

AMENDMENT NO. 851 TO ORDINANCE 121190

AUSTWELL UNSAFE BUILDING ABATEMENT ORDINANCE

AN ORDINANCE PROVIDING THAT UNSAFE BUILDINGS SHALL BE ABATED, PROVIDING STANDARDS FOR CONTINUED USE OR OCCUPANCY, PROVIDING FOR INSPECTIONS, PROVIDING FOR A PUBLIC HEARING, PROVIDING FOR IMPLEMENTATION AS PROVIDED HEREIN; PROVIDING STANDARDS FOR SECURING UNOCCUPIED BUILDINGS, PROVIDING FOR DISCONNECTING PUBLIC UTILITIES, PROVIDING FOR ASSESSMENT OF COSTS, DEFINING CERTAIN PROHIBITED ACTS, PROVIDING PENALTIES FOR VIOLATION, PROVIDING A WAIVER OF LIABILITY, AND PROVIDING FOR A SEVERABILITY CLAUSE.

BE IT ORDAINED ON JUNE 2, 1997 BY THE CITY COUNCIL OF THE CITY OF AUSTWELL, TEXAS:

BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTWELL, TEXAS:

The following provisions shall be and constitute the Austwell Unsafe Building Abatement Ordinance:

ARTICLE I

GENERAL

1.1 All dangerous buildings and structures within the terms of this ordinance are hereby declared to be unsafe buildings and public nuisances, and shall be vacated, secured, repaired, removed, demolished, or the occupants relocated as herein provided.

1.2 Statutory references for this ordinance:

Sec. 54.004 to 54.019 Local Government Code  
Sec. 214.001 & 214.0015 Local Government Code  
Sec. 217.042 Local Government Code  
Sec. 18.05 Code of Criminal Procedure  
Art. 5069-1.05 Title 79 V.T.C.S.

ARTICLE 2

DEFINITIONS

**BUILDING** - any structure or part thereof, erected for the support, shelter or enclosure of persons, animals, chattels or property of any kind.

BUILDING OFFICIAL - the designated authority charged with the administration of the Building Inspection Dept., or his duly authorized representative. Title may be used synonymously with Code Enforcement Official.

CODE ENFORCEMENT OFFICIAL - the designated authority charged with the administration and enforcement of this ordinance, or his duly authorized representative. Title may be used synonymously with Building Official.

NUISANCE - the following shall be defined as nuisances:

1. Any public nuisance known at common law or in equity jurisprudence.
2. Any attractive nuisance which may prove detrimental to others whether in a building, on the premises of a building, or upon a vacant lot. This includes but is not limited to any abandoned excavations, wells, shafts, basements, abandoned refrigerators, or any structurally unsound structures.
3. That which is dangerous to life or detrimental to health.
4. Any condition which causes a substantial and unreasonable interference with the use and enjoyment of someone's property.

OWNER - any person, agent, firm, or corporation having a legal or equitable interest in the property.

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

UNSAFE BUILDING - any building or structure that has any of the following conditions:

1. The building, structure, or any part thereof is liable to partially or fully collapse.
2. The structure or any part thereof was constructed or maintained in violation of any provision of the Building Code, or any other applicable ordinance or law of the city, county, or state.
3. Any walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
4. The foundation or the vertical or horizontal supporting members are 25% or more damaged or deteriorated.
5. The nonsupporting coverings of walls, ceilings, roofs, or floors are 50% or more damaged or deteriorated.
6. The structure has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the purpose used.

7. The 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 either a nuisance or dangerous to the public health, safety, or welfare.
8. Any structure or any part thereof that is in such a condition as to constitute a nuisance.
9. The structure or any part thereof has inadequate means of egress as required by the Building Code.
10. The structure does not have adequate light, ventilation, or sanitation facilities as required by the Building Code and Plumbing Code.
11. The structure or any part thereof is designed for or is being used in the commission of a crime.
12. The structure or any part thereof is a fire hazard, or is substandard, dilapidated, or otherwise unfit for human habitation, and is a hazard to the public health, safety or welfare.
13. Any unsecured unoccupied building.

