

ORDINANCE NO. 2010-04

AN ORDINANCE
REQUIRING VACATING, RELOCATION OF OCCUPANTS AND/OR
REQUIRING SECURING, REPAIRING, REMOVING OR DEMOLITION
OF DANGEROUS OR SUBSTANDARD BUILDINGS; PROVIDING
DEFINITIONS; PROVIDING PROCEDURES; PROVIDING A PENALTY;
PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PUBLICATION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INGLESIDE ON THE BAY:

Section 1. The City Council of the City of Ingleside on the Bay declares its intent that the provisions of Chapter 214, Local Government Code be implemented by this Ordinance to the fullest extent possible.

Section 2. Definitions.

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dangerous building means a building that meets one or more of the following conditions:

(1) Has interior walls or other vertical structural members that list, lean or buckle to such an extent that a plumbline passing through the center of gravity falls outside the middle third of its base.

(2) Exclusive of the foundation, shows 33 percent or more of damage or deterioration of the supporting members or 50 percent damage or deterioration of the nonsupporting enclosing or outside walls or covering.

(3) Has improperly distributed loads upon the floors or roofs or overloaded roofs or floors, or which has insufficient strength to be reasonably safe for the purpose used.

(4) Has been damaged by fire, wind or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the city.

(5) Is so dilapidated, decayed, unsafe, unsanitary or so utterly fails to provide the amenities essential to decent living that it is unfit for human habitation, or is likely to cause sickness or disease so as to work injury to the health, morals, safety or general welfare of those occupying such building or structure.

(6) Has light, air and sanitation facilities inadequate to protect the health, morals, safety or general welfare of human beings who live or may live in the building.

(7) Has inadequate facilities for egress in case of fire or panic or have insufficient stairways, elevators, fire escapes or other means of passage or communication.

(8) Regardless of its structural condition, has, during times it was not actually occupied by its owner, lessee or other invitees, been left unsecured from unauthorized entry to the extent that it may be entered or utilized by vagrants or other uninvited persons as a place of harborage or may be entered and utilized by children.

(9) Has parts so attached that they may fall and injure members of the public or property.

(10) Because of its condition, is unsafe, unsanitary, or dangerous to the health, morals, safety or general welfare of the people of the city.

(11) Exists in violation of any Ordinance or Code of the city, including the Building Code, Fire Code, Electrical Code or other ordinance of this city if the violation is of such a nature that the building or structure constitutes a danger to its occupants or to others.

A building or structure that is boarded up, fenced or otherwise secured in any manner may nevertheless be deemed to be a dangerous building under this Ordinance if the building constitutes a danger to the public even though secured from entry; or if it is found that the means utilized to secure the building or structure are not adequate to prevent the unauthorized entry of the building in contravention of this Ordinance.

Section 3. All dangerous buildings within the terms of this Ordinance are declared to be public nuisances and shall be vacated and/or repaired and/or demolished and/or secured as provided herein.

Section 4.

(a) The building official, or other authorized person, is authorized and directed to enforce any and all provisions of this Ordinance. The building official, or other authorized person's, enforcement authority shall include but not be limited to the following:

(1) Inspecting or supervising the inspection of any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in violation of the terms of this Ordinance or other code or ordinance.

(2) Inspecting or supervising the inspections of any building, wall or structure reported by any person or official as probably existing in violation of the terms of this Ordinance or other code or ordinance.

(3) Inspecting or supervision of the inspection of buildings or structures in the city to determine whether they are dangerous buildings within the terms of this Ordinance.

(4) Making or causing to be made surveys in any area of the City to determine the general condition of structures or buildings, the extent of deterioration, the lack of facilities or maintenance, unsafe or unsanitary conditions, and other relevant factors necessary to implement the purposes of this Ordinance.

(5) Presenting testimony to the City Council in support of any allegations of a violation of the provisions of this Ordinance.

(b) The building official, or other authorized person, shall be authorized to enter any building, structure or premises at any reasonable time to exercise the authority prescribed in this Ordinance.

(c) The owner, operator, agent or occupant of every structure, building or premises shall permit the building official, or other authorized person, to enter the structure, building or premises at reasonable times for the purpose of inspection.

Section 5. Notice of violation.

(a) Whenever the building official, or other authorized person, determines that there has been a violation of this Ordinance, or that there are reasonable grounds to believe that there has been a violation of this Ordinance, notice of such violation shall be given to the owner, occupant, lessee, mortgagee, agent and all other persons having an interest in the structure or building as shown by the deed records of the San Patricio County Clerk. Notice shall be to such persons by certified mail return receipt requested at their last known address and/or by personal delivery and/or by leaving a copy of such notice on the property.

