

ORDINANCE NO. 99-6

AN ORDINANCE AMENDING THE CITY OF COMMERCE CODE OF ORDINANCES REGARDING DANGEROUS AND UNSAFE BUILDINGS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

WHEREAS, the City of Commerce has reviewed the procedures for dangerous and unsafe buildings and has determined that it is in the best interest of the City of Commerce that the City of Commerce Code of Ordinances regarding Dangerous and Unsafe Buildings be amended to read as follows:

ARTICLE IX. DANGEROUS AND UNSAFE BUILDINGS*

DIVISION 1. GENERALLY

Sec. 22-266. Purpose of article.

It is the purpose of this article to provide a just, equitable, and practicable method, to be cumulative with and in addition to any other remedy available at law, whereby buildings or structures which are dilapidated, unsafe, dangerous, unsanitary, or are a menace to the life, limb, health, morals, property, safety and general welfare of the people of the city, or which tend to constitute a fire hazard, may be required to be repaired, vacated or demolished.

(Code 1969, § 5-58)

Cross reference-Housing code, § 22-181 et seq.

Sec. 22-267. Declaration of nuisance.

All buildings or structures which are structurally unsafe or are not provided with adequate egress, or which constitute a fire hazard or are otherwise dangerous to human life, or which, in relation to existing use, constitute a hazard to safety, health or public welfare, by reason of inadequate maintenance, neglect, decay, dilapidation, obsolescence, or abandonment as specified in the building code adopted by section 22-31 or any other provision of law, are, for the purpose of this article, declared to be public nuisances and shall be repaired, vacated and repaired or demolished as provided in this article.

(Code 1969, § 5-59)

Sec. 22-268. Removal of orders or notices posted under article.

Any person who removes any notice or order posted as required in this article shall be guilty of a misdemeanor. (Code 1969, § 5-65)

Sec. 22-269. Interfering with enforcement of article.

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

article, or in performing any necessary act preliminary to or incidental to such work, or authorized or directed pursuant thereto.
(Code 1969, § 5-66)

Sec. 22-270. Liability of city officers and employees for action under article.

No officer, agent or employee of the city shall be personally liable for damage incurred or alleged to be incurred as a result of any act required, permitted or authorized to be done or performed in the discharge of his duties pursuant to this article. Any suit brought against any officer, agent or employee of the city as a result of any act required, permitted or authorized in the discharge of his duties under this article shall be deemed an action against the city and shall be defended by the city attorney.
(Code 1969, § 5-67)

Sec. 22-271. Article does not affect other ordinances.

The provisions of this article shall not be deemed to repeal by implication any provisions of the fire prevention code, the building code or any other ordinance of the city, and the adoption hereof shall not be deemed to affect or diminish the power or authority of any officer or employee of the city to condemn any building or structure erected or maintained in violation of any provision of the fire prevention code, the building code, or any other ordinance of the city.
(Code 1969, § 5-68)

Sec. 22-272. Designation of dangerous buildings.

For the purpose of this article, any building or structure which has any or all of the following conditions or defects shall be deemed a dangerous building:

- (1) Whenever any door, aisle, passageway, 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, for all persons housed or assembled therein who would be required to or might use such door, aisle, passageway, stairway or other means of exit.
- (2) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than 1 ½ times the working stresses allowed in the building code adopted by section 22-31.
- (3) Whenever any portion thereof has been damaged by earthquake, wind, flood, or by any other cause, in such a manner that the structural strength or stability thereof is appreciably less than it was before such catastrophe and is less than the minimum requirements of the building code adopted by section 22-31 for a building of similar structure, purpose or location.
- (4) Whenever any portion or member or appurtenance thereof is likely to fall, to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- (5) 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 as to be capable of resisting a wind pressure of one-half that specified in the building code adopted by section 22-31 without exceeding the working stresses permitted in the building code.
- (6) Whenever any portion thereof has settled to such an extent that the walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of new construction.
- (7) Whenever the building or structure, or any portion thereof, because of dilapidation, deterioration, decay, faulty construction, or because of the removal or movement of some portion of the ground necessary for the purpose of supporting such building or portion thereof, or some other cause, is likely to partially or completely collapse, or some portion of the foundation or underpinning is likely to fall or give way.
- (8) Whenever for any reason whatsoever the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is used.
- (9) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb passing through the center of gravity does not fall inside the middle third of the base.
- (10) Whenever the building or structure, exclusive of the foundation, shows 33 percent or more of damage or

deterioration to the member or members, or 50 percent of damage or deterioration of a nonsupporting enclosing or outside wall or covering.

