

ORDINANCE NO. 325

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCHER CITY, TEXAS ENACTING REGULATIONS WITH RESPECT TO SUBSTANDARD, UNSECURED OR DANGEROUS BUILDINGS OR STRUCTURES, SPECIFYING THE REMEDIES AVAILABLE TO THE CITY TO OBTAIN COMPLIANCE WITH THOSE REGULATIONS, AUTHORIZING THE CITY TO TAKE CERTAIN ACTIONS TO REMEDY VIOLATIONS AND PROVIDING METHODS BY WHICH IT CAN RECOVER ITS EXPENSES IN DOING SO, ENACTING CIVIL PENALTIES AND CRIMINAL SANCTIONS AND PENALTIES FOR VIOLATION OF THE REGULATIONS, REPEALING CERTAIN PRIOR DANGEROUS BUILDING REGULATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Archer City, Texas has determined that the health safety and welfare of its citizens and the City require the adoption of rules and procedures which will regulate certain substandard, unsecured or dangerous buildings or structures; and

WHEREAS, the City is authorized to enact and enforce such regulations pursuant to Subchapter A of Chapter 214 of the Texas Local Government Code and Subchapter B of Chapter 54 of the Texas Local Government; and

WHEREAS, this Ordinance was adopted at a meeting of the City Council of the City of Archer City, Texas: (i) at which a quorum of the members of the City Council were present, (ii) which was open to the public, as required by Chapter 551 of the Texas Government Code (the Open Meetings Act), and (iii) which was preceded with the notice required by the Texas Open Meetings Act.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Archer City, Texas that the following regulations and provisions be adopted:

SECTION 1. Enactment of Substandard Building Regulations. That a new article 3.07 be enacted and added to the City's code of ordinances to read as follows:

3.07.001 Definitions. The following definitions shall be applicable in this article 3.07.

"Building" shall mean any structure used, or intended for, supporting or sheltering any use or occupancy and shall include: (i) any structure classified as a "building" pursuant to Section 202 of the International Building Code, adopted by section 3.02.001(a) of this code, and (ii) a dwelling.

"Dwelling" shall mean a building designed or intended for human habitation and shall include those structures that are classified as a "dwelling" under Section 202 of the International Building Code adopted by section 3.02.001(a) of this code and all structures

described in, and referred to, in Section 310.1 of the International Building Code adopted by section 3.02.001(a) of this code.

“Building codes” shall mean the technical building codes adopted pursuant to Section 3.02.001(a) of this code. “Applicable building codes” shall mean any and all building codes which are applicable to the particular condition or component of a structure or building which is being addressed.

“Owner” means the person or firm that owns a building or structure and shall include any person that has legal or equitable to the building or structure. Each owner of a building or structure shall be jointly and severally responsible for compliance with all provisions of this article 3.07. It shall not be a defense to prosecution or any other sanctions or the use of the city’s remedies under this article 3.07 if a joint owner is not prosecuted, sanctioned or required to perform remediation or assessed expenses.

“Structure” shall mean any improvement which is built, constructed or located on real property other than a dwelling or building and shall include any fence, shed, or awning.

Sec. 3.07.002 Buildings and Structures Regulated. The following buildings or structures, regardless of their date of construction, are subject to the regulations in this article 3.07 and may be referred to in this article 3.07 by the titles set forth in subdivisions (1), (2) and (3) below:

(1) Substandard Building or Structure. Any building or structure that is dilapidated, substandard, or unfit for human habitation and a hazard to public health, safety, and welfare. A building or structure is presumed to be a substandard building or structure if it does not meet the following minimum standards:

(A) A dwelling must have an adequate water closet, lavatory, bathtub or shower, kitchen sink, hot and cold running water to plumbing fixtures, as required by the applicable building codes.

(B) A dwelling must have adequate heating facilities and ventilating equipment.

(C) A dwelling must have lighting that is proper installed and that is operating in accordance with any applicable building codes.

(D) All electrical wiring in any building or structure must be installed and operating in accordance with all applicable building codes.

(E) A dwelling must not have dampness in any portion used, or constructed for use, as a human habitation.

