

ORDINANCE NO. 2024-11

AN ORDINANCE OF THE CITY OF WELLS, TEXAS, REQUIRING THE VACATION, RELOCATION OF OCCUPANTS, SECURING, REPAIR, REMOVAL OR DEMOLITION OF SUBSTANDARD — BUILDINGS; PROVIDING DEFINITIONS; ESTABLISHING MINIMUM STANDARDS FOR THE CONTINUED USE AND OCCUPANCY OF ALL BUILDINGS REGARDLESS OF THE DATE OF THEIR CONSTRUCTION; PROVIDING FOR GIVING NOTICE TO THE OWNER OF A BUILDING; PROVIDING FOR A PUBLIC HEARING TO DETERMINE WHETHER A BUILDING COMPLIES WITH THE STANDARDS OF THIS ORDINANCE; PROVIDING FOR AN ORDER THAT THE BUILDING BE VACATED, SECURED, REPAIRED, REMOVED OR DEMOLISHED; PROVIDING FOR TIME PERIOD TO RESPOND TO THE MUNICIPAL COURT; PROVIDING FOR THE SECURING OF UNSAFE BUILDINGS, NOTICES TO OWNERS, HEARINGS, EXPENSES, LIENS, AND ADDITIONAL AUTHORITY; PROVIDING FOR REPAIR BY THE CITY, ASSESSMENT OF EXPENSES AND CIVIL PENALTIES, EXTENT OF REPAIR, LIENS, PRIORITIES OF LIENS, INTEREST, NON-TRANSFERABILITY OF LIENS, ATTORNEY’S FEES, HOMESTEADS, CIVIL PENALTIES NOT TO EXCEED \$1,000 PER DAY PER VIOLATION, OR FOR HOMESTEADS \$10 PER DAY PER VIOLATION, FINALITY OF ASSESSMENTS, AND JUDGMENTS; JUDICIAL REVIEW, AUTHORITY, ENTRY ON PROPERTY, OFFENSES, CRIMINAL PENALTIES NOT TO EXCEED \$2,000 PER DAY. PER VIOLATION, TO PROVIDE ALTERNATIVES TO THE ENFORCEMENT THEREOF THROUGH BOTH CIVIL, CRIMINAL, AND ADMINISTRATIVE PROCEDURES, INCLUDING CHARGING THE COST OF ABATEMENT TO A VIOLATORS UTILITY BILL; AND PROVIDING THAT ANY PERSON WHO VIOLATES OR FAILS TO COMPLY WITH THE CRIMINAL PORTION OF THIS ORDINANCE WILL BE GUILTY OF A MISDEMEANOR PUNISHABLE BY FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00), WITH EACH DAY OF CONTINUED VIOLATION FOR NON COMPLIANCE TO CONSTITUTE A SEPARATE VIOLATION; CONFLICTS OF ORDINANCES, NON-LIABILITY OF THE CITY AND ITS REPRESENTATIVES, CUMULATIVE REMEDIES, A SEVERANCE CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS the City Council of the City of WELLS ("City Council") seeks to promote the health, safety, and general welfare of the community by preventing death, injuries, and property damage within the City of WELLS ("City") limits; and

WHEREAS the City Council seeks to protect property values within the City Limits; and

WHEREAS the City Council finds that substandard buildings or structures pose aesthetic harm to the City; and

WHEREAS the City Council finds that substandard buildings or structures are fire hazards and often attract vermin and insects; and

WHEREAS, pursuant to the laws of the State of Texas, including Texas Local Government Code section 51.001, the City Council has the authority to adopt, publish, amend, or repeal an ordinance that is for the good government, peace, or order of the City; and

WHEREAS, pursuant to Texas Local Government Code section 54.012, a municipality may bring a civil action for, among other things, the enforcement of an ordinance relating to dangerously damaged or deteriorated structures or improvements.

WHEREAS, pursuant to Texas Local Government Code section 214.001, et seq., the City Council has authority to regulate substandard buildings or structures; and

WHEREAS, pursuant to Texas Local Government Code section 214.002, the City Council has authority to order the repair, removal, or demolition of a substandard building or structure and to repair, remove, or demolish a substandard structure and assess such costs against the property owner or owner of the structure.

NOW THEREFORE, be it ordained by the City Council of the City of WELLS, County of Cherokee, State of Texas that:

SECTION 1.