UNSECURED UNOCCUPIED BUILDING - Any structure that currently has no legitimate occupant or tenant and which has missing or unlocked doors or windows, or other unsecured openings into the building through which unauthorized persons can enter.

### ARTICLE 3

### STANDARDS

#### 3.1 Minimum Standards For Buildings.

Buildings, regardless of their age, may continue to be used only if they do not qualify as unsafe buildings, as that term is defined in Article 2 of this ordinance, or if they do not violate other City building ordinances.

3.2 If the structure is in such a condition as to make it hazardous to the health, safety or general welfare of its occupants or the public, it shall be ordered vacated and secured, and the order may also require the occupants to be relocated, as provided in Article 7.

3.3 If the structure can be feasibly repaired or the condition remedied so that it will no longer exist in violation of the terms of this ordinance, it shall be ordered remedied or repaired. Repairs shall be deemed feasible only if less than fifty percent of the value or structure of the building must be repaired or replaced. (See Zoning Ordinance, Non-Conforming Use Regulations.)

3.4 In any case where a structure is fifty percent or more damaged or deteriorated from its value or structure, it shall be demolished or removed, and in all cases where a

structure cannot be repaired so that it will no longer exist in violation of the terms of this ordinance it shall be demolished or removed.

3.5 Subject to the provisions of this ordinance, if specific violations of this ordinance or any other ordinance exist in a structure which present a hazard to the public health, safety or welfare, those specific violations shall be ordered corrected.

#### ARTICLE 4

#### INSPECTION

4.1 The Code Enforcement Official shall inspect any building which is or may be unsafe. After inspecting such building, the Code Enforcement Official may initiate a public hearing on the issue of whether the building is unsafe.

#### ARTICLE 5

#### PUBLIC HEARING

5.1 The Code Enforcement Official shall request the City Secretary to schedule a public hearing and an agenda item before the City Council for the purpose of determining whether a structure is an unsafe building and public nuisance within the terms of this ordinance.

5.2 The Code Enforcement Official shall issue a notice of the public hearing directed to the owner of the building. The notice shall be served upon the owner of record and posted on the premises in a conspicuous location. The notice may be served either personally or by certified mail, return receipt requested. The executed return receipt shall be prima facie evidence of service.

5.3 If an address is not available for the owner of record, the notice shall be served by mailing to the address of the building involved in the proceedings. Where the owner cannot be found, or where he is unknown, notice may be served by publication of the notice one time in the official newspaper of the City of Austwell.

5.4 Notices normally shall be served at least 10 days prior to the hearing. However, if the structure poses an imminent danger to the health, life, or safety of any person unless immediately vacated, the City Council may take action to order the structure vacated, secured and the occupants relocated, in an emergency, special, or regular meeting without serving notice 10 days before the hearing date. In these situations posing imminent danger, the City shall make good faith efforts to give notice to the owners by personal service prior to the City Council meeting.

5.5 Notice of the public hearing shall also be provided to each mortgagee and lien holder of record in the official real property records of Refugio County in the same manner as provided in this Article.

## ARTICLE 6

### HEARING PROCEDURES

- 6.1 The Mayor, or in his absence the Mayor Pro Tem, shall preside over the hearing. He shall determine all questions of order, procedure, and as to the reception of evidence.
- 6.2 The hearing shall be held in an informal manner and shall not be required to be conducted in accordance with technical courtroom rules relating to evidence and testimony.
- 6.3 The City Council may inspect any involved building, structure, or premises during the course of the hearing provided the following are complied with:
1. Notice of such inspection is given to the parties involved prior to making the inspection.
  2. The parties are allowed to be present during the inspection.
  3. The facts observed and any conclusions are stated for the record.
- 6.4 The Mayor shall have the authority to grant a continuance upon good cause shown.
- 6.5 Any member of the City Council who did not hear the evidence or has not read or heard the entire record of the proceedings shall not vote or take part in the decision.
- 6.6 The owner shall have the right to appeal the decision of the City Council to a court of proper jurisdiction. A notice of appeal must be filed with the City Secretary within 10 days from the date of the City Council's order.
- 6.7 If the structure is found to be an unsafe building and public nuisance, the City Council shall issue an order that the structure be vacated, secured, repaired, removed, demolished, or the occupants relocated under the standards of Article 3.

