ORDINANCE NO. 2007- 021

AN ORDINANCE OF THE VILLAGE OF WIMBERLEY, TEXAS AMENDING THE CODE OF ORDINANCES, TITLE XIII (GENERAL OFFENSES) TO ADD CHAPTER 160 CONCERNING UNSAFE, DANGEROUS AND SUBSTANDARD BUILDINGS OR STRUCTURES AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; JURISDICTION; DEFINITIONS; DECLARATION OF NUISANCE AND PROHIBITION; FILING AND INVESTIGATING COMPLAINTS; NOTICE OF VIOLATION; PUBLIC HEARING; APPEAL; VILLAGE AUTHORITY TO VACATE, REMOVE, DEMOLISH OR RELOCATE OCCUPANTS AND ASSESS EXPENSES AGAINST THE PROPERTY; VILLAGE AUTHORITY TO REPAIR AND ASSESS EXPENSES AGAINST THE PROPERTY; VILLAGE AUTHORITY TO SECURE BUILDINGS AND ASSES EXPENSES AGAINST THE PROPERTY; FORECLOSING LIENS; RELATION TO OTHER ORDINANCES; EFFECTIVE DATE; ENFORCEMENT INCLUDING CRIMINAL AND CIVIL PENALTIES WITH MAXIMUM CRIMINAL FINE OF $2,000.00 AND MAXIMUM CIVIL FINE OF $1,000.00 FOR VIOLATION; NO VESTED INTEREST; SEVERABILITY; PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the Village of Wimberley seeks to promote the health, safety and general welfare of the community by preventing death, injury, property damage and urban blight within the Village limits; and,

WHEREAS, the City Council seeks to protect property values within the Village limits; and,

WHEREAS, the City Council finds that substandard buildings are fire hazards, attract vermin and insects and decrease the attractive nature of the Village; and,

WHEREAS, pursuant to Texas Local Government Code section 51.001 the City Council is authorized to adopt an ordinance that is for the good government, peace or order of the Village and is necessary or proper for carrying out a power granted by law to the Village; and

WHEREAS, pursuant to Texas Local Government Code section 51.012 the City Council is authorized to adopt an ordinance, not inconsistent with state law, that the Council considers proper for the government, interest, welfare or good order of the Village; and,

WHEREAS, pursuant to Texas Local Government Code Chapter 214, the Village is authorized to regulate substandard buildings or structures and to order the repair, removal or demolition of the same and assess such costs against the property; and,

WHEREAS, the City Council finds it to be in the best interest of the public safety, health and general welfare to adopt a substandard building ordinance that regulates substandard buildings and structures.

NOW THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WIMBERLEY, COUNTY OF HAYS, STATE OF TEXAS:

SECTION 1. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the Village of Wimberley and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION 2. AMENDMENT

That Title XIII (General Offenses), of the Code of Ordinances of the Village of Wimberley, is hereby amended to add Chapter 160 (Substandard Buildings) to read as follows:

"CHAPTER 160 SUBSTANDARD BUILDINGS

§ 160.01 JURISDICTION.

The provisions of this Chapter shall apply within the Village limits.

§ 160.02 DEFINITIONS.

Words and phrases used in this Chapter shall have the meanings set forth in this section. Words and phrases which are not defined in this Chapter but are defined in other provisions of the Code of Ordinances of the Village of Wimberley shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Chapter.

(A) "Building" means any structure of any kind or any part thereof, used, erected or designed for the support, shelter or enclosure of persons, animals, chattel or property of any kind including, but not limited to, tents, awnings or vehicles situated on real property.

(B) "Building inspector" means the person or persons officially designated by the Council to assist the Council in implementing and enforcing this Chapter. Such person or persons may be an employee of the Village, a person or persons contracted by the Village, or a person or persons otherwise designated by the Village to serve in this capacity, and such assistance shall include, but is not limited to, investigating alleged violations of this Chapter.

(C) "Council" means the City Council of the Village of Wimberley.

