

**TOWN OF TROPHY CLUB, TEXAS
ORDINANCE 2015-13**

AN ORDINANCE OF THE TOWN OF TROPHY CLUB, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF TROPHY CLUB, TEXAS BY REPEALING SECTIONS 12.02 THROUGH 12.05 AND SECTIONS 12.07 THROUGH 12.09 OF ARTICLE XII ENTITLED “STANDARDS FOR THE REPAIR, REMOVAL OR DEMOLITION OF DANGEROUS OR SUBSTANDARD BUILDINGS” OF CHAPTER 3 ENTITLED “BUILDINGS AND CONSTRUCTION” AND RENUMBERING THE REMAINING SECTIONS AND CORRECTING A TYPOGRAPHICAL ERROR; ADOPTING ARTICLE X, ENTITLED “BUILDING STANDARDS COMMISSION”, TO CHAPTER 3 ENTITLED “BUILDINGS AND CONSTRUCTION” OF THE CODE OF ORDINANCES ESTABLISHING A BUILDING STANDARDS COMMISSION; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING FOR AMENDMENTS; PROVIDING FOR CIVIL PENALTIES; PROVIDING A CUMULATIVE REPEALER CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING A CRIMINAL PENALTY NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Trophy Club, Texas is a Home Rule Town acting under its Charter and laws of the State of Texas; and

WHEREAS, the Town Council has determined that the interests of the public are best served when buildings and structures within the Town are maintained in accordance with Building and Fire Codes; and

WHEREAS, Chapter 54 of the Texas Local Government Code authorizes a municipality to adopt ordinances for the preservation of public safety, relating to the materials or methods used to construct a building or improvements, relating to the fire safety of a building or improvements, relating to dangerously damaged or deteriorated buildings or improvements, relating to conditions caused by accumulations of refuse, vegetation or other matter that create breeding and living places for insects and rodents, relating to a building code or to the condition, use, or appearance of property in a municipality; and

WHEREAS, the Town has adopted the 2009 International Property Maintenance Code as well as other International Fire and Building Codes to ensure that the condition of property and structures within the Town are maintained in a safe and healthy manner; and

WHEREAS, Chapter 214 of the Texas Local Government Code authorizes municipalities to adopt ordinances to establish minimum standards for the continued use and occupancy of buildings and to require the vacation or relocation of occupants, as well as the securing, repair, removal or demolition of a building that is dilapidated, substandard or unfit for human habitation and a hazard to the public health safety and welfare; and

WHEREAS, the Town has adopted ordinances establishing minimum standards for use and occupancy of structures within its jurisdiction; and

WHEREAS, the Town Council is authorized by Chapter 54 to provide for the appointment of a Building Standards Commission to hear and determine cases concerning alleged violations of Ordinances regulating buildings and structures, to order appropriate remedial actions, and to impose civil penalties as allowed by law; and

WHEREAS, the Town Council hereby finds that adopting this ordinance establishing a Building Standards Commission is appropriate and necessary to ensure that buildings and structures within the Town meet minimum requirements, to allow due process for review of administrative decisions, to address and abate floodplain violations, and to perform other functions set forth hereinbelow; and

WHEREAS, the Town Council finds that by adopting this Ordinance repealing Sections 12.02 through 12.05 and Sections 12.07 through 12.09 of Article XII entitled “Standards for the Repair, Removal or Demolition of Dangerous or Substandard Buildings” of Chapter 3 entitled “Buildings and Construction” and renumbering remaining sections of Article XII and by adopting Article X entitled “Building Standards Commission” of Chapter 3 entitled “Buildings and Construction” serves the best interests of the Town and health, safety and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TROPHY CLUB, TEXAS, THAT:

**SECTION 1.
INCORPORATION OF PREMISES**

The above and foregoing premises having been found by the Town Council to be true and correct are hereby adopted and incorporated herein and made a part hereof for all purposes.

**SECTION 2.
AMENDMENTS**

2.01 Sections 12.02 through 12.05 and Sections 12.07 through 12.09 of Article XII entitled “Standards for the Repair, Removal or Demolition of Dangerous or Substandard Buildings” of Chapter 3 entitled “Buildings and Construction” of the Code of Ordinances

of the Town are hereby repealed in their entirety and Section 12.06 entitled "Minimum Standards; Responsibilities of Owner" is hereby renumbered to be Section 12.02 "Minimum Standards; Responsibilities of Owner" and Subsection 3 of 12.02(A) "Property Standards" shall be amended to be and read in its entirety as follows with all other sections and subsections of Section 12.02 to remain the same:

12.02 Minimum Standards; Responsibilities of Owner

A. **Property Standards:** An owner shall:

....

