

ORDINANCE NO. 101112

AN ORDINANCE OF THE CITY OF KOSSE, TEXAS PROVIDING FOR THE REGULATION OF DILAPIDATED BUILDINGS, SUBSTANDARD BUILDINGS, AND UNSECURED VACANT BUILDINGS; PROVIDING FOR NOTICE AND OPPORTUNITY FOR HEARING; PROVIDING FOR ENFORCEMENT OF THE REGULATIONS; PROVIDING FOR ACTION BY THE CITY TO REPAIR, REMOVE, DEMOLISH OR SECURE A BUILDING IN VIOLATION OF THE REGULATIONS AND TO RELOCATE OCCUPANTS; ESTABLISHING A CIVIL PENALTY NOT TO EXCEED \$1,000.00 PER DAY FOR NON-HOMESTEAD PROPERTY AND NOT TO EXCEED \$10.00 PER DAY FOR HOMESTEAD PROPERTY FOR CERTAIN VIOLATIONS; PROVIDING FOR ASSESSMENT OF COSTS AGAINST OWNER(S) FOR COSTS INCURRED BY THE CITY IN ENFORCING THE REGULATIONS; PROVIDING FOR A LIEN ON BUILDINGS AND PREMISES FOR EXPENSES INCURRED BY THE CITY IN ENFORCING THE REGULATIONS AND/OR FOR CIVIL PENALTIES; PROVIDING FOR OTHER MEANS OF ENFORCEMENT; REPEALING CONFLICTING ORDINANCES; AND PROVIDING FOR PUBLICATION

WHEREAS, the existence of buildings that are dilapidated, substandard, unfit for human habitation and/or are a hazard to the public health, safety and welfare is a matter of legitimate concern in the City of Kosse; and

WHEREAS, to promote the health, safety, and welfare of the citizens of Kosse, Texas, and protect said citizens from the dangers posed by such buildings, the City Council of Kosse, Texas desires to enact regulations to address the repair, removal, demolition, securing and/or evacuation of such structures; and

WHEREAS, Subchapter A of Chapter 214 of the *Local Government Code (V.T.C.A.)* gives the City Council the power and authority to enact such regulations by ordinance.

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

I.

APPLICATION AND DEFINITIONS

1.01 Application.

This Ordinance applies to all building structures (residential, business or otherwise) located within the municipal limits of the City of Kosse, Texas, regardless of the date of construction.

1.02 Definitions.

- (a) *Dilapidated Building* means a building that does not comply with one or more of the minimum standards set forth in Section 2.01 below.
- (b) *Substandard Building* means a building that does not comply with one or more of the minimum standards set forth in Section 2.02 below.
- (c) *Unsecured Vacant Building* means a building, regardless of structural condition, unoccupied by its owners, lessees, and other invitees, and which 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.

II.

MINIMUM STANDARDS

2.01 Dangerous conditions: Prohibition against.

Buildings must be in compliance with the following standards:

- (a) No building shall have floor decks or ceiling supports that are rotted or termite infested/affected to the point that the floor or ceiling, or any substantial portion thereof, is not structurally safe, and thus presents a danger to persons entering the building.
- (b) No building shall have thirty-three percent (33%) or more of damage or deterioration of the supporting members/components of the building, or fifty percent (50%) or more of damage or deterioration of the non-supporting enclosing or outside walls or coverings.
- (c) No building shall be allowed to exist in a state of disrepair or damage (by fire, wind, explosion, vandalism or elements of nature) so as to have become dangerous to the health, safety and welfare of the occupants thereof, or to the citizens of the City of Kosse.
- (d) No building shall be allowed to exist with deteriorated or inadequate foundations.
- (f) No building shall be allowed to exist with defective or deteriorated flooring or floor supports.
- (e) No building shall be allowed to exist with members of walls, partitions, or other vertical supports that split, lean, list, or buckle or which allow moisture penetration due to defective material or deterioration.
- (f) No building shall be allowed to exist with members of ceilings, roofs, ceiling and roof supports or other horizontal members which split, or buckle or which allow moisture penetration due to defective material or deterioration.
- (g) No building shall be allowed to exist with fireplaces or chimneys that list, bulge, or settle, due to defective material or deterioration. The fireplace/chimney must be removed to correct the problem.
- (h) No building shall exist in a state where components or parts thereof are so attached, or have fallen into such a state of disrepair or deterioration, that they may fall and injure members of the public or damage property.
- (i) No building shall have a condition maintained thereon, whether or not specifically identified in (a) - (j) above, which an engineer, architect or safety consultant determines poses an unreasonable risk to the health, safety and/or welfare of the occupants or the public based on recognized architectural or engineering standards.

