

ORDINANCE 2024-001

AN ORDINANCE DECLARING A PUBLIC NUISANCE FOR AN OWNER TO MAINTAIN OR PERMIT THE EXISTENCE OF ANY UNSAFE BUILDING IN THE CITY AND FOR AN OWNER TO PERMIT SAME TO REMAIN IN SUCH CONDITION; DEFINING UNSAFE BUILDING; SETTING FORTH NOTICE AND PUBLIC HEARING PROCEDURES; PROVIDING FOR ASSESSMENT OF EXPENSES AND PENALTIES; POSTING OF WARNINGS; PROVIDING FOR SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PENITAS, TEXAS.

SECTION 1. Definitions

- a) Responsible Party. An owner of an unsafe building or structure.
- b) Unsafe Building. Any building or structure, or part thereof, regardless of the date of construction in or about which any or all of the following conditions exist:
 - (1) Walls or other vertical structural members list, lean, or buckle;
 - (2) Damage or deterioration exists to the extent that the building is unsafe;
 - (3) Loads on floors are improperly distributed or the floors or roofs are of insufficient strength to be reasonably safe for the purposes used;
 - (4) Damage by fire, wind, or other cause has rendered the building or structure dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the city;
 - (5) The building or structure is so dilapidated, substandard, decayed, unsafe, unsanitary, or otherwise lacking in amenities essential to decent living that the same is unfit for human habitation or is likely to cause sickness, disease or injury or otherwise to constitute a detriment to the health, morals, safety, or general welfare of those persons assembled, working, or living therein or is a hazard to the public health, safety and welfare;
 - (6) Light, air, and sanitation facilities are inadequate to protect the health, morals, safety, or general welfare of persons who assemble, work, or live therein;
 - (7) Parts or appendages of the building or structure are so poorly attached that they are likely to fall and injure persons or property;
 - (8) Whenever any door, aisle, passageway, stairway, fire escape, or other means of exit is not of sufficient width or size or are otherwise inadequate to provide safe and functional means of exit in case of fire, collapse, other catastrophe or emergency, or panic;
 - (9) Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire, collapse, other catastrophe or emergency, or panic;
 - (10) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one half times the working stress or

stresses allowed in the building code for new buildings of similar structure, purpose or location;

- (11) 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;
- (12) Whenever any portion or member or appurtenance thereof is likely to fail or to become detached or dislodged, or to collapse and thereby injure persons or damage property;
- (13) 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 new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the building code for such buildings;
- (14) Whenever any portion thereof has wracked, 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;
- (15) Whenever the building or structure, or any portion thereof, because of:
 - (A) Dilapidation, deterioration, or decay;
 - (B) Faulty construction;
 - (C) The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;
 - (D) The deterioration, decay or inadequacy of its foundation; or
 - (E) Any other cause, is likely to partially or completely collapse;
- (16) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used;
- (17) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center or gravity does not fall inside the middle one third of the base;
- (18) Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent or more damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
- (19) Whenever the building or structure has been so damaged by fire, wind, earthquake, flood, general exposure to the elements, or neglect; or is otherwise for any reason so dilapidated or deteriorated; regardless of whether it is boarded up, fence or otherwise secure at a level to prevent unauthorized entry; as to become an attractive nuisance to children; or a harbor of vagrants or other uninvited persons, or criminals.
- (20) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (A) strength, (B) fire-resisting

qualities or characteristics, or (C) 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;