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

SECTION 2.

This Ordinance shall be commonly referred to as the City's "Substandard Building Ordinance."

SECTION 3

That Article 6 of the Code of Ordinances the City of WELLS is hereby amended herein by amending Sections 6.64 through 6.74 and adding Sections 6.75 through 6.94, which shall now read as follows:

PART ONE

SECTION 6.64. Definitions.

Sec. 6.64.1. "Substandard Building" as used in this ordinance shall mean any of the following:

- (a) Any building or structure that has any of the following conditions, such as the life, health, property, or safety of its occupants or the general public are endangered, including but not limited to one or more of the following:
 - (1) Any means of egress or portion thereof is not of adequate size or is not arranged to provide a safe path of travel in case of fire or panic.
 - (2) Any means of egress or portion thereof, such as but not limited to fire doors, closing devices, and fire resistive ratings, as in disrepair or in a dilapidated or nonworking condition such that means of egress could be rendered unsafe in case of fire or panic.
 - (3) The stress in any material, member, or portion thereof, due to all imposed loads including dead load exceeds the stress allowed in the City's Building Code for new buildings.
 - (4) The building, structure, or portion thereof has been damaged by fire, flood, earthquake, wind, or other causes to the extent that the structural integrity of the building or structure is less than the minimum requirements established by the City's Building Code for new buildings.
 - (5) Any exterior appendage or portion of the building or structure is not securely fastened, attached, or anchored such that it is capable of resisting wind, seismic, or similar loads as required by the Standard Building Code for new buildings.
 - (6) For any reason, the building, structure, or portion thereof is manifestly unsafe or unsanitary for the purpose for which it is being used.
 - (7) The building, structure, or portion thereof as a result of decay, deterioration, or dilapidation is likely to collapse fully or partially.
 - (8) The building, structure, or portion thereof has been constructed or maintained in violation of a specific requirement of the Standard Codes or of a city, county, or state law.
 - (9) Any building, structure, or portion thereof that is in such a condition as to constitute a public nuisance.
 - (10) Any building, structure, or portion thereof that is unsafe,

unsanitary, or not provided with adequate egress, or which constitutes a fire hazard or is otherwise dangerous to human life, or, which in relation to existing use, constitutes a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment. The City Council hereby finds that any Substandard Building as defined in this section 6.64.1(a) is dilapidated, substandard, and unfit for human habitation and a hazard to public health, safety, and welfare, within the meaning of Section 214.001 of the Texas Local Government Code and is a nuisance within the meaning of Chapter 217 of the Texas Local Government Code; or

- (b) Any building or structure, regardless of its structural condition, that is 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 people as a place of harborage or could be entered or used by children; or
- (c) Any building or structure that is boarded up, fenced, or otherwise secured in any manner if:
 - (1) The building or structure constitutes a danger to the public even though secured from entry; or
 - (2) The means used to secure the building or structure are inadequate to prevent unauthorized entry or use of the building or structure in the manner described by section 6.64.1(b).

SECTION 6.65. Minimum Standards for the Continued Use and Occupancy of All Buildings.

Sec. 6.65.1. *Minimum Standards.* The City Council hereby establishes minimum standards for the continued use and occupancy of all buildings and other structures, regardless of the date of their construction, as follows: the definition of "Substandard Building" in section 6.64.1 is that standard. Any building or other structure that is a Substandard Building, as defined in section 6.64.1, fails to meet the minimum standards for continued use and occupancy. This ordinance shall be cumulative of any other law prohibiting or restricting the use or occupancy of a building or other structure, and this ordinance shall not be construed to permit or enlarge the use or occupancy of a building or structure in violation of any other law.

Sec. 6.65.2 *Use and Occupancy Prohibited.* After proper notification and public hearing as required by this Ordinance, the use or occupancy of any building or other structure defined as a Substandard Building by this Ordinance is prohibited, regardless of the date of construction of the building or structure.

SECTION 6.66. Hearing Required to Determine Whether a Building or Structure Complies with the Standards of This Ordinance.

Sec. 6.66.1. *Hearing Required.* The Municipal Court must hold a public hearing to determine whether a building or structure complies with the standards set out in this Ordinance.

Sec. 6.66.2. *Notice Required.* No less than fifteen (15) days prior to the public hearing, a notice must be sent to an owner, lienholder, or mortgagee. The notice must include a statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with the provisions of this Ordinance and the time it will take to reasonably perform the work.

