

ORDINANCE NO. 2020-005

AN ORDINANCE OF THE CITY OF COMBINE, TEXAS, AMENDING TITLE XV, "LAND USAGE," OF THE CODE OF ORDINANCES BY ADDING CHAPTER 155: "DANGEROUS AND SUBSTANDARD STRUCTURES", REGULATING SUBSTANDARD BUILDINGS AND STRUCTURES AND THEIR REPAIR, REMOVAL, OR DEMOLITION; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Combine, Texas ("City") is a Type A General Law municipality as described in the Texas Local Government Code, Chapter 6; and

WHEREAS, the City Council seeks to promote the health, safety and general welfare of the community by preventing death, injuries, and property damage within the City; and

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

WHEREAS, substandard building and structures are fire hazards, attract vermin and insects, create a nuisance to the community, negatively impact neighborhoods; and

WHEREAS, the City has authority pursuant to Texas Local Government Code Chapter 214 to regulate substandard buildings or structures and to order the repair, removal or demolition of a substandard building or structure and assess such costs against the property;

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

Section 1: TITLE XV: LAND USAGE, Chapter 155 "Dangerous and Substandard Structures, is hereby added to read as follows:

"CHAPTER 155: DANGEROUS AND UNSAFE STRUCTURES

Sec. 155.001 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building official shall mean the building official of the city or his authorized agents, designees, assistants, deputies or representatives.

Dilapidated structure means a building or structure which has been neglected of repairs or maintenance necessary to keeping the building or structure in compliance with the applicable building and housing codes of the city, the extent of such neglect being that the cost of necessary repairs to gain compliance with such codes exceeds the present value of the building or structure without regard to the value of the land.

Fire chief shall mean the chief of the fire department of the city or his authorized agents, assistants, deputies or representatives.

Nuisance means a nuisance in fact and, if left unabated, endangers the possession or use of adjoining property or creates and unreasonable danger to the public health and safety.

Sec. 155.002 Purpose

It is the purpose of this ordinance 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, property, safety and general welfare of the people of the city, or which constitute a fire hazard, may be required to be repaired, vacated or demolished.

Sec. 155.003 Declaration of nuisance; duty of building official.

- (a) In the event of an emergency which, in the opinion of the building official, creates imminent danger to human life or health, the building official may declare a building or structure, which is structurally unsafe, a fire hazard or otherwise dangerous, to be a hazard to the public health and safety.
- (b) The building official shall promptly cause such building, structure or portion thereof to be made safe or removed. For this purpose, he may at once enter such structure or land on which it stands, or abutting land or structures, with such assistance and at such cost as he may deem necessary. He may vacate adjacent structures and protect the public by appropriate fence or such other means as may be necessary, and for this purpose, may close a public or private way. Such costs incurred shall be charged to the owner of the premises involved and shall be collected in the manner provided by law.

Sec. 155.004 Dangerous buildings designated.

For the purpose of this article, any building or structure that has one (1) or more of the following conditions or defects is a dangerous building:

- (a) 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 person housed or assembled therein who would be required to, or might, use such door, aisle, passageway, stairway or other means of exit.
- (b) 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 city building code for a building of similar structure, purpose or location.
- (c) Whenever any portion or member or appurtenance thereof is likely to fall or to become detached or dislodged or to collapse and thereby injure persons or damage property.
- (d) 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.

- (e) 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 giveaway.
- (f) Whenever for any reason whatsoever the building or structure or any portion thereof is manifestly unsafe for the purpose for which it is used.
- (g) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle third of the base.
- (h) 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 to enable persons to resort thereto for the purpose of committing a nuisance or unlawful or immoral act.
- (i) 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 this city as set forth in the building code 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.
- (j) 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, in unsanitary or unfit for human habitation or is in a condition that is likely to cause sickness or disease, when so determined by the health officer, or is likely to work injury to the health, safety or general welfare of those living within.
- (k) 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.
- (l) 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 as to be a fire hazard and is so situated as to endanger life or provide a ready fuel supply to augment the spread and intensity of fire arising from any cause.
- (m) Roofs. The roof of every structure shall be structurally sound, tight, and free of leaks, and roof drainage shall be adequate to prevent rain water from causing dampness in the walls or interior portion of the structure. Roof coverings shall not be composed of tarps, plastic sheets or other materials not designed for permanent use.
- (n) Weather tight. The windows, doors, and frames of every habitable structure shall be constructed and maintained in such relation to the adjacent wall construction so as to exclude rain as completely as possible from entering the dwelling or structure.
- (o) Whenever any building or structure is:
 - (1) Dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare;

- (2) 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; or
- (3) 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 in the manner described by Section 155.004(o)(2).

