

ORDINANCE NO. 98- 22

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS, AMENDING CHAPTER 50, "ENVIRONMENT", OF THE CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS RELATING TO THE ABATEMENT OF SUBSTANDARD BUILDINGS AND THE CREATION OF A BUILDING STANDARDS COMMISSION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR A PENALTY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING A SAVINGS CLAUSE.

WHEREAS, the Texas Legislature has delegated the authority to regulate substandard buildings to municipalities through the enactment of Chapters 54 and 214 of the Texas Local Government Code; and

WHEREAS, the City Council of the City of New Braunfels recognizes that the quality of life for residents within a municipality is directly affected by the way that other residents and property owners maintain their property; and

WHEREAS, the City of New Braunfels, as a home-rule municipality, is legally empowered to reduce or eliminate substandard structures that pose a threat to the health, safety, and general welfare of the public; and

WHEREAS, the City Council of the City of New Braunfels desires to exercise all available statutory authority regarding the abatement of nuisances through the creation of a Building and Standards Commission charged with the enforcement of laws relating to the correction or abatement of dangerous and unsafe structures.

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

I.

THAT, Chapter 50 of the Code of Ordinances of the City of New Braunfels, Texas, be hereby amended by relocating Section 50-26 relating to prohibitions against noise to Chapter 82, "Offenses" as Section 82-8 and that the remaining portions of Chapter 50 be amended as follows:

ARTICLE 1. BUILDING STANDARDS COMMISSION

Section 50.1. *Creation of Building Standards Commission.* There is hereby created and established a commission to be known as the Building Standards Commission of the City of New Braunfels.

Section 50.2. *Building Standards Commission Membership.* The City Council shall appoint five (5) residents of the City of New Braunfels to serve two (2) year staggered terms as members of the Building Standards Commission; provided that for the first year two (2) members shall serve for one

(1) year and three (3) members shall serve for two years. To determine the length of term of the first members appointed under this ordinance, a drawing shall be held at the organizational meeting of the Commission. A member appointed to fill a vacancy shall serve for the unexpired term. In making appointments to the Commission, the City Council shall attempt to appoint one member with experience in each of the following areas: a) real estate profession; b) home building profession; c) development profession; and d) legal profession. One member of the Commission and the two alternate members shall be chosen from the public at large.

Section 50.3. *Alternate Members.* The City Council shall appoint two (2) alternate members to the Building Standards Commission who shall serve in the absence of one or more regular members when requested to do so by the City Manager or his designee. Alternate members shall serve for the same period and are subject to removal in the same manner as regular members; provided that for the first year one (1) member shall serve for one (1) year and one (1) member shall serve for two (2) years. A drawing shall be held at the organizational meeting of the Commission to determine the terms of the two alternates. A vacancy of an alternate member is filled in the same manner as a vacancy among the regular members.

Section 50.4. *Removal of Members.* The City Council may remove a Building Standards Commission member for cause on a written charge. Before a decision regarding removal is made, the City Council must hold a public hearing on the matter if requested by the member subject to the removal action.

Section 50.5. *Proceedings of the Building Standards Commission.*

(a) ***Rules.*** The commission, by majority vote, may adopt rules in accordance with this ordinance. The rules shall establish procedures for use in hearings, providing ample opportunity for the presentation of evidence and testimony by respondents or persons opposing charges brought by the City of New Braunfels relating to alleged violations of this ordinance.

(b) ***Quorum.*** Four members of the commission must be present to hear a case.

(c) ***City Representative.*** The Director of Planning or his designee shall present all cases on behalf of the city before the commission.

(d) ***Meetings.*** Meetings of the commission shall be held at the call of the chairman who shall be elected by the commission from among its members. Meetings shall be held at other times as determined by the commission. All meetings of the commission shall be open to the public and comply with the Texas Open Meetings Act. The chairman, or in the chairman's absence the vice chairman, may administer oaths and compel the attendance of witnesses.

(e) ***Minutes.*** 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.

