



City of Orchard

ORDINANCE NO. 94-2010

AN ORDINANCE OF THE CITY OF ORCHARD, TEXAS, ESTABLISHING PROCEDURES FOR THE REGULATION AND ABATEMENT OF PUBLIC NUISANCES CAUSED BY SUBSTANDARD BUILDINGS OR STRUCTURES WITHIN THE CITY; DEFINING SUBSTANDARD BUILDINGS AND STRUCTURES; PROVIDING FOR NOTICE AND A PUBLIC HEARING CONCERNING THE CONDITION OF SUCH BUILDINGS AND STRUCTURES; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORCHARD, TEXAS:

Section 1. The City of Orchard, Texas (the "City"), hereby adopts the following regulations governing the abatement of dangerous buildings and structures within the City.

A. Authority and Purpose. The provisions of this Ordinance are adopted pursuant to Chapters 54 and 214 of the TEXAS LOCAL GOVERNMENT CODE. The purpose of this Ordinance is as follows:

1. To establish the minimum standards for the continued use and occupancy of all types of buildings and structures within the City of Orchard, Texas (the "City"), regardless of the dates of construction, in order to safeguard the public health, safety, and welfare and to protect property.

2. To provide the authority to order and direct the method of securing property that is unoccupied by its owners, lessees, or other invitees, and which is

unsecured from unauthorized entry to the extent that such buildings or structures could be entered or used by vagrants or other uninvited persons or could be entered or used by children.

3. To provide the authority to address, and direct the method of addressing, buildings and structures which, although boarded up, fenced, or otherwise secured in any manner, exhibit conditions that may constitute a danger to the public, even though secured from entry, or the means used to secure the building or structure are inadequate to prevent unauthorized entry or use of the building by vagrants or other uninvited persons or could be entered or used by children. The City may require the building or structure, which endangers the public health and safety of the occupants of said building and structure and the general public, to be vacated, secured, repaired, removed, and/or demolished by the owner and/or the occupants thereof to be relocated.

B. Definitions. The following terms, when used in this Ordinance, shall have the meanings ascribed to them herein, except where the context clearly indicates a different meaning:

Building shall mean any structure designed or built for the support, enclosure, shelter, or protection of persons, animals, chattels, or property of any kind.

Structure shall mean anything constructed or erected that requires location on the ground or is attached to something having a location on the ground, including, but not limited to, signs, fences, walls, poles, and buildings, whether of a temporary or permanent nature.

C. Dangerous buildings or structures defined. Any building or structure, regardless of the date of its construction, having any of the following defects, shall be deemed to be substandard and/or unfit for human habitation and, as a result, a danger to the public health, safety and welfare and thus, declared to be a dangerous building or structure:

1. Any building or structure that has become deteriorated or damaged through

exposure to the elements, including without limitation flood, wind, hail, or rain, or damage through fire, or damage by any other cause, to the extent that either the roof, windows or doors, or portions of the house, building or structure that protect from the weather will no longer reasonably protect from the weather.

2. Any building or structure that is so structurally deteriorated or damaged that it is in danger of collapse or that cannot be expected to withstand reasonably anticipated weather conditions, such as storms or hurricanes;

3. Conditions within any building or structure that violate any provision of the City's building, electrical, plumbing, fire, or other such codes or ordinances, when such nonconformity constitutes a danger to the public health, safety, and welfare;

4. Any unsafe or defective electrical wiring, devices or equipment, or unsafe or defective gas piping or appliances that are apt to cause or promote fires;

5. Dilapidated, decayed, unsafe, unsanitary, or substandard conditions or any condition that fails to provide amenities essential to decent living so that the premises are unfit for human habitation, or are likely to cause sickness or disease, so as to cause injury to the public health, safety, and welfare;

6. Buildings and structures, regardless of their structural condition, that have been, during times that they were not actually occupied by their owners, lessees or other legal invitees, left unsecured from unauthorized entry to the extent that they may be entered by vagrants or other uninvited persons as a place of harborage or could be entered by children.

