

ORDINANCE NO. 2011-13

AN ORDINANCE OF THE CITY OF SIMONTON, TEXAS BY ADOPTING THE VARIOUS 2006 INTERNATIONAL STANDARDIZED CODES AS LISTED BELOW WITH DESCRIBED CHANGES AND SUBSTITUTIONS. THE ADOPTION OF THESE CODES IS DONE TO FACILITATE PROPER INSPECTION ACTIVITIES BY THE CITY OF SIMONTON, RELATING TO CONSTRUCTION AND TO MAINTENANCE OF BUILDINGS WITHIN SAID CITY OF SIMONTON, AND RELATING TO PUBLIC SAFETY, HEALTH AND GENERAL WELFARE; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2000 FOR EACH DAY OF VIOLATION THEREOF; REPEALING ORDINANCE NO. 080916, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY.

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SIMONTON:

Section 1. The following codes are hereby adopted by reference with described changes and substitutions as described below:

1. 2006 International Building Code
2. 2006 International Fire Code
3. 2006 International Gas Code
4. 2006 International Mechanical Code
5. 2006 International Plumbing Code
6. 2006 International Property Maintenance Code
7. 2006 International Residential Code
8. 2006 International Residential Code for One and Two Family Dwellings
9. ICC International Electrical Code
10. 2006 National Electric Code

Section 2. Any matters in said codes which are contrary to existing Ordinances of the City of Simonton, the codes shall prevail. That within said codes, when reference is made to the duties of a certain official named therein, that the designated official of the City of Simonton who has duties corresponding to those of the named official in said codes shall be deemed to be the responsible official insofar as enforcing the provision of said codes are concerned.

Section 3. Prior to the commencement of any construction project within the City of Simonton, a permit shall be required and must be obtained from the City, under the following terms:

1. The City Council shall adopt a Permit Application and Permit Fee Schedule;
2. Any person seeking a permit must fill out a Permit Application and have such Application reviewed and approved by the City;
3. Any person seeking a permit must pay a fee in accordance with the Permit Fee

Schedule;

4. A permit issued by the City shall have a term of twelve (12) months; and
5. The term of a permit may be extended one time for a period not to exceed six (6) months, without the applicant incurring additional fees, if the request is made prior to the expiration of such permit and substantial construction has commenced at the time of the request for extension.

Section 4. Building Code

4.01 Foundations

A. All foundations shall be Engineered, signed & sealed, site specific, based upon an Engineered soils report, site specific. Post tension cable foundation shall have a minimum of two (2) No. 5 rebar, grade 60 in the bottom of each beam with two (2) No. 5 rebar corner bars bent 90 degree with 24 inch long sides at each connection. Steel Reinforced Concrete Foundations shall have a minimum of six (6) No. 5 rebar, grade 60 with #3 rebar "stirrups" spaced at a minimum of 24" O.C.. Corners shall have a minimum of six (6) No. 5 rebar corner bars bent 90 degree with 24 inch long sides at each connection. Foundation grade beams shall be sized a minimum of 12" wide x 24" tall as measured from the top of the slab. The area of foundation slab that is supported by the grade beams shall be a minimum of 4" concrete, 3000 PSI or greater, with either 6 GA. Welded Wire Mesh mats (not rolls) or #3 rebar mat paced 16" O.C. supported by appropriate "chairs" at 2" O.C.

B. Foundation Specifications

(a) Footings and foundations shall be constructed of reinforced concrete with the following exception: Temporary structures of secondary buildings not exceeding one story in height and 200 square feet in area shall be exempt from the engineering requirements of this subsection. One-family and two-family dwellings shall be required to have footings and foundations of reinforced concrete. All footings shall extend at least 12 inches into undisturbed soil or of soil in a foundation pad, compacted to 95% of proctor density.

(b) Post-tension foundations shall be designed to meet or exceed the standards provided herein and the Post Tension Design Institute. A registered professional engineer shall certify to the building official that the foundation, as built, is in accordance with the plans approved by the city.

4.02 Framing/Structure

A. For additions or remodels that provide access the following wind storm anchoring devices shall be installed when site/job specific engineering design is not provided by the builder. Simpson StrongTie or equal Rafters to Rafters =15 inch long strap over the ridge: LSTA 20 gauge or MSTA 18 gauge every other member. Rafter to double top plate = H2A, H2.5, H2.5A or H8 every other member. Double top plate to stud = H2A, H2.5, H2.5A or H8 every other member. Stud to bottom plate = H2A, H2.5, H2.5A or H8 every other member.

