

**ORDINANCE 07-07
DILAPIDATED STRUCTURES**

AN ORDINANCE AMENDING ORDINANCE NO. 84-1 OF THE CITY OF NEWTON, TEXAS, REQUIRING THE DEMOLITION OR REMOVAL OF VACANT AND DANGEROUS BUILDINGS, DEFINING CERTAIN TERMS, PROVIDING FOR INSPECTION OF PRIVATE PREMISES, PROVIDING FOR CITATION, PROVIDING FOR HEARING, PROVIDING FOR REMEDY AND POSTING OF ORDERS, PROVIDING FOR ESTABLISHMENT OF LIENS, PROVIDING PENALTIES FOR VIOLATION AND SETTING EFFECTIVE DATE.

WHEREAS, the City of Newton has need for procedures by which to demolish or remove structures which are vacant and/or unfit for human habitation.

Section 1. DEFINITIONS:

For the purpose of this ordinance, certain abbreviations, terms, phrases, words and their derivations shall be construed as set forth in this section.

Words used in the present tense include the future. The singular number includes the plural, and the plural number includes the singular.

- A. **BUILDING INSPECTOR:** The legally designated inspection authority of the City, or his designee.

- B. **DANGEROUS STRUCTURES:** Any building or structure which has any or all of the conditions or defects described in this section shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property, welfare, or safety of the public or its occupants are endangered or adversely affected:
 - 1. Whenever any door, aisle, passage, 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 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

millimum requirements of the building code for new buildings of similar structure, purpose or location.

4. 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.
5. 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.
6. Whenever the building or structure, or any portion thereof, 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 purposed of supporting such building;
 - d. The deterioration, decay, or inadequacy of its foundation; or easy other cause is likely to partially or completely collapse.
7. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
8. Whenever the building or structure, exclusive of the foundation, shows thirtythree (33%) percent or more damage or deterioration of its supporting member or fifty (50%) percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
9. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become dilapidated or deteriorated as to become:
 - a. An attractive nuisance to children;
 - b. A harbor for vagrants, vermin, criminals or immoral persons,
 - c. As to enable persons to resort there for the purpose of committing unlawful or immoral acts.
10. Whenever any building or structure has been constructed, exists or maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the building code or of any law or ordinance of state or jurisdiction relating to the condition, location or structure of buildings.
11. Whenever a building or structure, 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 facility, or otherwise, is determine to be unsanitary, unfit for human habitation or in such a conditional that is likely to cause sickness or disease.
12. Whenever any building or structure, 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 to be a fire hazard.
13. Whenever any building or structure is in such a conditional as to constitute a public nuisance known to the common law or in equity jurisprudence.
14. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or

structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

15. Whenever any building or dwelling to which utility services have been disconnected and/or which has been continuously unoccupied for a period of at least sixty (60) days.
 16. Whenever the interior walls or other vertical structural members list, lean or buckle to such an extent that plumb line passing through the center of gravity falls outside the middle third of its base.
- D. OWNER: Owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vended in possession, receiver, execution, trustee, lessee or other person, firm or corporation, in control of a structure.
- E. PREMISES: A lot or parcel of land, including a building or dwelling, and auxiliary structures thereon. For purposes of this section, the term "building" shall mean and include 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 sense and meaning of the provisions hereof in the context reasonably have application.

Section 2. DANGEROUS STRUCTURES AS PUBLIC NUISANCE:

All dangerous structures within the terms of Section 1.C. are hereby declared to be a public nuisance and shall be repaired, vacated, or demolished as provided in this Ordinance.

Section 3. ENFORCEMENT OFFICER:

The provisions of this ordinance shall be administered and enforced by the building inspector, or his designee, of the City of Newton.

