

## **ORDINANCE NO. 137**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COAHOMA, TEXAS, REGULATING SUBSTANDARD AND DANGEROUS STRUCTURES; PROVIDING PROCEDURES FOR NOTICE, PUBLIC HEARINGS AND ABATEMENT OF SUCH STRUCTURES; PROVIDING FOR THE ASSESSMENT OF THE COSTS OF SUCH ABATEMENT AGAINST THE PROPERTY, AUTHORIZING THE FILING OF A LIEN ON THE PROPERTY FOR COSTS INCURRED; PROVIDING FOR THE ASSESSMENT OF CIVIL PENALTIES FOR VIOLATION AND PROVIDING FOR A CRIMINAL PENALTY NOT TO EXCEED TWO HUNDRED DOLLARS (\$200) FOR EACH VIOLATION; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT HEREWITH, PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION, PROVIDING AN EFFECTIVE DATE AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE WAS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW

**WHEREAS,** the City Council (Council) of the City of Coahoma (City) seeks to promote the health, safety and general welfare of the inhabitants of the City;

**WHEREAS,** pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

**WHEREAS,** pursuant to Chapter 214 of the Texas Local Government Code, the City may enact an ordinance regulating dangerous and substandard structures within the City;

**WHEREAS,** there exists such dangerous and substandard structures within the city limits of the City of Coahoma; and

**WHEREAS,** the existence of such structures constitutes a hazard to the public health, safety and general welfare; and

**WHEREAS,** the Council is of the opinion that it is necessary for the good government, peace and order of the City to adopt this ordinance repealing and replacing the City's ordinance No. 76 concerning Dangerous Buildings.

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

### **DANGEROUS/SUBSTANDARD STRUCTURES**

This Ordinance shall apply to all dangerous and substandard structures and shall apply equally to new and existing conditions. This Ordinance is adopted pursuant to Chapter 214 of the Texas Local

Government Code, to protect life, health, property, safety and the welfare of the general public from the hazards and dangers of substandard structures.

## **ARTICLE I. Definitions.**

In this Ordinance:

*City Official or Official* means the designated City Official or his duly authorized representative as directed by the Mayor.

*City* means the City of Coahoma, Texas.

*Dangerous Structure or Building/Substandard Structure or Building* means any structure that does not meet the City's minimum standards for continued use and occupancy of all structures and buildings as set forth in this ordinance.

*Structure* means a building or other structure, or part of a building or structure, including fences.

*Vacate* means to leave the premises and not return until further allowed by the City Official or the City Council.

## **ARTICLE II. MINIMUM STANDARDS - NUISANCE**

### **Sec. 2.01 Minimum Standards for Continued Use and Occupancy of Structures.**

- (a) A structure does not meet the City's minimum standards for continued use and occupancy of structures and buildings if it is in violation of any applicable law, or
  - (1) Is dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety and welfare;
  - (2) Regardless of the 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 minors; or
  - (3) Is boarded up, fenced, or otherwise secured in any manner, but:
    - a. 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 by vagrants, children or other uninvited persons;
  - (4) There exist conditions caused by accumulations or refuse, vegetation, or other matter that create breeding and living places for insects and rodents; or
  - (5) The condition, use, or appearance of the structure is in violation of any City Ordinance.

- (b) In addition to the foregoing, a structure does not meet the minimum standards and shall be considered substandard and deemed unsafe and dangerous if its structural condition presents a substantial hazard to its occupants, adjoining property, or other persons by not providing minimum safeguards to protect or warn occupants in the event of fire, or because the structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is possible, or that has any of the following structural deficiencies:
- (1) Those buildings or structures whose walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
  - (2) Those buildings or structures which, exclusive of the foundations, show 33 percent or more damage or deterioration to the supporting member or members, or 50 percent damage or to the non-supporting enclosing or outside walls or covering;
  - (3) Those buildings or structures:
    - a. Which have improperly distributed loads upon floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used; or
    - b. In which the stress in any material, member or portion thereof, due to all imposed loads is dangerous.
    - c. Which have been damaged by fire, flood, earthquake, wind, or other causes so as to have become dangerous to life, safety or the general health and welfare of the occupants or the general public.
    - d. Which have been damaged by fire, flood, earthquake, wind, or other causes to the extent that the structural integrity of the building or structure is less than it was prior to the damage.
    - e. In which the condition of the structure or building is likely to cause sickness or disease, so as to work injury to the health, safety or general welfare of those living therein or to persons or property in its vicinity.
    - f. In which the building, structure, or portion thereof, as a result of decay, deterioration or dilapidation, is reasonably likely to fully or partially collapse.
    - g. Having light, air and sanitation facilities which are inadequate to protect the health, safety or general welfare of human beings who occupy the building or structure;

