

**Ordinance passed and approved by city council November 15, 2018**

**ORDINANCE # 1201**

AN ORDINANCE AMENDING THE CAPTION TO ARTICLE IV OF CHAPTER 14 OF THE CODE OF ORDINANCES, REPEALING SECTION 14-78 OF THE CODE OF ORDINANCES, AND ADOPTING NEW SECTIONS 14-78 THROUGH 14-83 OF THE CODE OF ORDINANCES IN REGARD TO ABANDONED AND SUBSTANDARD BUILDINGS INCLUDING DEFINITIONS, PROCEDURES FOR ADDRESSING SUCH BUILDINGS, CIVIL PENALTIES TO INCLUDE ASSESSMENT OF CITY EXPENSES AGAINST THE PROPERTY OWNER AND POTENTIAL LIEN ON THE PROPERTY, A PENALTY NOT TO EXCEED \$1,000 FOR EACH VIOLATION WITH EACH DAY A VIOLATION OCCURS BEING A SEPARATE OFFENSE (UNLESS PROPERTY IS A HOMESTEAD IN WHICH CASE THE PENALTY SHALL NOT EXCEED \$10 WITH EACH DAY A VIOLATION OCCURS BEING A SEPARATE OFFENSE), AND CRIMINAL PENALTIES OF A FINE NOT TO EXCEED \$1,000 WITH EACH DAY A VIOLATION OCCURS BEING A SEPARATE OFFENSE.

Whereas, Article IV of Chapter 14 of the City Code of Ordinances is captioned “Hazardous Building Abatement” and consists of Section 14-78 which states “State law and municipal authority regarding the abatement of substandard buildings is hereby adopted by reference;” and

Whereas, the City Council believes that the city should enact more specific provisions to deal with abandoned or substandard buildings located in the city; and

Whereas, the City Council has determined that Article IV of the Code of Ordinances should be captioned “Abandoned and Substandard Buildings,” that Section 14-78 of the Code of Ordinances should be repealed, and that new Sections 14-78 through 14-83 of the Code of Ordinances should be adopted to set out definitions, procedures, and penalties associated with dealing with abandoned or substandard buildings in the city.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HILL COUNTRY VILLAGE that:**

Section 1. The caption to Article IV of Chapter 14 of the Code of Ordinances is hereby amended to read “Abandoned and Substandard Buildings.”

Section 2. Section 14-78 of the Code of Ordinances is repealed.

Section 3. New Sections 14-78 through 14-83 of the Code of Ordinances are hereby adopted to read as follows:

## ARTICLE IV. - ABANDONED AND SUBSTANDARD BUILDINGS

- **Sec. 14-78. - Definitions.**

For the purposes hereof, the following words, terms and phrases shall have the meanings ascribed thereto:

*Abandoned building* means any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be an abandoned building and a hazard to the public health, safety, and welfare, provided that such conditions pose a threat or potential threat to life, health, property, or human safety.

- (1) Whenever any building or structure, regardless of its structural condition, is unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered by children under the age of eighteen (18) years.
- (2) Whenever any building or structure is secured by a means inadequate to prevent unauthorized entry or use in the manner described in condition subsection (1) above.

*Building* means any structure designed or built for support, enclosure, shelter or protection of persons.

*City* means the City of Hill Country Village.

*Dangerous building* means any building or structure which has any of the conditions or defects hereinafter described shall be deemed to be a dangerous building and a hazard to the public health, safety, and welfare, provided that such conditions or defects of dilapidation, substandard status, or unfitness for human habitation, pose a threat or potential threat to life, health, property, or human safety.

- (1) Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- (2) Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn, or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
- (3) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the building code for new buildings of similar structure, purpose, or location.

(4) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such event and is less than the minimum requirements of the building code for new buildings of similar structure, purpose, or location.

(5) Whenever any portion, member, or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

(6) Whenever any portion of a building, any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the building code for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in the building code for such buildings.

(7) Whenever the building, or any portion thereof, because of:

(I) dilapidation, deterioration, or decay;

(ii) faulty construction;

(iii) the removal, movement, or instability of any portion of the ground necessary to support such building;

(iv) the deterioration, decay, or inadequacy of its foundation; or

(v) any other cause is likely to partially or completely collapse.

(8) Whenever, for any reason, the building or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

(9) Whenever the building, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, or 50 percent damage or deterioration of enclosing or outside walls or coverings.

(10) Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become dilapidated or deteriorated or neglected as to become a harbor for vagrants or criminals.

(11) Whenever any building or structure has been constructed, exists, or is maintained in violation of the minimum housing standards or building codes of the city, to the extent violation poses a threat or potential threat to life, health, safety, or property.

(12) Whenever a building is used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction, arrangement, inadequate light, air, or sanitation facilities, is determined by the health inspector to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.

(13) Whenever any building, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections, or heating apparatus, or other mechanical, structural, or social cause, is determined by the city building inspector to be a fire hazard.