## ARTICLE 7

### IMPLEMENTATION

- 7.1 The Code Enforcement Official shall issue an unsafe building order containing the order of the City Council and directed to the owner and occupants of the building. The order shall be served as provided in Sec. 5.2.
- 7.2 The Code Enforcement Official shall notify the owner that a permit must be obtained to repair, remove, or demolish the structure.

7.3 An unsafe building placard shall be posted in a conspicuous location at each entrance to the unsafe building. Such placard shall remain posted until the required action is completed.

7.4 The unsafe building placard shall read as follows:

UNSAFE BUILDING  
DO NOT OCCUPY

It shall be punishable by law to use or occupy this building.

7.5 The unsafe building order shall require compliance by the owner and occupants within a reasonable time not exceeding the following limits.

7.5.1 In any case where vacating, securing, or relocation of occupants is ordered, a maximum of 10 days.

7.5.2 In any case where removal or demolition is ordered, a maximum of 30 days.

7.5.3 In any case where repair is ordered, a maximum of 6 months provided that repair work commences within 30 days and does not lapse for any period exceeding 30 days.

7.6 If the owner fails to take the required action within the allotted time, the Code Enforcement Official shall serve a copy of the unsafe building order on each known mortgagee and lien holder in the manner provided in Sec. 5.2.

7.7 Any mortgagee or lien holder will be allowed reasonable time to comply with the order using the limits provided in Sec. 7.5.

7.8 The Code Enforcement Official may approve one or more extensions of time to complete the required repair or demolition. Requests for extensions shall be made in writing and shall state the reasons for the request.

7.9 If the unsafe building is not vacated, secured, repaired, removed, demolished, or the occupants are not relocated as specified in the unsafe building order within the allotted time, the Code Enforcement Official shall cause the ordered action to be performed by the city or its contractors, and shall assess the cost of such work in accordance with Article 10 of this ordinance.

## ARTICLE 8

### SECURING UNOCCUPIED BUILDINGS

8.1 The securing of windows, doors or any other opening allowing access to an unsecured unoccupied building shall be done with such materials and in such a manner as to effectively bar entrance to the structure.

8.2 Materials approved for use include but are not limited to plywood, lumber, steel, replacement glass, nails, screws and bolts. The use of cardboard, tar paper, window and

door screens or any other materials that will not effectively prevent entrance shall not be sufficient to meet the requirements of this article, not shall it be considered sufficient to make a structure in compliance with a notice to secure.

8.3 Upon receipt of a notice to secure each and every accessible means of entry must be secured in accordance with this article.

## ARTICLE 9

### DISCONNECTING PUBLIC UTILITIES

9.1 The Code Enforcement Official may request that public utilities be disconnected in order that demolition or removal may be accomplished without delay in those cases where the structure is vacant and has been ordered demolished or removed.

## ARTICLE 10

### ASSESSMENT

10.1 The owner of an unsafe building that is secured, repaired, removed or demolished by the city shall be charged for the expense of the city's work. Charges shall include but are not limited to the expenses of inspection or testing by third parties, photography, newspaper publication costs, title search fees, attorney's fees, costs incurred in identifying, locating, or contacting the owner, mortgagee or lien holder, labor and equipment costs for preparation of the premises, work to secure, repair, remove, demolish, cleanup and remove debris, landfill fees, plus an administrative fee to cover the City's cost of administering the work of \$100.00 or 10% of the total, whichever is greater, added to the total.

10.2 The Code Enforcement Official shall certify the expenses incurred in enforcing the provisions of this ordinance for billing to the owner of the property. The bill becomes an account receivable upon completion and shall be due within 30 days.

