

# Ordinance No. 25-2019

## Building and Standards Commission

**AN ORDINANCE OF THE CITY OF HILLCREST VILLAGE IMPLEMENTING V.T.C.A., LOCAL GOVERNMENT CODE CHAPTERS 54 AND 214, ESTABLISHING A BUILDING AND STANDARDS COMMISSION, PROVIDING FOR THE ENFORCEMENT OF CITY ORDINANCES, NOTICES, PROCEEDINGS OF AND HEARINGS BEFORE THE COMMISSION, CIVIL PENALTIES AND OTHER REMEDIES, ASSESSMENT OF LIENS, AND METHOD OF APPEALS. THE COMMISSION SHALL HAVE THE AUTHORITY PROVIDED BY V.T.C.A. LOCAL GOVERNMENT CODE CHAPTER 54, V.T.C.A. LOCAL GOVERNMENT CODE CHAPTER 214, THIS ORDINANCE, AND OTHER RELATED ORDINANCES.**

**WHEREAS**, the City expressly finds that the creation of a building and standards commission is in the public interest and is necessary for enforcement of City ordinances to preserve the health, safety, and welfare of its citizens;

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HILLCREST VILLAGE:**

### **Sec. 25.1 – Quasi-Judicial Enforcement of Health and Safety Ordinances**

- (a) The City of Hillcrest Village hereby implements Chapter 54, Subchapter C, of the Texas Local Government Code and provides for the appointment of a building standards commission to hear and determine cases concerning alleged violations of ordinances.
- (b) The City of Hillcrest Village hereby implements Chapter 214 of the Texas Local Government Code and further provides for the commission to have the authority to hear and determine cases concerning the regulation of housing and other structures.
- (c) The powers, rights, and remedies provided in this ordinance are cumulative, are not mutually exclusive, and are in addition to any other powers, rights, and remedies available to the City under any other provision of City ordinance or state law.

See Building and Standards Commission, V.T.C.A., Local Government Code §§ 54.031, 54.033; Municipal Regulation of Housing and Other Structures, V.T.C.A., Local Government Code § 214.001.

### **Sec. 25.2 – Establishment and Appointment of Building and Standards Commission**

- (a) This City of Hillcrest Village hereby establishes a building and standards commission to hear and determine cases and exercise any related enforcement authority as provided by this ordinance. The commission shall exercise its authority on behalf of the City in the manner and form prescribed by state law and this ordinance.
- (b) The commission shall consist of one or more panels, each composed of at least five members, to be appointed for terms of two years.
- (c) Members of the commission shall be appointed by the Mayor and approved by the City Council. The Mayor may consider for appointment to the commission residents of the City who have demonstrated their civic interest, general knowledge of the community,

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independent and intelligent judgment, understanding of building standards, understanding of neighborhood integrity, and availability to prepare for and attend meetings, and who by reason of diversity of their occupations constitute a commission which is broadly representative of the community.

- (d) Eight or more alternate members of the commission shall be appointed by the Mayor and approved by City Council. Alternate members shall serve in the absence of one or more regular members when requested to do so by the Mayor. The alternate members shall serve for the same period and are subject to removal in the same manner as the regular members. A vacancy shall be filled in the same manner as a vacancy among the regular members.
- (e) Regular members of the commission shall be identified by place numbers 1 through 5. Alternates shall be identified, in equal numbers, as either A or B. Regular members of the commission in places 1, 3, and 5, and alternates designated as A, shall serve two-year terms expiring on September 30 of odd-numbered years. Regular members of the commission in places 2 and 4 and alternates designated as B shall serve two-year terms expiring September 30 of even-numbered years.
- (f) The City Council may remove a commission member for cause on a written charge. Grounds for removal for cause may include, but are not limited to, incompetency, official misconduct, neglect of duty, the final conviction of a crime of moral turpitude, the final conviction of any felony, the unexcused absence from three consecutive commission meetings, the failure to meet residency requirements as provided by Subsection (c) of this Section, and any other reason in the best interests of the City. 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.
- (g) Any vacancy in commission membership shall be filled for the unexpired term of the member whose place has, by resignation, removal, or otherwise, become vacant. The Mayor and City Council shall endeavor to fill a vacancy, in the same manner provided for appointment of commission members, within sixty days after such place becoming vacant.

See Building and Standards Commission, V.T.C.A., Local Government Code § 54.033.

### **Sec 25.3 – Jurisdiction and Authority of the Commission**

- (a) Ordinances Subject to Enforcement by the Building and Standards Commission - Pursuant to Chapter 54 of the Texas Local Government Code, the commission is hereby authorized to hear and determine cases and exercise any related enforcement authority as provided by law and this ordinance concerning 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;
  - (2) relating to the fire safety of a building or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire

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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;
  - (4) relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;
  - (5) relating to a building code or to the condition, use, or appearance of property in a municipality;
  - (6) relating to animal care and control; or
  - (7) relating to water conservation measures, including watering restrictions.
- (b) Regulation of Housing and Other Structures - Pursuant to Chapter 214 of the Texas Local Government Code, the commission is hereby authorized to hear and determine cases and exercise any related enforcement authority as provided by law and this ordinance concerning the regulation of housing and other structures.