(14) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

*Emergency hazard* means where it appears to the city's building inspector or health inspector, that due to structural defects or such conditions as fire, accident, water damage, vandalism, or other sudden act or occurrence thereby threatening the structural integrity of a building, there is clear and imminent danger to the life, safety or property of any person unless the building is immediately demolished, any two of these officials shall declare the building an emergency hazard requiring emergency measures for purposes of this article.

- **Sec. 14-79. - Declaration of nuisance.**

All abandoned and all substandard buildings or structures which shall constitute a hazard to the health, safety or general welfare of its occupants, the citizens of the city, or to the public are hereby declared to be public nuisances and shall be ordered repaired, secured, removed, vacated or demolished as hereinafter provided.

- **Sec. 14-80. - Inspections and reports.**

It shall be the duty of the city building inspector, or other representative designated by city council or mayor, to inspect all buildings reported to be, or believed to be, substandard or abandoned; to present a report of such inspection to the city council.

- **Sec. 14-81. - Procedures.**

Abandoned or substandard buildings may be ordered to be, and pursuant to order shall be, repaired, secured, removed, vacated or demolished under the following conditions, regulations and procedures:

(a) *Emergency measures.*

(1) When there exists an emergency hazard as declared under this article and defined above certain measures may be taken, notification given, and procedures followed as set forth in this article:

a. When a building is declared an emergency hazard the condition shall be deemed a hazard justifying the use of emergency measures, and the municipal court may order any of the following emergency measures to be taken:

1. Immediate vacation of such building or structure, or adjoining buildings or structures;
2. Vacation of the danger area around such building or structure;
3. Such temporary emergency shoring and bracing of walls, roofs and supports as are required to eliminate the immediate and serious threat of damage to life or property;
4. Immediate securing of the building by adequate means to prevent entry into the building or structure; and
5. Post notices on or near such building or structure, notifying the public of such orders and ordering all persons to keep out of such building or structure and the surrounding areas of danger.

(2) When any of the above emergency measures are ordered to be taken, notice of such order shall be given by personal service on the owner and/or occupant of the building or structure or his representatives; or by publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the county in which the building is located if personal service cannot be obtained and the owner's post office address is unknown; or 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.

(3) The notice must contain:

- a. An identification, which is not required to be a legal description, of the building and the property on which it is located;
- b. A description of the violation of the municipal standards that is present at the building;
- c. A statement that the city will secure or has secured, as the case may be, the building; and
- d. An explanation of the owner's entitlement to request a hearing about any matter relating to the city's securing of the building.

(4) Upon issuance of such emergency order, the municipal court shall schedule a public hearing if, within 30 days after the date the city secures the building, the owner files with the city administrator a written request for the hearing. The municipal court shall conduct the hearing within 20 days after the date the request is filed.

(5) The municipal court may also conduct a hearing pursuant to subsection (b) below.

(6) The city has the same authority to assess expenses under this subsection as it has to assess expenses under subsection (b) below.

(b) *Non-emergency procedure.*

(1) When it shall come to the attention of the city that a building or structure in the city is abandoned or substandard under the provisions of this article, the municipal court shall schedule a public hearing at the request of the city administrator or the city attorney, and cite the owner, lienholder, or mortgagee of the building or structure or his representative to appear and show cause why such building or structure should not be declared to be an abandoned or substandard building or structure and why he should not be ordered to repair, vacate or demolish the building or structure. The date of such hearing shall be not less than ten days after such citation shall have been made.

(2) A notice of a hearing sent to an owner, lienholder, or mortgagee under this section must include a statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

(3) The city shall personally deliver, send by certified mail with return receipt requested, or deliver by the United States Postal Service using signature confirmation service, to each identified mortgagee and lienholder a notice containing:

- a. An identification, which is not required to be a legal description, of the building and the property on which it is located;
- b. A description of the violation of municipal standards that is present at the building; and
- c. A statement that the city will vacate, secure, remove, or demolish the building or relocate the occupants of the building if the ordered action is not taken within a reasonable time.

(4) In a public hearing to determine whether a building complies with the standards set out in this article, the owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

(5) The hearing shall be conducted and on the basis of such hearing the municipal court shall determine whether or not the building is an abandoned or substandard building, and shall issue such orders as shall appear reasonably necessary to prevent the building from being a hazard to life or property and to eliminate the abandoned or substandard qualities. However, any such orders shall also require the owner, lienholder, or mortgagee of the building to, within 30 days:

- a. Secure the building from unauthorized entry; or
- b. Repair, remove, or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within 30 days.

c. If the municipal court allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the municipal court shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the municipal court.

(6) Pursuant to Texas Local Government Code § 214.001(j), the municipal court may not allow the owner, lienholder, or mortgagee more than 90 days to repair, remove, or demolish the building or fully perform all work required to comply with the order unless the owner, lienholder, or mortgagee:

a. Submits a detailed plan and time schedule for the work at the hearing; and

b. Establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.