(b) The notice provided for herein shall be in writing, shall contain a description of the premises upon which the building or structure is located and shall specify the alleged violation. In addition, the notice shall state whether the building or structure must be vacated (if it is occupied), secured, repaired, removed and/or demolished in order to comply with the terms of this article.

(c) Any person or entity notified pursuant to this section shall be given a reasonable time, not exceeding 30 days, to comply with the notice. If after inspecting the structure or building, the building official, or other authorized person, determines that it is necessary to extend such time period, written notice of the time extension shall be given

to the affected person or entity. If no such extension is given the affected person or entity shall comply with the notice within the original time period.

Section 6. Standards.

The building official, or other authorized person, shall follow the following applicable standards in issuing notices of violations of this Ordinance:

(1) If the structure or building is occupied and in such condition as to make it dangerous to the health, safety or welfare of its occupants, the notice shall provide that the building or structure must be vacated.

(2) If the structure or building can reasonably be repaired so that it will no longer violate this Ordinance, the notice shall provide that the structure or building must be repaired (or demolished at the owner's option) such that it complies with the applicable provisions of this Ordinance.

(3) If the structure or building cannot be reasonably repaired such that it complies with this Ordinance or the applicable codes or ordinances of the City, the notice shall provide that the structure or building must be demolished.

(4) If the building or structure is unoccupied and the condition of the building or structure is such that it may be brought into compliance by securing it from unauthorized entry, the notice may provide that it be so secured and may include written specifications that must be complied with in securing the building or structure; in addition, the notice may provide that the building or structure be repaired or demolished if it is not secured in compliance with the notice.

(5) If the building or structure is at least 50 percent damaged, decayed or deteriorated, the notice shall provide that the building or structure must either be repaired or demolished if it cannot be repaired so that it complies with this Ordinance or applicable code or ordinance.

Section 7. Hearing

(a) Upon request by any owner, occupant, lessee, mortgagee, lienholder or other person, a public hearing shall be had before the City Council to determine whether a building complies with the standards set out in this Ordinance. Such request shall be in writing and must be filed before the expiration of the time period provided in Section 5 of this Ordinance.

(b) Upon failure of the owner, occupant, lessee, mortgagee, lienholder or other person with an interest in the building or structure to comply with the notice sent pursuant to Section 5 of this Ordinance, the building official, or other authorized person, shall schedule a public hearing before the City Council to determine whether a building complies with the standards set out in this Ordinance. Notice of such hearing shall be

mailed to the owner, if known, certified mail return receipt requested, at the last known address and/or by personal delivery and/or by leaving a copy of such notice on the property. The notice of hearing must contain the name and address of the owner of the affected property, if known, a legal description of the affected property and a description of the hearing. Additionally, the notice of hearing 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 the terms of this Ordinance and the time it will take to reasonable perform the work.

(c) The building official, or other authorized person, may file notice of the hearing in the real property records of the county. The notice must contain the name and address of the owner of the affected property, it that information can be determined from a reasonable search of the instruments on file in the office of San Patricio County Clerk, a legal description of the affected property and a description of the hearing. The filing of the notice is binding on subsequent grantees, heirs, lienholders or other transferees with an interest in the property who may acquire such interest, and constitutes notice of the hearing on any subsequent recipient with any interest in the property. Notice shall also be published once in the official newspaper.

(d) At the election of the building official, or other authorized person, the original notice to owners and lienholders may provide anticipatorily for such hearing which may be reset or canceled upon compliance with the order of the building official, or other authorized person.

(e) Service of notices authorized by this Ordinance shall be made by hand delivery, registered or certified mail, return receipt requested and/or by posting on the property. In cases where the owner, occupant, lessee, mortgagee or any other person having an interest in the property is absent from the City, it shall be sufficient for the notice required in this Ordinance to have delivery as authorized herein.

Section 8. Public Hearing.

(a) The Mayor shall preside at all hearings called pursuant to this Ordinance. Except as provided herein, the burden shall be on the building official, or other authorized person, to establish the correctness of the allegations made in the notice. The building official, or other authorized person, shall proceed with such official's evidence followed by the owner and any lienholders according to the priority of their liens. The building official, or other authorized person, shall then be allowed an opportunity for rebuttal. The Mayor shall allow for comment by the general public at a time the Mayor deems appropriate. The rules of evidence shall not apply, but the Mayor is authorized to rule out of order plainly extraneous or irrelevant matters and is further authorized to set a reasonable time limit for public presentations.