- h. Having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication in order to evacuate in a timely and expedient manner in order to avoid injury or peril from within.
- i. Which have:
  - i. Parts thereof which are detached that they may reasonably be expected to fall and injure members of the public or property, or
  - ii. Any exterior appendage or portion of the building or structure that is not securely fastened, attached or anchored such that it is capable of resisting wind or similar loads;
- j. In which the building, structure, or a portion thereof, does not contain sufficient space for sleeping or occupation of the building;
- k. Which because of their condition are unsafe, unsanitary or dangerous to the health, safety or general welfare, including but not limited to those which have;
  - i. a floor or roof that has insufficient strength to be reasonably safe for the purpose for which it is used and to support the weight of emergency personnel and equipment as determined by the fire chief;
  - ii. a foundation that has holes, cracks, buckling, crumbling, or defects that may cause said foundation to be unable to provide adequate support;
  - iii. a floor, exterior wall, or roof that has holes, cracks, or loose, rotten, warped, or protruding boards that may injure a person;
  - iv. an interior wall or ceiling that has holes, cracks, loose plaster, defective materials, or structural deterioration that may defeat the purpose of the wall or ceiling or that may fail to protect the occupants of the structure from danger of collapse or fire;
  - v. damage by fire, explosion, wind, vandalism, or elements of nature so that there may be a danger to life, safety, or to the general health and welfare of a person;
  - vi. the absence of an essential utility for forty-eight (48) hours or more;

- vii. inaccessibility of any part of the structure to fire, police, EMS, or other emergency vehicles; or
- viii. sewage flowing into the right-of way.
- l. Which are unsafe, unsanitary or have inadequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or, which in relation to existing use, constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment;
- m. Which have been constructed or maintained in violation of a specific requirement of any State law.

### **Sec. 2.02 Public Nuisance Declared.**

All substandard and/or dangerous buildings or structures defined herein are hereby declared to be public nuisances, and shall be abated as provided in this ordinance.

## **ARTICLE III. PROCEDURE FOR PUBLIC HEARING**

### **Sec. 3.01 Commencement of Proceedings.**

Whenever the Official has determined that a building or structure is a dangerous or substandard building or structure, he shall obtain a date and time for a public hearing before the City Council to determine whether the building complies with the standards set out in this Ordinance. The Official may seek voluntary compliance with this Ordinance with the owner, lienholder or mortgagee of the building or structure before seeking a hearing before the City Council. If the Official receives voluntary compliance from the owner, lienholder or mortgagee, the Official need not seek a public hearing from the City Council.

### **Sec. 3.02 Notice of hearing.**

The notice of public hearing shall be served on the persons of interest described below at least ten calendar days prior to the hearing date.

(a) **Identity of Interested Persons.** When the Official finds a structure to be in violation of this ordinance, he shall make a diligent effort, use his best efforts, or make a reasonable effort to determine the identity and address of each owner, lienholder, or mortgagee of the structure. Such effort shall be deemed sufficient for all purposes under this ordinance if he searches the following records:

- (1) Howard County real property records;
- (2) Howard County appraisal district records;
- (3) Secretary of State of Texas records;
- (4) Howard County assumed name records;
- (5) City of Coahoma Tax Records; and

(6) City of Coahoma utility records.

