

ORDINANCE NO. 0034-18-ORD

AN ORDINANCE OF THE LEWISVILLE CITY COUNCIL, AMENDING CHAPTER 4, BUILDINGS AND BUILDING REGULATIONS, BY REPEALING AND REPLACING ARTICLE VII, SUBSTANDARD BUILDINGS, IN ITS ENTIRETY; PROVIDING FOR A REPEALER; PROVIDING FOR A REPEALER, SEVERABILITY, AND A PENALTY; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, the Lewisville City Council has determined that for the health, welfare, and safety of its citizens, certain amendments to the Lewisville City Code, Chapter 4, are necessary.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:

SECTION 1. Chapter 4, Article VII is hereby repealed in its entirety, and in its place the attached Article VII is inserted, as illustrated in Exhibit “A.”

SECTION 2. REPEALER. Every ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY. If any section, sentence, clause, or phrase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, but they shall remain in effect.

SECTION 4. PENALTY. Any person, firm or corporation who violates any provisions of this ordinance shall be subject to a fine of not more than \$500.00 for each offense, unless the violation relates to fire safety, zoning or public health and sanitation in which case the fine shall not exceed \$2,000.00. Each continuing day’s violation shall constitute a separate offense.

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SECTION 5. EFFECTIVE DATE. This ordinance shall become effective immediately upon its passage and publication as required by law.

SECTION 6. EMERGENCY. It being for the public welfare that this ordinance be passed creates an emergency and public necessity, and the rule requiring this ordinance be read on three separate occasions be, and the same is hereby waived, and this ordinance shall be in full force and effect from and after its passage and approval and publication, as the law in such cases provides.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 4TH DAY OF JUNE, 2018.

APPROVED:

Rudy Durham, MAYOR

ATTEST:

Julie Worster, CITY SECRETARY

APPROVED AS TO FORM:

Lizbeth Plaster, CITY ATTORNEY

Exhibit “A”

Chapter 4, Article VII

Substandard Structures

Article VII. Substandard Structures

Sec. 4-241. Purpose.

The purpose of this article is to promote the public health, safety, and general welfare within the city by requiring the repair, removal, and/or demolition of substandard structures in order to protect property values and prevent bodily injury, death, and property damage within the city limits.

Sec. 4-242. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Appraised value means the value given to the structure by the applicable county’s tax assessor’s office.

Building Codes means the International Building Code, International Residential Code, National Electrical Code, International Plumbing Code, and International Mechanical Code, as adopted with amendments in Article II of this chapter.

Demolish means to tear down, destroy, dismantle, or otherwise abolish the existence of a structure in a lawful manner and to remove all remaining pieces, parts, rubbish, and traces of the structure.

Diligent effort means to attempt to determine the identity and address of an owner, a lien holder, or a mortgagee by performing a search of the following records:

- (a) county real property records of the county in which the structure is located;
- (b) appraisal district records of the appraisal district in which the structure is located;
- (c) records of the secretary of state;
- (d) assumed name records of the county in which the structure is located;

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- (e) tax records of the city, if any; and
- (f) city utility records.

Fire Code means the International Fire Code, as adopted with amendments in Chapter 5, Article III of this code.

Owner means any person, agent, firm or corporation, named in the real property records of the county where the structure 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, including a wall, slab, portion, foundation, or the collapsed remains of a structure or any other portion of a building, wall, or fence that was erected for the support, shelter or enclosure of persons, animals, chattel or property of any kind.

Sec. 4-243. Minimum standards and substandard declaration.

- (a) All structures within the city shall comply with the Building Codes and the Fire Code.
- (b) If the city council declares that a structure is a substandard structure under this article, such structure shall automatically be deemed to be a danger to the public health and welfare, a public nuisance, and in violation of this article.
- (c) Compliance is required with any orders issued by the city council relating to the repair, removal, or demolition of a substandard structure.

Sec. 4-244. Inspections.

Whenever it is necessary to make an inspection to enforce any of the provisions of this article, or whenever the Building Official has reasonable cause to believe that there exists in any structure or upon any premises any condition or violation of this article which makes such structure or premises unsafe, dangerous or hazardous, the Building Official may enter such structure or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Building Official by this article, provided that if such structure or premises be occupied, he shall first present proper credentials and request entry. If such structure or premises is unoccupied, he shall first make a diligent effort to locate the owner or other persons having charge or control of the structure or premises and request entry. If such entry is refused, or the owner or person in control is not identified or located, the Building Official shall have recourse to every remedy provided by law to secure entry.

Sec. 4-245. Notice of Violation.

