

**Ordinance No. 13-002**

**AN ORDINANCE OF THE CITY OF MARLIN, TEXAS AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE CITY OF MARLIN, TEXAS, "SUBSTANDARD BUILDINGS," TO REPEAL SECTIONS 7-56 THROUGH 7-88 AND REPLACE SAID SECTIONS WITH SECTIONS 7-56 THROUGH 7-74 PROVIDING FOR THE REGULATION OF DILAPIDATED BUILDINGS, SUBSTANDARD BUILDINGS, AND UNSECURED VACANT BUILDINGS; DECLARING SUCH BUILDINGS A PUBLIC NUISANCE, SETTING MINIMUM STANDARDS AND PROHIBITING BUILDINGS NOT MEETING THE MINIMUM STANDARDS; MAKING VIOLATION A CRIMINAL OFFENSE (MISDEMEANOR) PUNISHABLE BY A FINE NOT TO EXCEED \$2,000; MAKING EACH DAY OF VIOLATION A SEPARATE OFFENSE; PROVIDING FOR NOTICE AND OPPORTUNITY FOR HEARING AS PART OF CIVIL ENFORCEMENT; PROVIDING FOR ENFORCEMENT OF THE REGULATIONS; PROVIDING FOR ACTION BY THE CITY TO REPAIR, REMOVE, DEMOLISH OR SECURE A BUILDING IN VIOLATION OF THE REGULATIONS AND TO RELOCATE OCCUPANTS; ESTABLISHING A CIVIL PENALTY NOT TO EXCEED \$1,000.00 PER DAY FOR NON-HOMESTEAD PROPERTY AND NOT TO EXCEED \$10.00 PER DAY FOR HOMESTEAD PROPERTY FOR CERTAIN VIOLATIONS; PROVIDING FOR ASSESSMENT OF COSTS AGAINST OWNER(S) FOR COSTS INCURRED BY THE CITY IN ENFORCING THE REGULATIONS; PROVIDING FOR A LIEN ON BUILDINGS AND PREMISES FOR EXPENSES INCURRED BY THE CITY IN ENFORCING THE REGULATIONS AND/OR FOR CIVIL PENALTIES; PROVIDING FOR FILING OF A CIVIL ACTION TO ENFORCE REGULATIONS AND/OR RECOVER PENALTIES, OBTAIN INJUNCTIVE RELIEF AND/OR COMPEL REMOVAL OR REPAIR OF BUILDING, PROVIDING FOR IMMEDIATE ABATEMENT ACTION FOR STREET ENCROACHMENT AND IMMINENT THREATS, PROVIDING FOR ACTIONS TO REDUCE THREAT FROM FIRE HAZARDS, PROVIDING FOR INSPECTIONS AND MAKING REFUSAL TO ALLOW INSPECTIONS OF BUILDINGS IN THE ADMINISTRATION OF THE REGULATIONS A CRIMINAL OFFENSE (MISDEMEANOR) PUNISHABLE BY A FINE NOT TO EXCEED \$500.00 PER DAY OF VIOLATION, PROVIDING FOR PUBLICATION, PROVIDING FOR AN EFFECTIVE DATE, PROVIDING A SEVERABILITY CLAUSE, REPEALING CONFLICTING ORDINANCES**

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

**WHEREAS**, the City's current ordinances regulating this area need clarification and are outdated, and

**WHEREAS**, to promote the health, safety, and welfare of the citizens of Marlin, Texas, and protect said citizens from the dangers posed by such buildings, the City Council of Marlin, Texas desires to update and strengthen its regulations to address the repair, removal, demolition, securing and/or evacuation of such structures; and to provide for a range of enforcement tools that can be used by the City in combating this problem.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLIN, TEXAS AS FOLLOWS:**

**SECTION 1.** That all matters stated in the preamble are found to be true and correct and are incorporated herein as if copied in their entirety.