See Ordinances Subject to Quasi-Judicial Enforcement, V.T.C.A., Local Government Code § 54.032; Municipal Regulation of Housing and Other Structures, V.T.C.A., Local Government Code § 214.001 et seq.

### **Sec 25.4 – Proceedings of the Commission; Commission Panels**

- (a) A majority of the entire commission shall adopt rules for the entire commission in accordance with state law and any applicable City ordinances. The rules shall establish procedures for use in hearings, providing ample opportunity for presentation of evidence and testimony by respondents or persons opposing charges brought by the City or its officials relating to alleged violations of ordinances, and shall designate appropriate City officials and/or commission members to perform the administrative duties of the commission and commission panels, including, but not limited to, scheduling, searching public records, mailing, publishing, and/or posting notices, and processing and maintaining documents and files.
- (b) At its first meeting, and then at the first meeting of each subsequent year, each commission panel shall select a panel member to act as chairperson and presiding officer during the hearing of all cases before the panel. The chairperson shall serve from the date of selection until December 31 of the year selected and may be selected for subsequent terms of office. The chairperson shall be entitled to act and vote upon all matters before the commission panel in the same manner as other members.
- (c) At its first meeting, and then at the first meeting of each subsequent year, each commission panel shall select a panel member to act as secretary for the commission panel. The secretary shall prepare and be the custodian of minutes of all commission panel proceedings, showing the vote of each member on each question or the fact that a member is absent or fails to vote. The secretary shall also keep records of the commission panel's examinations and other official actions. The minutes and records shall be filed immediately with the City Secretary as public record.
- (d) Meetings of the entire commission shall be held at the call of the Mayor. Meetings of the commission panels shall be held at the call of the chairperson of each panel and at

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other times as determined by the commission. All meetings of the commission and its panels shall be open to the public. Each chairperson of a panel, or in the chairperson's absence each acting chairperson, may administer oaths and compel the attendance of witnesses.

- (e) All cases to be heard by the commission may be heard by any panel of the commission.
- (f) A majority of the members of a panel must hear a case.
- (g) Any commission member having any personal or financial interest in a case or a hearing before a commission panel shall, upon filing a declaration of such fact with the secretary of the commission panel, be automatically excused from the meeting in which the interests are involved. It shall be considered misconduct and cause for removal from the commission for any member to participate in any case or hearing in which he/she has a personal or financial interest.
- (h) The Mayor, or his/her designee, shall present all cases before the commission panels.
- (i) A majority vote of the members voting on a matter is necessary to take any action under this ordinance.

See Proceedings of Commission Panels, V.T.C.A., Local Government Code § 54.034; Vote, V.T.C.A., Local Government Code § 54.038.

### **Sec 25.5 – Notice of Proceedings Before Commission Panels**

- (a) Notice of all proceedings before the commission panels brought pursuant to this ordinance shall:
  - (1) state the date, time, and place of the hearing; and
  - (2) inform the property owner and/or lienholder that he/she has the right to:
    - i. be represented by an attorney at the hearing;
    - ii. inspect the City's file on the property at code compliance headquarters prior to the hearing;
    - iii. request the presence of City staff for the purpose of questioning at the hearing; and
    - iv. present evidence and cross-examine City staff at the hearing.
- (b) The notice shall be given as follows:
  - (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 the affected property, and each holder of a recorded lien against the affected property, as shown by the records in the office of the Brazoria County Clerk if the address of the lienholder can be ascertained from the deed of trust establishing the lien or other applicable instruments on file in the office of the county clerk; and
  - (2) 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) The notice shall be posted and either personally delivered or mailed before the 30th calendar day before the date of the hearing before the commission panel. In addition,

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the notice shall be published in a newspaper of general circulation in the City on one occasion on or before the 30th calendar day before the date fixed for the hearing.

- (d) A commission panel may file a notice of a proceeding before the commission panel in the Official Public Records of Real Property in Brazoria County. The notice shall 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 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.
- (e) A commission panel must exercise due diligence to determine the identity and address of a property owner, lienholder, or registered agent to whom it is required to give notice. A commission panel exercises due diligence when it follows the procedures for service under Section 82.118, Property Code, or searches the following records:
  - (1) Brazoria County real property records;
  - (2) appraisal district records of the Brazoria County Appraisal District;
  - (3) records of the secretary of state, if the property owner, lienholder, or registered agent is a corporation, partnership, or other business association;
  - (4) assumed name records of Brazoria County;
  - (5) tax records of the City; and
  - (6) utility records of the City.
- (f) When a commission panel mails a notice in accordance with this section to a property owner, lienholder, or registered agent, 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.

See Notice, V.T.C.A., Local Government Code § 54.035.