- (21) Whether 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 building inspector to be unsanitary, unfit for human habitation or in such condition that is likely to cause sickness or disease;
 - (22) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire restrictive construction, faulty wiring, connections to heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard;
 - (23) 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 such building or portion thereof an attractive nuisance or hazard to the public.
- c) As provided by this ordinance, while both terms “Unsafe Building” and “Unsafe Structure” may both be referred to herein; reference to a “building” is inclusive of a “structure” or portion thereof.
 - d) A condition exists in violation of the standards set forth in subsection (b) which condition renders the building or structure unsafe, unsanitary, or otherwise detrimental to the health, safety, morals, or welfare of the people of the city.
 - e) The minimum standards prescribed in the Building Code adopted by the City of Penitas and as prescribed by this Ordinance apply to the use and occupancy of all buildings in the city regardless of the date of their construction. A responsible party may continue to use and occupy any building located within the city regardless of the date said building was constructed if such building meets the applicable minimum standards for buildings as prescribed in the Building Code of the City of Penitas and is not in violation of this article.

Section II. Unsafe Buildings Declared to be a Nuisance

- a) It shall be unlawful for an owner of a building to maintain or permit the existence of any unsafe building in the city and it shall be unlawful for an owner of a building to permit same to remain in such condition.
- b) All unsafe buildings as provided by this ordinance are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures provided in this Ordinance.
- c) The building inspector shall enforce the provisions of this article.

Section III. Inspection of Buildings

- a) The building inspector shall inspect, or cause to be inspected, every building or portion thereof the building inspector reasonably believes to be unsafe or reported to be unsafe.

SECTION IV. Notice

- a) Whenever the building inspector, or his or her assigns, determines that a building is unsafe, he or she shall give notice of such determination to the City Clerk.
- b) The City Clerk shall determine the identity of an owner, a lienholder, or a mortgagee of the unsafe building by searching the following records:
 - (1) A statement that there will be conducted a public hearing before the City Council to determine whether a building complies with the standards set out in Sections I (b) and (c) as herein above set forth. Said notice shall inform of the date, time and place of the hearing;
 - (2) Provide an identification, which is not required to be a legal description, of the building and the property on which it is located;
 - (3) Identify the specific standards set out in this Ordinance which the building is alleged to violate;
 - (4) A statement advising the owner, lienholder, and/or mortgagee that they will be required to submit proof of the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

SECTION V. Sufficiency of Notice

- a) Notice given pursuant to this article shall be deemed properly served upon the responsible party, lienholder, or mortgagee if a copy thereof is:
 - (1) Served upon them personally; or
 - (2) sent by registered or certified mail, return receipt requested, to the last known address of such person, corporation, or entity
- b) When notice is mailed in accordance with this section to a property owner, lienholder, or mortgagee 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.

SECTION VI. Public Hearing

- a) The purpose of the public hearing is to determine whether or not the building is unsafe in accordance with the standards set forth in Sections I (b) and (c).
- b) The matter shall be set for hearing by the City Council at the earliest practicable date and notice of said hearing shall be served on the responsible party, lienholder and/or mortgagee not less than ten (10) days prior to the date of said hearing. All interested persons shall have the opportunity to be heard and may introduce evidence to said City Council for its members consideration.
- c) After the public hearing, the City Council shall make such findings and orders as it shall deem appropriate.
- d) After the public hearing, if a building is found in violation of the standards set out in Sections I (b) and (c) of this Ordinance, the Order issued by the City Council may 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 for the ordered action to be taken by any of the mortgagees or lienholders in the event the owner fails to comply with the order within the time provided for action by the owner.
- e) Within 10 days after the date that the order is issued, the City Clerk shall:
 - (1) File a copy of the order in the office of the City Clerk; and