3. Provide solid waste receptacles or containers when required by the Town.

2.02 Article X entitled "Building Standards Commission" of Chapter 3 entitled "Buildings and Construction" of the Code of Ordinances of the Town of Trophy Club is hereby adopted and shall read in its entirety as follows:

CHAPTER 3 BUILDINGS AND CONSTRUCTION

"ARTICLE X. Building Standards Commission

Section 10.01 Building Standards Commission (BSC) Created

There is hereby created a Building Standards Commission ("the Commission") in accordance with the provisions of Subchapter C of Chapter 54 of the Local Government Code, V.T.C.A., as amended.

Section 10.02 BSC Members

A. **Number, Appointment, Qualifications.** The Commission shall consist of five (5) regular members each to be appointed by the Town Council. The Town Council may also appoint up to eight (8) alternate members with the same duties and responsibilities as regular members who shall serve in the absence of one (1) or more regular members when requested to do so by the Town Manager, or designee. All cases shall be heard by at least four (4) members. Each member, whether regular or alternate, shall be appointed by majority vote of the Town Council. To the extent possible, members of the commission should be qualified in one (1) or more of the fields of fire prevention, building construction, sanitation, plumbing, electricity, mechanical systems, engineering, architecture or public health. Failure of a person to be qualified in any of such fields shall not prevent or disqualify that person from sitting on the commission.

B. **Terms of Office.** Each regular and alternate member of the Commission shall be appointed by the Town Council for a term of two

(2) years with staggered appointments so that no more than three (3) members' terms shall expire in any one year. Terms shall expire on September 30 of each year.

- C. **Removal, Filling of Vacancies.** Any member, whether regular or alternate, of the Commission may be removed for cause on a written charge. If requested by the member subject to the removal action, the Town Council shall hold a public hearing on the matter before a decision regarding removal is made in accordance with state law. Any and all vacancies shall be filled by appointment based upon a majority vote of the Town Council and shall be for the unexpired term of the vacant position.
- D. **Officers.** The Town Council shall appoint a member of the Commission to serve as Chairperson. The Commission shall annually elect a Vice-Chairperson, each of whom shall perform the duties set forth in this Article.

Section 10.03 BSC Meetings

- A. Meetings of the Commission shall be held at the call of the Commission Chairperson and at other times as determined by the Commission. All meetings of the Commission shall be open to the public. The concurring vote of a majority of the members of the Commission shall be required for any action taken by the Commission under state law or ordinance adopted by the Town. The Chairperson, or in the Chairperson's absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses.
- B. The Commission shall keep minutes of its proceedings showing the vote of each member on each question or the fact that a member is absent or fails to vote. The Commission shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the Building Inspection Department as public records.
- C. The Building Official or his designee shall present all cases before the Commission. As used in this Chapter, the term "Building Official" shall mean the "Building Official" for the Town of Trophy Club or a person designated by the Building Official or Town Manager.

Section 10.04 BSC Authority--Generally

- A. **Ordinances.** The Commission shall have the authority granted in this Article and, in addition, shall have authority to hear and determine cases concerning alleged violations of Town ordinances:

1. For the preservation of public safety, relating to the materials or methods used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;
2. Relating to the fire safety of a building or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;
3. Relating to dangerously damaged or deteriorated buildings or improvements; or
4. Relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents.
5. Relating to a Building Code or to the condition, use, or appearance of property in the Town.

