

**CITY OF TOOL
HENDERSON COUNTY, TEXAS**

ORDINANCE NO. 2006-1116

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF TOOL BY AMENDING ARTICLE 3.200, ENTITLED, "UNSAFE BUILDINGS," REGULATING THE ELIMINATION OR REPAIR OF DANGEROUS BUILDINGS WITHIN THE CORPORATE CITY LIMITS OF THE CITY OF TOOL; PROVIDING A REPEALING CLAUSE THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING DEFINITIONS; ESTABLISHING PROCEDURES FOR HEARINGS AND OFFICIAL ORDERS THEREOF; PROVIDING AUTHORIZATION OF CITY ACTION AND RELATED COST REIMBURSEMENT; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND NAMING AN EFFECTIVE DATE.

WHEREAS, the standards to be applied to substandard structures, in order to protect the integrity of neighborhoods and the property values of homeowners who have invested money, time, and effort in maintaining their property in a safe, attractive, and healthful manner, should be strengthened and clarified; and

WHEREAS, the City Council desires to protect the public health, safety and welfare of its citizens by establishing procedures for requiring the elimination or repair of dangerous buildings and to provide remedies for the failure to do so, as authorized pursuant to Texas Local Government Code, Chapters 214 and 342.

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

I.

That the existing Article 3.200 of the City of Tool Code of Ordinances is hereby repealed in its entirety, and a new Article 3.200 of Chapter 3, entitled "Elimination or Repair of Dangerous Buildings," is amended and replaced in its entirety as follows:

Article 3.200. Elimination or Repair of Dangerous Buildings

- Sec. 3.201. Purpose**
- Sec. 3.202. Definitions**
- Sec. 3.203. Dangerous Buildings Defined**
- Sec. 3.204. Dangerous Buildings Declared Nuisances**

- Sec. 3.205. Duties of Building Inspector**
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- Sec. 3.208. Findings; order**
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- Sec. 3.213. Reconvened hearings**
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- Sec. 3.216. Release of Lien**
- Sec. 3.217. Violations for disregarding or removing notices or orders**

Sec. 3.201. Purpose

The maintenance of dangerous buildings constitutes a threat to the public health, safety, and welfare. This Ordinance is adopted to establish a reasonable and uniform procedure for eliminating or repairing of dangerous buildings so as to protect the general welfare of the public.

Sec. 3.202. Definitions

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

Building means any structure used or intended for supporting or sheltering any use or occupancy.

Dangerous building means a substandard, damaged or deteriorated building or improvement that has one or more of the defects in section 3.203.

Habitation means the occupation of a building for sleeping or other living purposes.

Occupant means a resident of a building or any person having lawful possession of a building or any portion thereof.

Occupancy means the purpose for which a building, or part thereof, is used or intended to be used.

Owner means a person claiming, or in who is vested, or in possession of the ownership, dominion or title to real or personal property, including but not limited to:

- (1) The holder of fee simple title;
- (2) The holder of a life estate;
- (3) The holder of a leasehold estate, unless the context differentiates between owner and tenant or resident, in which case "owner" shall include lessees with a lease term of five or more years;
- (4) The owner's attorney-in-fact;
- (5) The buyer in a contract for deed; or
- (6) A mortgage holder, receiver, executor, or trustee in control of real property.

Sanitary means any condition of good order and cleanliness that precludes the probability of disease transmission.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Weatherproof means able to withstand exposure to weather without damage.

Sec. 3.203. Dangerous Buildings Defined

(a) All buildings and structures, regardless of their date of construction, that have one or more of the following defects are deemed to be dilapidated, substandard, or unfit for human habitation and a danger to the public health, safety and welfare, and are therefore declared to be dangerous buildings:

- (1) Walls, floors, or roofs that are not structurally sound;
- (2) Roofs or walls that are not weatherproof;

