

ORDINANCE NO. 2021-02

AN ORDINANCE OF THE CITY OF RIESEL, TEXAS AMENDING ORDINANCE NO. 2013.05; PROVIDING FOR THE REGULATION OF DILAPIDATED BUILDINGS AND SUBSTANDARD BUILDINGS; PROVIDING FOR NOTICE AND OPPORTUNITY FOR HEARING; PROVIDING FOR ENFORCEMENT OF THE REGULATIONS; PROVIDING FOR ACTION BY THE CITY TO REPAIR, REMOVE, DEMOLISH OR SECURE A BUILDING IN VIOLATION OF THE REGULATIONS AND TO RELOCATE OCCUPANTS; ESTABLISHING A CIVIL PENALTY NOT TO EXCEED \$1,000.00 PER DAY FOR NON-HOMESTEAD PROPERTY AND NOT TO EXCEED \$10.00 PER DAY FOR HOMESTEAD PROPERTY FOR CERTAIN VIOLATIONS; PROVIDING FOR ASSESSMENT OF COSTS AGAINST OWNER(S) FOR COSTS INCURRED BY THE CITY IN ENFORCING THE REGULATIONS; PROVIDING FOR A LIEN ON BUILDINGS AND PREMISES FOR EXPENSES INCURRED BY THE CITY TN ENFORCING THE REGULATIONS AND/OR FOR CIVIL PENALTIES; PROVIDING FOR OTHER MEANS OF ENFORCEMENT; REPEALING CONFLICTING ORDINANCES; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City’s substandard building regulations are in need of updates; and

WHEREAS, the existence of buildings that are dilapidated, substandard, unfit for human habitation, and/or are a hazard to the public health, safety, and welfare is a matter of legitimate concern in the City of Riesel; and

WHEREAS, Subchapter A of Chapter 214 of the Texas Local Government Code (V.T.C.A.) gives the City Council the power and authority to enact such regulations by ordinance.

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

Section 1 - Generally

1.01 Application

This ordinance applies to all building structures (residential, commercial, or otherwise) located within the municipal limits of the City of Riesel, Texas, regardless of the date of construction

1.02 - Definitions

(a) “Building” means and includes any building, fence, awning, canopy, sign, shed, garage, house, tent or other man-made structure whatsoever.

(b) “Building Official” means the person designated by the city council to enforce this article.

(c) “Dilapidated Building” means a building that does not comply with one or more of the minimum standards set forth in Section 2.01 below.

(d) “Substandard Building” means a building that does not comply with one or more of the minimum standards set forth in Section 2.02 below.

1.03 - Administration.

(a) *Building Official.* A contractual inspector shall serve as the Building Official designated by the City. 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 article. The building official may inspect any building for the purpose of determining whether the subject building may be in violation of the minimum standards of this ordinance. Cause for inspection may be based on:

(1) a complaint filed by any person, including but not limited to a member of the public, the police department, the fire department or any other city department or office; or

(2) general information or knowledge about the building

(b) *Inspections.* The Building Official or their designees are hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this ordinance.

(c) *Right of Entry.* When it is necessary to make an inspection to enforce the provisions of this ordinance, or when the Building Official or their designee has a reasonable cause to believe that there exists in a building or upon a premises 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 their designee may enter the building or premises at reasonable times to inspect or perform the duties imposed by this article, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be 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.

(d) *Abatement of Dangerous or Substandard Buildings.* All which are determined after inspection by the Building Official to be Dilapidated or Substandard as

defined by this article are hereby declared to be public nuisances and may be abated by repair, vacation, demolition, removal or securing in accordance with the procedures specified in this article.

(e) *Unlawful to Violate Ordinance.* It shall be unlawful for any person, firm or corporation to erect, construct, or use, occupy or maintain any building that is deemed herein to be a nuisance or cause or permit the same to be done in violation of this ordinance.

(f) *Notice.* Any notice or provision of a copy of an order required herein which is returned by the United States Postal Service as "refused" or "unclaimed" is deemed to have been delivered.

(g) *No Limitation.* Notwithstanding all other provisions of this ordinance, nothing herein shall be deemed a limitation on the duty of the city to summarily order the demolition of any building or structure where it is apparent that the immediate demolition of such building or structure is necessary to the protection of life, property or general welfare of the people in the city.

Section 2 - Dilapidated and Substandard Buildings Declared

2.01 - Dilapidated Buildings.