Bottom/sill plate to foundation (concrete) = 1/2" diameter J-bolt 10" long set 4 feet on center and 12" from each opening or joint in sill plate with 2" square washer and nut, hot dipped galvanized or MAS, MASP or MASB "Mudsill anchors. Bottom/sill plate to all wood foundation perimeter = H6 every other member. Second floor to First floor = CS16 Coil straps 36 inches long minimum every other member.

B. *International Residential Code and Chapter 23 of the International Building Code*, to the extent of conflict with the following provisions, is hereby deleted and the following shall apply.

- (a) All walls where plumbing drain, waste and vent lines are located shall be two-inch by six-inch sized lumber minimum.
- (b) All framing shall be no more than 16 inches on center including rafters, joists and vertical framing.
- (c) All lumber, including rafters, joists and vertical framing, shall be number 3 grade minimum. Utility grade lumber is not allowed for structural applications.

C. Roof construction of all buildings shall be of metal, slate, tile or fire- retardant fiberglass 225-pound composition shingles or approved equal. No wood shingles or fire retardant treated wood shingles allowed.

4.03 Existing Structures

2006 International Building Code, Existing Structures, is hereby amended as follows:

A. If, within any 12-month period, alterations or repairs costing in excess of 50 percent of the then physical value of the building are made to an existing building, such building shall be made to conform to the requirements of this code for new buildings.

B. If an existing building is damaged in excess of 50 percent of its then physical value before such damage, it shall be made to conform to the requirements of this code for new buildings.

C. If the cost of such alterations or repairs within any 12-month period or the amount of such damage as referred to in paragraph (b) is more than 25 but not more than 50 percent of the then physical value of the building, the portions to be altered or repaired shall be made to conform to the requirements of this code for new buildings.

D. For the purpose of this section physical value of the building shall be its appraised value as shown on the city's latest tax roll or average of 3 independent licensed appraisals.

E. If the occupancy of any existing building is entirely changed the building shall be made to conform to the requirements of this code for the new occupancy. If the occupancy of only a portion of an existing building is changed and that portion is separated from the remainder as stipulated in the International Building Code, Chapter 3, then only such portion need be made to conform.

F. The following are authorized: Repair and alterations, not covered by the preceding

paragraphs of this section, restoring a building to its condition previous to damage or deterioration, or altering it in conformity with the provisions of this code or in such manner as will not extend or increase the same kind of materials as those of which the building is constructed; but not more than 25 percent of the roof covering of a building shall be replaced in any period of 12 months unless the entire roof covering is made to conform with the requirements of this code for new buildings.

G. Any building which has been damaged by fire or other causes to the extent of more than 50 percent of its value shall be rebuilt in conformity with this article, as though it were a new building, or removed. The building shall be secured from entrance by any unauthorized persons within 24 hours after all embers are extinguished. A building permit is required before demolition, repair or reconstruction commences which shall be started within 60 days of the date the damage occurs and shall be completed within a reasonable time, but not later than 180 days after the damage occurs. Before occupancy will be permitted a certificate of occupancy shall be required.

4.04 Site Plan

Section 106.2, International Building Code, Site Plan, is hereby amended by adding thereto new paragraphs A, B and C to read as follows:

A. Where a structure is to be built on a foundation which is significantly above grade, such as pier and beam, stemwall, or other foundation type, the subfloor of the first level shall be no higher than 4" from grade immediately below such foundation subfloor regardless of whether the grade is natural ground or a built-up structural foundation pad.

B. Where the building site or lot lies within the 100-year floodplain according to the latest flood insurance rate map as established by the Federal Emergency Management Agency in the National Flood Insurance Program, an elevation certificate shall be prepared by a qualified surveyor, licensed by the State of Texas, certifying that the elevation of the first floor of the building or structure is at the required height of at least 18" above natural ground, 12" above the curb of the street, the crown of the street and/or the base flood elevation, whichever is greater. This certificate shall be required once the foundation is formed and ready for inspection.

C. An elevation survey shall be prepared by a qualified surveyor, licensed by the State of Texas, for each building site or lot showing that all drainage requirements have been satisfied. This shall be required before a certificate of occupancy is issued.