Section 4. MINIMUM STANDARD FOR CONTINUED USE AND OCCUPANCY OF BUILDINGS:

The minimum standard for the continued use and occupancy of all buildings or structures, regardless of the date of their construction, are that buildings or structures shall not be in a condition or have a defect which constitutes a dangerous structure as defined in Section 1.e. The following standard shall be followed by the enforcement officer in ordering repair, vacation or demolition:

1. If the dangerous building or structure can reasonably be repaired so that it will no longer exist as a dangerous building or structure, it shall be ordered repaired.
2. If the dangerous building or structure is in a conditional as to make it dangerous to the health, safety, morals or general welfare of its occupants, it shall be ordered to be vacated.
3. In any case where a dangerous building or structure is fifty (50%) percent or more damaged, decayed or deteriorated from its original value or structure, it shall be demolished and in all cases where a building or structure cannot be repaired so that it will no longer exist in violation of the terms of this section, it shall be demolished. In all cases where a dangerous building is a fire hazard existing or erected in violation of the terms of this section or any ordinances of the City or statutes of the state, it shall be

demolished. Included in the terms "demolished" in this section is the cleaning of the property and removing all debris and trash, and sealing sewer service (below ground) to prevent infiltration into the City sanitary sewer system.

Section 5. RIGHT OF ENTRY AND INSPECTION:

The enforcement officer shall enforce the provisions of this ordinance, and he, upon presentation of proper identification to the owner of such property, and in such a manner as to cause the least possible inconvenience to the person in possession, may enter any building, structure, or premises during all reasonable hours, to make inspections or examinations thereof in order to perform the duties imposed on him by this Ordinance. An inspection shall be made, when deemed necessary, of every building located within the City on which a complaint has been received, that is obviously in violation or that is suspected of being in violation of this ordinance. When the enforcement officer has inspected or cause to be inspected any building or structure, and has found and determined that such building is a dangerous building, the enforcement officer shall commence proceedings to cause repair, vacation or demolition of the building or structure.

Section 6. WARRANT TO INSPECT PREMISES:

If the owner of any building or dwelling refuses admittance, thereto of the enforcement officer, or his agent or representative, for the purpose of making an examination or inspection of the premises, the enforcement officer may make an affidavit before any judge or a court of competent jurisdiction that the enforcement officer believes or has reason to believe, that by an inspection of certain premises designated in the affidavit, he will obtain evidence tending to reveal the existence of violations of this Ordinance. Upon receiving this affidavit, the judge may issue a warrant authorizing the enforcement officer to inspect the premises named in the affidavit as designated in the warrant, or to obtain evidence tending to reveal the existence of violations of this ordinance.

Section 7. CITATION:

When it shall be determined by the enforcement officer that a building or structure is vacant and dangerous, within the terms of this Ordinance, the enforcement officer shall cite the owner of such building or structure, or his authorized agent or representative, to appear before the city council and show cause why such building should not be declared to be a public nuisance and why the owner should not be ordered to remove or demolish and clear such building or structure from its premises. The date of such hearing shall not be less than (10) days after such citation shall have been made.

Section 8. SERVICE OF CITATION:

Citation may be served by personal delivery of a copy thereof to the owner of the property, as such ownership appears on the last city tax role; or by depositing such citation properly addressed and certified mail in the United States Post Office; or by attaching a copy of such citation to a place of prominence on such building or structure. Notice shall also be given by publishing the same in the official publication of the City at least ten (10) days prior to the date set for a hearing which notice shall state the time and place of such hearing.

Section 9. HEARING:

On the date set in such citation for hearing, hearing shall be had and on the basis of such hearing, the City Council shall determine whether or not such building or structure is vacant and dangerous. At

the public hearing, it shall be the duty of the enforcement officer or his designee to present evidence to the City Council concerning the conditional of the structure in question. An owner, lessor, occupant, mortgagee, lienholder, as well as any interest person, may present evidence on relevant issues. At the conclusion of the hearing, the City Council shall make its findings, by a majority vote, and may:

1. Find that the structure is not a public nuisance. No further action is necessary.
2. Find that the structure is a public nuisance, and order that within thirty (30) days the owner:
 - a. Secure the structure;
 - b. Repair the structure;
 - c. Demolish the structure;
 - d. Assess a civil penalty against the owner for each day that the owner fails to repair, secure, remove, correct or demolish the structure; or
 - e. Any combination of the orders listed above necessary to remedy the public nuisance.