B. Other Functions. In addition to the authority granted in this Chapter, the Building Standards Commission, in its capacity as a review board for the Town, shall have the following duties and powers including, but not limited to:

1. Studying proposed Code amendments and making recommendations to the Town Council regarding any proposed amendments to the Building and Fire Codes.
2. Hearing from any person requesting a change to the Building and Fire Codes as adopted by the Town.
3. Serving as an advisor to the Building Official and/or Fire Chief.
4. Hearing appeals from decisions of the Building Official and/or Fire Chief pertaining to:
 - a. Use of alternate materials and construction methods. In the case of a request to use alternate materials or construction methods, the Building Standards Commission shall determine whether or not such alternate material or construction method is in fact equal to the standards of the applicable Building or Fire Code, considering adequacy, stability, strength, sanitation, and safety for the public's health and welfare. As used in this

Section, Building Code or Fire Code shall include without limitation Town adopted building, electrical, plumbing, mechanical, and fire codes, and abatement of dangerous building, fence, and swimming pool;

- b. Interpretations related to the Building Code or Fire Code as adopted by the Town, including without limitation, building, electrical, plumbing, mechanical, and fire, and abatement of dangerous building, fence, and swimming pool); and
- c. Decisions regarding substandard buildings as further provided in this Article.

- 5. Ordering the repair, within a fixed period, of buildings found to be in violation of an ordinance.
- 6. Declaring a building substandard in accordance with the powers granted by this Article and/or other local or state law.
- 7. Adopting and enforcing regulations relating to floodplain management within the Town and ordering compliance with floodplain regulations pursuant to the authority granted in this Article, state law and/or federal law.

C. **Variances.** The Building Standards Commission shall not be authorized to grant variances.

D. **State Statute.** In addition to the authority outlined in this Article, the Commission may exercise such other powers and authority conferred upon it by Subchapter C of Chapter 54 and Subchapter A of Chapter 214 "Dangerous Structures" of the Texas Local Government Code, as amended, or by other statutes or ordinances.

Section 10.05 BSC Authority--Substandard Housing

The Building Standards Commission may hear cases regarding a substandard structure if the structure is:

- A. Dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare; or
- B. 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
- C. Boarded up, fenced, or otherwise secured in any manner if:

1. The building constitutes a danger to the public even though secured from entry; or
2. The means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by Subsection B above.

Section 10.06 BSC Rules Governing Proceedings

The Building Standards Commission shall adopt rules to govern its proceedings provided, however, that such rule shall not be inconsistent with this Article or laws of the State of Texas. The rules shall establish procedures for use in hearings, providing ample opportunity for presentation of evidence and testimony by respondents or persons opposing charges brought by the Town or its officials relating to alleged violations of ordinances.

Section 10.07 BSC Criteria for Determining Substandard Condition

A structure shall be considered substandard if:

- A. It is in a condition such that it fails to comply with the minimum standards set forth in the Town's ordinances, including but not limited to the adopted building, electrical, plumbing, mechanical, and fire codes; and
- B. Such condition exists to the extent that the life, health, property, or safety of the public or its occupants is endangered.

Section 10.08 BSC Notice

- A. Notice of all proceedings before the Commission shall be given:
 1. By certified mail, return receipt requested, to the record owners of the affected property, and each holder of a recorded lien against the affected property, as shown by the records of the Office of the County Clerk of the county in which the affected property is located if the address of the lienholder can be ascertained from the deed of trust establishing the lien and/or other applicable instruments on file in the Office of the County Clerk; and
 2. 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.

- B. The notice shall be mailed and posted on or before the 10th day before the date of the hearing before the Commission and shall state the date, time, and place of the hearing. The notice shall also include a statement that at the hearing, the owner, lienholder, or mortgagee shall be required to submit proof of the scope of any work that may be required to comply with applicable ordinance(s) and the amount of time that such person alleges that it will take to reasonably perform the work. In addition, the notice shall be published in a newspaper of general circulation in the Town on one (1) occasion on or before the 10th day before the date fixed for the hearing.

Section 10.09 BSC Action; Time Frames

- A. **Commission Orders.** After notice and hearing and upon finding that a structure is substandard, the Commission may order any one (1) or more of the following actions:
1. Order the repair of a substandard structure, within a fixed period as provided in this Article and/or state law;
 2. Order, in an appropriate case, the immediate removal of persons or property found on private property, order entry on private property to secure the removal if it is determined that conditions exist on the property that constitute a violation of an ordinance, and/or order action to be taken as necessary to remedy, alleviate, or remove any substandard building found to exist;
 3. If the structure is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated with the time allotted by the Commission, the Town may vacate, secure, remove or demolish the building or relocate the occupants at its own expense. The Town may assess the expenses on and have a lien against the property on which the structure was located, unless it is a homestead as protected by the Texas Constitution;
 4. Issue orders or directives to any peace officer of the state, including a sheriff or constable or the Chief of Police of the Town, to enforce and carry out the lawful orders or directives of the Commission; and
 5. Determine the amount and duration of the civil penalty that may be recovered by the Town as authorized by Subchapter C of Chapter 54, Texas Local Government Code, as amended. In assessing a civil penalty, the Commission shall consider the severity of

violations present, the history of compliance of the property or the owner, and the efforts taken, if any, to correct the violations.