### **Sec 25.6 – Presumption of Ownership**

- (a) When the City is required by statute, rule, regulation, or ordinance to send a notice to an owner of real property for the purpose of enforcing a City ordinance, a commission panel may include the following statement in the notice: "According to the real property records of Brazoria County, you own the real property described in this notice. If you no longer own the property, you must execute an affidavit stating that you no longer own the property and stating the name and last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office not later than the 20th day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice, even if you do not." The notice must be delivered in person or by certified mail, return receipt requested.
- (b) If a commission panel sends a notice to the owner of the property to which the notice relates, as shown on or after the 10th day before the date notice is sent by the real

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property records of Brazoria County, and the record owner no longer owns the property, the record owner shall execute an affidavit provided with the notice by the commission panel stating:

- (1) that the record owner no longer owns the property; and
  - (2) the name and last known address of the person who acquired the property from the record owner.
- (c) The record owner shall deliver the affidavit in person or by certified mail, return receipt requested, to the City not later than the 20th day after the date the record owner receives the notice.
- (d) If the City receives an affidavit under Subsection (c), the commission panel shall send the appropriate notice to the person named in the affidavit as having acquired the property. A notice sent under this Subsection must include the statement authorized by Subsection (a).
- (e) If the City receives an affidavit under Subsection (c), it shall:
- (1) maintain the affidavit on file for at least two years after the date the City receives the affidavit; and
  - (2) deliver a copy of the affidavit to the chief appraiser of the Brazoria County Appraisal District.
- (f) The City is considered to have provided notice to a property owner if the commission panel complies with the statute, rule, regulation, or ordinance under which the notice is sent and if it:
- (1) complies with Subsection (a) and does not receive an affidavit from the record owner; or
  - (2) complies with Subsection (d) and does not receive an affidavit from the person to whom the notice was sent under Subsection (d).
- (g) If a commission panel complies with this Section and the City does not receive an affidavit under Subsection (c), the record owner is presumed to be the owner of the property for all purposes to which the notice relates.
- (h) For purposes of this Section, "real property" does not include a mineral interest or royalty interest.

See Notices to Certain Property Owners, V.T.C.A., Local Government Code § 54.005.

### **Sec 25.7 – Functions of a Commission Panel**

- (a) A commission panel may:
- (1) provide notices pursuant to this ordinance;
  - (2) conduct hearings pursuant to this ordinance;
  - (3) order the repair, within a fixed period, of buildings found to be in violation of an ordinance;
  - (4) declare a building substandard in accordance with the powers granted by state law and this ordinance;
  - (5) order, in an appropriate case, the immediate removal of persons or property found on private property, enter on private property to secure the removal if it is determined that

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conditions exist on the property that constitute a violation of an ordinance, and order action to be taken as necessary to remedy, alleviate, or remove any substandard building found to exist;

- (6) issue orders or directives to any peace officer of the state, including the Marshall, a sheriff, or a constable, to enforce and carry out the lawful orders or directives of the commission panel;
  - (7) determine the amount and duration of the civil penalty the City may recover as provided by Section 54.017 of the Local Government Code; and
  - (8) perform such other actions as may be authorized by the City Council, City ordinance, or state law.
- (b) At a hearing under this ordinance, the commission panel shall issue a written order, signed by the chairperson, stating:
- (1) whether the person charged with violating an ordinance is liable for the violation;
  - (2) the amount of a penalty, cost, or fee assessed against the person, if any; and
  - (3) any other decision of the commission panel and/or action to be taken in connection with the hearing.
- (c) Except as otherwise provided in this ordinance, a commission panel may:
- (1) allow a reasonable time in which to comply with the commission panel's order and the requirements of the applicable ordinance;
  - (2) accept an alternate method for compliance with the commission panel's order when it can be demonstrated that such alternate method meets the intent of the applicable City ordinance; and
  - (3) when it is determined that, due to peculiarities of the property, a literal enforcement of the applicable ordinances would result in an undue burden, the commission panel may allow the minimum variations necessary to relieve the burden when such minimum variations will not result in danger to persons or property and will not result in a lack of maintenance so as to affect the appearance and values of the neighborhood.
- (d) The order shall be deemed issued and effective on the date the commission panel hears and decides the case.
- (e) Promptly after a commission panel's decision becomes final, the commission panel shall deliver or mail a copy of the final decision and order, by personal delivery, first class mail with certified return receipt requested, or delivery by the United States Postal Service using signature confirmation service, to all persons to whom notice is required to be sent under Section 25.5. In addition, an abbreviated copy of the order shall be published one time in a newspaper of general circulation in the City within 10 calendar days after the date of the delivery or mailing of the copy as provided by this Subsection, including the street address or legal description of the property, the date of the hearing, a brief statement indicating the results of the order, and instructions stating where a complete copy of the order may be obtained. A copy of the order shall be filed in the office of the City Secretary, and the City Secretary shall keep the order in a separate index and file. The order may be recorded using microfilm, microfiche, or data processing techniques.