(b) **Delivery of Notice.**

- (1) The notice may be served personally or by certified mail, return receipt requested. The executed return receipt shall be prima facie evidence of service. If a notice is mailed according to this subsection and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice shall be deemed to be delivered.
- (2) The City must also post a notice of the public hearing on the front door of each improvement situated on the affected property or as close to the front door as practicable on or before the 10th day before the date fixed for the public hearing.
- (3) The City must publish a notice of the public hearing in a newspaper of general circulation in the municipality on one occasion on or before the 10th day before the date fixed for the public hearing.
- (4) The City may file a notice of the hearing in the Official Public Records of Real Property for Howard County in the form required by Section 214.001(e) of the Texas Local Government Code. The filing of the notice of hearing in the Official Public Records of Real Property for Howard County is binding on subsequent grantees, lienholders or other transferees of an interest in the property who acquire such interest after the filing of the notice and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice.

(c) **Contents of Notice.** The notice of public hearing must contain:

- (1) The name and address of the owner of the affected property if that information can be determined;
- (2) A legal description of the affected property;
- (3) A description of each violation that allegedly exists;
- (4) A description of the hearing;
- (5) 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 reasonably take to perform; and
- (6) A statement that the City may perform the required work to abate the violation if the owner fails to do so, and an explanation of the owner's right to a hearing before the Council.

### **Sec. 3.03 Public Hearing.**

At the hearing the Official shall present evidence of the condition of the structure and may recommend a course of action. The owner, lienholder, mortgagee or any other interested party may present evidence on any relevant issues.

### **Sec. 3.04 Council Orders.**

- (a) After the public hearing, if a building is found to be in violation of the minimum standards set out in this Ordinance or any other applicable laws, the City Council may issue an order:
  - (1) Declaring the structure to be substandard;
  - (2) Requiring that the owner, lienholder or mortgagee of the structure:
    - a. secure the structure from unauthorized entry; and/or
    - b. repair, remove or demolish the structure within thirty (30) days unless the owner, lienholder or mortgagee establishes at the hearing that the work cannot reasonably be performed within thirty (30) days.
  - (3) Requiring that the owner, lienholder or mortgagee must have the building vacated immediately and all occupants of the structure must be relocated.
- (b) If the City Council allows the owner, lienholder, or mortgagee more than thirty (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.
- (c) The City Council may not allow the owner, lienholder or mortgagee more than ninety (90) days to repair, remove or demolish the building or fully perform all work required to comply with the order of the City Council unless the owner, lienholder or mortgagee:
  - (1) Submits a detailed plan and time schedule for the work at the hearing; and
  - (2) Establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.
- (d) 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 Council will require the owner, lienholder or mortgagee to regularly submit progress reports, as defined by the City Council, to the Official to demonstrate compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder or mortgagee appear before the Council or the Official to demonstrate compliance with the time schedules.

- (e) If the City Council orders or allows the owner, lienholder or mortgagee to repair, remove or demolish the building, the work shall be done in compliance with all permitting requirements of the City, Howard County and State of Texas. Any repair work must comply with the applicable codes for the work to be completed.
- (f) If the owner, lienholder or mortgagee owns property, including structures and improvements on property, within the City limits of the City with a value that exceeds \$100,000.00 in total value, the Council 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 ordinance. In lieu of a bond, the Council may require the owner, lienholder or mortgagee to provide a letter of credit from a financial institution or guaranty from a third party approved by the Council. The bond must be posted, or the letter of credit or third party guaranty provided, not later than the 30th day after the Council issues the order. Value may be determined by using the appraised value of real property and improvements as determined by the Howard County Appraisal District, or its successor in interest.
- (g) 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 applicable City Ordinances and the time it will take to reasonably perform the work.