B. Time Frames for Compliance. After making a finding that a building is substandard, the Commission shall comply with the following time frames:

1. 30-Day Time Period. Except as otherwise provided in this Article, the Commission shall require the owner, lienholder, or mortgagee of a substandard building to within thirty (30) days of the date of the hearing:
 - a. Secure the building from unauthorized entry; or
 - b. Repair, remove or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within thirty (30) days.
2. 30 to 90-Day Time Period. If the Commission allows the owner, lienholder, or mortgagee more than thirty (30) days to repair, remove, or demolish the building, the Commission shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined at the hearing.
3. Time Period in Excess of 90 Days. The Commission may only 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 if the owner, lienholder, or mortgagee:
 - a. Submits a detailed plan and time schedule for the work at the Commission 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; and
 - c. Regularly submits progress reports to the Town to demonstrate compliance with the time schedules established by the Commission for commencement and performance of the work as well as other security requirements imposed by the Commission.

4. **Bond Requirement:** If the Commission allows the owner, lienholder, or mortgagee more than ninety (90) days to complete any part of the work required to repair, remove, or demolish the building, the order of the Commission may require that the owner, lienholder, or mortgagee or his designee appear and provide documentation that the Commission determines necessary to demonstrate compliance with Commission established time schedules. If the owner, lienholder or mortgagee owns property, including structures or improvements on property, within the Town boundaries that exceeds \$100,000 in total value, the Commission 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 the building or buildings as authorized by the provisions of this Article. In lieu of a bond, the Commission may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party as approved by the Town. The bond shall be posted, or the letter of credit or third party guaranty provided not later than the thirty (30) days after the date the Commission issues the order.

- C. **Burden of Proof.** The owner, lienholder, or mortgagee shall have the burden of proof to demonstrate the scope of any work that may be required to comply with Town ordinances and the time that it will take to reasonably perform the work.

Section 10.10 BSC Fees for Appeals

A fee of ONE HUNDRED AND FIFTY AND NO/100 DOLLARS (\$150.00) is hereby required for appeals heard at regularly scheduled meetings of the Building Standards Commission. For appeals that must be heard at a special called meeting of the Building Standards Commission, an additional fee of ONE HUNDRED AND FIFTY AND NO/100 DOLLARS (\$150.00) shall be required. All fees shall be due and paid at the time an appeal is filed.

Section 10.11 Failure to comply with Order of BSC

- A. If a building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the time period ordered by the Commission, the Town may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense.
- B. If the Town incurs expenses under this Section, the Town may assess the expenses on, and upon doing so, the Town shall have a lien against, the property on which the building was located, unless the property is a homestead as protected by the Texas Constitution. The

lien is extinguished if the property owner, lienholder, mortgagee or other person having an interest in the legal title to the property reimburses the Town for the expenses. 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 County Clerk of the county in which the property is located. 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 real property on which the building was located, the amount of expenses incurred by the Town, and the balance due.

Section 10.12 BSC Final Decision

- A. A copy of the final decision of the Commission shall be mailed by certified mail, return receipt requested, to all persons to whom notice was sent under **Section 10.08** of this Article. The copy shall be mailed promptly after the decision of the Commission becomes final pursuant to the requirements of this Article.
- B. Within ten (10) calendar days after the date that the order is issued, the Commission shall file a copy of the order in the office of the Town Secretary. Within ten (10) calendar days after the date the final decision of the Commission is mailed, an abbreviated copy of the final decision shall be published one (1) time in a newspaper of general circulation in the Town, and such notice shall include the street address or legal description of the property; the date of the hearing, a brief statement indicating the results of the order, and instructions stating where a complete copy of the order may be obtained.
- C. If no appeals are taken from the decision of the Commission within the required period, the decision of the Commission is, in all things, final and binding.