- (11) 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 an attractive nuisance to children who might play therein to their danger, or as to afford a harbor for vagrants, criminals or immoral persons, or as to enable persons to resort thereto for the purpose of committing a nuisance or unlawful or immoral acts.
- (12) Any building or structure which has been constructed, or which now exists or is maintained in violation of any specific requirement or prohibition, applicable to such building or structure, of the building regulations of the city as set forth in the building code adopted by section 22-31 or of any provisions of the fire prevention ordinances, when so determined and reported by the fire marshal, or of any law or ordinance of this state or city relating to the condition, location, or structure of buildings.
- (13) Any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50 percent, or in any supporting member less than 66 percent of the strength, fire-resisting qualities or characteristics or weather-resisting qualities or characteristics required by law or ordinance in the case of a newly constructed building of like area, height and occupancy in the same location.
- (14) Whenever a building or structure, used or intended to be used for dwelling purposes, because of dilapidation, decay, damage or faulty construction or arrangement, or otherwise, is unsanitary or unfit for human habitation or is in a condition that is likely to cause sickness or disease, when so determined by the person designated by the city manager, or is likely to work injury to the health, safety or general welfare of those living within.
- (15) Whenever a building or structure, used or intended to be used for dwelling purposes, has light, air, and sanitation facilities inadequate to protect the health, safety, or general welfare of persons living within.
- (16) Whenever any building or structure, by reason of obsolescence, dilapidated condition, deterioration, damage, electric wiring, gas connections, heating apparatus, or other cause, is in such condition to be a fire hazard and is so situated as to endanger life other buildings or property in the vicinity or provide a ready fuel supply to augment the spread and intensity of fire arising from any cause.
- (17) Any building or structure not constructed or maintained in conformity with the fire code of the city, when such nonconformity constitutes a serious hazard to the safety of persons or property.
- (18) Any building or structure not wired in conformity with the electrical code of the city, when such nonconformity constitutes a serious hazard to the safety of persons or property.
- (19) Any building or structure not constructed in conformity with the plumbing code of the city, when such nonconformity constitutes a serious hazard to the safety of persons or property.
- (20) Any building or structure not constructed in conformity with the building code of the city, when such nonconformity constitutes a serious hazard to the safety of persons property.
- (21) Any building used for the occupancy of one or more persons which is not connected to an approved public sanitary sewer or does not provide connection to a properly installed and approved septic system.
- (22) Any building that, regardless of its structural condition, is unoccupied by its owners, lessees, or other invites and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children.
- (23) Any building that is boarded up, fenced, or otherwise secured in any manner if the building constitutes a danger to the public even though secured from entry; or the means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by Subdivision (22) above.

Secs. 22-273-22-285. Reserved.

DIVISION 2. NOTICE AND ORDER TO REPAIR, VACATE OR DEMOLISH

Sec. 22-286. Generally.

It shall be the duty of the city building official or other representative designated by the city council to inspect all buildings or structures reported to be or believed to be substandard, to present a report of such inspection to the city council, and to give notice of the intention of city council to hold hearings and follow the procedures hereinafter provided.

Sec. 22-287. Identification of property.

The notice provided for in section 22-286 shall set forth the street address and a description sufficient for identification of the building or structure and the premises upon which the building or structure is located.
(Code 1969, § 5-61(b))

Sec. 22-288. Upon whom to be served.

The building official shall cause copies of the notice provided for in section 22-286 to be served upon each of the following: The person, if any, in real or apparent charge and control of the premises involved; the owner of record title; the holder of any mortgage, trust deed, or other lien or encumbrance of record; the owner or holder of any lease of record; the record holder of any other estate or interest in or to the building or structure or the land upon which it is located.
(Code 1969, § 5-61(c))

Sec. 22-289. Manner of service; failure to receive.