Sec. 6.66.3. *Burden of Proof.* In a public hearing to determine whether a building complies with the standards set out in this ordinance, the owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with this ordinance and the time it will take to reasonably perform the work.

SECTION 6.67. Order that Building be Vacated, Secured, Repaired, Removed or Demolished.

Sec. 6.67.1. *Order.* After the public hearing, if a building or other structure is found in violation of the standards set out in this ordinance, the Municipal Court may order that the building or structure be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time as provided by this Ordinance. The Municipal Court may also order that the occupants be relocated within a period as prescribed by this Ordinance.

Sec. 6.67.2. *Failure to Comply with Order.* If the owner fails to comply with a Municipal Court order under Section 6.67 within the allotted time, the City shall: (a) make a diligent effort to discover each mortgagee and lienholder having an interest in the building or structure or in the property on which the building or structure is located; and (b) the City shall send to each identified mortgagee and lienholder a notice containing:

- (1) An 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 these standards that is present at the building or structure; and
- (3) A statement that the City will vacate, secure, remove, or demolish the building or relocate the occupants of the building if the ordered action is not taken within a reasonable time, to be stated in the notice.

Sec. 6.67.3. *Hearing.* As an alternative to the procedure stated in sections 6.67.1 and 6.67.2 of this ordinance, the City may make a diligent effort to discover each mortgagee and lienholder before conducting the public hearing and may give them notice of and an opportunity to comment at the hearing.

In addition, the City may file notice of the hearing in the Official Public Records of Real

Property in the county in which the property is located. The notice must contain:

- (1) the name and address of the owner of the affected property if that information can be determined as provided in section 7 of this Ordinance.
- (2) a legal description of the affected property; and
- (3) a description of the hearing.

The filing of any notice or order under any portion of this ordinance shall be binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice or order and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice or order.

If the City operates according to this subsection 6.67.3, the order issued by the Municipal Court may specify a reasonable time in accordance with the provisions of this Ordinance for the building or structure to be vacated, secured, repaired, removed, or demolished by the owner or for the occupants to be relocated by the owner and an additional time in accordance with the provisions of this Ordinance for the ordered action to be taken by any of the mortgagees or lienholders in the event the owner fails to comply within the time provided for action by the owner. Under this section, the city is not required to furnish any notice to a mortgagee or lienholder other than a copy of the order in the event the owner fails to comply with the ordered action in the time provided by the Municipal Court.

Sec. 6.67.4. Filing and Publication of

Order. Within ten (10) days after an order is issued under this ordinance, the City shall.

- (1) file a copy of the order in the Office of the City Secretary; and
- (2) publish in a newspaper of general circulation in the City a notice containing:
 - a. the street address or legal description of the property.
 - b. the date of the hearing.
 - c. a brief statement indicating the results of the order; and
 - d. instructions stating where a complete copy of the order may be obtained.

Sec. 6.67.5. Mailing of Order to Owner of Building and to Any Lienholder or Mortgagee of Building. After the hearing, the City shall promptly mail by certified mail, return receipt requested, or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building. The City shall use its best efforts to determine the identity and address of any owner, lienholder, or mortgagee of the building.

SECTION 6.68. Time Period to Comply with Order of Municipal Court.

Sec. 6.68.1. *Order for Action Within Thirty (30) Days.* If the Municipal Court determines, as a result of the hearing required by this ordinance, that a building or other structure is in violation of the minimum standards set by this ordinance, the Municipal Court shall require the owner, lienholder, or mortgagee of the building to within thirty (30) days:

- (1) secure the building or other structure from unauthorized entry; or
- (2) repair, remove, or demolish the building or other structure, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within thirty (30) days. If the Municipal Court allows the owner, lienholder, or mortgagee more than thirty (30) days to repair, remove, or demolish the building, the Municipal Court shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the hearing official.

Sec. 6.68.2. *Orders Limited to Not More Than Ninety (90) Days.* The Municipal Court may not allow the owner, lienholder, or mortgagee more than ninety (90) days to repair, remove, or demolish the building or other structure or fully perform all the work required to comply with the order unless the owner, lienholder, or mortgagee:

- (1) submits a detailed plan and time schedule for the work at the hearing; and
- (2) establishes at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work.