**SECTION 2.** That Chapter 7 of the Code of Ordinances of the City of Marlin, Texas, "Substandard Buildings," is amended to repeal sections 7-56 through 7-88 as they currently exist, and add sections 7-56 through 7-74 which provide as follows:

**Sec. 7-56. APPLICATION**

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

**Sec. 7-57. PURPOSE; DECLARATION OF PUBLIC NUISANCE**

The purpose of this Chapter is to preserve and protect public health, safety and welfare. A Dilapidated Building, Substandard Building, and/or Unsecured Vacant Building is hereby found and declared to constitute and be a public nuisance which poses a threat to the health, safety and general welfare of the public.

**Sec. 7-58. DEFINITIONS**

(a) *Dilapidated Building* means a building that does not comply with one or more of the minimum standards set forth in Section 7-59 below.

(b) *Substandard Building* means a building that does not comply with one or more of the minimum standards set forth in Section 7-60 below.

(c) *Unsecured Vacant Building* means a building, regardless of structural condition, unoccupied by its owners, lessees, and other invitees, and which is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children.

(d) *Property Owner* includes a person with control over the premises unless the context requires otherwise.

**Sec. 7-59. MINIMUM STADARDS: BUILDING CONDITION**

Buildings must be in compliance with the following standards:

(a) No building shall have walls or other vertical, structural members that list, lean, or buckle in excess of one-eighth inch (1/8") horizontal measurement for each one foot (1') of vertical measurement.

(b) No building shall have floor decks or ceiling supports that are rotted or termite infested/affected to the point that the floor or ceiling, or any substantial portion thereof, is not structurally safe, and thus presents a danger to persons entering the building.

(c) No building shall have thirty-three percent (33%) or more of damage or deterioration of the supporting members/components of the building, or fifty percent (50%) or more of damage or deterioration of the non-supporting enclosing or outside walls or coverings.

(d) No building shall be allowed to exist in a state of disrepair or damage (by fire, wind, explosion, vandalism or elements of nature) so as to have become dangerous to the health, safety and welfare of the occupants thereof, or to the citizens of the City of Marlin.

(e) No building shall exist in a state where components or parts thereof are so attached, or have fallen into such a state of disrepair or deterioration, that they may fall and injure members of the public or damage property.

(f) No building shall be allowed to exist with members of walls, partitions, or other vertical supports that split, lean, list, or buckle or which allow moisture penetration due to defective material or

deterioration.

(g) No building shall be allowed to exist with members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split, or buckle or which allow moisture penetration due to defective material or deterioration.

(h) No building shall have a condition maintained thereon, whether or not specifically identified in (a) - (e) above, which an engineer, architect or safety consultant determines poses an unreasonable risk to the health, safety and/or welfare of the occupants or the public based on recognized architectural or engineering standards.

**Sec. 7-60. MINIMUM STANDARDS: HABITABILITY, HEALTH AND WELFARE**

Buildings must be in compliance with the following standards:

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

(b) All buildings must meet applicable state sanitation standards.

(c) No building shall be allowed to exist in a state of neglect or non-maintenance which results in creating an environment or habitat conducive to the infestation and breeding of rodents, insects or other pests in and around the building.

(d) No accumulation of garbage or refuse shall be allowed to exist in the building or on its premises that poses a fire hazard or creates an environment which facilitates pest infestation.

(e) All buildings occupied or used for authorized permanent or temporary occupancy shall have at least one sink installed in compliance with the plumbing code adopted by the City and be connected to City water service where such service is available, or to another public water supply if City water service is not available.

(f) All buildings occupied or used for authorized permanent or temporary occupancy must have at least one functional restroom containing a toilet installed and connected to the municipal sewage system if connection to the municipal sewage system is available, or if municipal sanitary sewer service is not available, connected to an on-site sewer system which complies with the applicable OSSF regulations of the Texas Commission on Environmental Quality. Commercial businesses that are otherwise exempt by the applicable codes adopted by the City from having a restroom are unaffected by this provision.

(g) All buildings occupied or used for authorized permanent or temporary occupancy shall have safe and unobstructed means of egress leading to safe and open space at ground level, as required by the building/safety code(s) adopted by the City of Marlin.

(h) All buildings occupied or used for authorized permanent or temporary occupancy shall have adequate windows and systems for ventilation.

(i) No building occupied or used for authorized permanent or temporary occupancy shall be maintained in a condition which renders it unsafe or uninhabitable for humans.

