

ORDINANCE NO. 2016-02-\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF CHAPTER 126, ENTITLED "HOUSING," BY RE-NUMBERING EXISTING SECTION 126-44, "REVIEW," AS SECTION 126-46, BY DELETING SECTIONS 126-41 THROUGH 126-43 IN THEIR ENTIRETY AND REPLACING SAID SECTIONS WITH NEW SECTIONS 126-41 THROUGH 126-45 REGARDING THE MEMBERSHIP AND ROLES OF THE BUILDING AND STANDARDS COMMISSION INCLUDING MAKING RECOMMENDATIONS REGARDING THE ADOPTION OF NEW EDITIONS OF THE MODEL CODES, TOGETHER WITH PROPOSED LOCAL AMENDMENTS THERETO, AND HEARING APPEALS RELATED TO THE MODEL CODES; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE

**WHEREAS**, the City of McKinney, Texas, (the "City") is a Home-Rule City possessing the full power of local self-governance pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

**WHEREAS**, the City Council has recognized that certain provisions of the Code of Ordinances should be reviewed and updated from time to time; and

**WHEREAS**, the City Council of the City of McKinney, Texas, finds and determines that it is in the best interest of the public health, safety and general welfare of the citizens of McKinney, Texas, to renumber existing Section 126-44, "Review," as Section 126-46 and delete Sections 126-41 through 126-43 in their entirety and replace said sections with new Sections 126-41 through 126-45 regarding the membership and roles of the Building and Standards Commission including making recommendations regarding the adoption of new editions of the Model Codes, together with proposed local amendments thereto, and hearing appeals related to the Model Codes.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:**

Section 1. **FINDINGS**

All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. **AMENDMENT OF CHAPTER 126, ENTITLED "HOUSING," BY RE-NUMBERING EXISTING SECTION 126-44, "REVIEW," AS SECTION 126-46**

From and after the effective date of this Ordinance, Chapter 126, entitled "Housing," is hereby amended by renumbering existing Section 126-44, "Review," as Section 126-46.

Section 3. **AMENDMENT OF CHAPTER 126, ENTITLED "HOUSING," BY DELETING SECTIONS 126-41 THROUGH 126-43 IN THEIR ENTIRETY AND REPLACING SAID SECTIONS WITH NEW SECTIONS 126-41 THROUGH 126-45 REGARDING THE MEMBERSHIP AND ROLES OF THE BUILDING AND STANDARDS COMMISSION INCLUDING MAKING RECOMMENDATIONS REGARDING THE ADOPTION OF NEW EDITIONS OF THE MODEL CODES, TOGETHER WITH PROPOSED LOCAL AMENDMENTS THERETO, AND HEARING APPEALS RELATED TO THE MODEL CODES**

From and after the effective date of this Ordinance, Chapter 126, entitled "Housing," is hereby amended by deleting Sections 126-41 through 126-43 in their entirety and replacing said sections with new Sections 126-41 through 126-45 to read as follows:

**"Sec. 126-41. - Implementation of state statute.**

The City Council hereby implements Subchapter C, entitled "Quasi-Judicial Enforcement of Health and Safety Ordinances," of Chapter 54, "Enforcement of Municipal Ordinances," which subchapter is set out in §§ 54.031, et seq. of the Texas Local Government Code.

**Sec. 126-42. - Creation of Building and Standards Commission.**

(a) *Creation and organization.* There is hereby created the Building and Standards Commission of the City, referred to in this article as "the Commission," which shall be organized as follows:

- (1) The Commission shall: consist of at least five (5) members appointed by a majority of the City Council; ideally consist of members who are qualified by experience and training to pass on matters pertaining to the building industry, who are not employees of the City; and ideally include at least one (1) architect, one (1) general contractor or engineer, and one (1) member with experience in the area of fire protection and fire safety;
- (2) Each member shall be a resident and qualified voter of the City, at the time of his appointment. A member who ceases to reside in the City during his term of office shall immediately forfeit his office;
- (3) The term of office for each member, except for a member appointed to fill an unexpired term, shall be at least two years. Commission members shall, to the extent not otherwise modified hereby, serve terms in accordance with City Council policy on Board and Commission Member Appointment and Eligibility. Unless otherwise provided herein, terms shall expire on September 30, and any vacancies shall be filled for the unexpired term. Members may be removed before their terms of office expire, as provided herein;
- (4) Members shall serve without compensation; and
- (5) The Council may remove a member for cause on a written charge. Before a decision regarding a removal is made, the Council must hold a public hearing on the matter if requested by the member subject to the removal action.

