

ORDINANCE NO. 2197

AN ORDINANCE OF THE CITY OF ALAMO HEIGHTS, TEXAS, AMENDING CHAPTER 5 BUILDINGS AND BUILDING REGULATIONS BY ADDING ARTICLE XI SUBSTANDARD BUILDINGS TO ENACT REGULATIONS FOR SUBSTANDARD, UNSECURED AND DANGEROUS BUILDINGS OR STRUCTURES; PROVIDING FOR REPEALER AND SAVINGS; PROVIDING A PENALTY; ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Alamo Heights, Texas ("City Council") seeks to promote the health, safety and general welfare of the community by preventing death, injuries and property damage within the City of Alamo Heights ("City") limits; and

WHEREAS the City Council seeks to protect property values within the City limits; and

WHEREAS the City Council finds that substandard buildings or structures pose aesthetic harm to the City that may adversely affect the value of adjacent property and the right of nearby property owners to the lawful use and enjoyment of their own property; and

WHEREAS, the City Council finds that substandard buildings or structures are health and fire hazards, create a public nuisance, and often attract vermin and insects which pose a threat to public health, and may invite unlawful occupancy by vagrants or other persons engaged in criminal activity and constitute a threat to public safety and welfare; and

WHEREAS, pursuant to Texas Local Government Code section 214.001, the City Council has authority to regulate substandard buildings or structures in accordance with applicable law; and

WHEREAS, pursuant to Texas Local Government Code section 214.002, the City Council has authority to order the repair, removal or demolition of a substandard building or structure and to repair, remove, or demolish a substandard structure and assess such costs against the property in accordance with this Ordinance after it becomes effective.

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

SECTION 1. AMENDMENT. Municipal Code of Ordinances Chapter 5 *Buildings and Building Regulation* is hereby amended by Adding Article XI *Substandard Buildings* and shall read as follows:

**“Chapter 5 *Buildings and Building Regulation*
Article XI *Substandard Buildings*”**

Sec. 5-160. PURPOSE AND SCOPE

- (A) *Purpose.* It is the purpose of this Ordinance to provide a just, equitable, and practical method, to be cumulative with and in addition to any other remedy provided by the Building Code, Electrical Code, Fire Code, Mechanical Code, Plumbing Code, Chapter 214 of the Local Government Code, or otherwise available at law, whereby buildings, as defined herein, which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants and may be required, following due process, to be repaired, vacated, demolished, removed or secured. The purpose of this Ordinance is also to provide minimum standards for the continued use and occupancy of all structures to safeguard life, limb, health, property, and public welfare.
- (B) *Scope.* The provisions of this Ordinance shall apply to all buildings which are hereinafter defined as dangerous or substandard buildings whether now in existence or which may hereafter become dangerous.

Sec. 5-161. DEFINITIONS

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Building means any building, fence, awning, canopy, sign, shed, garage, house, tent or other structure whatsoever and the enumeration of specific types of structures shall not be deemed to exclude other types of structures to which the sense and meaning of the provisions hereof in context reasonably have application.

Building Code means the national or international model codes, as adopted and amended by the City in Article II – CODES ADOPTED BY REFERENCE and Article III – AMENDMENTS TO ADOPTED CODES of this Chapter, and shall include all other laws or regulations relating thereto.

Building Official means the person designated by the City Council to enforce this Chapter.

Hearing Officer means the Municipal Court Judge.

Sec. 5-162. ENFORCEMENT

(A) *General.*

- (1) *Administration.* The Building Official is hereby authorized to enforce the provisions of this Ordinance. The Building Official shall have the power to render interpretations of this Ordinance and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules, and regulations shall be in conformity with the intent and purpose of this Ordinance.

- (2) *Inspections.* The Building Official or his/her designee is hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this Ordinance.
 - (3) *Right of entry.* When it is necessary to make an inspection to enforce the provisions of this Ordinance, or when the Building Official or his/her designee has a reasonable cause to believe that there exists in a building or upon a premise a condition which is contrary to or in violation of this Ordinance which makes the building or premises unsafe, dangerous, or hazardous, the Building Official or Fire Marshal or his/her designee may enter the building or premises at reasonable times to inspect or perform the duties imposed by this Ordinance, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises is unoccupied, the Building Official or his 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 shall have recourse to the remedies provided by law to secure entry.
- (B) *Abatement of dangerous or substandard buildings.* All buildings or portions thereof which are determined after inspection by the Building Official to be dangerous or substandard as defined by this Ordinance are hereby declared to be public nuisances and shall be abated by repair, vacation, demolition, removal, or securing in accordance with the procedures specified in this Ordinance.
- (C) *Unlawful to violate this Ordinance.* It shall be unlawful for any person, firm, or corporation to erect, construct or use, occupy or maintain any building that is deemed to be a nuisance or cause or permit the same to be done in violation of this Ordinance.
- (D) *Inspection authorized.* All buildings within the scope of this Article and all construction or work for which a permit is required shall be subject to inspection by the Building Official.