If the Municipal Court allows the owner, lienholder, or mortgagee more than ninety (90) days to complete any part of the work required to repair, remove, or demolish the building or other structure, the Municipal Court shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the City to demonstrate compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the Municipal Court to demonstrate compliance with the time schedules. If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the municipal boundaries that exceeds \$100,000 in total value, the Municipal Court may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing a building under this subsection. In lieu of a bond, the Municipal Court may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the Municipal Court. The bond must be posted, or the letter of credit or third-party guaranty provided, not later than the 30th day after the date the Municipal Court issues the order.

SECTION 6.69. Remedial Action by City.

Sec.6.69.1. *Remedial Action by City.* If the building or other structure is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, all as ordered by the Municipal Court, then the city may vacate, secure, remove, or demolish the building or other structure or relocate the occupants at its own expense, regardless whether the Municipal Court order recites such authorization of the City. This subsection does not limit the ability of the city to collect on a bond or other financial guaranty that may be required by this ordinance.

Sec. 6.69.2. *Expenses and Lien.* If the city incurs expenses under section 6.69.1, 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 building was located. Such expenses and lien shall also include clerical, administrative, legal, and other professional costs. The lien is extinguished if the property owner or another person having an interest in the legal title to the property 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 Cherokee County Clerk. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the building was located, the amount of expenses incurred by the city, and the balance due.

Sec.6.69.3. *Privileged Lien.* If the notice is given and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by sections 6.67.1, 6.67.2, or 6.67.4, the lien is a privileged lien subordinate only to tax liens.

SECTION 6.70. *Search For Owners, Lienholders, and Mortgagees.* Whenever this Ordinance requires the City to make a diligent effort, to use its best efforts, or to make a reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee, the City shall be deemed to have satisfied such requirement if the City searches the following records:

- (a) Cherokee County Real Property Records.
- (b) Cherokee County Appraisal District Records.
- (c) Records of the Secretary of the State of Texas;
- (d) Cherokee County Assumed Name Records.
- (e) City of WELLS Tax Records; and
- (f) City of WELLS Utility Records.

PART TWO

SECTION 6.80. City May Secure Unsafe Building.

Sec. 6.80.1. *Securing Unsafe Building.* The City may secure a building the Building Official determines:

- a. Is a Substandard Building, as defined in Section 6.64; and
- b. Is unoccupied or is occupied only by persons who do not have a right of possession to the building.

Sec.6.80.2. *Notice to Owner.* Within ten days after the date the building is secured, the city shall give notice to the owner by:

- a. Personally, serving the owner with written notice.
- b. Depositing the notice in the United States mail addressed to the owner at the owner's post office address.
- c. Publish 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
- d. 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.

The notice must contain:

- a. An identification, which is not required to be a legal description, of the building and the property on which it is located.
- b. A description of the violation of the municipal standards that is present at the building is a statement that the city will be secure or has secured, as the case may be, the building; and
- c. An explanation of the owner's entitlement to request a hearing about any matter relating to the city's securing of the building.

Sec. 6.80.3. *Hearing Upon Timely Request.* The Municipal Court shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the city's securing of the building if, within 30 days after the date the city secures the building, the owner files with the Clerk of the Municipal Court a written request for the hearing. The Municipal Court shall conduct the hearing within 20 days after the date the request is filed. A hearing under this section may be combined with a hearing under any other provision of this ordinance.

Sec. 6.80.4. *Expenses and Liens.* The City has the same authority to assess expenses incurred pursuant to this section as it has to assess expenses under Section 6.69. A lien is created under this section in the same manner that a lien is created under Section 6.69 and is subject to the same conditions and scope as a lien created under Section 6.69.

Sec. 6.80.5. *Cumulative, Additional Authority.* The authority granted by this Section is in addition to that granted by the other sections of this ordinance.

PART THREE

SECTION 6.81. Additional Enforcement Authority.

Sec. 6.81.1. *Repair by City, Expenses, and Penalties.* In addition to the authority granted to the city by other sections of this ordinance, after the expiration of the time allotted under Section 6.67, 6.67.1, or 6.67.2 for the repair, removal, or demolition of a building, the city may.

- a. Repair the building at the expense of the city and assess the expenses on the land on which the building stands or to which it is attached; or
- b. Assess a civil penalty against the property owner for failure to repair, remove, or demolish the building.