The notice provided for in section 22-286 may be served personally upon any owner or occupant or, if such premises are unoccupied, by attaching a copy of such notice in a prominent place on such building or structure and by depositing a copy of such notice in the United States Post Office, properly enclosed in a sealed envelope, and with the postage thereon fully prepaid. Such mail shall be registered or certified, return receipt requested, and addressed to the person entitled thereto at the address of such person as it appears on the last equalized assessment roll of the county or as known to the fire marshal or the building official. If no such address so appears or is known to the fire marshal or the building official, a copy of the notice shall be addressed to such person at the address of the building or structure involved. Service by registered or certified mail shall be complete on the day of mailing. The failure of any owner or other person to receive such notice shall not affect in any manner the validity of any proceedings taken under this article.
(Code 1969, § 5-61(d))

Sec. 22-290. Posting of copy.

One copy of the notice provided for in section 22-286 shall be conspicuously posted on the building or structure involved. (Code 1969, § 5-61(e))

Sec. 22-291. Affidavits as to service and posting; receipt card.

Upon giving notice as provided in section 22-286, the person designated by the city manager shall file with the city secretary an affidavit thereof certifying to the time and manner in which such notice was given and posted. He shall also file therewith any receipt card which may have been returned to him in acknowledgment of the receipt of such notice by registered or certified mail.
(Code 1969, § 5-61(f))

Secs. 22-292-22-300. Reserved.

DIVISION 3. HEARING BEFORE COUNCIL

Sec. 22-301. General procedure.

Substandard buildings or structures may be ordered to be, and pursuant to order shall be, repaired, vacated, or demolished under the following conditions, regulations, and procedures:

(1) Emergency measures. When there exists an emergency as defined in this subsection, certain measures may be taken, notification given, and procedures followed as set forth in this subsection:

(a) When it shall appear that a building or structure in the city is a substandard building or structure under the terms of this division and that such building or structure or the manner of its use constitutes an immediate and serious danger to life or property, the condition shall be deemed a hazard justifying the use of emergency measures, and the city council may order any of the following emergency measures to be taken:

- i. Immediate vacation of such building, structure, or adjoining buildings or structures.
- ii. Vacation of the danger area around such building or structure.
- iii. Such temporary emergency shoring and bracing of walls, roofs, and supports as are required to eliminate the immediate and serious threat of damage to life or property.
- iv. Post notices on or near such building or structure, notifying the public of such orders and ordering all persons to keep out of such building or structure and the surrounding areas of danger.

(b) When any of the above emergency measures are ordered to be taken, notice of such order shall be given by personal service on the owner and/or occupant of the building or structure or his representative or, if such premises is unoccupied, by attaching a copy of such notice in a place of prominence on such building or structure and causing a copy of such notice to be mailed to the owner or his representative by certified mail, return receipt requested. Upon the adoption of such emergency order the city council shall schedule a public hearing and cite the owner or his representative to appear and show cause why such building or structure would not be declared a substandard building or structure and why he should not be ordered to repair, vacate, or demolish such building or structure. Such citation shall be served with the notice of emergency order in accordance with the provisions of this subsection (1)(b). Such hearing shall be conducted in accordance with the provisions of subsection (2) of this section.

(2) Normal procedure.

- (a) When it shall come to the attention of the city council that a building or structure in the city is substandard under the provisions of this division, the city council shall schedule a public hearing and send notice to the owner of the building or structure or his representative of the date, place and time to appear and show cause why such building or structure should not be declared to be a substandard building or structure and why he should not be ordered to repair, vacate, or demolish the building or structure. The date of such hearing shall be not less than ten (10) days after such notice shall have been made. A copy of the building inspector's report shall accompany the notice. In addition to any other matter required elsewhere, the notice shall advise the recipient that they will be required to submit at the hearing proof of the scope of work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.
- (b) Such notice may be served by delivery of a copy thereof to the owner and occupant or, if such premises is unoccupied, by attaching a copy of such notice in a place of prominence on such building or structure and causing a copy of such notice to be mailed to the owner or his representative by certified mail, return receipt requested.
- (c) In addition to the notice provided to the owner or owners, notice shall likewise also be given to the owners of any lienhold interest in the property.
- (d) Notice of the public hearing shall be published in the newspaper one time, at least fifteen (15) days prior to the date set for hearing.

