

ORDINANCE NO 20230926C

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KRESS, TEXAS, REGARDING THE ABATEMENT OF SUBSTANDARD STRUCTURES; PROVIDING FOR NOTICE TO INTERESTED PERSONS REGARDING THE EXISTENCE OF A SUBSTANDARD STRUCTURE AND OPPORTUNITY FOR A HEARING; AND PROVIDING FOR THE CONDEMNATION AND REMOVAL OF SUBSTANDARD STRUCTURES.

WHEREAS the City Council of Kress, Texas, finds that there exist certain structures within the City of Kress that are in a state of disrepair and constitute a public nuisance; and

WHEREAS such structures constitute a health hazard and a create a threat to the public health and safety of the citizens of the City;

NOW, THEREFORE:

BE IT ORDAINED BY THE CITY OF KRESS, TEXAS

(a) *Definitions; Declaration of Nuisance.*

(1) *Definitions.* In this Section, the following meanings apply.

Good Repair. Means (1) that a premises is safe and habitable for its ordinary intended use; or, (2) that materials, equipment, and systems used in, on or under any structure are sound, stable, and performing the function for which intended without substantial defect that is detrimental to normal or intended operation or functionality. It does not mean or include purely cosmetic or aesthetic aspects of a structure, equipment, system, or material.

Interested Persons. Means jointly and severally any and all persons holding or claiming a legal interest in land or improvements thereon as either owner, tenant, occupant, lien holder, or other party with a legal interest discoverable by reasonable diligence.

Structure. That which is built or constructed or a portion thereof.

(2) *Declaration.* All Structures are hereby declared to be Dangerous Structures which are:

(2.a) Structurally unsafe; or

(2.b) Not provided with adequate egress; or

(2.c) Which constitute a fire hazard; or

(2.d) Are otherwise unfit for human habitation and are dangerous to human life, or which by way of existing use constitute a hazard to safety or health or public welfare, by reason of inadequate maintenance, or dilapidation, or obsolescence, or fire hazard, or abandonment; or

(2.e) 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 by children, animals, or vermin; or

(2.f) Boarded up, fenced, or otherwise secured in any manner but: (1) the building constitutes a danger to the public even though secured from entry; or (2) the means used to secure the building are inadequate to prevent unauthorized entry or use of the building.

All such Dangerous Structures are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in this Article. This Declaration of Nuisance and all terms of this Article shall be applicable to and enforceable both within the city limits and for a distance of five thousand feet (5,000) beyond the city limits or such other distance allowed by state law.

(b) *Initial Notice; service.*

- (1) The Mayor or designated person shall examine or cause to be examined every Structure or portion thereof suspected to be substandard and, if such is found to be a Dangerous Structure, the Mayor shall give Interested Persons in such Dangerous Structure written notice stating the defects found to exist and may revoke the certificate of occupancy.
- (2) The Initial Notice from the Mayor or designated person shall require the Interested Persons in the Dangerous Structure or premises to temporarily secure the structure from entry by persons and animals and repair or abate the defects without delay and no later than the tenth (10th) day after receipt of the notice. Such notice may also require the Dangerous Structure or portion thereof to be vacated forthwith and not occupied until the required repairs and improvements are completed, inspected and approved by the Mayor. Failure to secure, repair, or abate defects within the specified time may result in the Mayor to cause the work to be done and charge the costs against the property or its owner.
- (3) Service of notice is sufficient if it is deposited into the U.S. mail with proper postage for certified mail return receipt requested or is personally delivered to the Interested Persons in the property. In addition, the Mayor or designated person shall file in the real property records of the county clerk in the county where the property is situated, a copy or summary of the Initial Notice and the existence of the proposed condemnation proceeding, in a form acceptable to the County Clerk.
- (4) The Mayor or designated person shall cause to be posted at or on any Dangerous Structure ordered to be vacated, a notice to read: "DO NOT ENTER. UNSAFE TO OCCUPY, Mayor, City of Kress." Such notice shall not be removed without written permission of the Mayor except for the purpose of making the required repairs or demolishing the building with proper permits. The Mayor shall also cause the Dangerous Structure to be secured from unlawful entry if the Interested Persons who received the Initial notice fail, refuse or neglect to so secure the place by the tenth day after receipt of such notice.