### **Sec. 3.05 Standards for Repair, Vacation or Removal.**

The following standards shall be followed by the City Council in ordering repair, vacation and/or demolition of a structure:

- (a) **Repair.** If a dangerous or substandard structure can be feasibly repaired or the condition remedied so that it will no longer exist in violation of the terms of this Ordinance, it shall be ordered remedied or repaired. Repairs shall be deemed feasible only if less than 50 percent of the structure of the building must be repaired or replaced, or the value of the structure is reduced by less than 50 percent because of the violations. Value shall be determined by comparing the most recent valuation for the building or structure by the Howard County Appraisal District with the valuation of the building or structure two years prior to the most recent valuation by the Howard County Appraisal District.
- (b) **Vacate and Secure.** If a dangerous or substandard structure is in such a condition as to be hazardous to the health, safety or general welfare of its occupants or the public, it shall be ordered vacated and secured and the order may also require the occupants to be relocated in addition to any other orders regarding the structure.
- (c) **Demolish.** In any case where more than 50 percent of a building or structure is damaged, decayed or deteriorated, it shall be ordered demolished or removed, unless the City Council deems that the structure can be feasibly repaired or the condition remedied. In all cases where a building cannot be repaired, it shall be ordered demolished within a reasonable time.



### **Sec. 3.06 Civil Penalties, notices, assessments, and liens.**

- (a) Civil penalties may be assessed by the City Council in amounts not to exceed one thousand dollars (\$1,000.00) per day for each day a property owner is in noncompliance with an order of the City Council or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed ten dollars (\$10.00) a day for each violation, if the city proves:
  - (1) The property owner was notified of the requirements of the chapter and the owner's need to comply with the requirements; and
  - (2) After notification, the property owner committed an act in violation of the chapter or failed to take an action necessary for compliance with the chapter.
- (b) A determination of civil penalties made by the City Council is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the city for final judgment in accordance with the established penalty.
- (c) Civil penalties and expenses assessed herein shall constitute a personal liability of the property owner and a lien against the property.
- (d) All civil penalties and assessments for expenses to repair a building accrue interest at the rate of ten (10) percent per annum.
- (e) A property owner against whom a civil penalty is assessed or expenses are assessed shall be given notice of such order pursuant to Section 4.01 herein.
- (f) Promptly after the imposition of a lien for the assessment of a civil penalty or expenses, the Official shall cause a written notice of such imposition of lien in the office of the Howard County Clerk.
- (g) A certified copy of an order establishing the amount and duration of a civil penalty must also be filed with the district clerk. No other proof is required for a district court to enter final judgment of the penalty.
- (h) An abstract of judgment shall be issued against all parties found to be the owner of the subject property or in possession of that property.
- (i) A lienholder does not have standing to bring a proceeding for judicial review on the ground that the lienholder was not notified of the proceedings before the commission panel or was unaware of the condition of the property unless the lienholder had first appeared before the commission panel and entered an appearance in opposition to the proceedings.
- (j) The penalties provided for in this section are in addition to any other penalties or enforcement remedies that the city may have under any applicable laws.

## **ARTICLE IV. ACTIONS AFTER PUBLIC HEARING**

**Section 4.01** Within ten days after the date the order is issued, the City shall:

- (a) File a copy of the order in the office of the City Secretary; and
- (b) Publish in a newspaper of general circulation in the municipality in which the building is located a notice containing:
  - (1) The street address or legal description of the property;
  - (2) The date of the hearing;
  - (3) A brief statement indicating the results of the order; and
  - (4) Instructions stating where a complete copy of the order may be obtained.
- (c) The Official shall promptly mail by certified mail, return receipt requested, a copy of the order to the owner of the structure and to any lienholder or mortgagee of the building. The municipality shall use its best efforts to determine the identity and address of any owner, lienholder or mortgagee of the building. If a copy of the order is mailed according to this subsection and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the mailing is not affected, and the copy of the order shall be deemed to be delivered.

**Section 4.02 Compliance with Council order.**

- (a) 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 under subsection (a) of this section, the City Council may assess the expenses on, and the City has a lien against, unless it is a homestead protected by the Texas Constitution, the property on which the building is located. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the City for the expenses. The lien arises the office of the County Clerk of Howard 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 real property on which the building was located, the amount of expenses incurred by the City, and the balance due. Interest on any lien placed by the City shall be accrued at ten percent per annum.
- (c) This section does not limit the City's ability to collect on a bond or other financial guaranty that may have been required by Section 3.04.