Any building, regardless of the date of its construction, which has any or all of the conditions or defects described below shall be deemed to be a substandard building and a nuisance:

- (1) Any building with a caved in roof or portions of the roof missing.
- (2) Any building with walls or other vertical structures that lean.
- (3) Any building with a sunken in, inadequate, or damaged foundation.
- (4) Any building with a fireplace or chimney that leans, bulges, buckles, or is otherwise in danger of collapse or other structural failure.
- (5) Any building with materials or other component parts that are in danger of falling off and causing injury.
- (6) Any building which is so structurally deteriorated or damaged, whether from termite damage, weathering, or other causes, that it is in danger of collapse, or which cannot be expected to withstand reasonably anticipated storms or other weather events.
- (7) Any building that has become visibly deteriorated or damaged through fire or exposure to the elements, including, without limitation, flood, high

winds, hail, ice, or rain, to the extent that either the roof, windows or doors, or portions of the building which provide protection from the weather, will no longer reasonably provide protection from the weather.

(8) Any building being maintained in a state that is a danger to the health and safety of the public, including, but not limited to:

(a) All conditions conducive to the harboring of rats, snakes, mice or other disease-carrying animals, or insects reasonably calculated to spread disease;

(b) Conditions hazardous to the safety of persons or property, such as inadequate structural support, rotted wood, broken windows, exposed nails, rusted metal, and/or the presence of deteriorated materials; or

(c) Conditions that create an attractive nuisance for children such as unsecured building having dangerous conditions within or having parts or members that are a danger to fall or collapse.

(9) Any building that, 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, vandals, or other uninvited persons or could be entered or used by children.

2.02 - Substandard Buildings.

Any building or structure which has any of the following defects shall be deemed a substandard building and constitute a hazard to the health, safety and welfare of the citizens:

(1) Any building used for the occupancy of one or more persons which:

- (a) is not connected to an approved public sanitary sewer or a properly installed and approved septic system; or
- (b) does not have a working toilet installed; or
- (c) does not have a working bathtub or shower installed; or
- (d) does not have working hot and cold running water to plumbing fixtures.

(2) Any building used for the occupancy of one or more persons and 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.

Section 3 – Abatement

3.01. Abatement of Nuisance Condition.

(a) All Dilapidated and Substandard Buildings are illegal and are hereby declared to be a nuisance.

(b) All Dilapidated and Substandard Buildings may be abated by securing, repairing, removing or demolishing the building in accordance with the procedures set forth in this ordinance.

3.02 – City Council’s Authority to Hear Cases

(a) The City Council is hereby appointed to hear and determine cases concerning Dilapidated and Substandard buildings.

3.03 – Inspection and Report

(a) The Building Official may inspect any building for the purpose of determining whether the subject building may be in violation of the minimum standards of this ordinance. Cause for inspection may be based on:

(1) a complaint filed by any person, including but not limited to a member of the public, the police department, the fire department or any other city department or office; or

(2) general information or knowledge about the building.

(b) Upon a finding of a Dilapidated or Substandard Building, the Building Official shall give a written report to the City Secretary. The City Secretary shall ensure the case is set for hearing and notice that is given in accordance with the provisions of this ordinance.

Section 4 - Identification

4.01- Identification of Owner, Lienholder and Mortgagee.

Upon a suspected or reported violation of the minimum standards of this ordinance, the City shall, within a reasonable time of the suspected or reported violation, use its best and most diligent efforts to locate all owners, lienholders, and mortgagees. The City satisfies the requirement that it makes a diligent effort or use its best efforts to determine the identity and address of an owner, lienholder or mortgagee if the City searches the following records:

1. McLennan County real property records of the McLennan County Clerk;

2. McLennan County Appraisal District records;
3. Records of the Secretary of State;
4. Assumed Name Records;
5. City tax records; and
6. City utility records.

Section 5. Notice of Hearing to Interested Parties

5.01 Written and Mailed Notice

(a) At least ten (10) days before the City conducts a hearing on a suspected or reported violation of the minimum standards of this ordinance, the City shall send, via certified mail/return receipt requested and via regular mail notice describing:

- (1) the suspected or reported violation
- (2) the street or legal address of the affected property
- (3) the date, time, and place of the public hearing
- (4) the name of the reputed owner and such owner's address, if known
- (5) a conspicuous statement that the owner, lienholder, or mortgagee, as applicable, will be required to submit at the hearing proof of the scope of any work that may be required to comply with the minimum standards of this ordinance and the time it will take to reasonably perform such work.

