

Ordinance No. 031119F

EXHIBIT A
CITY OF HONEY GROVE, TEXAS
SUBSTANDARD AND DANGEROUS BUILDINGS AND STRUCTURES

Section 1. Statutory authority.

This ordinance, known as the Substandard and Dangerous Building Code (hereafter, the Code) is intended to adopt and implement in the broadest possible terms the powers, duties, and authorities set out in Sub-Sections B and C of Section 54 of the Local Government Code of the State of Texas, as said statutes apply to the subject matter of this ordinance, and as otherwise stated herein, and other powers granted a Type A Municipality under the laws of the State of Texas. Provisions of this ordinance shall not be narrowly construed, but shall be broadly applied to accomplish the stated purposes of this ordinance. In addition, this ordinance is intended to fully recognize and implement the procedures and authority set out in Sub-Section A, Section 214 Municipal Regulation of Housing and Other Structures, as contained in the Texas Local Government Code.

Section 2. Scope and Definitions.

Scope: All buildings are structures which require to be repaired under this Ordinance shall be subject to the provisions of the currently adopted edition of the International Building Code, as well as all Building and Construction Ordinances for the City.

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

(A) *Building and Standards Commission* shall mean that Building and Standards Commission duly appointed and created as set out in this Code.

(C) *Code Inspectors* shall mean the code inspectors of the City of Honey Grove, Fannin County, as the same shall be designated by the City Administrator of the City of Honey Grove, Fannin County.

(C) *Dangerous building or structure*: All buildings or structures which have any of the following defects or lack of facilities shall be deemed dangerous buildings or structures:

1. Whenever any door, isle, passageway, stairway, or other means of exit is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
2. Whenever the walking surface of any isle, passageway, stairway, or other means of exit is so warp, worn, loose, or torn, or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

3. Whenever the stress in any materials, member or portion thereof due to all dead and live loads is more than one and one-half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose, or location.
4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.
5. Whenever any portion or member or appurtenance thereof appears likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
6. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the Building Code for a new buildings of similar structure, purpose, or location without exceeding the work stresses permitted in the Building Code for such buildings.
7. Whenever any portion thereof has cracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
8. Whenever the building or structure or any portion thereof because of (1) dilapidation, deterioration, or decay; (2) faulty construction; (3) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (4) the deterioration, decay, or inadequacy of it's foundation; or (5) any other cause, is likely to partially or completely collapse.
9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which is being used.
10. Whenever the exterior walls or vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
11. Whenever the building or structure, exclusive of the foundation, shows thirty-three percent (33%) or more damage or deterioration of it's supporting member or members, or fifty percent (50%) damage or

deterioration of its nonsupporting members, enclosing or outside walls or coverings.

12. Whenever the building or structure has been so damaged by natural causes including, but not limited to fire, wind, earthquake or flood; or damaged by exposure to the elements, particularly wind, hail, or rain; or has become so dilapidated or deteriorated as to become (1) an attractive nuisance to children; (2) a harbor for vagrants, criminals or immoral persons; or as to (3) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.
13. Whenever any building or structure has been constructed, exits or is maintained in violation of any specific requirements or prohibition applicable to such building or structure provided by the building regulations of this City, as specified in the Building Code or Housing Code, or of any law or ordinance of this state or City relating to the condition, location or structure of buildings.
14. Whenever any building or structure which, whether erected in accordance with all applicable laws ordinances, has in any nonsupporting part, member or portion less than fifty percent (50%), or in any supporting part, member or portion less than sixty-six percent (66%) of the (1) strength, (2) fire-resisting qualities or characteristics, or (3) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal (public safety official) to be a fire hazard.
17. Whenever any building or structure is in such a condition as to constitute a public nuisance as known to the common law or in equity jurisprudence.
18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute an attractive nuisance or hazard to the public.

19. Any minimum standard provided by the Housing Code, Building Code or the Uniform Fire, Mechanical, Plumbing or Electrical Codes as amended, and as adopted by the City Council for the City of Honey Grove, Fannin County, Texas.
20. All buildings or structures that have become deteriorated through natural causes or by damage through exposure to the elements, especially wind, hail, or rain, or damage through fire to the extent that the roof, windows, or doors, or portions of the house, building, or structure which protect the interior from the weather, would no longer reasonably protect from the weather.
21. All buildings or structures of which the floors, walls, ceilings, and all supporting members are not capable of bearing imposed loads safely.
22. All buildings or structures not wired so as to provide in operating condition, electrical circuits sufficient to safely carry a load imposed by normal use of appliances and fixtures.
23. All buildings or structures so deteriorated or constructed or permitted to be constructed as to constitute a menace to the health or safety, including all conditions conducive to the harboring of rats or mice or other disease carrying animals or insects, reasonably calculated to spread disease; and includes such conditions hazardous to safety such as inadequate bracing or use of deteriorated materials.
24. All buildings or structures in noncompliance with the requirements of the City's building code, electrical code, plumbing code, fire code, or other applicable codes of the City such that said buildings or structures constitute a menace or hazard to the public health or safety.
25. All buildings or structures so dilapidated or substandard as to be unfit for human habitation and a hazard to the public health, safety, and welfare.
26. All buildings or structures which, because of activities involving the sale, use, or abuse on said premises of illicit drugs or alcohol or other similar activities, as certified by the chief of police, the fire marshal, the environmental health officer, or their designees, constitute a fire hazard or a menace to the health, safety, and welfare of the citizens of the city.
27. All buildings or structures, regardless of their structural condition, which are unoccupied by their owners, lessees, or other invitees and are unsecured from unauthorized entry to the extent they could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children.