(j) No building occupied or used for authorized permanent or temporary occupancy shall be maintained in a condition which does not offer reasonable protection from the elements to its inhabitants.

(k) To the extent allowed by municipal code, any septic tank system must be constructed and maintained in accordance with the applicable code adopted by the City and applicable state standards.

**Sec. 7-61. PROHIBITION OF DELAPIDATED AND SUBSTANDARD BUILDINGS**

a) No person shall allow a building owned by that person to become, or to continue to exist as, a Dilapidated Building or Substandard Building as those terms are defined herein.

b) The owner of a Dilapidated Building or Substandard Building as defined herein is in violation of this Chapter and is subject to the enforcement procedures and penalties provided by law and this Chapter.

c) Any person, firm, or corporation violating any of the provisions of this section or any amendment thereto shall be deemed guilty of a misdemeanor, and upon conviction in municipal court shall be subject to a fine not to exceed the sum of \$2,000.00 for each offense, and each and every day such violation continues shall constitute a separate offense.

**Sec. 7-62. PROHIBITION OF VACANT UNSECURED BUILDINGS**

No person shall allow a building that person owns to exist as an Unsecured Vacant Building as defined in this Chapter. The owner of an Unsecured Vacant Building as defined in this Chapter violates this Chapter, and is subject to the enforcement procedures provided by law and this Chapter. Any person, firm, or corporation violating any of the provisions of this section or any amendment thereto shall be deemed guilty of a misdemeanor, and upon conviction in municipal court shall be subject to a fine not to exceed the sum of \$2,000.00 for each offense, and each and every day such violation continues shall constitute a separate offense.

**Sec. 7-63. BOARDED UP OR FENCED BUILDINGS**

No person shall allow a building owned by that person to exist in a state where (a) the building constitutes a danger to the public even though secured from entry, or (b) the means used to secure the building are inadequate to prevent unauthorized entry or use of the vacant building. Any person, firm, or corporation violating any of the provisions of this section or any amendment thereto shall be deemed guilty of a misdemeanor, and upon conviction in municipal court shall be subject to a fine not to exceed the sum of \$2,000.00 for each offense, and each and every day such violation continues shall constitute a separate offense.

**Sec. 7-64. ENFORCEMENT OFFICERS; INSPECTIONS AND RIGHT OF ENTRY; REFUSAL TO ALLOW INSPECTION AN OFFENSE**

a) Any City code enforcement officer and the Fire Chief or his designee (hereinafter collectively referred to as "Code Enforcement Officer") is authorized to enforce this Chapter.

b) In addition to inspections provided for or required in any other Chapter or Chapter of the Code, a Code Enforcement Officer shall have the power and is authorized to inspect any building for the purpose of administering this Chapter. The owner or person in control of the building must give the Code Enforcement Officer access to the building at all reasonable times.

c) Refusal of the owner or person in control of a building to allow the Code Enforcement access to the building to conduct an inspection is a violation of this Chapter and is a criminal offense (misdemeanor) punishable by a fine not to exceed \$500. Each day of violation constitutes a separate offense.

**Sec. 7-65. CIVIL ENFORCEMENT PROCEDURES**

a) After compliance with the procedures set forth herein, the City may require the vacation or relocation of occupants of a building, the repair, removal or demolition of a building, and/or the securing of a building that is a Dilapidated Building, Substandard Building or an Unsecured Vacant Building.

b) Prior to enforcement action being taken, written notice shall be provided to the owner of the building by U.S. mail, certified/return receipt requested at the address of the owner determined by the best efforts of the City. Said notice must be served on the owner at least ten (10) days prior to the hearing on the matter. Refused and unclaimed notices at a verified last known address are deemed to be actual

notice. A notice shall also be sent to each lienholder or mortgagee of record with regard to the building as shown in the Deed Records of the Falls County Clerk by personal delivery or by certified mail return receipt requested.

c) If notice as provided in (b) above is unobtainable, notice shall be given by publishing the notice at least twice within a 10-day period in a newspaper of general circulation in Falls County, the final publication to be at least ten (10) days prior to the hearing on the matter. Newspaper notice must be supplemented by mailed notice to the last known owner and last known address determined by the City's exercise of reasonable diligence, and by a copy of the notice being attached to the building.