(c) *Provisional permit; opportunity to cure or remove structure.*

- (1) If the Interested Persons in the property cannot secure the Dangerous Structure and remedy the defects within ten (10) days after receipt of the notice, but desires more time to do so, then the Interested Persons must apply for a provisional permit within the ten (10) days from the date such notice is received. A provisional permit authorizes the Interested Persons either to remove the structure in accordance with applicable ordinances of the City of Kress or to take such corrective remedial work that can be substantially complete within sixty (60) days, as agreed in writing with the Mayor.
- (2) The Mayor shall issue a provisional permit for the agreed corrective work or removal of the structure when the Interested Persons (i) demonstrates the structure has been temporarily secured as required in the notice letter; (ii) tenders a plan and schedule of work that is feasible to accomplish within sixty (60) days or less, in consideration of: the season; availability of materials; skills of the owner or availability of skilled or licensed contractors in the local market; the scope and amount of work to be performed; and other objective factor reasonably bearing on likelihood of success of the endeavor; (iii) demonstrates reasonably adequate financial resources to accomplish the agreed corrective work within sixty (60) days, such as cash on hand, revenue stream, pre-approved loan, line of credit or a combination of these or other liquid resources readily available to allow substantial completion within sixty (60) days; and, (iv) pays the required fee of three hundred forty-five dollars (\$345.00) for the permit.
- (3) Abatement Inspection. Apart from any ordinarily required construction inspection as required by another applicable code, the Mayor shall cause an abatement re-inspection of the

property after the 60th day, and shall issue a written determination that either: finds substantial completion of the work authorized by the provisional permit (and thereupon may grant an extension of the provisional permit as provided for above or issue a standard building permit and other permits for additional work to continue on the Structure); or, finds that there is not substantial compliance and the condemnation process provided in this Article shall continue.

(d) *Notice of Condemnation Hearing.*

- (1) In the event that the Interested Persons shall fail, neglect or refuse: (1) to comply with the Initial Notice of violation to repair or rehabilitate: or (2) to demolish the Dangerous Structure or portion thereof; or, (3) to timely and substantially complete the terms of a provisional permit, then the Mayor shall cause to be presented to the City Council a resolution setting a date for a condemnation hearing before the City Council, which allows for not less than ten (10) days' notice to the Interested Persons in the property, and ordering that a written notice of such hearing be promptly sent to such person(s) at the last known address for such person(s), and by publication of a notice of such hearing one (1) time in a newspaper of general circulation in the City prior to the date of such hearing. In addition, the City Manager may post notice of the hearing on the property.

(f) *Conduct of Hearing.*

- (1) The Mayor, or the person designated as the chairperson in the absence of the Mayor, shall act as the chairman of the condemnation hearing and shall announce the case and administer an oath or affirmation to all persons desiring to testify in the matter.
- (2) The Mayor or designee shall present photographs, documents, and other relevant and material testimony and evidence concerning (i) the conditions existing on and at the property; (ii) problems and nuisances arising out of same, (iii) the notices sent or effort to locate Interested Persons; and (iv) the existence and status of any provisional permit or reasons for denial of same by the Mayor. At the conclusion of the Mayor testimony, the chairman shall admit the file into the record of the proceeding and for individual review and questioning by any City Council member.
- (3) The Interested Persons in the property shall then have the right to cross-examine the Mayor or designee and challenge any aspect of the evidence or testimony offered by the Mayor. The Interested Persons shall then be allowed to offer direct testimony, photos, and other relevant and material evidence in support of that person's position or in opposition to the Mayor.
- (4) Any other person desiring to offer testimony about the matter shall then be heard by the City Council.
- (5) If the Interested Persons who were sent notice of the hearing fails, refuses, or neglects to appear at the hearing, then such person is deemed to admit liability for the defects and violations stated in the initial notice.
- (6) The City Council may adopt such other procedural rules it deems reasonable and helpful for the conduct of such hearings. The chairman shall, in consultation with the City Attorney as needed, rule on all procedural questions in order to do substantial justice with due regard for notions of fair play, judicial efficiency, private property rights, and public health and safety concerns posed by the condition of property.
- (7) Upon conclusion of all testimony from interested persons, the chair shall close the hearing. The City Council shall publicly deliberate its decision, giving due consideration to and weighing the following factors: validity of the violations as alleged by the Mayor; the severity of such violations and any corresponding danger to the public; due regard for private property rights; fair opportunity for the Interested Persons to have been notified of the problems and a corresponding opportunity to repair, remediate, or remove the defects or Dangerous Structure; weighing the private property interests of neighbors affected by further delay or deterioration of the subject property; and any other relevant consideration unique to the circumstances of that

case but which may materially affect due process and equal protection of involved persons. The City Council shall then announce its decision during that meeting and issue its resolution order:

- (7.i) Finding that the Structure is not a dangerous one or one marked by accumulation of vegetation, debris or trash, and ordering the matter be dismissed and City to dismiss the notice filed in the county real property records; or,
 - (7.ii) Finding the Structure or any other improvement of any kind, or any part thereof, is dangerous and ordering its removal ten (10) days after notice of decision; or,
 - (7.iii) Finding the Structure is a danger and ordering its removal ten (10) days after notice of decision, however, further finding that good cause exists to grant a reprieve on that order to allow the Interested Persons in the property to seek to qualify for and obtain a provisional permit during that period, and if obtained then the reprieve shall continue for the duration of such permit or successor permit, as provided in this Section. The reprieve granted under this subsection shall expire upon the later of the expiration of time to apply for and obtain a provisional permit or the expiration of such permit. If at expiration of the reprieve the Mayor finds that the defects that gave rise to the finding of a Dangerous Structure have been abated, then the prior order of the City Council to remove the Structure is moot; or, if the defects remain, then the Mayor shall proceed to carry out the City Council's prior order to remove the Dangerous Structure; or,
 - (7.iv) Finding good cause exists to defer the adjudication of the case and directing reinstatement or extension of a prior provisional permit, for a period of time determined by the City Council not exceeding sixty (60) days from date of the hearing. If at the end of the deferral period, the Mayor finds that there has been no substantial progress toward abatement of the defects, the City Manager shall request the City Council to set a new hearing and proceed with an adjudication of whether the Structure is dangerous or not, in accordance with the procedures of subsection (e).
- (g) *Notice of Decision.* A copy of the decision (resolution, order, or other document) of the City Council shall be promptly sent to the Interested Persons in the Dangerous Structure or Premises in the same manner provided in subsection (b)(3) of this Section.
- (h) *Default; assessment of costs; lien; law suit.*
- (1) If the Interested Persons shall fail, refuse, or neglect: (i) to remove or remedy the Dangerous Structure in accordance with the City Council's resolution order not later than ten (10) days after notice of such resolution is sent or posted; or (ii) either to apply for or to timely and substantially perform the terms of a provisional permit or extended provisional permit as ordered by the City Council. (iii) or to timely and fully comply with the terms of a deferred adjudication, then the Mayor shall proceed to execute the City Council's finding and order to remove the Dangerous Structure.
 - (2) All expenses incurred by the City in the course of sending notices, removing and disposing of the Dangerous Structure or other improvements, as well as any other work performed on the premises or Structure, shall be invoiced to the owner of the property, with notice to any occupant and lien holder of record.
 - (3) If the Interested Persons in the Premises shall fail, refuse, or neglect for a period of thirty (30) days to pay or discharge the expenses assessed by the City, then the City shall have a privileged lien second only to tax liens, and may file a record of such lien against such property in the appropriate county deed records, which shall bear interest at the rate of ten (10) percent per annum or as otherwise allowed by law. In no case shall the City foreclose such lien by forced sale, except as may otherwise be prescribed by applicable state law.
 - (4) Apart from any other action, right, or remedy mentioned in this section, the City Attorney may file a civil law suit for any or all of the following: injunctive relief, declaratory judgment against the nuisance, for recovery of expenses incurred with interest.

- (i) *Appeal.* The findings and decision of the City Council may be appealed to the district court within thirty (30) days after receiving notice of the decision in accordance with Section 214.0012 of the Texas Local Government Code as amended.
- (j) *Other Authority.* Nothing in this section is intended as and shall not be construed as any limitation on the legal authority, right to enter, right to abate, or the procedures related thereto, that may be exercised by the Mayor, Fire Marshal, or other government official acting in the scope of duty, as to any substandard building, or other condition existing on a premises that poses a clear and imminent hazard to human life, health, or safety.

State Law reference— Authority to define and prohibit nuisances, V.T.C.A., Local Government Code §217.042, and § 54.043 pertaining to alternate adjudication procedures.

Passed and approved at a meeting of the City Council of the City of Kress, TX on the 26th day of September 2023.

SIGNED:
Johnny Taylor Mayor

Attest Signed:
Galen Owen Pro Temp Mayor