(b) Such notice shall be provided to all owners, lienholders, and mortgagees of the subject property and identified as a result of the City's efforts set forth in Section 4 of this ordinance.

(c) If notice as provided in (a) above is unobtainable, notice shall be given by publishing the notice at least twice within a 10-day period in a newspaper of general circulation in McLennan County, the final publication to be at least ten (10) days prior to the hearing on the matter.

5.02 – Posted Notice

Reasonably promptly after the notice required by subsection 5.01, above, is sent, an authorized representative of the City shall place a placard on the front door of the structure, or as near to the front door of the structure as practicable—which notice shall be sufficient if it follows this form, though this form is not exclusive and may be modified as necessary:

WARNING

The City of Riesel has determined that this building is in violation of the City's minimum building standards. As such, the city deems this building to be an uninhabitable and dangerous structure. This building is to be vacated immediately and remain vacant until further notice. This placard is to remain in place until the condition of this building has been addressed by the City Council and/or this building has been repaired, removed or demolished as determined by the City Council at a public hearing. Notice of this public hearing, including the date and time of the hearing, has been sent to all known persons having an interest in this building or property. Unauthorized removal of this placard is punishable by a fine of up to \$2,000.00.

Building Official
City of Riesel, Texas

5.03. Notice to Subsequent Grantees, Lienholders, or other Transferees.

Before the City Council conducts a hearing on a suspected or reported violation of the minimum standards of this ordinance, the City may, but is not required to, file in the Official Public Records of Real Property where the affected property is located a notice containing:

- (a) the name of the owner;
- (b) a legal description of the property affected; and
- (c) the date, time, and place of the hearing.

Section 6 - The Hearing

6.01 - Content

A hearing under this Section shall be before the City Council who shall have the power to administer oaths/affirmations and to certify official acts of the City, as permitted under Texas law. The issues pertinent to a hearing under this section shall be limited to whether the affected property is in violation of the minimum standards of this ordinance; and, if a violation is found:

- (a) the scope of work necessary to bring the unsafe building in compliance with the minimum standards of this ordinance, including the time allowed to perform such action; and
- (b) the possibility of vacation and relocation of any occupant otherwise lawfully entitled to possession of the building.

6.02 – Procedure

The following procedures shall apply to a hearing under this section:

(a) At the appointed date noticed to the owner, and lienholders or mortgagees, a public hearing shall be held in open session of a regular meeting or special called meeting of the City Council of the City of Riesel.

(b) The hearing will begin with the City representative reading into the record the complained of violations of the minimum standards of this ordinance. The City representative shall give a brief description of how the building is not in compliance with each standard claimed to be violated and present any information supporting the existence of the violation to the City Council. Thereafter, the owner, and any lienholder and/or mortgagee, shall each be given an opportunity to be heard on the issue of whether or not the building is, in fact, a Dilapidated Building or a Substandard Building in violation of the minimum standards of this ordinance. The owner, lienholder, and/or mortgagee will also be required to submit at the hearing proof of the scope of any work that may be required to comply with the ordinance and a projected time that it will take to reasonably perform the work. The owner, lienholder, and/or mortgagee may appear by or with a representative.

(c) While the rules of civil procedure or evidence do not apply, oral testimony given by an owner, lienholder, mortgagee (or other interested party) shall be given only under oath/affirmation. Each party shall have the right to testify; introduce documents; call and examine witnesses; cross-examine witnesses or otherwise rebut evidence offered against them. The City Council has the authority to adopt reasonable rules by majority vote to ensure the efficiency and fairness of the hearing such as time limits, or other rules, as it may deem proper.

(d) The owner, lienholder, and/or mortgagee shall have the burden of proof to demonstrate the scope of any work that may be required to comply with the minimum standards of this ordinance, including the time it will take to reasonably perform such work.

Section 7 - The Order

7.01 Written Order

(a) After the presentation of evidence and any necessary deliberation, the City Council's decision shall be reduced to written order, with an effective date, and the contents of the order shall be read into the record.

(b) The order shall contain the City Council's findings of fact and conclusions with regard to the issues before it, and shall also specifically determine

whether the Substandard or Dilapidated Building shall be vacated, repaired, removed and/or demolished—including the amount of allowable time for the owner, lienholder, and/or mortgagee to affect such vacation, repairs, removal and/or demolition.