The city shall assess such expenses or civil penalties by the same method provided in Section 6.69.2. The city shall give written notice of the assessment or civil penalty to any owner, lienholder, or mortgagee, whose name and address are ascertainable by reasonable efforts. Such notice shall include the amount of the assessment or civil penalty, a statement that the assessment or civil penalty was made under this ordinance, the names and addresses of any owner, lienholder, or mortgagee that can be learned by reasonable diligence, and a legal description of the property subject to the assessment or civil penalty. Such notice shall be given by the method provided by Section 6.82. Such notice shall also be recorded in the Official Records of Real Property of the Cherokee County Clerk.

Sec. 6.81.2. *Extent of Repair by City.* The city may repair a building under Section 6.81.1 to the extent necessary to bring the building into compliance with the minimum standards and only if the building is a residential building with 10 or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum housing standards.

Sec. 6.81.3. *Lien.* The city shall have 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 must file for record, in recordable form in the office of the Cherokee County Clerk, a written notice of the imposition of the lien. The notice must contain a legal description of the land.

Sec. 6.81.4. *Priority of Liens.* Except as provided by Section 6.69.3, the city's lien to secure the payment of a penalty or costs of repairs, removal, or demolition is inferior to any previously recorded bonafide 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 Cherokee 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 precisely recorded judgment liens.

Sec. 6.81.5. *Interest.* Any civil penalty or other assessment imposed under this section accrues interest at the rate Provided by law from the date of the assessment until paid in full.

Sec. 6.81.6. *Lien is Non-Transferable.* The city's right to the assessment lien may not be transferred to third parties.

Sec. 6.81.7. *Senior Citizen Homestead.* 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.

Sec. 6.81.8. *Amount of Civil Penalty.* The Municipal Court by order may assess and recover a civil penalty against a property owner at the time of an administrative hearing on violations of this ordinance, in an amount not to exceed \$1,000 a day for each violation or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed \$10.00 a day for each violation, if the city proves

1. The property owner was notified of the requirements of the ordinance and the Owner's need to comply with the requirements; and
2. After notification, the Property owner committed an act in violation of the ordinance or failed to take an action necessary for compliance with the ordinance.

A hearing on civil penalties may be held separately or together with any other hearing under this ordinance. If held separately, notice of the hearing shall be given to the Owner at least 15 days before the hearing.

Sec. 6.81.9. *Assessment is Final and Binding.* An assessment of a civil penalty under Subsection 6.81.9 is final and binding and constitutes a prima facie evidence of the penalty in any suit brought by the city in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty.

Sec. 6.81.10. *Basis for Judgment.* To enforce a civil penalty under this ordinance, the clerk or secretary of the city must file with the district clerk of Cherokee County a certified copy of an order issued under Subsection 6.81.9 stating the amount and duration of the penalty. No other proof is required for a district court to enter a final judgment on the penalty.

PART FOUR

SECTION 6.82. Notices.

Sec. 6.82.1. *Method of Giving Notice.* Any notice required or permitted by this

Sec. 6.82.2. *Refused or Unclaimed Notice.* When the city mails a notice in accordance with this ordinance to a property owner, lienholder, or mortgagee, and the United States Postal Service returns the notice as "Refused" or "Unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

SECTION 6.83. Authority.

Wherever this ordinance provides for an action to be taken by the city, without specifying which agent of the city shall take such action, the Code Enforcement Officer, Building Official, City Secretary, Clerk of the Municipal Court, City Attorney, any Police Officer, or any of them, is hereby authorized to take such action.

SECTION 6.84. Inspection.

Sec. 6.84.1. *Entry on Premises.* The City shall have the right to enter and inspect any premises to determine whether the premises are in compliance with the standards adopted by this ordinance, any order issued pursuant to this ordinance, or any other aspect of this ordinance, or to enforce or administer this ordinance.

SECTION 6.85. Hearings.

Sec. 6.85.1. *Jurisdiction.* The Municipal Court of the City of WELLS shall have jurisdiction of any hearing provided for in this ordinance.

Sec. 6.85.2. *Civil Proceeding.* A Proceeding under this ordinance in the Municipal Court shall be a civil proceeding, and the burden of proof shall be a preponderance of the evidence.