Sec. 5-163. SUBSTANDARD BUILDINGS DECLARED

- (A) For the purposes of this Article, any building, regardless of the date of its construction, which has any or all of the conditions or defects hereinafter described shall be deemed to be a substandard building and a nuisance:
- (1) Whenever any building is dilapidated, deteriorated, decayed, damaged, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare in the opinion of the Building Official.
 - (2) Whenever a building, regardless of its structural condition, is 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.
 - (3) Whenever any building is 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 in Section 5-162 (A)(2) above.

- (4) Whenever any building because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus or other cause is determined by the Building Official or Fire Marshal to be a fire hazard.
- (5) Whenever any building is in such a condition as to make a public nuisance known to the common law or in equity jurisprudence.
- (6) Whenever any portion of a building remains on a site after the demolition or destruction of the building.
- (7) Whenever any building is abandoned so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.
- (8) Any building constructed and still existing in violation of any provision the Building Code to the extent that the life, health or safety of the public or any occupant is endangered.

(B) For the purposes of this Article, any building, regardless of the date of its construction, which has any or all of the conditions or defects hereinafter described to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building and a nuisance:

- (1) Whenever any door, aisle, passageway, stairway, or other means of exit is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- (2) Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn, or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
- (3) Whenever the stress in any materials or members, or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose, or location.
- (4) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose, or location.
- (5) Whenever any portion, or member, or appurtenance thereof is likely to fail or to become detached or dislodged or to collapse and thereby injure persons or damage property.
- (6) Whenever any portion of a building or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability or is not so anchored,

attached, or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

- (7) Whenever any portion thereof has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- (8) Whenever the building, or any portion thereof, is likely to partially or completely collapse because of:
 - (a) Dilapidation, deterioration, or decay;
 - (b) Faulty construction;
 - (c) The removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building;
 - (d) The deterioration, decay, or inadequacy of its foundation; or
 - (e) Any other cause.
- (9) Whenever, for any reason, the building, or any portion thereof is manifestly unsafe for the purpose for which it is being used.
- (10) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
- (11) Whenever the building, exclusive of the foundation, shows 33% or more damage or deterioration of its supporting member or members, or 50% or more damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
- (12) Whenever the building has been so damaged by fire, wind, earthquake, flood or other causes, or has become so dilapidated or deteriorated as to become:
 - (a) An attractive nuisance to children; or
 - (b) A harbor for vagrants, criminals, or immoral persons.
- (13) Whenever any building has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building provided by the building regulations of the City, as specified in the Building Code, or of any law or ordinance of this state or City relating to the condition, location or structure of buildings.
- (14) Whenever any building which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 50%, or in any supporting part, member or portion less than 66% of the:
 - (a) Structural integrity;
 - (b) Fire-resisting qualities or characteristics; or

- (c) Weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.
- (15) Whenever a building, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the Building Official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease for reasons including, but not limited to, the following:
- (a) Lack of, or improper water closet, lavatory, bathtub, or shower in a dwelling unit or lodging house.
 - (b) Lack of, or improper water closets, lavatories and bathtubs or showers per number of guests in a hotel.
 - (c) Lack of, or improper kitchen sink in a dwelling unit.
 - (d) Lack of hot and cold running water to plumbing fixtures in a hotel.
 - (e) Lack of hot and cold running water to plumbing fixtures in a dwelling unit or lodging house.
 - (f) Lack of adequate heating facilities.
 - (g) Lack of, or improper operation of, required ventilating equipment.
 - (h) Lack of minimum amounts of natural light and ventilation required by this or other applicable codes and ordinances of the city.
 - (i) Room and space dimensions less than required by the Building Code.
 - (j) Lack of required electrical lighting.
 - (k) Dampness of habitable rooms.
 - (l) Infestation of insects, vermin, or rodents.
 - (m) General dilapidation or improper maintenance.
 - (n) Lack of connection to required sewage disposal system.
 - (o) Lack of adequate garbage and rubbish storage and removal facilities.