Sec. 155.005 - Notice and order to repair, vacate or demolish generally.

- (a) *Generally.* Upon his own finding that a building or structure is a fire hazard or is unsafe or is dilapidated or is dangerous or is a hazard to public safety or health, or upon the complaint to the building official by any person that a building or structure is a fire hazard or is unsafe or is dilapidated or is dangerous or is a hazard to the public safety or health, the building official shall deliver a notice in writing stating in detail the conditions which render the building or structure, or portion thereof, to be unsafe, dangerous or a hazard, and ordering the repair, vacation and repair or demolition thereof by a specific date. The building official may, when it is determined that additional time will be necessary to complete the work ordered, extend such time upon the application of the owner or person charged with the duty of complying with such order.
- (b) *Notice of hearing.* The building official shall set the matter for hearing before the city council. Notice of the date, hour and place of the hearing shall be posted and served at least ten (10) days before the date set for the hearing in the manner and upon the persons specified in this Section. The notice shall order all interested parties who desire to be heard to appear and show cause, if any they have, why the building or structure or portion thereof involved in the proceedings should not be repaired, vacated and repaired, or demolished.
- (c) *Identification of property.* To determine the identity of a property owner, mortgagee, or lien holder, the building official shall:
 - (1) Search the following records:
 - a. County real property records of Kaufman County and Dallas County;
 - b. Appraisal district records of Kaufman County and Dallas County;
 - c. Records of the secretary of state, if the property owner or lien holder is a corporation, partnership, or other business association; and
 - d. Assumed name records of Kaufman County and Dallas County;
- (d) *Upon whom to be served.* Notice of all proceedings before the city council must be given by:
 - (1) Certified mail, return receipt requested, delivery by the United States Postal Service using signature confirmation service, or personally deliver to the record owner of the affected property, and each mortgagee and holder of a recorded lien against the affected property;
 - (2) And to all unknown owners, by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable.
 - (3) The notice shall be posted and mailed on or before the tenth day before the date of the hearing before the city council and must state the date, time, and place of the hearing. In

addition, the notice must be published in a newspaper of general circulation in the City of Combine on one occasion before the tenth (10th) day before the date fixed for the hearing.

- (4) When a notice is mailed in accordance with this Section to a property owner or lien holder and the United States Postal Service returns the notice as "refused" or "unclaimed", the validity of the notice is not affected and is considered delivered.
- (e) *Contents of Notice.* The notice must contain the following information:
- (1) An identification, which is not required to be a 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 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 the ordinance and the time it will take to reasonably perform the work; and
 - (4) A statement that the city will vacate, secure, remove, or demolish the building or relocate the occupants of the building if the ordered action is not taken within a reasonable time. If the order of the building official is not complied with, the city, after appropriate notice and hearing, may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense.
- (f) *Filing in property records.* The city may file notice of the hearing in the official public records of real property in the county in which the property is located. The notice shall contain the name and address of the owner of the affected property if that information can be determined, a legal description of the affected property and a description of the hearing. The filing of the notice is binding on subsequent grantees, lienholder 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 acquired such interest after the filing of the notice.
- (g) *Affidavits as to service and posting, receipt card.* Upon giving notice as provided herein, the building official shall file with the city clerk 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 that may have been returned to him in acknowledgement of the receipt of such notice by registered or certified mail.

Sec. 155.006 Hearing.

- (a) At the time stated in the notice, the city council shall hold a hearing and hear and consider any relevant evidence offered by the fire chief or the building official, or both, as well as the owner, occupant or person in charge and control, mortgagee or beneficiary under any deed of trust, lessee or any other person having any estate or interest in the building or structure, pertaining to the matters set forth in the notice to repair, vacate and repair, or demolish.
- (b) *Findings of fact and decision/order of the city council.*

After hearing evidence from any interested party the council may:

- (1) Find that the structure is not dangerous, substandard, dilapidated, unfit for human habitation or a hazard to the public health, safety and welfare, and refer the matter to the Building Official for appropriate action.