2.02 Habitability, Safety and Public Welfare.

Buildings must be in compliance with the following standards:

- (a) All buildings must be in compliance with applicable building codes, plumbing codes, electrical codes, fire prevention codes and sanitation codes or ordinances heretofore adopted by the City of Kosse or which are adopted hereafter unless specifically exempted therefrom.

- (b) All buildings must meet applicable state sanitation standards.
- (c) No building shall be allowed to exist in a state of neglect or non-maintenance which results in creating an environment or habitat conducive to the infestation and breeding of rodents, insects or other pests in and around the building.
- (d) No accumulation of garbage or refuse shall be allowed to exist in the building or on its premises that poses a fire hazard or creates an environment which facilitates pest infestation.
- (e) All buildings occupied or used for authorized permanent or temporary occupancy shall have at least one sink and lavatory basin installed in compliance with the plumbing code adopted by the City and must have municipal water service.
- (f) All buildings occupied or used for authorized permanent or temporary occupancy must have at least one functional restroom containing a toilet installed and connected to the municipal sewage system.
- (g) All buildings occupied or used for authorized permanent or temporary occupancy shall have safe and unobstructed means of egress leading to safe and open space at ground level, as required by the building/safety code(s) adopted by the City of Kosse.
- (h) All buildings occupied or used for authorized permanent or temporary occupancy shall have adequate windows and systems for ventilation.
- (i) No building occupied or used for authorized permanent or temporary occupancy shall be maintained in a condition which renders it unsafe or uninhabitable for humans.
- (j) No building occupied or used for authorized permanent or temporary occupancy shall be maintained in a condition which does not offer reasonable protection from the elements to its inhabitants.
- (k) To the extent allowed by municipal code, any septic tank system must be constructed and maintained in accordance with the applicable code adopted by the City and applicable state standards.

III.

PROHIBITION AGAINST DILAPIDATED AND/OR SUBSTANDARD BUILDINGS

- 3.01 No person shall allow a building owned by that person to become, or to continue to exist as, a Dilapidated Building or Substandard Building as those terms are defined herein.
- 3.02 The owner of a Dilapidated Building or Substandard Building as defined herein is in violation of this Ordinance and is subject to the enforcement procedures and penalties provided by law and this Ordinance.

IV.

PROHIBITION AGAINST UNSECURED VACANT BUILDINGS

- 4.01 No person shall allow a building that person owns to exist as an Unsecured Vacant Building as defined in this Ordinance.

- 4.02 The owner of an Unsecured Vacant Building as defined in this Ordinance violates this Ordinance, and is subject to the enforcement procedures provided by law and this Ordinance.

V.

BOARDED UP AND FENCED BUILDINGS

- 5.01 No person shall allow a building owned by that person to exist in a state where (a) the building constitutes a danger to the public even though secured from entry, or (b) the means used to secure the building are inadequate to prevent unauthorized entry or use of the vacant building.

VI.

ENFORCEMENT PROCEDURES

- 6.01 After notice of a hearing and a hearing as set forth herein, the City may require the vacation or relocation of occupants of a building, the repair, removal or demolition of a building, and/or the securing of a building that is a Dilapidated Building, Substandard Building or an Unsecured Vacant Building.

- 6.02 (a) Prior to enforcement action being taken, written notice shall be provided to the owner of the building by U.S. mail, certified/return receipt requested at the address of the owner determined by the best efforts of the City. Said notice must be served on the owner at least ten (10) days prior to the hearing on the matter. Refused and unclaimed notices at a verified last known address are deemed to be actual notice. A notice shall also be sent to each lienholder or mortgagee of record with regard to the building as shown in the Deed Records of the Limestone County Clerk by personal delivery or by certified mail return receipt requested.

(b) If notice as provided in (a) above is unobtainable, notice shall be given by publishing the notice at least twice within a 10-day period in a newspaper of general circulation in Limestone County, the final publication to be at least ten (10) days prior to the hearing on the matter.