28. All buildings and structures that, even though boarded up, fenced, or otherwise secured; a) constitute a danger to the public even though secured from entry, or b) the means used to secure the building or adequate to prevent an authorized entry, including but not limited to entry or use by vagrants, any unauthorized persons, or children.
29. For purposes of this Section, additions, appendages or attachments to buildings, such as awnings, poles, signs, gutters or overhangs. Shall be deemed structures.

(D) *Vacate or order the vacation of a building or structure* under this ordinance shall mean to require or cause individuals other than the owner, the owner's lessee, or other invitees of the owner or lessee, to leave or quit the premises of said building or structure.

(E) Building Code is the Uniform Building Code promulgated by the International Conference of Building Officials as adopted by this jurisdiction. It may also be known as the International Building Code as amended or updated.

Section 3. Public nuisance declared.

All dangerous buildings or structures which shall constitute a menace to the health, morals, safety, or general welfare of their occupants or of the general public are declared to be public nuisances and shall be ordered to be vacated, repaired, secured, or demolished as provided by this Ordinance.

Section 4. Building and Standards Commission.

Section 4.01. Created; purpose. There is hereby created a Building and Standards Commission of the City of Honey Grove, Fannin County, whose members shall be appointed by the City Council to hear and determine cases concerning alleged violations of this Code.

Section 4.02. Membership and Terms. The Building and Standards Commission created hereunder shall consist of five (5) members appointed by the City Council, each of whom shall be a resident of the city of Honey Grove, Fannin County. The members of said Commission shall hold their offices for a period of two years, or until their successors are appointed, provided that three (3) of the five (5) initially appointed hereafter shall serve for a term of one year, unless reappointed, such that all members shall ultimately serve a staggered term of two years. As nearly as practical, the members of said Commission shall be qualified in one or more of the fields of fire prevention, building construction, sanitation, health, public safety, and historic preservation, and as nearly as practical shall be selected one (1) each by each City Council person. The City Council may remove a 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 Commission member subject to the removal action. The City Council shall also appoint four alternate members of the Commission who shall serve in the absence of one or more regular

members when requested to do so by the city administrator or a code inspector as the city administrator's designee. The alternate members serve for the same period and are subject to removal in the same manner as the regular members. Any vacancy on the Commission shall be filled by appointment by the City Council for the unexpired term. A vacancy for alternate members shall be filled in the same manner as a vacancy among the regular members. The city's code inspectors shall also be ex officio and nonvoting members of the Building and Standards Commission.

Alternate Membership and Terms. Alternative Membership. The Planning and Zoning Committee may, at the discretion of the City Council, serve as the Building and Standards Commission.

Municipal Court. Alternatively, any and all hearings provided by this Ordinance may be conducted by the Municipal Court of the City of Honey Grove utilizing the established proceedings of the Building and Standards Commission.

Section 4.03. Proceedings of the Commission.

(1) The Building and Standards Commission shall upon due notice as set out herein conduct public hearings and other proceedings to implement and enforce the provisions of this Code. In any event, public hearings as set out herein shall be conducted as otherwise provided herein and shall be a precedent to the issuance of any orders by said Commission.

(2) The Commission shall by majority approval of the entire Commission adopt rules and establish procedures for use in said hearings, providing ample opportunity for presentation of evidence and testimony by respondents or persons opposing charges brought by the City or its code inspectors relating to alleged violations of this Ordinance.

(3) Meetings of the Commission shall be held at the call of the chairperson and at other times as determined by the Commission. All meetings of the Commission shall be open to the public. Members of the Commission shall by their own ballot choose a chairperson and vice chairperson to serve in the absence of the chairperson. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. A quorum of four (4) members of the Commission shall be necessary to conduct all business of the Commission. All cases to be heard by the Commission must be heard by at least four (4) members. The concurring vote of four (4) members of the Commission shall be necessary to take any action under this Ordinance.