**Section 4.03 City's Additional Authority to Secure Dangerous Building.**

- (a) The City may secure a building that the Official determines violates the minimum standards and is unoccupied or occupied only by persons who do not have a right of possession to the building.
- (b) Before the 11th day after the date the building is secured, the Official shall 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 ten-day period in a newspaper of general circulation 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.
- (c) 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 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 Council 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 of the building if, within 30 days after the date the City secures the building, the owner files with the Official a written request for the hearing. The Council shall conduct the hearing within 20 days after the date the request is filed.
- (e) The authority granted by this Section is in addition to any other remedy provided by state law.

#### **Sec. 4.04 Judicial Review of City Council Order.**

Any owner, lienholder or mortgagee of record, jointly or severally aggrieved by an order of the City Council, may file in Howard County District Court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed with the court within thirty (30) calendar days after the respective dates a copy of the order of the City Council is personally delivered, mailed by first class mail, certified return receipt requested or delivered to them by the United States Postal Service using signature confirmation service to all persons to whom notice is required to be sent under Section 54.035 of the Texas Government Code. Notice of the order shall be pursuant to Section 4.01 herein. If a petition is not filed within the thirty-calendar day period by an owner, lienholder or mortgagee, the order of the City Council shall become final as to that owner, lienholder or mortgagee upon the expiration of such thirty-calendar day period.

## **ARTICLE V. Miscellaneous**

### **Section 5.01 Placing placard on structure.**

The Official may place a red placard on the building or structure that is unsanitary or unsafe warning of its dangerous condition. A person commits an offense if:

- (a) Without authority from the Official, he removes or destroys the red placard;
- (b) He occupies a vacant structure on which the Official has placed a red placard;
- (c) As owner of a building or structure, he allows a person to occupy or continue to occupy a building on which the red placard has been placed by the City Official.

### **Section 5.02 Timely vacation of structure.**

- (a) Each occupant of a structure or dwelling unit that has been ordered vacated shall vacate the structure or dwelling unit within the time specified in the order. It is unlawful for any person to occupy a structure or dwelling unit that has been ordered vacated.
- (b) A person who is ordered to vacate a structure shall not be considered a displaced person and shall not be eligible for relocation assistance if:
  - (1) The person is ordered to vacate a structure as a consequence of his own intentional or negligent conduct; or
  - (2) The person began occupying the structure after the Official placed a red placard on the structure warning of its dangerous condition.

### **Section 5.03 Disconnecting Public Utilities.**

The Official may request that public utilities be disconnected in order that demolition may be accomplished without delay when an order for demolition has been issued or when an emergency situation exists.

### **Section 5.04 Municipal Court Enforcement.**

The notice and abatement procedures conducted by the City Council pursuant to this ordinance do not affect criminal proceedings under the jurisdiction of any court of competent jurisdiction.

Any person that violates any of the provisions of this Ordinance, shall upon conviction be guilty of a misdemeanor and subject to a fine of up to \$200 per day or as otherwise provided by a court of competent jurisdiction. Each and every day a violation continues constitutes a separate offense.

### **Sec. 5.05 Repeal.**

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance, including, but not limited to Ordinance Number 76, are hereby

repealed, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein.

**Sec. 5.06 Severability.**

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

**Sec. 5.07 Publication.**

The City Secretary is hereby directed to publish a caption of this Ordinance that summarizes its purpose and penalty, as provided in Section 52.011 of the Texas Local Government Code.

**Sec. 5.08 Effective Date.**

This Ordinance shall be effective upon its passage and publication as required by law.

**Sec. 5.09 Proper Notice and Meeting.**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by law.

**PASSED, ADOPTED AND APPROVED** by the City Council of the City of Coahoma, Texas on this the 19<sup>th</sup> day of July, 2018.

By: Warren Wallace  
Warren Wallace, Mayor

**ATTEST:**

Tammy Griffith  
Tammy Griffith, City Secretary