- (a) Whenever the Building Official has inspected any structure and believes that such structure is substandard due to violations of this article, he shall prepare a written report of such inspection, giving a general description of the structure in question, a description of the land on which it is located and street address, a description of the violations of this article observed therein, and stating his opinion as to whether such structure should be ordered to be vacated, repaired, removed, or demolished, as provided for herein.
- (b) Upon completion of the written report, the Building Official shall schedule a public hearing for the city council to determine whether the structure should be declared a substandard structure and whether the structure must be vacated, repaired, removed, or demolished, or any occupants relocated.
- (c) A notice of the public hearing shall be sent to the occupant, if any, and all owners, lienholders or mortgagees. The notice of hearing shall contain:
 - (1) The name and address of the owner of the affected property, if that information can be determined;
 - (2) The names of all persons to whom notice is being served;
 - (3) The street address and legal description of the affected property;
 - (4) The date of inspection;
 - (5) The nature of the violation(s);
 - (6) The date, time and location of the hearing, which shall be established not less than ten (10) days from the date of the mailing of the notice;
 - (7) A description of the hearing;

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- (8) A statement advising that securing the required permits and physically commencing the work required to rectify the violations set forth in the Building Official's report shall be considered as an intent to comply with the Building Codes and Fire Code, and that the hearing may, at the sole discretion of the Building Official, be temporarily postponed upon the written request of the owner, lienholder or mortgagee with accompanying evidence of such permits and/or work, but should such compliance efforts halt, or not progress at a rate determined to be reasonable by the Building Official, the hearing shall be recalled and new notice sent in compliance with the requirements of this section; and

- (9) 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 city's Building Codes and Fire Code and the time it will take to reasonably perform the work.

- (d) Notice of the hearing shall be in writing and shall be delivered by personal delivery or by certified mail with return receipt requested, with a second copy sent by regular mail. Notice to the occupant of the property does not require the occupant's name. The city shall make a diligent effort to discover the identity and address of each owner, mortgagee, and lienholder before mailing or delivering notice of the hearing.

- (e) The notice of hearing shall be served to all unknown owners, lien holders, or mortgagees by posting a copy of the notice on the front door of each affected structure situated on the property or as close to the front door as practicable.

- (f) The notice of hearing shall also be filed in the Official Public Records of Real Property in the county in which the property is located.

- (g) When the notice of hearing is mailed in accordance with this section to a property owner, lienholder, mortgagee, or registered

agent and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

Sec. 4-246. Substandard structure finding.

The city council is authorized to find that a structure is a substandard structure if any of the following conditions or defects exist to the extent that the structure is dilapidated, substandard, or unfit for human habitation and constitutes a hazard to the public health, safety, and welfare:

- (a) The structure has been damaged by fire, earthquake, tornado, wind, flood, vandals or any other cause, to such an extent that the structural strength or stability thereof is subject to partially or fully collapsing.
- (b) The structure was constructed or is being maintained in violation of any provision of the city’s Building Codes, Fire 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 of the structure or the vertical or horizontal supporting members are twenty-five (25) percent or more damaged or deteriorated.
- (e) The total area of nonsupporting coverings of walls, ceilings, roofs, and floors throughout the structure is fifty (50) percent or more damaged or deteriorated.
- (f) The structure has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the purpose used.
- (g) The structure or any part thereof has been damaged by fire, water, earthquake, wind, tornado, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety and welfare.
- (h) A portion of a structure remains on a site when construction or demolition work is abandoned.
- (i) A door, aisle, passageway, stairway, fire escape or other means of egress is not of sufficient width or size, or is damaged, dilapidated, obstructed or otherwise unusable, or so arranged so as

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not to provide safe and adequate means of egress in case of fire or panic.

- (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.
- (k) The structure has been found to contain molds which are known to be harmful to humans, and the city council finds that the cost of remediation of such mold contamination would exceed fifty (50) percent of the appraised value of the structure.
- (l) Whenever the structure has been so damaged by fire, wind, tornado, earthquake or flood, or has become so dilapidated or deteriorated as to:
 - (1) become an attractive nuisance to children;
 - (2) become a harbor for vagrants, criminals or trespassers; or
 - (3) as to enable persons to resort thereto for the purpose of committing unlawful acts.
- (m) A portion of the structure or member or appurtenance thereof (e.g. porch, chimney, signs) is likely to fall, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- (n) The structure has any portion, member, appurtenance, or ornamentation on the exterior thereof which is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of safely resisting wind pressure, snow, ice, or other loads.
- (o) The electrical system is totally or partially damaged, destroyed, removed or otherwise made inoperable, unsafe or hazardous.
- (p) The plumbing system is totally or partially damaged, destroyed, removed or otherwise made inoperable or unsanitary.
- (q) The mechanical system or any portion of the mechanical system is totally or partially damaged, destroyed, removed or otherwise

made inoperable or unsafe.

