

ORDINANCE NO. 2012-08

AN ORDINANCE OF THE CITY OF SIMONTON, TEXAS REPEALING ORDINANCE NO. 87031701, AND REPLACING SUCH REPEALED ORDINANCE WITH THIS ORDINANCE, ESTABLISHING STANDARDS RELATED TO SUBSTANDARD BUILDINGS WITHIN THE CITY; DECLARING SUCH BUILDINGS AS A NUISANCE; STATING HEARING AND NOTICE REQUIREMENTS; ALLOWING THE CITY TO REPAIR OR DEMOLISH SUBSTANDARD BUILDINGS; ALLOWING FOR A LIEN TO BE ASSESSED FOR EXPENSES OF REPAIR OR DEMOLITION; PROVIDING A CRIMINAL PENALTY IN AN AMOUNT NOT TO EXCEED \$2,000.00 FOR ANY VIOLATION OF THIS ORDINANCE, WITH EACH DAY TO CONSTITUTE A SEPARATE VIOLATION; REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the Board of Aldermen of the City of Simonton seeks to promote the health, safety and general welfare of the community by preventing death, injuries and property damage within the City of Simonton (“City”) limits; and

WHEREAS, the Board of Aldermen seeks to protect property values within the City limits; and

WHEREAS, the Board of Aldermen finds that substandard or uninhabitable buildings or structures pose aesthetic harm to the City; and

WHEREAS, the Board of Aldermen finds that substandard or uninhabitable buildings or structures are fire hazards and often attract vermin and insects; and

WHEREAS, pursuant to Texas local Government Code 214.001, et seq. the Board of Aldermen has authority to regulate substandard and uninhabitable buildings or structures; and

WHEREAS, pursuant to Texas Local Government Code section 214.002, the Board of Aldermen has authority to order the repair, removal or demolition of a substandard or uninhabitable building or structure and to repair, remove, or demolish said building or structure and assess such costs against the property owner or owner of the building or structure; now, therefore,

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SIMONTON, TEXAS:

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Simonton and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

This Ordinance is adopted so that the Board of Aldermen may promote the public health, safety, and general welfare within the City through the regulation of substandard, uninhabitable and dangerous buildings or structures. By requiring the repair, demolition or removal of substandard, uninhabitable and dangerous buildings and structures, the Board of Aldermen seeks to protect property values and prevent bodily injury, death, and property damage within the City limits.

Ordinance No. 87031701 is hereby repealed and the regulations established therein are replaced by the following regulations:

“Section 1. Definitions. As used in this Ordinance, the following terms shall be defined as follows, unless the clear meaning of the text mandates otherwise:

Appraised Value shall mean the value given the structure by the county tax assessor’s office.

Building shall mean any structure of any kind or any part thereof, erected for the support, shelter or enclosure of persons, animals, chattel or property of any kind and includes any structure used as storage whether or not associated with a living unit.

Building Inspector shall mean the person appointed by the City to conduct periodic inspections of buildings and structures to insure that the same are being maintained in a manner consistent with prescribed Building Codes of the City and not in violation of this Ordinance.

City shall mean the City of Simonton, Texas.

Board of Aldermen shall mean the governing body of the City of Simonton, Texas.

Diligent effort shall mean best or reasonable effort to determine the identity and address of an owner, a lien holder, or a mortgage including a search of the following records:

- (a) County real property records of the county in which the building is located;
- (b) Appraisal district records of the appraisal district in which the building is located;
- (c) Records of the secretary of state;
- (d) Assumed name records of the county in which the building is located;
- (e) City tax records; and
- (f) City utility records

Minimum housing standards shall mean those standards found in the City’s adopted standard residential, building, electrical, plumbing, gas, mechanical,

existing building fire prevention, and property maintenance codes and any other housing and structure regulations adopted by the City.

Owner shall mean any person, agent, firm, corporation, or other entity named in the real property records of the county where the building is located as owning the property.

Structure shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built or composed of parts joined together in some definite manner, or any part thereof.

Section 2. Declaration of Nuisance. Any building or structure requiring repair, removal or demolition, as described in Section 3 below, as well as all buildings or structures within the City, which because of their condition, are unsafe, unsanitary, uninhabitable or otherwise dangerous to the health, safety and general welfare of the citizens of the City are hereby declared to be a public nuisance and unlawful and subject to the provisions of this Ordinance regarding repair, removal or demolition.

