

CITY OF HIGHLAND HAVEN TEXAS

ORDINANCE # 034 (REVISION #1)

AN ORDINANCE OF THE CITY OF HIGHLAND HAVEN, TEXAS ENACTED PURSUANT TO SECTION 214 OF LOCAL GOVERNMENT CODE FOR THE PURPOSE OF ESTABLISHING REGULATIONS RELATED TO SUBSTANDARD AND DANGEROUS STRUCTURES, PROVIDING A PENALTY FOR VIOLATION, DECLARING AN EMERGENCY, AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF HIGHLAND HAVEN, TEXAS:

Revision #1 – Will add Ordinance #020 as a standard in Section 4 (a) .

SECTION 1

DESIGNATION OF OFFICIAL AND TERMS

When this Ordinance refers to the duties of certain officials, the official designated by the City shall be the Code Compliance Officer as well as those who he authorizes and designates to act under his authority. The Mayor shall designate an official to perform such duties as are assigned to the Code Compliance Officer. The Code Compliance Officer is authorized to devote such personnel under this direction to the extent necessary to accomplish enforcement of the provisions of this ordinance. For the purposes of this ordinance, the term "Code Compliance Officer" shall mean the Code Compliance Officer of the City of Highland Haven, Texas, and the term "City" shall mean the City of Highland Haven, Texas. The terms "Building" and "Structure" are interchangeable.

SECTION 2 INTENT

The city declares every substandard building or structure as herein defined to be a public nuisance and subject to repair, vacation or demolition to abate such nuisance as herein provided in order to protect the health, safety and welfare of the occupants and the public.

SECTION 3 NOTICE OF VIOLATION

A. SERVICE

The Code Compliance Officer or his authorized designee shall give notice of a violation of this ordinance. Such notice shall be in writing and shall be served by personal delivery or by certified mail return receipt requested to the record owners of the affected property, and to all unknown owners, by posting a copy of the notice on the front door of each affected improvement situated on the property or as close to the front door as practicable; and if the owner's address is different than the address shown for the property involved, to the address of the property, addressed to the occupant of such address. Listing of the occupant by name or sending the notice by certified mail is not required. Service of the notice may be accomplished by first class U.S. Mail or by personal delivery to any occupant of the property who is above the age of 16 years or older.

B. CONTENTS

The notice shall contain the following:

1. The names of all persons to who the notice is being served pursuant to Section 3(A) of this ordinance;
2. The street address or legal description of the premises;
3. A general description of the building, structure improvements or condition deemed substandard or otherwise in violation of this ordinance;
4. A description of the violation of municipal standards that are present at the building;
5. Notice of the date, time and place of the public hearing to determine whether the building complies with the standards set out in this ordinance;
6. A statement that the owner, lien holder, or mortgagee will be required to submit at the public 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;
7. Whether or not the building shall be vacated by the occupants and, if so, the date by which such vacation shall be effected.

SECTION 4 ORDER OF THE BOARD OF ALDERMEN

(A) After the public hearing before the Board of Aldermen of the City of Highland Haven, if the building, structure or dwelling is found in violation of the standards set out in this Ordinance and Ordinance #-020, the City may order that the building be vacated, secured, repaired, removed or demolished by the owner within the time provided for in this Section. The City may also order that the occupants be relocated within a reasonable time. If the owner does not take the ordered action within the allotted time, the City shall make a diligent effort pursuant to Sec. 214.001, Local Government Code, to discover each mortgagee and lien holder having an interest in the building, structure or dwelling or in the property on which the building is located. The City shall send to each identified mortgagee and lien holder a notice containing:

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

(B) As an alternative to the procedure prescribed above, the City may make a diligent effort to discover each mortgagee and lien holder before conducting the public hearing and may give them a notice of and an opportunity to comment at the hearing. In addition, the City may file notice of the hearing in the Official Public Records of Real Property in Burnet County, Texas. The notice must contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the instruments on file in the office of the county clerk, a legal description of the affected property and a description of the hearing. The filing of the notice is binding on subsequent grantees, lien holders, or other transferees of an interest in the property who acquire such interest after the filing of the notice, and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice. The order issued by the City may specify a reasonable time before the building to be vacated, secured, repaired, removed, or demolished by the owner or for the occupants to be related by the owner and an additional reasonable time for the ordered action to be taken by any of the mortgagees or lien holders in the event the owner fails to comply with the order within the time provided for action by the owner. The City is not required to furnish any notice to a mortgagee or lien holder other than a copy of the order in the event the owner fails to timely take the ordered action.