(4) The Code Inspectors of the City of Honey Grove, Fannin County shall present all cases before the Commission. The City Attorney may, in his or her discretion, participate in the presentation of such cases or in any other matters to come before the Commission.

(5) 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 office of the Commission as public records. Alternatively, the Commission may produce and use an "Order" in writing, detailing the findings and the action required from the owner.

(6) In any public hearing or other proceeding conducted by the Commission to determine whether a building or other structure complies with the requirements of the Code, the owner, lienholder, or mortgagee shall have the burden of proof, by clear and convincing evidence to demonstrate the scope of any work that may be required to comply with this Ordinance and the time it will take to reasonably perform the work. The filing of a report by the Code Inspector raises a presumption of the existence of a substandard or dangerous building for purposes of a Commission hearing.

Section 4.04. Notice; orders of the Commission.

(1) Unless other requirements are specified herein, notice of all public hearings and other proceedings before the Commission must be given:

a. By personal delivery or by certified mail, return receipt requested with a second copy by regular first class mail, to the record owners of the affected property, and each holder of a recorded lien against the affected property, as shown by the records in the office of the County Clerk of Fannin County 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

b. 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.

c. Presumption of Notice: If the return receipt is returned as "unclaimed" or if the regular first class mailing is not returned for an address defect, then notice is presumed if the return receipt is returned as "unclaimed" or if the regular first class mailing is not returned for insufficient address or other similar defect.

(2) In ascertaining the identity and addresses of any property owners or lienholders of the affected property, the code inspectors shall search the following records:

a. Real property records of the county in which the property is located;

b. Appraisal district records of the appraisal district in which the property is located;

- c. Records of the secretary of state, if the property owner or lienholder is a corporation, partnership, or other business association;
- d. Assumed name records of the county in which the property is located;
- e. City of Honey Grove, Fannin County tax records; and
- f. City of Honey Grove, Fannin County utility records.

(3) The notice must be posted and either personally delivered or mailed on or before the 10th calendar day before the date of the hearing, and must state the date, time, and place of the hearing. In addition, the notice must be published in a newspaper of general circulation in the city on one occasion on or before the 10th calendar day before the date fixed for the hearing.

(4) In addition to the requirements of Section 4.04(3) herein, all notices sent by mail shall contain as a minimum the following:

- a. An identification, which is not required to be a legal description, of the building and the property on which it is located;
- b. A description of the violation of City codes or substandard conditions that exist at the building (a copy of the Code Inspector Report is sufficient);
- c. 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 bring the structure into compliance with the requirements of this Ordinance along with proof of the time it will take to reasonably perform the work; and
- d. A statement that the City will vacate, secure, remove, or demolish the building if any ordered action is not taken within 30 calendar days unless additional time is granted by the Commission as set forth herein.
- e. Language equivalent with or consistent with Section 54.005 of the Local Government Code directing that the recipient of the notice if they are not the owner execute an affidavit returnable immediately to the City of Honey Grove, Fannin County, on a form provided, providing information concerning ownership, note holders, liens or titles.

(5) The Commission shall file notice of a proceeding before the Commission in the Official Public Records of Real Property in the county in which the property is located. The notice must contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the records as set forth in Section 4.04(2) herein, a legal description of the affected property, and a description of the proceeding. 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 proceeding on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice. The hearing notice previously mentioned in this Section, may be used to satisfy this filing requirement.

(6) When notice is mailed in accordance with this section to a property owner or lienholder and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

(7) After a hearing on an affected property, the Commission shall reduce any order it issues to writing. Each such order shall specify the action to be taken as part of the notice and shall order the owner, lienholder, or mortgagee of the building to, within 30 calendar 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 30 calendar days. If the Commission allows the owner, lienholder, or mortgagee more than 30 calendar days to repair, remove, or demolish the building, the Commission shall set forth 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.

(8) The Commission shall not allow the owner, lienholder, or mortgagee more than ninety (90) calendar 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 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) calendar days because of the scope and complexity of the work. In such case, the Commission shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the Commission and the code inspector to demonstrate compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the Commission or the Commission's designee to demonstrate compliance with the time schedules.

(9) If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within Fannin County, Texas that exceeds \$100,000.00 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 a building under this Code. In lieu of a bond, the municipality may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third-party approved by the municipality. The bond must be posted, or the letter of credit or third party guaranty

provided, not later than the 30th calendar day after the date the Commission enters the order.

(10) Once the Commission has reduced its order to writing, it shall promptly mail, by certified mail, return receipt requested, or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building at the address ascertained as provided in Section 4.04(2) herein.

