



## City of Whitehouse

### ORDINANCE NO. 15-0127-01

**AN ORDINANCE OF THE CITY OF WHITEHOUSE, TEXAS, RELATING TO THE REPAIR OR DEMOLITION OF SUBSTANDARD, UNINHABITABLE OR OTHERWISE DANGEROUS BUILDINGS OR STRUCTURES; PROVIDING FOR FINDINGS OF FACT; A POPULAR NAME; PURPOSE; DEFINITIONS; NUISANCE DECLARATION; INSPECTION; NOTICE OF VIOLATION; STANDARDS; HEARING; ORDER FOR REPAIR OR DEMOLITION; NOTICE OF REPAIR OR DEMOLITION; APPEAL, DEMOLITION AND REPAIR EXPENSES; ASSESSMENT OF LIEN; CRIMINAL AND CIVIL PENALTIES WITH MAXIMUM CIVIL PENALTY OF \$1,000.00 PER VIOLATION; LIABILITY, REPEALER; SEVERABILITY; EFFECTIVE DATE; PROPER NOTICE AND MEETING.**

**WHEREAS**, the City Council of the City of Whitehouse ("City Council") seeks to promote the health, safety and general welfare of the community by preventing death, injuries and property damage within the City of Whitehouse("City") limits; and

**WHEREAS**, the City Council seeks to protect property values within the City Limits; and

**WHEREAS**, the City Council finds that substandard buildings or structures pose aesthetic harm to the City; and

**WHEREAS**, the City Council finds that substandard buildings or structures are fire hazards and often attract vermin and insects; and

**WHEREAS**, pursuant to the laws of the State of Texas, including Texas Local Government Code section 51.001, the City Council has the authority to adopt, publish, amend or repeal an ordinance that is for the good government, peace or order of the City; and

**WHEREAS**, pursuant to Texas Local Government Code section 54.012, a municipality may bring a civil action for, among other things, the enforcement of an ordinance relating to dangerously damaged or deteriorated structures or improvements;

**WHEREAS**, pursuant to Texas Local Government Code section 214.001, et seq., the City Council has authority to regulate substandard buildings or structures; and

**WHEREAS**, pursuant to Texas Local Government Code section 214.002, the City Council has authority to order the repair, removal or demolition of a substandard building or structure and to repair, remove, or demolish a substandard structure and assess such costs against the property owner or owner of the structure;

**NOW THEREFORE, be it ordained by the City Council of the City of Whitehouse, County of Smith, State of Texas that:**

## **I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

## **II. POPULAR NAME**

This Ordinance shall be commonly referred to as the City's "Substandard Building Ordinance."

## **III. PURPOSE**

This Ordinance is adopted so that the City Council may promote the public health, safety, and general welfare within the City through the regulation of substandard and dangerous buildings or structures. By requiring the repair and/or demolition of substandard and dangerous buildings and structures, the City Council seeks to protect property values and prevent bodily injury, death, and property damage within the City limits.

## **IV. DEFINITIONS**

As used in this Ordinance, the following terms shall be defined as follows:

"Appraised value" means the value given the structure by the county tax assessor's office.

"Building" shall mean any structure of any kind or any part thereof, erected for the support, shelter or enclosure of persons, animals, chattel or property of any kind.

"Building Inspector" shall mean the person appointed by the City to conduct periodic inspections of buildings and structures to ensure that the same are being maintained in a manner consistent with prescribed Building Codes of the City and not in violation of this Ordinance.

"City" means the City of Whitehouse, Texas.

"City Council" means the governing body of the City of Whitehouse.

"Diligent effort" means best or reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee, including a search of the following records:

- a. county real property records of the county in which the building is located;
- b. appraisal district records of the appraisal district in which the building is located;
- c. records of the Secretary of State;
- d. assumed name records of the county in which the building is located;
- e. City tax records; and
- f. City utility records.

"Minimum housing standards" means those standards found in the City's adopted standard building, electrical, plumbing, gas, mechanical, existing building and fire prevention codes and any other housing and structure regulations adopted under Chapter 214, Local Government Code.

"Owner" means any person, agent, firm, corporation, Limited Liability Company, partnership or other entity named in the real property records of the county where the building is located as owning the property.

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built or composed of parts joined together in some definite manner, or any part thereof.

## **V. DECLARATION OF NUISANCE**

Any building or structure requiring repair, removal or demolition, as described and defined herein below and all buildings or structures within the City which because of their condition are unsafe, unsanitary or otherwise dangerous to the health, safety and general welfare of the citizens of the City are hereby declared to be a public nuisance and unlawful and subject to the provisions of this Ordinance regarding repair, removal or demolition.

## **VI. INSPECTION**

An inspection shall be made of every building located within the City which is suspected of being in violation of this Ordinance. The Building Inspector, or his/her official designee, is hereby authorized to conduct inspections of buildings suspected of being in violation of this Ordinance and take such actions as may be required to enforce the provisions of this Ordinance.