On the day set in such notice the hearing shall be conducted, and on the basis of such hearing the city council shall finally determine whether or not the building or structure is a substandard building or structure, and shall issue such orders as shall appear reasonably necessary to prevent the building or structure from being a hazard to life or property and to eliminate the substandard qualities.

Sec. 22-302. Hearing.
(Repealed)

Sec. 22-303.
(Repealed)

Sec. 22-304.
(Repealed)

Sec. 22-305. Order - Generally.

If, from a full and fair consideration of the evidence and testimony received at the hearing, the city council shall determine that the building or structure, or any portion thereof, is unsafe and a public nuisance, then it shall issue an order, certified by the city secretary:

- (1) That the building or structure must be repaired, vacated and repaired, or demolished; or
- (2) That the occupant, lessee, or other person in possession must vacate the building or structure, or that he may remain in possession while repairs are being made; or
- (3) That any mortgagee, beneficiary under a deed of trust, or any other person having interest or estate in the building or structure may, at his own risk, repair, vacate and repair, or demolish it.

Sec. 22-306. Same-Governing standards.

The following standards, where applicable, shall be followed in substance by the city council in ordering the repair, vacation, or demolition of any building or structure. Any order to demolish rendered pursuant to this section shall not indicate an alternative permission to repair. However, an order to repair may be satisfied by demolition.

- (1) If the unsafe building can reasonably be repaired so that it will no longer exist in violation of the terms of this article, it shall be ordered repaired.
- (2) If the unsafe building is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants, it shall be ordered to be vacated and repaired.
- (3) If the unsafe building is 50 percent damaged, or decayed, or deteriorated, it shall be demolished.
- (4) In all cases where an unsafe building cannot be repaired so that it will no longer exist in violation of the terms of this article, it shall be vacated and demolished.
- (5) In cases where an unsafe building is a fire hazard, as specified by the fire prevention code of the city, existing or erected in violation of the terms of this article, or any other ordinance of this city, or statute of the state, it shall be repaired, except where the cost of such repairs would exceed 50 percent of the value of such unsafe building, in which case it shall be demolished.
(Code 1969, § 5-62(f))

Sec. 22-307. Same-Contents.

(A) The Order of the city council shall:

- (1) Set forth the information required in section 22-287.

- (2) Contain a finding that the building or structure is unsafe and a public nuisance.
 - (3) Contain a general statement of the things required to be done.
 - (4) Specify the time within which the work required must be commenced, which shall not be less than ten (10) days after the issuance of the Order after which time the work shall be completed or the building or structure is to be demolished or the nuisance otherwise abated by the city.
 - (5) Specify a reasonable time within which the work shall be completed. Require the owner, lienholder, or mortgagee of the building to within thirty (30) days:
 - (a) secure the building from unauthorized entry; or
 - (b) repair, remove, or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within thirty (30) days.
- (B) If the Order allows the owner, lienholder, or mortgagee more than thirty (30) days to repair, remove, or demolish the building, it 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.
- (C) The Order may not allow the owner, lienholder, or mortgagee more than ninety (90) days to repair, remove, or demolish the building or fully perform all 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.
- (D) If the Order 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, it shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the building official to demonstrate that the owner, lienholder, or mortgagee has complied 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 city council or its designee to demonstrate compliance with the time schedules.
- (E) In a public hearing to determine whether a building complies with the standards set out in an ordinance adopted under this section, the owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

Sec. 22-308. Same-Posting and service.

After the city council makes its orders in accordance with section 22-307, it shall cause copies of such Order to be:

- (1) Posted on the substandard building or structure;
- (2) Sent to the owner and occupant and any lienholder by certified mail, return receipt requested;
- (3) Filed in the office of the city secretary; and
- (4) Published by notice in a newspaper of general circulation in the City of Commerce 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.

