

ORDINANCE NO. 14-21

AN ORDINANCE OF THE CITY OF COMMERCE, TEXAS HEREBY CREATING A BUILDING STANDARDS COMMISSION WHICH SHALL BE ORGANIZED, APPOINTED, AND FUNCTION AS A PUBLIC HEARING COMMISSION REGARDING NUISANCE ABATEMENTS AND SUBSTANDARD/DANGEROUS STRUCTURES IN THE CITY LIMITS OF COMMERCE, TEXAS; PROVIDING REGULATIONS APPLICABLE THERETO AND ENFORCEMENT THEREOF; PROVIDING JUDICIAL REVIEW, ISSUE WRITTEN ORDERS PROCEDURES AND CIVIL PENALTIES (EXCEPT AS OTHERWISE PROVIDED FOR HEREIN) NOT TO EXCEED THE SUM OF ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED TO OCCUR EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS:

SECTION 1. CREATION OF A BUILDING STANDARDS COMMISSION

There is hereby created a building and standards commission which shall be organized, appointed, and function as follows in this division.

SECTION 2. ORGANIZATION

- A. *Membership:* The commission shall consist of five (5) members, who are residents and taxpayers of the city, each of whom shall be appointed by the City Council, three (3) of whom shall be appointed for terms of two (2) years, two (2) of whom shall be appointed for a period of one (1) year, and each member of the commission shall thereafter be appointed for a term of two (2) years.
- B. *Alternates:* The City Council shall appoint four (4) alternate members of the commission, who shall serve in the absence of one (1) or more of the regular members, when requested to do so by the City Manager. The alternate members serve for the same period and are subject to removal in the same manner as regular members and a vacancy is filled in the same manner as with a regular member.
- C. *Removal:* The City Council may remove a commission member for cause on written charge, however, prior to making a decision regarding removal, must hold a public hearing on the matter, if requested to do so by the commission member subject to the removal action.
- D. *Vacancy:* A vacancy shall be filled for the unexpired term by the City Council.

SECTION 3. PROCEEDINGS

- A. *Commissioners required for action:* All cases to be heard by the commission must be heard by at least four (4) members and any action taken must be concurred in by the vote of four (4) members.

- B. *Presentation of cases*: All cases brought before the commission shall be presented by the building official or his designee, who may be assisted as he deems necessary, by the city attorney.
- C. *Meetings*: Meetings of the commission shall be open to the public, held at the call of the chairman, and at other times as determined by the commission.
- D. *Oaths; certification*: The chairman, or the acting chairman in the chairman's absence, may administer oaths and compel the attendance of witnesses.
- E. *Record*: A record of the entire proceedings shall be made by tape recording, or by any other means of permanent recording determined to be appropriate by the commission. Minute of proceedings showing the vote of each member on each question or the fact that a member is absent or fails to vote and records of its examinations and other official actions shall be kept by the commission and filed immediately in the office of the City Secretary as public records.
- F. *Continuances*: The commission may grant continuances for good cause shown.

SECTION 4. CONDUCT OF HEARINGS

- A. *Rules*: Hearings need not be conducted according to the technical rules relating to evidence and witnesses.
- B. *Oral evidence*: Oral evidence shall be taken only on oath or affirmation
- C. *Hearsay evidence*: Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.
- D. *Admissibility of evidence*: Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.
- E. *Exclusion of evidence*: Irrelevant and unduly repetitious evidence shall be excluded.
- F. *Rights of parties*: Each party shall have these rights, among others:
 - 1. To call and examine witnesses on any matter relevant to the issues of the hearing;
 - 2. To introduce documentary and physical evidence;
 - 3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 - 4. To impeach any witness regardless of which party first called him to testify;
 - 5. To rebut evidence against him;
 - 6. To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.
- G. *Inspection of premises*: The commission may inspect upon notice to all parties any building or premises involved in a hearing before the commission only during the course of such hearing.

SECTION 5. PURPOSE

The commission is empowered to enforce ordinances:

- A. For the preservation of public safety, relating to the materials used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances or exits;

- B. Relating to the fire safety of a building or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fire, or location, design, or width of entrances or exits;
- C. Relating to dangerously damaged or deteriorated buildings or improvements; or
- D. Relating to conditions caused by accumulations of refuse, vegetation, junk vehicles and or other matter that creates breeding and living space for insects and rodents.

SECTION 6. COMMISSION ACTIONS

The commission may, upon notice and hearing, as provided herein:

- A. Order the repair, within a fixed period, of buildings found to be in violation of this article;
- B. Declare a building substandard in accordance with this article;
- C. Order, in an appropriate case, the immediate removal of persons or property found on private property, enter private property to secure removal if it is determined that conditions exist on the property that constitute a violation of this article, and order action to be taken as necessary to remedy, alleviate, or remove any substandard building found to exist;
- D. Issue orders or directives to any peace officer of the state, including the sheriff or constable or the chief of police of the city, to enforce and carry out the lawful orders or directives of the commission
- E. Determine the amount and duration of a civil penalty, not to exceed one thousand dollars (\$1,000.00) per day, the city may recover, when it finds that an owner or owner's representative:
 - 1. Was actually notified of the provisions of this article; and
 - 2. After receiving notice of the article provisions, committed acts in violation of the article or failed to take action necessary for compliance with the article.

