS**, the City Council of the City of Ballinger finds that policies contained herein are necessary to insure the health and safety of and are in the best interest of the citizens of Ballinger, Texas;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BALLINGER, TEXAS:**

I. Enactment. That Chapter 8, Article IV., of the Code of Ordinances of the City of Ballinger is hereby established and the provisions contained herein regarding substandard buildings within the City are enacted and shall be adopted as the Substandard Buildings Ordinance of the City of Ballinger, and shall be codified as Chapter 8, Article IV., Substandard Buildings, of the Code of Ordinances of the City of Ballinger.

**ARTICLE IV. SUBSTANDARD BUILDINGS**

**Sec. 8-42. Definitions.**

The words and phrases contained herein shall have the following meanings ascribed to them unless the context states otherwise:

Abatement. Any action the city may take on public or private property and any adjacent property as may be necessary to remove or alleviate a nuisance, including, but not limited to, demolition, removal, repair, boarding and securing or replacement of property.

Administrative enforcement order. An order issued by the City Council, after a hearing, requiring a responsible person to correct a violation, abate a public nuisance, pay civil penalties and administrative costs or take any other action as authorized or required by this Code and applicable

state codes. Such term may also include an order authorizing the city to abate a public nuisance or assess a code enforcement lien.

*Building or Structure.* Includes, but is not limited to, any building, fence, awning, canopy, sign, shed, garage, house, manufactured or modular home, mobile home, tent, trailer or other structure whatsoever, wherever located in the city.

*Code enforcement official.* Any person authorized to enforce violations of this Article or applicable state codes.

*Minimum standards.* The minimum standards for continued use and occupancy of a building as set forth in section 8-44 herein.

*Owner of record.* Any person, agent, firm, corporation or governmental agency shown to be the owner or owners of a building in:

- (1) The real property, assumed name, or appraisal district records of the county;
- (2) The tax and utility records of the city; or
- (3) The records of the secretary of state.

*Public nuisance.*

- (1) Whatever is dangerous to human life or health; whatever renders the ground, water, air or food hazardous to human life, or health, or that is offensive to the senses; or that is or threatens to become detrimental to the public health; or
- (2) Any building that creates a hazard to health, safety, comfort or welfare.

*Substandard building.* Any building or structure that does not comply with the minimum standards set forth in Section 8-44.

### **Sec. 8-43. Abatement.**

(a) It shall be unlawful for any owner, occupant, or other person in control of a building to allow that building to be in a condition that does not conform to the minimum standards, as defined herein.

(b) Any building that does not conform to the minimum standards is hereby declared to be a public nuisance and shall be abated by vacation, relocation of occupants, repair, demolition, or removal, as necessary, upon the issuance of an order to abate issued in accordance with the procedures specified in this article.

### **Sec. 8-44. Minimum standards.**

A building is considered not to meet the minimum standards of the city for continued use and occupancy of a building, regardless of its date of construction, under any of the following conditions:

- (1) Any building that is dilapidated, substandard, or unfit for human habitation and a hazard to public health, safety and welfare, including, but not limited to:
  - (A) Any building with roof, ceiling, floors, walls, sills, windows, or foundation or any combination thereof rotted or decayed, and falling apart; or that is uninhabitable due to obsolescence and deterioration caused by neglect, vandalism, fire damage, old age, or the elements;
  - (B) Any building intended for human occupancy that is in danger of collapse or cannot be expected to withstand reasonably anticipated storms or hurricanes, which may present a danger to persons or property;
  - (C) Any building that is a fire hazard because it is in a dilapidated condition, as described in subsections (1)(A) and (B) above or that is likely to become a fire hazard or be set on fire;
  - (D) Any building that is in unsanitary condition and is likely to create disease because of the presence of insects, rodents or vermin;
  - (E) Any building that is damp and in unsanitary condition and is likely to create disease and sickness because of being in the condition in subsection (1)(A), (B), (C) or (D) above, or for other reasons;
  - (F) Any building that has holes, cracks or other defects in it, or does not have railings for stairs, steps, balconies, porches, and elsewhere, thereby constituting a danger to persons or property;
  - (G) Any building occupied by humans that does not have in operating condition a connection to discharge sewage from the structure or land into a public sewer system (where such is available), a toilet connected to a water source and to a public sewer system (where such is available), and connection to potable water at adequate pressure;
  - (H) Any building intended for human occupancy that does not have operating supply lines for electrical service, if electric service is available within three hundred feet of the building, or that does not have operating electrical circuits and outlets sufficient to safely carry a load imposed by normal use of appliances and fixtures.

