

ORDINANCE NO. 3361

AN ORDINANCE AMENDING SECTIONS 98-463, 98-465, 98-466, 98-468, 98-469 AND 98-470 OF THE NORTH RICHLAND HILLS CODE OF ORDINANCES TO PROVIDE FOR A SINGLE HEARING FOR THE IMPOSITION OF CIVIL PENALTIES AS AN ALTERNATIVE TO OTHER ACTION IMPOSED BY THE SUBSTANDARD BUILDING BOARD; CHANGING THE DESIGNATION OF THE PERSON WHO WILL ISSUE NOTICES AND CARRY OUT OTHER FUNCTIONS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, staff has recommended changes to the regulations concerning substandard buildings to provide notices to be issued by the director of neighborhood services and providing for a single hearing for determining whether a civil penalty for violations of the city's building standards ordinance should be imposed when the substandard building board considers whether to require repairs or demolition should be ordered

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH RICHLAND HILLS, TEXAS:

Section 1: THAT Sections 98-463, 98-465, 98-466, 98-468, 98-469 and 98-470 of the North Richland Hills Code of Ordinances are hereby amended to read as follows:

"Sec. 98-463. - Notices and orders of director of neighborhood services and building official.

(a) Right of entry. When it is necessary to make an inspection to enforce the provisions of this article, or when the building official or director of neighborhood services or designee has a reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this article which makes the building or premises unsafe, dangerous, or hazardous, the building official or director of neighborhood services or designee may enter the building or premises at reasonable times to inspect or perform the duties imposed by this article, provided that if such building or premises is occupied credentials shall be presented to the occupant and entry shall be requested. If such building or premises is unoccupied, the building official or director of neighborhood services or designee shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the building official or director of neighborhood services shall have recourse to the remedies provided by law to secure entry. The building official or director of neighborhood services is designated as the person who may be issued a search warrant pursuant to Vernon's Ann. C.C.P. art. 18.05, upon presentation of evidence to a magistrate of probable cause to believe that a fire or health hazard or violation or unsafe building condition is present in the premises sought

to be inspected. Upon searching the premises, a copy of the warrant shall be presented to the owner if present or if not present, to any person present who is in possession of the property. If the building official or director of neighborhood services takes anything from the property, he shall prepare an inventory and leave a copy with the owner or person in possession of the premises.

(b) Commencement of proceedings. Whenever the building official or director of neighborhood services has inspected or caused to be inspected any building, and has found and determined that such building is:

(1) Dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare or in violation of the ordinances of the city;

(2) Regardless of its structural condition, 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 or used by children; or

(3) Boarded up, fenced, or otherwise secured in any manner 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 in the manner described by subsection (b)(2) directly above, the building official or director of neighborhood services shall commence proceedings to cause the repair, rehabilitation, vacation, removal or demolition of the building.

(c) Notice. The building official or director of neighborhood services shall issue a notice directed to the record owner of the building. The notice shall contain:

(1) The street address and description (legal or other) sufficient for identification of the premises upon which the building is located;

(2) A statement that the building official or director of neighborhood services has found the building to be substandard or in violation of city ordinances with a brief and concise description of the conditions found to render the building dangerous;

(3) A statement of the action required to be taken as determined by the building official or director of neighborhood services;

(4) A requirement that the owner or person in charge of the building or premises secure required permits and commence the required action within 15 days from the date of such notice and that all work be completed within such time as the building official or director of neighborhood services shall determine is reasonable;

(5) If the building official or director of neighborhood services has determined that the building or structure must be vacated, the notice shall contain a requirement that the building be vacated within such time from the date of the notice as determined by him to be reasonable;

(6) A statement advising that if any required repair or demolition work is not commenced within the time specified, the building official or director of neighborhood services will, without further notice, order the building vacated and posted to prevent further occupancy until the work is completed; and

(7) A statement advising that if any required repair or demolition work is not commenced or completed within the time specified, proceedings will be commenced to have the building repaired, removed or demolished and the cost of such assessed as a charge against the land.

(d) Service of notice. The notice and any amended notice shall be served upon the record owner.

