

ORDINANCE NO. 2019-313

AN ORDINANCE AUTHORIZING THE CITY TO DECLARE CERTAIN BUILDINGS AND OTHER STRUCTURES AS HAZARDOUS AND DEMAND THEIR REPAIR OR DEMOLITION; PROVIDING FOR THE PROHIBITION OF UNSANITARY CONDITIONS; PROVIDING THAT LOTS BE KEPT CLEAN OF WEEDS, RUBBISH, STAGNANT WATER, ETC.; PROVIDING FOR PENALTIES FOR FAILURE TO ABATE NUISANCES; AND PROVIDING THAT THIS ORDINANCE BE PUBLISHED IN THE OFFICIAL NEWSPAPER OF THE CITY OF DEVERS, TEXAS.

WHEREAS, the City of Devers, Texas is a Type B General Law Municipality having the right to declare certain structures as hazardous; and

WHEREAS, the City Council of the City of Devers, Texas recognizes that hazardous buildings and structures in the City should be made safe for the good of the public; and

WHEREAS, the City Council of the City of Devers, Texas shall have the right to declare all buildings and structures that are substandard or unfit for human habitation within the City as public nuisances; and

WHEREAS, the City Council of the City of Devers, Texas after finding that a building or structure is a public nuisance shall have the authority to require that the building or structure be either repaired, vacated and repaired, or demolished in accordance with Chapter 214 of the Texas Local Government Code; and

WHEREAS, the City Council of the City of Devers, Texas recognizes that it is in the best interest of the public to prohibit unsanitary conditions on personal property; and

WHEREAS, the City shall have the authority to declare certain unsanitary conditions nuisances and have them abated.

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

DIVISION 1. HAZARDOUS STRUCTURES

SECTION 1: APPLICABILITY

- a) *Declaration of nuisance.* All buildings or structures which are substandard or unfit for human habitation and a hazard to the public health, safety and welfare by reason of inadequate maintenance, neglect, decay, dilapidation, obsolescence, or abandonment as specified by any ordinance or code of the city, or any other provision of law, are, for the purpose of this article.

declared to be a public nuisance, and shall be repaired, vacated and repaired, or demolished as provided herein.

SECTION 2: EFFECT ON EXISITING REGULATIONS

The provisions of this article shall not be deemed to repeal by implication any provisions of the fire prevention code, the building code, or any other ordinance or code of the city, and the adoption hereof shall not be deemed to affect or diminish the power or authority of any officer or employee of the city to condemn any building or structure erected or maintained in violation of any provision of the fire prevention ordinances, the building code, or any other code or ordinance of the city.

SECTION 3: SUBSTANDARD CONDITIONS

For the purpose of this article, any building or structure which has any or all of the following conditions or defects shall be deemed a substandard and dangerous building and be below the minimum standards for continued use and occupancy;

- 1) *Inadequate sanitation.* Inadequate sanitation shall include but not be limited to the following, and as defined in specifications or standards in any ordinance or this Code:
 - a) Lack of, or improper, water closet, lavatory, bathtub or shower.
 - b) Lack of, or improper, kitchen sink.
 - c) Lack of hot and cold running water to plumbing fixtures.
 - d) Lack of electricity.
 - e) Lack of adequate heating facilities.
 - f) Lack, or improper operation, of required ventilating equipment.
 - g) Lack of minimum amounts of natural light and ventilation.
 - h) Room and space dimensions less than minimum requirements.
 - i) Lack of required electrical lighting.
 - j) Dampness of habitable rooms.
 - k) Infestation of insects, vermin or rodents as determined by the health officer.
 - l) General dilapidation or improper maintenance.
 - m) Lack of connection to required sewage disposal system.
 - n) Lack of adequate garbage and rubbish storage and removal facilities as determined by the health officer.
- 2) *Structural hazards.* Structural hazards shall include but not be limited to the following:
 - a) Deteriorated or inadequate foundations.
 - b) Defective or deteriorated flooring or floor supports.
 - c) Flooring or floor supports of insufficient size to carry imposed loads with safety.
 - d) Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defect or deterioration.
 - e) Members of walls, partitions or other vertical supports that are of insufficient size to carry imposed loads with safety.