(11) Within 10 calendar days after the date of issuing any order, the Commission shall:

a. file a copy of the order with the City Secretary of the City of Honey Grove, Fannin County;

b. publish one time in a newspaper of general circulation in the city of Honey Grove a notice and abbreviated copy of the order containing:

1. the street address or legal description of the property;
2. the date of the hearing;
3. a brief statement indicating the results of the order; and
4. instructions stating where a complete copy of the order may be obtained.

(12) If, after the hearing, the owner does not take the ordered action within the allotted time, the municipality shall personally deliver or send by certified mail, return receipt requested, to each identified mortgagee and lienholder a notice containing:

a. An identification, which is not required to be a legal description, of the building and the property on which the building is located;

b. A description of the violation of municipal standards that is present at the building; and

c. A statement that the municipality will vacate, secure, remove or demolish the building or relocate the occupants of the building if the ordered action is not taken within a reasonable time.

Section 4.05. Authority of the Commission. Following notice and public hearing, the Commission may undertake any of the following actions, or a combination of such actions:

(1) Declare a building or structure dangerous or substandard in accordance with the standards set out in this Code;

(2) Order the securing, within a fixed period, of buildings or structures found to be in violation of this Code;

(3) Order the demolition or removal, within a fixed period, of buildings or structures found to be in violation of this Code;

(4) Order the repair, within a fixed period, of buildings or structures found to be in violation of this Code;

(5) Order, in an appropriate case, the immediate vacation of persons or the immediate removal of property found on private property, enter on private property to secure the vacation or removal if it is determined that conditions exist on the property that constitute a violation of this Code, and order action to be taken as necessary to remedy, alleviate, or remove any substandard building or structure found to exist.

(6) Issue orders or directives to any peace officer of the state, including a sheriff or constable or the chief of police of the City, to enforce and carry out the lawful orders or directives of the Commission; and

(7) Upon a finding that the owner was actually notified of the provisions of this Ordinance and any other applicable City building standards, and a further finding that after the owner received notice of this Code's provisions, the owner committed acts in violation of this Code or failed to take action necessary for compliance with this Ordinance, the Commission then may determine the amount and duration of a civil penalty which the city may be entitled to recover for such violations, not to exceed \$1,000.00 per day for each violation of this Ordinance for non-homestead property, \$10 per day for homestead property. Any civil penalty so assessed shall accrue interest at the legal rate from the date of assessment until paid in full.

Section 4.06. Standards. The following standards shall be applied by the Building and Standards Commission in determining whether or not to order a building or structure repaired, vacated, demolished, or secured, or a combination of such remedies:

(1) If the dangerous building or structure can be reasonably repaired so that it will no longer be in a condition which is in violation of this Code, it shall be ordered repaired consistent with the standards of the Fire Code, Electrical Code, Plumbing Code, Building Code, or other codes of the City of Honey Grove, Fannin County.

(2) If the dangerous building or structure is in such condition as to make it dangerous to the health, morals, safety, or general welfare of its occupants or of the public, it shall be ordered to be vacated.

(3) In any case where a dangerous building or structure is so damaged or destroyed that it cannot be repaired so that its existence will no longer be in violation of the terms of this Code, it shall be ordered demolished and removed.

(4) If open to the public such as to constitute a threat to public health or safety, the Commission may order such building secured by such means as the Commission shall deem appropriate.

(5) If the building repair requires greater than fifty percent (50%) of the building surface, or an amounting greater than fifty percent (50%) of the building value, it shall be demolished. Further, if a building cannot be repaired so that it will be brought into compliance with this Ordinance, it shall be demolished. Additionally, if the building as it stands presents an incurable fire hazard in violation of the terms of this Code or any Ordinance of the City or Statute of the State, it shall be demolished. For the purpose of this Code, the term "demolished" includes the cleaning and grading of the property and the removal of all debris and trash.

(6) If the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated with the time allotted consistent with the final order of the Commission, the City may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense, and may thereafter access expenses and establish a lien, against the property consistent with this Code, the Local Government Statutes as adopted hereby, or the laws of the State of Texas.

(7) If, after the expiration of time for removal, repair, vacation, or securing of a dangerous or substandard building as allowed, the owner, lienholder or other person or entity at interest fails to comply, the city may do or cause to be done the repairs necessary to bring the building into compliance with applicable codes of the city, only if the building is a residential building; however, the repairs made may not improve the building to the extent that the building exceeds the minimum standards as defined by this Code. Any and all expenses may be assessed and collected as provided in this Code, Section 54 of the Local Government Code as adopted herein, and/or the laws of the State of Texas.

Section 4.07. Civil penalties final.

(1) An assessment of a civil penalty by the Commission as provided in this Ordinance 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 City for final judgment as provided elsewhere herein.