Sec. 5-164. DETERMINATION BY BUILDING OFFICIAL

When the Building Official has inspected or caused to be inspected any building that he/she has reason to believe may constitute a substandard building and has found and determined that the building is substandard, the Building Official may take any or all of the following actions, as he or she deems appropriate:

- (A) Issue notice to the record owner that the building is substandard and must be repaired or demolished; or

- (B) Issue citation(s) for violation(s) of this Article; or
- (C) Secure the building if permitted by Section 5-171 (A); or
- (D) Recommend to City Council that abatement proceedings be commenced pursuant to Section 5-164.

Sec. 5-165. PUBLIC HEARING FOR ABATEMENT OF SUBSTANDARD BUILDINGS.

- (A) *Commencement of proceedings.* When the Building Official has found and determined that a building is a substandard building, the Building Official shall commence proceedings to cause the repair, relocation of occupants, removal, demolition, or securing of the building by first submitting a written report to City Council that identifies the subject property, specifies any substandard conditions thereon, and provides the Building Official's recommendation(s) for remedial and/or punitive action(s).
- (B) *Public hearing to be held.* Except when the City Council finds that a building is likely to immediately endanger persons or property, a public hearing before City Council shall be conducted by the Hearing Officer to determine whether a building complies with the standards set out in Section 5-162. If, following the public hearing, the City Council determines that the building constitutes an immediate danger, the procedures set forth in Section 5-171 (B) shall be followed.
- (C) *Notice.* Not less than ten days prior to the date on which the hearing is set, the Building Official shall issue a notice of the public hearing directed to the record owner of the building, and to all mortgagees and lienholders. The city shall use diligent efforts to determine the identity and address of any owner, lienholder, or mortgagee of the building through searching the county real property records of the county in which the building is located; appraisal district records of the appraisal district in which the building is located; records of the Secretary of State; assumed name records of the county in which the building is located; tax records of the city; and utility records of the city. The notice shall contain:
 - (1) The name and address of the record owner;
 - (2) The street address and a legal description sufficient for identification of the premises upon which the building is located;
 - (3) A statement that the Building Official has found the building to be substandard or dangerous, with a description of the conditions found to render the building dangerous or substandard under the provisions of Section 5-163;
 - (4) 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 this Ordinance and the time it will take to reasonably perform the work;
 - (5) Notice of the time and place of the public hearing; and
 - (6) A statement that if the building is found to be in violation of this Ordinance the City Council may order that the building be vacated, secured, repaired, removed, or demolished within a reasonable time.

- (D) *Additional notice of public hearing.* Prior to the public hearing, the city may file a copy of the notice mailed pursuant to Section 5.165 (C) above in the official public records of real property in the county in which the property is located. If such notice is not filed of record, each identified mortgagee and lienholder must be notified of any abatement order issued by the City Council following the public hearing, prior to any remedial action by the city.
- (E) *Burden of proof.* At the public hearing 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 Ordinance and the time it will take to reasonably perform the work.
- (F) *Conduct of public hearing.* At the public hearing, the owner of the building and all other interested persons may make their appearance and be heard. Any evidence may be received and considered by the Hearing Officer. The hearing may be adjourned from day to day or continued upon order of the City Council.

Sec. 5-166. ABATEMENT ORDERS.

- (A) *Action by City Council.* The action of the City Council shall be final, subject to judicial review in accordance with Section 214.0012 of the Texas Local Government Code.
- (B) *Findings of the City Council.* If the City Council, by a majority vote, finds upon evidence presented at the public hearing that the building is in violation of standards set out in Section 5-162, the City Council may order that the building be repaired, vacated, removed or demolished, secured or the occupants relocated by the owner, mortgagee or lienholder within a reasonable time as provided herein.
- (C) *Time allowed to complete work.*
 - (1) The order must require the owner of the building to within 30 days, and the lienholder or mortgagee to within an additional 30 days if the owner does not comply:
 - (a) Secure the building from unauthorized entry; and/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.
 - (2) If the City Council allows the owner, lienholder, or mortgagee more than 30 days to repair, remove or demolish the building, 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.
 - (3) The City Council may not allow the owner, lienholder or mortgagee 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;
 - (b) Said detailed plan has been reviewed by the Building Official and deemed adequate to abate the nuisance, hazard or otherwise bring about compliance with all applicable codes and ordinances; and