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See Functions, V.T.C.A., Local Government Code § 54.036; Judicial Review, V.T.C.A., Local Government Code § 54.039; see *also* Alternate Procedure for Administrative Hearing, V.T.C.A., Local Government Code § 54.044.

### **Sec 25.8 – Civil Penalty**

- (a) A commission panel may assess a civil penalty in a proceeding against the owner or the owner's representative with control over the premises if the City proves at the hearing that such party was actually notified of the provisions of the ordinance and, after receiving notice of the ordinance provisions, said party committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.
- (b) A civil penalty under this Section may not exceed \$1,000 a day for a violation of an ordinance, except that a civil penalty under this Section may not exceed \$5,000 a day for a violation of an ordinance relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the City.
- (c) A determination made under Section 25.7(a)(7) 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.
- (d) To enforce any civil penalty under Chapter 54, Subchapter C, of the Local Government Code, the City Secretary shall file with the district clerk of Brazoria County a certified copy of the order of the commission panel establishing the amount and duration of the penalty. No other proof shall be required for a district court to enter final judgment on the penalty.

See Civil Penalty, V.T.C.A., Local Government Code § 54.037.

### **Sec 25.9 – Lien; Abstract**

- (a) An order issued under Section 25.7, including any civil penalties assessed under Section 25.7(a)(7), is enforceable in the same manner as provided in Sections 214.001(k), (m), (n), and (o) of the Texas Local Government Code. An abstract of judgment shall be ordered 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 under Section 54.039 of the Texas Local Government Code 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.

See Lien; Abstract, V.T.C.A., Local Government Code § 54.040.



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### **Sec 25.10 – Judicial Review**

- (a) Any owner, lienholder, or mortgagee of record jointly or severally aggrieved by any decision of a commission panel may present a petition to a district court, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality.
- (b) The petition must be presented to the court within 30 calendar days after the date a copy of the final decision of the commission panel is personally delivered, mailed by first class mail with certified return receipt requested, or delivered by the United States Postal Service using signature confirmation service, to all persons to whom notice is required to be sent under Section 25.5.
- (c) On presentation of the petition, the court may issue a writ of certiorari directed to the commission panel to review the decision of the commission panel and shall prescribe in the writ the time, which may not be less than 10 days, within which a return on the writ must be made and served on the relator or the relator's attorney.
- (d) The commission panel may not be required to return the original papers acted on by it. It shall be sufficient for the commission panel to return certified or sworn copies of such papers or of parts of such papers as may be called for by the writ.
- (e) The return shall concisely set forth other facts as may be pertinent and material to show the grounds for the decision appealed from and shall be verified.
- (f) The allowance of the writ does not stay proceedings on the decision appealed from.
- (g) 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.
- (h) Costs may not be allowed against the commission panel.
- (i) If the decision of the commission panel is affirmed or not substantially reversed but only modified, the district court shall allow to the City all attorney's fees and other costs and expenses incurred by the City 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 occupation of the property subject to the proceedings before the commission panel.
- (j) If no appeals are taken from the decision of the commission panel within the required period, the decision of the commission panel is, in all things, final and binding.

See Judicial Review, V.T.C.A., Local Government Code § 54.039; Commission Panel Decision Final, V.T.C.A. Local Government Code § 54.041.

### **Sec 25.11 – Authority Regarding Substandard Building; Minimum Standards**

- (a) The City hereby requires, and a commission panel may order, the vacation, relocation of occupants, securing, repair, removal, or demolition of a building that is:
  - (1) dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare;

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- (2) regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or
- (3) boarded up, fenced, or otherwise secured in any manner if:
  - i. the building constitutes a danger to the public even though secured from entry; or
  - ii. the means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described in Subsection (a)(2).
- (b) For purposes of this Section, the term "building code" shall mean the applicable building code as adopted by City ordinance.
- (c) In accordance with Section 214.001(b)(1) of the Texas Local Government Code, the City hereby establishes the following minimum standards for the continued use and occupancy of all buildings in the City, regardless of the date of their construction or whether there are actual occupants of the building:
  - (1) whenever any door, aisle, 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;
  - (2) 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;
  - (3) whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and a half times the working stress allowed in the building code for new buildings of similar structure, purpose, or location;
  - (4) whenever any portion of a building 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 of a building is 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 new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in the building code for such buildings;
  - (7) whenever any portion of a building has cracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to fire, earthquake, wind, flood, or any other catastrophe, than is required in the case of similar new construction;
  - (8) whenever a building, or any portion thereof, lacks 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;