(b) After the public hearing, if the building is found in violation of the standards in this Ordinance, the City Council may order that the building be vacated, secured, repaired, removed or demolished by the owner within a reasonable time. The City Council also

may order that the occupants be relocated within a reasonable time. If the owner does not take the ordered action within the allotted time, the City 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 City shall personally deliver, send by certain mail with return receipt requested, or deliver by the United States Postal Service using signature confirmation service, to each identified mortgagee and lien holder a notice containing:

(1) an identification, which is not required to be a legal description, of the building and the property on which it is located;

(2) a description of the violation of 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.

(c) After the public hearing, if the building is found in violation of the standards in this Ordinance, the City Council shall require the owner, lienholder or mortgagee of the building to, within 30 days:

(1) Secure the building from unauthorized entry; or

(2) Repair, remove or demolish the building unless the owner or lien holder establishes at the public hearing that the work cannot reasonable be performed within 30 days.

(d) If the City Council allows the owner, lienholder or mortgagee more than 30 days to repair remove or demolish the building, the City Council 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 City Council.

(e) The City Council may not allow the owner, lienholder or mortgagee more than 90 days to repair, remove or demolish the building or fully perform all work required to comply with the order unless the owner, lienholder or mortgagee:

(1) Submits a detailed plan and time schedule for the work at the public hearing; and

(2) Establishes at the public hearing that the work cannot reasonable be completed within 90 days because of the scope and complexity of the work.

(f) If the City Council allows the owner, lienholder or mortgagee more than 90 days to complete any part of the work required to repair, remove or demolish the building, the City Council shall require the owner, lienholder or mortgagee to regularly submit

progress reports to the City Council to demonstrate that the owner, lienholder or mortgagee has complied 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 building official, or other authorized person, to demonstrate compliance with the time schedules.

(g) In a public hearing to determine whether a building complies with the standards in this Ordinance, the owner, lienholder or mortgagee has the burden of proof to demonstrate 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.

Section 9. Order.

(a) Upon conclusion of the public hearing and not later than the next regular meeting of the City Council, the City Council shall issue its Order, in the form of an ordinance, requiring the vacation, relocation of occupants, securing, repair removal or demolition of the building which it has found to violate this Ordinance. The Order shall specify a reasonable time as provided herein for occupants to be relocated, at the owner's expense, and shall provide an additional reasonable time for the ordered action to be taken by the owner, lienholder or mortgagee.

(b) Within ten days after the date the Order is issued, the City shall:

(1) File a copy of the Order in the office of the City Secretary; and

(2) Publish in the official newspaper of the City a notice containing:

a. The street address or legal description of the property;

b. The date of the hearing;

c. A brief statement indicating the action required in the Order; and

d. Instructions stating where a complete copy of the Order may be obtained.

(c) After the entry of the Order, the City shall promptly mail by certified mail, return receipt requested, a copy of the Order to the owner of the building; and if the owner does not take the ordered action within the allotted time, the City shall promptly mail by certified mail, return receipt requested, a copy of the Order to any lienholder or mortgagee of the building.

(d) If the building is not vacated, secured, repaired, removed or demolished, or the occupants are not relocated within the allotted time, the City may vacate, secure, remove or demolish the building or relocate the occupants at its own expense.

(e) If the City incurs expenses under this section, the City may assess the expenses on the property on which the building was located unless it is a homestead as protected by the Texas Constitution. 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, including penalties, interest and collection costs. 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 San Patricio County Clerk. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the building was located, the amount of the expenses, including penalties, interest and collection costs, and the balance due.

(f) 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 herein, the lien is a privileged lien subordinate only to tax liens.

(g) The public hearing required by this Ordinance may be held by the Ingleside on the Bay Municipal Court at the option of the City.

(h) The City satisfies the requirement to make 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 by searching the following records:

- (1) the San Patricio County real property records;
- (2) San Patricio County Appraisal District records;
- (3) records of the Texas Secretary of State;
- (4) assumed name records of San Patricio County;
- (5) tax records of the City; and
- (6) utility records of the City.

(i) When the City mails a notice in accordance with this Ordinance to a property owner, lienholder or mortgagee and the United States Postal Service returns the notice as "refused" or "unclaimed" or other designation indicating non-delivery, the validity of the notice is not affected and the notice is considered delivered.

Section 10. Judicial Review

(a) Judicial review of any Order under this Ordinance is governed by Section 214.0012, Local Government Code, as it now reads or may hereafter be amended, which is incorporated herein by this reference.

(b) Specifically, any owner, lienholder or mortgagee of record of property, jointly or severally, aggrieved by an Order under this Ordinance may file in the San Patricio County District Court a verified petition setting forth that the decision is illegal, in whole or in part and specifying the grounds of the illegality. The petition must be filed by an owner, lienholder or mortgagee within 30 calendar days after the respective dates a copy of the final decision of the City 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 date period.

