

ORDINANCE NO. 02062018-03

AN ORDINANCE OF THE CITY OF POTEET, TEXAS; PROVIDING FOR THE ABATEMENT, VACATION, RELOCATION OF OCCUPANTS, SECURING, REPAIR, REMOVAL OR DEMOLITION OF UNSAFE AND SUBSTANDARD/DANGEROUS STRUCTURES; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of Poteet wishes to repeal previous conflicting ordinances regarding abatement of unsafe and substandard structures; and

WHEREAS, the City Council of Poteet wishes to codify in one ordinance the rules and regulations regarding unsafe buildings located in the City of Poteet; and

WHEREAS, the City Council of Poteet wishes to protect the health, safety and public welfare of its residents and set out the fines for violations of this ordinance;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POTEET, THAT:

Effective immediately following the publication of this ordinance in the local newspaper as required by Section 52.011 of the Texas Local Government Code, the following rules will apply within the corporate city limits the City of Poteet.

**Section 1. Definitions**

As used in this Ordinance, the following terms mean:

- A. *City*: The City of Poteet, Atascosa County, Texas.
- B. *Municipal Court*: The Municipal Court for the City of Poteet, Texas.
- C. *Unsafe Building*: All or any part of a building or structure which has one or more conditions or defects hereinafter described shall be deemed to be an Unsafe building.
  - i. Whenever the building or structure does not conform to applicable City adopted codes or ordinances; or
  - ii. Any condition of defect or dilapidation, substandard, or unfit for human habitation, and/or poses a threat or potential threat to life, health, property, or human safety; or
  - iii. Whenever a building is unoccupied by its owner, lessee 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.

**Section 2. UNSAFE BUILDING ABATEMENT – PURPOSE**

This ordinance is remedial in purpose and shall be construed to secure the prevention and abatement of hazards incident to the construction, alteration, repair, removal, use and maintenance of buildings. This article applies equally to all buildings, regardless of the date of their construction.

**Section 3. PROHIBITED ACTS**

- (a) It is unlawful for the owner of a building to maintain the building in a manner that allows the building to become or remain an unsafe building.

- (b) It is unlawful for any person to remove any form of unsafe building notice attached to a building by the City.

**Section 4. UNSAFE BUILDING**

If a building fails to meet the following minimum standards for continued use and occupancy, it is considered an "unsafe building," and whenever that term is used in this article, it means:

- (a) The building is dilapidated, substandard or unfit for human habitation and a hazard to the public health, safety and welfare, more specifically defined as follows:
  - 1. The foundation or the vertical or horizontal supporting members are damaged or deteriorated to the extent that the building may collapse from its own weight or from the effects of wind, rain or other natural forces;
  - 2. The exterior roof, walls or flooring is damaged, decayed or deteriorated to the extent that the elements and vermin are not sealed out from the building's occupants or contents;
  - 3. Any part of the building is so damaged, decayed or deteriorated that, from its own weight or from the effects of wind, rain or other natural forces, the building may collapse and injure occupants of the building, other persons or other property;
  - 4. The condition of the electrical, gas, mechanical or plumbing system serving the building poses a manifest hazard to the building's occupants, other persons or other property; or
  - 5. The building has been damaged by fire, wind, water, vandalism or other causes to the extent that it poses a hazard to the occupants of the building, other persons or other property.
- (b) The building is unoccupied by its owner, lessee 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; or
- (c) The building is boarded up, fenced or otherwise secured in any manner but:
  - 1. The building constitutes a danger to the public even though secured from entry; or
  - 2. The means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by subsection (b) of this section.

**State law references:** Substandard buildings, Dangerous Structures, V.T.C.A., Local Government Code § 214.001.

**Section 5. INSPECTION AND INITIAL NOTICE**

- (a) The City will respond to all complaints that a building is in violation of this article by ordering and/or conducting an on-site inspection of the building and premises.
- (b) After determining that a building is unsafe, the City will issue an initial notice of unsafe building to the owner of the building. The City will use its best efforts to determine the identity and address of any owner, lienholder or mortgagee of the building through the records of the County Clerk and other sources available to the City.
- (c) An initial notice of unsafe building must contain the following information:
  - 1. The street address of the building;

2. A description of the condition(s) that make the building an unsafe building;
    - (a) A request that the building be vacated within ten (10) days if it is both occupied and cannot be repaired within that time; or
    - (b) A request that the owner obtain a permit within ten (10) days for the repair or demolition of the building. Owner will have thirty (30) days to complete repairs, unless the owner or lienholder establishes that the work cannot reasonably be performed within thirty (30) days.
  3. A statement that the owner/lienholder may request a public hearing on whether the building is unsafe by submitting a written request to the City within ten (10) days.
- (d) The initial notice will be given to the owner in one of the following ways:
1. By serving the owner in person with a copy; or
  2. By certified mail, return receipt requested, addressed to the owner at the owner's post office address; or
  3. If service cannot be affected in person and the owner's post office address is unknown, notice may be accomplished by either publishing the notice at least twice within a ten (10) day period in a newspaper of general circulation in the county in which the building is located; and by posting the notice on or near the front door of the building.
  4. In emergency cases, the City shall post at each entrance to such unsafe building a notice to read: DO NOT ENTER. BUILDING TO BE DEMOLISHED BY THE CITY OF POTEET.

**Section 6. PUBLIC HEARING-NOTICE**

- (a) If the owner of a building fails to comply with a request in an initial notice to vacate or obtain a permit for a building under Section 5(c)(2) within the ten (10) day requirement, the City may schedule a public hearing on the building or pursue other enforcement action regarding the building. If the owner of a building responds to an initial notice by requesting a public hearing, the City will schedule a public hearing on the building.
- (b) Notice of a public hearing will be given to the owner of the building and to each mortgagee and lienholder having an interest in the building or in the property on which the building is located, in a manner described in subsection 5 (d).
- (c) The notice will contain the following:
  1. The street address of the building;
  2. A description of the condition(s) that make the building an unsafe building;
  3. A statement that the issues at the hearing will be whether the building is an unsafe building and, if so, whether the building should be vacated, secured, repaired or demolished and, if so, within what time periods these activities should be completed;
  4. A statement that if the building is not vacated, secured, repaired or demolished in accordance with an order entered after the hearing, the City may vacate, secure, repair or demolish the building and assess a lien for expenses incurred; and
  5. A statement that the owner, lienholder or mortgagee is 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.

- (d) The City may file notice of the hearing in the official public records of real property in the county in which the property is located. The filing of the notice is binding on subsequent grantees, lienholders, or other transferees of interest in the property, who acquire the interest after the filing of the notice, and constitutes notice of the hearing. The notice will contain the following:
  - 1. Name and address of the owner of the affected property, if that information can be determined from a reasonable search of the instruments on file in the County Clerk's office;
  - 2. A legal description of the affected property; and
  - 3. A description of the hearing.

**Section 7. PUBLIC HEARING - ORDER**

- (a) Public hearings under this article will be held before the Municipal Court Judge.
- (b) The issues at a hearing will be limited to those described in subsection 6(c)(3). The City's representative, the owner and any mortgagee or lienholder of the building and other interested persons may address these issues at the hearing.
- (c) Disputed fact issues will be determined by a preponderance of the evidence.
- (d) If a building is found to be an unsafe building, the Judge will order that the building be vacated, secured, repaired or demolished.
- (e) The Judge will require the owner, lienholder or mortgagee of the building to, within thirty (30) days:
  - 1. Vacate the building; or
  - 2. Secure the building from unauthorized entry; or
  - 3. Repair, remove or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within thirty (30) days.
- (f) If the Judge allows the owner, lienholder or mortgagee more than thirty (30) days to repair, remove or demolish the building, the Judge will establish specific time schedules for the commencement and performance of the work and will require the owner, lienholder or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed.
- (g) The Judge 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 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 ninety (90) days because of the scope and complexity of the work.
- (h) If the Judge allows the owner, lienholder or mortgagee more than ninety (90) days to complete any part of the work required to repair, remove or demolish the building, the Judge will require the owner, lienholder or mortgagee to regularly submit progress reports to the city to demonstrate that the owner, lienholder or mortgagee has complied 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 Municipal Court Judge or the Judge's designee.