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

d) The notice of hearing may be filed in the Deed Records of the Falls County Clerk's office. To be so filed, said notice must contain the name and address of the owner of the affected property if that information can be determined from the best efforts of the City, a legal description of the affected property, and a description of the hearing. The filing of the notice is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice, and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice.

e) At the appointed date noticed to the owner, and lienholders or mortgagees, a public hearing shall be held before the City Council. The City representative shall give a brief description of how the building is not in compliance with each standard claimed to be violated and present any information supporting the existence of the violation to the Council. Thereafter, the owner, and any lienholder and/or mortgagee, shall each be given an opportunity to be heard on the issue of whether or not the building is, in fact, a Dilapidated Building or a Substandard Building in violation of the minimum standards of this Chapter, or whether or not the building is an Unsecured Vacant Building in violation of this Chapter. The owner, lienholder, and/or mortgagee will also be required to submit at the hearing proof of the scope of any work that may be required to comply with the Chapter and a projected time that it will take to reasonably perform the work. The owner, lienholder, and/or mortgagee may appear by or with a representative. The City has the burden of proof to show by a preponderance of evidence that the building is a Dilapidated Building or a Substandard Building in violation of the minimum standards of this Chapter, or an Unsecured Vacant Building in violation of this Chapter. The owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with this Chapter, and the time it will take to reasonably perform the work.

f) After the public hearing, if the building is found by the Council to be in violation of the standards set out in this Chapter, the Council may order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time. The Council may also order that the occupants be relocated within a reasonable time.

g) The order issued by the Council shall specify a reasonable time for the building to be vacated, secured, repaired, removed or demolished by the owner or for the occupants to be relocated by the owner, and an additional reasonable time shall be provided for the ordered action to be taken by any mortgagee or lienholder, in the event that the owner fails to comply with the order within the time provided for action by the owner. After the hearing, the City will promptly deliver by personal delivery or certified mail, return receipt requested, a copy of the order to the owner of the building and to any mortgagee or lienholder. The City shall use the records and the office of the Falls County Clerk to identify the address

of any owner, lienholder, or mortgagee of the property. The City shall use its best efforts to determine the identity and address of any owner, lienholder, or mortgagee of the building. No notice other than the copy of the order is required to a mortgagee or lienholder in the event that the owner fails to timely take the action ordered.

h) Within ten (10) days after the date that the Council issues the order, the City shall: (1) file a copy of the order in the office of the City Secretary, and (2) publish in a newspaper of general circulation in Marlin, Texas, a notice containing: (a) the street address or legal description of the property; (b) the date of the hearing; (c) a brief statement indicating the results of the order; and (d) instructions stating where a complete copy of the order may be obtained.

i) The Council's order shall require the owner, lienholder, or mortgagee of the building to, within thirty (30) days, secure the building from unauthorized entry; or repair, remove, or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within thirty (30) days. If more than thirty (30) days are allowed to the owner, lienholder, or mortgagee to repair, remove, or demolish the building, then the Council shall establish a specific time schedule for the commencement and performance of the work, and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed. Notwithstanding anything to the contrary herein, the Council will not allow the owner, lienholder, or mortgagee more than ninety (90) days to repair, remove, or demolish the building, or fully perform all work required to comply with the order, unless the owner, lienholder, or mortgagee: (1) submits at the hearing a detailed plan and time schedule for the work; and (2) establishes at the hearing that the work cannot be reasonably completed within ninety (90) days because of the scope and complexity of the work. If more than ninety (90) days are allowed to an owner, lienholder, or mortgagee to complete any part of the work required to repair, remove, or demolish the building, the City will require the owner, lienholder, or mortgagee to regularly submit progress reports to the City to demonstrate that the owner, lienholder, or mortgagee has complied with the time schedule established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee to appear before the City Manager, or the City Manager's official designee, to demonstrate compliance with the time schedules. If the Council allows more than 90 days to complete the work, the Council may require a bond or other security as authorized under section 214.001(k) of the *Local Government Code* if the owner or lienholder/mortgagee owns property within the City (including structures or improvements) which exceed one hundred thousand (\$100,000.00) dollars in total value.

