

## ARTICLE VII. - BUILDING AND STANDARDS COMMISSION <sup>[23]</sup>

<sup>(23)</sup> **State Law reference**— Dangerous structures, V.T.C.A., Local Government Code § 241.001 et seq.; mandatory building and rehabilitation codes, V.T.C.A., Local Government Code § 214.211 et seq.

- Sec. 8-37. - Building and standards commission.
- Sec. 8-38. - Authority of city to secure building before a hearing.
- Sec. 8-39. - Proceedings.
- Sec. 8-40. - Notice of proceedings.
- Sec. 8-41. - Action of the building and standards commission.
- Sec. 8-42. - Civil penalties, notices, assessments, and liens.
- Sec. 8-43. - Action by city after building and standards commission issues order.
- Sec. 8-44. - Action by city on noncompliance with order of the building and standards commission.
- Sec. 8-45. - Refused or unclaimed notice.
- Sec. 8-46. - Judicial review of a building and standards commission order.
- Sec. 8-47. - Municipal court enforcement.

### **Sec. 8-37. - Building and standards commission.**

(a) There is created a building and standards commission to hear and determine cases concerning alleged violations of ordinances:

- (1) For the preservation of public safety, relating to the materials or methods used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits, including, but not limited to, the building codes as adopted and the minimum standards for buildings in this chapter;
- (2) Relating to the fire safety of a building or improvement, including, but not limited to, provisions in the International Fire Code as adopted in chapter 17 herein, relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;
- (3) Relating to dangerously damaged or deteriorated buildings or improvements, including, but not limited to, provisions in sections 8-26 through 8-30 herein;
- (4) Relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents, including, but not limited to, sections 8-26 through 8-30 and chapter 32 herein, and the zoning ordinance; or
- (5) Relating to a building code or to the condition, use, or appearance of property in the city including, but not limited to, provisions regarding the minimum standards for buildings in this chapter;

(b) The commission shall consist of one (1) five-member panel. The members of the commission shall be residents of the city and shall be appointed by the city council to terms of two (2) years. The city council shall appoint regular members on the commission to designated places 1 through 5. Terms of Places 1, 3, and 5 expire in November of odd-numbered years. Terms of Places 2 and 4 expire in November of even-numbered years.

PART II - THE CODE  
Chapter 8 - BUILDING STANDARDS CODE  
ARTICLE VII. - BUILDING AND STANDARDS COMMISSION

(c) A member may be removed for cause on a written charge in accordance with section 54.033, Texas Local Government Code. Before a decision on 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.

(d) Any vacancy shall be filled for the unexpired term.

(e) The city council may appoint five (5) or more alternate members who shall serve in the absence of one (1) or more regular members when requested to do so by the mayor or city manager. By the adoption of this chapter, the mayor requests alternate members to serve in place of a regular member due to absence or as part of a rotation of regular and alternate members. Alternate members shall serve for the same period and are subject to removal in the same manner as regular members. Vacancies for alternates shall be filled in the same manner as vacancies for regular members. The city council may appoint alternates on the commission to designated Places 1 through 5. The terms of alternates for Places 1, 3, and 5 shall expire in November of odd-numbered years. Terms of alternates for Places 2 and 4 expire in even-numbered years.

(Ord. No. 2008-9000, § 2, 10-2-08)

**Sec. 8-38. - Authority of city to secure building before a hearing.**

(a) The code enforcement director or building official may, before notice and hearing, secure a building that violates the minimum standards in this chapter and is unoccupied or is occupied only by persons who do not have a right of possession if:

(1) Before the eleventh day after the building is secured, the owner is given notice by:

- a. Personally serving the owner with written notice;
- b. Depositing the notice in the United States mail addressed to the owner at the owner's post office address;
- c. Publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the county in which the building 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.

(b) The notice pursuant to this section must contain:

- (1) An identification, which is not required to be a legal description, of the building and the property on which it is located;
- (2) A description of the violation 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.