(b) *Meetings.* The Commission shall hold its meetings on the call of the chairman or the Chief Building Official, upon written request of two members or at the request of the City Council. All meetings shall be open to the public.

(c) *Quorum.* All cases to be heard by the Commission must be heard by a majority of its members, except that a request to modify or reverse a decision of the Fire Chief or the Chief Building Official shall be heard by at least four (4) members.

(d) *Chairman and vice-chairman.* A chairman and a vice-chairman shall be selected annually by the members at the first meeting after October 1 of each calendar year. Notwithstanding the foregoing, if the chairman and vice-chairman are both absent from the same meeting a temporary chairperson may be selected by the remaining members to serve as the chairperson for that particular meeting.

(e) *Subpoena witnesses, etc.* The Commission shall have the power to subpoena witnesses, administer oaths, and punish for contempt, and may require the production of documents, under such regulations as it may establish.

(f) *Records.* The recording of the minutes of the Commission meetings shall be the responsibility of the City personnel assigned by the City Manager, or his designee. The secretary for the Commission shall keep a record of the cases, activities, and actions of the Commission and its determinations, give notice of the date and time of hearings, and perform such other duties as are consistent with or may be necessary for the enforcement of this chapter, as required by the Commission. The Commission shall keep records of its examinations and other official actions. The minutes and records shall be filed in the office of the City Secretary, upon signing and/or approval, as public records. Tapes of the meeting shall be retained in accordance with state law and City record retention policies and in no event may the tapes be erased or destroyed until such time as the time for appeal has expired.

(g) *Vote.* A majority vote of the members voting on a matter shall be necessary for the adoption of any motion, the issuance of any order or the determination of the amount and duration of any civil penalty. Notwithstanding the foregoing, the concurring vote of at least four (4) members shall be required to modify or reverse a decision of the Fire Chief or the Chief Building Official. Only the members of the Commission present for the hearing and consideration of a matter shall be allowed to vote.

(h) *Rules and regulations.* The Commission shall adopt rules in accordance with this article and pursuant to sections 54.032 et seq. of the Texas Local Government Code, as amended. 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 municipality or its building officials relating to alleged violations of ordinances, as specified in said sections 54.032 et seq. of the Texas Local Government Code.

(i) *Designated City representative.* The City Manager, Fire Chief, Chief Building Official, or one or more of their respective designees, may present all cases before the Commission.

#### **Sec. 126-43. – Model Codes and Amendments.**

The Commission shall hold a public hearing and make a recommendation to the City Council, prior to any consideration by the City Council, on any of the following:

(a) The adoption of any new editions to the codes adopted under Chapter 42, Article II and Chapter 122 of the Code of Ordinances as adopted by the City of McKinney including, but not limited to, the:

(1) International Building Code;

- (2) International Energy Conservation Code;
- (3) International Fire Code;
- (4) International Fuel Gas Code;
- (5) International Mechanical Code;
- (6) International Plumbing Code;
- (7) International Property Maintenance Code;
- (8) International Residential Code; and,
- (9) National Electrical Code,

which codes are hereinafter referred to collectively in this article as the "Model Codes";

(b) The adoption of any necessary amendments, including local amendments recommended by the North Central Texas Council of Governments, to the Model Codes; and

(c) The adoption of any other amendment to any part or portion of a Model Code that is requested by a member of the public.