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- (9) whenever a building, or any portion thereof, is likely to partially or completely collapse because of:
  - i. dilapidation deterioration or decay;
  - ii. faulty construction;
  - iii. the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building;
  - iv. the deterioration. Decay, or inadequacy of its foundation; or
  - v. any other cause;
- (10) whenever, for any reason, a building, or any portion thereof, is manifestly unsafe for the purpose for which it is being used;
- (11) 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 of gravity does not fall inside the middle one-third of the base;
- (12) whenever a building, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings;
- (13) whenever a building has been so damaged by fire, wind, earthquake, or flood, or has become so dilapidated or deteriorated, as to become:
  - i. an attractive nuisance to children;
  - ii. a harbor for vagrants, vermin, insects, criminals or immoral persons; or
  - iii. as to enable persons to resort thereto for the purpose of committing unlawful or immoral acts;
- (14) whenever, any building which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 66 percent of the strength, fire-resisting qualities or characteristics, or 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, 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 to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness, disease, or injury;
- (16) whenever any building, 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 to be a fire hazard or other danger to human occupants;
- (17) whenever there has been no significant construction work done on a construction site in the previous three months, and the site is not secured by a fence or other means to prevent its use by children or by vagrants or other uninvited as a place of harborage;
- (18) whenever there has been no significant construction work done on a construction site in the previous three months, and all building materials and construction equipment and tools have neither been removed from the site nor secured at the site to prevent their use by children, their theft, their deterioration, their vandalism, or their harborage of rodents or insects;

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- (19) whenever any portion of a building remains on a site after the demolition or destruction of the building or whenever any building 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; or
  - (20) whenever any other conditions or defects exist with respect to a building, or any portion thereof, that endanger or adversely affect the life, health, property, welfare, or safety of its occupants or the public.
- (d) A building that fails to satisfy any one or more of the minimum standards set forth in Subsection (b) is hereby deemed to be substandard and a public nuisance.

See Authority Regarding Substandard Building, V.T.C.A., Local Government Code § 214.001.

### **Sec 25.12 – Notice and Hearing Regarding Substandard Building**

- (a) A commission panel may provide notice and conduct a public hearing in accordance with this ordinance to determine whether the building complies with the minimum standards set forth in Section 25.11.
- (b) In addition to the requirements set forth in Section 25.5, a notice of a hearing sent to an owner, lienholder, or mortgagee under this Section must include a statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with this ordinance and the time it will take to reasonably perform the work.
- (c) In conducting a hearing authorized under this Section:
  - (1) The commission panel shall require the owner, lienholder, or mortgagee of the building to within 30 calendar days:
    - i. secure the building from unauthorized entry; or
    - ii. repair, remove, or demolish the building, unless the owner or lienholder establishes at the hearing, by a preponderance of the evidence, that the work cannot reasonably be performed within 30 calendar days.
  - (2) If the commission panel allows the owner, lienholder, or mortgagee more than 30 calendar days to repair, remove, or demolish the building, the commission panel 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 commission panel.
  - (3) The commission panel may not allow the owner, lienholder, or mortgagee more than 90 calendar days to repair, remove, or demolish the building or fully perform all work required to comply with the order of the commission panel, unless the owner, lienholder, or mortgagee:
    - i. submits a detailed plan and time schedule for the work at the hearing; and
    - ii. establishes at the hearing that the work cannot reasonably be completed within 90 calendar days because of the scope and complexity of the work.

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- (4) If the commission panel allows the owner, lienholder, or mortgagee more than 90 calendar days to complete any part of the work required to repair, remove, or demolish the building, the commission panel shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the commission panel, or its designee, 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 panel or its designee to demonstrate compliance with the time schedules. If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the City boundaries that exceeds \$100,000 in total value, the commission panel 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 Subsection. In lieu of a bond, the commission panel 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 panel. 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 panel issues the order.
- (5) In a public hearing to determine whether a building complies with the minimum standards set out in Section 25.11, the owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.
- (d) After the public hearing, if a building is found in violation of the minimum standards set out in Section 25.11, the commission panel may order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time as provided by this Section. The commission panel may also order that the occupants be relocated within a reasonable time. The commission panel 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 commission panel shall use its best efforts to determine the identity and address of any owner, lienholder, or mortgagee of the building.
- (e) Within 10 days after the date that the order is issued, the commission panel 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:
    - i. the street address or legal description of the property;
    - ii. the date of the hearing;
    - iii. a brief statement indicating the results of the order; and
    - iv. instructions stating where a complete copy of the order may be obtained.
- (f) If the owner does not take the ordered action within the allotted time, the commission panel shall make a diligent effort to discover each mortgagee and lienholder having an interest in the building or in the property on which the building is located. The commission panel 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:

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- (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 of municipal minimum standards 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.
- (g) If the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, the commission panel may order the building to be vacated, secured, removed, or demolished the building or the occupants relocated at the City's expense. This Subsection does not limit the ability of the commission panel to collect on a bond or other financial guaranty that may be required by Subsection (c)(4).
- (h) If the City incurs expenses under Subsection (g), the commission panel may order the assessment of 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 is or was located.
- (1) 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.
  - (2) 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 is or was located, the amount of expenses incurred by the city, and the balance due. If the notice is given and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by Subsections (d) and (f), the lien is a privileged lien subordinate only to tax liens.
  - (3) 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.
- (i) A commission panel 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 commission panel searches the records set forth in Section 25.5(e).
- (j) When a commission panel mails a notice in accordance with this Section to a property owner, lienholder, mortgagee, or registered agent, 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.