(c) The notice shall set forth the location of the building (legal description not required), a description of the minimum standards violated, the fact that the owner, and the lienholder or mortgagee, will be given a right to be heard on the violations, including the date, time and location of the hearing, and shall disclose the fact that the City of Kosse has the power, under this Ordinance and under state law, to take action to order the building to be secured, repaired, vacated, demolished and/or to order that the tenants be relocated, and/ or impose a civil penalty on the owner, and will do so, at its discretion, if the ordered action is not taken in the time allotted by the City, which will be a reasonable time or as set out by Chapter 214 of the *Local Government Code*. The notice also must include a statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with this Ordinance and the time it will take to reasonably perform the work.

- 6.03 The notice of hearing discussed in section 6.02 may be filed in the Deed Records of the Limestone County Clerk's office. To be so filed, said notice must contain the name and address of the owner of the affected property if that information can be determined from the best efforts of the City, a legal description of the affected property, and a description of the hearing. The filing of the notice is binding on subsequent grantees, lienholders, or 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 acquires such interest after the filing of the notice.

- 6.04 At the appointed date noticed to the owner, and lienholders or mortgagees, a public hearing shall be held in open session of a regular meeting or special called meeting of the City Council of the City of Kosse. This

hearing will begin with the City representative reading into the record the complained of violations of the minimum standards of this Ordinance. The City representative shall give a brief description of how the building is not in compliance with each standard claimed to be violated and present any information supporting the existence of the violation to the City Council. Thereafter, the owner, and any lienholder and/or mortgagee, shall each be given an opportunity to be heard on the issue of whether or not the building is, in fact, a Dilapidated Building or a Substandard Building in violation of the minimum standards of this Ordinance, or whether or not the building is an Unsecured Vacant Building in violation of this Ordinance. The owner, lienholder, and/or mortgagee will also be required to submit at the hearing proof of the scope of any work that may be required to comply with the Ordinance and a projected time that it will take to reasonably perform the work. The owner, lienholder, and/or mortgagee may appear by or with a representative.

- 6.05 In the public hearing to determine whether the building complies with the standards set out in this Ordinance, the owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with this Ordinance, and the time it will take to reasonably perform the work.
- 6.06 After the public hearing, if the building is found in violation of the standards set out in this Ordinance, the City Council may order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time. The City Council may also order that the occupants be relocated within a reasonable time.
- 6.07 The order issued by the City Council shall specify a reasonable time for the building to be vacated, secured, repaired, removed or demolished by the owner or for the occupants to be relocated by the owner, and an additional reasonable time shall be provided for the ordered action to be taken by any mortgagee or lienholder, in the event that the owner fails to comply with the order within the time provided for action by the owner.
- 6.08 Within ten (10) days after the date that the City Council issues the order, 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 Kosse, Texas, a notice containing: (a) the street address or legal description of the property; (b) the date of the hearing; (c) a brief statement indicating the results of the order; and (d) instructions stating where a complete copy of the order may be obtained.
- 6.09 The City Council's order shall require the owner, lienholder, or mortgagee of the building to, within thirty (30) days, secure the building from unauthorized entry; or 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. If more than thirty (30) days are allowed to the owner, lienholder, or mortgagee to repair, remove, or demolish the building, then the City Council shall establish a specific time schedule 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. Notwithstanding anything to the contrary herein, the City will 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 at the hearing a detailed plan and time schedule for the work; and (2) establishes at the hearing that the work cannot be reasonably completed within ninety (90) days because of the scope and complexity of the work. If more than ninety (90) days are allowed to an owner, lienholder, or mortgagee to complete any part of the work required to repair, remove, or demolish the building, the City will require the owner, lienholder, or mortgagee to regularly submit progress reports to the City to demonstrate that the owner, lienholder, or mortgagee has complied with the time schedule established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee to appear before the Mayor, or the Mayor's official designee, to demonstrate compliance with the time schedules. If the City Council allows more than 90 days to complete the work, the City may require a bond or other security as authorized under section 214.001(k) of the *Local Government Code* if the owner or lienholder/mortgagee owns property

within the City (including structures or improvements) which exceed one hundred thousand (\$100,000.00) dollars in total value.