SECTION 7. COMMISSION ORDERS

- A. *Written Orders*: The commission shall cause a written final decision to be prepared when it has made its determination.
- B. *Delivery; publication; filing*: A copy of the final decision shall be:
 - 1. Sent by certified mail, return receipt requested, to all those persons entitled to notice of hearing.
 - 2. Published one (1) time within ten (10) calendar days after mailing has herein provided; and
 - 3. Filed in the office of the City Secretary
- C. *Evidence of penalty for judgment*: A commission decision to impose a civil penalty is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the city for final judgment. No other proof shall be required for a district court to enter final judgment on a penalty established by the building and standards commission other than filing of a certified copy of the order establishing the penalty with the district clerk.

SECTION 8. JUDICIAL REVIEW

- A. *Standing*: Any person or persons, jointly or severally aggrieved by a decision and/or order of the commission, may file a petition in a district court of Hunt County, Texas, duly verified, setting forth that the decision and/or order of the commission is wrong, or illegal, in whole or in part, and specifying the grounds there for.

- B. The petition must be filed in said district court within thirty (30) days after the date of receipt by such person or persons aggrieved by the decision and/or order of the commission of a copy of such decision and/or order. If such copy of the decision and/or order is mailed and properly addressed and stamped, it shall be presumed in the court that the person or persons to whom the notice was addressed received the notice three (3) days after the post mark on the envelope or other mailing container. Such notice of any decision and/or order may be hand delivered to the person or persons aggrieved by the decision and/or order of the commission.
- C. An appeal to the district court of any decision and/or order of the commission shall be limited to a hearing under the substantial evidence rule except, if a decision and/or order of the commission orders removal and/or demolition of a building located on property subject of the decision and/or order, the proceedings in the appeal to the district court shall be de novo.
- D. *Disposition*: The court may:
1. Reverse, in whole or in part;
 2. Affirm, in whole or in part; or
 3. Modify the commission decision.
- E. *Costs*: Costs may be allowed against the commission only when the court finds it acted with gross negligence, in bad faith, or with malice in making its decision.
- F. *Attorney's fees*: The court shall enter a judgment on behalf of the city for its attorney's fees and all other costs and expenses incurred, which may be against the property owners as well as all persons found to be in occupation of the subject property, if the commission decision is affirmed or not substantially reversed but only modified.

SECTION 9. COMMISSION DECISION FINAL

If no appeal or appeals are taken from the decision and/or order of the commission within the time period provided in the preceding section, the decision and/or order of the commission is, in all things, final and binding.

SECTION 10. PENALTY

It shall be unlawful for any person to violate any provision of this Ordinance, and, except as otherwise provided for herein, any person violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount not more than One thousand and no/100 Dollars (\$1,000.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

SECTION 11. SAVINGS

This Ordinance shall be cumulative of all other ordinances of the City, and shall not repeal any of the provision of those ordinances except in those instances where the provision of those ordinances are in direct conflict with the provisions of this Ordinances; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiate or has arisen under or pursuant to such other ordinance(s) shall continue to e governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

SECTION 12. SEVERABILITY

The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

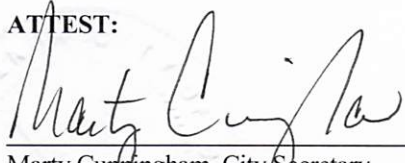
SECTION 13. EFFECTIVE DATE

This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by the law and the City Charter.

PASSED AND APPROVED on the **FIRST READING** at a regular meeting of the City Council of the City of Commerce, Texas on this the 18th day of November 2014.

PASSED AND APPROVED on the **SECOND READING** at a regular meeting of the City Council of the City of Commerce, Texas on this the 16th day of December 2014.

ATTEST:


Marty Cunningham, City Secretary

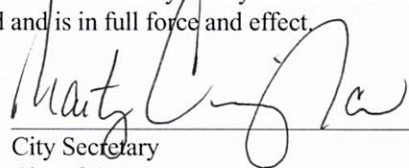
(seal)

CITY OF COMMERCE, TEXAS


John Ballotti, Mayor

I, Marty Cunningham, 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.

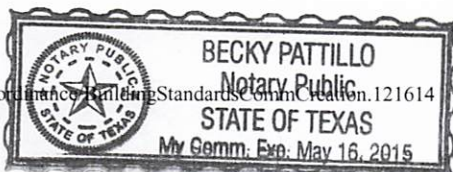
(seal)

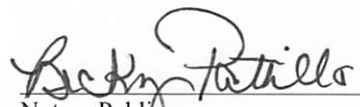

City Secretary
City of Commerce, Texas

SWORN TO AND SUBSCRIBED BEFORE ME, on this the 17th day of Dec, 2014,
to certify which witness my hand and seal of office.

(seal)

Ordinance/cityofcommerce.com/StandardCommCitation.121614




Notary Public
State of Texas