(e) Method of service. Service of notice shall be made upon all persons entitled there to either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at his address as it appears on the last tax roll of the city, or as known to the building official or director of neighborhood services. If no address of any such person so appears or is known to the building official or director of neighborhood services, then a copy of the notice and order shall be published twice within ten consecutive days in a newspaper of general circulation in the city. Failure to receive such notice or order shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner provided in this section shall be deemed effective on the date of mailing. Service by publication shall be deemed effective on the date of the second publication.

(f) Order to vacate. An order to vacate immediately may be issued only if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or of the occupants.

(g) Posting. Every notice to vacate shall, in addition to being served as provided in subsection (e) of this section, be posted at or upon each exit of the building, and shall be in substantially the following form:

DO NOT ENTER

UNSAFE TO OCCUPY

It is a Misdemeanor to Occupy this Building or to Remove or Deface this Notice

Building Official and/or Director of Neighborhood Services

City of North Richland Hills, Texas

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Sec. 98-465. - Enforcement.

If the required repair or demolition has not been commenced within 15 days from the date of any notice served pursuant to this article, or if required action has not been completed as required by such notice, the building official or director of neighborhood services shall commence proceedings as follows:

(1) The building official or director of neighborhood services or designee shall cause such building to be vacated by posting at each entrance thereto a notice reading:

SUBSTANDARD BUILDING

It is a Misdemeanor to Occupy this Building

or to Remove or Deface this Notice

Director of Neighborhood Services and/or Building Official

City of North Richland Hills, Texas

(2) A public hearing shall be scheduled before the substandard building board to determine whether the building complies with the standards set out in this article and whether there has been a violation of a city ordinance which has continued after the owner has been made aware of such and been advised of what needs to be done to correct the violation and to consider to decide whether to order the repair, removal or demolition and whether to cause the cost of such work to be paid and levied as a special assessment against the property and whether a civil penalty should be assessed against the owner..

(3) The substandard building board shall hold the hearing noticed and enter its order concerning the property as soon as possible thereafter.

(4) A title search shall be conducted to discover each owner, mortgagee and lienholder. A diligent search shall be made by searching the following records:

- a. County real property records;
- b. Appraisal district records;
- c. Records of the secretary of state;
- d. Assumed name records of the county;
- e. Tax records of the city; and
- f. Utility records of the city.

(5) Notice of the public hearing to be held before the substandard building board shall be given on or before the tenth day before the hearing by causing a notice to be published in the city's official newspaper and mailed by certified mail, return receipt requested or personally delivered to the owner of such property and to each mortgagee and lienholder having an interest in the building or in the property on which the building

is located. Notice shall also be posted on the front door of the building which is the subject of the proceeding or as close thereto as is practicable. The notice shall include the date, time and place of such hearing and shall state that the owner, lienholder or mortgagee will be required to submit proof of the scope of any work that may be required to comply with this article and the time it will take to reasonably perform the work together with:

- a. The name and address of the record owner;
- b. The street address of the premises;
- c. An identification, which is not required to be a legal description, of the building and the property on which it is located;
- d. A description of the violation of city standards that is present at the building; and
- e. 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.

(6) The Director of Neighborhood Services or designee shall, at the time notices are mailed, file a notice of the hearing in the county clerk's office, stating the name and address of the owner, if such can be determined, a legal description of the land, and stating the purpose, time and place of the hearing, which notice shall be binding on all subsequent grantees, lienholders, or other transferees of any interest in the property who acquire such interest after the filing of such notice.

(7) After conducting a hearing authorized under this section, if the substandard building board finds that the allegations are true, the substandard building board shall require the owner, 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.

(8) If the substandard building board allows more than 30 days to repair, remove, or demolish the building, the substandard building board 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 substandard building board.

(9) The owner, lienholder, or mortgagee shall not be allowed 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. If the substandard building board allows the more than 90 days to complete any part of the work required to repair, remove, or demolish the building, the owner, lienholder, or mortgagee shall be required to regularly submit progress reports to the city to demonstrate that the owner, lienholder, or mortgagee has complied 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 substandard building board or its designee to demonstrate compliance with the time schedules. If the owner, lienholder or mortgagee owns property within the city that exceeds \$100,000.00 in value, the substandard building board may require the posting of a cash or surety bond in an amount adequate to cover the cost of repairing, removing or demolishing a building which is the subject of an order hereunder. Any such bond must be posted no later than the 30th day after the order is issued.