j) If the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time set forth in the order, the City may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense. If the City incurs expenses hereunder, those expenses may be assessed on, and the City has a lien against, the property on which the building is or was located for such expenses (except homestead property protected by the Texas Constitution). Said lien is extinguished if the property owner or another person having an interest in legal title reimburses the City for the expenses. The lien arises and attaches on the property at the time notice of lien is recorded and indexed in the office of the County Clerk of Falls County. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the property on which the building is or was located, the amount of expenses incurred by the City, and the balance due. If the notice is given, and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as set forth herein, the lien is a privileged lien, subordinate only to tax liens.

k) Any notice or provision of a copy of an order required herein which is returned by the United States Postal Service as "refused" or "unclaimed" is deemed to have been delivered.

l) If demolition is ordered the City Manager will review the matter to determine whether the city shall proceed with the demolition or a seek a district court order in accordance with section 7-70. If the structure is clearly a nuisance that is not reasonably repairable---fallen-in, etc., the City Manager will assure that photographic evidence of the condition of the structure is maintained and shall proceed with city abatement. If it is questionable whether the structure could be rendered compliant by reasonable

repairs, the City Manager shall obtain approval of the City Council to pursue an action in district court as provided in section 7-70; however, if the time for the owner to appeal the Council's decision to a district court has passed, the City Manager shall consult with the City Attorney as to whether an action under section 7-70 is necessary or whether the City can proceed with demolition.

**Sec.7-66. SECURING NON-COMPLYING BUILDINGS**

a) The City may secure a building that is determined to be in violation of the minimum standards of this Ordinance and is unoccupied or is occupied only by persons who do not have a right of possession to the building. The City is allowed to do this for the protection of the health, safety and welfare of the citizens of the City of Marlin.

b) Before the eleventh (11th) day after the building is secured, the City shall give notice to the owner by: (1) personally serving the owner with written notice; (2) depositing a notice in the United States mail addressed to the owner at the owner's post office address; (3) publishing the notice at least twice within a ten (10) day period in a newspaper of general circulation in Falls County if personal service cannot be obtained and owner's post office address is unknown; or (4) posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.

c) The notice must contain: (1) an identification, which is not required to be legal description, of the building and the property on which it is located; (2) a description of the violation of municipal standards that is present at the building; (3) a statement that the City will secure or has secured, as the case may be, the building; and (4) an explanation of the owner's entitlement to request a hearing about any matter relating to the City's securing of the building.

d) The City shall conduct a hearing on the date noticed in which the owner may testify or present witnesses or written information about any matter relating to the City's security of the building if, within thirty (30) days after the date the City secures the building, the owner files with the City a written request for the hearing. The City, through its City Council, shall conduct the hearing within twenty (20) days after the date the request is filed. The City has the same authority to assess expenses under this section as it has to assess expenses under section 7-65 above. A lien is created under this section in the same manner that a lien is created under section 7-65 above, and is subject to the same conditions as a lien created under that section.

e) The procedures and enforcement powers set out hereunder are in addition to those set forth in prior sections of this Chapter.

**Sec. 7-67. ADDITIONAL ENFORCEMENT ACTION: CIVIL PENALTY**

a) In addition to the enforcement action provided for above, after the time allotted for the owner and/or lienholder and/or mortgagee to undertake the required actions, the City may assess a civil penalty against the property owner for failure to repair, remove, or demolish the building as ordered. The civil penalty may be assessed by the City Council after the allotted time for compliance has passed. The owner and/or lienholder shall have an opportunity to be heard prior to assessment of the penalty. The owner and/or lienholder will be notified of the hearing at which the penalty may be imposed in the same manner as the owner and/or lienholder was notified of the hearing on the property's violation status. At the hearing the City must prove: (1) the property owner was notified of the requirements of the Ordinance and the owner's need to comply with the requirements; (2) the property owner was ordered to undertake action to repair, remove, or demolish the building within an allotted time, and (3) the property owner failed to comply with the order within the allotted time.

