

ORDINANCE NO. 2018-6

AN ORDINANCE PROHIBITING THE MAINTAINING OF DANGEROUS BUILDINGS WITHIN THE CITY OF BALMORHEA, TEXAS; DEFINING "DANGEROUS OR SUBSTANDARD BUILDING", DECLARING SAID BUILDINGS TO BE NUISANCES AND UNLAWFUL; PROVIDING FOR NOTICE TO REPAIR OR REMOVE; PROVIDING FOR DEMOLITION THEREOF IN THE EVENT OF FAILURE TO COMPLY WITH SUCH NOTICES; PROVIDING FOR THE ASSESSMENT OF THE COST OF SUCH WORK AS A LIEN AGAINST THE PROPERTY; PROVIDING A PENALTY FOR VIOLATIONS OF THIS ORDINANCE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE ARE CUMULATIVE OF ALL OTHER ORDINANCES COVERING THE SAME SUBJECT MATTER, BUT EXPRESSLY REPEALING THOSE IN CONFLICT HEREWITH; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council of the finds that there are many obsolete, deteriorated and dangerous buildings within the which constitute fire hazards or are in such condition as to constitute hazards to those going in and about said buildings, or are unsanitary and in such filthy condition as to constitute public health menaces; and

WHEREAS, the Council finds that the repair or removal of such buildings is essential to the safety, health and general welfare of the citizens of Balmorhea, Texas; and

WHEREAS, Chapter 214 of the Texas Local Government Code authorization municipalities, by ordinance, to order the repair, removal of demolition of such dangerous or substandard structures and prescribes the process by which notice is to be given and hearings are to be conducted; and

WHEREAS, the Council finds that existing regulations or ordinances of the City of Balmorhea are insufficient to provide for the satisfactory abatement of nuisances occasioned by the existence of such buildings;

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

Sec. Any building or structure which has any or all of the conditions or defects described in this section shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property, welfare, or safety of the public or its occupants are endangered or adversely affected:

Whenever any door, aisle, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn, or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than  $1\frac{1}{2}$  times the working stress allowed in the building code for new building of similar structure, purpose or location.

Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other **cause**, to such an extent **that** the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the building code for new building of similar structure, purpose or location.

Whenever any portion *or* member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

Whenever any portion of a building or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability or is not so anchored attached or fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the building code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the building code for such buildings.

Whenever any portion thereof has cracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

Whenever the building or structure, or any portion thereof, because of: weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

Whenever a building or structure, or any portion thereof, because of-

- (a) Dilapidation, deterioration or decay;
- (b) Faulty construction;
- (c) The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;
- (d) The deterioration, decay or inadequacy of its foundation; or
- (e) Any other cause, is likely to partially or completely collapse.

Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

Whenever, the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become:

- (a) An attractive nuisance to children;
- (b) A harbor for vagrants, vermin, criminals or immoral persons; or
- (c) As to enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the building *code* or of any law or ordinance of state or jurisdiction relating to the condition, location or structure of buildings.

Whenever, any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 66 percent of the strength; fire-resisting qualities or characteristics, or weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined to be a fire hazard.

Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

The term "building code" as used in this section, refers to the building code as adopted by the City.

Sec. - Dangerous buildings as public nuisance.

All dangerous buildings and structures within the terms of herein are hereby declared to be public nuisances and shall be repaired, vacated or demolished as provided in this article.

Sec. -Minimum standards for continued use or occupancy of buildings.

The minimum standards for the continued use and occupancy of all buildings or structures, regardless of the date of their construction, are that buildings or structures shall not be in a condition or have a defect which constitutes a dangerous building or structure as defined herein. The following standards shall be followed by the building official and the town council in ordering repair, vacation or demolition.

If the dangerous building or structure can reasonably be repaired so that it will no longer exist as a dangerous building or structure, it shall be ordered repaired;

If the dangerous building or structure is in such condition as to make it dangerous to the health, safety, morals or general welfare of its occupants, it shall be ordered to be vacated

In any case where a dangerous building or structure is 50 percent or more damaged, decayed or deteriorated from its original value or structure, it shall be demolished and in all cases where a building or structure cannot be repaired so that it will no longer exist in violation of the terms of this section, it shall be demolished. In all cases where a dangerous building or structure is a fire hazard existing or erected in violation of the terms of this section or any ordinances of the town or statutes of the state, it shall be demolished. Included in the terms "demolished" in this section is the cleaning of the property and removing all debris and trash and sealing sewer service (belowground) to prevent infiltration into the town sanitary system.

Sec. - Duties of building official.

It shall be the duty of the building official or his designee to:

Inspections. Inspect or cause to be inspected, when deemed necessary, public Buildings, schools, halls, churches, theatres, hotels, dwellings, tenements or apartments, other multifamily residences and commercial manufacturing building for the purpose of Determining whether any condition exist which render such a place a dangerous Building or structure with the terms of section herein

Investigations of complaints. Inspect any building, wall or structure about which Complaints are filed by any person to the effect of the building, wall, or structure is or May be a dangerous building or structure as defined in this article.