Section 50.6. *Functions of the Building Standards Commission.* The commission may:

- (a) order the repair, within a fixed period, of buildings found to be in violation of this ordinance;
- (b) declare a building substandard in accordance with the powers granted in this ordinance;
- (c) order, in an appropriate case, the immediate removal of persons or property found on private property, enter on private property to secure the removal if it is determined that conditions exist on the property that constitute a violation of this ordinance, and order action to be taken as necessary to remedy, alleviate, or remove any substandard building found to exist;
- (d) determine the amount and duration of any civil penalty assessed against the property owner.

Sections 50.07-50.25. Reserved

ARTICLE II. NUISANCE ABATEMENT

Division 1. Substandard Structures

Section 50.26. *Unsafe Buildings.* All buildings or structures which are unsafe, unsanitary, unfit for human habitation, not provided with adequate egress, or which constitute a fire hazard, otherwise dangerous to human life or which constitute a hazard to the safety, health or welfare of the public, by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, are considered unsafe buildings. All such unsafe buildings are hereby declared illegal and shall be abated by repair, rehabilitation or by demolition.

Section 50.27. *Unoccupied Buildings.* Any or all buildings regardless of its structural condition, which are unoccupied by its owners, lessees, or other invitee(s) and are unsecured or inadequately secured 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 otherwise constitute a danger to the public are considered unsafe. All such unsafe buildings are hereby declared illegal and shall be abated by repair, rehabilitation or by demolition.

Section 50.28. *Conditions Constituting an Uninhabitable or Dangerous Structure or Dwelling.* An uninhabitable or substandard building or structure is defined as any building or structure:

- (a) Which has walls or other vertical structural members that list, lean or buckle in excess of one-eighth inch horizontal measurement for each one foot of vertical

measurement;

b) Which exclusive of the foundation shows 33% or more of damage or deterioration of the supporting member or members, or 50% of damage or deterioration of the non supporting enclosing or outside walls or covering;

(c) Which has been damaged by fire, explosion, wind, vandalism or elements of a nature so as to have become dangerous to life, safety or the general health and welfare of the occupants thereof or the people of the city;

(d) Which has inadequate facilities for egress in case of fire or panic or which has insufficient stairways, elevators, fire escapes or other means of ingress or egress;

(e) Which has parts thereof which are so attached that they may fall and injure members of the public or property;

(f) Which the stress in any material, member or portion thereof exceeds the stresses allowed in any applicable code for new buildings;

(g) Which, because of its condition is unsafe, or unsanitary, or dangerous to the health, morals, safety, or general welfare of the people of the city; or

(h) Which exists in violation of any material provision of the city's building code, plumbing code, fire prevention code, electrical code or any state statute, or that fails to comply with any material provision of this ordinance.

Section 50.28. *Notice of Violation.*

A. Whenever it is determined that there are reasonable grounds to believe that there has been a violation of any provision of this Article or of any rule or regulation adopted pursuant thereto, notice of such alleged violation shall be given to the owner, lienholder, or mortgagee and such alleged violations shall constitute a nuisance.

B. The notice shall contain:

1. the date, time, and location of the hearing before the Building Standards Commission; and
2. a statement that the owner, lienholder, or mortgagee will be required to submit proof, at the hearing, of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

C. Prior to conducting the hearing before the Building Standards Commission the City will make an effort to locate each lienholder and mortgagee having an interest in the building or

in the property on which the building is located and give them a notice of and an opportunity to comment at the hearing.

D. The City may file notice of the hearing in the official public records of real property in Comal or Guadalupe County.

Section 50.29. *Hearing.*

A. The Building Standards Commission may require the owner, lienholder, or mortgagee of the building to, within thirty (30) days, secure the building from unauthorized entry or to repair, remove, or demolish the building, whichever is applicable, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within thirty (30) days. The City will furnish a copy of the order to any lienholders or mortgagees in the event the owner fails to timely take the ordered action.

