

ORDINANCE NO. 09-16-2024-A

AN ORDINANCE OF THE CITY OF MERKEL, TEXAS REPEALING AND REPLACING ORDINANCE NO. 110998-2; ADOPTING REGULATIONS REGARDING SUBSTANDARD BUILDINGS WITHIN THE CITY; PROVIDING MINIMUM STANDARDS; PROVIDING FOR NOTICE AND ABATEMENT; PROVIDING A PENALTY; PROVIDING REPEALER AND SEVERABILITY CLAUSES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Merkel (the “City”) is a general law municipality operating pursuant to the laws of the State of Texas;

WHEREAS, pursuant to Section 214.001(a) of the Texas Local Government Code, the City may “require the vacation, relocation of occupants, securing, repair, removal, or demolition” of a building that is “substandard...and a hazard to the public health, safety, and welfare” or that is unoccupied and unsecured or secured in an inadequate manner;

WHEREAS, Section 214.001(b) of the Texas Local Government Code requires that such an ordinance “establish minimum standards for the continued use and occupancy of all buildings”, “provide for giving of proper notice...to the owner of a building”, and “provide for a public hearing to determine whether a building complies with the standards set out in the ordinance”;

WHEREAS, the City’s existing ordinance addressing dilapidated structures is outdated and the City Council of the City (the “City Council”) has determined that it is necessary to adopt an updated ordinance; and

WHEREAS, the City Council finds that this Ordinance is in the best interest of the health, safety, and welfare of the citizens of the City.

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

Part 1. The provisions in the attached Exhibit “A” are hereby adopted as the Substandard Building Ordinance of the City of Merkel.

Part 2. Any person, firm, or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a class C misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two thousand dollars (\$2,000.00).

Part 3. Ordinance No. 110998-2, adopted on November 23, 1998, is hereby repealed. Any and all other ordinances or ordinance provisions in conflict herewith are hereby repealed or amended to the extent of such conflict.

Part 4. If any provision or any section of this ordinance shall for any reason be adjudged invalid or unconstitutional by a court of competent jurisdiction, such judgement shall not affect or invalidate the remaining provisions or sections, which shall remain in full force and effect.

Part 5. This ordinance, being a penal ordinance, shall become effective after its publication as required by the Texas Local Government Code.

PASSED AND APPROVED this 16th day of September 2024.

ATTEST:

SIGNED:

City Secretary, Evelyn Morse

Mayor, Mary Schramper

EXHIBIT "A"

CITY OF MERKEL SUBSTANDARD BUILDING ORDINANCE

Section 1. Definitions.

- (a) Building. Includes, but is not limited to, any structure, shed, garage, house, manufactured or modular home, mobile home, trailer, or tent, intended for business, shelter, housing or enclosure of persons, animals, moveable property including household goods, inventory, records, furniture, fixtures, and equipment or other building whatever.
- (b) Code enforcement official. Any person appointed by the City Council to enforce violations of this Ordinance or applicable state codes.
- (c) Commercial Building. A building for the use or occupation of people for:
- (1) a public purpose or economic gain; or
 - (2) a residence if the building is a multifamily residence that is not defined as residential by this section.
- (d) Minimum Standards. The minimum standards for continued use and occupancy of a building as set forth in Section 3 herein.
- (e) Owner of record. Any person, agent, firm, corporation or governmental agency shown to be the owner or owners of a building in:
- (1) The real property, assumed name, or appraisal district records of the County;
 - (2) The tax and utility records of the City; or
 - (3) The records of the Secretary of State.
- (f) Residential Building. A building means having the character of a detached one-family or two-family dwelling or a multiple single-family dwelling that is not more than three stories high with separate means of egress, including the accessory structures of the dwelling, and that does not have the character of a facility used for the accommodation of transient guests or a structure in which medical, rehabilitative, or assisted living services are provided in connection with the occupancy of the building.
- (g) Substandard Building. Any building or structure that does not comply with the minimum standards under Section 3 of this Ordinance.

Section 2. Abatement of Substandard Buildings.

- (a) This ordinance is adopted pursuant to Chapter 214 of the Local Government Code.
- (b) It shall be unlawful for any owner, occupant, or other person in control of a building to allow that building to be in a condition that does not conform to the minimum standards as defined in Section 3, below.