Procedure for inspection Upon probable cause to inspect that any building or premises are in violation of this article, and if such building or premises are opened and clearly unoccupied, the building official may enter such building or premises for the purpose of inspecting the building or premises without prior notice to any person; or if such building or premises are closed, or if a reasonable prudent person would have reason to believe that such premises are occupied, the building official shall have recourse to

every procedure, right or remedy provided by law to secure entry for the purpose of inspecting the building or premises.

Commencement of proceedings. When the building official has inspected or caused to be inspected any building or structure, and has found and determined that such building is a dangerous building or structure, the building official shall commence proceedings to cause repair, vacation or demolition of the building or structure. The building official may commence criminal proceeding or civil proceedings, or both, as determined by the conditions existing on such premises.

Written notice to owner. Notify in writing, by certified mail, the owner of the building or structure, as determined by using the records in the office of the county clerk in the county in which the building or structure is located, that the building is a dangerous building or structure as defined in this section. The notice to the owner shall further state their reason that the building does not meet the minimum standards for continued use and occupancy of a building and that unless the building is put in a condition so that the building is not a dangerous building or structure within a reasonable time not exceeding 60 days (as specified by the building official), then a hearing will be scheduled before the city council to determine whether the building complies with the minimum standards set forth in this section. The building official, in his sole discretion, may elect not to send this notice to remedy and may instead proceed directly with notice of hearing as set forth herein

Appearance at hearings. Appear at all hearing s conducted by the town council and testify as to the conditions of the dangerous building or structure

Placement of notice on dangerous buildings; content s of notice. Place a notice on all dangerous building or structures, upon a determination by the town council, reading as follows:

"THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING BY THE TOWN COUNCIL OF THE CITY OF BALMORHEA. THIS NOTICE IS TO REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED, VACATED OR DEMOLISHED IN ACCORDANCE WITH THE NOTICE WHICH HAS BEEN GIVEN TO THE OWNER. IT IS UNLAWFUL TO REMOVE THIS NOTICE UNTIL SUCH NOTICE IS COMPLIED WITH."

Sec. - Criminal enforcement,

The building official is hereby authorized to commence criminal proceedings whenever He finds that there has been a violation of any subsection of this section.

It shall be unlawful for any owner, occupant or person in control to maintain a dangerous building or structure as defined herein. All buildings or structures which are

Determined to be dangerous buildings or structures are declared to be public nuisances. For purposes hereof, the term 'maintain' shall mean keep, preserve, use, maintain Status quo or permit to exist.

After the notice described herein is posted, it shall be unlawful for any person To use, enter, remain in or occupy such building to normally permit any person to use, Enter, remain in or occupy such building. It shall be a defense to any prosecution Occurring under this subsection that entry was made for the sole purpose of repairing, Demolishing or removing such building or structure.

It shall be unlawful for any person to remove or deface the notice until the required repairs, demolition or removal have been completed and a Certificate of occupancy has been issued pursuant to the provisions of the building code

It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove convert, or demolish any building or structure without first obtaining the appropriate permits for each building or structure according to the applicable conditions prescribe in the applicable conditions prescribed in the building code.

#### Sec. Civil enforcement

Assessment lien or civil penalty. If the dangerous building or structure is not vacated, secured, repaired, removed or demolished within the allotted time, the town may:

Without further action by the town council, vacate, secure, remove or demolish the building at its own expense, by town personnel or its contractor. Any costs incurred by the town in securing, removing or demolishing the building or structures may be charged to the owner. The town may assess the expenses on, and the town shall have a lien against, the property on which the building was located, unless the property is a homestead as protected by the state Constitution. The lien arises and attaches to the property by the state Constitution. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in which the property is located. The notice of lien 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 is located, the amount of expenses incurred by the municipality and the balance due; or

Acting by and through the town council, assess a civil penalty under the applicable state law not exceeding \$2,000 per day for failure to repair, remove or demolish the building or structure Notice of the hearing in which the civil penalty will be considered shall be given to the owner with written notice; or by sending the notice in the United States mail by certified mail, return receipt requested, addressed to the owner at the owner's post office address at least ten days

prior to the administrative hearing. Before holding a hearing to consider a civil penalty, the board shall have evidence that the property owner was actually notified of the requirements of the order and the need to comply with such requirements. Any civil penalty assessed shall be imposed as a lien against the land on which the building stands or stood, unless it is homestead protected by the state Constitution, to secure the payment of such civil penalty.

Promptly after the imposition of the lien, the town shall file for record, in recordable form in the office of the county clerk of the county in which the land is situated, a written notice of the imposition of the lien. The notice must contain a legal description of the land. In addition to the filing of the lien, the town may seek a judgment against the owner for the civil penalty in accordance with applicable state law.

Additional remedies. In addition to any remedy set forth in this section, the town may exercise any and all of its rights to abate any nuisance as defined in this section and seek appropriate relief as authorized by applicable state law.

Sec. - Notice of hearing to **owner, lienholder** or mortgage.