(D) "Dangerous building" or "unsafe building" or "substandard building" means any structure or building, regardless of the date of construction, located within the Village limits that is:

(1) In such a state or condition of repair or disrepair that all or any of the following conditions exist:

(a) The building is not constructed or maintained in compliance with the Village's building code, or any other applicable ordinance or law of the Village, county, state, or federal government;

(b) Walls or other vertical structural members of the building list, lean or buckle to such an extent that it has become dangerous to the public health, safety and welfare or otherwise constitutes a detriment to the health, safety or welfare of those persons who assemble, work or live therein;

(c) The building is partially or completely collapsing;

(d) The foundation or the vertical or horizontal supporting members of the building are damaged or deteriorated to such an extent that it has become dangerous to the public health, safety and welfare or otherwise constitutes a detriment to the health, safety or welfare of those persons who assemble, work or live therein;

(e) The nonsupporting coverings of walls, ceilings, roofs, or floors of the building are damaged or deteriorated to such an extent that it has become dangerous to the public health, safety and welfare or otherwise constitutes a detriment to the health, safety or welfare of those persons who assemble, work or live therein;

(f) The building has improperly distributed loads upon the structural members or insufficient strength to be reasonably safe for the purpose used;

(g) The building is damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety and welfare or otherwise constitutes a detriment to the health, safety or welfare of those persons who assemble, work or live therein;

(h) The building does not have adequate light, ventilation, and sanitation facilities adequate to protect the health, safety and welfare of persons who assemble, work or live therein;

(i) The building does not have adequate facilities for egress in case of fire or other emergency;

(j) The building's condition is likely to cause sickness, disease or injury or otherwise constitute a detriment to the health, safety or welfare of those persons who assemble, work or live therein or is a hazard to the public health, safety and welfare including,

but not limited to, all conditions conducive to the harboring of rats, mice or other disease carrying animals or insects reasonably calculated to spread disease.

(2) Dilapidated, substandard or unfit for human habitation and a hazard to the public health, safety, and welfare of the Village residents.

(3) Regardless of its structural condition, unoccupied by its owners, lessees, or other invitees 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.

(4) Boarded up, fenced or otherwise secured in any manner if:

(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 building by vagrants or other uninvited persons as a place of harborage or could be entered or used by children.

(E) A "designee" of the Council means official designee appointed by resolution.

(F) "Diligent effort" means best or reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee including a search of the following records:

(1) county real property records of Hays County;
(2) appraisal district records of the Hays County Appraisal District;
(3) records of the secretary of state;
(4) assumed name records of Hays County;
(5) Village tax records; and
(6) Village utility records.

(G) "Minimum housing standards" means those standards found in the Village's adopted standard building, electrical, plumbing, gas, mechanical, and fire prevention codes.

(H) "Owner" means any individual, person, agent, firm, corporation or other legal entity, named in the real property records of Hays county as owning the property upon which a building or structure is located.

(I) "Person" means an individual, corporation organization, government agency, business, trust, partnership, association, or any other legal entity.

(J) "Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built or composed of parts joined together in some definite manner, or any part thereof.

(K) "Village" means the Village of Wimberley, County of Hays, State of Texas, and includes any official, agent or employee acting on behalf of the Village.

§ 160.03 DECLARATION OF NUISANCE; PROHIBITION.

It shall be unlawful for any person to maintain or permit the existence of a dangerous, unsafe or substandard building, and the same are hereby declared to be a public nuisance and unlawful. Any building constituting a nuisance under this Chapter shall be vacated, secured, repaired, rehabilitated, demolished or removed in accordance with this Chapter.

§ 160.04 FILING AND INVESTIGATING COMPLAINTS.

(A) Any Village resident or property owner may file a complaint alleging a violation of this ordinance. The complaint must:

(1) be in writing;
(2) provide sufficient details about the alleged violation;
(3) be signed by the complainant; and
(4) be filed with the building inspector, the Council or its designee.

(B) The building inspector, or his designee, on his/her own knowledge or on the basis of a complaint by a Village resident or property owner, shall inspect every building located within the Village which is suspected of being in violation of this Chapter. The building inspector, or his designee, is hereby authorized to conduct inspections of buildings suspected of being in violation of this Chapter.

(C) If the building inspector, or his designee, determines there is a violation of this Chapter, a written report of violation shall be submitted to the Council or its designee. The Council or its designee may then initiate official action to remedy the violation.

§ 160.05 NOTICE OF VIOLATION.