Sees. 22-309-22-320. Reserved.

DIVISION 4. FAILURE TO COMPLY WITH ORDERS TO REPAIR, VACATE OR DEMOLISH

Sec. 22-321. Prohibited.

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

Sec. 22-322. Action by city.

- (a) Authority to vacate or demolish. Whenever an order to repair, vacate and repair, or demolish any building or structure, or any portion thereof, has not been complied with within the time set by the city council, the building official shall have the power, in addition to any other remedy herein provided, to:
 - (1) Cause the building or structure ordered to be repaired, to be vacated until such time as the necessary repairs have been made. No person shall thereafter occupy or permit to be occupied any such building until and unless the necessary repairs have been made and the building official has approved the repairs and issued a permit to reoccupy such building or structure.
 - (2) Cause the building or structure to be demolished, and the land restored to a reasonably clear and level condition, including the filling of any excavation to the finished grade of the surrounding area.
- (b) Report of demolition. Upon completion of the demolition of any building or structure, or any portion thereof, under this section, the city manager shall cause to be prepared and filed with the city council a report specifying:
 - (1) The work done;
 - (2) The cost of the work and incidental expenses;
 - (3) A description of the real property upon which the building or structure was located;
 - (4) The names and addresses of the persons entitled to notice pursuant to division 2 of this article; and
 - (5) The assessment against each lot or parcel of land proposed to be levied to pay the cost thereof.

Any such report may include demolition work on any number of buildings or structures on any number of parcels of property, whether contiguous to each other or not. The term "incidental expenses" shall include, but not be limited to, the expenses and costs of the city in the preparation of notices, specifications and contracts, inspection of the work, and the costs of printing and mailing required under this article's provisions.

- (c) Assessment as lien on property. The amount of the cost of abating such nuisance upon the various lots or parcels of land, including incidental expenses, as confirmed by the city council, shall constitute special assessments against the respective lots or parcels of land and, as thus made and confirmed, shall constitute a lien on such property for the amount of such assessments, respectively, until paid. Such lien shall, for all purposes, take priority over all other liens except tax liens or paving assessment liens. Within a reasonable time after the report of demolition is presented to the city council under this section, the city secretary shall cause a notice of lien to be filed with the county clerk in the deed records of the county. The notice of lien shall contain, at a minimum, a legal description of the real property on which the building was located, the amount of expenses incurred by the municipality, and the balance due. Such special assessment liens shall bear interest at the rate of six percent (6%) per annum from the date of filing of the lien with the county clerk, and such lien shall be collected in the same manner as other assessment liens are collected under the laws of the state.

WHEREAS, all Ordinances or parts of Ordinances in conflict herewith are hereby expressly repealed.

WHEREAS, if any section, subsection, word, sentence, or phrase of this Ordinance is declared to be invalid, it shall not affect the validity of this Ordinance.

NOW, THEREFORE, this Ordinance shall take effect and be in force from and after its passage and approval.

PASSED AND APPROVED on FIRST READING at a regular meeting of the City Council of the City of Commerce, Texas, on this the 16th day of March, 1999.

PASSED AND APPROVED on SECOND READING at a regular meeting of the City Council of the City of Commerce, Texas, on this the 6th day of April, 1999.

ATTEST

CITY OF COMMERCE


Marty Morrison
Marty Morrison
City Secretary

John R. Sands
John R. Sands
Mayor

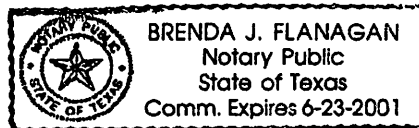
(seal)

I, Marty Morrison, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an Ordinance, and that the same has not been repealed and is in full force and effect.

(seal)

Marty Morrison
Marty Morrison, City Secretary
City of Commerce

Sworn to and subscribed before me, on this the 8th day of April, 1999, to certify which witness my hand and seal of office.



Brenda J. Flanagan
Notary Public

Ordinance/demoproc.499