Upon notification from the building official that he, or his designee, has determined that a building or structure is a dangerous building or structure as defined in this article, and does not meet the minimum standards for continued use and occupancy, the town council shall have a notice of hearing issued to the owner, lienholder and mortgagees of the alleged dangerous building or structure. The notice of the hearing must be sent by certified mail at least ten days prior to the hearing and 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 so that the building or structure will not constitute a dangerous building or structure and the time it will take to reasonably perform the work. The building official or his designee shall make diligent effort to discover each mortgagee and lienholder for purposes of giving them notice and an opportunity to comment at the hearing. The records in the office of the county clerk in the county in which the building or structure is located shall be used to determine, if possible, the identity and address of any owner, lienholder or mortgagee of the building or structure. The town may file notice of the hearing in the official public records of real property in which the property is located. The notice shall contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the instrument on file in the office of the county clerk, a legal description of the affected property and a description of the hearing. The filing of the notice is binding on subsequent grantees, lienholder or the other transferees of an interest in the property who acquire such interest after the filing of the notice and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquired such interest after the filing of the notice.

Sec. Hearing.

On the date set forth in the notice, the town council shall hold a hearing to determine whether the building is a dangerous building or structure as defined herein. If the town council determines that the building or structure is a dangerous building or structure, the town council may order that the building be vacated, secured, repaired, removed or demolished by the owner within a reasonable time as provided for by V.T.C.A., Local Government Code ch.214. In addition, if there is a mortgagee or lienholder, the town council may provide in the order an additional reasonable time as provided by this section for the ordered action to be taken by any mortgagee or lienholder, in the event the owner fails to comply with the order within the time provided for action by the owner. No notice to any mortgagee or lienholder shall be required other than a copy of the order in the event the owner fails to timely take the ordered action. The owner of the building or the lienholder or mortgagee may present proof at the hearing of the scope of any work that may be required so that the building or structure will be a dangerous building or structure and the time it will take to reasonably perform the work.

Sec. Finding of fact.

The town council shall make written findings of facts from the testimony offered, as to whether or not the building in question is a dangerous building within the terms herein.

Sec. Copy of order to owner.

After the hearing, a copy of the order issued by the town council, if any, shall be promptly mailed by certified mail, return receipt requested, to the owner of the building.

Sec. Filing and publishing order.

Within ten days after the date that the order is issued, the town shall:

File a copy of the order in the office of the town clerk; and

Publish in a newspaper of general circulation in the town a notice containing the street address or legal description of the property, the date of the hearing, a brief statement indicating the results of the order and instruction stating where a complete copy of the order may be obtained.

Sec. - Copy of order to mortgage and lienholder.

After the hearing, if the owner does not take the ordered action within the allotted time, a copy of the town council order shall be promptly mailed by certified mail, return receipt requested, to each identified mortgagee or lienholder.



Sec. - Citation for violation.

At the conclusion of the hearing, the town council may order the building or structure repaired, demolished or removed as the council may deem necessary. In no event, however, shall the time fixed for repair, demolition or removal be more than 90 days from the date the council order, unless the council allows for additional time which shall be entered only if the council finds that the building is in violation of the standards set out herein and the applicable codes of the town.

Sec. - Demolition and assessment.

Should the owner or other person responsible for such building or structure fail or refuse to comply with the order of the town council, the town council may order the fire marshal, fire chief, or building official to dose the building or structure or to demolish or remove the same and to assess the expenses incurred against the property owner. Notice of the amount of the assessment shall be given to the owner and all lienholders by certified mail, return receipt requested to the addressee only, and upon the owner's failure to pay the same within 30 days after notice, the mayor may proceed to file a sworn affidavit of such expenses in the Office of the County Clerk, Reeves County, Texas, to establish the town's lien for such removal expenses against the property to which the building was attached. The lien shall be extinguished if the property owner or other interested party reimburses the town for the removal expenses.

Sec. - Violation, penalty.

Any person violating the provisions of this article shall upon conviction, be subject to a fine not to exceed the sum of \$2,000 and that each day in violation shall constitute a separate offense.

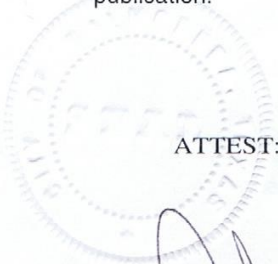
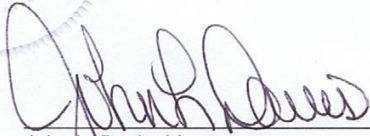
Sec. Separability

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the remaining portions hereof.

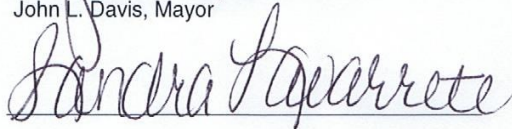
Sec. Effective Date

The town secretary is hereby directed to publish the caption and penalty clause hereof as an alternative method of publication as provided by law, once a week for two (2) consecutive weeks in some newspaper regularly published in the and this ordinance shall become effective ten {10} days after the date of its first publication.

ATTEST:

John L. Davis, Mayor



Sandra Navarrete, City Clerk

1<sup>st</sup> Reading: February 12, 2018

2<sup>nd</sup> Reading: March 12, 2018