(c) Any building that does not conform to the minimum standards is hereby declared to be a public nuisance and shall be abated by vacation, relocation of occupants, repair, demolition, or removal, as necessary upon the issuance of an order to abate in accordance with the procedures specified in this Ordinance.

Section 3. Minimum standards.

(a) A building is considered not to meet the minimum standards of the City for continued use and occupancy of a building, regardless of its date of construction, if it is a building that is dilapidated, substandard, or unfit for human habitation and a hazard to public health, safety and welfare, and:

(1) Has a roof, ceiling, floors, walls, sills, windows, or foundation or any combination thereof, that is/are rotted or decayed, and falling apart;

(2) Is uninhabitable due to obsolescence and deterioration caused by neglect, vandalism, fire damage, old age, or the elements;

(3) Is in danger of falling and injuring persons or property;

(4) Is a fire menace because it is in a dilapidated condition, as described in subsections (a)(1) through (a)(3) above, or that is likely to become a fire menace or be set on fire;

(5) Is in unsanitary condition and is likely to create disease because of the presence of insects, rodents or vermin;

(6) Is damp and in unsanitary condition and is likely to create disease and sickness because of being in the condition as described under subsections (a)(1) through (a)(5), or for other reasons;

(7) Is occupied by humans and does not have an authorized and valid utility account with the City, and, in operating condition, a connection to potable water at adequate pressure, a connection to discharge sewage from the structure or land into a public sewer system or an approved private septic system, and,

(A) For residential buildings, a kitchen sink, bathtub or shower, a lavatory connected to a cold and hot water source, a toilet connected to a water source and a public sewer system or an approved private septic system.

(B) For commercial buildings, a lavatory connected to a cold and hot water source, a toilet connected to a water source and to a public sewer or approved private septic system.

(8) Does not contain a minimum floor area of at least one hundred fifty (150) square feet of floor space for one occupant and one hundred (100) square feet of floor space for each additional occupant;

(9) Has holes, cracks or other defects in it, or does not have railings for stairs, steps, balconies, porches, and elsewhere from a walking surface to a lower surface more than 30 inches below, thereby constituting a danger to persons or property;

(10) Is not weathertight and watertight, or does not have a moisture-resistant finish or material for the flooring or subflooring of each bathroom, shower room and toilet room;

(11) Does not have, in operating condition, heating equipment capable of maintaining a minimum inside temperature of 68 degrees Fahrenheit at a point 3 feet above the floor and 2 feet from the exterior walls, within the habitable space of the building between November 1 and April 15 of each year in all habitable rooms;

(12) Does not have exterior windows and doors that are easily opened to provide air ventilation and are covered with screens for keeping out insects at each opening of the structure, or air conditioning equipment capable of maintaining a maximum inside temperature of 85 degrees Fahrenheit or twenty degrees lower than the outside temperature, whichever is warmer, between April 16 and October 31 of each year; and/or

(13) Does not have operating supply lines for electrical service, if electrical service is available within 300 feet of the building, or does not have operating electrical circuits and outlets sufficient to safely carry a load imposed by normal use of appliances and fixtures.

(b) A building is considered not to meet the minimum standards if it is not occupied by its owners, lessees or other invitees and is not secure from unauthorized entry so that it could be entered or used by uninvited persons or children regardless of its structural condition.

(c) A building that is boarded up, fenced or secured is considered not to meet the minimum standards if the building constitutes a danger to the public health, safety and welfare, even though secured from entry or the means used to secure the building are inadequate to prevent unauthorized entry or use of the building.

Section 4. Inspection and notice of abatement.

(a) Inspection. The code enforcement official may inspect any building the official has probable cause to believe does not meet the minimum standards. If an owner, occupant, agent or person in control of the premises refuses permission to enter or inspect, the code enforcement official may seek an administrative search warrant from an appropriate court as provided for by Texas Code of Criminal Procedure Article 18.05, unless an exception to the warrant requirement exists. All inspections, entries, examinations and surveys shall be done in a reasonable manner.

(b) Determination. After completing the inspection, the code enforcement official shall make an initial determination regarding whether the building is a substandard building, as defined herein.