The City may allow the owner, lienholder, or mortgagee more than thirty (30) days to repair, remove, or demolish the building if the City:

1. Establishes specific time schedules for the commencement and performance of the work; and
2. Requires the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed.

The City may allow more than ninety (90) days to repair, remove, or demolish the building or fully perform all work required to comply with the order if 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 ninety (90) days because of the scope and complexity of the work.

Section 10. COPY OF ORDER TO OWNER, FILING, PUBLISHING, AND POSTING OF ORDER:

Any order issued by the City Council for the demolition or removal of a building or structure shall be immediately and prominently posted by the enforcement officer on the premises, in the form of a placard. Such placard shall declare the premises unfit for human habitation and contain other information as to the order in force.

Any person who shall use, enter or occupy such premises and/or any person who shall interfere or hinder the demolition or removal of any building or structure under the terms of this Ordinance, shall be deemed guilty of a misdemeanor and shall be subject to a fine as prescribed herein.

After the hearing, a copy of the order issued by the City Council, if any, shall be promptly mailed by certified mail, return receipt request, or personally delivered to the owner of the building and to any lienholder or mortgagee of the building.

1. File a copy of the order in the office of the City Clerk; and
2. Publish in a newspaper of general circulation in the City 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; and
 - d. Instructions stating where a complete copy of the order may be obtained.

Section 11. FAILURE TO COMPLY:

In any case where the City Council orders a building or structure demolished and cleared or removed and the owner of any such building or structure fails to comply within the time period allowed in the order, the city council may cause the same to be done and pay, therefore, and charge the expenses incurred thereby to the owner of such premises. Such expenses shall be assessed against the lot or real estate upon which the work is done. The doing of such work by the City or the ordering of the same by the City Council may not relieve of this or other Ordinances.

Section 12. ESTABLISHMENT OF LIEN:

Whenever any work is done on any building or structure by the City under the provisions above, the enforcement officer on behalf of the city shall file a statement of the expenses incurred with the County Clerk. Such statement shall give the amount of such expenses and the date or dates on which the work was done, or the expenses incurred, and the costs of demolishing, cleaning, or removing the building or structure. When this statement is filed with the County Clerk, the City shall have a privileged lien on the lot or real estate upon which the work was done to secure the expenses involved. Such lien shall be second only to tax liens and liens for street improvements, and the amount thereof shall bear interest at the rate of ten (10) percent, per annum from the date the statement was filed with the County Clerk, or a certified copy thereof, shall be prima facie proof of the amount expended for such repairs, demolition, clearance or removal.

Section 13. LIABILITY:

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

Section 14. PENALTIES:

Any person violating the terms of this ordinance shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than five dollars nor more than two hundred dollars; and upon conviction shall be fined in any sum not exceeding two hundred dollars; and each and every day's violation shall constitute a separate and distinct offense.

Section 15. APPEALS:

Any owner, lienholder, or mortgagee of record aggrieved by an order of the city council issued under this ordinance, or under V.T.C.A., Local Government Code, chapter 214, subchapter A as adopted herein, may appeal the decision or order as provided V.T.C.A., Local Government Code, § 214.0012.

Section 16. SEVERABILITY:

If any article, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be adjudged invalid, or be held unconstitutional, the same shall not affect the validity of the ordinance as a whole or any part of the provision thereof, other than the part so decided to be invalid or held to be unconstitutional.

This Ordinance shall be effective upon adoption by the City Council and publication of the Ordinance as required by §52.011, Texas Government Code.

PASSED, APPROVED AND ADOPTED, this 8th day of October, 2007

Rachel Martin, Mayor

Mertice Weeks, City Secretary