## **VII. NOTICE OF VIOLATION**

Whenever a violation of this Ordinance has been discovered and reported by the Building Inspector, or his/her designee, a public hearing shall be held by the City Council to determine whether a building complies with the standards set out in this Ordinance.

A notice of the hearing shall be sent to the occupant, if any, and record owner, lienholder or mortgagee. Such notice shall be in writing and shall be served by personal delivery or by certified mail return receipt requested. Additionally, a copy of the notice shall be posted on the front door of each affected structure situated on the property or as close to the front door as practicable. It is not necessary that the notice to the occupant of the property list an occupant by name. Service of the notice may be accomplished by the first class U.S. mail or by personal delivery to any occupant of the property who is above the age of eighteen (18) years.

The notice shall contain:

- a. the names of all persons to whom notice is being served,
- b. the street address or legal description of the premises,
- c. the date of inspection,
- d. the nature of the violation,
- e. the date, time and location of the hearing, and
- f. 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.

## VIII. STANDARDS

The following standards, individually or in any combination, shall be utilized in determining whether a building should be ordered repaired, removed or demolished:

- a. The building or structure is liable to partially or fully collapse.
- b. The building or structure was constructed or maintained in violation of any provision of the City's building code, or any other applicable ordinance or law of the City, county, state, or federal government.
- c. Any wall or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle one-third (1/3) of its base.
- d. The foundation or the vertical or horizontal supporting members are twenty-five (25) percent or more damaged or deteriorated.
- e. The nonsupporting coverings of walls, ceilings, roofs, or floors are fifty (50) percent or more damaged or deteriorated.
- f. The structure has improperly distributed loads upon the structural members, or the structural members have insufficient strength to be reasonably safe for the purpose used.
- g. The structure of any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public, health, safety and welfare.
- h. The structure does not have adequate light, ventilation, or sanitation facilities as required by the City.
- i. The structure has inadequate facilities for egress in case of fire or other emergency or has insufficient stairways, elevators, fire escapes or other means of ingress or egress.
- j. The structure, because of its condition, is unsafe, unsanitary, or dangerous to the health, safety or general welfare of the City's citizens including all conditions conducive to the harboring of rats or mice or other disease carrying animals or insects reasonably calculated to spread disease.

## IX. HEARING

The date of the hearing shall not be less than ten (10) days after notice is made (as described in Section VII).

If a building is found to be in violation of this Ordinance, the City shall require the owner, lienholder, or mortgagee of the building to repair, remove or demolish the building, within thirty (30) days, unless it is proven at the hearing that the work cannot reasonably be done in thirty (30) days.

If the City allows more than thirty (30) days for the building to be repaired, removed or demolished, the City shall establish specific time schedules for the work to be commenced and performed 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 hearing official.

The City shall not allow the owner, lienholder or mortgagee more than ninety (90) days to repair, remove or demolish the building, or fully perform all worked required to comply with the order, unless a detailed plan and time schedule for the work are submitted at the hearing and it is proven at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work. Additionally, the owner, lienholder, or mortgagee must submit work progress reports to demonstrate compliance with the time schedule established.

In any case where repairs are estimated to cost fifty (50) percent or more of the appraised value, a building shall be demolished or removed, and in all cases where a structure cannot be repaired so that it will no longer exist in violation of the provisions of this Ordinance, it shall be demolished or removed.

#### **X. ORDER FOR REPAIR OR DEMOLITION**

After the public hearing, if a building is found to be in violation of the standards set out in this Ordinance, the City may order that the building be repaired, removed or demolished within a reasonable time, as established under Section IX.

If the building is ordered to be repaired, removed or demolished, the City shall promptly mail by certified mail, return receipt requested, or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building. The City shall make a diligent effort to discover each owner, mortgagee and lienholder having an interest in the building or property on which the building is located.

If the ordered action is demolition of the building or structure, demolition shall not occur until a magistrate has issued a seizure and demolition warrant supported by a probable cause affidavit stating that: 1) the building or structure constitute a nuisance; 2) the City has complied with the procedures set forth in this Ordinance; 3) demolition has been ordered by the City; and 4) the time for appeal of the order to district court has expired and no appeal has been taken or, in the alternative, the order was appealed to district court but the appeal has been finally resolved in a manner that does not prevent the City from proceeding with demolition.

#### **XI. NOTICE OF REPAIR OR DEMOLITION**

In addition to the order, each identified mortgagee or lienholder shall be sent a notice containing:

- a. an identification of the building and property on which it is located (this does not have to be a legal description);
- b. a description of the violation of the Ordinance; and
- c. a statement that the municipality may demolish the building if the ordered action is not taken.

If the notice is returned "refused" or "unclaimed," the validity of the notice is not affected and the notice shall be deemed delivered.