4.05 Dangerous Buildings.

A. Definitions.

(a) All buildings or structures which have any or all of the following defects shall be deemed dangerous buildings:

(1) Those which have interior walls or other vertical structural members that

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 which, exclusive of the foundation, show thirty-three (33) percent or more of damage of structural members or fifty (50) percent of damage or deterioration of the non-supporting enclosing or outside walls or covering;

(3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used;

(4) Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, morals or the general health and welfare of the occupants or the people of the city;

(5) Those which are so dilapidated, decayed, unsafe, unsanitary, or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause sickness or disease so as to work injury to the health, morals, safety or general welfare of those occupying such building;

(6) Those having light, air and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live therein;

(7) Those, regardless of their structural condition, which have, during times that they were not actually occupied by their owners, lessees or other invitees, been left unsecured from unauthorized entry to the extent that they may be entered and utilized by vagrants or other uninvited persons as a place of harborage or may be entered and utilized by children as a play area;

(8) Those which have parts thereof which are so attached that they may fall and injure members of the public or property;

(9) Those which because of their condition are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city; and/or

(10) Those buildings existing in violation of any provisions of this article, the Texas Local Government Code, Section 214.001 et seq., the building code, the fire code, or other ordinances of this city, if the violation is of such a nature that the building constitutes a danger to its occupants and to others.

(b) A building that is boarded up, fenced or otherwise secured in any manner may, nevertheless, be deemed to be a dangerous building under the foregoing criteria if:

(1) The building constitutes a danger to the public, even though secured from

entry; or

(2) It is found that the means utilized to secure the building are not adequate to prevent unauthorized entry of the building in contravention of item (7) of subsection (a) above.

(c) Any building or structure which has any or all of the conditions or defects described herein, where such condition or conditions pose a threat or potential threat to life, health, property, or human safety, is also hereby declared to be a public nuisance, and is prohibited as unlawful, and shall be abated according to provisions of this Article. It is an offense for an owner or occupant or other person having control of the building or structure to fail to abate such public nuisance. Therefore, failure to abate such condition may also be prosecuted as a criminal misdemeanor offense. It is a further offense and it is unlawful for any person to cause, permit, or allow a dangerous building after the thirtieth day after the date on which the hearing officer finds a condition of dangerous building, nuisance and orders abatement or after such extended date as may be lawfully permitted by the hearing officer.

(d) The city council hereby finds and determines that any building which has any or all of the defects set forth in (a) or (b) above is dilapidated, substandard, a nuisance or unfit for human habitation and is a hazard to the public health, safety and welfare.

B. Duties of director.

The director or his/her designee shall:

(a) Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in violation of the terms of this article;

(b) Inspect any building, wall or structure reported (as hereafter provided for) by the fire, health or police departments of this city as probably in violation of the terms of this article;

(c) Inspect buildings in the city to determine whether they are dangerous buildings within the terms of this section;

(d) Notify the director or his/her designee of buildings that are found to be dangerous so that hearings may be scheduled pursuant to this section; and

(e) Appear at all hearings conducted pursuant to this section and testify as to the conditions existing in the dangerous building.

C. Duties of city attorney.

The city attorney may:

(a) Prosecute any person failing to comply with the terms of the notices and orders

provided for in this article;

(b) Appear at hearings before the director or his designee in regard to dangerous buildings;

(c) Bring suit to collect municipal charges, liens, or costs incurred by the city in preparing or causing to be vacated or demolished dangerous buildings; or

(d) Take such other legal action as is necessary to carry out the terms and provisions of this article.

D. Hearing--Notice.

(a) Upon inspection, if a building has been found to be a dangerous building, written notice, by personal service or by certified mail, return receipt requested, shall be served on persons having an interest in the property, the owner, lien holder, or mortgagee for the property, as shown by the county real property records of the county where the land is located; appraisal district records of the appraisal district in which the building is located; records of the Secretary of State; assumed name records of the county in which the building is located; tax records of the city; and utility records of the city. This notice shall inform such persons that a hearing will be held before the city manager or his designated representative in which the city will seek an order requiring the building to be vacated, and/or requiring the building to be repaired and/or demolished and/or secured upon a finding that the building is dangerous and that it constitutes a hazard to the health, safety or welfare of its occupants and/or citizens of this city. Such notice shall also set forth:

(1) The specific conditions which render the building a dangerous building within the standards set forth in this section;

(2) That a hearing will be held before the director or his designated representative in which the city will seek an order that the building be vacated and/or that the building also be repaired and/or demolished and/or secured as provided in this section;

(3) The date, time and place of such hearing;

(4) That all persons having an interest in the property may appear in person and/or be represented by an attorney and may present testimony and may cross examine all witnesses; and

(5) That all persons having an interest in the property will be required to submit at the hearing proof of the scope of any work that may be required to comply with this article and the time it will take to reasonably perform the work.