Sec. 6.85.3. *Commencement of Proceedings.* A proceeding under this ordinance in the Municipal Court shall be commenced by the filing of a petition by the City.

Sec. 6.85.4. *Request to Postpone Hearing.* A hearing under this ordinance shall not be postponed unless: (1) a party files a written, sworn, motion for the postponement, stating the reason it is requested; (2) the court finds good cause for such postponement; and (3) all parties waive any deadlines or time restrictions that would be violated by the postponement.

SECTION 6.86. Judicial Review.

Sec. 6.86.1. Any owner, lien holder, or mortgagee of record of property jointly or severally aggrieved by an order of the Municipal Court issued under Parts One or Two of this ordinance 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 illegality. The

petition must be filed by an owner, lien holder, or mortgage within 30 calendar days after the respective dates a copy of the final decision of the Municipal Court is personally delivered or mailed to them by first class mail, returned receipt requested or such decision shall become final as to each of them upon the expiration of each such calendar day period.

On the filing of the petition, the District Court may issue a writ of certiorari directed to the Municipal Court to review the order of the Municipal Court 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 realtor or the realtor's attorney.

Sec. 6.86.3. The Municipal Court may not be required to return the original papers acted on by it, but it is sufficient for the Municipal Court to return certified or Sworn copies of the papers or of parts of the papers as may be called for by the writ.

Sec. 6.86.4, 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.

Sec. 6.86.5. The issuance of the writ does not stay Proceedings on the decision appealed from.

Sec. 6.86.6. 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.

Sec. 6.86.7. Costs may not be allowed against the city.

Sec. 6.86.8. If the decision of the Municipal Court is affirmed or not substantially reversed but only modified, the District Court shall allow 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, lien holders, or mortgages as well as all persons subject to the proceedings before the City.

SECTION 6.87. Offenses and Penalties.

Each owner of any interest in any building or structure shall maintain such a building or structure so that it is not a substandard building, as defined herein. No person shall occupy any building or structure that is a substandard building, as defined herein. A violation of this section is a misdemeanor offense, punishable upon conviction by a fine not to exceed \$2,000. Each day or portion of a day that an offense continues shall constitute a separate offense. A criminal penalty under this section may be imposed separately from, or in addition to, any other right or remedy of the City.

SECTION 6.88. Cumulative Remedies.

All rights and remedies of the City provided in this ordinance shall be cumulative of all other rights and remedies provided herein, by other ordinances, or by any applicable law. Furthermore, the exercises of one right or remedy by the City shall not be construed as an

election of remedies and shall not impair any other right or remedy of the City. The City may exercise any right or remedy herein either alone or together with any other right or remedy under this ordinance or any other applicable law.

SECTION 6.89. Enforcement Through Administrative Fine.

A person who has violated a regulatory provision of this Ordinance or other zoning or building ordinances of the City of WELLS may be required to pay an administrative fine in accordance with the provisions of this chapter.

Sec. 6.89.1. *Amount of Fines.* The following fines shall be imposed for each separate violation of same code section:

- A. \$100.00 for a first violation; separate violations shall be cumulative; and
- B. \$200.00 for a second violation within the same year; and
- C. \$500.00 for each additional violation in the same year.

In the above section, a "Year", and "Within the same year" shall have the meaning of a standard 365-day year and shall begin on the date of the first violation. Each day or portion of a day that a violation continues shall constitute a separate violation.

Sec. 6.89.2 *Issuance of Administrative Citation.* Code Enforcement shall have the authority to issue Administrative and Civil citations. An administrative citation shall contain the following information:

- A. The date of the violation.
- B. The address or a description of the geographic location where the violation occurred.
- C. The section of the code violated.
- D. A description of the conditions which caused the code violation.
- E. An order to bring the conditions into compliance with the code and the date in which a follow-up inspection will be conducted.
- F. Information concerning the fine:
 - 1. The amount of the fine which the offender is to pay.
 - 2. The date, 20 working days from the date of the citation, by which the offender must pay the fine; and
 - 3. The location where the offender must pay the fine.
- G. Notice that the offender's payment of the fine does not excuse a continued or subsequent violation of the code.

H. Notice of the offender's entitlement to request an administrative review in accordance with Section 6.89.4 below.

Sec. 6.89.3 *Notice of violation.*

A. The Code Enforcement Officer shall provide a reasonable period of time for the person who has violated a regulatory provision of the code to correct the violation, if the violation pertains to any violation that, in the professional opinion of the Code Enforcement Official, does not constitute an immediate risk to public health and safety, fire, or property damage.