(F) Buildings and structures must be free of hazardous or unsanitary items or conditions including any accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, stagnant water or conditions likely to harbor or promote the breeding or infestation of insects, snakes, vermin or rodents.

(G) Buildings and structures and components thereof must be maintained in accordance with all applicable building codes, including, without limitation, the following codes adopted by section 3.02.001(a) of this code: the International Building Code, the International Residential Code, the ICC Electrical Code (Administrative Use of the National Electrical Code), the International Fire Code, the International Plumbing Code, the International Mechanical Code, the International Fuel Gas Code and the International Property Maintenance Code.

(H) Dwellings must be properly connected to the city's sanitary sewer system unless they are connected to an on-site sewer system which has been approved by the city's health department.

(I) A building or structure with a water closet, lavatory, bathtub, shower, or clothes washer or dish washer must be properly connected to the city's sanitary sewer system unless they are connected to an on-site sewer system which has been approved by the city's health inspector.

(J) A building must not have garbage, rubbish or other unsightly material in or around its location.

(K) A building must have a foundation which is adequate to support the building and loads imposed on the foundation in a safe manner.

(L) A building must have flooring and floor supports of sufficient size, structure and condition to carry loads imposed in a safe manner.

(M) The walls, partitions or other vertical support members of a building or structure must be adequate to carry the imposed loads in a safe manner and support the roof of the building or structure; and must not be split, must not lean, must not list or must not buckle.

(N) The ceilings, roofs, and ceiling and roof supports of a building or structure must be of sufficient size, structure and condition to carry imposed loads in a safe manner and must not sag, split or buckle.

(O) Chimneys and ventilation systems for fireplaces and stoves must be of sufficient size, structure and condition to effectively remove smoke and other gases

created from combustion in the fireplace or stove in a safe manner and must be sufficiently insulated so that they do not create a risk or hazard of fire to adjacent structures within the building in which they are installed.

(P) Chimneys and ventilation systems for fireplaces and stoves and fireplaces must have sufficient strength, structure and condition to carry the structural loads imposed on them in a safe manner.

(Q) All plumbing in any building or structure shall be installed and in a condition that complies with the International Plumbing Code adopted pursuant to section 3.02.001(a) of this code.

(R) All mechanical systems in a building or structure shall be installed in a condition that complies with the International Mechanical Code adopted by section 3.02.001(a) of this code.

(S) All buildings shall have effective waterproofing on exterior walls, roofs, foundations or floors. The following are examples of ineffective waterproofing: deteriorated, crumbling or loose plaster on exterior walls or foundations, broken or missing exterior windows or doors, lack of paint on exterior walls, broken, rotted, split or buckled exterior wall coverings or roof coverings.

(T) All buildings and structures shall be free of combustible waste or vegetation or from any substance which could be an accelerant to a fire or likely to cause an explosion unless the substance which could accelerate a fire or cause an explosion is properly stored in accordance with applicable law.

(U) All buildings must have adequate exists as required by applicable building codes.

(V) When any portion of a building is used as a living or sleeping quarters or a place where food is cooked for human consumption, such building shall comply with the building codes applicable to dwellings with respect to its plumbing, electrical and heating systems.

(W) A building that is damaged by fire, windstorm, hail, or acts of vandalism shall be immediately secured to avoid it being an unsecured building or structure or a dangerous building or structure and work to bring the building or structure into compliance with the regulations of this article 3.07 must be commenced within 30 days unless a longer time period is permitted by the city manager or code enforcement officer.

(2) Unsecured Building or Structure. Any building or structure 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 or other uninvited persons as a place of harborage or could be entered or used by children.

(3) Dangerous Building or Structure. Any building or structure that is boarded up, fenced, or otherwise secured in any manner if:

(A) the building or structure constitutes a danger to the public even though secured from entry; or

(B) the means used to secure the building or structure are inadequate to prevent unauthorized entry or use of the building in the manner described in Subdivision (2) of this section 3.07.002.

Sec. 3.07.003 Offenses; Penalty.

(a) Maintaining a Nuisance. A substandard building or structure, an unsecured building or structure or a dangerous building or structure, as defined by Section 3.07.002 is hereby declared a nuisance. It shall be unlawful for the owner of a building or a structure to allow it to exist in a condition in which it is a substandard building or structure, an unsecured building or structure or a dangerous building or structure, as defined by Section 3.07.002.