B. The Building Standards Commission may allow the owner, lienholder, or mortgagee more than thirty (30) days to repair, remove or demolish the building. If the Building Standards Commission allows the owner, lienholder, or mortgagee more than thirty (30) days to repair, remove or demolish the building, the Building Standards Commission shall establish specific time schedules, as determined by the Building Standards Commission in consultation with the Director of Planning or his designee, 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. The City will furnish a copy of the order to any lienholders or mortgagees in the event the owner fails to timely take the ordered action.

C. The Building Standards Commission may not allow the owner, lienholder, or mortgagee more than ninety (90) days to repair, remove, or demolish the building or to fully perform all work required to comply with the order unless at the hearing the owner, lienholder, or mortgagee submits a detailed plan and time schedule for the work at the hearing and establishes at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work.

D. If the Building Standards 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 Building Standards Commission shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the City building official to demonstrate that the owner, lienholder, or mortgagee has complied with the time schedules established for commencement and performance of the work. The City will furnish a copy of the order to any lienholders or mortgagees in the event the owner fails to timely take the ordered action.

Section 50.30. *Burden of Proof at Hearing.* In the hearing to determine whether a building complies with the standards set out in the Standard Housing Code, Section 14-201 or the Standard Building Code, Section 14-27 of the Code of Ordinances of the City of New Braunfels, 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 Housing Code and the time it will take to reasonably perform the work.

Section 50.31. *Procedure After Hearing.* After the hearing before the Building Standards Commission the City will mail by certified mail, return receipt requested, a copy of the order to the owner of the building and to any lienholder or mortgagee of the building. Within ten (10) days after the date the order from the Building Standards Commission is issued the City will:

1. File a copy of the order in the office of the City Secretary; and
2. Publish in a local newspaper 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 hearing or order; and
 - d. instructions stating where a complete copy of the order may be obtained.

Section 50.32. *Enforcement.*

A. After the expiration of the time granted by the Building Standards Commission for the repair, removal, demolition of a building, or the relocation of occupants of a building, whichever is applicable, the City will either:

1. Refer the property owner to municipal court for criminal prosecution; or
2. Vacate occupants, secure, remove, or demolish the building, or relocate the occupants, whichever is applicable, and assess the expenses against the property on which the building is located unless it is homestead property protected by the Texas Constitution; or
3. Repair the building and assess the expenses on the land on which the building stands or to which it is attached; or
4. Assess a civil penalty against the property owner for failure to repair, remove, or demolish the building.

B. The Building Standards Commission by order, may assess and recover a civil penalty against the property owner in an amount not to exceed \$1000 per day for each violation or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed \$10 per day for each violation, if the City proves:

1. the property owner was notified of the requirements of this article and the

owner's need to comply with the requirements; and

2. after notification, the property owner committed an act in violation of this article or failed to take an action necessary for compliance with this article.

Section 50.33. *Securing of Substandard Buildings.* The City of New Braunfels may secure a building if the City determines the building violates the minimum standards set forth in the Housing Code and is unoccupied or is occupied only by persons who do not have a right of possession to the building.

Section 50.34. *Notice of Secured Building.* Before the eleventh (11th) day after the date the building is secured pursuant to Section 50.33, the City will give notice to the owner of the building by either:

1. personally serving the owner with written notice; or
2. depositing the notice in the United States mail addressed to the owner at the owner's post office address; or
3. if personal service cannot be obtained and the owner's post office address is unknown;
 - a. publishing the notice at least twice within a ten (10) day period in the official newspaper of the City; or
 - b. posting the notice on or near the front door of the building.

The notice will contain:

1. An identification of the building and the property on which it is located; and
2. A description of the violation of the Housing Code or Building Code standards that is present at the building; and
3. A statement that the City will secure or has secured, as the case may be, the building; and
4. The owner's right to request a hearing about any matter relating to the City's securing of the building.

Section 50.35. *Hearing.*

A. If, within thirty (30) days after the date the City secures a building, the owner files with the City a written request for a hearing, the Building Standards Commission will conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the City's securing of the building.