(b) If the address of any person having an interest in the property is unknown, or if notice to any person having an interest in the property is returned undelivered, a copy of such notice shall be posted in a conspicuous place on the building found by the city manager or his designee to be dangerous and such notice shall be published in a newspaper of general circulation within the city. The posting and publishing of such notice shall constitute notice to any person having an interest in the property who does not receive personal notice or notice by mail.

State law references: Authority of city regarding substandard building, V.T.C.A., Local Government Code § 214.001.

E. Same--Conduct.

(a) All hearings shall be held by the **director** or a person designated by the **director** to conduct such hearings. Such official shall be referred to as the hearing officer; provided, however, that the city manager shall not designate any person to perform the duties of hearing officer under this section who has participated in the inspections of such building or has had prior knowledge of the conditions of such building, except such person designated as hearing officer may, prior to the hearing, receive a copy of the notice given to the owners.

(b) All hearings shall be conducted under rules consistent with the nature of the proceedings; provided, however, the following rules shall apply to such hearings:

- (1) All parties shall have the right to representation by a licensed attorney, though an attorney is not required.
- (2) Each party may present witnesses in his own behalf.
- (3) Each party has the right to cross-examine all witnesses.
- (4) Only evidence presented before the hearing officer at such hearing may be considered in rendering the order.
- (5) The person having an interest in the building has the burden of proof to demonstrate the scope of any work that may be required to comply with ordinance and the time it will take to reasonably perform the work.

(c) If no person having an interest in the building appears before the hearing officer at the date and time specified, the city shall produce evidence showing the building to be a dangerous building within the standards set forth in this section and that the same constitutes a hazard to the health, safety and welfare of the citizens.

(d) The city may request that public utilities be disconnected in order that demolition or other nuisance abatement actions may be accomplished without delay in those cases where the structure is open, vacant, dilapidated, or subject to any of the conditions defining dangerous building and public nuisance in this article.

F. Same--Findings; placards.

(a) After completion of the presentation of testimony by all parties appearing, the hearing officer shall make written findings of fact as to whether or not the buildings are dilapidated, substandard or unfit for human habitation and constitute a hazard to the health, safety or welfare of occupants and/or the citizens, and whether or not the buildings in question are dangerous within the standards set forth in this section, setting out the underlying facts supporting the findings.

(b) If the hearing officer finds that any building is dilapidated, substandard or unfit

for human habitation and that same constitutes a hazard to the health, safety or welfare of its occupants and/or the citizens, and that same is a dangerous building within the terms of this section, he shall issue an order directing the owner, occupant and all other persons having an interest in such building, as shown by the deed records of the county clerk of the county where the land is located:

- (1) That the building shall be vacated if same is occupied and the hearing officer finds that the building is in such condition as to make it dangerous to the health, safety or welfare of its occupants;
- (2) That, at the owner's option, the building shall be either demolished or repaired (if it can reasonably be brought into compliance by repair);
- (3) That the building shall be demolished if it cannot reasonably be repaired; and/or
- (4) If the building is unoccupied and the condition of the building is such that it may be brought into compliance by securing it from unauthorized entry, then the order may provide that it be so secured and be kept secured and may include or adopt written specifications that must be complied with in securing the building, and the order may provide that the building be demolished if it is not secured in compliance therewith.

(c) If the hearing officer finds that the building is substandard as above described and in such condition as to make same dangerous to the health, safety or welfare of its occupants or to the citizens, the hearing officer shall order that the city place a notice in a conspicuous place on such building. Such notice to have the heading "DANGEROUS BUILDING" in letters one and one-fourth (1 1/4) inches high and to read, in letters at least one and one-fourth (1 1/4) inches high, the words:

DANGEROUS BUILDING

"THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING. OCCUPANCY OF THIS BUILDING IS PROHIBITED BY LAW, AS SUCH OCCUPANCY IS DANGEROUS TO THE HEALTH, SAFETY OR WELFARE OF ITS OCCUPANTS. THIS NOTICE IS POSTED (here the notice shall set forth the date and hour such notice is posted). ALL PERSONS MUST VACATE THIS BUILDING NOT LATER THAN FORTY-EIGHT (48) HOURS AFTER THE TIME OF POSTING AND SHALL NOT RE-ENTER THE SAME UNTIL THE PLANNING DIRECTOR FINDS THAT THE BUILDING HAS BEEN REPAIRED SO AS TO BE IN COMPLIANCE WITH THE ORDINANCES OF THE CITY OF SIMONTON. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED."