See Functions, V.T.C.A., Local Government Code § 54.036; Authority Regarding Substandard Building, V.T.C.A., Local Government Code § 214.001.

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### Sec 25.13 – Additional Authority to Secure Substandard Building

- (a) Without a hearing before the commission panel, a commission panel may order a building to be secured at the City's expense if the commission panel determines that the building:
- (1) violates the minimum standards set forth in Section 25.11; and
  - (2) is unoccupied or is occupied only by persons who do not have a right of possession to the building.
- (b) Upon securing a building as provided in Subsection (a), the building inspector shall post a notice on or near the front door of the building in substantially the following form:

**WARNING: DO NOT OCCUPY**

This building is in violation of the City Code of the City of Hillcrest Village. Occupancy is suspended until such time as the violations are corrected and approved by the City Building and Standards Commission. It is a misdemeanor to occupy this building or to remove or deface this notice.

- (1) It shall be unlawful for any person to tamper with or remove such notice or to occupy or use, or permit the occupancy or use of, any building upon which such notice has been posted until the condition giving rise to such notice has been corrected in accordance with the requirements of the commission panel's order and all applicable City ordinances or the alleged violation has been finally dismissed by the ultimate authority having jurisdiction thereof.
- (c) Before the 11th calendar day after the date the building is secured, the commission panel shall give notice to the owner.
- (1) The notice must contain:
- i. an identification, which is not required to be a legal description, of the building and the property on which it is located;
  - ii. a description of the violation of the minimum standards that is present at the building;
  - iii. a statement that the City will secure or has secured, as the case may be, the building; and
  - iv. an explanation of the owner's entitlement to request a hearing about any matter relating to the City's securing of the building.
- (2) The notice shall be given by:
- i. personally, serving the owner with written notice;
  - ii. depositing the notice in the United States mail addressed to the owner at the owner's post office address;
  - iii. publishing the notice at least twice within a 10-calendar day period in a newspaper of general circulation in Brazoria County if personal service cannot be obtained and the owner's post office address is unknown; or
  - iv. 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.

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- (d) A commission panel shall conduct a hearing, in accordance with this ordinance, 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, the owner files with the City Secretary a written request for the hearing. The commission panel shall conduct the hearing within 20 calendar days after the date the request is filed.
- (e) A commission panel has the same authority to assess expenses under this Section as it has to assess expenses under Section 214.001(n) of the Texas Local Government Code, and a lien is created under this Section in the same manner that a lien is created under Section 214.001(n) of the Texas Local Government Code and is subject to the same conditions as a lien created under that Section.
- (f) The authority granted by this Section is in addition to that granted by Section 25.12.

See Judicial Review, V.T.C.A., Local Government Code § 214.0011.

### **Sec 25.14 – Judicial Review of Orders Issued Under Sections 25.11–.13**

- (a) Any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of a commission panel issued under Sections 25.11–.13 may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed by an owner, lienholder, or mortgagee within 30 calendar days after the respective dates a copy of the final decision of the commission panel is personally delivered to them, mailed to them by first class mail with certified return receipt requested, or delivered to them by the United States Postal Service using signature confirmation service, or such decision shall become final as to each of them upon the expiration of each such 30 calendar day period.
- (b) On the filing of the petition, the court may issue a writ of certiorari directed to the commission panel to review the order of the commission panel and shall prescribe in the writ the time within which a return on the writ must be made, which must be longer than 10 days, and served on the relator or the relator's attorney.
- (c) The commission panel may not be required to return the original papers acted on by it, but it is sufficient for the commission panel 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 issuance of the writ does not stay proceedings on the decision appealed from.
- (f) Appeal in the district court 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 City.
- (h) If the decision of the commission panel is affirmed or not substantially reversed but only modified, the district court shall allow to 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



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entered against the property owners, lienholders, or mortgagees as well as all persons subject to the proceedings before the commission panel.

See Judicial Review, V.T.C.A., Local Government Code § 214.0012.