- f) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split or buckle due to defective material or deterioration.
 - g) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety.
 - h) Fireplaces or chimneys which list, bulge or settle, due to defective material or deterioration.
 - i) Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.
- 3) *Nuisances.* Nuisances shall include any nuisance as defined in this Code.
 - 4) *Hazardous wiring.* Hazardous wiring shall include all wiring except that which conformed with all applicable laws in effect at the time of installation and which has been maintained in good condition and is being used in a safe manner.
 - 5) *Hazardous plumbing.* Hazardous plumbing shall include all plumbing except that which conformed with all applicable laws in effect at the time of installation and which has been maintained in good condition and which is free of cross-connections and siphonage between fixtures and is being used in a safe manner.
 - 6) *Hazardous mechanical equipment.* Hazardous mechanical equipment shall include all mechanical equipment, including vents, except that which conformed with all applicable laws in effect at the time of installation and which has been maintained in good and safe condition and is being used in a safe manner.
 - 7) *Faulty weather protection.* Faulty weather protection shall include but not be limited to deteriorated, crumbling or loose plaster or deteriorated or ineffective waterproofing of exterior walls, roof, foundations, or floors, including broken windows or doors; also, defective, or lack of, weather protection for exterior wall covering, including lack of paint, or weathering due to lack of paint or other approved protective covering, and broken, rotten, split or buckled exterior wall covering or roof coverings.
 - 8) *Fire Hazard.* Fire hazard shall include any building or portion thereof, device, apparatus, equipment, combustible waste, or vegetation which, in the opinion of the fire chief or his deputy, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.
 - 9) *Faulty materials of construction.* Faulty materials of construction shall include all materials of construction except those which are specifically allowed or approved by this code and the building code, and which have been adequately maintained in good and safe condition.
 - 10) *Hazardous or unsanitary premises.* Hazardous or unsanitary premises shall include those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials, and similar materials or conditions constitute fire, health or safety hazards.
 - 11) *Inadequate maintenance.* Inadequate maintenance shall include any building or portion thereof which is determined to be an unsafe building.
 - 12) *Inadequate exits.* Inadequate exits shall include all buildings or portions thereof not provided with adequate exit facilities as required by this Code, except those building or portions thereof

whose exit facilities conformed with all applicable laws at the time of their construction and which have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy. When an unsafe condition exists through lack of or improper location of exits, additional exits may be required to be installed.

- 13) *Inadequate fire protection or firefighting equipment.* Inadequate fire protection of firefighting equipment shall include all buildings or portions thereof which are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required, except those buildings or portions thereof which conformed with all applicable laws at the time of their construction and whose fire-resistive integrity and fire-extinguishing systems or equipment have been adequately maintained and improved in relation to any increases in occupant load, alteration or addition, or any change in occupancy.
- 14) *Improper occupancy.* Improper occupancy shall include all buildings or portions thereof occupied for living, sleeping, cooking or dining purposes which were not designed or intended to be used for such occupancies.

SECTION 4: NOTICE TO OWNER.

- a) *Finding by Mayor or his designee.* If the Mayor or his designee finds that any building or structure, or portion thereof, is unsafe, substandard, dangerous, or a hazard, he shall prepare a notice in writing stating in detail the conditions which he finds render the building or structure, or portion thereof, a nuisance, as defined in this article, and setting a hearing to determine if the building complies with the standards set out in this article or if the structure should be ordered repaired, vacated and repaired, or demolished within sixty (60) days from the date of the personal service or mailing of the notice to the owner of the building. The notice shall also state whether the Mayor believes the structure should be ordered repaired, vacated and repaired, or demolished. The notice must also state that the recipient has a duty to appear at said hearing and present evidence regarding the structure and any work that is to be performed on the structure. The Mayor or his designee may, when it is determined that additional time will be necessary to complete the work ordered, extend such time for an additional thirty-day period upon the application of the owner or person charged with the duty of complying with such order.
- b) *Identification of structure.* The notice provided for above shall set forth the street address and a legal description sufficient for identification of the building or structure and the premises upon which the building or structure is located.
- c) *Persons to be served copies.* The Mayor, or his designee, shall cause copies of the notice provided for herein to be served upon each of the following:
- 1) The person, if any, in real or apparent charge and control of the premises involved.
 - 2) The owner of record title.
 - 3) The holder of any mortgage, trust deed, or other lien or encumbrance of record.
 - 4) The owner or holder of any lease of record.

- 5) The record holder of any other estate or interest in or to the building or structure or the land upon which it is located.
- d) *Service.* The notice provided for herein shall be served by depositing a copy of such notice in the United States Post Office, properly enclosed in a sealed envelope, and with the postage thereon fully prepaid. Such mail shall be registered or certified, return receipt requested, and addressed to the person entitled thereto at the address of such person as it appears on the last property tax roll of Liberty County or as known to the Mayor, or his designee,. If no such address so appears or is known to the Mayor, or his designee, a copy of the notice shall be addressed to such person at the address of the building or structure involved. Service by registered or certified mail shall be complete on the day of mailing. The failure of any owner or other person to receive such notice shall not affect in any manner the validity of any proceedings taken under this section.
- e) *Posting.* One (1) copy of the notice provided for herein shall be conspicuously posted on the building or structure involved.
- f) *Record of service.* Upon giving notice as provided herein, the Mayor, or his designee, shall file with the city secretary an affidavit thereof certifying to the time and manner in which such notice was given and posted to be maintained in the official city records. He shall also file therewith any receipt card which may have been returned to him in acknowledgment of the receipt of such notice by registered or certified mail.