B. If the person fails to cure the violation within the time provided by the Code Enforcement Officer, the Code Enforcement Officer is authorized to issue an administrative citation in accordance with Section 6.89.2 above.

C. Notice shall not be required to an owner who was noticed for a similar type of violation within the past calendar year.

Sec. 6.89.4 *Review to contest administrative citation. (Administrative Process Only)* Civil and Criminal reviews shall follow the Municipal Courts Procedures.

A. *Request for Review.* An offender may contest the citation by:

1. Completing an Administrative Appeal form and returning it to the City Clerk within ten (10) days from the issuance of the administrative citation; and
2. Depositing with the City Clerk a refundable \$25.00 deposit for the review.

B. *Suspension of Payment of Fine.* If the offender files a timely request for review, the requirement to pay the fine shall be suspended and the payment of the fine, if any, shall be in accordance with the decision of the Review Officer.

C. *Processing Request.*

1. Upon the receipt of a request for review, the City Clerk shall set the matter for hearing and provide the offender at least ten (10) days' notice of the time, date, and location of the review.
2. If the City intends to submit any written material for consideration at the review, other than the citation, then the City Clerk shall provide copies of such additional material to the offender at least five (5) working days prior to the review.

Exception: If the offender has previously been given a copy of the Code Official's report, it is not required to be sent a second time.

D. *Administrative Review Officer.* The City Attorney shall serve as a Review Officer

or shall designate a competent person or persons to serve as a Review Officer.

Sec. 6.89.5 Review procedure.

- A. If the offender requesting the review fails to appear, the Review Officer shall enter a decision upholding the citation.
- B. At the review, the Code Enforcement Officer shall present the City's case in support of the contention that a violation of this code has occurred, and that the offender is responsible.
- C. At the review, the person contesting the penalty shall be given the opportunity to testify and to present evidence that a violation did not occur and/or the offender is not responsible for the violation.

Sec. 6.89.6 Review Officer's Decision.

- A. No administrative decision of a Code Enforcement Officer may be overturned unless a determination is made that:
 - (1) The true intent of this Ordinance or the rules legally adopted thereunder have been incorrectly interpreted.
 - (2) The provisions of this Ordinance do not fully apply; or
 - (3) The requirements of this Ordinance are adequately satisfied by other means.
- B. The City Clerk shall send a copy of the Review Officer's decision to the offender with notice of the offender's entitlement to appeal the Review Officer's decision in Municipal Court. Such an appeal must be filed in writing within ten (10) days of the Review Officer's decision being rendered.
- C. The decision of the Review Officer shall be the City's decisive action on the matter. The decision shall be final as of the date of the decision.
- D. If the Review Officer upholds the administrative citation, the City shall reimburse the offender's \$25.00 deposit.
- E. Should the offender elect to appeal the Review Officer's decision in Municipal Court within the above-referenced ten (10) days they shall file provide a written Notice of Appeal and tender a \$50.00 filing fee to the Court Clerk before said appeal shall be perfected.

Sec. 6.89.7 Administrative Hearing Order Enforcement

- A. An administrative order issued against a person found liable for a city ordinance violation may be enforced by:
 - (1) a civil suit for the collection of a penalty assessed;

- (2) an injunction that prohibits specific conduct that violates the ordinance or requires specific conduct necessary for compliance with the ordinance;
- (3) referral to a collection agency for non-payment of assessed penalties, costs, and fees, with the cost to the city for collection services assessed as costs and added to the judgment; or
- (4) a counter-petition on behalf of the City in response to an offender's appeal of the Review Officer's decision in Subsection. 6.89.6 during an administrative hearing.

Sec. 6.89.8 *Cost of Abatement May Be Charged to Utility Bill.* When the city has effected the removal of obnoxious growth or other prohibited condition or matter under the terms of this article, or has paid for its removal, the actual cost thereof, plus any administrative fee and accrued interest at the rate of ten (10%) percent per annum from the date of payment for such work by the city, if not paid by such owner prior thereto, or if not paid by the occupant or agent of such owner prior thereto, may be charged to the owner of such property, or to the occupant thereof if such property is not occupied by the owner, on the next regular water and sewer bill forwarded to such owner or occupant by the city, and such charge shall be due and payable by such owner or occupant at the time of payment of such utility bill, and this charge shall be cumulative of the other charges and methods of collection provided for by this article. If no owner is found or no current address is found for the current owner, then the last renter could be held responsible for work or payment on the property.