(A) Whenever a violation of this ordinance has been discovered and reported by the building inspector, or his designee, a public hearing shall be held by the Village municipal court to determine whether the building complies with the standards set out in this Chapter.

(B) A diligent effort shall be made to send notice of the hearing to each owner, lienholder or mortgagee of the building. Such notice shall be in writing and shall be served by personal delivery, by certified mail, return receipt requested, or by delivery by the United States Postal Service using signature confirmation service.

(C) The notice shall contain:

(1) the street address or legal description of the premises;
(2) the date of inspection;
(3) the nature of the violation;
(4) the corrective measures required;
(5) a reasonable time to comply with the required corrective measures;
(6) a statement advising the person that there will be conducted a public hearing before the Village municipal court to determine whether the building complies with the standards set out in the definition of dangerous or unsafe building under the ordinance and the date, time and location of such hearing;
(7) 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 Chapter and the time it will take to reasonably perform the work; and
(8) the following statement:

"According to the real property records of Hays County, you are the owner, lienholder or mortgagee of the property described in this notice. If you no longer have a legal interest in the property, you must execute an affidavit stating that you no longer have a legal interest in the property and stating the name and last known address of the person who acquired the property from you, if applicable. The affidavit must be delivered in person or by certified mail, return receipt requested, to the City Secretary not later than the ____ day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you have a legal interest in the property, even if you do not."

(D) If the Village mails notice to an owner, lienholder or mortgagee and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

(E) Notice of the hearing may also be filed in the Official Public Records of Real Property in Hays County. Such a notice shall contain:

(1) the name and address of the owner of the unsafe building and the real property on which it is located, if that can be determined;
(2) a legal description of the affected real property; and
(3) the date, time and location of the hearing.

§ 160.06 PUBLIC HEARING.

(A) The Village municipal court shall, at the earliest practicable date after notice is served, schedule and conduct public hearings to determine whether the building in question is a dangerous building, the scope of any work that may be required to comply with this Chapter, and

the amount of time it will take to reasonably perform any necessary work. The court shall hear related testimony from the building inspector or person that inspected the building, the occupant, if any, the owner or any other person with a legal interest in the building desiring to present factual evidence relevant to the unsafe building. 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 Chapter and the time it will take to reasonably perform the work.

(B) After the public hearing, if the court determines a building is in violation of this Chapter, the building inspector shall cause to be posted at each entrance to such building a notice as follows: "This building has been found to be an unsafe building by the Village of Wimberley. This notice is to remain on this building until it is secured, repaired, removed, demolished or vacated in accordance with the order which has been given to the owner(s) and other person(s) with interests in the property. It is unlawful to remove this notice until such order is complied with and the Village building inspector has provided written permission to remove this notice." No person shall enter the building except for making inspections or required repairs or to demolish such building.

(C) After the public hearing, if the court determines a building is in violation of this Chapter, the court may order that the building be secured, repaired, removed or demolished by the owner within thirty (30) days, unless it is established at the hearing that the work cannot reasonably be performed within (30) days, in which instance the court shall establish specific time schedules for the commencement and performance of the work. The court may also order that any occupants be relocated within a reasonable time. The court shall require the owner to secure the unsafe building in a reasonable manner from unauthorized entry while any work is being performed. The court may establish an additional reasonable time for the mortgagee or lienholder to take the ordered action in the event the owner fails to comply with the order in the allotted time. The court shall require the mortgagee or lienholder to secure the unsafe building in a reasonable manner from unauthorized entry while any work is being performed.

(D) The court may not allow the owner, lienholder or mortgagee more than ninety (90) days to repair, remove, demolish or perform the necessary work to comply with the ordinance 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.

(E) If the court allows the owner, lienholder or mortgagee more than ninety (90) days to complete any work required to repair, remove or demolish the unsafe building, the court shall require that:

(1) regular progress reports be submitted to the building inspector to demonstrate compliance with the time schedules established by the court and

(2) the owner, lienholder or mortgagee appear before the building inspector to demonstrate compliance with the established time schedules.

(F) The court's order shall contain a statement that the Village may vacate, secure, remove, repair or demolish the building or relocate the occupants of the building if the ordered action is not taken within the time specified by the court.