7. Buildings and structures, which are secured, though by inadequate means to prevent unauthorized entry or use in the manner described in paragraph 6. above.

8. Any building or structure so constructed or maintained as to constitute a menace to the public health or safety, including:

(a) All conditions conducive to the harboring of rats, snakes, mice, other disease-carrying animals, or insects reasonably capable of spreading disease;

(b) Conditions hazardous to the safety of persons or property, such as inadequate bracing, structural support, construction, or the presence of deteriorated materials;

(c) Conditions constituting an attractive nuisance and creating a hazard to the health or safety of minors.

D. Declaration of nuisance. Any building or structure which has any of the conditions or defects described in Paragraph C. hereof, where such condition or conditions pose a threat or potential threat to the health, safety, or general welfare of its occupants or the public, may be declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition, or as otherwise determined by the City Council.

E. Inspections and reports. It shall be the duty of the City's building official, or designee, to inspect all buildings and structures reported to be, or believed to be, in violation of any of the terms of this Code. Prior to scheduling a public hearing regarding the condition of a building or structure, the City's building official, or designee, shall present a written report of such inspection to the City Council. Said report shall list each building or structure, by street address and legal description, the names of all owners of record, the specific conditions or defects that render the building or structure dangerous pursuant to the standards set out in Paragraph C. above, and a summary of any previous enforcement actions and attempts to bring the building or structure into compliance.

F. Notice of public hearing.

1. Upon consideration and acceptance of the report provided for in Paragraph E. hereof, City Council may schedule and specify a date for a public hearing to hear testimony and receive evidence as to the condition(s) of the building or structure. Based upon this action, the City's building official, or designee, shall give notice of a public hearing before City Council:

(a) By personal service or by certified mail, return receipt requested,

to:

(1) The owners of the affected property; and

(2) Each mortgagee or lien holder having an interest in the affected property.

(3) To all other persons, by posting a copy of such notice on the front door of each building or structure situated on the affected property or as close to the front door as practicable.

(4) The building official, or designee, shall make a diligent effort to discover the identity of any owner(s), lien holder(s), or mortgagee of a building or structure by searching the following records for such information:

- (i) Fort Bend County real property records;
- (ii) Fort Bend County appraisal district records;
- (iii) Texas Secretary of State records;
- (iv) Fort Bend County assumed name records;
- (v) City tax records; and

(vi) City utility records.

(b) The notice shall inform all persons that a public hearing will be held before the City Council in which the building official, or designee, will seek an order requiring the building to be vacated, secured, repaired, removed and/or demolished upon a finding that the building or structure is substandard and/or dangerous. The notice shall include or state the following:

(1) A copy of the inspection report as provided for in Paragraph E. above, which shall list the specific conditions or defects that render the building or structure a dangerous building within the standards set out in Paragraph C. above;

(2) That a public hearing will be held before the City Council and that following such hearing, the City Council will consider and, if deemed appropriate, adopt an order providing that the building or structure be vacated, secured, repaired, removed, and/or demolished as provided above;

(3) The date, time, and place of the public hearing;

(4) That at such public hearing the owner(s), lien holder(s), or mortgagee will be required to submit proof of the scope of all work that is required to bring such building or structure into compliance with this Ordinance, the length of time it will take to perform such work, as well as the start and ending date for the performance of such work.

G. Burden of proof At the public hearing or a meeting before the City Council to determine whether a building or structure has any of the conditions specified in Paragraph C.

above, which may result in a finding of a public nuisance and an abatement order, the owner(s), lien holder(s), or mortgagee shall have the burden of proof to demonstrate the scope of any work that may be required to abate the nuisance, the time it will take to perform such work, as well as the start and ending date for the performance of such work. The owner(s), lien holder(s), or mortgagees are encouraged to submit written and/or photographic evidence as proof of the scope of any contemplated and necessary work.

H. Public hearing before City Council; consideration of order at meeting following public hearing.

1. The City Council may, after proper notice and following a public hearing, declare a building or structure to be in violation of this Code where the condition of the building or structure has any of the conditions set out in Paragraph C. above.