B. The Building Standards Commission will conduct the hearing within twenty (20) days after the date the request is filed.

Section 50.36. Procedure After Hearing. After the hearing before the Building Standards Commission, or the expiration of the time allowed for the owner to request a hearing and no hearing has been requested, the City will mail by certified mail, return receipt requested, a copy of the order to the owner of the building and to any lienholder or mortgagee of the building. Within ten (10) days after the date the order from the Building Standards Commission is issued, the City will:

1. File a copy of the order in the office of the City Secretary; and
2. Publish in the City's official newspaper 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 hearing or order; and
 - d. instructions stating where a complete copy of the order may be obtained.

Section 50.37. Costs. The City may assess the expenses incurred to secure a building pursuant to Section 50.33 against the property on which the building is located unless it is homestead property protected by the Texas Constitution.

Section 50.38. Historic Buildings.

(a) **Intent.** It is the intent of the City Council in enacting this ordinance to preserve buildings of historic significance whenever possible.

(b) **Historic Landmark Commission.** Before a notice is sent or a hearing is conducted by the Commission, the New Braunfels Historic Landmark Commission shall be notified in order to allow the Commission an opportunity to review a building to determine whether the building qualifies for designation : (1) on the National Register of Historic Places; (2) as a Recorded Texas Historic Landmark; or, (3) as a historic landmark pursuant to Section 66-56 of the Code of Ordinances of the City of New Braunfels.

(c) **Written Report.** If the Historic Landmark Commission reviews a building, it shall submit a written report to the Building Standards Commission indicating the results of the review.

(d) **Rehabilitation Not Recommended.** If the report submitted by the Historic Landmark Commission determines that the building may not be rehabilitated and designated as historic property, the Building Standards Commission may proceed as

authorized.

(e) ***Rehabilitation Recommended.*** If the report submitted by the Historic Landmark Commission determines that the building may be rehabilitated and designated as historic property, the Commission may not permit the building to be demolished for at least ninety (90) days after the date the report is submitted. During the ninety (90) day period, the Commission shall notify the owner and attempt to identify a feasible alternative use for the building or locate an alternative purchaser to rehabilitate and maintain the building. If the Commission is not able to locate the owner or if the owner does not respond within the ninety-day period, the Commission may seek appointment of a receiver as provided by Local Government Code § 214.003.

(f) ***Demolition of Historic Building.*** The Commission may require the building to be demolished after the expiration of the ninety-day period if the Commission is not able to:

- 1) identify a feasible alternative use for the building; or
- 2) locate an alternative purchaser to rehabilitate and maintain the building; or
- 3) appoint a receiver for the building.

(h) ***No Penalties.*** A property owner is not liable for penalties related to the building that accrue during the ninety-day period provided for disposition of historic property under this section.

Sections 50.39 - 50.55. Reserved

II.

THAT, Division 2, "Condition of Premises" of Chapter 50 of the Code of Ordinances of the City of New Braunfels is hereby amended to renumber the current sections, without any substantive change, to contain sections 50.56 through 50.62 and that sections 50.62 through 50.75 be reserved.

III.

THAT, Division 3, "Abandoned Property" of Chapter 50 of the Code of Ordinances of the City of New Braunfels is hereby amended to renumber the current sections, without any substantive change, to contain sections 50.76 through 50.85.

IV.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

V.

That if any provisions of this ordinance shall be held to be invalid or unconstitutional, the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

VI.

That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be a part of the Code of Ordinances of the City of New Braunfels, Texas, and that sections of this ordinance may be renumbered or relettered to accomplish such intention.

VII.

That this ordinance shall become effective ninety (90) days after the third and final reading of the ordinance by the City Council.

PASSED AND APPROVED: First reading this the 24th day of November, 1997.

PASSED AND APPROVED: Second reading this the 8th day of December, 1997.


PASSED AND APPROVED: Third reading this the 10th day of August, 1998.