(G) If the owner, lienholder or mortgagee owns property, including structures or improvement on property, within the Village that exceeds one-hundred thousand dollars ($100,000.00) in total value, the court may require a cash or surety bond be posted in an amount adequate to cover the costs of repair, removal or demolition of the unsafe building or, alternatively, require a letter of credit be provided from a financial institution or a guaranty from a third party approved by the court. The bond must be posted, or the letter of credit or third party guaranty provided, not later than the thirtieth (30th) day after the date the court issues its order.

(H) After the hearing, the Village shall promptly mail by certified mail, return receipt requested, or personally deliver a copy of the court's final order to each owner, lienholder and mortgagee of the unsafe building along with a statement that the Village may vacate, secure, remove, repair or demolish the building or relocate the occupants of the building if the ordered action is not taken within a reasonable time and that such expenses may be assessed on the property on which the unsafe building is located.

(I) Within ten (10) days of issuance of the court's final order:

(1) a copy of the order shall be filed with the Village Secretary; and
(2) a notice shall be published in a newspaper of general circulation in the Village 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 a complete copy of the order may be obtained from the City Secretary.

§ 160.07 APPEAL.

(A) Any owner, lienholder or mortgagee may appeal the decision of the Village municipal court by filing in district court a verified petition, as required by law.

(B) The petition must be filed within thirty (30) calendar days after the receipt of the municipal court's final order as required by Section 7(8) of this Chapter.

(C) A decision of the municipal court shall become final as to each owner, lienholder or mortgagee upon the expiration of such thirty (30) calendar day period.

§ 160.08 VACATING, REMOVING, DEMOLISHING OR RELOCATING OCCUPANTS OF UNSAFE BUILDINGS AND ASSESSING EXPENSES.

If the owner, mortgagee or lienholder fails to take the action ordered by a municipal court within the allotted time and fail to timely appeal the municipal court's order, the Village may *vacate, secure, remove or demolish* the unsafe building *or relocate* the occupants of the unsafe building at its own expense. The Village may assess the expenses on, and the Village has a lien against, the property on which the unsafe building is located, unless the building is a homestead as protected by the Texas Constitution. The lien is extinguished if the owner or other person with a legal interest in the property reimburses the Village for the expenses. Such lien is a privileged lien subordinate only to previously recorded bona fide mortgage liens and tax liens. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the Hays County Clerk. Notice of the lien shall contain:

(a) the name and address of the owner of the unsafe building and the real property on which it is located, if that can be determined;
(b) a legal description of the real property on which the unsafe building is located;
(c) the amount of expenses incurred by the Village; and
(d) the balance due.

§ 160.09 REPAIRING UNSAFE BUILDINGS AND ASSESSING EXPENSES AND PENALTIES.

(A) In addition to the authority in Section 9 above, after the expiration of the time allotted in the municipal court's order for the repair, removal or demolition of an unsafe building, the Village may:

(1) order the *repair* of the building at the Village's expense and assess the expenses on the land on which the building is located or to which it is attached; or
(2) assess a civil penalty against the responsible party for failure to repair, remove or demolish the building.

(B) The Village may *repair* an unsafe building under Section 9(1) of this ordinance only to the extent necessary to bring the building into compliance with the minimum housing standards of the Village and to comply with the standards established in this ordinance. The Village can undertake repairs only if the building is a residential building with ten (10) or fewer dwelling units. The Village shall impose a lien against the land on which the building stands or stood, unless it is a homestead as protected by the Texas Constitution, to secure the payment of the repair or the civil penalty. The Village shall follow the procedures in Section 9 above for filing a lien on the property.

(C) A civil penalty or assessment imposed accrues interest at the rate of ten percent (10%) a year from the date of the assessment until paid in full.

(D) The Village's right to an assessment lien may not be transferred to third parties.

(E) In any judicial proceeding regarding enforcement of Village rights under this section, the prevailing party is entitled to recover reasonable attorney's fees from the nonprevailing party.

(F) A lien acquired under this section by the Village for repair expenses may not be foreclosed if the property on which the repairs were made is occupied as a residential homestead by a person sixty-five (65) years of age or older.

§ 160.11 SECURING BUILDINGS.

(A) The Village may secure a building if the building inspector, or his designee, determines the building:

(1) is unsafe; and
(2) is unoccupied or occupied only by persons who do not have a right of possession to the building.