- (c) Establishes at the hearing that the work cannot be reasonably completed within 90 days because of the scope and complexity of the work.
- (4) If the City Council allows the owner, lienholder or mortgagee more than 90 days to complete any part of the work required to repair, remove or demolish the building, the City Council shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the Building Official to demonstrate that the owner, lienholder, or mortgagee has complied with the time schedules established for the commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the City Council or the Building Official to:
 - (a) Demonstrate compliance with time schedules; and
 - (b) If the owner, lienholder, or mortgagee owns the property, including structures and improvements on property within the city's boundaries that exceeds \$100,000, to post cash or surety bond or letter of credit or third party guaranty in an amount sufficient to cover the cost of the work ordered by the City Council in the event that the owner fails to complete the work as ordered by the City Council.
- (5) All orders of the City Council must allow a lienholder or mortgagee at least 30 additional days to complete the ordered work in the event the owner fails to comply with the order within the time provided for action by owner, prior to remedial action by the city.

(D) *Contents of order.* The order of the City Council must contain at minimum:

- (1) An identification, which is not required to be a legal description, of the building and the property on which it is located; and
- (2) A description of the violation of minimum standards present in the building; and
- (3) A description of the ordered actions, including a statement that the owner may repair, if feasible or demolish or remove at his option; and
- (4) 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 the time allowed, and charge the costs to the property; and
- (5) If the City Council has determined that the building will endanger persons or property and that the building is a dwelling with ten or fewer dwelling units, a statement that the city may repair the building and charge the costs to the property if the ordered action is not taken within the time allowed.

Sec. 5-167. NOTICE OF ORDER OF THE CITY COUNCIL.

(A) *Order shall be mailed.* After the public hearing, the Building Official shall promptly mail, by certified mail, return receipt requested, a copy of the order to the record owner of the building, and each identified lienholder and mortgagee of the building.

- (B) *Order shall be filed with City Secretary.* Within ten (10) days after the date that the order is issued by the City Council, the Building Official shall file a copy of the order in the office of the City Secretary.
- (C) *Order shall be published.* Within ten (10) days after the date the order is issued by the City Council, the Building Official shall publish in a newspaper of general circulation within the city a notice containing:
 - (1) The street address or legal description of the property; and
 - (2) The date the hearing was held; and
 - (3) A brief statement indicating the results of the order; and
 - (4) Instructions stating where a complete copy of the order may be obtained.
- (D) *Filing of order.* The order may be filed in the official public records of real property in the county in which the property is located.

Sec. 5-168. ENFORCEMENT OF THE ORDER OF THE CITY COUNCIL.

- (A) *If order not complied with, city may take action.* If the building is not vacated, secured, repaired, removed, or demolished within the time specified by the order, the city may vacate, secure, repair, remove or demolish the building or relocate the occupants and recover all costs, provided, however:
 - (1) The city may not act to remove or demolish a building until after the City Council has found:
 - (a) That such defects or conditions exist to the extent that the life, health, property or safety of the public or the occupants of the building are endangered; and
 - (i) The building is infeasible of repair; or
 - (ii) There is no reasonable probability that the building will be repaired within a reasonable period of time if additional time is given.
 - (2) The city may only repair a building as provided herein to the extent necessary to correct the conditions which render the building dangerous, and may not act to repair a building unless:
 - (a) The City Council has made a determination that the building is likely to endanger person or property; and
 - (b) The building is a residential dwelling with ten or fewer dwelling units.
 - (3) In the event there are mortgagors or lienholders, the city may only repair, remove or demolish the building after allowing the lienholder or mortgagee an additional 30 days after the time prescribed in the order has expired to complete the required work.
 - (4) Remedial action by the city does not limit the ability of the city to collect on a bond or other financial guarantee that may be required by Section 5-166 (C)(4).
- (B) *Posting of notice to vacate building.* If the order requires vacation or if compliance is not had with the order within the time specified therein, the Building Official is authorized to require

that the building be vacated. Notice to vacate shall be mailed by certified mail, return receipt requested to the occupant of the building and it shall be posted at or upon each entrance to the building and shall be in substantially the following form:

SUBSTANDARD BUILDING
DO NOT ENTER
UNSAFE TO OCCUPY

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

Building Official
City of Alamo Heights

- (C) *Remedial action by city.* Any repair work or demolition work, or securing of the building shall be accomplished and the cost thereof paid and recovered in manner hereinafter provided. Any surplus realized from the sale of such building, or from the demolition thereof, over and above the cost of demolition and cleaning of the lot, shall be paid over to the person or persons lawfully entitled thereto.
- (D) *Failure to obey order.* Any person to whom an order pursuant to Section 5-166 is directed who fails, neglects, or refuses to comply with such order shall be guilty of a misdemeanor and may be prosecuted in municipal court in addition to any other remedies available to the city provided herein or by law or equity.
- (E) *Interference prohibited.* No person shall obstruct, impede or interfere with any officer, employee, contractor, or authorized representative of the city or with any person who owns or holds any estate or interest in the building which has been ordered, repaired, vacated, demolished, removed or secured under the provisions of this Ordinance; or with any person to whom such building has been lawfully sold pursuant to the provisions of this Ordinance, whenever such officer, employee, contractor or authorized representative of the city, person having an interest or estate in such building, or purchaser is engaged in the work of repairing, vacating and repairing or demolishing, removing or securing any such building pursuant to the provisions of this Ordinance, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this Ordinance.
- (F) *Permit required.* Any work of closure, repair, removal or demolition by the property owner or any lienholder or mortgagee or their agents must be performed pursuant to valid unexpired permits issued by the city. All permits issued pursuant to the order of the City Council shall expire upon expiration of the time for compliance set forth in the order.

Sec. 5-169. 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 any order of the City Council, the work may be

accomplished by city personnel or by private contract as may be deemed 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 other costs of the work.

- (B) *Costs.* The cost of such work shall be paid from city funds and shall constitute a special assessment and a lien shall be duly filed as provided in Section 5-169 (B) against such property to secure payment thereof, together with 10% interest per year on such amount from the date of the assessment.
- (C) *Repair to minimum standards only.* In the event repair by the city is permitted by this Ordinance, 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.

Sec. 5-170. RECOVERY OF COST OF SECURING, REPAIR, REMOVAL OR DEMOLITION.

- (A) *Itemized account and notice of lien.* The Building Official shall keep an itemized account of the expenses incurred by the city in the securing, repair, removal, or demolition of any building pursuant to this Article. Upon completion of the work, the Building Official shall prepare and file with the City Secretary a sworn account and Notice of Lien containing the following information:
 - (1) The name and address of the owner if that information can be determined with a reasonable effort;
 - (2) A legal description of the real property on which the building is or was located;
 - (3) The type of work performed; and
 - (4) The amount of expenses incurred by the city in performing the work and the balance due.
- (B) *Notice filed in county records.* The City Secretary shall file the Notice of Lien along with a copy of the order of abatement issued by the City Council in the deed records of the county in which the premises are located.
- (C) *Personal obligation of property owner.* The expenses incurred by the city as set forth in the sworn account of the Building Official shall be a personal obligation of the property owner in addition to a priority lien upon the property. The City Attorney may bring an action in any court of proper jurisdiction against the owner or property to recover the costs incurred by the city.
- (D) *Lien shall be valid and privileged.* Upon filing of the Notice of Lien in the Deed Records of Bexar County, Texas, the lien shall be valid against the property so assessed. The lien shall be privileged and subordinate only to tax liens, existing special assessment liens and shall be paramount to all other liens. The lien shall continue until the assessment and all interest due and payable thereon has been paid.
- (E) *Assessment must be paid.* No utility service, building permit or certificate of occupancy shall be allowed on such property until the assessment is paid and such lien is released by the city.

(F) *Release of lien.* After the expenses incurred by the city, as set forth in the sworn account of the Building Official, have been fully paid with interest of 10% per annum from the date the expenses were assessed against the property, the Building Official shall execute a release of lien which shall be filed in the Deed Records of Bexar County, Texas.

(G) *Homesteads.* If the subject property is a considered a homestead, the City shall not take any legal action to foreclose upon a lien established under this section.

Sec. 5-171. ADDITIONAL AUTHORITY TO SECURE CERTAIN SUBSTANDARD BUILDINGS PRIOR TO PUBLIC HEARING AND SECURE, DEMOLISH, REPAIR OR REMOVE CERTAIN DANGEROUS BUILDINGS.