(b) Failure to Comply with City Council Order. It shall be unlawful for any person to fail to timely comply with an order of the city council entered pursuant to section 3.07.007, requiring the vacation, relocation of occupants, securing, repair, removal or demolition of a substandard building or structure, an unsecured building or structure or a dangerous building or structure as defined by Section 3.07.002.

(c) Penalty. Any person, firm or corporation who shall fail to comply with any of the provisions of this Section 3.07.002 commits an offense and shall, upon conviction thereof, be punished by a fine in accordance with the general penalty provision found in Section 1.01.009 of this code.

Sec. 3.07.004 City Authority to Require Remediation. The city may require the vacation, relocation or occupants, securing, repair, removal or demolition of a substandard building or structure, an unsecured building or structure or a dangerous building or structure as defined by Section 3.07.002 by the procedures specified in this article 3.07.

Sec. 3.07.005 Complaint and Notice.

(a) Complaint. The city manager or the code enforcement officer of the city shall prepare a written complaint with respect to any building or structure that is a substandard building or structure, an unsecured building or structure or a dangerous building or structure, as defined by Section 3.07.002. The complaint shall contain the following:

(1) Identification of the building or structure (which shall not require a legal description of the property);

(2) A description of the manner in which the building or structure is a substandard building or structure, an unsecured building or structure or a dangerous building or structure, as defined by Section 3.07.002;

(3) The name, office address and phone number of the city manager or code enforcement officer that can be contacted during regular office hours to discuss the complaint;

(4) Direction to the owner, lienholder or mortgagee that they must by either: (i) remedy the violations in the complaint by a date certain or (ii) present the city manager or code enforcement officer with a detailed plan stating the manner in which each violation will be remedied and the time by which all work necessary to remedy the violations will be completed, which plan shall be presented to the city manager or code enforcement officer by a date certain specified in the complaint;

(5) A statement that a public hearing will be held on the complaint before the city council if the owner fails to comply with subsection (4) preceding by the deadlines stated therein or if the owner or lienholder or mortgagee desires to contest the allegations in the complaint;

(6) The date, time and place of the public hearing before the city council;
and

(7) The following statement:

The owner, lienholder or mortgagee of this property will be required to submit at the public hearing proof of the scope of any work that may be required to comply with article 3.07 of Archer City's code of ordinances and the time it will take to reasonably perform the work.

(b) Notice of the Complaint and Hearing. The complaint shall be mailed to the owner and any lienholder or mortgagee of the building or structure. The following procedures shall govern the mailing of such notice.

(1) Determining Identity and Address of Owner, Lienholder or Mortgagee.

The city will search the following records to determine the identity and address of an owner, a lienholder, or a mortgagee:

- (A) the real property records of Archer County, Texas;
- (B) the records of the Archer County Central Appraisal District;
- (C) the records of the Secretary of State of the State of Texas;
- (D) the assumed name records of Archer County, Texas;
- (E) the tax records of Archer City, Texas; and
- (F) the utility records of Archer City, Texas.

(2) Method of Mailing. The complaint and notice of hearing shall be mailed to the owner and any lienholder or mortgagee of the building or structure by certified mail with return receipt requested, delivered by the United States Postal Service using signature confirmation service or by personal delivery to the owner, lienholder or mortgagee of the building or structure. If a notice or complaint is mailed in accordance with this subsection to a property owner, lienholder, mortgagee, or registered agent and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

Sec. 3.07.006 Public Hearing; Procedure.

(a) Hearing Before City Council. The public hearing on the complaint shall be conducted by the city council.

(b) Evidence; Burden of Proof. At the public hearing on a complaint the city council shall consider any verbal or written evidence presented by the city manager or code enforcement officer and by the owner, lienholder or mortgagee; however, the presentation of evidence shall be subject to any procedural rules applicable to public hearings or proceedings before the city council. In 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 the ordinance and the time it will take to reasonably perform the work.

