

ORDINANCE 2023-09

UNSAFE OR SUBSTANDARD BUILDINGS OR STRUCTURES

AN ORDINANCE OF THE CITY OF THORNDALE, TEXAS, ADOPTING SUBSTANDARD STRUCTURE REGULATIONS; FORMALLY ADOPTING CHAPTER 214 OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING FOR ENFORCEMENT, INCLUDING FINES AND CRIMINAL PENALTIES NOT TO EXCEED \$500; A REPEALER; SEVERABILITY; CODE CONFLICT RESOLUTION; EFFECTIVE DATE; PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Thorndale, Texas (“City”), seeks to promote safe and orderly construction activities within its corporate limits; and

WHEREAS, the City Council seeks to deter poor craftsmanship and substandard work by contractors; and

WHEREAS, the City Council is authorized to regulate construction and enforce its regulations pursuant to the City's general police powers and Texas Local Government Code Chapters 51, 54 and 217; and

WHEREAS, the City Council had previously adopted Ordinance No. 2006-01, and wishes to adopt a more thorough regulation regarding such construction activities; and

WHEREAS, pursuant to Texas Local Government Code Chapter 214 the City Council is expressly authorized to establish procedures to adopt building regulations, establish local amendments to standard codes, and provide for the administration and enforcement of the codes; and

WHEREAS, the City Council finds that the municipal regulation of the buildings used as residences is necessary for the protection of the public health, safety, and general welfare; and

WHEREAS, the City Council finds the enclosed codes and rules in this ordinance (“Ordinance”) to be reasonable and necessary.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL:

SECTION 1. All of the above recitals are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance.

SECTION 2. Severance. Should any section, paragraph, sentence, clause, phrase, or word of this ordinance be declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby.

SECTION 3. Code Adoption, Conflicts, Repealer. Chapter 214 of the Texas Local Government Code is hereby adopted by the City and made a part of this Ordinance. In the event of any conflict or inconsistency between the terms and provisions of this Ordinance and Chapter 214, the terms and provisions of Chapter 214 shall govern and control. Any provision of any previous City building ordinance found inconsistent with the terms of this Ordinance or Chapter 214 of the Texas Local Government Code is hereby repealed.

SECTION 4. Definitions. As used in this Ordinance, the following terms shall have the meanings given below:

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

Building Official. A person employed, appointed, or designated by the City Administrator for purpose of making inspections, sending notices, and otherwise enforcing the provisions of this Ordinance. Such designation can occur as an interim designation if such designation is deemed immediately necessary by the City Administrator.

City Council. The Mayor of the City of Thorndale and the City of Thorndale City Council together.

Minimum Housing Standard. Those standards found in this Ordinance, the City's adopted standard building, electrical, plumbing, gas, mechanical, building and fire prevention codes, City's previously enacted Ordinance No. 2006-01, and any other housing and structure regulations adopted under Chapter 214 of the Texas Local Government Code.

Owner. Any person, agent, firm, corporation, or other entity named in the real property records of the county as owning the property.

Responsible Parties (or Party). The owner, occupant, or person in custody or control of the building or structure, and any mortgagee or lienholder.

Structure. Anything constructed or erected which 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.

SECTION 5. Conditions Constituting a Substandard Structure.

- (a) The term "Substandard" when referring to a structure or building shall be used interchangeably with "dangerous" or "unsafe."

- (b) Any structure or building located within the incorporated limits of the City shall be deemed a Substandard Structure and constitute a hazard to the health, safety, and welfare of the citizens if it has any of the following defects, including being:
- (1) In such a state or condition of repair or disrepair that all or any of the following conditions exist:
 - (A) Walls or other vertical structural members list, lean, or buckle;
 - (B) Damage or deterioration exists to the extent that the building or structure is unsafe;
 - (C) Loads on floors or roofs are improperly distributed or the floors or roofs are of insufficient strength to be reasonably safe for the purposes used;
 - (D) Damage by fire, wind, or other cause has rendered the building or structure dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the City;
 - (E) The building or structure is so dilapidated, decayed, unsafe, unsanitary, or otherwise lacking in the amenities essential to decent living or use that the same is unfit for human habitation or occupancy, or is likely to cause sickness, disease, or injury or otherwise to constitute a detriment to the health, morals, safety, or general welfare of those persons assembled, working or living therein or is a hazard to the public health, safety and welfare;
 - (F) Light, air, or sanitation facilities are inadequate to protect the health, morals, safety, or general welfare of persons who assemble, work, or live therein;
 - (G) Stairways, fire escapes, and other facilities of egress in case of fire or panic are inadequate;
 - (H) Parts or appendages of the building or structure are so attached that they are likely to fall and injure persons or property; or
 - (I) The building or structure does not meet the Minimum Housing Standards as set forth herein.
 - (2) Dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare of the City's residents;
 - (3) Unoccupied by its owners, lessees, or other invitees, regardless of its structural condition, and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited person as a place of harborage or could be entered or used by children; or
 - (4) Boarded up, fenced, or otherwise secured in any manner if:
 - (A) The building or structure constitutes a danger to the public even though secured from entry; or
 - (B) The means used to secure the building or structure are inadequate to prevent unauthorized entry or use of the building to the extent 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;