(A) *Securing of unoccupied substandard building.* Notwithstanding any other provisions of this Ordinance the city may secure a building if the Building Official determines:

- (1) That the building violates the minimum standards set forth in Section 5-162; 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) *If building creates immediate danger.* Notwithstanding any other provisions of this Ordinance, if the City Council finds that a building is likely to immediately endanger persons or property the City Council may:

- (1) Order the owner of the building, the owner's agent, or the owner or occupant of the property on which the structure is located to repair, remove or demolish the structure, or the dangerous part of the structure, within a specified time; or
- (2) Repair, remove or demolish the structure, or the dangerous part of the structure, at the expense of the municipality, on behalf of the owner of the structure or the owner of the property on which the structure is located, and assess the repair, removal or demolition expenses on the property on which the structure was located.

(C) *Notice of action.* Before the eleventh (11th) day after the date the building is secured pursuant to Section 5-171 (A) above, or action is ordered pursuant to Section 5-171 (B)(1) above, or the building is repaired, removed or demolished pursuant to Section 5-171 (B)(2) above, the Building Official shall give notice to the owner by:

- (1) Personally serving the owner with written notice; or
- (2) Depositing the notice in the United States mail addressed to the owner at the owner's post office address; or
- (3) Publishing the notice at least twice within a ten (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
- (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; and

(5) In addition to the above, depositing notice in the United States mail to all lienholders and mortgagees who can be determined from a reasonable search of instruments on file in the office of the County Clerk.

(D) *Content 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 seemed, as the case may be, the building or that the city has taken or will take the action ordered pursuant to Section 5-171 (B) above;
- (4) An explanation of the owner's entitlement to request a hearing about any matter relating to the city's securing, removing, demolishing or repairing of the building.

(E) *Hearing.* The City Council, by and through the Hearing Officer, 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, repairing, removing or demolishing of the building, if, within 30 days after the date the city has taken action pursuant to Section 5-171 (B)(1) or 5-171 (B)(2) above, 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.

(F) *Lien.* If the city incurs expenses under this Section 5-171, such 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 by Sections 5-169 and 5-170.

(G) *Violation.* It shall be unlawful to fail to comply with an order issued pursuant to this Section 5-171.

Sec. 5-172. CIVIL PENALTY.

(A) *Civil penalty authorized.* In addition to any other enforcement authority provided for by law, the City Council may, by order, at an administrative hearing assess a civil penalty against a property owner as provided for herein for failure to comply with an order issued by the City Council pursuant to Section 5-166.

(B) *Showing required.* The civil penalty may be assessed if it is shown at the administrative hearing that:

- (1) The property owner was notified of the contents of the order issued pursuant to Section 5-166; and
- (2) The property owner committed an act in violation of the order or failed to take an action necessary for compliance with the order.

(C) *Amount of penalty.* The civil penalty may be assessed in an amount not to exceed \$500 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.

(D) *Notice of administrative hearing.* Not less than ten (10) days prior to the date on which the administrative hearing is set, the property owner shall be sent a notice of the hearing by certified mail/return receipt requested. The notice shall contain:

- (1) A copy of the order issued by the City Council pursuant to Section 5-167;
- (2) A statement that the Building Official has determined that the property owner committed an act in violation of that order, or failed to take an action necessary for compliance with that order;
- (3) A statement that at the administrative hearing the City Council may assess a civil penalty not to exceed \$1.00 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; and
- (4) Notice of the time and place of the hearing.

(E) *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.

(F) *Enforcement.* The civil penalty may be enforced by the city in a suit brought by the city in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty. A civil penalty under this Section 5-172 is final and binding and constitutes prima facie evidence of the penalty in any suit.

SECTION 2. AUTHORIZATION. Notwithstanding all other provisions of this Ordinance, nothing herein shall be deemed a limitation on the duty of the city to summarily order that a building or structure be demolished, removed, secured or vacated where it is apparent that the immediate demolition of such building or structure is necessary for the protection of life, property or the general welfare of the people in the city.

SECTION 3. LIABILITY. Neither the City nor any authorized agent acting under the terms of this Ordinance shall be liable or have any liability by reason of orders issued or work done in compliance with the terms of this Ordinance.

SECTION 4. REPEALER. The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Alamo Heights hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION 6. EFFECTIVE DATE. This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

PRESENTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALAMO HEIGHTS, TEXAS THIS 23rd DAY OF JANUARY, 2023.



BOBBY ROSENTHAL, MAYOR

ATTEST:



ELSA T. ROBLES, CITY SECRETARY



APPROVED AS TO FORM:



FRANK J. GARZA, CITY ATTORNEY
RICHARD LINDNER, R17 ATTORNEYS