Within ten (10) days after the date that the order is issued, the City shall:

- a. file a copy of the order in the office of the City Secretary; and
- b. publish a notice in a newspaper of general circulation in the City (and where the building is located) stating:
  1. the street address or legal description of the property;
  2. the date of the hearing;
  3. a brief statement indicating the results of the order; and
  4. instructions as to where a complete copy of the order may be obtained.

## **XII. APPEAL**

The owner, lienholder, or mortgagee shall have the right to appeal the decision made at the hearing to a district court. A notice of appeal must be filed with the district court within thirty (30) calendar days from the date the order is mailed to the owner, lienholder or mortgagee, as provided herein.

## **XIII. DEMOLITION AND REPAIR EXPENSES**

Whenever it is discovered upon reinspection that the owner, mortgagee or lienholder has failed to repair, remove or demolish the building or take other ordered action within the allotted time, the City, shall make a diligent effort to discover each mortgagee and lienholder having an interest in the building or in the property which the building is located and shall personally deliver or send by certified mail, return receipt requested, to each a notice containing:

- a. an identification of the building and property on which it is located (this does not have to be a legal description);
- b. a description of the violation of the Ordinance; and
- c. a statement that the municipality will remove or demolish the building if the ordered action is not taken.

Whenever it is discovered upon reinspection that the owner, mortgagee or lienholder has failed to repair, remove or demolish the building or take other ordered action within the allotted time, the City, or its authorized agent, may repair, remove or demolish and remove said building or cause the same to be done and charge the expenses incurred in doing such work or having the same done to the owner, mortgagee or lienholder of said land or otherwise assess the expenses against the property on which the building is located.

If such work is done at the expense of the City, then the said expense shall be assessed against any salvage resulting from the demolition of the building and against the lot, tract, or parcel of land, or the premises upon which such expense was incurred.

For the purposes of this section, any repair, alteration or improvement made to a building by the City will only be to the extent necessary to bring the building into compliance with the minimum housing standards and only if the building is a residential building with ten (10) or fewer dwelling units; PROVIDED, HOWEVER, the City may elect to obtain a judicial determination by a decree of a court of competent jurisdiction of the existence, in fact, of a public nuisance in cases contemplated by this Ordinance. Such judicial determination may include any available remedy for the abatement of such a nuisance.

## **XIV. ASSESSMENT OF LIEN**

When the City incurs expenses to repair, remove or demolish a building, the City may assess the expenses on and obtain a lien against the property on which the building is located, unless it is a homestead as protected by the Texas Constitution. The lien arises and attaches to the property when the City has the lien recorded and indexed with the county clerk of the county in which the property is located. The notice shall contain:

- a. the name and address of the owner, if that information can be determined with a diligent effort;

- b. a legal description of the real property on which the building was located;
- c. the amount of expense incurred by the City;
- d. the balance due; and
- e. the date on which said work was done or improvements made.

The City shall have a privileged lien on such lot, lots, or other premises or real estate upon which said building was located, to secure the expenditure so made, second only to other liens as provided by law. It is further provided that for any such expenditure suit may be instituted and foreclosure of said lien may be made in the name of the City; and the statement of expenses so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or expense.

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.

#### **XV. PENALTY FOR VIOLATION**

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law.

##### **a. Civil Remedies**

A property owner violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding One Thousand Dollars (\$1,000.00) for each and every day of violation or, if the owner shows the property is the owner's lawful homestead, in an amount not to exceed Ten Dollars (\$10.00) per day for each violation, provided that:

1. The owner was notified of the requirements of the Ordinance and the owner's need to comply with the requirements; and
2. After notification, the owner committed an act in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance.

If such a civil penalty is assessed, the city secretary shall file a certified copy of the order containing such amount and duration of the penalty with the county district clerk's office no later than three (3) working days after such order.

##### **b. Other Remedies**

The remedies provided herein shall be available to the City in addition to any penal or other remedy provided by law or equity which the city, state, or any other person may provide to remedy the unsafe building condition.

The City may bring a civil action in a court of competent jurisdiction to collect the amount due plus all associated costs and fees.

**XVI. LIABILITY**

Neither the City nor any authorized agent acting under the terms of this Ordinance shall be liable or have any liability by reason of orders issued or work done in compliance with the terms of this Ordinance.

**XVII. REPEALER**

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent.

**XVIII. SEVERABILITY**

If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

**XIX. EFFECTIVE DATE**

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

**XX. PROPER NOTICE AND MEETING**

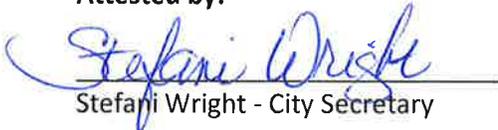
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

**PASSED AND APPROVED by the City of Whitehouse City Council on this 27th day of January 2015.**



Charles Parker - Mayor

**Attested by:**

  
Stefani Wright - City Secretary