(d) If the hearing officer finds that the building is in such condition that it is dangerous for anyone to enter, the hearing officer shall order that the city place a notice in a conspicuous place on such building. Such notice to have a heading stating DANGEROUS BUILDING in letters at least one and one-fourth (1 1/4) inches high and read in letters at least one and one-fourth (1 1/4) inches high, the words:

DANGEROUS BUILDING

"THE PLANNING DIRECTOR OF THE CITY OF SIMONTON HAS FOUND THIS BUILDING TO BE A DANGEROUS BUILDING. NO PERSON SHALL ENTER THIS BUILDING EXCEPT INSPECTORS OF THE CITY OF SIMONTON AND PERSONS AUTHORIZED BY THE OWNER WHO ENTER SOLELY FOR THE PURPOSE OF CORRECTING THE HAZARDOUS CONDITIONS THEREIN. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED."

G. Opportunity to bring property into compliance.

(a) The persons having an interest in the property coming under this article shall be given a reasonable period of time in which to comply with the hearing officer's order. Such period not to exceed thirty (30) days unless, in the judgment and discretion of the hearing officer, it is determined that a greater period of time is necessary. The order shall state the date by which the action ordered must be completed and state that the planning director shall cause the building to be vacated, repaired and/or demolished if the persons having an interest in the property do not comply with the order.

(b) The order of the hearing officer shall be served on all persons having an interest in the property, as shown on the deed records of the county in which the land lies, by registered mail or certified mail, return receipt requested. If the address of a person having an interest in the property as shown on the deed records is unknown, or if such order is returned undelivered, a copy of such order shall be posted in a conspicuous place on such building. Such posting of the order shall constitute notice to any person having an interest in the property who does not receive personal service.

(c) A copy of the order of the hearing officer shall also be filed in the deed records of the county in which the land lies.

(d) If the persons having an interest in the property fail to comply with the order of the hearing officer within the time specified in the order for compliance, the planning director shall cause such building to be vacated, repaired and/or demolished as the facts may warrant.

(e) In any instance in which an order has been issued, pursuant to this section, that a building be secured and the owner complies with the order by securing the building, the hearing officer's case file shall, nevertheless, remain active for a period of three (3) years from the date of signature of the order. The planning director may request that the hearing official reconvene the hearing if he receives evidence that the building has not remained secured and is in contravention of this section of this Code. Upon notice to the owner, lien holders, occupants and other persons having an interest in the property, the hearing officer shall reconvene the hearing. If the hearing officer finds that the building remains a

dangerous building, notwithstanding the owner's efforts to secure it, he/she may issue a revised order that the building be demolished.

H. Charges; lien.

(a) The city council hereby finds and declares that the general administrative expenses of inspecting buildings, locating owners, conducting hearings, issuing notices and orders, together with all associated administrative functions, require the reasonable charge of five hundred dollars (\$500.00) for each lot, adjacent lots under common ownership or tract of land. Such minimum charge is hereby established and declared to be the charge for such administrative expenses to be assessed in each instance where the hearing officer determines that the building or structure is a dangerous building and the city is required to proceed with notice and hearing as provided for in this section. Notwithstanding any tabulation of recorded costs, a charge of five hundred dollars (\$500.00) is hereby expressly stated to be the minimum charge, unless otherwise determined by the hearing officer. Further, the cost of securing, repairing, demolishing the building or buildings, either by the city or by persons doing so under contract with the city, shall be separately calculated and assessed in each instance where the city demolishes or causes the demolition of a building or buildings pursuant to this article.

(b) The city shall certify all administrative expenses and costs of demolishing a building or buildings by the city or by persons doing so under contract with the city, as a charge which shall be assessed the owner thereof, and which shall constitute a lien on the land on which the building or buildings are or were situated. Such charge shall bear interest at the rate of ten (10) percent per annum until paid.