- (2) Any building that is not occupied by its owners, lessees or other invitees and is not secure from unauthorized entry so that it could be entered or used by uninvited persons or children regardless of its structural condition.
- (3) Any building that is boarded up, fenced or secured if:
  - (A) The building constitutes a danger to the public even though secured from entry; or
  - (B) The means used to secure the building are inadequate to prevent unauthorized entry or use of the building.
- (4) Any building that fails to comply with provisions of adopted State codes, including, without limitation, the International Residential Code, the International Building Code and the National Electric Code.

**Sec. 8-45. Authority.**

(a) The city manager or any of the city's designated code enforcement officials, including the building inspector ("code enforcement officials") shall have the authority and powers necessary to gain compliance with the provisions of this article. Such powers include the power to issue notices of violation, issue citations, inspect public and private property and use whatever judicial and administrative remedies are available under this article or applicable state laws. The city manager and any code enforcement official are authorized to enter upon any property or premises to ascertain whether the provisions of this article or applicable state codes and statutes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. Such duties may include the taking of photographs, samples or other physical evidence

(b) Any code enforcement official shall have the authority to issue citations for any violation of this article. If the person being cited is not present, the code enforcement official may send the citation to the alleged offender by certified mail, return receipt requested. If a person who receives a citation by personal service or as provided under this subsection fails to appear on the return date of the citation, the court may issue a warrant for the person's arrest for the violation described in the citation.

(c) It shall be unlawful for any person to interfere with a code enforcement official in the performance of his or her duties and enforcement under this section.

(d) The city may secure a building that it determines does not meet the minimum standards and is unoccupied or occupied only by persons who do not have a right to possess the building according to the following procedures:

(1) Before the 11th day after the date the building is secured, the city shall give notice to the owner of record by:

- (i) Personally serving the owner with written notice;
- (ii) Depositing the notice in the United States mail addressed to the owner at the owner's last known post office address;
- (iii) Publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the city if personal service cannot be obtained and the owner's post office address is unknown; or
- (iv) Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.

(2) The notice shall contain identification of the building and the property on which it is located, a description of the existing violation(s) of the minimum standards, and a statement that the municipality will secure or has secured the building.

(3) The notice shall also state that the owner may request a hearing about any matter related to the city's securing of the building no later than thirty (30) days after the date the city secures a building, and that if such a hearing is requested, it shall be held within twenty (20) days after the request for hearing is filed pursuant to Texas Local Government Code sec. 214.0011(e) and heard by the city manager or his designee.

#### **Sec. 8-46. Inspection and notice of abatement.**

(a) Inspection. The city manager shall designate the building inspector or any code enforcement official to inspect or cause to be inspected any building the official has probable cause to believe does not meet the minimum standards. If an owner, occupant, agent or person in control of the premises refuses permission to enter or inspect, the code enforcement official, first authorized by the city manager, may seek an administrative search warrant pursuant to Texas Code of Criminal Procedure Article 18.05 unless an exception to the warrant requirement exists. All inspections, entries, examinations and surveys shall be done in a reasonable manner.

(b) Determination. After completing the inspection, the inspecting official shall determine if the building is a substandard building, as defined herein.