Sec. 4-247. Public hearing.

- (a) To determine if a structure is substandard, there shall be a public hearing before the city council.
- (b) In the public hearing to determine if a structure is a substandard structure under this article, the owner, lienholder, or mortgagee may testify or present witnesses or written information, and 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.
- (c) If, at the public hearing, a structure is found to be a substandard structure, the city shall order the owner of the structure to, within thirty (30) days:
 - (1) secure the structure from unauthorized entry; or
 - (2) repair, remove, or demolish the structure, unless the owner, lienholder, or mortgagee establishes at the hearing that the work cannot reasonably be performed in thirty (30) days.

The city council may also order that the occupants be relocated within a reasonable time, at the owner's expense.

- (d) The order shall also specify an additional reasonable time, comprising at least thirty (30) days, for the ordered action(s) to be taken by any of the mortgagees or lienholders 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 lienholder other than a copy of the order in the event the owner fails to timely take the ordered action.
- (e) If the city council allows the owner, lienholder, or mortgagee more than thirty (30) days to repair, remove, or demolish the structure, the city council 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 city council.

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- (f) The city council shall not allow the owner, lienholder or mortgagee more than ninety (90) days to repair, remove, or demolish the structure or fully perform all work required to comply with the order unless the owner, lienholder, or mortgagee:
 - (1) submits a detailed plan and time scheduled for the work at the hearing; and
 - (2) proves at the hearing that the work cannot reasonably be completed within ninety (90) days.

If the city council allows the owner, lienholder, or mortgagee more than ninety (90) days to complete any part of the work required by the order, the city council shall require the owner, lienholder, or mortgagee to regularly submit work progress reports 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 city council to demonstrate compliance with the time schedules.

- (g) The following standards shall be followed by the city council in ordering the repair, vacation or demolition of any substandard structure:
 - (1) The structure shall be repaired in accordance with the current Building Codes and Fire Code or other current codes applicable to the type of substandard conditions requiring repair.
 - (2) If city council finds that the structure is in such a condition as to make it immediately dangerous to the health, safety and welfare of the occupants, it shall be ordered vacated and secured from unlawful entry, and the occupants relocated.

- (h) An order may not be reconsidered by the city council unless a written request for reconsideration is submitted to the city secretary within ten days of the order. The request for reconsideration will be entertained only if it includes substantial evidence, clearly documented, of changed circumstances sufficient to warrant a change of decision.

Sec. 4-248. Notice of repair, removal, or demolition.

- (a) After the hearing, the city shall promptly mail by certified mail with return receipt requested or delivery by the United States Postal Service using signature confirmation service, with a second copy by regular mail, or personally deliver a copy of the order to the owner and any lienholder or mortgagee of the structure.

The city shall make a diligent effort to determine the identity and address of any owner, lienholder, or mortgagee of the structure before mailing or delivering a copy of the order.

- (b) Within ten (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:
 - a. the street address or legal description of the property;
 - b. the date of the 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.

Sec. 4-249. Demolition, removal, and repair by the city.

- (a) If the structure 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 structure or relocate the occupants at its own expense. The city

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shall keep an itemized account of the expenses, and may thereafter assess the expenses on the property, and establish a lien for the expenses against the property as set forth in section 4-250, below.

(b) Whenever the required repair or demolition is not commenced within the time period allotted by an order issued under this article:

(1) The Building Official shall cause the structure described in such order to be vacated by posting at each entrance thereto a notice reading:

SUBSTANDARD BUILDING

DO NOT OCCUPY

It is a misdemeanor to occupy this structure, or to remove or deface this notice.

Building Official, Department of Community Development
for City of Lewisville

(2) No person shall occupy any structure which has been posted as specified in this section. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the city council have been completed and a certificate of occupancy issued pursuant to the provisions of this code.

(c) If, after the expiration of the time allotted under an order issued under this article, the owner, lienholder or mortgagee of a structure which is a residential building with ten (10) or fewer dwelling units fails to comply with the order, the city may do or cause to be done the repairs necessary to bring the structure into compliance with this article. The repairs may not improve the structure to the extent that the structure exceeds the minimum standards outlined in the Building Codes and Fire Code, and expenses may be assessed and a lien established against the property as provided in section 4-250. Notwithstanding the requirements of this section, 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 article. Such judicial determination may include any available remedy for the abatement of such a nuisance.