SECTION 6.90. Voluntary Correction Agreement.

Sec. 6.90.1. *Content.* When the Code Enforcement Officer has determined that a violation has occurred or is occurring, he or she may enter into a voluntary correction agreement with the person responsible for the violation. The voluntary correction agreement is a written contract prepared by the City and the person responsible for the violation, under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

- (a) The name and address of the person responsible for the violation.
- (b) The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring.
- (c) A description of the violation(s) and a reference to the regulation(s) which has been violated.
- (d) The necessary corrective action to be taken, and the date by which the correction must be completed.

(e) An agreement by the person responsible for the violation that the City may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement.

(f) The amount of the civil penalty that will be imposed pursuant to this section if the voluntary compliance agreement is not satisfied; and

(g) An agreement by the person responsible for the violation that if the City determines that the terms of the voluntary correction agreement are not met, the City may impose any remedy authorized by this chapter, including:

(i) Assessment of civil penalties identified in the voluntary correction agreement.

(ii) Abatement of the violation.

(iii) Assessment of all costs and expenses incurred by the City to pursue code enforcement and to abate the violation, including legal and incidental expenses; and

(iv) Suspension, revocation, or limitation of a developmental permit.

(h) A statement that the person responsible for the violation waives the right to a hearing.

Sec. 6.90.2. Right to a Hearing Waived. In consideration of the City's agreement to enter into a voluntary correction agreement, the person responsible for the violation shall have no right to an administrative or judicial hearing, under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.

Sec. 6.90.3. Extension and Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the City if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances delay correction under the original conditions and the responsible person provides the request in writing clearly establishing the need for such an extension.

Sec. 6.90.4. Monetary Penalty. If the terms of the voluntary correction agreement are not met, the person responsible for the violation may be assessed a monetary penalty not to exceed \$1,000 for each violation per day or portion thereof. Civil penalties, in whole or in part, may be waived by the Code Enforcement Officer or his/her designee if the code violations which formed the basis for the civil violation have been corrected, and

the Code Enforcement Officer or his/her designee finds that compelling reasons justify waiver of all or part of the outstanding civil penalties.

SECTION 6.91 Repeal of Prior Ordinances.

Any ordinance that directly conflicts with this ordinance repealed and is superseded by this ordinance.

SECTION 6.92. Conflicting Ordinances.

In the event of any conflict between the terms of this ordinance and any other ordinance, the more stringent or restrictive provision shall govern and control.

SECTION 6.93. Nonliability.

Neither the City, nor its officers, employees, agents, or representatives shall be liable to any person, other than the City, for any act, omission, or condition in any way concerning this ordinance or the subject matter hereof.

SECTION 6.94. Severance Clause.

In this event, if any provision, of whatever size of this ordinance is found to be unconstitutional, void, or inoperative by the final judgment of a court of competent jurisdiction, such defective provision, if any, is hereby declared to be severable from the remaining provisions of this ordinance, and such remaining provisions shall remain in full force and effect.

SECTION 4.

If any section, paragraph, sentence, clause, or phrase of this ordinance is ever held to be invalid or unenforceable by a court of competent jurisdiction, this holding shall not affect the validity and enforceability of all of the other provisions of this ordinance which can reasonably be given effect without any such invalid portion.

SECTION 5.

That the remainder of Article 6 of the Code of the City of WELLS, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 6.

All ordinances, resolutions, or parts thereof that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated herein.

SECTION 7.

That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared

unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality 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 in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.


SECTION 8.

That the City Secretary of the City of WELLS, Texas, is hereby directed to publish the full text of the ordinance or the caption and penalty provision, in accordance with Sec. 52.011 of the Texas Local Government Code in the official newspaper of the City of WELLS, Texas.

SECTION 9.


This ordinance shall become effective upon the publication of the caption hereof in a newspaper of general circulation in the City of WELLS.

**INTRODUCED, READ AND ADOPTED THIS THE 9TH DAY OF DECEMBER,
2024.**



TONY MCKNIGHT
Mayor

Attest:



MELANIE POUND
City Secretary