**Sec. 126-44. – Board of Appeals for Model Codes; Reinstatement of Contractor Registration.**

(a) The Commission shall serve as the Board of Appeals for the Model Codes, and shall hear appeals from any decision of the Fire Chief or the Chief Building Official related to the Model Codes including:

- (1) The use of alternate materials and construction methods; or
- (2) Appeals where it is alleged there is error in any order, requirement, decision or determination made by the Fire Chief or the Chief Building Official regarding the interpretation and/or application of the Model Codes; or
- (3) Any request for an exception to the Model Codes in order to make a reasonable accommodation for a disabled person or group as defined by the Fair Housing Act.

(b) *Procedure.* Appeals from the decision of the Fire Chief or the Chief Building Official may be taken to and before the Commission by any person aggrieved by the decision, or by any officer, department, board, or bureau of the City affected by the decision. The appellant must file with the Commission and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. Such appeal shall be filed within 30 days after decision in question has been rendered by the administrative officer. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the Commission all the papers constituting the record of the action that is appealed.

The party seeking the appeal must remit the applicable fee(s) as set out in Appendix A, Schedule of Fees, at the time of filing the appeal. Applicants requesting placement on the Commission

agenda for a meeting other than a regularly scheduled meeting must pay an additional fee as set out in Appendix A, Schedule of Fees.

- (1) Any request to use alternative materials or construction methods pursuant to subparagraph (a)(1) herein may be approved by the Commission if and only if the Commission determines that the alternative material or construction method equally meets the applicable Model Code's standards, especially considering the alternative's adequacy, stability, strength, sanitation and safety for the public's health and welfare.
- (2) An application for an appeal pursuant to subparagraph (a)(2) herein shall be based on a claim that the true intent of the Model Code in question or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of such Model Code do not fully apply or an equally good or better form of construction is proposed. The Commission shall have no authority to waive any requirements of such Model Code.

(c) *Notice of hearing on appeal.* The Commission shall fix a reasonable time for the hearing of the appeal or other matters referred to it, shall give public notice of the hearing, and shall mail notices of such hearing to the appellant and to the owners of property lying within 200 feet or less of any point of the lot or portion thereof that is the subject of the appeal, and to all other persons deemed by the Commission to be affected thereby, such owners and persons being determined according to the current tax rolls of the City. Depositing of such written notice in the mail, postage-paid, shall be deemed sufficient compliance therewith.

(d) *Decision by Commission.* The Commission shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or attorney. The Commission may reverse or affirm wholly or partly or may modify the order, requirements, decision, or determination of the administrative officer as in its opinion ought to be made in the premises, and to that end, shall have all powers of the officer or department from whom the appeal is taken. Notwithstanding the foregoing, the Commission shall have no right or authority to waive any requirements of the Model Codes save and accept only to the extent an appeal is specifically brought pursuant to subparagraphs (a)(1) and/or (a)(3) of this Section.

(e) The Commission shall also hear any appeal regarding the revocation of a contractor's registration by the Chief Building Official. In addition, the Commission shall review for possible reinstatement any contractor's registration that has been revoked by the Chief Building Official prior to reinstatement of such registration.

**Sec. 126-45. – Dangerous, Unsafe and Substandard Structures; Enforcing Model Codes.**

The Commission shall have quasi-judicial authority to enforce the enumerated health and safety ordinances as authorized by sections 54.032, et seq. of the Texas Local Government Code, as amended, and the Model Codes, as amended.

(a) Specifically, the Commission shall hear cases relative to 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 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; or
- (5) Relating to a Model Code as it pertains to the condition, use, or appearance of property in the City.

(b) The Commission shall have the above-referenced authority to the extent such jurisdiction is not in conflict with, or duplicative of, the jurisdiction of another board or commission.