b) The City shall impose a lien against the land on which the building stands or stood, unless it is a homestead that is protected by the Texas Constitution, to secure the payment of the civil penalty. Promptly after the imposition of the lien, the City must file of record, in recordable form, in the office of the County Clerk of Falls County, written notice of the imposition of the lien. The notice must contain a

legal description of the land. Except as provided by §214.001 of the *Local Government Code*, the City's lien to secure the payment of the civil penalty is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the City's lien attaches if the mortgage lien was filed for record in the office of the Falls County Clerk before the date the civil penalty was assessed. The City's lien is superior to all other previously recorded judgment liens.

c) Any civil penalty assessed under this section accrues interest at a rate of ten percent (10%) per year from the date of the assessment until paid in full.

d) A civil penalty assessed against a property owner may not exceed \$1,000.00 per day for each violation or, if the owner shows that the property is the owner's lawful homestead, may not exceed \$10.00 per day for each violation. This assessment of a civil penalty is final and binding, and constitutes prima facie evidence of the penalty in any suit brought by the City in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty. To enforce the civil penalty hereunder, the City Secretary shall file with the Falls County District Clerk a certified copy of the order issued by the City Council stating the amount and duration of the penalty. No other proof is required for a district court to enter a final judgment on the penalty.

e) The City's right to the assessment lien may not be transferred to third parties.

f) In any judicial proceeding regarding enforcement of the City's rights under this section, the prevailing party is entitled to recover reasonable attorney's fees from the non-prevailing party.

#### **Sec. 7-68. ADDITIONAL ENFORCEMENT ACTION: REPAIR**

a) In addition to the enforcement action provided for above, after the time allotted by the order for the owner and/or lienholder and/or mortgagee to undertake the required actions, the City may repair the building at the expense of the City and assess the expenses on the land on which the building stands or to which it is attached.

b) The City may not repair a building beyond the extent necessary to bring the building into compliance with the minimum standards, and only then if the building is a residential building with ten (10) or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds the minimum standards.

c) The City shall impose a lien against the land on which the building stands or stood, unless it is a homestead that is protected by the Texas Constitution, to secure the payment of the repair expenses. Promptly after the imposition of the lien, the City must file of record, in recordable form, in the office of the County Clerk of Falls County, written notice of the imposition of the lien. The notice must contain a legal description of the land. Except as provided by §214.001 of the *Local Government Code*, the City's lien to secure the payment of the civil penalty or the cost of repairs is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the City's lien attaches if the mortgage lien was filed for record in the office of the Falls County Clerk before the date the repair is begun by the City. The City's lien is superior to all other previously recorded judgment liens.

d) Any assessment imposed under this section accrues interest at a rate of ten percent (10%) per year from the date of the assessment until paid in full.

e) The lien acquired under this section for repair expenses may not be foreclosed if the property on which the repairs are made is occupied as a residential homestead by a person 65 years of age or older.

f) The City's right to the assessment lien may not be transferred to third parties.

g) In any judicial proceeding regarding enforcement of the City's rights under this section, the prevailing party is entitled to recover reasonable attorney's fees from the non-prevailing party.

#### **Sec.7-69. PRESUMPTION OF OWNERSHIP/DETERMINATION OF IDENTITY AND/OR ADDRESS OF OWNERS, LIENHOLDERS, AND MORTGAGEES**

a) The City may include in any notice required in this Chapter the required information/notices set out in §54.005 of the *Local Government Code*. If the addressee fails to take the action required of the

addressee under §54.005, the addressee is presumed to be an owner of the property for purposes of this Chapter.

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

1. Falls County real property records of the Falls County Clerk;
2. Falls County Appraisal District records;
3. Records of the Secretary of State;
4. Assumed Name Records of Falls County;
5. City tax records; and
6. City utility records.

c) Any notice or provision of a copy of an order required herein which is returned by the United States Postal Service as “refused” or “unclaimed” is deemed to have been delivered.

**Sec. 7-70. ALTERNATIVE ENFORCEMENT: ACTION TO COMPEL REPAIR OR DEMOLITION OF STRUCTURE**

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

b) To recover civil penalties under Section 54.017 of Texas Local Government Code the City must prove that (1) the property owner was notified of the requirements of the Chapter and the owner's need to comply with the requirements; and (2) after notification, the property owner committed an act in violation of this Chapter or failed to take action necessary for compliance with this Chapter.

c) The civil penalty may not exceed \$1,000 per day.