- (3) Light, air, or sanitation facilities that are inadequate to protect the life, safety, or general health and welfare of the structure's occupants or inhabitants of the city;
 - (4) Unsafe or defective electrical wiring, devices, or equipment, or unsafe or defective gas piping, devices, or equipment;
 - (5) Holes in the roof, walls, or floor that would allow insects, rodents or other pests to gain access to the building for harborage to the extent constituting a present hazard to health or safety;
 - (6) Dilapidated, decayed, unsafe, unsanitary, or substandard conditions that are unfit for human habitation or are likely to cause sickness or disease;
 - (7) Unoccupied by their owners, lessees, or other legal invitees, and left 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;
 - (8) Inadequate facilities for ingress and egress in case of fire or panic or insufficient stairways or elevators; or
 - (9) Buildings and structures, which because of their condition are unsafe, unsanitary, or dangerous to the health, safety or general welfare of the people of this city.
- (b) A building that is boarded up, fenced or otherwise secured in any manner is nevertheless declared to be a dangerous building under the foregoing criteria if:
- (1) The building constitutes a danger to the public even though secured from entry; or
 - (2) It is found that the means used to secure the building are inadequate to prevent unauthorized entry or use of the building.

Sec. 3.204. Dangerous Buildings Declared Nuisances

All dangerous buildings and structures within the terms of Section 3.203 of this Article are hereby declared to be public nuisance and shall be vacated, secured, repaired, removed or demolished as hereinafter provided.

Sec. 3.205. Duties of Building Inspector

The building inspector shall:

(a) Inspect any building or structure that may be in violation of the terms of Section 2.03 of this Article, whether based upon public complaint or determination by city employee;

(b) Report to city council the existence of buildings or structures discovered upon inspection to be dangerous so that hearings may be scheduled pursuant to this ordinance; and

(c) Appear at hearings conducted pursuant to this ordinance and testify about conditions existing in the dangerous building.

Sec. 3.206. Notice of Hearing

(a) If, upon inspection, a building is determined to be a dangerous building, then the building inspector shall serve written notice on all Owners of the property either by personal service or by certified mail, return receipt requested. This notice shall also set forth:

(1) The address or other adequate description of the property;

(2) The specific conditions that render the building a dangerous building;

(3) A statement that the City may order vacation, repair, or demolition of the dangerous building after a hearing;

(4) The day, time, and location of the hearing;

(5) That all persons having an interest in the property may appear in person, may be represented by an attorney, and may present testimony and cross-examine all witnesses; and

(6) 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 this division and the time it will take to reasonably perform the work.

(b) If the address of any person having an interest in the property is unknown, or if notice to any person having interest in the property is returned undelivered, a copy of such notice shall be posted in a conspicuous place on the property on which the building is located. The posting of such notice shall constitute notice to any person having an interest in the property who does not receive personal notice or notice by mail.

(c) The city may also file notice of the hearing in the real property records of the county in which the property is located. The notice must contain the name and address of the owner of the affected property if that information can be determined, a legal description of the affected property, and a description of the hearing. The filing of the notice is binding on subsequent grantees, lienholders, 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.

Sec. 3.207. Hearings

At hearing, all persons having an interest in the property may make their appearance and be heard. The Building Official or the designee of the Building Official shall present evidence in support of the allegation that the building is dangerous within the definition of Section 3.203 of this Article. Any evidence of probative value may be received and considered by the city Council. The Mayor, or in his absence, the Mayor pro tem, shall preside, and shall determine all questions of order, procedure, and as to the admission of evidence. The hearing may be adjourned from day to day, or continued upon a majority vote of the Council. The following rules shall apply to hearings:

- (a) All parties shall have the right to representation by an attorney, though an attorney is not required.
- (b) Each party may present witnesses-in the party's own behalf.
- (c) Each party has the right to cross-examine all witnesses.
- (d) Only evidence presented at the hearing may be considered in rendering the order.
- (e) The owner has 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.

Sec. 3.208. Findings; order

After the completion of the presentation of testimony, if the Council, by majority vote, shall find upon the evidence presented that the building is a dangerous building as defined by Section 3.203, the Council may require that:

- (a) The building be vacated if it is occupied and the city council finds that the building is in a condition that makes it dangerous to the health, safety or welfare of its occupants;

- (b) The building be lawfully repaired or renovated, if it can reasonably be brought into compliance;
- (c) The building be lawfully secured and be kept secured, if the building is unoccupied and the condition of the building is such that it may be brought into compliance by securing it from unauthorized entry; or
- (d) The building be demolished if it cannot reasonably be repaired or renovated, or if the requirement that the building be repaired or secured is not met within the time periods set forth in Section 3.209 of this Article.