(c) If the Substandard or Dilapidated Building shall be vacated, repaired, removed and/or demolished, then the City shall allow the owner, lienholder, and/or mortgagee 30 days to secure the building from unauthorized entry and to conduct the needed repairs, removal, or demolition as determined by the City.

(d) If relocation of occupants otherwise lawfully entitled to possession of the affected property but for the substandard condition of the structure is necessary, the order shall provide appropriate and lawful instructions to that effect.

(e) Based on the information presented by the owner, lienholder, or mortgagee at the hearing, the City may allow the owner, lienholder, or mortgagee more than 30 days—but no more than 90 days—to conduct the needed repairs, removal or demolition of the Dilapidated or Substandard Building, as determined by the City, if the City also requires in its order the owner, lienholder, and/or mortgagee to:

(1) secure the property in a reasonable manner from unauthorized entry while the work is being performed and;

(2) to establish specific time schedules for the commencement and performance of the work.

(f) When the City allows an owner, lienholder, and/or mortgagee more than 90 days to conduct the needed repairs, removal or demolition of the Dilapidated or Substandard Building, the City may also require in its order that the owner, lienholder, or mortgagee appear before a hearing official or a hearing official's designee to demonstrate compliance with the established time schedules. Likewise, the City may require in its order that the owner, lienholder, or mortgagee post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing the unsafe building if the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the City that exceeds \$100,000 in total value. Alternatively, in lieu of a bond, the City may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the municipality. The bond must be posted, or the letter of credit or third-party guaranty provided, not later than the 30th day after the date the municipality issues the order.

Section 8 - Post-Hearing Notice

8.01 - Public Notice

Within ten (10) days after the date that the City Council issues the order, 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 Riesel, Texas, a notice containing: the street address or legal description of the property, the date of the hearing, a brief statement indicating the results of the order, and instructions stating that a copy of the order may be obtained at the office of the City Secretary.

8.02 – Notice to Owner, Lienholder, and/or Mortgagee

After a hearing is conducted, the City shall promptly mail by certified mail with return receipt requested and by regular mail, or shall promptly and personally deliver, a copy of its order to the owner, lienholder, and mortgagee of the Dilapidated or Substandard building.

Section 9 – Securing Dilapidated or Substandard Buildings

9.01 - Securing Dilapidated or Substandard Buildings

(a) The City may secure a building that is determined to be in violation of the minimum standards of this ordinance and is unoccupied or is occupied only by persons who do not have a right of possession to the building. This the City is allowed to do for the protection of the health, safety and welfare of the citizens of the City of Riesel.

(b) Before the eleventh (11th) day after the building is secured, the City shall give notice to the owner by: (I) personally serving the owner with written notice; (2) depositing a notice in the United States mail addressed to the owner at the owner's post office address; (3) publishing the notice at least twice within a ten (10) day period in a newspaper of general circulation in McLennan County if personal service cannot be obtained and 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.

(c) The notice must contain: (1) an identification, which is not required to be legal description, of the building and the property on which it is located; (2) a description of the violation of municipal standards that is present at the building; (3) a statement that the City will secure or has secured, as the case may be, the building; and (4) an

explanation of the owner's entitlement to request a hearing about any matter relating to the City's securing of the building.

(d) The City shall conduct a hearing on the date noticed in which the owner may testify or present witnesses or written information about any matter relating to the City's securing of the building if, within thirty (30) days after the date the City secures the building, the owner files with the City a written request for the hearing. The City shall conduct the hearing within twenty (20) days after the date the request is filed. The City has the same authority to assess expenses under this section as it has to assess expenses under section 10.01 below. A lien is created under this section in the same manner that a lien is created under section 10.01 below and is subject to the same conditions as a lien created under that section.

(e) The procedures and enforcement powers set out hereunder are in addition to those set forth elsewhere in this ordinance.

Section 10 - Enforcement

10.01 – Non-Compliance: Liens

(a) Subject to the limitation addressed in Section 10.02 (d) below, if the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, the City may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense.

(b) If the City incurs expenses hereunder, those expenses may be assessed on, and the City has a lien against, the property on which the building is or was located for such expenses (except homestead property protected by the Texas Constitution).

(c) Said lien is extinguished if the property owner or another person having an interest in legal title reimburses the City for the expenses. The lien arises and attaches on the property at the time notice of lien is recorded and indexed in the office of the County Clerk of McLennan County. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the property on which the building is or was located, the amount of expenses incurred by the City, and the balance due.

(d) If the notice is given, and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as set forth herein, the lien is a privileged lien, subordinate only to tax liens.