Section 10.13 BSC Judicial Review

- A. Any person(s) jointly or severally aggrieved by any decision of the Commission 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 illegality. The petition shall be presented within thirty (30) calendar days after the date a copy of the final decision of the Commission is personally delivered or mailed by first class mail, certified return receipt requested, to all persons to whom notice is required to be sent pursuant to **Section 10.08** of this Article.
- B. Proceedings shall not be stayed by an appeal and issuance of a writ of certiorari and shall only be stayed by the grant of a restraining order or injunction granted by the district court. The District Court's review shall

be limited to a hearing under the substantial evidence rule. Costs may not be allowed against the Commission panel. If the decision of the Commission panel is affirmed or not substantially reversed but only modified, the District Court shall allow to the Town all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those items, which may be entered against the property owners as well as all persons found to be in occupation of the property subject to the proceedings before the Commission panel.

Section 10.14 BSC Authority—Penalties

- A. **Civil Penalty.** The Commission may assess a civil penalty against the property owner for failure to repair, remove, or demolish a substandard structure upon proof presented by the Town that:
1. The property owner was notified of the requirements in the Town's substandard building ordinance along with notification of the owner's need to comply; and
 2. The owner continued to violate the ordinance after receiving notice.
- B. **Amount.** A civil penalty imposed pursuant to this Section may not exceed \$1000 per day for each violation, unless the property is shown to be the owner's legal homestead, in which case the penalty shall not exceed \$10 per day for each violation.
- C. **Criteria for Assessing Civil Penalty.** In assessing a civil penalty, the Commission shall consider the severity of violations present, the history of compliance of the property or the owner, lienholder or mortgagee, and the efforts taken, if any, to correct the violations.
- D. **Determination Final.** A determination made under this Section is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the Town for final judgment in accordance with the established penalty.
- E. **Enforcement of Civil Penalty.** To enforce any civil penalty under this Section, the Town Secretary shall file with the district clerk of the county in which the Town is located, a certified copy of the order of the Commission stating the amount and duration of the penalty. No other proof is required for a district court to enter final judgment on the penalty.
- F. **Remedies Cumulative.** The remedies authorized under this Article are inclusive and not exclusive and shall in no way prevent the Town from exercising any and all other remedies at law to which it may be

entitled, including proceedings under the jurisdiction of the Municipal Court or injunctive or other civil relief as allowed by law.”

**SECTION 4.
CUMULATIVE REPEALER**

This Ordinance shall be cumulative of all other Ordinances of the Town and shall not repeal any of the provisions of such Ordinances except in those instances where provisions of those Ordinances are in direct conflict with the provisions of this Ordinance; whether such Ordinances are codified or uncodified, and all other provisions of the Ordinances of the Town of Trophy Club, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**SECTION 5.
SEVERABILITY**

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the Town Council hereby declares it would have passed such remaining of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 6.
ENGROSSMENT AND ENROLLMENT**

The Town Secretary of the Town of Trophy Club is hereby directed to engross and enroll this Ordinance in accordance with the Town Charter and by filing this Ordinance in the Ordinance records of the Town.

**SECTION 7.
PENALTY**

Any Person violating any of the provisions of this Ordinance shall be deemed guilty of a Class C misdemeanor upon conviction and shall be fined, except as otherwise provided herein, in a sum not to exceed two thousand dollars (\$2,000.00) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. Further, if the governing body of the Town of Trophy Club determines that a violation of this Ordinance creates a threat to the public safety, the Town may bring suit in the District Court to enjoin such violation and seek such remedies as allowed by law. The civil and criminal remedies and penalties provided in this Article shall be cumulative of those provided by state law and provided herein.

SECTION 8.

PUBLICATION

The Town Secretary of the Town of Trophy Club is hereby directed to publish the Caption, Penalty and Effective Date of this Ordinance as required by Section 52.011 of the Texas Local Government Code.

**SECTION 9.
EFFECTIVE DATE**

This Ordinance shall take effect from and after its date of passage in accordance with law, and it is so ordained.

PASSED AND APPROVED by the Town Council of the Town of Trophy Club, Texas, this 23rd day of June, 2015.



C. Nick Sanders, Mayor
Town of Trophy Club, Texas

[SEAL]

ATTEST:



Holly Fimbres, Town Secretary
Town of Trophy Club, Texas



APPROVED AS TO FORM:



Patricia A. Adams, Town Attorney
Town of Trophy Club, Texas