(2) To enforce any civil penalty as assessed hereunder, the City Secretary shall file with the district clerk of Fannin County a certified copy of the Commission's order establishing the amount and duration of the civil penalty. No other proof is required for a district court to enter final judgment on said penalty.

Section 5. Judicial review.

- (a) Any owner, lienholder, or mortgagee of record, jointly or severally aggrieved by any Order or Decision of the Commission may present a Petition to a District Court, duly verified, setting forth that the Order or Decision is illegal, in whole or in part, and specifying the grounds of the illegality. The Petition must be presented to the Court within 30 calendar days after the date a copy of the Final Order or 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 by this Ordinance. Proof of mailing establishes a presumption of notice for purposes of Judicial review.
- (b) On presentation of the Petition, the Court may allow a writ of certiorari directed to the Commission to review the decision of the Commission and shall prescribe in the writ the time, which may not be less than 10 calendar days, within which a return on the writ must be made and served on the realtor or the realtor's attorney.
- (c) The Commission may not be required to return the original papers acted on by it. It is sufficient for the Commission to return certified or sworn copies of the papers or parts of the papers as may be called for by the writ.
- (d) The return must concisely set forth other facts as may be pertinent and material to show the grounds for the decision appealed from and shall be verified.
- (e) The allowance of the writ does not stay proceedings on the decision appealed from.
- (f) The District Court's review shall be limited to a hearing under the substantial evidence rule. The Court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.
- (g) Costs may not be allowed against the Commission.
- (h) If the decision of the Commission is affirmed or not substantially reversed but only modified, the District Court shall allow the City 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 possession of the property subject to the proceedings before the Commission.

Section 6. Abstract of judgment; lienholders.

- (a) An abstract of judgment shall be issued against all parties found to be the owners of the subject property or in possession of that property.
- (b) A lienholder does not have standing to bring a proceeding as provided in Section 5 (a) herein on the ground that the lienholder was not notified of the proceedings before the Commission or was unaware of the condition of the property unless the lienholder has first appeared before the Commission panel and entered an appearance in opposition to the proceedings.

Section 7. Commission decision final.

If no appeals are taken pursuant to Section 5 herein from the Decision of the Commission within the required period, the Decision of the Commission is in all things, final and binding.

Section 8. Actions by the City.

(a) If a building or structure is not vacated, secured, repaired, removed, or demolished, in accordance with an order of the Building and Standards Commission, the City may vacate, secure, remove, or demolish the building on its own initiative. This provision shall not be interpreted to limit the ability of the City to collect on a bond or other financial guaranty required under Section 7-49(d)(9).

(b) If the City incurs expenses under this section, the City may assess the expenses on, and the City has a lien against (unless it is a homestead as protected by the Texas Constitution), the property on which the building or structure was or is located. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the City 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 Fannin County Clerk. 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 City, and the balance due.

(c) If the notice is given and the opportunity to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized herein, the lien is a privileged lien subordinate only to tax liens.

Section 9. Duties of the code inspectors.

The code inspectors of the City of Honey Grove, Fannin County are hereby authorized to:

- (1) Inspect or cause to be inspected any building or structure situated within the city where the code inspector has reason to believe conditions exist which render such building or structure a dangerous building or structure as that term is defined herein.
- (2) If, upon inspection and investigation, the Code Inspector finds that the building or structure is a dangerous building or structure as that term is defined herein, the code inspector shall refer said building or structure to the Commission for consideration as provided in Section 4 herein.
- (3) If upon inspection the Code Inspector determines that the structure is dangerous, a health or safety hazard, or otherwise unfit for human occupation, the Code Inspector shall place a notice on said dangerous building or structure to read substantially as follows:

“NOTICE–DANGEROUS BUILDING. This building is unsafe, further use of this building is prohibited by order of the City Code Inspector. Do not remove this notice. Violation of this notice is punishable by fines or penalties.”

(4) Upon a finding of immediate risk and danger to the public health and safety, and upon an Order of the City (Police Chief or City Secretary), the Code Inspector may secure the exterior doors and all first level windows of any dangerous building or structure, and provide such other security measures reasonably necessary to protect the public health and safety.

(5) Appear at all hearings conducted by the Building and Standards Commission, testify as to the condition of dangerous or substandard buildings at such hearings, and perform all other staff-related functions in support of the activities of the Building and Standards Commission.

(6) It shall be unlawful for any person to use any building or structure after the code inspector has placed a notice thereon as provided for in this section.

Section 10. Authority of the City Attorney.

The City Attorney is hereby authorized, and it shall be the duty of the City Attorney of the City of Honey Grove, Fannin County, without further authorization of the City Council, to undertake, by all legal means appropriate or necessary, the enforcement of the Orders of the Building and Standards Commission, including but not limited to enforcement in Municipal Court, filing of appropriate civil actions in courts of appropriate jurisdiction to seek compliance with said Orders, or defending the City from suit if suit is taken to appeal any action of the Building and Standards Commission.