- (d) If work under this section is done at the expense of the city, then said expense shall be assessed against any salvage resulting from the demolition of the structure and against the lot, tract, or parcel of land, or the premises upon which such expense was incurred, and the remainder shall be considered a lien against the property as described in Section 4-250.

Sec. 4-250. Assessment of Lien.

- (a) In the event the owner fails or refuses to pay the expenses assessed against the property under Section 4-249, above, within twenty (20) days after the abatement work is completed, a lien may be obtained against the property on which the structure was located, unless the property in question is a homestead as protected by the Texas Constitution, and subject to any other restrictions in Chapter 214 of the Texas Local Government Code. The lien arises and attaches to the property when 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 notice shall contain:

- (1) The name and address of the owner, if that information can be determined with a diligent effort;
- (2) A legal description of the property on which the structure was located;
- (3) The amount of expenses incurred by the city;
- (4) The balance due; and
- (5) The date on which said work was done or improvements made.

- (b) A lien placed on a property under this section shall be a privileged lien subordinate only to tax liens; except that a lien placed on a property for expenses arising from repair work done under Section 4-249(d), above, shall be inferior to any previously recorded bona fide mortgage lien attached to the property to which the city’s lien attaches if the mortgage lien was filed for record in the office of

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the county clerk of the county in which the property is located before the date the repair is begun by the city, but shall be superior to all other previously recorded judgment liens.

- (c) The amount of a lien under this section shall bear interest at the rate of ten (10) percent per annum from the date such statement was filed.
- (d) For any expenditure and interest assessed under this section and placed as a lien on a property, suit may be instituted and recovered, and foreclosure of said lien may be made in the name of the city, except when prohibited by Chapter 214 of the Texas Local Government Code; 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.
- (e) 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.

Sec. 4-251. Interference with repair or demolition work prohibited.

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of this city or with any person who owns or holds any estate or interest in any structure which has been ordered repaired, vacated or demolished under the provisions of this article; or with any person to whom such structure has been lawfully sold pursuant to the provisions of this code, whenever such officer, employee, contractor or authorized representative of this city, person having an interest or estate in such structure, or purchaser is engaged in the work of repairing, vacating and repairing, removing or demolishing such structure pursuant to the provisions of this article, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this article.

Sec. 4-252. Appeal.

In accordance with Section 214.0012 of the Texas Local Government Code, any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order issued under this article may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed by an owner,

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lienholder, or mortgagee within thirty (30) calendar days after the respective dates a copy of the final decision of the municipality is personally delivered to them, mailed to them by first class mail with certified return receipt requested, or delivered to them by the United States Postal Service using signature confirmation service, or such decision shall become final as to each of them upon the expiration of each such thirty (30) calendar day period.

Sec. 4-253. Emergency demolitions.

- (a) Where it appears to the Building Official or fire marshal that, due to violations of the Building Codes or Fire Code threatening the structural integrity of a structure, there is clear and imminent danger to the life, safety or property of any person unless the structure is immediately vacated and demolished, either of these officials shall, in writing, declare its immediate vacation and demolition. The written concurrence of the Director of Development Services shall be required prior to execution of the demolition order. Such concurrence shall include a determination that under the circumstances no other abatement procedure is reasonably available except demolition. Emergency demolition under this section shall be the remedy of last resort, and shall be utilized only when the notice and hearing procedure outlined in this article will not be adequate to prevent the clear and imminent danger described herein.

- (b) Notice that the structure has been determined to be a clear and imminent danger to life and safety shall be issued:
 - (1) by a placard affixed to the property or by stake driven into the ground at the property where the structure is located. It shall be unlawful for any person to remove the posted notice without written permission of the Building Official and no unauthorized person shall enter the structure for any purpose; and

 - (2) by personal delivery to the owner of the structure, as defined herein, only if the owner resides within the city. If the owner cannot be located for personal delivery, a copy of the notice may be posted on the front door of the main

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structure at the owner’s address.

- (c) The emergency demolition shall be executed not later than ninety-six (96) hours after the last required written concurrence is made.

- (d) After execution of the emergency demolition, the official who declared the immediate vacation and demolition shall:
 - (1) Provide notice to the owners, lienholders, and mortgagees of the structure; and

 - (2) Advise the city council at its next regularly scheduled meeting.

- (e) Expenses for the repair, removal, or demolition of the structure shall be at the expense of the city. Such expenses shall be assessed on the property on which the structure was located and a lien placed thereupon as outlined in Section 4-250, above.