(7) Pursuant to Texas Local Government Code § 214.001(k), if the municipal court allows the owner, lienholder, or mortgagee more than 90 days to complete any part of the work required to repair, remove, or demolish the building, the municipal court shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the city to demonstrate compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the municipal court from time to time to demonstrate compliance with the time schedules and municipal court's order. If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the municipal boundaries that exceeds \$100,000.00 in total value, the municipal court may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing a building. In lieu of a bond, the municipal court may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the city. The bond must be posted, or the letter of credit or third-party guaranty provided, not later than the thirtieth day after the date the municipal court issues the order.

(8) If the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, the municipal court may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense. This subsection does not limit the ability of a municipality to collect on a bond or other financial guaranty.

(9) If the city incurs expenses in the vacating, securing, removing, or demolishing of the building or relocating the occupants, then pursuant to Texas V.T.C.A. Local Government Code § 214.001(n), the city may assess the expenses on, and the city has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the building was located. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the city for the 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. The lien is a privileged lien subordinate only to tax liens to the extent allowed by law.

(10) The city may foreclose a lien on property under this article:

a. In a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code;

b. In a judicial proceeding, if:

1. A building or other structure on the property has been demolished;

2. A lien for the cost of the demolition of the building or other structure on the property has been created and that cost has not been paid more than 180 days after the date the lien was filed; and

3. Ad valorem taxes are delinquent on all or part of the property.

- **Sec. 14-82. - Other remedial action.**

*(a) Civil penalties.*

(1) In addition to the authority granted to the city by Texas Local Government Code § 214.001, after the expiration of the time allotted by a municipal court order for the repair, removal, or demolition of a building, the city may assess a civil penalty against the property owner for failure to repair, remove, or demolish the building and provide for that assessment, the mode and manner of giving notice, and the means of recovering the assessment.

(2) The city may repair a building only to the extent necessary to bring the building into compliance with the minimum standards and only if the building is a residential building with ten or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum housing standards.

(3) The city may impose a lien on the property to secure payment of any civil penalty imposed under this article, unless the property is a homestead. Promptly after imposition of the lien, the city must file, in recordable form, in the office of the county clerk, written notice of imposition of the lien. The notice must include a legal description of the property on which the lien is imposed.

(4) Any civil penalty or other assessment imposed under this section accrues interest at the rate of ten percent a year from the date of the assessment until paid in full.

(5) The city by municipal court order may assess and recover a civil penalty against a property owner at the time of a public hearing on violations of an ordinance, in an amount not to exceed \$1,000.00 a day for each violation, or if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed \$10.00 a day for each violation, if the city proves:

a. The property owner was notified of the requirements of the ordinance and the owner's need to comply with the requirements; and

b. After notification, the property owner committed an act in violation of the ordinance or failed to take an action necessary for compliance with the ordinance.

(6) An assessment of a civil penalty is final and binding and constitutes prima facie evidence of the penalty in any suit brought by the city in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty.

(7) To enforce a civil penalty under this article, the city secretary must file with the District Clerk of Bexar County a certified copy of an order issued by the municipal court stating the amount and duration of the penalty. No other proof is required for a district court to enter a final judgment on the penalty.

(b) *Other remedies.* Nothing in this article shall preclude the city's pursuit of any and all other remedies allowed under the civil and criminal statutes, and in equity, to address conditions which are treated in this article, under the theory of public nuisance and abatement of dangerous structures or buildings. Neither shall the city be required, nor prohibited, to issue criminal citations before, after, or during any proceeding prescribed in this article. Specifically, in addition to provisions of this article and remedies afforded under Chapter 214 of the Texas Local Government Code, the city further asserts full authority to exercise its right to remedy under all provisions of Chapter 54 of the Texas Local Government Code in prosecution of civil suits for enforcement, injunctive relief, and civil penalties to remedy conditions of public concern described in this article.

- **Sec. 14-83. - Penalty.**

Any person who intentionally, knowingly, or recklessly refuses or fails to repair or demolish a building or structure when ordered to repair or demolish such building under the terms of this article, or who intentionally, knowingly, or recklessly refuses or fails to leave a building which has been ordered vacated under the terms of this article or who intentionally, knowingly, or recklessly enters an area around such building that has been declared to be dangerous and notice of which declaration shall have been posted, or who intentionally, knowingly, or recklessly interferes with or hinders the repair, vacation or demolition of any building under the terms of this article, or who otherwise violates any order of the municipal court as provided for herein, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$1,000.00. Each day in which any violation shall occur, or each occurrence of any violation, shall constitute a separate offense.

Section 4. This ordinance shall become effective on passage and adoption.

Section 5. The City Administrator shall arrange for publication of the caption of this ordinance in the official newspaper of the city.

Passed and adopted this 15<sup>th</sup> day of November, 2018.

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Gabriel Durand-Hollis, Mayor

ATTEST:

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Frank Morales, Acting City Secretary