(c) Notice of Abatement. After an initial determination that a building is a substandard building, the inspecting official shall notify the owner of record of the building, by certified mail, return receipt requested, of the nature of the violation(s) of the minimum standards. The inspecting official shall also notify the owner of record of the building that the building is substandard and that the owner must vacate and/or repair, demolish, or remove the building for the good of the public health, safety and welfare. A notice shall be posted on the substandard building as follows:

“THIS BUILDING IS SUBSTANDARD ACCORDING TO THE MINIMUM STANDARDS SET FORTH IN THE OFFICIAL CODE OF THE CITY, CHAPTER 8, ARTICLE IV., AND THE OWNER MUST REPAIR, DEMOLISH OR REMOVE IT.

CONTACT \_\_\_\_\_ AT \_\_\_\_\_ FOR FURTHER INFORMATION.

“DATE \_\_\_\_\_”

(d) Request for public hearing before City Council. If the owner does not reply or take action within fifteen (15) days from the date the notice was mailed, the inspecting official may request that a public hearing be held before the City Council, as defined in Sec. 8-47, to determine whether the building complies with the minimum standards set forth in this article. The city shall then order a public hearing.

- (1) If a public hearing is ordered, the city shall make a diligent effort to discover the identity and address of the owner(s) of record and any lienholders or mortgagees of the building and the underlying property.
- (2) The city shall notify each owner, lienholder, or mortgagee by certified mail, return receipt requested, no later than ten (10) days prior to the date of the public hearing, and notify any unknown owners by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable that a public hearing will be held in reference to the building and that the interested party may appear at the public hearing, be heard, and present evidence in reference to the condition of the building. The notice shall further advise the owner, lienholder, or mortgagee or unknown owner that he will have the burden of proof at such hearing and will be required to submit at the hearing proof of the scope of any work that may be required to make the building comply with this article and the amount of time it will take to reasonably perform the work.
- (3) The city will publish notice of the public hearing in a newspaper of general circulation in the city no later than ten (10) days prior to the date of the public hearing. The city may also file a notice of the public hearing in the official public records of real property in the county. The notice must contain the name and address of the owner of the property (if it can be determined from a reasonable search of county records), a legal description of the affected property and a description of the proceeding, including the date, location and time of the public hearing.

#### **Sec. 8-47. Enforcement powers of City Council.**

(a) Setting hearing. Upon the request of the City Manager or the code enforcement official for a public hearing, the City Council shall set a date and time for the hearing and shall provide notice of the hearing as may be required by law. The City Council shall conduct its activities and enforce this article in accordance with the provisions of the Local Government Code.

(b) Powers and duties. The City Council shall have the power and duty to:

- (1) Require the reduction in occupancy load of an overcrowded structure or vacation of a structure that is hazardous to the health, safety and welfare of the occupants;
  - (2) Permit the repair of a substandard structure as an alternative to demolition of the structure; or
  - (3) Require the demolition of structures found to be substandard.
  - (4) Require the removal of personalty from a structure ordered vacated or demolished. Removal may be accomplished by use of city forces or a private transfer company if the owner of the personalty is not known, the whereabouts of the owner cannot be ascertained or the owner fails to remove the personalty. The City Council may cause any personalty removed to be stored in the care and custody of a bonded warehouse facility. Cost of removal and storage is the responsibility of the owner of the personalty;
  - (5) Require that a vacant structure or vacant portion of a structure constituting a hazard be securely closed and made safe;
  - (6) Grant a variance when, in the opinion of the City Council, a literal interpretation of the city's housing standards regulations would result in an imposition of an unnecessary or unreasonable hardship;
  - (7) Interpret the provisions of this article in a way so as to carry out their intent and purpose and propose and carry forward amendments to the city's housing standards regulations, including the minimum standards contained herein; and
  - (8) Enforce any and all ordinances of the city authorizing or subject to quasi-judicial enforcement under Sec. 54.032 of the Local Government Code.
- (c) Applicability. This provision applies only to buildings and structures that are considered not to meet the minimum standards defined in Sec. 8-44, herein. This section does not affect the ability of a municipality to proceed under the jurisdiction of the municipal court.