- (2) Find that the structure is dangerous, substandard, dilapidated, unfit for human habitation, or a hazard to the public health, safety, and welfare and order:
 - (a) Demolition of the structure within a reasonable time;
 - (b) Repair or correction of the structure within a specified period of time;
 - (c) Require the relocation of occupants in a reasonable time;
 - (d) Repair or correction of the structure within a specified period of time and demolition of the structure if the repair or correction is not timely effected; or
 - (e) Repair or correction of the structure by the owner, mortgagee, or lienholder within a specified period of time and repair, demolition, or correction by the city if not timely effected by the owner, mortgagee, or lienholder.
- (c) Within ten (10) days after the date that the order is issued, the city shall:
 - (1) File a copy of the order in the office of the city clerk; and
 - (2) Publish in a newspaper of general circulation in the city in which the building is located 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.
- (d) The city may file a copy of the order in the official public records of real property in the county in which the property is located. The filing of the notice is binding on subsequent grantees, lienholder or other transferees of an interest in the property who acquire such interest after the filing of the order, and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquired such interest after the filing of the order.
- (e) After the hearing, the city shall promptly mail by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service, or personally deliver a copy of the order to the owner of the building and to any lien holder or mortgagee of the building as determined in accordance with Section 155.005. When a notice is mailed via certified mail, return receipt requested, to a property owner or lien holder and the United States Postal Service returns the notice as "refused" or "unclaimed", the validity of the notice is not affected.
- (f) *Remediation.*
 - (1) If the city council declares a building substandard or requires repairs to be made to the building, the repair work or demolition, such work shall be completed not more than thirty (30) days from the date of the order.
 - (2) If the city council allows the owner, lien holder, or mortgagee more than thirty (30) days to repair, remove, or demolish the building, the city council shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lien holder, or mortgagee to secure the property, as required by this code, to prevent unauthorized entry while the work is being performed, as determined by the city

council. The order may require that the owner, lien holder, or mortgagee appear before the council or council's designee to demonstrate compliance with the time schedules.

- (3) The city council may not allow the owner, lien holder, 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, lien holder, or mortgagee:
 - a. Submits a detailed plan and time schedule for the work at the hearing; and
 - b. Establishes at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work.
- (4) If the city council allows the owner, lien holder, or mortgagee more than ninety (90) days pursuant to (f)(3) above to complete any part of the work required to repair, remove or demolish the building, the city shall require the owner, lien holder, or mortgagee to regularly submit progress reports to the municipality to demonstrate compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lien holder, or mortgagee appear before the council or council's designee to demonstrate compliance with the time schedules. If the owner, lienholder or mortgagee owns property, including structures or improvements on property, within the city boundaries that exceeds one hundred thousand dollars (\$100,000.00) in total value, the council may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing or demolishing a building. In lieu of a bond, the council may require the owner, lienholder or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the commission. 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 council issues the order.
- (g) The order issued by the city council may specify a reasonable time as provided by the time limits described in Section 155.006 herein for the building, structure, or improvement 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 for the ordered action to be taken by any of the mortgagees or lienholders in the event the owner fails to comply with the order within the time provided for action by the owner. Under this subsection, the city is not required to furnish any notice to a mortgagee or lienholder other than a copy of the order provided pursuant to Section 155.006(e) in the event the owner fails to timely take the ordered action.

Sec. 155.007 Appeal of city council decision.

Any owner, lien holder, or mortgagee or record jointly or severally aggrieved by any decision of the city council may present a petition to a district court, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the legality. The petition must be filed by an owner, lien holder, or mortgagee within thirty (30) calendar days after the date a copy of the final decision of the city council is mailed by first class mail, certified, return receipt requested or is personally delivered, to all persons to whom notice is required to be sent.

If no appeals are taken from the decision of the city council within the required period, the decision of the city council shall, in all things, be final and binding.

Sec. 155.008 Failure to comply with orders given under article; penalty for violation.

- (a) The owner or other person having charge and control over any building or structure determined by the building official or, upon appeal, 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 class C 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 class C misdemeanor.
- (c) Whenever in this article an act is prohibited or declared to be unlawful, the violation of any such provision of this article shall be punished by a fine not exceeding two thousand dollars (\$2,000.00). Each day any violation of this article shall continue shall constitute a separate offense.