PART II - THE CODE  
Chapter 8 - BUILDING STANDARDS CODE  
ARTICLE VII. - BUILDING AND STANDARDS COMMISSION

(c) The commission shall conduct a hearing pursuant to this section 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 thirty (30) days after the date the city secures the building, the owner files with the city a written request for the hearing. The commission shall conduct the hearing within twenty (20) days after the date the request is filed.

(d) The city has the same authority to assess expenses under this section as it has to assess expenses under section 8-44 herein. A lien is created under this section in the same manner that a lien is created under section 8-44 herein and is subject to the same conditions as a lien created under that section.

(e) The authority granted in this section is in addition to that granted by section 214.001 of the Texas Local Government Code and other sections in this article.

(Ord. No. 2008-9000, § 2, 10-2-08)

**Sec. 8-39. - Proceedings.**

(a) All cases to be heard by the commission must be heard by a panel of at least five (5) members and/or alternate members.

(b) A majority of the entire commission shall adopt rules for the entire commission in accordance with this chapter. The rules shall establish procedures for use in hearings, providing ample opportunity for presentation of evidence and testimony by respondents or persons opposing charges being brought by the city relating to alleged violations of ordinances.

(c) A majority vote of the members voting on a matter is necessary to take any action under this chapter.

(d) The code enforcement director or his or her designee shall present all cases before the commission panel.

(e) Meetings of the commission panel shall be held at the call of the chairman, or in the chairman's absence, the acting chairman, and at other times as determined by the commission. All meetings of the commission shall be open to the public. The chairman or acting chairman may administer oaths and compel the attendance of witnesses.

(f) 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. Each commission panel 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.

(g) Public hearings will be conducted by the building and standards commission in accordance with the rules of the commission to hear and consider alleged violations of ordinances by owners, managers or occupants of buildings.

(h) If no appeals are taken from the decision of the commission within the required period, the decision of the commission panel is final and non-appealable.

PART II - THE CODE  
Chapter 8 - BUILDING STANDARDS CODE  
ARTICLE VII. - BUILDING AND STANDARDS COMMISSION

(i) In a public hearing to determine whether a building complies with the standards set out in this chapter, the owner, lienholder, or mortgagee, has the burden of proof to demonstrate the scope of work that may be required to comply with this chapter, and the time it will take to reasonably perform the work.

(Ord. No. 2008-9000, § 2, 10-2-08)

**Sec. 8-40. - Notice of proceedings.**

(a) Notice of proceedings before the building and standards commission panel shall be given:

(1) By personal delivery, by certified mail with return receipt requested or by delivery by the United States Postal Service using signature confirmation service to the record owners of, and each holder of a recorded lien against, the affected property as shown by the records in the Office of the Dallas County Clerk 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 Dallas County Clerk;

(2) The owner or manager shown on the current license on file with the city, if applicable; and

(3) To all unknown owners by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable.

(b) The notice must be:

(1) Posted and either personally delivered or mailed on or before the tenth day before the date of the hearing before the commission panel and must state the date, time and place of the hearing; and

(2) Published in a newspaper of general circulation in the City of Irving on one occasion on or before the tenth day before the date fixed for the hearing.

(c) The commission may file notice of a proceeding before a commission panel in the Dallas County Official Public Records of Real Property. 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 instruments on file in the office of the Dallas County Clerk, 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.

(d) The city must exercise due diligence to determine the identity and address of a property owner or lienholder to whom the city is required to give notice. The city exercises such due diligence when it searches the following records:

(1) Dallas County Official Public Records of Real Property;

(2) Dallas County Appraisal District records;

(3) Texas Secretary of State records, if the property owner or lienholder is a corporation, partnership or other business association;

(4) Dallas County assumed name records;

PART II - THE CODE  
Chapter 8 - BUILDING STANDARDS CODE  
ARTICLE VII. - BUILDING AND STANDARDS COMMISSION

- (5) City tax records; and
- (6) City utility records.

(e) All notices herein shall be sent or given by the code enforcement director.