Sec. 3.07.007 Action By City Council Following Public Hearing. After the public hearing if the city council determines that the building or structure which is the subject of the hearing is a substandard building or structure, an unsecured building or structure or a dangerous building or structure, as defined in Section 3.07.002, the city council may order that the building or structure be vacated, secured, repaired, removed or demolished by the owner within a reasonable time and may order that any occupants of a building be relocated within a reasonable time. The order of the city council shall be reduced to writing and shall be signed by the mayor or the mayor pro tem and the city secretary.

Sec. 3.07.008 Time Periods for Remediation. If the city council orders the owner to remediate violations with respect to a building or structure, the remediation work shall be conducted within the following time periods:

(1) 30 Days. Except as provided in subsections (2) and (3) below the owner shall secure the building or structure or repair, remove, or demolish the building or structure within 30 days from the date of the public hearing.

(2) More Than 30 Days; Conditions. If the city council finds that the work required to remedy all violations cannot be accomplished within 30 days from the date of the public hearing, the city council may allow the owner, lienholder or mortgagee of the building or structure more than 30 days to repair, remove, or demolish the building or structure if the following conditions are satisfied:

(A) The city council establishes a specific time schedule for the commencement and performance of the work; and

(B) Requires the owner, lienholder or mortgagee of the building or structure to secure the property in a reasonable manner from unauthorized entry while the work is being performed in a manner approved by the city manager or code enforcement officer.

(3) More Than 90 Days; Additional Conditions. The city council may not allow the owner, lienholder or mortgagee of the building or structure more than 90 days to repair, remove, or demolish the building or structure unless the owner, lienholder or mortgagee:

(A) submits a detailed plan and time schedule for the work at the hearing; and

(B) establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work; and

(C) is required to by the city council's order to regularly submit progress reports to the city manager or code enforcement officer to demonstrate compliance with the time schedules established for commencement and performance of the work.

(4) Bond as Additional Condition in Certain Circumstances. If the city council allows the owner, lienholder or mortgagee of a building or structure more than 90 days to complete the required repairs, removal or demolition of a building or structure and if the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the boundaries of the city that exceeds \$100,000 in total value, the city may require the owner, lienholder, or mortgagee to post a cash or surety bond in an

amount adequate to cover the cost of repairing, removing, or demolishing a building or structure under this article 3.07. 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 city. 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 city issues the order.

Sec. 3.07.009 Notice of City Council's Order. Notice of the city council's order shall be given as follows:

(1) It shall be promptly mailed to the owner and any lienholder or mortgagee of the building or structure by certified mail with return receipt requested, delivered by the United States Postal Service using signature confirmation service or by personal delivery to the owner, lienholder or mortgagee of the building or structure.

(2) A copy of the order shall be filed with the city secretary within 10 days after the date the order is issued.

(3) A notice shall be published in a newspaper of general circulation in the city within 10 days after the date the order is issued. The published notice shall state the street address or legal description of the property, the date of the public hearing, a brief statement of the results of the order and instructions on where a complete copy of the order may be obtained.

Sec. 3.07.010 Remediation by the City; Civil Penalty.

(a) Securing the Building or Structure. If the building or structure is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time in the city council's order, the city may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense.

(b) Repairing the Certain Buildings. If the building is a residential building with 10 or fewer dwelling units and is not repaired within the allotted time in the city council's order, the city may repair the building and assess the expenses on the land on which the building or structure stands or to which it is attached. The city may repair the building only to the extent necessary to bring it into compliance with the minimum standards set forth in this article 3.07. The repairs may not improve the building to the extent that the building exceeds those minimum housing standards.

(c) Civil Penalty. If the building or structure is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time in the city council's order, the city may assess a civil penalty against the property owner for failure to repair, remove, or demolish the building or structure and provide for that

assessment, the mode and manner of giving notice, and the means of recovering the assessment. The civil penalty shall only be imposed if the owner does not complete the action required by the city council's order within the time period specified in such order. Any civil penalty shall be specified in the city council's order but shall not to exceed \$1,000 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, if the city council finds:

(1) that the property owner was notified of the requirements of this article 3.07 and the owner's need to comply with the requirements; and

(2) after notification, the property owner committed an act in violation of this article 3.07 or failed to take an action necessary for compliance with this article 3.07.