SECTION 5: RIGHT TO HEARING; DETERMINATION BY CITY COUNCIL.

- a) *Opposition to order of Mayor, or his designee.* Any person potentially aggrieved by the proposed order to repair, vacate and repair, or demolish any building or structure, or portion thereof, may appear to oppose such order before the city council. The Mayor, or his designee, shall notify by personal service or mailing of the notice or order proposing to repair, vacate and repair, or demolish, which is being opposed. The Mayor, or his designee, shall set the matter for public hearing before the city council within forty-five (45) days after the date the notice is mailed. Notice of the date, hour, and place of the hearing shall be posted and served at least ten (10) days before the date set for the hearing in the manner and upon the persons specified in subsection 4(c). The notice shall order all interested parties who desire to be heard to appear and show cause, if any, why the building or structure, or portion thereof, involved in the proceedings should not be repaired, vacated and repaired, or demolished.
- b) *Failure to appear.* Failure of any person or his agent or attorney to appear in opposition of the proposed order in accordance with the provisions of this Code shall constitute a waiver of his right to oppose the notice and the order, or any portion thereof.
- c) *Hearing.* At the time stated in the notice, the city council shall hold a hearing and hear and consider any relevant evidence offered by the Mayor, or his designee,, as well as the owner, occupant, or person in charge and control, mortgagee or beneficiary under any deed of trust, trust, lessee, or any other person having any estate or interest in the building or structure, pertaining to the matters set forth in the notice to repair, vacate and repair, or demolish.

- d) *Request for additional information.* Whenever in the course of any proceedings taken hereunder the city council shall have cause to request additional information, the same may be requested of the fire department, the Mayor, or his designee, the health officer, or any other agencies charged by law with enforcement of health or safety requirements of local or state law.
- e) *Decision by city council.* Within thirty (30) days after the conclusion of the hearing, the city council shall make written findings of fact as to whether or not the building or structure or portion thereof is unsafe and a public nuisance, and shall render its decision, either closing the proceedings, or if it finds that the building or structure, or portion thereof, is unsafe, and a nuisance, ordering that it be repaired, vacated and repaired, or demolished. All decisions and findings of the city council shall be made in writing and a duplicate copy of such decisions and findings shall be sent to the appellant. A copy of the City Council's order shall be placed in the official newspaper of the City of Devers within ten (10) days after the decision is rendered. The order shall be filed with the City Secretary within ten (10) days after the decision is rendered.
- f) *Order to repair, demolish, etc.* If, from a full and fair consideration of the evidence and testimony received at the hearing, the city council shall determine that the building or structure, or any portion thereof, is unsafe and a public nuisance, then it shall issue an order, certified by the city secretary:
- 1) That the building or structure must be repaired, vacated and repaired, or demolished.
 - 2) That the occupant, lessee, or other person in possession must vacate the building or structure, or, that he may remain in possession while repairs are being made.
 - 3) That any mortgagee, beneficiary under a deed of trust, or any other person having an interest or estate in the building or structure may, at his own risk, repair, vacate and repair, or demolish it.
- g) *Standards for determination.* The following standards, where applicable, shall be followed in substance by the city council in ordering the repair, vacation, or demolition of any building or structure. Any order to demolish rendered pursuant to this section shall not indicate an alternative permission to repair; however, an order to repair may be satisfied by demolition.
- 1) If the unsafe building can reasonably be repaired so that it will no longer exist in violation of the terms of this article, it shall be ordered repaired.
 - 2) If the unsafe building is in such condition as to make it dangerous to the health, morals, safety or general welfare of its occupants, it shall be ordered to be vacated and repaired.
 - 3) If the unsafe building is at least fifty (50) percent damaged, decayed, or deteriorated, it shall be demolished.
 - 4) In all cases where an unsafe building cannot be repaired so that it will no longer exist in violation of the terms of this article, it shall be vacated and demolished.
 - 5) In cases where an unsafe building is a fire hazard, existing or erected in violation of the terms of this article or any other ordinance or code of this city, or statute of the state, it

shall be repaired, except where the cost of such repairs would exceed fifty (50) percent of the value of such unsafe building, in which case it shall be demolished.