SECTION 6. Substandard Structures Violation and Nuisance Status.

- (a) Any person or entity maintaining or permitting the existence of any Substandard Structure, or any person or entity permitting the same to remain in such condition, shall be guilty of a misdemeanor and subject to violations provisions set out in subsection 11(d) and any other relevant provision herein.
- (b) All Substandard Structures are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures provided in this Ordinance and to the standards enumerated in the current building code adopted by the City, as long as no abatement shall occur within thirty (30) days of any appeal period.
- (c) The Building Official shall enforce the provisions of this Ordinance.

SECTION 7. Inspections and Duties of the Building Official.

- (a) The Building Official or designee of the City Administrator shall inspect, or cause to be inspected, every building, or portion thereof, reported or visually identified to be unsafe. If property is occupied, the Building Official will present credentials to the occupant and request entry. If entry is refused, the Building Official shall have recourse to every remedy provided by law to secure entry, including securing a warrant from the municipal judge or any other magistrate with authority.
- (b) If such building, or any portion thereof, is determined to be a Substandard Structure by the Building Official, the Building Official shall give the responsible parties notice in accordance with the requirements set forth in Sections 8 and 9 of this Ordinance. The Building Official shall further:
 - (1) Inspect or cause to be inspected, when necessary, any building or structure within the incorporated limits of the City, including public buildings, schools, halls, churches, theaters, hotels, tenements, or apartments, multi-family residences, single-family residences, garages, warehouses, and other commercial and industrial structures of any nature whatsoever for the purpose of determining whether any conditions exist which render such places Substandard Structures;
 - (2) Inspect any building or structure about which complaints have been filed by any person to the effect that a building or structure is or may be existing in violation of this Ordinance;
 - (3) Report to the City Council any noncompliance with the minimum standards set forth in this Ordinance. The City Building Official shall obtain from the City Council a hearing date for a public hearing in front of the City Council on any structure believed to be a Substandard Structure and shall provide the City Council and/or any other applicable appeals entity with copies of

the written notice to persons with interests in the property as provided for in Section 8;

- (4) Appear at all hearings conducted by the City Council and/or any other applicable appeals entity and testify as to the condition of Substandard Structures within the City;
- (5) Place a notice on all Substandard Structures reading as follows: "This building has been found to be a Substandard Structure by the City of Thorndale Building Official. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given to the owner(s), occupant(s), and person(s) with interests in the property as shown by the records of the City Secretary and the Tax Appraisal District. It is unlawful to remove this notice until such notice is complied with as determined by the Building Official."; and
- (6) Perform the other requirements with respect to notification of public hearings as are set forth more specifically in this Ordinance.

SECTION 8. Notice to Repair Required.

- (a) Should the Building Official determine that any building or structure within the incorporated limits of the City is a Substandard Structure, they shall cause written notification to be sent, by certified mail, to the owner and all other persons having an interest in the building after a diligent effort to discover each owner, mortgagee, and lienholder, served as set out in this Ordinance. Such notice shall contain:
 - (1) A description of the building or structure deemed unsafe and its location.
 - (2) A statement of the particulars which make the building or structure a Substandard Structure.
 - (3) Notice of the date and time of a public hearing before the City Council to determine whether the building complies with the standards set out in this Ordinance.
 - (4) A statement that the owner, lienholder, mortgagee, or persons with a legal interest in the building will be required to submit at the hearing proof of the scope of any work that may be required to comply with this Ordinance and the amount of time it will take to reasonably perform the work.
- (b) The requirements to make a diligent effort, to use its best efforts, or to make a reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee, are satisfied if the municipality searches the following records:
 - (1) County real property records of the county in which the building is located;
 - (2) Appraisal district records of the appraisal district in which the building is located;
 - (3) Records of the secretary of state;
 - (4) Assumed name records of the county in which the building is located;

- (5) Tax records of the City; and
- (6) Utility records of the City.