(C) Within 10 days after the date that the order is issued, the City 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:
 - i. The street address or legal description of the property;
 - ii. The date of the hearing;
 - iii. A brief statement indicating the results of the order; and
 - iv. Instructions stating where a complete copy of the order may be obtained.

(D) After the hearing, the City shall promptly mail by certified mail, return receipt requested, a copy of the order to the owner the building and to any lien holder or mortgagee of the building. The City shall use its best efforts to determine the identity and address of any owner, lien holder, or

mortgagee of the building through the records of the Burnet County Clerk and through other sources available to the City.

(E) In conducting a hearing authorized under this section, the City shall require the owner, lien holder, or mortgagee of the building to within thirty (30) days:

1. Secure the building from unauthorized entry; or
2. Repair, remove, or demolish the building, unless the owner or lien holder establishes at the hearing that the work cannot reasonably be performed within thirty (30) days.

(F) If the City allows the owner, lien holder, or mortgagee more than thirty (30) days to repair, remove, or demolish the building, the City shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lien holder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the Board of Aldermen.

(G) The City will not allow the owner, lien holder, or mortgagee more than ninety (90) days to repair, remove, or demolish the building or fully perform all work required to comply with the order unless the owner, lien holder, or mortgagee:

1. Submits a detailed plan and time schedule for the work at the hearing; and
2. Establishes at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work.

(H) If the City allows the owner, lien holder, or mortgagee more than ninety (90) days to complete any part of the work required to repair, remove, or demolish the building, the owner, lien holder, or mortgagee must regularly submit progress reports to the City to demonstrate that the owner, lien holder, or mortgagee has complied with the time schedules established for commencement and performance of the work. The order may require that the owner, lien holder, or mortgagee appear before the Board of Aldermen to demonstrate compliance with the time schedules.

(I) In a public hearing to determine whether a building complies with the standards set out in this ordinance, the owner, lien holder, 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.

(J) If the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, the City may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense.

(K) If the City incurs expenses under Subsection (J), 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. The notice must 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 on which the building was located, the amount of expenses incurred by the City, and the balance due.

(L) If the notice is given and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lien holder as authorized by Subsection (A), (B) or (C) above, the lien is a privileged lien subordinate only to tax liens.

SECTION 5 POSTING A PLACARD ON UNINHABITABLE, DANGEROUS BUILDINGS.

(A) If the Code Compliance Officer or a designated representative, shall, upon inspection of any building within the city, find the same to be uninhabitable and/or dangerous, he shall place a placard on the uninhabitable and/or dangerous building reading as follows:

WARNING

This building has been found to be an UNINHABITABLE AND DANGEROUS STRUCTURE by the Code Compliance Officer or a designated representative. This building is to be vacated immediately. This placard is to remain on the structure until it is repaired or demolished in accordance with the notice dated _____ which has been mailed to all known persons having an interest in this building or property as shown by the County Clerk of Burnet County. It is a violation of this ordinance, Section 5 (B), punishable by a fine up to \$2,000, for anyone to remove this placard until such notice has been complied with.

Signed

Code Compliance Officer or a Designee

(B) No person shall occupy any building posted with such placard nor shall any person deface, destroy, or remove any such placard.

(C) A copy of such notice shall be posted on the front door or as near to the front door as practicable on the uninhabitable and dangerous dwelling or building to which it related.

SECTION 6 PLACARD BUILDING TO BE SECURED

When the placard authorized by Section 5 has been posted on any building in the City found to be a violation of this ordinance, the owner or occupant thereof shall render it secure from entry by unauthorized persons.

SECTION 7 EMERGENCY CASES.