### **Sec 25.15 – Additional Authority Regarding Substandard Building**

- (a) In addition to the authority granted to a commission panel by Sections 25.11–.13, after the expiration of the time allotted under Sections 25.12(d) and (f) for the repair, removal, or demolition of a building, the commission panel may:
  - (1) order the repair of the building at the City's expense and the assessment of such expenses on the land on which the building stands or to which it is attached and may provide for that assessment, the mode and manner of giving notice, and the means of recovering the repair expenses; or
  - (2) order the assessment of a civil penalty against the property owner for failure to repair, remove, or demolish the building and provide for that assessment, the mode and manner of giving notice, and the means of recovering the assessment.
- (b) A commission panel may order the repair of a building under Subsection (a) only to the extent necessary to bring the building into compliance with the minimum standards and only if the building is a residential building with 10 or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum housing standards.
- (c) The commission panel shall impose a lien against the land on which the building stands or stood (unless it is a homestead as protected by the Texas Constitution) to secure the payment of the repair, removal, or demolition expenses or the civil penalty. Promptly after the imposition of the lien, the commission panel must file for record, in recordable form in the office of the county clerk of the county in which the land is located, a written notice of the imposition of the lien. The notice must contain a legal description of the land.
- (d) Except as provided by Section 214.001 of the Texas Local Government Code, the City's lien to secure the payment of a civil penalty or the costs of repairs, removal, or demolition is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the City's lien attaches if the mortgage lien was filed for record in the office of the county clerk of the county in which the real property is located before the date the civil penalty is assessed or the repair, removal, or demolition is begun by the City. The City's lien is superior to all other previously recorded judgment liens.
- (e) Any civil penalty or other assessment imposed under this Section accrues interest at the rate of 10 percent a year from the date of the assessment until paid in full.
- (f) The City's right to the assessment lien may not be transferred to third parties.
- (g) In any judicial proceeding regarding enforcement of the City's rights under this Section, the prevailing party is entitled to recover reasonable attorney's fees from the non-prevailing party.

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- (h) 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 a person 65 years of age or older.
- (i) A commission panel may order the assessment and recovery of a civil penalty against a property owner at the time of an administrative hearing on violations of an ordinance, in an amount not to exceed \$1,000 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 a day for each violation, if the City proves:
  - (1) the property owner was notified of the requirements of the ordinance and the 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 the ordinance.
- (j) An assessment of a civil penalty under Subsection (i) is final and binding and constitutes prima facie evidence of the penalty in any suit brought by the City in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty.
- (k) To enforce a civil penalty under Sections 25.11–.15, the City Secretary, or his/her designee, must file with the district clerk of the county in which the City is located a certified copy of an order issued under Subsection (i) stating the amount and duration of the penalty. No other proof is required for a district court to enter a final judgment on the penalty.

See Additional Authority Regarding Substandard Building, V.T.C.A., Local Government Code § 214.0015.

#### **Sec 25.16 - Authority Regarding Swimming Pool Enclosures**

- (a) A commission panel may order the repair, replacement, securing, or other remedy of an enclosure or fence that is damaged, deteriorated, substandard, dilapidated, or otherwise in a state that poses a hazard to the public health, safety, and welfare.
- (b) A commission panel may require the owner of the property on which the swimming pool or enclosure or fence is situated, after notice and hearing as provided in Section 25.12, to repair, replace, secure, or otherwise remedy an enclosure or fence of a swimming pool that the commission panel determines violates the minimum standards for swimming pool enclosures adopted under City ordinance.
- (c) If the enclosure or fence is on unoccupied property or is on property occupied only by persons who do not have a right of possession to the property, the commission panel shall give notice to the owner, in accordance with the procedures set out in Section 25.12, of the City's action to repair, replace, secure, or otherwise remedy an enclosure or fence of a swimming pool.
- (d) If the City incurs expenses under this Section, the commission panel 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 swimming pool or the enclosure or fence is situated. 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.

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The lien arises and attaches to the property at the time the notice of the lien is recorded in the office of the Brazoria 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 swimming pool or the enclosure or fence is situated, the amount of expenses incurred by the City, and the balance due. The lien is a privileged lien subordinate only to tax liens and all previously recorded bona fide mortgage liens attached to the real property to which the City's lien attaches.

- (e) A commission panel may assess a penalty, not to exceed \$1,000, for a violation of a City ordinance concerning swimming pool enclosures. Each day a violation occurs constitutes a separate offense.
- (f) A City official, agent, or employee, acting under the authority granted by this Section or any City ordinance concerning swimming pool enclosures, may enter any unoccupied premises at a reasonable time to inspect, investigate, or enforce the powers granted under this Section or any City ordinance concerning swimming pool enclosures. After providing a minimum of 24 hours' notice to the occupant, a City official, agent, or employee, acting under the authority granted by this Section or any ordinance concerning swimming pool enclosures, may enter any occupied premises to inspect, investigate, or enforce the powers granted under this Section or any City ordinance concerning swimming pool enclosures. The City, commission and its officials, agents, or employees, including the commission and any commission panel, shall be immune from liability for any acts or omissions not knowingly done that are associated with actions taken in an effort to eliminate the dangerous conditions posed by an enclosure or fence that is damaged, deteriorated, substandard, dilapidated, or otherwise in a state that poses a hazard to the public health, safety, and welfare and for any previous or subsequent conditions on the property.
- (g) The authority granted by this Section is in addition to that granted by any other law.

See Authority Regarding Swimming Pool Enclosures, V.T.C.A., Local Government Code § 214.101.