10.02 – Non-Compliance: Civil Penalty

(a) As an alternative to the enforcement action provided for above, subject to the limitations set out in subpart (d) below, and after the time allotted for the owner

and/or lienholder and/or mortgagee to undertake the required actions, the City Council may assess a civil penalty against the property owner for failure to repair, remove, or demolish the building as ordered. The civil penalty may be assessed by the City Council after the allotted time for compliance has passed.

(b) The owner and/or lienholder shall have an opportunity to be heard prior to assessment of the penalty. The owner and/or lienholder will be notified of the bearing at which the penalty may be imposed in the same manner as the owner and/or lienholder was notified of the hearing on the property's violation status.

(c) At the hearing the City representative must prove: (1) the property owner was notified of the requirements of this ordinance and the owner's need to comply with the requirements; (2) the property owner was ordered to undertake action to repair, remove, or demolish the building within an allotted time, and (3) the property owner failed to comply with the order within the allotted time.

(d) The City shall impose a lien against the land on which the building stands or stood, unless it is a homestead that is protected by the Texas Constitution, to secure the payment of the civil penalty. Promptly after the imposition of the lien, the City Secretary must file of record, in recordable form, in the office of the County Clerk, written notice of the imposition of the Lien. The notice must contain a legal description of the land. Except as provided by §214.001 of the Local Government Code, the City's Lien to secure the payment of the civil penalty 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 was assessed.

(e) The City's lien is superior to all other previously recorded judgment Liens. Any civil penalty assessed under this section accrues interest at a rate of ten percent (10%) per year from the date of the assessment until paid in full.

(f) A civil penalty assessed against a property owner may not exceed \$1,000.00 per day for each violation or, if the owner shows that the property is the owner's lawful homestead, may not exceed \$10.00 per day for each violation. This assessment of a civil penalty is final and binding and constitutes prima facie evidence of the penalty in any suit brought by the City in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty.

10.03 – Additional Compliance Measures

(a) The City may bring an action in a District Court of McLennan County, Texas for the repair or demolition of a structure or to obtain approval to remove the structure and recover the removal costs. [Sections 54.012 and 54.018, Texas Local Government Code]. In that action the City may also bring a claim for civil penalties under Section 54.017 of Texas Local Government Code and an action in rem against the structure that may result in a judgment against the structure as well as a

judgment against the defendant. A notice of lis pendens may be filed in the real property records of the McLennan County Clerk upon the filing of the action.

(b) To recover civil penalties under Section 54.017 of Texas Local Government Code the City must prove that (1) the property owner was notified of the requirements of the ordinance and the owner's need to comply with the requirements; and (2) after notification, the property owner committed an act in violation of this ordinance or failed to take action necessary for compliance with this ordinance. The civil penalty may not exceed \$1,000 per day.

(c) On a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant, the City may obtain against the owner or owner's representative with control over the premises an injunction that:

- (1) prohibits specific conduct that violates this ordinance; and
- (2) requires specific conduct that is necessary for compliance with this ordinance.

(d) It is not necessary for the City to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted.

(e) The City may use an enforcement action to compel repair or demolition of a structure even if the City has proceeded with the administrative process for enforcement provided elsewhere in this ordinance.

Section 11 – Judicial Review

11.01 – Judicial Review

In accordance with §214.0012 of the Local Government Code (V.T.C.A.), any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of the City issued pursuant to this ordinance may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Said procedures are subject to the conditions, rules and regulations found at §214.0012 of the Local Government Code.

I.

Repeal of Prior/Inconsistent Ordinances

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Riesel providing for the condemnation of substandard buildings or structures, and providing for the evacuation, repair, and/or demolition

of substandard buildings, and shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinances are inconsistent or in conflict with the provisions of this Ordinance, in which instance or instances such conflicting provisions in said other ordinance or ordinances shall be and are hereby repealed.

II.

Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portions of this ordinance, and all the remainder of this ordinance not so declared to be invalid shall continue to be in full force and effect. The City Council of the City of Riesel, Texas, 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. This ordinance complies with Chapter 214.000 of the Local Government Code.

III.

Publication

The City Secretary is directed to publish the caption of this ordinance in compliance with §52.011 of the Local Government Code.


This ordinance shall be effective from and after its passage and publication as provided by law, and IT IS ACCORDINGLY SO ORDAINED.

Passed and approved on this the 31st day of August, 2021.



Mayor, City of Riesel

Attest:



City Secretary, City of Riesel