(10) 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 this article and the time it will take to reasonably perform the work. The substandard building board shall specify a reasonable time for the building to be vacated, secured, repaired, removed or demolished by the owner or for the occupants to be relocated by the owner and an additional reasonable time for the ordered action to be taken by the mortgagees or lienholders in the event the owner fails to comply with the order within the time provided for action by the owner.

(11) The substandard building board's requirement shall be reduced to writing and shall be considered an order. Within ten days after the date that the order is issued, the Director of Neighborhood Services or designee shall:

a. File a copy of the order in the office of the municipal secretary or clerk; and

b. Publish in a newspaper of general circulation in the municipality in which the building is located a notice containing:

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 stating where a complete copy of the order may be obtained.

(12) After the hearing, the Director of Neighborhood Services or designee 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.

Sec. 98-466. - Performance of work by the city.

(a) Procedure. When any work of repair, removal, demolition, or securing is to be performed by the city pursuant to the provisions of an order of the board or city council, the work may be accomplished by city personnel or by private contract as determined to be necessary. Rubble and debris shall be removed from any premises and the lot cleaned if removal or demolition is ordered. The building or building materials may be sold if removal or demolition is ordered, and the proceeds shall be used to offset costs of the work.

(b) Costs. The cost of the work shall be paid from city funds and shall constitute a special assessment and a lien against the property to secure payment, together with ten percent interest on the amount from the date on which the work is performed.

(c) Repair to minimum standards only. The city may repair the building at its own expense and assess the expenses on the land on which the building stands or is attached to only to the extent necessary to bring the building into compliance with 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 it exceeds minimum housing standards....

Sec. 98-468. - Prohibitions against service.

No utility service, building permit or certificate of occupancy shall be allowed for any such property until any lien imposed pursuant to section 98-467 is discharged.

Sec. 98-469. - Unoccupied buildings; dangerous buildings.

(a) Securing of unoccupied, substandard building. Notwithstanding any other provisions of this article, the city may secure a building if the building official or director of neighborhood services determines:

(1) That the building violates the minimum standards set forth herein; and

(2) That the building is unoccupied or is occupied only by persons who do not have the right of possession to the building.

(b) Notice to the owner. Before the 11th day after the date the building is secured pursuant to subsection (a) of this section, the building official or director of neighborhood services or designee shall give notice to the owner by:

(1) Personally serving the owner with written notice;

(2) Depositing the notice in the United States mail addressed to the owner at the owner's post office address;

(3) Publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the county in which the property is located, if personal service cannot be obtained and the owner's post office address is unknown; or

(4) 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.

(c) Contents of notice. The notice must contain:

(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 minimum standards present in the building;

(3) A statement that the city will secure or has secured, as the case may be, the building; and

(4) An explanation of the owner's entitlement to request a hearing about any matter relating to the city's securing of the building.

(d) Hearing. The substandard building board shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the city's securing, of the building, if, within 30 days after the date the city has taken action pursuant to subsection (a) of this section, the owner files with the city a written request for the hearing. The hearing shall be conducted within 20 days after the date the request is filed.

(e) Expenses incurred by city. If the city incurs expenses under this section, the expenses incurred shall be a personal obligation of the property owner in addition to a priority lien upon the property, and costs shall be recovered as provided in this article.

Sec. 98-470. - Civil penalty.

(a) A civil penalty may be assessed against a property owner at the time of an administrative hearing on violations of an ordinance, in an amount not to exceed \$1,000 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 a day for each violation, if the city proves:

(1) the property owner was notified of the requirements of the ordinance and the owner's need to comply with the requirements; and

(2) 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.

(b) An assessment of a civil penalty under Subsection (a) 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.

(c) Copy of order filed with district clerk. After the civil penalty is assessed, the city secretary shall file with the district clerk of the county in which the property is located, a certified copy of the order assessing the civil penalty 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.”

Section 2: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the city council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section.

Section 3: This ordinance shall be in full force and effect immediately upon passage.

AND IT IS SO ORDAINED.

PASSED AND APPROVED on this 13th day of July, 2015.

CITY OF NORTH RICHLAND HILLS

By: _____
Oscar Trevino, Mayor

ATTEST:

Alicia Richardson, City Secretary

APPROVED AS TO FORM AND LEGALITY:

George A. Staples, City Attorney

APPROVED AS TO CONTENT:

Stefanie Martinez, Director of Neighborhood Services