In cases where it reasonably appears that there is immediate danger to the life or safety of any person unless an uninhabitable and dangerous building is immediately repaired, vacated or demolished, the Code Compliance Officer or a designated representative shall cause the immediate repair, vacation or demolition of such uninhabitable and dangerous building or dwelling. The costs of such emergency repair, vacation, demolition or other compliance shall be collected in the same manner as provided in Section 4(K) of this ordinance.

SECTION 8 RIGHT OF INSPECTION.

The Code Compliance officer or his designated representative shall cause to be inspected any building or structure for the purpose of determining whether conditions exist which render such place uninhabitable or substandard within the terms of Section 1.09 of this ordinance. Cause for inspection may be based on any of the following:

(A) A complaint filed by any person.

(B) A report filed by the Police Department, Fire Department, or any other city department of any building or structure which is or may be uninhabitable within the terms of Section 9,

(C) General information or knowledge about the building or structure.

SECTION 9 CONDITIONS CONSTITUTING AN UNINHABITABLE OR DANGEROUS STRUCTURE OR DWELLING

An uninhabitable or substandard building or structure is defined as any building or structure:

(A) Whose walls or other vertical structural members list, lean or buckle in excess of one-eighth-inch horizontal measurement for each one foot of vertical measurement;

(B) Which exclusive of the foundation Shows 33% or more of damage or deterioration of the supporting member or members, or 50% of damage or deterioration of the non-supporting

enclosing or outside walls or covering;

- (C) Which has been damaged by fire, explosion, wind, vandalism or elements of a nature so as to have become dangerous to life, safety or the general health and welfare of the occupants thereof or the people of the city;
- (D) Which has inadequate facilities for egress in case of fire or panic or which has insufficient stairways, elevators, fire escapes or other means of ingress or egress;
- (E) Which has parts thereof which are so attached that they may fall and injure members of the public or property;
- (F) Which the stress in any material, member or portion thereof, due to all imposed; loads including dead loads exceeds the stresses allowed in any applicable code for new buildings;
- (G) Which, because of its condition is unsafe, or unsanitary, or dangerous to the health, morals, safety, or general welfare of the people of this city; or
- (H) Which exists in violation of any material provision of the city's building code, plumbing code, fire prevention code, electrical code or the statutes of the state as revised, or that fail to comply with any material provision of this ordinance. For the purposes of this subsection, "violation of any material provision" is a violation of any section that involves a significant risk of personal injury, death or property damage.

SECTION 10 GUIDE FOR REPAIR, VACATION OR DEMOLITION OF UNINHABITABLE BUILDINGS

The following guide shall be followed by the Board of Aldermen in determining whether to order the repair, vacation or demolition of any uninhabitable or dangerous building, structure or dwelling.

(A) Repair. If a building, structure or dwelling can reasonably be repaired so that it will no longer exist in violation of the terms of this ordinance, the City Council shall order it repaired within the time provided in Section 4 of this ordinance.

(B) Vacation. If a building, structure or dwelling is in such condition as to make it a danger to the health, safety or general welfare of its occupants or the citizens of the city or if deemed necessary for the abatement of the nuisance, the Board of Aldermen shall order it vacated.

(C) Demolition. The Board of Aldermen may order a building, structure or dwelling demolished if it

1. Is at least 50% damaged or deteriorated, on either a structural or original value basis;
2. Is an immediate danger to life or safety of any person and such danger is not immediately remedied or corrected to eliminate the danger;
3. Is in need of repair under Subsection 10 (A) above and is not repaired within the reasonable time set forth therein; or
4. Is in such condition as to make it dangerous to the health, safety, or general welfare, has been ordered vacated by the Board of Aldermen, and has not been cured of the defects within a reasonable time.

SECTION 11 PROCEDURES FOR CONDUCT OF HEARING

(A) A record of the entire proceedings shall be made by tape recording, or by any other means of permanent recording determined to be appropriate by the Board of Aldermen.

(B) A copy of the tape of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor.

(C) The Board of Aldermen may grant continuances for good cause shown

(D) In any proceedings under this Section, the mayor or any member of the Board of Aldermen has the power to administer oaths and affirmations and to certify to official acts.

(E) Hearings need not be conducted according to the technical rules relating to evidence and witnesses. However, oral evidence shall be taken only on oath or affirmation.