Section 11. Remedies and Enforcement.

(A) *Nonexclusive.* The remedies and penalties set out herein are intended to be nonexclusive; that is, they shall not be construed to exclude the City from seeking any and all remedies at law or equity to which the City may be entitled under state law or otherwise, and the remedies as set out herein shall be considered in addition to and cumulative of such remedies as set out under state law.

(C) *Municipal Court remedies preserved.* Remedies set out in this Ordinance shall not affect or be construed to affect the ability of the City to proceed under the jurisdiction of the municipal court.

(C) *Penalties in municipal court.*

(1) The owner, occupant, lessee, agent, or any other person subject to any notice and Order issued by the Building and Standards Commission under this Ordinance who shall fail to comply with said notice or order to repair, demolish, or secure such building or structure, or any person who shall willfully refuse or

fail to leave a building or structure that has been ordered vacated under the terms of this Ordinance or who shall enter an area around such building or structure that has been declared to be dangerous, shall be deemed guilty of a misdemeanor and shall be subject to a fine as provided in section 54.001 of the Local Government Code as adopted herein¹ (and any amendments thereto). Each and every day's violation shall constitute a separate and distinct offense.

- (2) If the owner of any dangerous building or structure ordered vacated, repaired, demolished, or secured under the terms of this Ordinance shall be a corporation and shall violate any of the provisions of this Ordinance, the president, vice president, secretary, or treasurer of such corporation or any manager or agent of such corporation shall be jointly and severally liable for the penalties herein provided.
- (3) Any person removing the notice provided for in this Ordinance from the building or structure shall be deemed guilty of a misdemeanor and subject to the penalties set forth in section 1-6 of this Code.
- (4) The Municipal Court retains its contempt power for violation of an Order of the Court.

(D) Civil action authorized.

(1) *City Attorney authorized.* The City Attorney is hereby authorized to bring a civil action for the enforcement of any order issued by the Building and Standards Commission in accordance with this Ordinance.

(2) *Jurisdiction, venue, and preferential setting.* The jurisdiction and venue of any such action shall be as established in accordance with Sub-Section B, Section 54.013 of the Texas Local Government Code. The City Attorney shall be authorized to seek a preferential setting for said action in accordance with Section 54.014 of the Local Government Code.

(3) *Remedies authorized.* The City Attorney may in his discretion seek any and all remedies authorized under state law, including the provisions of Sections 54 and 214 of the Texas Local Government Code. Such remedies may include, but may not be limited to, injunctive relief pursuant to Section 54.016 of the Texas Local Government Code, enforcement and collection of civil penalties authorized under this Ordinance, an action to compel the repair, demolition, or securing of any building or structure, recovery of all costs and attorneys fees, appointment of a receiver to administer any noncompliant property in accordance with Section

¹ On the effective date of this Ordinance, the fine for violation is up to \$500 per day, per occurrence. However, for Ordinance or Rule violations that involve Fire Safety, Zoning, Public Health and Sanitation, (including dumping of refuse) the fine is up to \$2000 per day per occurrence.

214.003 of the Texas Local Government Code, and any and all other remedies actionable to the City under law or equity.

(4) *Lis pendens authorized.* The City Attorney may file a notice of lis pendens in the office of the county clerk regarding such action. If the City files such notice, a subsequent purchaser or mortgagee who acquires an interest in the noncompliant property takes the property subject to the enforcement proceeding of the City and subsequent orders of the court.

(E) *Buildings or structures secured by the City.* For any building or structure which the City itself secures in accordance with this Ordinance, following such securing of said building or structure, the City shall undertake the following procedure:

(1) Before the 11th calendar day after the date the building is secured, the City shall give notice to the owner of said property by:

- a. Personally serving the owner with written notice;
- b. Depositing the notice in the U.S. mail addressed to the owner at the owner's post office address;
- c. Publishing the notice at least twice within a ten calendar day period in a newspaper of general circulation in the county in which the building or structure is located *if personal service cannot be obtained and the owner's post office address is unknown*; or
- d. 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.

(2) The notice must contain:

- a. An identification, which is not required to be a legal description, of the building or structure and the property on which it is located;
- b. A description of the violation of this Ordinance that is present on the premises;
- c. A statement that the City will secure, or has secured, as the case may be, the building or other structure; and
- d. An explanation of the owner's entitlement to request a hearing before the Building and Standards Commission about any matter relating to the City's securing of the building.
- e. Language substantially similar to Section 54.005 of the Local Government Code which provides that the recipient of the notice if they are not the owner execute an affidavit returnable immediately to the City of

Honey Grove, Fannin County, on a form provided, providing information concerning ownership, note holders, liens or titles.