Section 3. Standards. Buildings or structures that meet one or more of the following standards shall be required to be repaired, removed or demolished:

- (a) The building or structure is dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare;
- (b) Regardless of its structural condition, 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;
- (c) Boarded up, fenced, or otherwise secured in any manner if:
 - i. The building or structure constitutes a danger to the public even though secured from entry; or
 - ii. The means used to secure the building or structure are inadequate to prevent unauthorized entry or use of the building in the manner described by Subsection (b) above;
- (d) The building or structure or any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public, health, safety and welfare;
- (e) The building or structure does not have adequate light, ventilation, or sanitation facilities as required by the City;
- (f) The building or structure has inadequate facilities for egress in case of fire or other emergency or has insufficient stairways, elevators, fire escapes or other means of ingress or egress; or
- (g) The building or structure does not meet minimum housing standards, and because of its condition, is uninhabitable, unsafe, unsanitary, or dangerous to the health, safety or general welfare of the City's citizens;

- (h) The condition of the building or structure is an attractive nuisance, including all conditions conducive to the harboring of rats or mice or other disease carrying animals or insects reasonable calculated to spread disease.

Section 4. Inspection. An inspection shall be made of every building or structure located within the City, which is suspected of being in violation of this Ordinance. The building inspector, or his/her official designee, is hereby authorized to conduct inspections of building suspected of being in violation of this Ordinance to determine if any such violation exists, and take such actions as may be required to enforce the provisions of this Ordinance.

Section 5. Notice of Violation. Whenever a violation of this Ordinance has been determined and reported by the building inspector or his/her designee, a public hearing shall be held by the Board of Aldermen to determine whether a building or structure complies with the standards set out in this Ordinance. A diligent effort shall be made by the City to determine all owner(s), lien holder(s) and/or mortgagee(s). Once identified, a notice of the hearing shall be sent to the occupant, if any, and all record owner(s), lien holder(s) and/or mortgagee(s). Such notice shall be in writing and shall be served by personal delivery or by certified mail return receipt requested. Additionally, a copy of the notice shall be posted on the front door of each affected structure situated on the property or as close to the front door as practicable. It is not necessary that the notice to the occupant of the property list an occupant by name. Service of the notice may be accomplished by the first class U.S. mail or by personal delivery to any occupant of the property who is above the age of eighteen (18) years.

The notice shall contain:

- (a) the names of all persons to whom the notice is being served,
- (b) the street address or legal description of the premises,
- (c) the date of inspection,
- (d) the nature of the violation
- (e) the date, time and location of the public hearing, and
- (f) a statement that the owner, lien holder, or mortgage 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 take to reasonable perform the work.

Section 6. Public Hearing. The owner(s), lien holder(s) and/or mortgagee(s) shall be allowed an opportunity to present evidence concerning the determination by the building inspector that a violation of this Ordinance exists, the scope of work that may be required to comply with this Ordinance and the time it will take to reasonable perform the work, as well as any other evidence that the owner(s), lien holder(s) and/or mortgagee(s) deem appropriate and/or applicable concerning the alleged violation. The owner(s), lien holder(s) and/or mortgagee(s) has the

burden of proof to demonstrate the scope of any work that may be required to comply with this Ordinance and the time it will take to reasonably perform the work. A hearing under this Section may be held by the City's Municipal Court, and any order for repair or demolition following the hearing may be issued by the Presiding Judge of such Municipal Court.

Section 7 Order for repair or demolition. After the public hearing, if a building or structure is found to be in violation of this Ordinance, the City may order that the building or structure be vacated, secured, repaired, removed or demolished within a reasonable time, as established herein. The City may also order that the occupants be relocated within a reasonable time.

If the building is ordered to be repaired, removed or demolished, the City shall promptly mail by certified mail, return receipt requested, or personally deliver a copy of the order to the owner of the building and to any lien holder or mortgagee of the building. The City shall make a diligent effort to discover each owner, mortgagee and lien holder having an interest in the building or property on which the building is located.

If a building is found to be in violation of this Ordinance, the City shall require the owner, lien holder or mortgagee of the building to, within thirty (30) days, repair, remove or demolish the building, unless it is proven at the hearing that the work cannot reasonably be done in thirty (30) days.

If the City allows more than thirty (30) days for the building to be repaired, removed or demolished, the City shall establish specific time schedules for the work to be commenced and performed and shall require the owner, lien holder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the hearing official.