CITY OF NEW BRAUNFELS, TEXAS

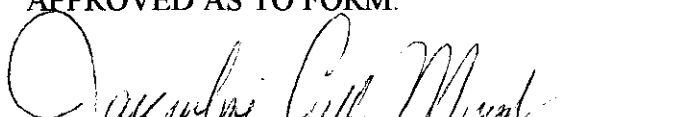
BY:


JAN KENNADY, Mayor

ATTEST:


VERONICA SARKOZI, City Secretary

APPROVED AS TO FORM:


JACQUELINE CULLOM MURPHY, City Attorney

110 Legal Notices**110** Legal Notices

REPAIR, REMOVAL, DEMOLITION OF A BUILDING, OR THE RELOCATION OF OCCUPANTS OF A BUILDING, WHICHEVER IS APPLICABLE, THE CITY WILL EITHER: 1. Refer the property owner to municipal court for criminal prosecution; or 2. Vacate occupants, secure, remove, or demolish the building, or relocate the occupants, whichever is applicable, and assess the expenses against the property on which the building is located unless it is homestead property protected by the Texas Constitution; or 3. Repair the building and assess the expenses on the land on which the building stands or to which it is attached; or 4. Assess a civil penalty against the property owner for failure to repair, remove, or demolish the building. B. THE BUILDING STANDARDS COMMISSION BY ORDER, MAY ASSESS AND RECOVER A CIVIL PENALTY AGAINST THE PROPERTY OWNER IN AN AMOUNT NOT TO EXCEED \$1000 PER DAY FOR EACH VIOLATION OR, IF THE OWNER SHOWS THAT THE PROPERTY IS THE OWNER'S LAWFUL HOMESTEAD, IN AN AMOUNT NOT TO EXCEED \$10 PER DAY FOR EACH VIOLATION, IF THE CITY PROVES: 1. the property owner was notified of the requirements of this article and the owner's need to comply with the requirements; and 2. after notification, the property owner committed an act in violation of this article or failed to take an action necessary for compliance with this article. Done by order of the City Council of the City of New Braunfels, Texas, this

the 11th day of August, 1998.
VERONICA SARKOZI,
CITY SECRETARY.

110 Legal Notices**PUBLIC NOTICE**

At its regular meeting of August 10, 1998, City Council of the City of New Braunfels, Texas, approved an amendment to the Code of Ordinances. The caption and penalty of the ordinance are as follows:

CAPTION: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS TEXAS AMENDING CHAPTER 50, "ENVIRONMENT," OF THE RELATING TO THE ABATEMENT OF SUBSTANDARD BUILDINGS AND THE CREATION OF A BUILDING STANDARDS COMMISSION: REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR A PENALTY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR A SAVINGS CLAUSE.

PENALTY: A. AFTER THE EXPIRATION OF THE TIME GRANTED BY THE BUILDING STANDARDS COMMISSION FOR THE

AFFIDAVIT OF PUBLISHER

THE STATE OF TEXAS }
COUNTY OF COMAL }

DOUG TONEY

BEFORE ME, the undersigned authority, on this day personally appeared _____

_____ known to me, who, being duly sworn, on his oath deposes and says that he is the
EDITOR & PUBLISHER

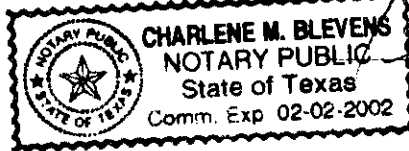
_____ of the New Braunfels Herald and Zeitung,
a newspaper of general circulation published in Comal County; that said newspaper has been continuously
and regularly published in said County for a period of more than one year; that a copy of the within fore-
going notice was published in said newspaper for a period of ONE
day(s) before the return day named therein, such publication being on the following dates:

August 13, 1998

and a newspaper copy of which is hereto attached.

Signed _____

Sworn to and subscribed before me this, the 19th day of August, 1998



Notary Public, State of Texas

Publisher's Fees \$ 100.00