(c) Notice of Abatement. After an initial determination that a building is a substandard building, the code enforcement official shall provide notice to the owner of record of the building, by certified mail, return receipt requested, that the building is believed to be substandard, which shall include a description of the nature of the violation(s) of the minimum standards, and that the owner must vacate

and/or repair, demolish, or remove the building for the good of the public health, safety and welfare. A notice shall be posted on the substandard building as follows:

“THIS BUILDING IS SUBSTANDARD ACCORDING TO THE MINIMUM STANDARDS SET FORTH IN CITY ORDINANCE NO. 08-19-2024 AND THE OWNER MUST REPAIR, DEMOLISH OR REMOVE IT. CONTACT MERKEL POLICE DEPARTMENT AT (325) 928-4766 FOR FURTHER INFORMATION.

DATE: _____”

(d) Request for public hearing before the City Council. If the owner does not reply or take action within fifteen (15) days from the date the notice was mailed, the code enforcement official may request that a public hearing be held before the City Council, to determine whether the building complies with the minimum standards set forth in this ordinance.

Section 5. Notice of hearing.

(a) If a public hearing is scheduled, the code enforcement official shall make a diligent effort to discover the identity and address of the owner(s) of record and any lienholders or mortgagees of the building and the underlying property. Due diligence will include searching the following records for information on the property owner or lienholder:

- (A) Taylor County real property records;
- (B) Records of the Taylor County Appraisal District;
- (C) Records of the Secretary of State, if the property owner or lienholder is a corporation, partnership, or other business association;
- (D) Assumed name records of Taylor County;
- (E) Tax records of Taylor County; and
- (F) Utility records of Taylor County.

(b) The code enforcement official shall provide notice of the public hearing to each owner, lienholder, or mortgagee by certified mail, return receipt requested, no later than ten (10) days prior to the date of the hearing. The notice shall further advise the owner, lienholder, or mortgagee that he or she will have the burden of proof at such hearing and will be required to submit proof of the scope of any work that may be required to make the building comply with this ordinance and the amount of time it will take to reasonably perform the work.

(c) The code enforcement official may provide notice to any unknown owners or interested parties by posting a copy of the notice described by subsection (b) on the front door of each improvement situated on the affected property, or as close to the front door as practicable.

(d) The City shall also publish notice of the public hearing in a newspaper of general circulation in the City no later than ten (10) days prior to the date of the public hearing. The City may also file a

notice of the public hearing in the Official Public Records of Taylor County. The published notice must contain the name and address of the owner of the real property (if it can be determined from a reasonable search of county records), a legal description of the affected property and a description of the proceeding, including the date, location and time of the public hearing.

Section 6. Hearing.

(a) The City Council shall hold a public hearing regarding the subject property prior to determining whether a structure is a substandard structure as defined in this Ordinance, at which any interested party will be given the opportunity to address the City Council regarding the structure.

(b) At the hearing, the owner, lienholder, or mortgagee has the burden of proving that the structure is not a substandard structure.

(c) If more than 30 days is requested by the owner, lienholder, or mortgagee to repair, vacate, demolish and/or remove the structure, the owner, lienholder, or mortgagee will be required to submit proof of the scope of any work that may be required to make the building comply with this Ordinance and the amount of time it will take to reasonably perform the work.

Section 7. Order to abate.

(a) If it is found at the public hearing that a building is in violation of the minimum standards, the City Council may order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time.

(b) The order shall allow the owner thirty (30) days to complete the ordered action, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within 30 days. If more than thirty (30) days are allowed to repair, remove or demolish the building, specific time schedules shall be established for the commencement and performance of the work.

(c) The owner, lienholder or mortgagee may not be allowed more than ninety (90) days to complete the ordered action, unless the owner, lienholder, or mortgagee submits a detailed plan and time schedule for the work at the hearing and 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 City Council allows more than ninety (90) days to complete the work, the owner, lienholder, or mortgagee shall be required to regularly submit progress reports to demonstrate compliance with the time schedules established for the commencement and performance of the work. Additionally, if the owner, lienholder, or mortgagee owns property, including structures and improvements, that exceed \$100,000 in total value, the City Council may require that the owner, lienholder, or mortgagee post a cash or surety bond, or provide a letter of credit or third party guaranty to cover the cost of repairing, removing, or demolishing a building.

(d) The order must contain:

- (1) An identification of the building and the property on which it is located;
- (2) A description of the violation(s) of the minimum standards; and
- (3) A statement that the City will secure, vacate, repair, remove or demolish the building if the ordered action is not taken by the owner within a specified time.

Section 8. Notice of order.

(a) The City shall promptly mail a copy of any order issued pursuant to Section 7 of this Ordinance to the owner of record of the building and to any lien holder or mortgagee by certified mail, return receipt requested.