- 6.10 After the hearing, the City will promptly deliver by personal delivery or certified mail, return receipt requested, a copy of the order to the owner of the building and to any mortgagee or lienholder. The City shall use the records and the office of the Limestone County Clerk to identify the address of any owner, lienholder, or mortgagee of the property. The City shall use its best efforts to determine the identity and address of any owner, lienholder, or mortgagee of the building. As provided in Section 214.001(e) of the *Local Government Code*, no notice other than the copy of the order is required to a mortgagee or lienholder in the event that the owner fails to timely take the action ordered.
- 6.11 Subject to the limitation addressed in Section 9.01 below, if the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, the City may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense. If the City incurs expenses hereunder, those expenses may be assessed on, and the City has a lien against, the property on which the building is or was located for such expenses (except homestead property protected by the Texas Constitution). Said lien is extinguished if the property owner or another person having an interest in legal title reimburses the City for the expenses. The lien arises and attaches on the property at the time notice of lien is recorded and indexed in the office of the County Clerk of Limestone County. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the property on which the building is or was located, the amount of expenses incurred by the City, and the balance due. If the notice is given, and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as set forth herein, the lien is a privileged lien, subordinate only to tax liens.
- 6.12 Any notice or provision of a copy of an order required herein which is returned by the United States Postal Service as “refused” or “unclaimed” is deemed to have been delivered.
- 6.13 Civil Penalty. As an alternative to the enforcement action provided for above, but subject to the restrictions of Section 9.01 below, after the time allotted for the owner and/or lienholder and/or mortgagee to undertake the required actions, the City Council may assess a civil penalty against the property owner for failure to repair, remove, or demolish the building as ordered. The civil penalty may be assessed by the City Council after the allotted time for compliance has passed. The owner and/or lienholder shall have an opportunity to be heard prior to assessment of the penalty. The owner and/or lienholder will be notified of the hearing at which the penalty may be imposed in the same manner as the owner and/or lienholder was notified of the hearing on the property’s violation status. At the hearing the City representative must prove: (1) the property owner was notified of the requirements of this ordinance and the owner's need to comply with the requirements; (2) the property owner was ordered to undertake action to repair, remove, or demolish the building within an allotted time, and (3) the property owner failed to comply with the order within the allotted time.

The City shall impose a lien against the land on which the building stands or stood, unless it is a homestead that is protected by the Texas Constitution, to secure the payment of the civil penalty. Promptly after the imposition of the lien, the City Secretary must file of record, in recordable form, in the office of the County Clerk, written notice of the imposition of the lien. The notice must contain a legal description of the land. Except as provided by §214.001 of the Local Government Code, the City's lien to secure the payment of the civil penalty is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the City's lien attaches if the mortgage lien was filed for record in the office of the County Clerk before the date the civil penalty was assessed. The City's lien is superior to all other previously recorded judgment liens. Any civil penalty assessed under this section accrues interest at a rate of ten percent (10%) per year from the date of the assessment until paid in full.

A civil penalty assessed against a property owner may not exceed \$1,000.00 per day for each violation or, if the owner shows that the property is the owner's lawful homestead, may not exceed \$10.00 per day for

each violation. This assessment of a civil penalty is final and binding, and constitutes prima facie evidence of the penalty in any suit brought by the City in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty.

VII.

SECURING NON-COMPLYING BUILDINGS

- 7.01 The City may secure a building that is determined to be in violation of the minimum standards of this Ordinance and is unoccupied or is occupied only by persons who do not have a right of possession to the building. This the City is allowed to do for the protection of the health, safety and welfare of the citizens of the City of Kosse.
- 7.02 Before the eleventh (11th) day after the building is secured, the City shall give notice to the owner by: (1) personally serving the owner with written notice; (2) depositing a notice in the United States mail addressed to the owner at the owner's post office address; (3) publishing the notice at least twice within a ten (10) day period in a newspaper of general circulation in Limestone County if personal service cannot be obtained and 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.
- 7.03 The notice must contain: (1) an identification, which is not required to be legal description, of the building and the property on which it is located; (2) a description of the violation of municipal standards that is present at the building; (3) a statement that the City will secure or has secured, as the case may be, the building; and (4) an explanation of the owner's entitlement to request a hearing about any matter relating to the City's securing of the building.
- 7.04 The City shall conduct a hearing on the date noticed in which the owner may testify or present witnesses or written information about any matter relating to the City's security of the building if, within thirty (30) days after the date the City secures the building, the owner files with the City a written request for the hearing. The City shall conduct the hearing within twenty (20) days after the date the request is filed. The City has the same authority to assess expenses under this section as it has to assess expenses under section 6.11 above. A lien is created under this section in the same manner that a lien is created under section 6.11 above, and is subject to the same conditions as a lien created under that section.
- 7.05 The procedures and enforcement powers set out hereunder are in addition to those set forth in prior articles of this Ordinance.