(c) The Commission may, in the exercise of its quasi-judicial authority under sections 54.032, et seq. of the Texas Local Government Code:

- (1) Declare a building substandard in accordance with the powers granted by sections 54.032 et seq. of the Texas Local Government Code, as amended, and in accordance with sections 214.001 et seq. of the Texas Local Government Code, as amended;
- (2) Require, within a fixed period of time, the reduction in occupancy load of an overcrowded structure or the vacation of a structure that is dangerous to the health, safety, or welfare of the occupants;
- (3) Order, in the 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 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 structure found to exist;
- (4) Require, within a fixed period of time, the removal of personalty from a structure ordered vacated or demolished. Removal may be accomplished by use of city staff or a private transfer company if the owner of the personalty is not known, or the whereabouts of the owner cannot be ascertained, or the owner fails to remove the personalty. The commission may cause any personalty removed to be stored in the care and custody of a bonded warehouse facility. Costs of removal and storage are the responsibility

of the owner of the personalty. The personalty may be disposed of, and associated costs assessed, to the extent and as allowed by law;

- (5) Require, within a fixed period of time, the demolition of a structure by the owner or by the City if said structure is found to be a public nuisance;
- (6) Require, within a fixed period of time, as an alternative to demolition of a structure found to be a public nuisance, or in violation of an ordinance, the repair of the structure by the owner or by the City;
- (7) Require that the owner, lienholder or mortgagee of property repair a structure and bring same into compliance with current Model Codes, the City's Code of Ordinances and all applicable standards within a fixed period of time;
- (8) Require or cause the correction, within a fixed period of time, of a dangerous condition, as defined by City ordinance or state law, on the land. Correction of a dangerous condition may be accomplished by City staff or private contractor. Costs of correction are the responsibility of the owner;
- (9) Require that structures be secure against entry within a reasonable time based upon the evidence presented to the commission and as determined to be in the best interest of the health, safety and general welfare of the citizens;
- (10) Issue orders or directives to any peace officer of the state, including a sheriff or constable or the chief of police of the City, to enforce and carry out the lawful orders or directives of the commission;
- (11) Determine the amount and duration of the civil penalty the City may recover against the owner or owner's representative with control over the premises, in a suit for such purpose, on proof that such party was notified of the provisions of the ordinance, as defined herein, 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, such civil penalty not to exceed \$1,000.00 a day for violation of such 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 municipality, all as provided by sections 54.017 and 54.036 of the Texas Local Government Code;
- (12) Grant variances in accordance with provisions hereinafter stated when, in the opinion of the commission, a literal interpretation of the Housing and Substandard Building Code, the Housing Code and the International Property Maintenance Code, as adopted, would result in the imposition of an unnecessary or unreasonable hardship, provided that the variance would not create or allow the existence of a hazardous condition, as defined by City ordinance or state law;

(13) Hear appeals and offer interpretations of the Housing and Substandard Building Code, the Housing Code, the International Property Maintenance Code, and other Model Codes adopted by the City; and

(14) Determine the eligibility and length of ad valorem tax exemptions for applications submitted under the historic neighborhood improvement zone program.

(d) The authority and functions of the commission, as enumerated in subsections (a) through (c) of this section, are a non-exhaustive listing of the powers and authority of the Commission. The Commission may acquire and exercise such other power and authority as granted by City Council or state statute, as amended.”

Section 4. **REPEALER CLAUSE**

This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 5. **SEVERABILITY CLAUSE**

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 6. **RESERVATION OF EXISTING RIGHTS AND REMEDIES**

All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 7. **IMMUNITY**

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 8. **INJUNCTIONS**

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of McKinney in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of McKinney.



Section 9. **PENALTY**

Any person, firm or corporation violating any of the provisions of this ordinance shall be subject to the penalty provisions set forth in Chapter 126 of the McKinney Code of Ordinances; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

Section 10. **PUBLICATION**

The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council's adoption hereof as provided by law.

Section 11. **EFFECTIVE DATE**

This Ordinance shall become effective from October 1, 2016 and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 16<sup>th</sup> DAY OF FEBRUARY, 2016.**

CITY OF MCKINNEY, TEXAS

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BRIAN LOUGHMILLER  
Mayor

CORRECTLY ENROLLED:

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SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney