

ORDINANCE NO. 2012-10-09-001

Revision of 2004-03-23-002

AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, ADOPTING AN ORDINANCE REGULATING SUBSTANDARD AND DANGEROUS BUILDINGS AND STRUCTURES WITHIN THE CITY; PROVIDING DEFINITIONS; ADOPTING THE 2012 EDITION OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE; ESTABLISHING PENALTY AND ENFORCEMENT PROVISIONS; PROVIDING AN EFFECTIVE DATE, SAVINGS, AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS; ADOPTING AMENDMENTS TO THE 2012 INTERNATIONAL PROPERTY MAINTENANCE CODE; ADOPTING CHAPT. 214, TEX. LOC. GOV'T. CODE, BY REFERENCE; AMENDING SECTIONS OF THE CODE AS ADOPTED; PROVIDING FOR INSPECTIONS OF BUILDINGS AND STRUCTURES WITHIN THE CITY; PROVIDING FOR NOTICE TO OWNERS AND PERSONS WITH INTERESTS IN SUBSTANDARD AND DANGEROUS BUILDINGS AND STRUCTURES; PROVIDING FOR HEARINGS TO DETERMINE IF A BUILDING COMPLIES WITH THE MINIMUM STANDARDS SET OUT IN THIS ORDINANCE; PROVIDING FOR APPEALS; REQUIRING THE OWNER(S) OR PERSONS WITH AN INTEREST IN A DANGEROUS OR SUBSTANDARD BUILDING OR STRUCTURE TO REPAIR, REMOVE OR DEMOLISH SUCH BUILDING OR STRUCTURE; PROVIDING FOR REPAIR AND DEMOLITION OF DANGEROUS AND SUBSTANDARD BUILDINGS AND STRUCTURES; PROVIDING FOR THE ASSESSMENT OF EXPENSES ON THE PROPERTY ON WHICH THE DANGEROUS OR SUBSTANDARD BUILDING OR STRUCTURE IS LOCATED; PROVIDING PENALTIES; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING SEVERABILITY, EFFECTIVE DATE AND OPEN MEETINGS CLAUSES.

WHEREAS, the regulation and control of unsafe, dangerous, dilapidated and substandard buildings and structures within the City of Kempner (the “City”) is necessary and essential to the economic health of the community and the preservation and protection of the public welfare;

WHEREAS, the regulation and control of unsafe, dangerous, dilapidated and substandard buildings and structures within the City will preserve and protect the public health and safety;

WHEREAS, the implementation of this ordinance will result in the repair, refurbishment and preservation of some residences and buildings, before deterioration advances to the point that preservation is no longer economically feasible;

WHEREAS, the implementation of this ordinance will assist the preservation and protection of property values, the City’s tax base, and housing opportunities within the City;

WHEREAS, this ordinance is authorized by State law, including but not limited to, *Chaper 214, Tex. Loc. Gov't. Code*, ("Chapter 214") which specifically authorizes the City to regulate, control and abate substandard and dangerous structures and buildings;

WHEREAS, the public health, safety and welfare, require the adoption and enforcement of codes governing the issuance of permits for, inspection and completion of construction, plumbing, electrical work, and buildings within the City; and **WHEREAS**, adoption of the 2012 International Property Maintenance Code, together with certain deletions, additions, and amendments thereto, is in the best interest of the health, safety, and welfare of the citizens and will more adequately protect life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of buildings, structures and premises;

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

**ARTICLE I.
FINDINGS AND ADOPTION OF CODES**

Section 1.01. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this Ordinance are reasonable and necessary to protect the public health, safety and quality of life.

Section 1.02. Adoption of International Property Maintenance Code and Amendments. (a) That certain document, one copy of which is on file in the office of the city secretary, being marked and designated as the "International Property Maintenance Code," 2012 edition, including all Appendix Ordinances, published by the International Code Council, Inc., is hereby adopted as the building code of the City establishing the minimum regulations governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures in connection with the City's dangerous building regulations and Ordinance 214, Tex. Local Gov't Code; and each and all of the regulations, provisions, conditions and terms of such "International Property Maintenance Code," 2012 edition, published by the International Code Council, Inc., on file in the office of the city secretary are hereby referred to, adopted and made a part of this Section as if fully set out in this Ordinance.

(a) The 2012 International Property Maintenance Code is further amended as follows:

- (1) Each reference to “Board of Adjustments and Appeals” is hereby amended to provide that the composition of the Board of Adjustments and Appeals of the City of Kempner shall be the City Council for the City of Kempner.
- (2) Each reference to the qualification requirements for members of the “Board of Adjustments and Appeals” is hereby repealed.
- (3) Section 111.1 is amended to delete any reference or requirement that requires a written application for appeal to be filed within 20 days after the decision of a code official.
- (4) Section 111.3 is deleted.

(b) The following numbered section is deleted and replaced in full with the text indicated:

- (1) Section 112.4 Failure to Comply. Any person who violates a provision of this code, or fails to comply therewith, or with any of the requirements thereof, shall be guilty of a misdemeanor, and subject to a fine of between \$1.00 and \$2,000.00. Each day a violation occurs constitutes a separate offense.

Section 1.03. Chapter 214 Adopted. *Chapter 214, Tex. Loc. Gov't. Code*, is hereby adopted by the City and made a part of this Ordinance. In the event of any conflict or inconsistency between the terms and provisions of this Ordinance and Chapter 214, the terms and provisions of Chapter 214 shall govern and control.

Section 1.04. Substandard Building Regulations Adopted. The City Council hereby adopts the “Substandard Building Regulations” as set forth below:

SUBSTANDARD BUILDING REGULATIONS ARTICLE II. DEFINITIONS

Section 2.01. Definitions. As used in this Ordinance the following terms shall have the meanings given below:

(a) “**Building**” means any building or structure built for the support, shelter, use or enclosure of persons, animals, chattels or property of any kind.

(b) “**Code Enforcement Authority**” means the person designated by the City for purposes of making inspections, sending notices, and otherwise enforcing the provisions of this Ordinance.

(c) “**County**” means the County of Lampasas, Texas.

(d) "**Dangerous Building**", "**Unsafe Building**", and "**Substandard Building**" means any building located within the incorporated limits of the City that is:

(a) in such a state or condition of repair or disrepair that all or any of the following conditions exist:

- (1) Walls or other vertical structural members list, lean, or buckle;
- (2) Damage or deterioration exists to the extent the building cannot be used or occupied without risk of injury, or to the extent the building poses a danger to persons on the property or adjacent property;
- (3) Loads on floors or roofs are improperly distributed or the floors or roofs are of insufficient strength to be reasonably safe for the purposes used;
- (4) Damage by fire, wind, or other cause has rendered the building or structure dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the City;
- (5) The building or structure is so dilapidated, substandard, decayed, unsafe, unsanitary or otherwise lacking in the amenities essential to decent living or use that the same is unfit for human habitation or occupancy, or is likely to cause sickness, disease or injury or otherwise to constitute a detriment to the health, morals, safety or general welfare of those persons assembled, working, or living therein or is a hazard to the public health, safety and welfare;
- (6) Light, air, and sanitation facilities are inadequate to protect the health, morals, safety, or general welfare of persons who assemble, work, or live therein;
- (7) Stairways, fire escapes, and other facilities of egress in case of fire or panic are inadequate;
- (8) Parts or appendages of the building or structure are so attached that they are likely to fall and injure persons or property;
- (9) The floors, exterior walls, or roof fail to protect occupants of the building or structure from weather, injury, and the danger of collapse due to the presence of holes, cracks, and loose, rotten, warped, or protruding boards or other similar damage in floors,

exterior walls or the roof;

(10) Conditions of the structure or building constitute a material violation of provisions of the City's Building Codes, Plumbing Code, Fire Prevention Code, or Electrical Code (the "Codes"). For the purposes of this section, a "material" violation is a violation of any provision or provision of the Codes that creates a significant risk of personal injury, death, or property damage;

(b) dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare of the City's residents;

(c) 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; or

(d) boarded up, fenced or otherwise secured in any manner if:

(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 to the extent it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children;

(3) defined as a dangerous or unsafe building by the 2006 International Property Maintenance Code, published by the International Code Council, Inc.

(e) "**Responsible Parties**" means the owner, and any mortgagee or lienholder identified by the owner or by search of the public tax records and real property records of the County, and any occupant or person residing within, or in custody of, the building or structure,

(f) "**Structure**" means that which is constructed.

ARTICLE III. GENERAL REGULATIONS

Section 3.01. Dangerous Buildings Declared a Nuisance.

(a) It shall be unlawful for any person to maintain or permit the existence of any Dangerous Building in the City; and it shall be unlawful for any person to permit same to remain in

such condition.

(b) All Dangerous Buildings, Unsafe Buildings, and Substandard Buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures provided in this Ordinance.

(c) The Code Enforcement Authority shall enforce the provisions of this Ordinance.

Section 3.02. Inspections and Duties of the Code Enforcement Authority. The Code Enforcement Authority shall inspect, or cause to be inspected, every building, or portion thereof, reported to be dangerous. If such building, or any portion thereof, is determined to be dangerous, the Code Enforcement Authority shall give the responsible parties notice in accordance with the requirements set forth in Sections 5 of this Ordinance. The Code Enforcement Authority shall also:

(a) Inspect or cause to be inspected, when necessary, any building or structure within the incorporated limits of the City, including public buildings, schools, halls, churches, theaters, hotels, tenements, or apartments, multifamily residences, single-family residences, garages, warehouses, and other commercial and industrial structures of any nature whatsoever for the purpose of determining whether any conditions exist which render such places a "Dangerous Building" as defined herein.

(b) Inspect any building, wall or structure about which complaints have been filed by any person to the effect that a building, wall or structure is or may be existing in violation of this Ordinance.

(c) Report to the Board of Adjustments and Appeals any non-compliance with the minimum standards set forth in this Ordinance. The City Code Enforcement Authority shall obtain from the secretary of the Board of Adjustments and Appeals a hearing date for a public hearing by the Board of Adjustments and Appeals on any building believed to be a Dangerous Building and shall provide the secretary of the Board of Adjustments and Appeals with copies of the written notice to persons with interests in the property as required under this Article.

(d) Appear at all hearings conducted by the Board of Adjustments and Appeals and testify as to the conditions of Dangerous Buildings within the City.

(e) Place a notice on all Dangerous Buildings reading as follows: "This building has been found to be a dangerous building by the City of Kempner Code Enforcement Authority. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given to the owner(s), occupant(s) and person(s) with interests in the property as shown by the records of the City Secretary and the Tax Appraisal District. It is unlawful to remove this notice until such notice is complied with."

(f) Request the Mayor, or City Secretary, as applicable, to have the Building

Inspector, or an appropriate engineer or building inspector, provide additional inspections, reports and act as an expert witness at hearings for buildings that appear marginally dangerous.

(g) Make a diligent effort to determine the identity and address of each owner, lienholder, or mortgagee. The Code Enforcement Authority satisfies the requirements of this subsection to make a diligent effort, to use best efforts, or to make a reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee if the Code Enforcement Authority searches the following records:

- (1) county real property records of the county in which the building is located;
- (2) appraisal district records of the appraisal district in which the building is located;
- (3) records of the secretary of state;
- (4) assumed name records of the county in which the building is located;
- (5) tax records of the City; and
- (6) utility records of the City.

(h) Perform the other requirements with respect to notification of public hearings as are set forth more specifically in this Ordinance.

Section 3.03. Notice of Dangerous Building or Dangerous Condition of Property.

(a) Should the Code Enforcement Authority determine that a building within the City is a Dangerous Building, he/she shall, in the manner provided for in this Article, attempt to identify all the Responsible Parties that have an interest in the building, and give written notification of the dangerous building or condition by certified mail return receipt requested and regular U.S. mail to each of the identified Responsible Parties that are identified by the search made pursuant to subsection (4) below. Such notice shall include:

- (1) the address or legal description of the property where the building or structure deemed unsafe is located;
- (2) a statement of the specific conditions, violations, or defects which make the building or structure a Dangerous Building;
- (3) notice of the date and time of a public hearing before the Board of Adjustments and Appeals to determine whether the building complies with the standards set out in this Ordinance; and

- (4) a statement that the owner, lienholder, mortgagee, or persons with a legal interest in the building will be required to submit at the hearing proof of the scope of any work that may be required to comply with the Ordinance and the amount of time it will take to reasonably perform the work.

(b) The notice required under this section must be either personally delivered or mailed on or before the 10th day before the date of the hearing unless the Code Enforcement Authority determines that the property, building, or structure is in immediate need to be secured, repaired, or abated and the property, building, or structure presents an immediate threat to the health, safety, and welfare of the public. For purposes of providing the minimum notice under this subsection, the Notice of Dangerous Building or Dangerous Condition of Property shall be deemed served upon the Responsible Parties on the date the notice is deposited with the U.S. Postal Service.

(c) Such notice shall be served upon the Responsible Parties both by certified mail and regular U.S. mail as required in this Section.

Section 3.04. Securing Dangerous Building.

(a) Should the Code Enforcement Authority determine that any building or structure within the incorporated limits of the City is a Dangerous Building, or is unoccupied and unsecured, or is occupied only by persons who do not have a right of possession of the building, he/she shall cause the building to be secured either by the property owner or by contacting the Kempner Police Department.

(b) Before the 11th day after the date the building is secured, the municipality shall give notice to the owner by:

- (1) personally serving the owner with written notice; or
- (2) depositing the notice in the United States mail addressed to the owner at the owner's post office address; or
- (3) publishing the notice at least twice within a 10-day period in a newspaper of general circulation in the county in which the building is located 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) 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 City 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 municipality's securing of the building.

(d) The Board of Adjustments and Appeals shall conduct a hearing at which any of the responsible parties may testify and present witnesses and written information about any matter relating to the City's securing of the building, if, within 30 days after the date the Code Enforcement Authority secures or causes to be secured the building, a responsible party files a written request for the hearing. The Board of Adjustments and Appeals shall conduct the hearing within 20 days after the date the request is filed with the City.

(e) The City shall impose a lien against the land on which the building stands, unless it is a homestead, to secure the payment of the cost of securing the building. Promptly after the imposition of the lien, the City shall file for record, in recordable form in the Official Public Records of the County, a written notice of the imposition of the lien. The notice shall contain a legal description of the land.

Section 3.05. Sufficiency of Notice.

(a) A Notice of Dangerous Building or Dangerous Condition of Property as required under this ordinance shall include notice of the date and time of a public hearing and shall be deemed properly served upon the Responsible Parties if a copy thereof is:

- (1) served upon him/her personally; or
- (2) sent by registered or certified mail, return receipt requested, and regular U.S. mail to the last known address of such person as shown on the records of the City; or
- (3) posted in a conspicuous place in or about the building affected by the notice.

(b) When the City mails a notice in accordance with this section to a property owner, lienholder, or mortgagee, and the United States Postal Service returns the notice "refused" or "unclaimed", the validity of the notice is not affected, and the notice is considered delivered.

(c) The City shall file notice of the hearing in the Public Records of Real Property of Lampasas County.

ARTICLE IV. HEARING BEFORE THE BOARD

Section 1. Duties of the Board of Adjustments and Appeals. The Board of Adjustments and Appeals (the “Board”) shall:

(a) Schedule and conduct a hearing and hear testimony from the Code Enforcement Authority, the owner and other persons having an interest in the Dangerous Building, and any person desiring to present factual evidence relevant to the Dangerous Building. Such testimony shall relate to the determination of the question of whether the building or structure in question is a Dangerous Building and the scope of any work that may be required to comply with this Ordinance and the amount of time it will take to reasonably perform the work. The owner or a person having an interest in the Dangerous Building shall have 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.

(b) Upon conclusion of the hearing, the Board of Adjustments and Appeals shall determine by majority vote whether the building or structure in question is a Dangerous Building. Upon a determination that the building or structure in question constitutes a Dangerous Building, the Board of Adjustments and Appeals shall issue a written Order:

- (1) containing an identification of the building and the property on which it is located;
- (2) making written findings of the minimum standards violations that are present at the building;
- (3) requiring the owner and persons having an interest in the building to secure, repair, vacate, and/or demolish the building within thirty (30) Days from the issuance of such Order, unless the owner or a person with an interest in the building establishes at the hearing that the work cannot reasonably be performed within thirty (30) days, in which instance the Board of Adjustments and Appeals shall specify a reasonable time for the completion of the work; and further provided that the Board of Adjustments and Appeals may require the owner and occupants to vacate the building within a shorter period of time if the building has fallen, is at risk of immediate collapse, or is in such a condition that life is endangered by further occupation of the building; and

- (4) containing a statement that the City will vacate, secure, remove or demolish the Dangerous Building and relocate the occupants of the building if the ordered action is not taken within the time specified by the Board of Adjustments and Appeals and it is found and determined by the Board of Adjustments and Appeals in its Order that there is an immediate clear and present danger to other property or the public.

(c) If repair or demolition is ordered, the Board of Adjustments and Appeals shall send a copy of the Order by certified mail to the owner and all persons having an interest in the property, including all identifiable mortgagees and lienholders within a reasonable period of time after the hearing. Within 10 days after the date that the Order is issued, the City shall:

- (1) file a copy of the Order in the office of the municipal secretary or clerk; and
- (2) publish in a newspaper of general circulation in the municipality in which the building is located 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 (may be a copy of the Order); and
 - (D) if not provided in the notice, instructions stating where a complete copy of the Order may be obtained.

(d) If repair or demolition is ordered and notice of public hearing was not filed in the Official Public Records of Real Property of the County, the City may file and record a copy of the Order in such records of the County.

(e) If the Board of Adjustments and Appeals allows the owner or a person with an interest in the Dangerous Building more than thirty (30) days to repair, remove, or demolish the building, the Board of Adjustments and Appeals in its written Order shall establish specific time schedules for the commencement and performance of the work and shall require the owner or person to secure the property in a reasonable manner from unauthorized entry while the work is being performed. The securing of the property shall be in a manner found to be acceptable by the City Code Enforcement Authority. Any required permits or approvals shall be obtained prior to commencing the repair, removal, or demolition of the building.

(f) The Board of Adjustments and Appeals may not allow the owner or person with an interest in the Dangerous Building more than ninety (90) days to repair, remove, or demolish the

building or fully perform all work required to comply with the written Order unless the owner or person:

- (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.

(g) If the Board of Adjustments and Appeals allows the owner or person with an interest in the Dangerous Building more than ninety (90) days to complete any part of the work required to repair, remove, or demolish the building, the Board of Adjustments and Appeals shall require the owner or person to regularly submit progress reports to Board of Adjustments and Appeals to demonstrate that the owner or person has complied with the time schedules established for commencement and performance of the work. The written Order may require that the owner or person with an interest in the building appear before the City Code Enforcement Authority to demonstrate compliance with the time schedules.

(h) In the event the owner or a person with an interest in a Dangerous Building fails to comply with the Order within the time specified therein, the City may cause any occupants of the Dangerous Building to be relocated, and may cause the Dangerous Building to be secured, removed, or demolished at the City's expense. The City may assess the expenses on, and the City has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the Dangerous Building was located. The lien is extinguished if the property owner or a person having an interest in the building reimburses the City for the expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the County Clerk in the county in which the property is located. The notice of lien must contain:

- (1) the name and address of the owner of the Dangerous Building if that information can be determined by a diligent effort;
- (2) a legal description of the real property on which the building was located;
- (3) the amount of expenses incurred by the City; and
- (4) the balance due.

(i) Such lien is a privileged lien subordinate only to tax liens and all previously recorded bona fide mortgage liens attached to the real property.

(j) In addition to the authority set forth in subsection (g) above, after the expiration of the time allotted in the Order for the repair, removal, or demolition of a Dangerous Building, the City may repair the building at its expense and assess the expenses on the land on which the building stands or to which it is attached. The repairs contemplated by this section may only be

accomplished to the extent necessary to bring the building into compliance with the minimum standards established by City Ordinance, and to the extent such repairs do not exceed minimum housing standards. This section shall be applicable only to residential buildings with ten (10) or fewer dwelling units. The City shall follow the procedures set forth in subsection (g) above for filing a lien on the property on which the building is located.

ARTICLE V. APPEAL OF AN ORDER OF THE BOARD

Section 5.01. Appeal of the Board of Adjustments and Appeals Order .

(a) Any Responsible Party affected by a Board of Adjustments and Appeals Order who desires to appeal the decision of the Board of Adjustments and Appeals or the findings set forth in the Board of Adjustments and Appeals Order, must appeal the Order of the Board of Adjustments and Appeals to City Council in accordance with the following procedures:

- (1) The Responsible Party shall file a written notice of appeal with the Board of Appeals and the Code Enforcement Authority within 30 calendar days of receiving the Board of Adjustments and Appeals Order.
- (2) The Notice of Appeal must set forth and describe the factual and legal grounds why the Board of Adjustment and Appeals decision is in error, wrong, or incorrect.
- (3) The Responsible Party must request a public hearing before the City Council.
- (4) The Responsible Party has the burden of proof of demonstrating at a public hearing before City Council that the Board of Adjustment and Appeals Order is in error, wrong, or incorrect.
- (5) City Council shall only consider evidence that was available to the Board of Adjustments and Appeals at the time of the hearing before the Board of Adjustments and Appeals.
- (6) The Board of Adjustments and Appeals Order shall be deemed final and non-appealable if a Responsible party fails to timely submit an appeal in accordance with this Section.

(b) In conducting its review of a Board of Adjustments and Appeals Order, the City Council shall by ordinance either affirm the Order or modify or reverse the Order.

(c) If the City Council affirms the Board of Adjustments and Appeals Order, the findings and decision set forth in the Board of Adjustments and Appeals Order shall be deemed

final and the City Council's ordinance shall include the following:

- (1) Findings of fact as to the specific conditions which make the building or structure a Dangerous Building;
- (2) If City Council orders the demolition of the Dangerous Building, the ordinance ordering the demolition of the Dangerous Building must include:
 - (A) a finding that there is an immediate clear and present danger to other property or the public; and
 - (B) the ordinance must specify that the demolition of the Dangerous Building cannot occur earlier than 35 calendar days from the date of the City Council's Order affirming the Board of Adjustments and Appeals.
- (d) If the City Council reverses the Board of Adjustment and Appeals Order, the City Council shall set forth in factual findings in the ordinance the grounds and reasons for the reversal.
- (e) The Board of Adjustments and Appeals Order shall be deemed final:
 - (1) In the absence of a timely filed appeal in accordance with the appeal procedures established in this Section; or
 - (2) Due to a failure of an appealing party to comply with the appeal procedures set forth in this Section.

Section 5.02. City Council Action. If the Responsible Parties that have an interest in a building or structure that is ordered to be repaired, rehabilitated, demolished, or removed, fail to timely comply with such Order, the City Council may:

- (a) Authorize the Code Enforcement Authority to obtain the repair and/or securing of the building or structure, and to file a lien against such property for the cost and expense of such work;
- (b) By ordinance, assess a civil penalty of up to \$1,000.00 per day against the owners and persons having an interest in the property; and
- (c) Authorize and take such other action as contemplated by this Ordinance, or *Chapter 214*, as is necessary or advisable in the judgment of the City Council to protect the public health, safety or welfare.

Section 5.03. Judicial Review.

(a) Any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of a City Council issued under this Ordinance and Section 214.001 may file in 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 by an owner, lienholder, or mortgagee within 30 calendar days after the respective dates a copy of the final decision of the municipality is personally delivered to them, mailed to them by first class mail with certified return receipt requested, or delivered to them by the United States Postal Service using signature confirmation service, or such decision shall become final as to each of them upon the expiration of each such 30 calendar day period.

(b) On the filing of the petition, the court may issue a writ of certiorari directed to the municipality to review the order of the municipality and shall prescribe in the writ the time within which a return on the writ must be made, which must be longer than 10 days, and served on the relator or the relator's attorney.

(c) The City may not be required to return the original papers acted on by it, but it is sufficient for the municipality to return certified or sworn copies of the papers or of parts of the papers as may be called for by the writ.

(d) The return must concisely set forth other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(e) The issuance of the writ does not stay proceedings on the decision appealed from.

(f) Appeal in the district court shall be limited to a hearing under the substantial evidence rule. The court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.

(g) Costs may not be allowed against the City.

(h) If the decision of the municipality is affirmed or not substantially reversed but only modified, the district court shall allow to the City all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those items, which may be entered against the property owners, lienholders, or mortgagees as well as all persons subject to the proceedings before the City.

ARTICLE VI. PENALTIES AND ENFORCEMENT

Section 6.01. Assessment of Expenses and Penalties.

(a) If the time allotted for the repair, removal or demolition of a building under this Ordinance has expired, then the City Council may, in addition to the authority granted under *Chapt. 214, Tex. Loc. Gov't. Code*, and the foregoing sections of this Ordinance:

- (1) order the repair of the building at the City's expense and assess the expenses on the land on which the building stands or to which it is attached, or
- (2) assess a civil penalty of up to \$1,000.00 per day against the responsible party for failure to repair, remove, or demolish the building.
- (3) authorize the City Code Enforcement Authority to invite at least two (2) or more building contractors to make estimates pertaining to the needed repair, removal or demolition of a building. The Code Enforcement Authority shall cause to be made an assessment of expenses, and may also recommend civil penalties, based on such estimates. The Code Enforcement Authority shall endeavor to minimize the expenses of any building repairs, removal or demolitions Order pursuant to this Ordinance.

(b) The City shall impose a lien against the land on which the building stands or stood, unless it is a homestead as protected by the Texas Constitution, to secure the payment of the repair, removal, or demolition expenses or the civil penalty. Promptly after the imposition of the lien, the City shall file for record, in recordable form in the office of the Burleson County Clerk, a written notice of the imposition of the lien. The notice shall contain a legal description of the land.

(c) The City's lien to secure the payment of a civil penalty or the costs of repairs, removal, or demolition is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the City's lien attaches if the mortgage lien was filed for record in the office of the Burleson County Clerk before the date the civil penalty is assessed or the repair, removal, or demolition is begun by the City. The City's lien is superior to all other previously recorded judgment liens.

(d) Any civil penalty or other assessment imposed under this section accrues interest at the rate of 10 percent a year from the date of the assessment until paid in full. The City may further file with the district clerk a copy of an ordinance assessing a civil penalty pursuant to this Ordinance.

(e) In any judicial proceeding regarding enforcement of the City's rights under this section, the prevailing party is entitled to recover reasonable attorney's fees as otherwise provided by statute.