10.3 If after 30 days from billing, payment in full has not been made, then the city shall assess the expenses on, and have a lien against, the property on which the structure was located, unless it is a homestead as protected by the Texas Constitution.

10.4 Notice of the lien shall be provided to the property owner and the County Clerk on a form approved by the City Attorney. 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. The lien notice must contain the name and address of the owner if that information can be determined, a legal description of the real property on which the structure was located, the amount of expenses incurred by the city, the interest rate to be charged and the balance due.

10.5 The city's lien is a privileged lien subordinate only to tax liens and all previously recorded bona fide mortgage liens attached to the real property to which the city's lien attaches. Such lien shall bear interest at the rate of ten percent per annum until paid.

10.6 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 total amount due.

10.7 This remedy shall be available to the city in addition to any penal or other remedy provided by law or equity which the city, state or any other person may have to remedy the unsafe building.

10.8 The city may also direct the City Attorney to bring a civil action in a court of competent jurisdiction to collect the amount due plus all associated costs and fees. The City Attorney is hereby authorized to make use of whatever legal or equitable remedies are available to collect said monies due.

## ARTICLE 11

### PROHIBITED ACTS

11.1 It shall be unlawful for the owner or occupants of an unsafe building to fail or refuse to comply with the order of the Code Enforcement Official or the City Council.

11.2 It shall be unlawful for any person to obstruct or interfere with the implementation of any action required by the order of the Code Enforcement Official or the City Council.

11.3 It shall be unlawful for any person to remove a posted unsafe building placard without written permission of the Code Enforcement Official, or for any person to enter the building except for the purpose of making the required repairs or of demolishing same.

## ARTICLE 12

### PENALTIES

12.1 Any person, agent, firm, or corporation who violates any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined any sum up to \$2,000.00. Each day such violation exists shall constitute a separate offense.

12.2 The city may also direct the City Attorney to bring a civil action in a court of competent jurisdiction to enforce the provisions of this ordinance.

## ARTICLE 13

### ADMINISTRATIVE LIABILITY

13.1 No officer, agent or employee of the city shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this ordinance. Any suit brought against any officer, agent or employee of the city as a result of any act required or permitted in the discharge of his duties under this ordinance shall be defended by the city attorney until the final determination of the proceedings.



ARTICLE 14

VALIDITY

14.1 If any section, paragraph, sentence, clause, phrase, or provision of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

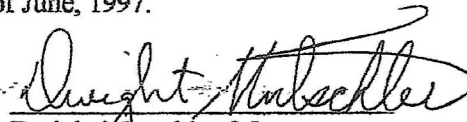
14.2 All ordinances or parts of ordinances in conflict herewith are hereby repealed.

14.3 This ordinance shall become effective on June 2, 1997, after adoption and publication one time in the official newspaper of the City of Austwell.


AN ORDINANCE PROVIDING THAT UNSAFE BUILDINGS SHALL BE ABATED, PROVIDING STANDARDS FOR CONTINUED USE OR OCCUPANCY, PROVIDING FOR INSPECTIONS, PROVIDING FOR A PUBLIC HEARING, PROVIDING FOR IMPLEMENTATION AS PROVIDED HEREIN; PROVIDING STANDARDS FOR SECURING UNOCCUPIED BUILDINGS, PROVIDING FOR DISCONNECTING PUBLIC UTILITIES, PROVIDING FOR ASSESSMENT OF COSTS, DEFINING CERTAIN PROHIBITED ACTS, PROVIDING PENALTIES FOR VIOLATION, PROVIDING A WAIVER OF LIABILITY, AND PROVIDING FOR A SEVERABILITY CLAUSE

was approved and adopted by the City Council of the City of Austwell, Texas on the 2nd day of June, 1997, and the full text of said Ordinance is available to the public in the Office of the City Secretary at City Hall, P.O. Box 147, Austwell, Texas 77950.

APPROVED ON THIRD READING this 2nd day of June, 1997.

  
Dwight Mutschler, Mayor

ATTEST:

  
Lena Stark, City Secretary