(c) If an order has been issued pursuant to this article for the repair or demolition of a building or buildings and the city has let a contract for demolition, and the building or buildings are subsequently repaired or demolished by the owners prior to completion of the contracts let by the city, the administrative expenses and all costs for cancellation of the contract shall be certified as a charge which shall be assessed against the owners thereof, and which shall constitute a lien on the land on which the building or buildings are or were situated. Such charge shall bear interest at the rate of ten (10) percent per annum until paid.

I. Execution of release, notice of compliance.

(a) Upon full payment of the charges assessed against any property, or in the event the lien is placed on the property through error, the finance director or his/her designee is hereby authorized to execute, for and in behalf of the city, a written release approved in each case by the city attorney.

(b) Upon compliance with an order of the hearing officer to repair or demolish a building, the **director** shall be and is hereby authorized to execute a written "notice of compliance" setting forth the date the notice of compliance is issued, the date the building was found to be repaired or demolished in compliance with the order; and if the building

has not been demolished, whether or not the building is in such condition that it may be occupied.

(c) A fee in the amount of fifty dollars (\$50.00) shall be imposed for such release of lien provided hereunder.

J. Violations.

(a) The owner of any dangerous building who shall fail to comply with any order to repair, vacate, demolish or secure such building by any person authorized by this article to give such order shall be guilty of a misdemeanor.

(b) The occupant or lessee in possession, who fails to comply with any order to vacate, and anyone having an interest in such building as shown by the deed records of the county clerk of the county where the land is located, and under a legal duty to repair, who fails to repair or secure such building in accordance with any order given as provided for in this article, shall be guilty of a misdemeanor.

(c) Any person removing any notice provided in this article shall be guilty of a misdemeanor.

(d) The penalty upon conviction for violation of this section shall be as provided in this section of this Code.

K. Emergencies.

(a) In cases where it reasonably appears that there is immediate danger to the health, life or safety of any person unless a dangerous building is immediately repaired, vacated, demolished or secured, the **director** shall report such facts to the **City Council**. If the **City Council** finds there is in fact an immediate danger to the health, life or safety of any person unless the building is immediately repaired, vacated, demolished or secured, he/she shall cause the immediate repair; vacation, demolition or securing of such building.

(b) Whenever the **director** causes a building to be repaired, vacated, demolished or secured pursuant to this section, he shall cause a notice, as described in this section to be posted on the building.

(c) Whenever the **director** causes a building to be repaired, vacated, demolished or secured pursuant to this section, he/she shall also cause notice to be given that a hearing will be held concerning the orders issued in connection therewith, and whether the building constitutes a dangerous building. Such notice shall be given to the owners and lien holders of the building, all persons having possession of any portion thereof, and all other persons who may have an interest in the building. The notice shall set forth the specific conditions which render the building a dangerous building within the standards set forth in this section et seq., the date, time and place of such hearing, that all persons

having an interest in the building may appear in person and/or be represented by an attorney and may present testimony and may cross examine all witnesses. Such notice shall comply with the provisions set out in this section et seq.; however, the hearing shall be held as soon as it is reasonably possible, but in no case later than ten (10) days, after the director has caused the building to be repaired, vacated, demolished or secured, unless all persons having either an ownership interest or a possessory interest in the building request a continuance of the hearing. All such hearings shall be held by the **director** or a person designated by him/her in accordance with the provisions of this section et seq. At such a hearing, the burden shall be upon the city to show that there was an immediate danger to health, life or safety necessitating the immediate action and whether the building constitutes a dangerous building within the provisions of this article at the time of the hearing.

(d) After completion of the presentation of the testimony by all parties appearing, the hearing official shall make written findings of fact as to whether or not the building was an immediate danger to health, life or safety necessitating the action taken by the city manager, and whether the building was a dangerous building within the provisions of this article. If the hearing official finds that there was an immediate danger to public health, life or safety that required the action that was taken, all administrative expenses and any cost of repair or demolition shall be calculated and assessed with the owners of the building, and shall constitute a lien on the land on which the building stands or stood, which shall bear interest as provided in this section. If the hearing official finds that the building, at the time of the hearing, constitutes a dangerous building within the provisions of this article, he shall issue an order for its abatement as set out in this section. The provisions of this section et seq. shall be applicable to any such order.