SECTION 9. Sufficiency of Notice. A notice to repair and a notice of a public hearing pursuant to this Ordinance shall be deemed properly served upon the responsible parties if a copy thereof is:

- (a) Served upon them personally;
- (b) Sent by registered or certified mail, return receipt requested, to the last known address of such person(s) as shown on the records of the City;
- (c) Published at least twice within a 10-day period in a newspaper of general circulation, in the county in which the building is located if personal service cannot be obtained and the owner's post office address is unknown; or
- (d) Posted on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.
- (e) Notwithstanding notice sufficiency outlined in this Section 9, if the above methods of service do not yield a response, additional reasonable efforts will be undertaken if they are determined by the City Council or any City staff to have a higher likelihood of response than such methods already undertaken.

SECTION 10. Duties of the City Council. The City Council shall:

- (a) Schedule and hold a hearing and hear testimony from the Building Official, the owner, and other persons having an interest in the building or structure, and any person desiring to present factual evidence relevant to the building. Such testimony shall relate to the determination of the question of whether the building or structure in question is a Substandard Structure and the scope of any work that may be required to comply with this Ordinance and the amount of time it will take to reasonably perform the work. The "Responsible Party" shall have the burden of proof to demonstrate the scope of any work that may be required to comply with this Ordinance and the time it will take to reasonably perform the work.
- (b) Upon conclusion of the hearing, the City Council shall determine whether the building or structure in question is a Substandard Structure. Upon a determination that the building or structure in question constitutes a Substandard Structure, the City Council shall issue an order:
 - (1) Containing an identification of the building and the property on which it is located;
 - (2) Making written findings of the violations of the minimum standards that are present at the building;
 - (3) Requiring the owner and persons having an interest in the building to repair, vacate, or demolish the building within thirty (30) days from the issuance of such order, unless the "Responsible Party" establishes at the hearing that the work cannot reasonably be performed within thirty (30)

- days, in which instance the City Council shall specify a reasonable time for the completion of the work; and
- (4) Containing a statement that the City will vacate, secure, remove, or demolish the Substandard Structure and relocate any occupants of the building or structure if the ordered action is not taken within the time specified by the City Council.
- (c) If repair or demolition is ordered, the City Council shall send a copy of the order by certified mail to the owner and all persons having an interest in the property, including all identifiable mortgagees and lienholders within a reasonable period of time after the hearing. 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 municipality in which the building is located 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 (may be a copy of the order); and
 - (D) If not provided in the notice, instructions stating where a complete copy of the order may be obtained; and
 - (3) If City determines that above methods of contact are unlikely to reach all identifiable mortgagees and lienholders, undertake any additional reasonable efforts that the City Council or City staff determine to have a higher likelihood to reach intended recipients.
- (d) If the City Council allows the “Responsible Party” more than thirty (30) days to repair, remove, or demolish the building, the City Council in its written order shall establish specific time schedules for the commencement and performance of the work and shall require the “Responsible Party” to secure the property in a reasonable manner from unauthorized entry while the work is being performed. The securing of the property shall be in a manner found to be acceptable by the Building Official.
- (e) The City Council may not allow the “Responsible Party” more than ninety (90) days to repair, remove, or demolish the building or fully perform all work required to comply with the written order unless the “Responsible Party”:
- (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.
- (f) If the City Council allows the “Responsible Party” more than ninety (90) days to complete any part of the work required to repair, remove, or demolish the

building, the City Council shall require the “Responsible Party” to regularly submit progress reports to the City Council to demonstrate that the “Responsible Party” has complied with the time schedules established for commencement and performance of the work. The written order may require that the “Responsible Party” appear before the Building Official to demonstrate compliance with the time schedules.

- (g) In the event the “Responsible Party” fails to comply with the order within the time specified therein, the City may cause any occupants of the Substandard Structure to be relocated, and may cause the Substandard Structure to be secured, removed, or demolished at the City’s expense. If the City causes such securing, removal, or demolition, the City shall assess the expenses on, and, unless it is a homestead as protected by the Texas Constitution, the City shall have a lien against, the property on which the Substandard Structure stands or is attached, following and according to the procedures below in subsections 12(c) *et seq.*
- (h) In addition to the authority set forth in subsections above, after the expiration of the time allotted in the order for the repair, removal, or demolition of a Substandard Structure, the City may repair the building at its expense and assess the expenses on the land on which the Substandard Structure stands or is attached. The repairs contemplated by this section may only be accomplished to the extent necessary to bring the building into compliance with the minimum standards established by this Ordinance, and to the extent such repairs do not exceed minimum housing standards. The City shall follow the procedures set forth in subsection 12(c) *et seq.* for filing a lien on the property on which the Substandard Structure is located or attached.