(3) The City shall conduct a hearing before the Building and Standards Commission at which the owner may testify or present witnesses or written information about any matter relating to the City's securing of the building, if, within 30 calendar days after the date the City secures the building. If the owner files with the City Secretary a written request for the hearing. The City shall conduct a hearing no later than 20 calendar days after the date the notice is given to the City Secretary.

(4) The City has the same authority to assess expenses under this section as it has to assess expenses under other provisions of this Ordinance. A lien in the amount of such expenses is created under this section in the same manner that a lien is created under section 4 and section 11, and is subject to the same conditions as a lien created under said section.

Section 12. Duty to furnish proof of proper and legal disposal to Code Inspector.

A property owner or a lien holder of property shall, furnish written proof to a city code inspector of the proper and legal disposal at a landfill of all materials from a substandard, dangerous, or hazardous building or structure demolished pursuant to this Ordinance. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not to exceed two thousand dollars (\$2,000.00), and each and every day's continuance of any violation of this section shall constitute and be deemed a separate offense.

Sec. 13. Secured building permit created.

A property owner may, upon proper application to the City Secretary, and satisfaction of all requirements of this Ordinance, obtain a secured building permit for any qualified building within the city limits of the City of Honey Grove, Fannin County. The issuance of a permit as authorized herein is a privilege and not a matter of right.

Sec. 14. Application; criteria for issuance of Secured Building Permit

Application for a secured building permit shall be made to the office of the City Secretary of the City of Honey Grove, Fannin County, Texas, on forms as may be required. To qualify for the issuance of a secured building permit, the owner and the property proposed for permitting shall satisfy all of the following requirements:

(1) The building shall be structurally sound, including sound structural supports and support members and a structurally sound roof such that the property is not in danger of collapse, does not experience deterioration from the weather or the elements, and does not constitute an immediate or long-term threat or menace to health or safety. The building official, or on proper appeal, the Building and Standards Commission of the City of Honey Grove, Fannin County, shall determine

the standards for and shall adjudge the structural soundness of a particular building or structure for which a secured building permit is sought.

(2) At the time of application, and during the entire term of the permit, the building shall remain vacant.

(3) At the time of the application, and during the entire term of the permit, all utilities shall be disconnected from the premises.

(4) At the time of the application, and during the entire term of the permit, the building shall be secured. For purposes of this Ordinance, a building shall be considered secured if all windows are covered if broken, all open access doorways are covered securely, and all other openings or access to the building are secured from entry from the outside. In securing said building, the permittee shall be required to comply with any plan for securing the building specified by the building official. In securing said premises, the owner may use plywood or other material acceptable to the building official and stencil thereon a notice to read substantially as follows:

“SECURED BUILDING MATERIALS; REMOVAL, SALE, OR PURCHASE OF THIS MATERIAL WITHOUT CONSENT OF THE OWNER SHALL CONSTITUTE A VIOLATION OF SECTION 13 OF THE DANGEROUS BUILDING ORDINANCE OF THE CITY OF HONEY GROVE, FANNIN COUNTY, TEXAS AND SHALL SUBJECT THE VIOLATOR TO FINES OR PENALTIES”

(5) During the term of the secured building permit, the structure and the premise must comply with all City Nuisance Ordinances and regulations, including but not limited to control of weeds, grass, brush, vectors, abandoned vehicles, abandoned junk, refuse, and other conditions as may be established by the Ordinances of the City.

(6) The owner of the building as part of the permitting process shall agree in writing that the police department, fire department, building inspection department, or any other applicable department of the City shall have access to the premises at all times while on official business. The building owner shall likewise agree in writing that, save and except for officials of the City as specified herein, only the building owner or the owner's lawfully authorized agent shall have access to and enter the building during the time that such building is governed by a secured building permit.

(7) A secured building permit may issue if no enforcement action is currently pending against the property or its owner before the City's Building and Standards Commission or under any other City Ordinance; however, a secured building permit may also issue upon a finding by the Building and Standards Commission in an enforcement proceeding, and in response to a request by the owner, that a property the subject of an enforcement proceeding is otherwise qualified for a secured building permit. In the event of such a finding, the property owner shall

comply with all the terms and conditions for the issuance of a secured building permit as set out herein, and upon issuance of such permit, the enforcement action, if pending, before the Building and Standards Commission shall be abated, but not dismissed, for so long as a valid secured building permit is maintained for the property. At such time as the property is no longer governed by a valid secured building permit, the abated enforcement action shall be placed upon an ensuing agenda of the Building and Standards Commission for review and subsequent action.

Sec. 15. Effect of issuance of a secured building permit.