(B) Within ten (10) days following the date that an order is issued, 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 the following:

(A) The street address or legal description of the property;

(B) The date the hearing was held;

(C) A brief statement indicating the results of the hearing and the contents of the order; and

(D) Instructions stating where a complete copy of the order may be obtained.

Section 9. Authority to secure building before hearing in some cases.

(a) The City may immediately secure a building that it determines does not meet the minimum standards and is unoccupied or occupied only by persons who do not have a right to possess the building according to the procedures contained in this Section.

(b) Notice. Before the 11th day after the date the building is secured according to Subsection (a), above, the City shall give notice to the owner of record by:

(1) Personally serving the owner with written notice;

(2) Depositing the notice in the United States mail addressed to the owner at the owner's last known post office address;

(3) Publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the city if personal service cannot be obtained and the owner's post office address is unknown; or

(4) Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.

(c) Contents of Notice. The notice shall contain identification of the building and the property on which it is located, a description of the existing violation(s) of the minimum standards, and a statement that the municipality will secure or has secured the building.

(d) Hearing. The notice shall also state that the owner may request a hearing in front of the City Council about any matter related to the City securing the building by filing a written request for a hearing within thirty (30) days after the date the City secures the building. If such a hearing is requested, it shall be held within twenty (20) days after the date the request for hearing is filed.

Section 10. Appeal and Judicial Review.

Any owner, lienholder or mortgagee of record of a property jointly or severally aggrieved by any order issued under this ordinance shall be entitled to judicial review in district court. A petition must be filed in district court by an owner, lienholder or mortgagee within thirty (30) calendar days after the date of delivery of said order pursuant to Texas Local Government Code Sec. 214.0012. The petition must be verified, set forth that the decision of the City Council was illegal, in whole or in part, and specify the grounds of the illegality.

Section 11. Criminal Prosecution.

(a) Violation. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance.

(b) Penalty. A violation of any of the provisions, or failure to comply with any of the mandatory requirements, of this ordinance shall constitute a misdemeanor punishable by a maximum fine of \$500.00 or a maximum fine of \$2,000 if the court finds that the violation governs fire safety or public health and sanitation.

(c) Continuing Violation. Each day a person violates, continues to violate, or permits a violation of this ordinance shall be a separate offense.

Section 12. Expense; civil penalties; lien.

(a) All expenses of vacating, securing, repairing, removing, demolishing, or relocation of occupants of a building are the responsibility of the owner of the property.

(b) If an owner or other interested party does not vacate, secure, repair, remove, demolish, or relocate occupants of a building within the time allotted in an order issued pursuant to this ordinance, the City may take the ordered action at its expense at the direction of the City Council. If the City repairs the building, such repairs shall only be to the extent required to meet minimum standards and only if the building is a residential building with ten or fewer dwelling units.

(c) As an alternative to subsection (b), a civil penalty may be assessed against the property owner for failure to repair, remove or demolish the building. A notice of penalty shall be mailed by certified mail, return receipt requested, to the property owner advising the amount and duration of the penalty, the date on which it is due, and notice that failure to pay said penalty shall result in a lien being placed on the property.

(d) In addition to subsections (b) and (c) above, the City may assess and recover a civil penalty against a property owner at the time of the hearing for violations of this ordinance, pursuant to Texas Local Government Code Sec. 214.0015.

(e) Any expenses incurred by the City pursuant to subsection (b), and any civil penalties incurred by the owner pursuant to subsections (c) and (d), will be assessed as a lien against the property on which the building stands or stood. The City shall have a privileged lien upon filing same in the Official Public Records of Taylor County subordinate only to tax liens against the property unless it is a homestead as protected by the Texas Constitution. The lien will be extinguished if the property owner or other interested party reimburses the City for all expenses and penalties, plus interest.

(f) Any civil penalty or other assessment imposed under this Section accrues interest at the rate of ten percent a year from the date of the assessment until paid in full, pursuant to Texas Local Government Code Sec. 214.0015.

Section 13. Receiver.

The City may bring an action in District Court against an owner of residential property that is not in substantial compliance with the minimum standards and request the appointment of a receiver for purposes of rehabilitating the property pursuant to Texas Local Government Code Sec. 214.003.

Section 14. Administrative liability.

No officer, agent or employee of the City shall render himself personally liable for any damage that may accrue to any person or property as a result of any act required or permitted in the discharge of his duties under this ordinance.