(Ord. No. 2008-9000, § 2, 10-2-08)

**Sec. 8-41. - Action of the building and standards commission.**

After a public hearing, if a building is found to be in violation of this chapter, the commission may:

(a) Enter into the minutes its findings that:

- (1) A building is in violation of the minimum standards of this chapter;
- (2) A building is dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety and welfare;
- (3) A building is unoccupied by its owners, lessees, or other invitees and 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;
- (4) A building is boarded up, fenced, or secured, but;
  - a. 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 building by vagrants, children, or other uninvited persons.
- (5) The materials or methods used to construct the building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances or exits do not meet the standards set forth in this chapter in regard to the preservation of public safety;
- (6) A building or improvement does not meet fire safety standards as designated in the International Fire Code as adopted in chapter 17 herein;
- (7) A building or use thereof is in violation of sections 8-26 through 8-30 and chapter 32 herein in that there exist conditions caused by accumulations of refuse, vegetation or other matter that creates breeding and living places for insects and rodents;
- (8) The condition, use or appearance of property is in violation of the minimum standards in this chapter;
- (9) Determine the amount and duration of final civil penalties the city may recover; and
- (10) Determine that a building fails to meet the requirements necessary to retain a certificate of occupancy or multi-family dwelling community license.

PART II - THE CODE  
Chapter 8 - BUILDING STANDARDS CODE  
ARTICLE VII. - BUILDING AND STANDARDS COMMISSION

(b) Make an order that:

- (1) Declares a building substandard;
- (2) The owner, lienholder or mortgagee of a building:
  - a. Secure it from unauthorized entry; or
  - b. Repair, remove or demolish the building.
- (3) Persons or property be immediately removed from a building and designate the city to enter on the property to secure the removal if it is determined that conditions exist on the property that constitute a violation of an ordinance;
- (4) Action be taken as necessary to remedy, alleviate, or remove any substandard building found to exist;
- (5) The building(s) be vacated and/or that any or all occupants be relocated within a reasonable time;
- (6) Authorizes any peace officer of the state, including the police chief, sheriff, or constable, to enforce and carry out the lawful order or directives of the commission; and
- (7) The owner(s) of the property pay to the city the amount of civil penalties found to be owed. The commission may not order conditional civil penalties.

(c) *Time limits.*

- (1) An order may require that a building shall be secured as found necessary in a manner which prevents entry by unauthorized persons.
- (2) An order may require that a building must be repaired, removed, or demolished within thirty (30) days unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within thirty (30) days.
- (3) If the commission allows the owner, lienholder, mortgagee, manager or occupant more than thirty (30) days to repair, remove or demolish the building, the commission shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder, mortgagee, manager or occupant to secure the property in a reasonable manner from unauthorized entry while the work is being performed.
- (4) The commission may not allow the owner, lienholder, mortgagee, manager or occupant more than ninety (90) days to repair, remove or demolish the building or fully perform all work required to comply with the order of the commission unless the owner, lienholder, mortgagee, manager or occupant:
  - a. Submits a detailed plan and time schedule for the work at the hearing; and
  - b. Establishes at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work.

PART II - THE CODE  
Chapter 8 - BUILDING STANDARDS CODE  
ARTICLE VII. - BUILDING AND STANDARDS COMMISSION

(5) If the commission allows the owner, lienholder, mortgagee, manager or occupant more than ninety (90) days to complete any part of the work required to repair, remove, or demolish the building, the commission shall require the owner, lienholder, mortgagee, manager or occupant to regularly submit progress reports to the commission to demonstrate that the owner, lienholder, mortgagee, manager, or occupant complied with the time schedules established by the commission for commencement and performance of the work. The order may require that the owner, lienholder, mortgagee, manager, or occupant appear before the commission to demonstrate compliance with the schedules. If the owner, lienholder or mortgagee owns property, including structures or improvements on the property, within the city boundaries that exceeds one hundred thousand dollars (\$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. In lieu of a bond, the commission may require the owner, lienholder or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the commission. The bond must be posted, or the letter of credit, or third party guaranty provided not later than the thirtieth day after the date the commission issues the order.