For such time as any building is governed by a valid, unexpired secured building permit, and all conditions for the original issuance of said permit shall continue to be satisfied, including proper security of the building and all utilities remaining disconnected, the building shall be exempted from complying with all internal nonstructural requirements of the City building code, or other applicable codes of the City of Honey Grove, Fannin County, save and except the City Fire Code, which shall continue to apply as to any condition of the building which constitutes an immediate fire hazard. In addition, while such building continues to be governed by a valid, unexpired permit for which all conditions continue to be met as specified in this Ordinance, no enforcement action shall be taken by the City of Honey Grove, Fannin County, Texas. (see Section 14 above)

Sec. 16. Maintaining a secured building permit.

The building owner shall be responsible for keeping the building at all times in full compliance with the terms and conditions of the secured building permit. If the building shall become noncompliant with the terms and provisions of this Ordinance, as found by the building official or as found by the Building and Standards Commission on appeal from a decision of the building official, then any outstanding secured building permit shall be revoked.

Sec. 17. Permit fees.

The fee for the issuance of a secured building permit shall be \$100.00.

Sec. 18. Permit duration.

A secured building permit issued in accordance with the terms and provisions of this Ordinance, and provided said building governed by said permit continues to be in all things compliant with this Ordinance, shall be valid for a period of one year from the date of issuance.

Sec. 19. Permit renewal.

A secured building permit as authorized herein shall be subject to annual renewals provided the building owner files proper application on such forms as shall be established by the City for such permit renewal and satisfies all of the following requirements:

- (1) A showing that all of the original requirements for issuance of the permit continue to be satisfied, including a showing that the condition of the building is structurally sound and that the building will meet or exceed the standards for issuance of a permit contained herein.
- (2) Payment of the appropriate permit issuance fee of \$100.
- (3) An inspection shall be performed by an inspector of the owner's choosing, provided such inspector shall meet all the requirements of state law, regarding Licensed Real Estate Inspectors. The Inspector shall document in writing the results of the inspection, such documentation to be in such form as the City shall specify. Any Inspector who intentionally or repeatedly falsifies or provides incomplete reports as required herein may be excluded by the building official as an acceptable Inspector for the purposes of this Code.

Sec. 20. Reoccupation of a secured building.

Before a building governed by a secured building permit can be reoccupied, the building owner must satisfy the following conditions:

- (1) The building must be returned to full compliance with any and all applicable City codes, including but not limited to the City building code, fire code, electrical code, plumbing code, air conditioning code, and all other similar codes as said codes are constituted at the time that reoccupation of the building is sought.
- (2) The owner shall pay an appropriate fee for reinspection of the building by the City, and the building shall be certified by the Inspector as compliant with all outstanding building codes.
- (3) The owner shall apply for and receive a new occupancy permit, including payment of any applicable occupancy fee.
- (4) No utilities shall be turned on in the building until full compliance with all outstanding City Codes and compliance with this Ordinance; however, temporary drops in service may be permitted if necessary for construction work to bring the building back into compliance with all applicable codes.

Sec. 21. Penalties.

(A) It shall be unlawful to enter a building for which a secured building permit has been issued, unless such person is the owner or the owner's duly authorized agent.

(B) It shall be unlawful to remove securing material from a building for which a secured building permit has been issued.

(C) It shall be unlawful to sell securing material, properly or appropriately stenciled or marked as such, which has been removed from a building for which a secured building permit has been issued and is currently in effect.

(D) It shall be unlawful to purchase securing material which has been appropriately stenciled or marked and which has been removed from a building for which a secured building permit has been issued and is currently in effect.

(E) It shall be unlawful to seek the issuance of a secured building permit under false pretenses.

(F) Any person who shall violate the terms and provisions of Section 22 shall be deemed guilty of a misdemeanor and shall be subject to a fine not to exceed \$500 per occurrence.

Sec. 23. Severability.


Any sections, articles, subsections, paragraphs, sentences, clauses, or phrases of this Ordinance are severable and therefore if any phrase, clause, sentence, paragraph, subsection, article of section of this Ordinance is declared void ineffective or unconstitutional by a valid judgment or valid decree of a court of competent jurisdiction, such voidness, ineffectiveness or unconstitutionality does not impact or effect any of the remaining phrases, clauses, sentence, paragraph, subsections, articles, or section of this Ordinance since the same would have been enacted by the Honey Grove City Council without the incorporation of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph, subsection, article, or section.

Sec 24. Specific Provision.

Upon passage of this Ordinance, Ordinance No 96-6 of the City of Honey Grove is repealed.

Signed on the 11th day of March, 2019


Claude Caffee, Mayor

ATTESTED BY:
Jaci Garner, City Secretary
David Hamilton, City Attorney