2. The City Council may specify, in a written order signed by the mayor:

(a) A reasonable time period for the building or structure to be vacated, secured, repaired, removed, and/or demolished by the owner(s), lien holder(s), or mortgagee and, reasonable dates upon which such work must be initiated and completed; and

(b) A reasonable time for the owner(s), lien holder(s), or mortgagee to relocate the occupants of such building or structure.

3. The order shall be deemed issued and effective on the date the City Council hears and decides the case.

4. After the public hearing and meeting of the City Council, the City's building official, or designee, shall promptly mail, by certified mail, return receipt

requested, a copy of the order to the owner(s), and to any known lien holder(s), or mortgagee, of the affected building or structure.

5. If the City Council makes a finding under subparagraph 1. of this paragraph, it shall order the owner(s), lien holder(s), or mortgagees of the building or structure to, within thirty (30) days:

- (a) Secure the building or structure from unauthorized entry; and/or
- (b) Repair, remove, and/or demolish the building or structure, unless the owner(s), lien holder(s), or mortgagee establishes at the public hearing that the work cannot reasonably be performed within the thirty (30) days.

6. If the City Council allows the owner(s), lien holder(s), or mortgagee more than thirty (30) days to repair, remove, and/or demolish the building or structure, the City Council shall establish specific time schedules for the commencement and completion of the work and shall require the owner(s), lien holder(s), or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed.

7. The City Council shall not allow the owner(s), lien holder(s), or mortgagee more than ninety (90) days to repair, remove, and/or demolish the building or structure or fully perform all work required to fully comply with the order of the City Council, unless the owner(s), lien holder(s), or mortgagee:

- (a) Submits a detailed plan in writing which includes a time schedule for the commencement and completion of such work; and

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

8. If the City Council allows the owner(s), lien holder(s), or mortgagee more than ninety (90) days to complete any part of the work required to repair, remove, and/or demolish the building or structure, the City Council shall require the owner(s), lien holder(s), or mortgagee to submit regular progress reports to the City, in writing, to demonstrate that the owner(s), lien holder(s), or mortgagee has complied with the time schedules established for commencement and completion of the work. The order may require that the owner(s), lien holder(s), or mortgagee appear on specific dates before the City Council or the City's building official, or designee, to demonstrate compliance with such time schedules.

I. Notice of Order. Within ten (10) days after the date the order is issued, the City's building official, or designee, shall:

1. file a copy of the order in the office of the City Secretary;
2. publish, in a newspaper of general circulation within the City, a notice containing:

- (a) the street address and legal description of the property;
- (b) the date of the public hearing;
- (c) a brief statement indicating the results of the order; and
- (d) instructions stating where a complete copy of the order may be obtained; and

3. File a copy of the published notice in the Fort Bend County real property records.

J. Imposition of Civil penalty for failure to comply with Order; assessment of lien.

1. After the time has lapsed to comply with an order of the City Council issued pursuant to Paragraph H. above, the City Council, by order, may assess a civil penalty against the property owner(s) for violations of the order requiring repair, vacation, demolition, and/or removal of a building or structure. The civil penalty may not exceed One Thousand and No/100 Dollars (\$1000.00) per day for each violation or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed Ten and No/100 Dollars (\$10.00) per day for each violation, if the City proves:

(a) The property owner was properly notified of the order, as adopted by the City Council, and the owner's need to comply with the requirements of such order; and

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

2. An assessment of a civil penalty made by the City Council under subparagraph 1. Above is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the City for final judgment in accordance with the assessed penalty.

3. To enforce a civil penalty assessed under this Section, the City Secretary shall file, with the District Clerk of Fort Bend County, a certified copy of the order issued

under subparagraph (a) above stating the amount and duration of the civil penalty. No other proof shall be required for a district court to enter a final judgment on the penalty.

4. Any civil penalty or expense assessed by the City under this Section shall accrue interest at the rate of ten percent (10%) per year from the date of such assessment until paid in full.

5. The City may take the appropriate action to create a lien against the subject property, within the limits of state homestead protections, to secure payment of the civil penalty.