(F) Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

(G) Irrelevant and unduly repetitious evidence shall be excluded.

(H) Each party shall have these rights, among others

1. To call and examine witnesses on any matter relevant to the issues of the hearing;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
4. To impeach any witness regardless of which party first called him to testify;
5. To rebut the evidence against him; and
6. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.

(I) The Board of Aldermen may inspect any building or premises involved in the appeal during the course of the hearing, provided that: (i) notice of such inspection shall be given to the parties before the inspection is made; (ii) the parties are given an opportunity to be present during the inspection; and (iii) the Board of Aldermen shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the Board of Aldermen.

(J) The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him by certified mail, postage prepaid, return receipt requested.

(K) The effective date of the order shall be as stated therein.

SECTION 12 ENFORCEMENT OF THE ORDER OF THE CODE COMPLIANCE OFFICER OR THE BOARD OF ALDERMEN

(A) After any order of the Board of Aldermen made pursuant to this ordinance shall become effective, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor and upon conviction thereof such person shall be punished by a fine of not more than two thousand dollars (\$2,000).

(E) If, after any order of the Board of Aldermen made pursuant to this code has become effective, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the Code Compliance Officer may cause such person to be prosecuted under subsection (A) of this section, and/or the City may institute any appropriate action to abate such building as a public nuisance.

(C) No person shall occupy any building which has been posted as specified in this ordinance. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the Board of Aldermen have been completed pursuant to the provisions of the all applicable building codes and ordinances.

(D) No person shall obstruct, impede or interfere with any officer, employed, contractor or

authorized representative of the City, or with any person who owns or holds any real estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this ordinance, whenever such officer, employee, contractor or authorized representative of the City, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building pursuant to the provisions of this ordinance, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this ordinance.

(E) Any person who is aggrieved by the actions taken under the provisions of this ordinance after he has exhausted his administrative remedy as provided herein, may file suit in the District Court of Burnet County, Texas, in the nature of an appeal from the action of the Board of Aldermen within fifteen (15) days, in which appeal questions presented to the said district court the substantial evidence rule shall prevail, except the question of whether or not the premises is a nuisance, which said question of whether or not a nuisance exists shall be tried by the district court de novo.

**SECTION 13
POSTING OF WARNINGS ON UNSAFE BUILDINGS**

(A) In the event the Board of Aldermen makes a determination after the public hearing that the building is deemed to be in violation of the terms of this ordinance, the Code Compliance Officer shall cause to be posted at each entrance to such building a notice to read as follows:

**DANGEROUS
DO NOT ENTER, UNSAFE TO OCCUPY**
Code Compliance Officer of the City of Highland Haven

(B) Such notice shall remain posted until required repairs, demolition, or removal is completed and such premises have been rendered safe. Such notice shall not be removed without written permission of the Code Compliance officer, and no person shall enter the building except for making inspections or required repairs or to demolish such building.

**SECTION 14
SEVERABILITY**

If any article, section, subsection, paragraph, subdivision, clause phrase, or provision of this Ordinance shall be held invalid, unenforceable, or illegal, said invalidity, unenforceability, or illegality shall not affect any other article, section, subsection, paragraph, subdivision, clause phrase, or provision of this Ordinance, it being the intent of the Board Of Aldermen that this Ordinance would have been enacted in the absence of the article, section, subsection, paragraph, subdivision, clause phrase, or provision of this Ordinance having been held invalid, unenforceable, or illegal.

**SECTION 15
REPEALER**

All ordinances and resolutions, and parts of ordinances and parts or resolutions, in conflict with this Ordinance are hereby repealed.

**SECTION 16
EFFECTIVE DATE**

Pursuant to the emergency called and recognized by the Board of Aldermen this Ordinance shall take effect immediately from and after the date of its passage.

PASSED AND APPROVED ON THE 21st DAY OF AUGUST 2001 BY THE BOARD OF ALDERMEN OF THE CITY OF HIGHLAND HAVEN, TEXAS

SEAL

Signed
Mayor of the City of Highland Haven, Texas

Attest
Secretary of the City of Highland Haven, Texas