- (i) A copy of the order will be given to the owner and any lienholder or mortgagee of record of the property in a manner described in subsection 5(d).
- (j) Within ten (10) days after the date the order is issued, the City will:
  1. File a copy of the order in the City Secretary's office; and
  2. Publish in a newspaper of general circulation in the city a notice containing:
    - (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 stating where a complete copy of the order may be obtained.

**Section 8. FAILURE TO COMPLY WITH ORDER -- PUBLIC HEARING**

- (a) If any part of an order issued under Section 7 is not complied with by the owner or by any mortgagee or lienholder, the City will schedule a public hearing within thirty (30) days on the issue of failure to comply with the court order.
- (b) Notice of the public hearing will be given in accordance with section 6(b) and (d).
- (c) The notice will contain the following:
  1. The street address of the building;
  2. The date and content of the court order;
  3. A statement that the issue at the hearing will be limited to whether the owner of the building complied with the court order; and
  4. A statement that if the court finds that the building owner did not comply with the court order, the court will order the City to vacate, secure, repair or demolish the building and assess a lien for expenses incurred.

**Section 9. FAILURE TO COMPLY WITH ORDER — ORDERS**

- (a) Public hearings under this article will be held before the Municipal Court Judge.
- (b) The issues at the hearing will be limited to those described in subsection 6(c)(3). The City's representative, the owner and any mortgagee or lienholder of the building and other interested persons may address these issues at the hearing.
- (c) Disputed fact issues will be determined by a preponderance of the evidence.
- (d) If the court finds that the building owner did not comply with the previous court order, the court will order that the City take, or cause to be taken, the previously ordered remedial action.
- (e) Any repairs caused by the City will be limited to the removal or correction of hazardous conditions and the securing of the building against unauthorized entry.
- (f) The City will certify the amount of the City's expenses for remedial action for billing to the owner.
- (g) The City may assess the expenses as a lien against the property on which the building is or was located, on a form approved by the City Attorney. The lien is a privileged lien, subordinate only to tax liens.

**Section 10. Penalty**

It shall be unlawful to do or perform any act prohibited in this Ordinance, and it shall be unlawful to fail to do or perform any act required in this Ordinance. Hearings under this Ordinance will be held before a Municipal Court Judge. Upon conviction of any violation hereof, the defendant shall be punished by a fine not to exceed Five Hundred dollars (\$500.00). Each day shall constitute a separate distinct violation. In case the owner or occupant of any lot or premises under the provisions of this section shall be a corporation, and shall violate any provision of this section, the President, Vice-President, Secretary, or Treasurer of such corporation, or any manager, agent or employee of such corporation shall be also severally liable for any penalty.

**Section 11: Severability**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not effect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsections, sentences, clauses, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void.

**Section 12: Repealer**

All ordinances in effect when this Ordinance becomes effective which as inconsistent with, or in conflict with this Ordinance are hereby expressly repealed insofar as said ordinances are inconsistent with or are in conflict with this Ordinance.

**Section 13: Effective date**

Effective immediately following the publication of this ordinance in the local newspaper as required by Section 51.052 of the Texas Local Government Code, the following rules will apply within the corporate city limits of Poteet.

**PASSED AND ADOPTED** this 4<sup>th</sup> day of February, 2018.

**APPROVED:**

  
\_\_\_\_\_  
Albert Trevino, Mayor

**ATTEST:**

  
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Abigayle Frautschi, City Secretary