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

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

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

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

**Sec. 7-71. BUILDING ENCROACHING ONTO STREET**

If a building has deteriorated such that part of it has fallen onto a municipal street, the City may take immediate action to demolish and remove the deteriorated portion thereof encroaching on the street without prior notice. The property owner will be notified of the cost incurred by the City and given an opportunity to be heard before the City Council as to whether he/she should be assessed the City's costs incurred. If the City Council determines that the property owner should be assessed the cost, the City Council shall enter an order that the property owner pay the cost. If the cost is not paid within the time

allotted by the Council, the City may seek recovery from the property owner by any lawful means.

**Sec. 7-72. IMMINENT THREATS TO PUBLIC SAFETY**

Where a building or other structure exists in such a state due to calamity that it constitutes an imminent threat to public safety by collapse, falling materials or fire hazard; the City may take immediate action to abate the threat by demolishing and removing the building or structure. This authority shall not be used to address long-standing conditions or conditions that do not present an imminent threat to public safety. The purpose of this section is to address conditions brought about by an unforeseen calamity such as a fire, flood or tornado. The property owner will be notified of the cost incurred by the City and given an opportunity to be heard before the City Council as to whether he/she should be assessed the City's costs incurred. If the Council determines that the property owner should be assessed the cost, the Council shall enter an order that the property owner pay the cost. If the cost is not paid within the time allotted by the Council, the City may seek recovery from the property owner by any lawful means.

**Sec. 7-73. FIRE HAZARDS**

A building that has been condemned as a fire hazard by the Fire Chief or his/her designee may be abated in the same manner and under the same procedures as set forth in sections 7-65, 7-67 and 7-68 above or by an action as set forth in section 7-70 above. If the Fire Chief or his/her designee finds that an imminent threat of fire exists due to some condition of the building, action to prevent that occurrence short of the demolition or repair of the building may be taken prior to notice and a hearing being provided or an action being filed.

**Sec. 7-74. JUDICIAL REVIEW**

In accordance with §214.0012 of the *Local Government Code (V.T.C.A.)*, any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order issued under this Chapter, as authorized by §214.0012 of the *Local Government Code*, may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Said procedures are subject to the conditions, rules and regulations found at §214.0012 of the *Local Government Code*. Upon receipt of notice of the filing of such an action, the City shall suspend any enforcement action against the subject property pending the outcome of the judicial review.

SECTION 3. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are 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 and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4. This ordinance shall become effective upon passage and publication in accordance with laws of the State of Texas and the Charter of the City of Marlin.

SECTION 5. That all ordinances or any parts thereof in conflict with the terms of this ordinance shall be and hereby are deemed repealed and of no force or effect; provided, however, that the ordinance or ordinances under which the cases currently filed and pending in the Municipal Court of the City of Marlin, Texas, shall be deemed repealed only when all such cases filed and pending under such ordinance or ordinances have been disposed of by a final conviction or a finding not guilty or nolo contendere, or dismissal.

SECTION 6. The fact that the present ordinances and regulations of the City of Marlin, Texas, are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the public creates an emergency which requires that this ordinance become effective from and after the date of its passage and publication, and it is accordingly so ordained.

SECTION 7. The City Secretary is hereby directed to publish the caption of this Ordinance at least one time in the official City newspaper.

SECTION 8. It is found and declared that the City Council meeting at which this Ordinance has been adopted was open to the public and was noticed and held in accordance with Chapter 551 of the government code.

FIRST READING PASSED this 8<sup>th</sup> day of January, 2013 by a vote of 7 AYES to 0 NAYS with 0 Absentions.



*Elizabeth Nelson*

Elizabeth Nelson, Mayor

*Sandra Herring*

Sandra Herring, City Secretary

SECOND READING PASSED this 12 day of February, 2013 by a vote of 7 AYES to 0 NAYS with 0 Absentions.



*Elizabeth Nelson*

Elizabeth Nelson, Mayor

*Sandra Herring*

Sandra Herring, City Secretary