**Sec. 8-48. Receiver.**

The city may bring an action in district court against an owner of residential property that is not in substantial compliance with the minimum standards and request the appointment of a receiver for purposes of rehabilitating the property pursuant to Tex. Local Government Code Sec. 214.003.

**Sec. 8-49. Order to abate.**

(a) If it is found at the public hearing that the building is in violation of the minimum standards, one of the following orders or any combination thereof may be issued by the City Council:

- (1) An order to secure or vacate the building and relocate occupants; or

- (2) If it is determined that the order provided for in subsection (a)(1) above is not sufficient to protect the public health, safety or welfare, an order may be issued to repair, demolish or remove the building within a reasonable time.

(b) The city shall promptly mail by certified mail, return receipt requested, a copy of any order issued pursuant to subsection (a) of this section to the owner of record of the building and to any lienholder or mortgagee along with a notice containing an identification of the building and the property on which it is located; a description of the violation(s) of the minimum standards; a statement that the municipality will secure, vacate, repair, remove or demolish the building if the ordered action is not taken by the owner within a reasonable time.

(c) The order shall allow the owner thirty (30) days to complete the ordered action, unless it is determined from the evidence presented at the public hearing that additional time is required. If more than thirty (30) days is allowed to repair, remove or demolish the building, specific time schedules shall be established for the commencement and performance of the work.

(d) The order shall also state that any lienholders or mortgagees of the building and/or the underlying property shall have an additional thirty (30) days to complete the ordered action if the owner fails to comply within the time allotted in subsection (c) above.

(e) The owner, lienholder or mortgagee may not be allowed more than ninety (90) days to complete any part of the work required, remove or demolish the building unless the requirements of Texas Local Government Code Sec. 214.001(k) are met.

**Sec. 8-50. Filing and publication of order; sending of order to owner and lienholders.**

Within then (10) days following the date that an order is issued, the City Council shall:

- (1) File a copy of the order in the office of the city secretary; and
- (2) Publish in a newspaper of general circulation in the city a notice containing the following:
  - (A) The street address or legal description of the property;
  - (B) The date the hearing was held;
  - (C) A brief statement indication the results of the hearing and the contents of the order; and
  - (D) Instructions stating where a complete copy of the order may be obtained.
- (3) Send by certified mail, return receipt requested, signature confirmation through United States Postal Service, or personal delivery, a copy of the order to the owner and to any lienholder or mortgagee of the building.



**Sec. 8-51. Appeal and Judicial Review.**

Any owner, lienholder or mortgagee of record of a property jointly or severally aggrieved by any order issued under this article shall be entitled to judicial review in district court. A petition must be filed in district court by an owner, lienholder or mortgagee within thirty days of after delivery of said order pursuant to Texas Local Government Code Sec. 214.0012

**Sec. 8-52. Violation and Penalty.**

(a) Criminal violations; penalty. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Code. A violation of any of the provisions or failure to comply with any of the mandatory requirements of this Code shall constitute a Class C misdemeanor punishable by a fine not to exceed \$2,000.00. Each such person may be charged with a separate offense for each and every day, or portion thereof, during which any violation of any provision of this Code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

(b) Civil violations. In addition to any other remedy provided by this Code, any provision of this Code or applicable state law may be enforced by injunction issued by a court of competent jurisdiction upon a suit brought by the city. As part of a civil action filed to enforce provisions of this Code, a court may assess a maximum civil penalty as allowed by law per violation of this Code or state law for each day during which any person commits, continues, allows or maintains a violation of any provision of this Code or state law.

(c) Recovery of civil penalties. The city manager may collect all civil penalties and related administrative costs by the use of all appropriate legal means, including referral to the city attorney, the recordation of a code enforcement lien pursuant to the procedures set forth in this chapter and state law, and the filing of a court action to recover such penalties and costs.