(B) Before the eleventh (11th) day after the date the building is secured, the Village shall give notice to the owner by:

(1) personally serving the owner with written notice;
(2) depositing the notice in the United States mail address to the owner at the owner's post office address;
(3) publishing notice at least twice within a ten (10) day period in the official Village newspaper, 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) The notice must contain:

(1) an identification of the building, which is not required to be a legal description, and the property on which it is located;
(2) a description of the violation;
(3) a statement that the Village will secure or has secured, as the case may be, the building and the related date; and

(4) an explanation of the owner's entitlement to make a written request for a hearing within thirty (30) days after the date the Village secures the building.

(D) A hearing shall be conducted by the Village municipal court within twenty (20) days of the filing of a written request for a hearing.

(E) If the Village incurs expenses in securing the building, the Village may assess the expenses on, and the Village has a lien against the property on which the building is located, unless it is a homestead as protected by the Texas Constitution. The lien is extinguished if the owner or another person having an interest in the legal title to the property reimburses the Village for the expenses. Such lien is a privileged lien subordinate only to previously recorded bona fide mortgage liens and tax liens. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the Hays County Clerk. Notice of the lien shall contain:

(1) the name and address of the owner of the building and the real property on which it is located, if that can be determined;
(2) a legal description of the real property on which the building is located;
(3) the amount of expenses incurred by the Village; and
(4) the balance due.

§ 160.12 FORECLOSING A LIEN.

A lien created under this ordinance may be foreclosed by the Village:

(1) in a proceeding brought under Subchapter E, Chapter 33, Tax Code; or
(2) in a judicial proceeding, if:
(a) a building or other structure on the property has been demolished;
(b) a lien for the cost of the demolition has been created and that cost has not been paid more than 180 days after the date the lien was filed; and
(c) ad valorem taxes are delinquent on all or part of the property.

§ 160.13 ENFORCEMENT.

(A) Civil and Criminal Penalties

The Village shall have the power to administer and enforce the provisions of this Chapter as may be required by governing law. Any person violating any provision of this ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations.

(B) Criminal Prosecution

Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding two-thousand dollars ($2,000.00). Each day that a provision of this Chapter is violated shall constitute a separate offense. Any person failing to comply with a court order to secure, repair, remove or demolish an unsafe building shall be guilty of a misdemeanor.

(C) Civil Remedies

Nothing in this ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Chapter and to seek remedies as allowed by law, including, but not limited to the following:

(1) injunctive relief to prevent specific conduct that violates the ordinance or to require specific conduct that is necessary for compliance with the ordinance; and

(2) a civil penalty up to one-thousand dollars ($1,000.00) a day when it is shown that the defendant was actually notified of the provisions of the ordinance and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the Chapter or, if the defendant shows the property is the defendant's lawful homestead ten dollars ($10.00) a day when it is shown that the defendant was actually notified of the provisions of the Chapter and after receiving notice committed acts in violation of the ordinance or failed to take action necessary for compliance with the Chapter; and

(3) any other available relief;"

Except as herein amended the Code of Ordinances of the Village of Wimberley shall remain in full force and effect.

SECTION 3. RELATION TO OTHER ORDINANCES.

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect October 5, 2007 after its passage and publication as may be required by governing law.

SECTION 5. NO VESTED INTEREST.

No person shall acquire any vested interest in this Ordinance or any specific regulations contained herein. This Ordinance and any regulation enacted hereby may be amended or repealed by the Village Council in the manner provided by law.

SECTION 6. SEVERABILITY.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

SECTION 7. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

FIRST READING PASSED AND APPROVED this 16th day of August, 2007, by a 5 to 0 vote of the Village Council of the Village of Wimberley, Texas.

SECOND READING PASSED AND APPROVED this 6th day of September, 2007, by a 5 to 0 vote of the Village Council of the Village of Wimberley, Texas.

VILLAGE OF WIMBERLEY

By: Tom Haley

Tom Haley, Mayor

ATTEST:

Cara McPartland

Cara McPartland, City Secretary

APPROVED AS TO FORM:

Carolyn J. Crosby

Carolyn J. Crosby, Assistant City Attorney