Sec. 3.07.011 Lien for City's Expenses and Civil Penalty. The city may impose a lien against the land on which a building or structure stands or stood, unless it is a homestead as protected by the Texas Constitution, to secure the payment of any repair, removal, or demolition expenses incurred by the city pursuant to Section 3.07.010 or any civil penalty assessed by the city pursuant to Section 3.07.010. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the municipality for the expenses.

(1) Contents of Lien Notice. The lien 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 real property on which the building or structure was located, the amount of expenses incurred by the city, and the balance due.

(2) Lien Attachment and Priority. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the County Clerk of Archer County, Texas. If notice has been given to the owner and any lienholder or mortgagee prior to the public hearings so that such persons or firms are the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building or structure, the lien is a privileged lien subordinate only to tax liens but shall be inferior to any previously recorded bona fide mortgage lien attached to the real property if the mortgage lien was filed for record in the office of the County Clerk of Archer County, Texas before the date the civil penalty is assessed or the repair, removal, or demolition is begun by the municipality. The city's lien is superior to all other previously recorded judgment liens.

(3) Interest. Any civil penalty or other assessment imposed shall accrue interest at the rate of 10 percent a year from the date of the assessment until paid in full.

Sec. 3.07.012 Additional Authority to Secure Certain Buildings or Structures.

(a) Authority to Secure. The city may secure a substandard building or structure, an unsecured building or structure or a dangerous building or structure, as defined by Section 3.07.002 and the building or structure is unoccupied or is occupied only by persons who do not have a right of possession to the building or structure.

(b) Notice to Owner. Before the 11th day after the date the building or structure is secured, the city will give notice to the owner by:

- (1) personally serving the owner with written notice;
- (2) depositing the 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 10-day period in a newspaper of general circulation in Archer County, Texas 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 or structure if personal service cannot be obtained and the owner's post office address is unknown.

(c) Contents of Notice. The notice will contain:

- (1) an identification, which is not required to be a legal description, of the building or structure and the property on which it is located;
- (2) a description of the violation of the city standards that are present at the building or structure;
- (3) a statement that the city will secure or has secured, as the case may be, the building or structure; and
- (4) an explanation of the owner's right to request a hearing before the city council about any matter relating to the municipality's securing of the building or structure.

(d) Hearing. The city will conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the city's securing of the building or structure if, within 30 days after the date the city secures the building or structure, the owner files with the city secretary a written request for the hearing. The city shall conduct the hearing within 20 days after the date the request is filed.

(e) Assessment of Expenses as Lien. The city shall have the same authority to assess expenses under this section as it has to assess expenses under Section 3.07.011. A lien is created under this section in the same manner that a lien is created under Section 3.07.011 and is subject to the same conditions as a lien created under that section.

(f) Authority to Secure is Cumulative. The authority granted to the city by this section is in addition to the city's authority to require remediation by the owner, lienholder or mortgagee pursuant to other provisions of article 3.07 or its authority to impose civil penalties or criminal sanctions.

Sec. 3.07.013 Property Bid Off to the City. The provisions of this article 3.07 shall be applicable to all property that has been bid off to the city under TEX. TAX CODE §34.01(j) so that the city, subject to the limitations set forth in this article 3.07 and in applicable law, shall have the authority to require the vacation or relocation of occupants and the securing, repair, removal and demolition of buildings or structures located on such property and may assess a lien for its expenses in doing so.

Sec. 3.07.014 Judicial Enforcement. In addition to the remedies which the city has pursuant to other provisions of this article 3.07, the city may bring a civil action pursuant to Subchapter B of Chapter 54 of the Texas Local Government Code with respect to violations of this article 3.07. In any such civil action the city may ask for injunctive relief, the assessment of a civil penalty, an order compelling the repair or demolition of a building or structure, the recovery of its costs in enforcing the provisions of this article 3.07 and in bringing any such civil action, and any other relief that it may be entitled to request under applicable law.

SECTION 2. Repeal of Prior Regulation. Section 6.02.002(a)(3) of the city's code of ordinances is repealed.

SECTION 3. Severability. If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the remaining portions or applications remaining in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective ten (10) days after its publication in the *Archer County News*.

PASSED AND APPROVED on May 19th, 2016.

Kelvin Green, Mayor

ATTEST:
Kim Whitsitt, City Secretary