**Sec. 8-53. Expense of lien.**

(a) All expenses of vacating, securing, repairing, removing, demolition, or the relocation of occupants of a building are the responsibility of the owner of the property.

(b) If an owner or other interested party does not vacate, secure, repair, remove, demolish, or relocate occupants of a building within the time allotted in an order issued pursuant to this article, the city may take the ordered action at its expense at the direction of the city manager. If the city repairs the building, such repairs shall only be to the extent required to meet minimum standards and only if the building is a residential building with ten (10) or fewer dwelling units.

(c) As an alternative to subsection (a) a civil penalty may be assessed against the property owner for failure to repair, remove or demolish the building. A notice of penalty shall be mailed by certified mail, return receipt requested, to the property owner advising the amount and duration of the penalty, the date on which it is due, and notice that failure to pay said penalty shall result in a lien being placed on the property.

(d) In addition to subsections (a), (b) and (c) above, the city may assess and recover a civil penalty against a property owner at the time of the hearing for violations of this article, pursuant to Texas Local Government Code sec. 214.0015.

(e) Any expenses incurred by the city pursuant to subsection (a) of this section and any civil penalties incurred by the owner pursuant to subsections (b) and (c) of this section will be assessed against the property on which the building stands or stood. The city will have a privileged lien upon filing same in the official public records of the county clerk subordinate only to tax liens against the property unless it is a homestead as protected by the state constitution. Then lien will be extinguished if the property owner or other interested party reimburses the city for all expenses and penalties.

#### **Sec. 8-54. Voluntary Conveyance of Property to City for Demolition**

Upon approval by the City Council and a determination by the City Council that a certain property has value to the city, the city may take possession of property on which there is located a building that the owner has been ordered to demolish; this requires conveyance of the property by deed to the city and may require payment by the property owner for some portion of the demolition and disposal or the administrative costs associated with the conveyance and demolition. The terms of this type of agreement must be reduced to writing, to be signed by both parties, and approved and accepted by the City Council prior to conveyance.

#### **Sec. 8-55. Administrative liability.**

No officer, agent or employee of the City of Ballinger shall render himself personally liable for any damage that may accrue to any person or property as a result of any act required or permitted in the discharge of his duties under this article.

#### **Sec. 8-56. Building permit, fees.**

It shall be unlawful for any person to construct, repair, alter, add on to, remodel or structurally alter, install, or move any building or structure within the city without first obtaining a permit from the designated code enforcement official of the city. Application for a building permit shall be made on a form furnished by the city. All permit fees will be as set by the City Council annually by ordinance in conjunction with the budget process.

#### **Sec. 8-57. Demolition-permit required.**

It shall be unlawful for any person to demolish any building situated within the limits of the city without first obtaining a written permit from the city. Application for such permit shall be made on a form furnished by the city. The cost of the permit shall be as set by the City Council annually by ordinance in conjunction with the budget process.

#### **Sec. 8-58 – Sec. 8-61 reserved.**

\*\*\*\*\*

II. Repealing Provision. The City Council of the City of Ballinger declares that Chapter 8, Article IV. contained in the City's Code of Ordinance or any prior ordinance or any provision in any prior ordinance, as may be applicable, is hereby repealed to the extent that such ordinance or provision of an ordinance conflicts or contradicts the amendments and provisions enacted herein.

III. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstances for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, or ineffectiveness or such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

IV. Notice. It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the *Open Meetings Act, Chapter 551, Gov't. Code*.

V. Effective Date. This Ordinance shall take effect and be in full force and effect from and after the date of its passage and publication of the caption of the Ordinance in a newspaper of general circulation within the City, as required by law.

**PASSED AND ADOPTED** on this the \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Sam Mallory, Mayor

**ATTEST:**

\_\_\_\_\_ Date: \_\_\_\_\_  
Bonita Shields, City Secretary