SECTION 11. Additional Criminal Violations.

- (a) The owner, occupant, or lessee in possession of any Substandard Structure commits an offense if they fail to comply with any notice or order issued under the authority of this Ordinance to repair, vacate, or demolish said Substandard Structure.
- (b) A person commits an offense if they remove or otherwise interfere with the notice of a Substandard Structure as provided for in Section 8 of this Ordinance.
- (c) The violation of any provision of this Ordinance shall be unlawful and a class c misdemeanor offense punishable by a fine not to exceed five hundred dollars (\$500.00). Each day a violation of this Ordinance continues shall constitute a separate offense.

SECTION 12. Assessment of Expenses and Civil Penalties.

- (a) If the time allotted for the repair, removal, or demolition of a building under this Ordinance has expired, then the City Council may, in addition to the authority granted under Chapter 214 of the Texas Local Government Code, and the foregoing sections of this Ordinance, do any or all of the following:

- (1) Order the repair of the structure at the City's expense and assess the expenses on the land on which the structure stands or to which it is attached;
 - (2) Assess a civil penalty of up to five hundred dollars (\$500.00) per day against the responsible party for failure to repair, remove, or demolish the building, unless the property is the owner's lawful homestead, in which case the civil penalty shall not exceed ten dollars (\$10.00) per day for each violation. In order to assess a penalty under this section, the City must prove at an administrative hearing on the violation of an Ordinance the property owner was notified of the requirements of this Ordinance and the owner's need to comply with the requirements; and after notification the property owner committed an act in violation of this Ordinance or failed to take an action necessary for compliance with this Ordinance; or
 - (3) Authorize the Building Official to invite at least two (2) or more building contractors to make estimates pertaining to the needed repair, removal, or demolition of a building. The Building Official shall cause to be made an assessment of expenses, and may also recommend civil penalties, based on such estimates. The Building Official shall endeavor to minimize the expenses of any building repairs, removal, or demolitions order pursuant to this Ordinance.
 - (4) The City may repair a building or structure under this subsection (a) only if it is likely to endanger persons or property and only to the extent necessary to bring the building into compliance with the minimum standards of the City.
- (b) The City shall impose a lien against the land on which the structure stands or stood, unless it is a homestead as protected by the Texas Constitution, to secure the payment of the repair, removal, securing, or demolition expenses or the civil penalty. Promptly after the imposition of the lien, the City shall file for record, in recordable form in the office of the county clerk, a written notice of the imposition of the lien. The notice must contain the name and address of the owner of the Substandard Structure (if available to be determined by diligent effort), a legal description of the real property on which the Substandard Structure stands, stood, is or was attached, the amount of expenses and/or civil penalty incurred by the City, and the balance due. A copy of the notice shall be either served upon the responsible parties personally or sent by registered or certified mail, return receipt requested, to the last known address of such person(s) as shown on the records of the City.
- (c) The City's lien to secure the payment of a civil penalty or the costs of repairs, removal, or demolition is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the City's lien attaches if the mortgage lien was filed for record in the office of the county clerk before the date the civil penalty is assessed or the repair, removal, or demolition is begun by the City. The City's lien is superior to all other previously recorded judgment liens. The lien is extinguished if the responsible parties of the Substandard Structure fully reimburse the City for its expenses, and pay all civil penalties and other assessment imposed under subsection 12(e).

- (d) Any civil penalty or other assessment imposed under this section accrues interest at the rate of ten percent (10%) a year from the date of the assessment until paid in full. The City may further file with the district clerk a copy of an ordinance assessing a civil penalty pursuant to this Ordinance.
- (e) In any judicial proceeding regarding enforcement of the City's rights under this section, the prevailing party is entitled to recover reasonable attorney's fees as otherwise provided by statute.
- (f) A lien acquired under this section by the City for repair expenses may not be foreclosed if the property on which the repairs were made is occupied as a residential homestead by a person 65 years of age or older.

SECTION 13. Headings. Captions, titles to sections, and paragraph headings used herein are for convenience of reference and shall not be deemed to limit or alter any provision hereof.

SECTION 14. Finding and Determination. It is officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law.

PASSED AND APPROVED this, 9th day of August, 2023, by a vote of 4 (*ayes*) to _____ (*nays*) to _____ (*abstentions*) of the City Council of Thorndale, Texas.

CITY OF THORNDALE, TEXAS



George Galbreath Jr., Mayor

ATTEST:



Stacy Irwin, City Secretary