(Ord. No. 2008-9000, § 2, 10-2-08)

**Sec. 8-42. - Civil penalties, notices, assessments, and liens.**

(a) Civil penalties may be assessed by the commission in amounts not to exceed one thousand dollars (\$1,000.00) per day for each day a property owner is in noncompliance with an order of the commission or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed ten dollars (\$10.00) a day for each violation, if the city proves:

(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 the chapter or failed to take an action necessary for compliance with the chapter.

(b) A determination of civil penalties made by the building and standards commission 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 in accordance with the established penalty.

(c) Civil penalties and expenses assessed herein shall constitute a personal liability of the property owner and a lien against the property.

(d) All civil penalties and assessments for expenses to repair a building accrue interest at the rate of ten (10) percent per annum.

(e) A property owner against whom a civil penalty is assessed or expenses are assessed shall be given notice of such order pursuant to section 8-43 herein.

(f) Promptly after the imposition of a lien for the assessment of a civil penalty or expenses, the code enforcement director shall cause a written notice of such imposition of lien in the office of the Dallas County Clerk.

(g) A certified copy of an order establishing the amount and duration of a civil penalty must also be filed with the district clerk. No other proof is required for a district court to enter final judgment of the penalty.

PART II - THE CODE  
Chapter 8 - BUILDING STANDARDS CODE  
ARTICLE VII. - BUILDING AND STANDARDS COMMISSION

(h) 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.

(i) A lienholder does not have standing to bring a proceeding for judicial review on the ground that the lienholder was not notified of the proceedings before the commission panel or was unaware of the condition of the property unless the lienholder had first appeared before the commission panel and entered an appearance in opposition to the proceedings.

(j) The penalties provided for in this section are in addition to any other penalties or enforcement remedies that the city may have under any applicable laws.

(Ord. No. 2008-9000, § 2, 10-2-08)

**Sec. 8-43. - Action by city after building and standards commission issues order.**

(a) Within ten (10) days after the date a building and standards commission order is issued, 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 the city 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.

(b) The city shall promptly mail by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building. The city shall use its best efforts to determine the identity and address of any owner, lienholder or mortgagee of the building.

(c) The city satisfies the requirements of this section to make a diligent effort, to use its best efforts or to make a reasonable effort to determine the identity and address of an owner, a lienholder or a mortgagee if the city searches the following records:

- (1) Dallas County Official Public Records of Real Property;
- (2) Dallas County Appraisal District records;
- (3) Records of the secretary of state;
- (4) Dallas County assumed name records;
- (5) Tax records of the city; and
- (6) Utility records of the city.

(d) Upon a finding by the commission that a building is dangerously damaged or deteriorated or is likely to endanger persons or property, the city may place a placard on all dwelling units which the commission has determined to be dangerously damaged or deteriorated or likely to endanger persons or property, with the following language: "Warning! This Structure has been found to be dangerously

PART II - THE CODE  
Chapter 8 - BUILDING STANDARDS CODE  
ARTICLE VII. - BUILDING AND STANDARDS COMMISSION

damaged or deteriorated or likely to endanger Persons or property. The Building/Unit is to be vacated immediately. This notice is to remain on this Building until it is repaired or demolished in compliance with the order of the Building and Standards Commission. It is unlawful to remove this Placard."

(Ord. No. 2008-9000, § 2, 10-2-08)

**Sec. 8-44. - Action by city on noncompliance with order of the building and standards commission.**

(a) If an owner does not take the action ordered by the commission within the allotted time, the city shall make a diligent effort to discover each mortgagee and lienholder having an interest in the building or property on which the building is located. The city shall personally deliver, send by certified mail with return receipt requested or deliver by the United States Postal Service using signature confirmation service, to each identified mortgagee and lienholder a notice containing:

- (1) An identification, which is not required to be a legal description, of the building and the property on which it is located;
- (2) A description of the violation that is present at the building; and
- (3) A statement that the city 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.