- h) *Contents of order.* The order of the city council shall:
- 1) Set forth the information required in subsection 4(b).
 - 2) Contain a statement of the particulars which render the building or structure unsafe and a public nuisance.
 - 3) Contain a statement of the things required to be done.
 - 4) Specify the time within which the work required must be commenced, which shall not be less than ten (10) days after the issuance of the order.
 - 5) Specify a reasonable time within which the work shall be completed.

SECTION 6: FAILURE TO COMPLY WITH ORDER – DECLARED MISDEMEANOR.

- a) The owner or other person having charge and control over any building or structure determined by the Mayor, or his designee, and the city council to be unsafe and a public nuisance who shall fail to comply with any order to repair, vacate and repair, or demolish such building or structure, or any portion thereof, shall be guilty of a Class C misdemeanor.
- b) The occupant or lessee in possession who fails to comply with any order to vacate any building or structure, or any portion thereof, in accordance with any order given as provided for, shall be guilty of a Class C misdemeanor.

SECTION 7: ACTION BY CITY UPON FAILURE TO COMPLY WITH ORDER.

The following is the action to be taken by the city in the event of failure to comply with any order given:

- 1) *Notice to vacate; demolition of structure.* Whenever an order to repair, vacate and repair, or demolish any building or structure or any portion thereof, has not been complied with within the time set by the Mayor, or his designee, or, upon appeal, by the city council, the Mayor, or his designee, or the city council shall have the power, in addition to any other remedy herein provided, to:
 - a) Cause the building or structure ordered to be repaired to be vacated until such time as the necessary repairs have been made. No person shall thereafter occupy or permit to be occupied any such building until and unless the necessary repairs have been made and the Mayor, or his designee, has approved same and issued a permit to reoccupy such building or structure.
 - b) Cause the building or structure to be demolished and the land restored to a reasonably clear and level condition, including the filling of any excavation to the finished grade of the surrounding area. The demolition of any building or structure and the sale of the materials thereof shall be by a contract award following advertisement for bids, to the best bidder. The city secretary may sell or cause to be sold any such building or structure singly or otherwise. Any proceeds from the sale of any building or structure, or groups of buildings

or structures, over and above the cost of demolition and of cleaning the site, shall be retained to be distributed to the parties or persons lawfully entitled thereto.

- 2) *Costs to constitute lien.* The amount of the cost of abating such nuisance upon the various lots or parcels of land, including incidental expenses, shall constitute special assessments against the respective lots or parcels of land, and as thus made and confirmed shall constitute a lien on such property for the amount of such assessments, respectively, until paid. Such lien shall, for all purposes, take priority over all other liens except tax liens or paving assessment liens.

Within a reasonable length of time after the special assessment liens are created, the city secretary shall cause a certified copy of such special assessment lien to be filed with the county clerk in the deed records of the county. Such special assessment liens shall bear interest at the rate of eight (8) percent per annum from the date of filing of the same with the county clerk and such lien shall be collected in the same manner as other assessment liens are collected under the laws of the state.

SECTION 8: REMOVING NOTICE POSTED ON PROPERTY.

Any person who removes any notice or order posted as required in this article shall be guilty of a misdemeanor.

SECTION 9: OBSTRUCTION OF WORK.

It shall be unlawful for any person to obstruct, impede, or interfere with any officer, agent, or employee of the city or with any person who owns or holds any estate or interest in any building or structure, or any portion thereof, which has been ordered to be repaired, vacated and repaired, or demolished, or with any person to whom such building or structure has been lawfully sold pursuant to the provisions of this article, whenever any such officer, agent, employee, purchaser, or person having an interest or estate in such building or structure is engaged in repairing, vacating and repairing, or demolishing any such building or structure pursuant to the provisions of this article, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant thereto.

SECTION 10: LIABILITY FOR DAMAGE.

No officer, agent, or employee of the city shall be personally liable for damage incurred or alleged to be incurred as a result of any act required, permitted, or authorized to be done or performed in the discharge of his duties pursuant to this article. Any suit brought against any officer, agent, or employee of the city as a result of any act required, permitted or authorized in the discharge of his

duties under this article shall be deemed an action against the city and shall be defended by the city attorney.