Sec. 3.209. Time allowed for action

- (a) If the City council determines that a building is a dangerous building, the order shall state the date by which the action ordered must be completed, and that the city may cause the building to be secured, vacated, repaired, or demolished if the persons having an interest in the property do not comply with the order.
- (b) The order shall require the owner of a dangerous building to comply with the order within 30 days; provided that, if the owner establishes at the hearing that the work cannot reasonably be performed within 30 days, and the City Council determines from the record that a greater period of time is warranted, the City Council may provide for a specified period greater than 30 days as provided below.
- (c) If the City Council allows the owner more than 30 days to comply with the order, the City Council shall establish specific time schedules for the commencement and performance of work and shall require the owner to secure the property in a reasonable manner from unauthorized entry while the work is being performed.
- (d) The City Council may not allow the owner more than 90 days to perform fully all work required to comply with the order unless the owner:
 - (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 90 days because of the scope and complexity of the work.
- (e) If the City Council allows the owner more than 90 days to comply with the order, the City Council shall require the owner to submit regular progress reports to the City to demonstrate that the owner has complied with time schedules established for the commencement and performance of the work. The order may require that the owner appear before the City Council to demonstrate compliance specified time schedules.

Sec. 3.210. Placard posting

- (a) If the City council finds that the building is a dangerous building, the City council may order that the city place the following notice in a conspicuous place on such building, sufficient to be visible from the nearest public street. The notice shall include on its faced the date and time of posting:

THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING BY THE CITY OF TOOL. LAW PROHIBITS OCCUPANCY OF THIS BUILDING. OCCUPANCY IS DANGEROUS TO THE HEALTH, SAFETY AND WELFARE OF ITS OCCUPANTS. ALL PERSONS MUST VACATE THIS BUILDING NOT LATER THAN 48 HOURS AFTER THE TIME OF POSTING AND SHALL NOT REENTER THE SAME UNTIL THE CITY FINDS THAT THE BUILDING HAS BEEN REPAIRED SO AS TO BE IN COMPLIANCE WITH THE ORDINANCES OF THE CITY OF TOOL. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED.

- (b) If the City Council finds that, in addition to requiring vacation as described above, the building is in such condition that it is dangerous for anyone to enter other than to carry out work in compliance with the order, the City Council may order that the city place the following notice in a conspicuous place on the building sufficient to be visible from the nearest public street:

THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING BY THE CITY OF TOOL. NO PERSON SHALL ENTER THIS BUILDING EXCEPT INSPECTORS FOR THE CITY OF TOOL AND PERSONS AUTHORIZED BY THE OWNER WHO ENTER SOLELY FOR THE PURPOSE OF CORRECTING THE HAZARDOUS CONDITIONS THEREIN. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED.

Sec. 3.211. Notice of order

- (a) After the hearing, the city shall promptly mail a copy of the order by certified mail, return receipt requested, to each Owner of the building. If the address of an Owner as shown on the deed records is unknown, or if the order is returned undelivered, a copy of the order shall be posted in a conspicuous place on the building subject to the order. The posting of the order shall constitute notice to any person having an interest in the property who does not receive personal service.

- (b) The city shall also promptly:

- (1) File a copy of the order in the office of the city secretary;

- (2) File a copy of the order in the deed records of Henderson County; and
- (3) Publish in a newspaper of general circulation 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. 3.212. Action by city authorized

If the persons having an interest in the property fail to comply with the order of the City Council within the time specified in the order for compliance, the City Council may order the building inspector to cause the building to be vacated, repaired, secured, or demolished pursuant to the order.