VIII.

JUDICIAL REVIEW

- 8.01 In accordance with §214.0012 of the *Local Government Code (V.T.C.A.)*, any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of the City issued pursuant to Article VI. of this Ordinance, as authorized by §214.0012 of the *Local Government Code*, may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Said procedures are subject to the conditions, rules and regulations found at §214.0012 of the *Local Government Code*.

IX.

**ADDITIONAL ENFORCEMENT ACTION WITH RELATION TO
NON-COMPLYING BUILDINGS**

9.01 The City may only act on an order to demolish or repair a structure if such is allowed by prevailing law, including the decisions of the Texas Supreme Court and the United States Supreme Court. If under the prevailing authorities at the time a structure may not be demolished or repaired by the City based on the order issued after the administrative proceedings before the City Council, the order of the City Council shall serve merely as a basis for the City Council to initiate judicial proceedings to obtain compliance. In addition, if prevailing law would not allow the imposition of civil penalties by the City based on the administrative order, the City's order shall serve as a basis to institute a judicial proceeding to impose and recover civil penalties.

9.02 The City may bring an action in a District Court of Limestone County, Texas for the repair or demolition of a structure or to obtain approval to remove the structure and recover the removal costs. [Sections 54.012 and 54.018, Texas Local Government Code]. In that action the City may also bring a claim for civil penalties under Section 54.017 of Texas Local Government Code and an action in rem against the structure that may result in a judgment against the structure as well as a judgment against the defendant. A notice of lis pendens may be filed in the real property records of the Limestone County Clerk upon the filing of the action.

9.03 To recover civil penalties under Section 54.017 of Texas Local Government Code the City must prove that (1) the property owner was notified of the requirements of the Ordinance and the owner's need to comply with the requirements; and (2) after notification, the property owner committed an act in violation of this Ordinance or failed to take action necessary for compliance with this Ordinance. The civil penalty may not exceed \$1,000 per day.

9.04 On a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant, the City may obtain against the owner or owner's representative with control over the premises an injunction that:

- (1) prohibits specific conduct that violates this Ordinance; and
- (2) requires specific conduct that is necessary for compliance with this Ordinance.

It is not necessary for the City to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted.

9.05 The City may use an enforcement action to compel repair or demolition of a structure even if the City has proceeded with the administrative process for enforcement provided elsewhere in this Ordinance.

X.

**PRESUMPTION OF OWNERSHIP/DETERMINATION OF IDENTITY
AND/OR ADDRESS OF OWNERS, LIENHOLDERS, AND MORTGAGEES**

10.01 The City may include in any notice required in this Ordinance the required information/notices set out in §54.005 of the *Local Government Code*. If the addressee fails to take the action required of the addressee under §54.005, the addressee is presumed to be an owner of the property for purposes of this Ordinance.

10.02 The City satisfies the requirement that it makes a diligent effort or use its best efforts to determine the identity and address of an owner, lienholder or mortgagee if the City searches the following records:

1. Limestone County real property records of the Limestone County Clerk;
2. Limestone County Appraisal District records;
3. Records of the Secretary of State;
4. Assumed Name Records of Limestone County;

5. City tax records; and
6. City utility records.

XI.

CONFLICTING ORDINANCES REPEALED

- 11.01 This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Kosse providing for the condemnation of substandard buildings or structures, and providing for the evacuation, repair, and/or demolition of substandard buildings, and shall not operate to repeal or affect any such ordinance or ordinances except insofar as the provisions of such ordinances are inconsistent or in conflict with the provisions of this Ordinance, in which instance or instances such conflicting provisions in said other ordinance or ordinances shall be and are hereby repealed.

XII.

SEVERABILITY CLAUSE

- 12.01 If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portions of this Ordinance, and all the remainder of this Ordinance not so declared to be invalid shall continue to be in full force and effect. The City Council of the City of Kosse, Texas, hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional. This Ordinance complies with Section 214.000 through 214.015 of the *Local Government Code*.

XIII.

PUBLICATION

- 13.01 The City Secretary is directed to publish the caption of this Ordinance in compliance with §52.011 of the *Local Government Code*.

This Ordinance shall be effective from and after its passage and publication as provided by law, and IT IS ACCORDINGLY SO ORDAINED.

PASSED AND APPROVED this the 8th day of November, 2012.

s/Jarrod Eno
Mayor

ATTEST:

s/Nora Ensminger
City Secretary