Sec. 155.009 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 obeyed within the time set by the city council, the chief building official or the city council shall have the power, in addition to any other remedy herein provided, to:
 - (1) Cause the building or structure ordered to be repaired or to be vacated until such time as the necessary repairs have been made. Repair of a structure may be accomplished by the city but only to the extent necessary to bring the structure into compliance with minimum standards and only if the structure is a residential structure with not more than ten dwelling units. 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 inspector has approved same and issued a permit to reoccupy such building or structure;
 - (2) Request the chief of police, serving as the director of public works, to 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. The demolition of any building or structure, and the sale of the materials thereof, may be by a contract awarded, following advertisement for bids, to the best bidder; or when time is of the essence, the demolition maybe be accomplished with force account labor or any other reasonable means at the discretion of the city council.
- (b) *Report of demolition.* Upon completion of the demolition of any building or structure or any portion thereof under this section, the chief of police 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 direct 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 section 155.005;
 - (5) Administrative cost in complying with and accomplishing the purposes and procedures of this article; and
 - (6) The total assessment against the lot and legal owner(s) proposed to be levied to pay the cost thereof.
- (c) *Hearing on report and assessment of costs.* Upon filing of the report of the chief of police, as provided in (b) above, the city council shall, by resolution, fix the day, hour and place when it will hear and pass upon the report, together with any objections or protests which may be raised by any property owner liable to be assessed for the cost of such demolition, and any other interested persons. At least ten (10) days before the date set for the hearing, the chief of police shall cause copies of his report and notice of the filing of his report and of the day, hour and place when the city council will hear and pass upon the report, and any objections or protests thereto, to be posted and served in the manner and upon the persons specified in section 155.006. A copy of the notice shall be published once, at least ten (10) days prior to the date set for the hearing, in the official newspaper of the city. The council may make such revisions, corrections or modifications in the report as it may deem just, and the report, as submitted or as revised, corrected and modified, together with the assessment, shall be confirmed by ordinance. The decision of the council on the report and the assessment and all protests or objections shall be final and conclusive.
- (d) *Contest of assessment.* The validity of any assessment levied under the provisions of this section shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is confirmed.
- (e) *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, respectively, until paid. Such lien shall, for all purposes, take priority over all other liens except tax liens and/or paving assessment liens. The city clerk shall cause a certified copy of such special assessment lien to be filed with the county clerk in the deed records of the county. Such special assessment liens shall bear interest at the rate of 10 percent per annum from the date of filing of the same with the county clerk until paid in full, and such lien shall be collected in the same manner as other assessment liens are collected under the laws of the state.

Sec. 155.010 Removal of orders or notices posted under article.

It shall be unlawful for any person to remove any notice or order posted as required in this article.

Sec. 155.011 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 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.

Sec. 155.012 Abrogation.

The provisions of this article shall not be deemed to repeal by implication any provisions of the fire department 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 ordinances, the building code or any other ordinance of the city.

Secs. 155.013—115.019 Reserved.”

Section 2: Penalty.

Any person, firm, entity or corporation who violates any provision of this Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day’s violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the city from filing suit to enjoin a violation. The city retains all legal rights and remedies available to it pursuant to local, state, and federal law.

Section 3: Severability.

If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Combine, Texas, in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

Section 4: Repealer.

All ordinances parts of ordinances, resolutions and parts of resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

Section 5: Continuation.

That nothing in this ordinance (or any code adopted herein) shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed by this ordinance and such prior law is continued in effect for purposes of such pending matter.

Section 6: Publishing and Effective Date.

This ordinance shall be published and become effective according to law.

Section 7: Open Meeting.

of action acquired or existing, under any act or ordinance hereby repealed by this ordinance and such prior law is continued in effect for purposes of such pending matter.

Section 6: Publishing and Effective Date.

This ordinance shall be published and become effective according to law.

Section 7: Open Meeting.

That it is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given all as required by Section 551.041, Texas Government Code.

PASSED AND, APPROVED by the City Council of the City of Combine, Texas on the 26th day of October 2020.



Tim Ratcliff, Mayor

ATTEST:



Robin Price, City Secretary