DIVISION 2. UNSANITARY CONDITIONS

SECTION 11: Prohibited Conditions

- (a) Stagnant Water. It shall be unlawful for the owner of any lot or other premises in the city to allow or permit holes or places where water may accumulate and become stagnant to be or remain on such lot or premises or to allow or permit the accumulation of stagnant water thereon, or to permit the stagnant water to remain thereon.
- (b) Accumulation of carrion, filth, etc. It shall be unlawful for the owner of any lot, building, house, establishment or premises in the city to allow or permit any carrion, filth or any other impure or unwholesome matter of any kind to accumulate or remain thereon.
- (c) Growth or accumulation of weeds, rubbish, etc. It shall be unlawful for the owner of any lot or premises in the city to allow or permit weeds or grass over twelve (12) inches in height, rubbish, brush or any other unsightly, objectionable or unsanitary matter of whatever nature to accumulate or remain on such lot or premises.
- (d) Unlawful Dumping. The following acts are declared to be unlawful and in violation of this section:
 - 1. The throwing, placing, dumping or depositing of any lawn trimmings or any other cuttings or trimmings of weeds, flowers, or other vegetation on lots vacant or occupied, driveways or any other private property.
 - 2. The throwing, placing, dumping or depositing of any lawn trimmings, hedge trimmings or any other cuttings or trimmings of weeds, flowers or other vegetation on or in any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the City of Devers.
 - 3. The throwing, placing, dumping or depositing of any garbage, trash, refuse, animal or vegetable waste matter of any kind on or in any street, parkway, driveway, alley or any other public property of the City of Devers.
- (e) A violation of this section shall be deemed a Class C misdemeanor.

SECTION 12: Notice to correct or remove condition

- (a) Compliance. Whenever any condition described in Division 2 of this ordinance is found to exist on any premises within the city, the owner of such premises shall be notified by the city,

in writing, to correct, remedy or remove the conditions within seven (7) days after such notice, and it shall be unlawful for any person to fail to comply with such notice.

- (b) Service. The notice provided for in this section shall be served personally on the owner whom it is directed or shall be given by letter addressed to such owner at his last known address. If a person cannot be personally served and the owner's address is unknown, such notice shall either be published in the newspaper, or posted on or near the entrance of each building on the property to which the violation relates, or notice shall be posted on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.
- (c) Anniversary of notice. City may inform the owner in the notice described in subsection (b) that if the owner commits another violation of the same kind or nature on or before the first anniversary of the date of the notice, the city may without further notice correct the violation at the owner's expense and assess the expense against the property.
- (d) Dangerous weeds. City may immediately abate the nuisances of weeds in excess of forty-eight (48) inches in height which are an immediate danger to the health, life or safety of any person.

SECTION 13: Correction or removal of conditions by city

- (a) Authorized. If the owner of any lot or premises upon which a condition described in this article exists fails to correct, remedy or remove such condition within seven (7) days after notice to do so is given in accord with this article, the city may do such work or make such improvements as are necessary to correct, remedy or remove such conditions, or cause the work to be done, and pay therefor and charge the expenses incurred to the owner of such property. Such expenses shall be assessed against the lot or real estate upon which the work was done or the improvements made. The doing of such work by the city shall not relieve such person from prosecution for failure to comply with such notice, in violation of section 12.
- (b) Filing of statement of expenses. Whenever any work is done or improvements are made by the city under subsection (a), the City Mayor or his/her designee, on behalf of the city, shall file a statement of the expenses incurred thereby with the county clerk. Such statement shall give the amount of such expenses and the dates on which the work was done or the improvements were made.
- (c) Lien for and collection of expenses. After the statement provided for in subsection (b) is filed, the city shall have a privileged lien on the lot or real estate upon which the work was done or improvement made, to secure the expenses thereof. Such lien shall be second only to tax liens and liens for street improvements, and the amount thereof shall bear interest at the rate of ten

(10) percent per annum from the date of the payment of such expenses. For any such expenditures and interest, suit may be instituted and recovery and foreclosure of the lien may be had in the name of the city. The statement of expenses made in accord with subsection (b), or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Devers, Liberty County, Texas, this Ordinance shall become effective upon signature by the Mayor, or, if not signed or vetoed by the Mayor, upon expiration of the time for ordinances to become law without the signature by the Mayor.

BE IT FURTHER ORDAINED that if any provision or item of this ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this ordinance which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this ordinance are hereby declared severable.

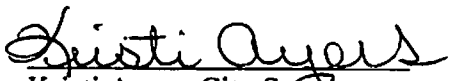
BE IT FURTHER ORDAINED that all ordinances or parts of ordinances in conflict herewith are hereby repealed.

The above and foregoing ordinance shall be in full force and effect from and after its adoption, approval and publication, as provided by law.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Devers, this the 12th day of March, 2019.


Steve Horelica, Mayor

ATTEST:


Kristi Ayers, City Secretary