L. Where owner absent from city.

In cases, except emergency cases, where the owner, occupant, lessee or mortgagee is absent from the city, all notices or orders provided for herein shall be sent by registered mail or certified mail. Notices and/or orders shall be served on persons having an interest in the property, the owner(s), lien holder(s), or mortgagee for the property, as shown by the county real property records of the county where the land is located; appraisal district records of the appraisal district in which the building is located; records of the Secretary of State; assumed name records of the county in which the building is located; tax records of the city; and utility records of the city to the owner, occupant, mortgagee, lessee and all other persons having an interest in any building coming under this article, as shown by the deed records of the county clerk of the county where the land is located, to the last known address of each. A copy of such notice shall be posted in a conspicuous place on the dangerous building to which it relates. Such posting and mailing shall be deemed adequate service.

M. Duty of city employees to report dangerous buildings.

It shall be the duty of all city employees to make a report in writing to the **director** of all buildings or structures which they believe are, may be or are suspected to be dangerous buildings within the terms of this article. Such reports are to be made within a reasonable time after the

discovery of such buildings or structures.

N. Other remedies; Chapters 54 and 214, Texas Local Government Code.

(a) Nothing in this article shall preclude the city's pursuit of any and all other remedies allowed under the civil and criminal statutes, and in equity, to address conditions which are treated in this article, under the theory of public nuisance and abatement of dangerous structures or buildings. Neither shall the city be required, nor prohibited, to issue criminal citations before, after, or during any proceeding prescribed in this article.

(b) Specifically, in addition to provisions of this article and remedies afforded under the Texas Local Government Code, Chapter 214, Municipal Regulation of Structures, the city further asserts full authority to exercise its right to remedy under all provisions of the Texas Local Government Code, including, but not limited to, Chapter 54, Subchapter B, Municipal Health and Safety Ordinances, in prosecution of civil suits for enforcement, injunctive relief, and civil penalties to remedy conditions of public concern described in this article.

4.06 Landscaping requirements.

A. *Purpose*

The purpose of this ordinance is to preserve and enhance the natural beauty and character of the community. Protection of existing native trees and planting of desirable tree species will ensure that the character of our community remains intact.

B. *Requirements*

The following requirements shall become applicable to each individual lot at such time as an application for a building permit is made and shall remain in effect thereafter, changes in ownership notwithstanding. The building official shall not issue a building permit unless the developer provides plans according to this section.

C. *Definitions*

Canopy Tree Any self-supporting woody plant with one well defined trunk and a distinct and definite formed crown which attains a mature height of at least 30 feet such as: Oaks, Pecans, Magnolias, Loblolly Pines, Sycamore, Bald Cypress, and Elm

Non canopy Tree Any self-supporting woody plant with one or more trunks which attains a height of at least 15 feet such as: Redbuds, Bradford Pears, Crape Myrtles, Wax Myrtles and Yaupons

Caliper A measurement in inches taken on the trunk of a tree that represents the diameter of the trunk. For trees under 4" in caliper this measurement is taken 6" above the crown of the root

system. For trees over 4” in caliper this measurement is taken 1” above the crown.

Undesirable Tree Any tree that is diseased or dead or any species not indigenous to our area or considered an invasive species such as: Chinese tallow, Sugar hackberry, Huisache, Mesquite, and China berry

D. Procedures

Applications for building permits shall show both the required tree planting and the existing trees on the building site.

(1) Existing trees must be located on site plan with species and caliper size noted for all trees over 4” in caliper.

Note Undesirable trees need not be noted or counted in the total caliper inches.

(2) An explanation of how existing trees which are proposed to be retained from damage during construction, will be protected and preserved.

(3) A building official shall inspect each site within 12 months of the issuance of the certificate of occupancy to insure compliance of this ordinance.

A. Building Site Requirements

All existing Canopy trees within 20” of the Building Envelope **shall** be protected and preserved during the construction process. Any canopy trees within the building envelope that cannot be preserved shall be mitigated by planting a minimum of **40%** of the caliper inches removed, unless the remaining total caliper inches exceeds **60%** of the original total or 40 total inches, whichever is greater.

All building sites with no existing canopy trees shall require a minimum combined total of **24** caliper inches be planted on the building site. Of the total **24** caliper inches required, a minimum of **75% (18”)** of caliper must be **Canopy Trees**, with the remaining **25% (6”)** being **Non Canopy Trees**.

All of the building sites must have a minimum combined total of **10** caliper inches in the front of the building.

Note Trees from the Undesirable Trees list will not be credited towards the total caliper inches.