(f) A lien acquired under this section by the City for repair expenses may not be foreclosed if the property on which the repairs were made is occupied as a residential homestead by a person 65 years of age or older.

Section 6.02. Violations.

(a) The owner of any Dangerous Building who shall fail to comply with any notice or Order to repair, secure, vacate or demolish said building or structure, such notice or Order given by the authority of the Board of Adjustments and Appeals, or the City Council, shall be guilty of a misdemeanor.

(b) An occupant or lessee in possession of any Dangerous Building who fails to comply with any notice or Order to vacate such building and fails to repair such building in accordance with an Order given by the Board of Adjustments and Appeals shall be guilty of a misdemeanor.

(c) Any person removing the notice of a secured building as provided for in section Art. II, Sec. 4(b)(4), and or a notice of Dangerous Building as provided in Art. II, Sec. 5(a)(3) of this Ordinance, shall be guilty of a misdemeanor.

(d) The violation of any provision of this Ordinance shall be unlawful and a misdemeanor offense punishable by a fine of between \$1.00 and \$2,000.00 Dollars. Each day a violation of this Ordinance continues shall constitute a separate offense.

Section 6.03. Penalty. Any person who shall violate any of the provisions of this Ordinance, or shall fail to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of two thousand dollars (\$2,000.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided herein. To the extent of any conflict between this Section and a penalty provision in the codes adopted herein, such penalty provision shall be amended and this Section shall control.

Section 6.04. Enforcement of Regulations. (a) No building permit, certificate of occupancy, plumbing permit, electrical permit, or utility tap shall be issued by the City for or with respect to any lot, tract or parcel of land within the City limits, after the effective date of this Ordinance, except in compliance with all then applicable requirements of this Ordinance and the above codes.

(b) Whenever any building work is being done contrary to the provisions of this Ordinance, another controlling ordinance or statute governing the building, the Building Official or Code Enforcement Officer designated by the City Manager may order the work stopped by notice verbally or in writing served on any persons engaged in the doing or causing such work to be done and the City shall post a STOP WORK ORDER on the property adjacent to the posted building permit, and any such persons shall forthwith stop such work until authorized by the Building Official or Code Enforcement Officer to proceed with the work. If no permit has been issued, all work shall stop until a permit has been properly issued and all errors corrected to the satisfaction of the Building Official or Code Enforcement Officer. The Building Official or Code Enforcement Officer may also issue a work correction order, which shall be served upon any persons who are working on a certain aspect of the construction project. The work on other aspects of the construction not in violation of the City's ordinances may proceed, but work shall cease as to that aspect in violation of the City's ordinances.

(c) This Ordinance and any code or provision adopted by this Ordinance may be further enforced by injunction and other judicial proceedings, either at law or in equity; and, in lieu of or in addition to any other authorized enforcement or action taken, any person who violates any term or provision of this Ordinance, with respect to any land, building or development within the City, by fine and penalties as provided herein.

ARTICLE VII. GENERAL PROVISIONS

Section 7.01. Amendment of Ordinances. All ordinances regulating the abatement of dangerous structures, or the adoption of prior versions of a Property Maintenance Code, published by a trade group, association or commercially, are hereby amended to the extent of any conflict with this Ordinance, and the parts or portions of other ordinances that remain in effect shall be read, construed and applied consistent with this Ordinance. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the city, the terms and provisions of this ordinance shall govern.

Section 7.02. Savings Clause. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting dangerous and substandard buildings within the City which are pending or have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 7.03. Severability. It is hereby declared that the section, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 7.04. Open Meeting. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapter 551, Texas Government Code*.

Section 7.05. Effective Date. This ordinance shall take effect immediately upon its approval and passage, and publication as required by law.

PASSED AND APPROVED on this the ___ day of _____, 2012.

THE CITY OF KEMPNER

Attest:

Gene Isenhour, Mayor

Frances Spinney, City Secretary