6. In any judicial proceeding regarding enforcement of the City's rights under this Code, the City may be entitled to recover reasonable attorney's fees.

K. City action following failure to abate; notice on building.

1. If the owner of the building or structure made the subject of an order adopted by City Council to vacate, secure, repair, remove, and/or demolish said building or structure does not comply with such order within the allotted time, the City may vacate, secure, remove, or demolish the building or structure, or relocate the occupants of said building or structure, at the City's expense.

2. If the City Council authorizes the building to be vacated and secured as provided in subparagraph a. above, the City's building official shall post a notice on or near the front door of such building or structure. The notice to vacate must be in substantially the following form:

DO NOT OCCUPY

This building or structure is in violation of Ordinance No. _____ of the City of Orchard. No one may occupy this building until such time as such violations are corrected and approved by the City's building official. It is a misdemeanor offense to occupy this building or structure or to remove or deface this notice.

1. Assessment of lien for City expenses.

a. If the City incurs expenses under Paragraph K above, it may assess said expenses on, and the City shall have a lien against the property upon which the building or structure is located, unless such property is a homestead protected by the Texas Constitution.

b. The lien is extinguished if the property owner(s) or any other person having an interest in the legal title to the property reimburses the City for its expenses.

c. The lien arises and attaches to said property at the time the notice of the lien is recorded and indexed in the Fort Bend County real property records.

d. The notice of the lien shall contain the name and address of the owner, if that information can be determined with a reasonable effort; a legal description of the real property upon which the building or structure is or was located; the amount of expenses incurred by the City; and the balance due.

13. Criminal Penalty. Any person who refuses or fails to repair, demolish, and/or remove a building or structure when ordered to take such action(s) under the terms of this Code, or who refuses or fails to leave a building that has been ordered vacated under the terms of this Code, or who enters an area around a building that has been declared to be dangerous and notice of which declarations shall have been posted, or who interferes with or hinders the repair, vacation, demolition, and/or removal of any building or structure under the terms of this Code, or who otherwise violates any order of the City Council as provided for in this Code, shall be deemed guilty of an misdemeanor and,

upon conviction thereof, shall be subject to punishment as provided by this Code or applicable law.

14. Other remedies; Chapters 54 and 214, Texas Local Government Code.

Nothing in this Section shall preclude the City's pursuit of any and all other remedies allowed under civil and criminal law, or in equity, to address conditions which are treated in this Section, under the theory of public nuisance and the abatement of dangerous buildings or structures. Neither shall the City be required, nor prohibited, to issue criminal citations before, after, or during any proceeding prescribed in this Section.

Specifically, in addition to the provisions in this Section and remedies afforded under the TEXAS LOCAL GOVERNMENT CODE, Chapter 214, Municipal Regulation of Structures, the City further asserts full authority to exercise its right to remedy under all provisions of the TEXAS LOCAL GOVERNMENT CODE, including, but not limited to, Chapter 54, Subchapter B, Municipal Health and Safety Ordinances, in prosecution of civil suits for enforcement, injunctive relief, and civil penalties to remedy conditions of public concern described in this Section.

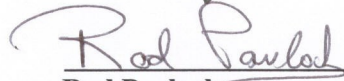
Section 2. Penalty. Any person, corporation, or entity who or which violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000. Each day in which any violation shall occur, or each occurrence of any violation, shall constitute a separate offense.

Section 3. Repealer. All ordinances or parts or ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 4. Severability. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason

be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Orchard, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED and APPROVED this 9th day of June, 2010.



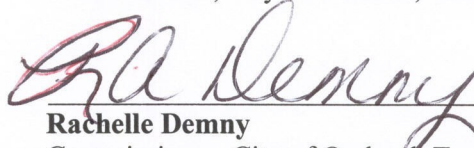
Rod Pavlock

Mayor, city of Orchard, Texas



David Kolafa

Commissioner, City of Orchard, Texas



Rachelle Demny

Commissioner, City of Orchard, Texas

ATTEST:



Merry Sue Hajdik

City Secretary, City of Orchard, Texas