### **Sec 25.17 - Requiring Repair, Removal, or Demolition of Building or Other Structure**

- (a) If the City Council finds that a building, bulkhead or other method of shoreline protection, fence, shed, awning, or other structure, or part of a structure, is likely to endanger persons or property, the City Council may:
  - (1) order the owner of the structure, the owner's agent, or the owner or occupant of the property on which the structure is located to repair, remove, or demolish the structure, or the part of the structure, within a specified time; or
  - (2) order the repair, removal, or demolition of the structure, or the part of the structure, at the City's expense, on behalf of the owner of the structure or the owner of the property on which the structure is located, and assess the repair, removal, or demolition expenses on the property on which the structure was located.

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- (b) The expenses incurred under Subsection (a)(2) for repair, removal, or demolition shall be assessed in accordance with Section 25.13.
- (c) Notice of the assessment shall be given in accordance with Section 25.13.
- (d) The expenses shall be recovered in accordance with Section 25.13.
- (e) The City Council may punish by a fine, confinement in jail, or both a person who does not comply with an order issued under Subsection (a)(1).

See Requiring Repair, Removal, or Demolition of Building or Other Structure, V.T.C.A., Local Government Code § 214.002.

### **Sec 25.18 - Property Bid Off to the City**

- (a) This ordinance shall apply to property that has been bid off to the City under Section 34.01(j) of the Texas Tax Code.

See Property bid off to municipality, V.T.C.A., Local Government Code § 214.005.

### **Sec 25.19 – Authority Regarding Junked Vehicles**

- (a) The City hereby adopts Sections 25.5–.10 of this ordinance as the administrative adjudication process under which an administrative penalty may be imposed for the enforcement of a City ordinance adopted under Chapter 683, Subchapter E of the Texas Transportation Code concerning junked vehicles.
- (b) In addition to the requirements set forth in Section 25.5, notice to a person charged with violating the ordinance shall be served by legal process in the form of a summons or citation.
  - (1) The original or a copy of the summons or citation shall be kept as a record in the ordinary course of the City and is rebuttable proof of the facts it states.
  - (2) The person who issued the summons or citation is not required to attend a hearing under this Section.
- (c) A person charged with violating an ordinance who fails to appear at a hearing authorized under this Section is considered to admit liability for the violation charged.
- (d) An order issued under this Section against a person charged with an ordinance violation may be enforced by:
  - (1) filing a civil suit for the collection of a penalty assessed against the person; and
  - (2) obtaining an injunction that:
    - i. prohibits specific conduct that violates the ordinance; or
    - ii. requires specific conduct necessary for compliance with the ordinance.
- (e) A person who is found by a commission panel to have violated an ordinance may appeal the determination by filing a petition in a court of competent jurisdiction before the 31st day after the date the commission panel's determination is filed. An appeal does not stay enforcement and collection of the assessment unless the person, before filing the appeal, posts a bond with an agency designated for that purpose by the commission panel.

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See Alternative Procedure for Administrative Hearing, V.T.C.A., Transportation Code § 683.0765.

**Sec 25. – Other Rights and Remedies of the City Unaffected**


- (a) Nothing in this ordinance or in the commission’s exercise of its authority pursuant to this ordinance shall limit or otherwise affect the City’s ability to take any other action permitted by law or exercise any other rights or remedies available to the City pursuant to state law, including, but not limited to, Chapters 54 and 214 of the Texas Local Government Code, and other City ordinances.

**THIS ORDINANCE SHALL BECOME EFFECTIVE AND BE ENFORCED FROM AND AFTER PASSAGE BY THE BOARD OF ALDERMAN OF HILLCREST VILLAGE, TEXAS.**

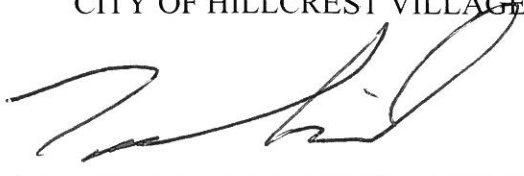
**FIRST READING:**

PASSED, APPROVED, AND ADOPTED, THIS 9<sup>th</sup> DAY OF December 2019.

CITY OF HILLCREST VILLAGE, TEXAS

  
\_\_\_\_\_

RASHELLE CASAS, CITY CLERK

  
\_\_\_\_\_

TOM WILSON, MAYOR

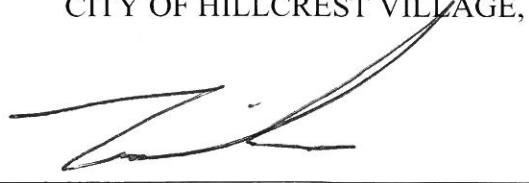
**FINAL READING:**

PASSED, APPROVED, AND ADOPTED, THIS 13<sup>th</sup> DAY OF January 2020.

CITY OF HILLCREST VILLAGE, TEXAS

  
\_\_\_\_\_

RASHELLE CASAS, CITY CLERK

  
\_\_\_\_\_

TOM WILSON, MAYOR