Sec. 3.213. Reconvened hearings

In any instance in which an order requiring that a building be secured has been issued pursuant to Section 2.07(c) of this Article, the City Council's case file shall remain active for three years from the date of the order even if the owner complies with the order by securing the building. If the building inspector receives evidence that the building has not remained secured and is in violation of Section 3.203(a)(7), the building, inspector may request the City Council to reconvene the hearing. Upon notice of the unsecured condition of the building to the Owner or Owners of the property, the City Council shall reconvene the hearing. If the City Council finds that the building remains a dangerous building notwithstanding the Owner's efforts to secure it, the City Council may issue a revised order that the building be demolished. An order of the City Council ordering the securing of the building shall not be released until the owner requests a release, and the building inspector issues a certificate of compliance certifying that the building is in full compliance with applicable minimum standards for the contemplated use of the building.

Sec. 3.214. Judicial review

Unless a judicial review petition is timely filed as provided by under chapter 214 of the Texas Local Government Code, the orders of the City Council shall in all things be final and binding.

Sec. 3.215. Expenses; lien

(a) The building inspector shall certify all expenses and costs of vacating, securing, repairing, or demolishing a building, incurred by the city or by persons doing so under contract with the city, as a charge that shall be assessed the owners thereof, and shall constitute a lien on the land, unless it is a homestead as protected by the Texas Constitution, on which the building is or was situated, privileged over all other liens to the maximum extent allowed by law. Upon the filing of the lien statement with the county clerk, the charges shall bear interest at the rate of ten percent per annum until paid.

(b) If the city has executed a contract for demolition of a building pursuant to a valid order issued under this ordinance and the building is subsequently repaired or demolished by persons other than the city or its contractors prior to the completion of the work by the city or its contractor, all costs for cancellation of the demolition contract shall be certified as a charge that shall be assessed as provided in Subsection (a) of this Section.

Sec. 3.216. Release of Lien and Notice of Compliance

(a) Upon full payment of the charges assessed against any property, the lien is extinguished and the building inspector is hereby authorized to execute, for and on behalf of the city, a written release of lien, The City Attorney shall approve the form of the release.

(b) Upon compliance with an order of the City Council hereunder, the building inspector shall be and is hereby authorized to execute a written notice setting forth the date the notice of compliance is issued and the date the city found the building to be secured, repaired, demolished, or otherwise in compliance with the order. If the building has not been demolished, the notice may state whether the building is in such condition that it may be occupied. An order to secure a building will be released only upon issuance of a certificate of compliance by the building inspector.

Sec. 3.217. Violations; penalty for disregarding or removing notices or orders

(a) It shall be unlawful for any person subject to an order issued under this ordinance, or anyone having an interest in the building as shown by the real property records of the county in which the building is located and under a legal duty to take the ordered actions with respect to the building, to fail to comply with any order issued pursuant to this ordinance. Violations of this subsection shall be punishable as a Class C Misdemeanor.

(b) It shall be unlawful for any person to remove any notice posted under the provisions of this ordinance. Violations of this subsection shall be punishable as a Class C Misdemeanor.

II.
Ordinance Repeals

That all ordinances in conflict with Article 3.200, as adopted in this Ordinance, including Ordinance No. 0829-02 Amendment Tool Code of Ordinance, Article 3.200 Unsafe Buildings, and the amendment to Section 3.205(b), are hereby repealed.

III.
Savings

That nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in this ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

IV.
Severability

That if any provision of this ordinance, or the application of same to any person or set of circumstances, shall for any reason be held unconstitutional, void, or invalid, such invalidity shall not affect the validity of the remaining provisions of this ordinance or their application to other persons or sets of circumstances and; to this end, all provisions of this ordinance are declared to be severable.

V.
Publication

The City Secretary is hereby directed to give notice of this Ordinance by causing the caption of the Ordinance to be published in the official newspaper of the City of Tool at least twice after the passage of this Ordinance.

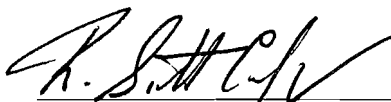
VI.
Effective date

This ordinance shall be effective from and after the date of its passage.

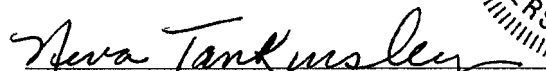
PASSED AND APPROVED this 7th day of DECEMBER, 2006

APPROVED:

ATTEST:



R. Scott Confer, Mayor



Neva Tankursley, City Secretary