4.07 Miscellaneous Regulations

Height and area regulations. The height of buildings, the maximum lot coverage shall be as follows:

A. Height.

(a) Single-family residences shall not exceed 2 1/2 stories in height or 35 feet above

the lowest area of living area the finished floor.

(1) Detached private garages and freestanding structures shall not exceed in height the roof peak of the single family residence.

(b) Maximum lot coverage allowed for single family residential lots is 50 %.

(c) Commercial buildings shall not exceed 35 feet in height unless provided with a fire sprinkler system per section 903.3.1 of the International Building Code.

(d) Nonresidential lots shall have a minimum of ten percent of the total lot area devoted to landscaping. All open unpaved or uncovered space shall be devoted to landscaping.

(e) Construction. The exterior surface or veneer on all commercial buildings shall be masonry, fiber cement siding or concrete with masonry, concrete, wood, fiber cement or metal fascia and trim; provided, however, that exterior insulation finish system (EIFS) or other approved synthetic exterior stucco products may be used for exterior walls where no wood, wood by-products or wood compounds are used for sheathing or structural elements and a qualified third party inspection agency inspects and certifies in writing to the city that the installation performed according to the manufacturer's installation instructions. *Masonry* means that form of construction composed of stone, brick, concrete, hollow clay tile, decorative concrete block or tile, glass block or other similar building units or materials or a combination of these materials laid up unit by unit and set in mortar. For the purposes of this definition, true stucco is considered masonry. *Commercial building* means any building other than a single-family residence.

(f) *Fences.*

(1) No fence shall be permitted in the front yard of a house which extends forward of the front of the house or of the building setback line whichever is greater, unless it is an open style fence, no greater than 60" in height, with minimum 50% open area, such as a chain link, 3-rail or similar fence.

(2) Fences may not be erected and hedges may not be planted directly on a property line without the express agreement of the property owners on both sides of the property line.

(3) Fences shall not exceed six feet in height, and shall be of a permanent type, such as chainlink, redwood, cedar, wrought iron, brick or other approved material of equal quality.

(4) Fences for unimproved residential lots or acreage may use smooth or barbed wire or other open style fence no greater than 60" in height.

(5) Refuse containers or similar equipment on nonresidential lots shall be screened from public view, and from adjacent buildings or property, whether public or private. Such screening shall be permanent and opaque and of wood, metal or masonry material and shall be at least as high as the screened object, but in no event shall be less than six feet in height.

(g) The use of razor wire or any other similar material is not allowed.

(h) Commercial fences exceeding 6" in height requires City Council Approval.

4.08 Deletions or Changes

Section 115, International Building Code, Unsafe Buildings and Equipment, is hereby deleted in its entirety.

Section 103, International Building Code, Department of Building Safety, is deleted in its entirety.

Section 112, International Building Code, Board of Appeals, is amended to be the City Council.

Section 5. Enforcement and Penalty for violation of article.

A. The Mayor or his/her designee shall have the authority to issue citations for any violation of this ordinance.

B. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000. Each day of violation shall constitute a separate offense.

C. The owner of any building or premises or part thereof, where anything in violation of this article shall be placed or shall exist, and any architect, builder, contractor, agent or person in connection therewith and who may have assisted in the commission of any such violation shall be guilty of a separate offense and, upon conviction thereof, shall be fined as provided in this section.

D. In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any provisions of this ordinance shall be deemed a public nuisance and may be abated by the city as provided by law.

E. The penalty for starting work prior to obtaining a valid permit, all fees will be doubled.

F. The imposition of a fine under this ordinance shall not prevent the revocation, suspension or denial of any permit issued or granted by the City of Simonton, nor shall it be deemed to prevent impede or delay the rights of the city to proceed in any other court of competent jurisdiction to secure equitable relief, including but not limited to, injunctions or to file suits in the name of the city or as member of a class for damages or other relief as provided for by law.

Section 6. Severability

In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional, and the City Council of the City of Simonton, Texas, declares that it would have passed each and every part of the same notwithstanding the

omission of any such part thus declared to be invalid or unconstitutional, or whether be one or more parts.

Section 7. Repealer

All other ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 8. Adoption of ordinances.

This ordinance shall become effective upon its approval and passage.

PASSED by an affirmative vote of all members of the City Council this 17th of January, 2012.

APPROVED:

Daniel McJunkin, Mayor

ATTEST:

S. Purcell, City Secretary