- (2) Publish in a newspaper of general circulation in the City of Penitas 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.
- f) After a hearing, the City Clerk shall promptly mail by certified airmail, return receipt requested, or personally deliver or authorize the personal delivery of a copy of the order to the owner of the building and to any lienholder or mortgagee of the building.
- g) In conducting a hearing authorized under this section, the City shall, subject to subsection VI(h), (i), and (j) below, require the owner, lienholder, or mortgagee of the building to within 30 days:
- (1) Secure the building from unauthorized entry; or
 - (2) Repair, remove, or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within 30 days.
- h) If the City allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the City shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the hearing official.
- i) A City may not allow the owner, lienholder, or mortgagee more than 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 a detailed plan and time schedule for the work at the hearing; and
 - (2) Establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.
- j) If the City allows the owner, lienholder, or mortgagee more than 90 days to complete any part of the work required to repair, remove, or demolish the building, the City shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the City 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 hearing official or the hearing official's designee to demonstrate compliance with the time schedules. If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the municipal boundaries that exceeds \$100,000 in total value, the City 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 section. In lieu of a bond, the City 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 City. The bond must be posted, or the letter of credit or third party guaranty provided, not later than the 30th day after the date the City issues the order.

- k) The City has further authority to secure any unsafe buildings pursuant to Section 214.0011, Texas Local Government Code, and as it may be amended.

SECTION VII. Assessment of Expenses and Penalties

- a) If the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, the City may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense. This subsection does not limit the ability to collect on a bond or other financial guaranty that may be established.
- b) If the City incurs expenses under Section VII (a), 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 was 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 county clerk in the county in which the property is located. The notice must contain the name and address of the owner, 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) The City Council may by order at the time of the public hearing assess and recover a civil penalty against the responsible party at the time of the hearing on violations of this ordinance, in an amount not to exceed \$1,000.00 a day for each violation or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed \$10.00 a day for each violation, if the city proves:
- (1) The responsible party was notified of the requirements of this ordinance and other owner's need to comply with the requirements; and
 - (2) After notification, the property owner committed an act in violation of the ordinance or failed to take an action necessary for compliance with this ordinance.
- d) Any civil penalty or other assessment imposed under this section accrues interest at the rate of ten percent (10%) per year from the date of the assessment until paid in full.

SECTION VIII. Posting of Warnings on Unsafe Buildings

- a) In the event the City Council makes a determination after the public hearings required herein that the building is deemed to be an unsafe building, the building inspector shall cause to be posted at each entrance to such building a notice to read as follows:

**DANGEROUS
DO NOT ENTER
UNSAFE TO OCCUPY
BUILDING OFFICIAL OF THE
CITY OF PENITAS, TEXAS**

- b) Such notice shall remain posted until required repairs, demolition, or removal is completed and such premises have been rendered safe. Such notice shall not be removed without written permission of the building inspector, and no person shall enter the building except for making inspections or required repairs or to demolish such building.

SECTION IX. Resort to the Courts

Nothing in this article shall be construed as abridging the right of the City of Penitas, Texas to resort to the courts of this state for the enforcement of this article, or of the rights of any owner or interested party to resort to the courts of this state in an attempt to enjoin the enforcement of this article.

SECTION X. Severability:

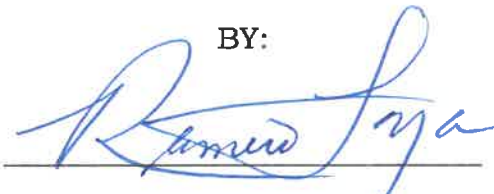
It is the intention of the City Council that this ordinance, and every provision thereof, shall be considered separable, and the invalidity of any section, clause, provision, or part or portion of any section, clause, of this ordinance shall not affect the validity of any other portion of this ordinance.

SECTION XI. Effective Date: This Ordinance shall become effective on the 1st day following publication of such ordinance.

PASSED AND APPROVED THIS 10th DAY OF January 2024.

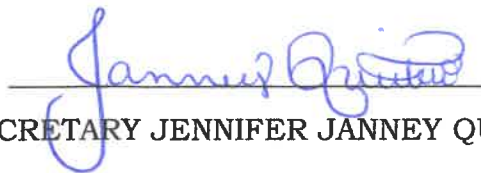
CITY OF PEÑITAS

BY:



HON. MAYOR RAMIRO LOYA

ATTEST:



CITY SECRETARY JENNIFER JANNEY QUINTERO