The City shall not allow the owner, lien holder 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 unless a detailed plan and time scheduled for the work are submitted at the hearing and it is proven at the hearing that the work cannot reasonable be completed within ninety (90) days because of the scope and complexity of the work. Additionally, the owner, lien holder, or mortgagee must submit work progress reports to demonstrate compliance with the time schedule established.

The City may require a surety bond, letter of credit or other security, as provided by Section 214.001 of the Local Government Code.

Section 8. Notice of Order for repair or demolition. If the building is ordered to be repaired, removed or demolished, the City shall promptly mail by certified mail, return receipt requested, or personally deliver a copy of the order to the owner(s) of the building and to any lien holder(s) or mortgagee(s) of the building

or structure. The City shall make a diligent effort to discover each owner, mortgagee and lien holder having an interest in the building or property on which the building is located.

Section 9. Additional Notice. In addition to notice of the order, each identified mortgagee or lien holder shall be sent a notice containing:

- (a) An identification of the building and property on which it is located (this does not have to be a legal description);
- (b) A description of the violation of the Ordinance; and
- (c) A statement that the municipality may demolish the building if the ordered action is not taken.

If the notice is returned “refused” or “unclaimed,” the validity of the notice is not affected and the notice shall be deemed delivered.

Section 10. Filed Copy of Order and Publication. Within ten (10) days after the date that the order is issued, the City shall:

- (a) File a copy of the order in the office of the City Secretary; and
- (b) Publish a notice in a newspaper of general circulation in the City (and where the building is located) stating:
 - a. The street address or legal description of the property;
 - b. The date of the hearing;
 - c. A brief statement indicating the results of the order and
 - d. Instructions as to where a complete copy of the order may be obtained.

Section 11. Appeal. The owner, lien holder or mortgagee shall have the right to appeal the decision made at the hearing to a District Court. A notice of appeal must be filed with the District Court within thirty (30) calendar days from the date the order is personally delivered or mailed (in accordance with Section 214.0012 of the Local Government Code) to the owner(s), lien holder(s) or mortgagee(s), as provided herein. Upon the expiration of the thirty (30) calendar day period, the decision of the City shall become final.

Section 12. Demolition and repair expenses. Whenever it is discovered upon re-inspection that the owner(s), lien holder(s) and/or mortgagee(s) has failed to repair, remove or demolish the building or structure, or take other ordered action within the allotted time, the City or its authorized agent may repair, remove or demolish and remove said building or cause the same to be done and charge the expenses incurred in doing such work or having the same done to the owner(s), lien holder(s) and/or mortgagee(s) said land or otherwise assess the expenses against the property on which the building or structure is located.

If such work is done at the expense of the City, then said expense shall be assessed against any salvage resulting from the demolition of the building and against the lot, tract, or parcel of land, or the premises upon which such expense was incurred.

Section 13. Assessment of lien. When the City incurs expenses to repair, remove or demolish a building or structure, the City may assess the expenses on and obtain a lien against the property on which the building or structure is located, unless it is a homestead as protected by the Texas Constitution. The lien arises and attaches to the property when the City has the lien recorded and indexed with the County Clerk of the county in which the property is located. The notice shall contain:

- (a) The name and address of the owner, if that information can be determined with a reasonable effort;
- (b) A legal description of the real property on which the building was located;
- (c) The amount of expense incurred by the City;
- (d) The balance due; and
- (e) The date on which said work was done or improvements made.

The City shall have a privileged lien on such lot, lots, or other premises or real estate upon which said building or structure was located, to secure the expenditure so made, second only to other liens as provided by law. It is further provided that for any such expenditure suit may be instituted and foreclosure of said lien may be made in the name of the City; and the statement of expenses to be made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or expense.

The lien shall be extinguished if the property owner or another person having an interest in the legal title to the property reimburses the City for the expenses.”

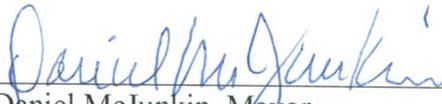
Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction, may be fined an amount not to exceed \$2,000.00 per violation, with each day constituting a separate offense.

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent.

If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining provisions of the Ordinance. The Board of Aldermen hereby declares that it would have passed

this Ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

PASSED, APPROVED AND ADOPTED on this the 21st day of August, 2012.



Daniel McJunkin, Mayor

ATTEST:



S. Purcell, City Secretary