(b) As an alternative to subsection (a):

(1) The city may make a diligent effort to discover each mortgagee and lienholder before conducting the commission's public hearing and may give them a notice of and an opportunity to comment at the hearing.

(2) In addition, the city may file notice of the hearing in the Official Public Records of Real Property in Dallas County.

a. The notice must contain the name and address of the owner of the affected property if that information can be determined, a legal description of the affected property and a description of the hearing.

b. 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.

(3) If the city operates under this subsection, the order issued by the commission may specify a reasonable time as provided by the time limits described in section 8-41 herein 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 as provided by section 8-41 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.

(4) Under this subsection, the city is not required to furnish any notice to a mortgagee or lienholder other than a copy of the order in the event the owner fails to timely take the ordered action.

(c) If a building is not vacated, secured, repaired, removed or demolished or the occupants are not relocated within the allotted time, the city may:

PART II - THE CODE  
Chapter 8 - BUILDING STANDARDS CODE  
ARTICLE VII. - BUILDING AND STANDARDS COMMISSION

(1) vacate, secure, remove or demolish the building, or relocate the occupants at its own expense and then collect on a bond or other financial guaranty that may be required in this chapter;

(2) If the building is a residential building with ten (10) or fewer dwelling units, repair the building to the extent necessary to bring the building into compliance with the minimum standards; and

(3) Withdraw the owner's certificate of occupancy and cancel the license authorized by this chapter for those units or structures in violation.

(d) 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 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 Dallas 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.

(e) If the notice is given and the opportunity to relocate the residents of the building or 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.

(f) In any judicial proceeding regarding enforcement of the city's rights under Section 214.0015 of the Texas Local Government Code and this article, the prevailing party is entitled to recover reasonable attorney's fees from the nonprevailing party.

(g) A lien acquired under this section by the city for repair expenses may not be foreclosed if the property on which the repairs were made is occupied as a residential homestead by an individual sixty-five (65) years of age or older.

(Ord. No. 2008-9000, § 2, 10-2-08)

**Sec. 8-45. - Refused or unclaimed notice.**

When the city mails a notice in accordance with this article 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.

**Sec. 8-46. - Judicial review of a building and standards commission order.**

(a) Any owner, lienholder or mortgagee of record, jointly or severally aggrieved by an order of the commission, may file in Dallas County District Court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed with the court within thirty (30) calendar days after the respective dates a copy of the order of the commission is personally delivered, mailed by first class mail, certified return receipt requested or delivered to them by the United States Postal Service using signature confirmation service to all persons to whom notice is required to be sent under Section 54.035 of the Texas Government Code. Notice of the order shall be pursuant to section 8-43 herein. If a petition is not filed within the thirty-calendar day period by an owner, lienholder or mortgagee, the order of the commission shall become final as to that owner, lienholder or mortgagee upon the expiration of such thirty-calendar day period.

PART II - THE CODE  
Chapter 8 - BUILDING STANDARDS CODE  
ARTICLE VII. - BUILDING AND STANDARDS COMMISSION

- (b) On filing of the petition, the district court may issue a writ of certiorari directed to the commission to review the decision and order of the commission and shall prescribe in the writ the time within which a return on the writ must be made, which must be longer than ten (10) days and served on the relator or the relator's attorney.
- (c) The commission may not be required to return the original papers acted on by it, but it is sufficient for the commission to return certified or sworn copies of the papers or of 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 of the decision appealed from and shall be verified.
- (e) The allowance of the writ does not stay proceedings on the commission decision appealed from.
- (f) The district court's review of the order of the commission shall be in accordance with Sections 214.0012 and 54.039, Texas Local Government Code.

(Ord. No. 2008-9000, § 2, 10-2-08)

**Sec. 8-47. - Municipal court enforcement.**

Proceedings by the building and standards commission do not affect proceedings under the jurisdiction of the municipal court.

(Ord. No. 2008-9000, § 2, 10-2-08)