Section 11. Placarding inherently dangerous building.

(a) If the building official, or other authorized person, completes an inspection of a building or structure and finds it to be inherently dangerous and, in the opinion of such official, a nuisance per se, such official shall place a notice on such building or structure forthwith, which shall contain language to the effect that the building or structure is a dangerous building/structure and that all unauthorized persons entering the building/structure shall be subject to a fine.

(b) The placard shall contain a warning that any unauthorized person entering a placarded building/structure, as set forth above, shall be deemed guilty of a misdemeanor and upon final conviction shall be fined a sum of not less than \$200.00 nor more than \$2,000.00.

(c) The approval of the building official, or other authorized person, of a finding pursuant to this section and the posting of the notice shall not be construed to deprive any person entitled thereto to the notice and hearing provided in this Ordinance.

Section 12. Emergencies.

(a) In cases where it reasonable appears that there is an immediate danger to the health, life, safety or welfare of any person, unless a dangerous building is immediately repaired, vacated, demolished or secured, if the building official, or other authorized person, finds there is in fact an immediate danger to the health, life, safety or welfare of any person unless the building/structure is immediately repaired, vacated, demolished or secured, such official shall cause the immediate repair, vacating, demolition or securing of such building/structure.

(b) Whenever the building official, or other authorized person, causes a building/structure to be repaired, vacated demolished or secured pursuant to this section, such official shall cause a notice as described in Section 11 of this Ordinance, to be posted on the building/structure. In addition, the building official, or other authorized person, shall schedule a hearing before the City Council concerning the action taken pursuant to this section and send notice of such hearing to all persons required pursuant to Section 7 of this Ordinance. The notice shall set forth the specific

conditions which rendered the building a dangerous building and an immediate danger to the health, life, safety or public welfare of persons. At such hearing, the burden shall be upon the City to show that the immediate actions was necessary because the building/structure was dangerous within the meaning of Section 2 of this Ordinance and/or this section and/or another applicable code or ordinance, and an immediate danger to the health, life, safety or public welfare of persons. Such hearing shall follow the requirements of Section 8 of this Ordinance. If after completion of the presentation of the testimony of all parties appearing, the City Council finds that the action was necessary because the building/structure was dangerous within the meaning of this Ordinance and an immediate danger to health, life, safety or public welfare of persons, all administrative expenses and cost of vacating, repairing, securing or demolishing the building/structure shall be calculated and assessed against the owners of the building/structure, shall constitute a line on the land on which the building/structure stood and shall bear interest as provided by law in accordance with Section 9 (e) of this Ordinance.

Section 13. A person commits an offense if the person violates this Ordinance. An offense under this Ordinance is a misdemeanor punishable by a fine, upon a conviction, not to exceed \$2,000.00. Each day that the violation continues is a separate offense and each separate offense is punishable upon conviction by a fine not to exceed \$2,000.00. In addition, the City Attorney is authorized to take appropriate action to enforce this Ordinance by any appropriate means including filing such criminal and/or civil lawsuits as appropriate including suits for injunction.


Section 14. In the event any section, part or paragraph of this Ordinance is held to be invalid or unenforceable by any Court of competent jurisdiction, the remaining parts of this Ordinance shall be and remain in full force and effect, it being the intention of the City Council to pass each part of this Ordinance irrespective of any other section, part or paragraph.

Section 15. This Ordinance shall be published by publishing the caption hereof once in the official newspaper of the City of Ingleside on the Bay and shall become effective upon the second such publication.

Passed and approved on the 4th day of May, 2010.




Howard Gillespie
Mayor

ATTEST:

Diane Hosea
City Secretary

City Council of Ingleside on the Bay passed the following Ordinance on May 4, 2010

ORDINANCE 2010-04

IN ORDINANCE REQUIRING VACATING, RELOCATION OF OCCUPANTS AND/OR REQUIRING SECURING, REPAIRING, REMOVING, OR DEMOLITION OF DANGEROUS OR SUBSTANDARD BUILDINGS; PROVIDING DEFINITIONS; PROVIDING PROCEDURES; PROVIDING PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PUBLICATION.

The original of this document is on file with the City Secretary
 Published in The Ingleside Index, May 12, 2010

THE STATE OF TEXAS
 COUNTY OF SAN PATRICIO:

Before me, the undersigned authority, personally appeared

Randa Ann Ingleside, Trustee
 of The Aransas Pass Progress.

who after being by me duly sworn, on his oath deposes and said:

1. That (he) (she) is *Randa Ann Ingleside, Trustee* of The Aransas Pass Progress.

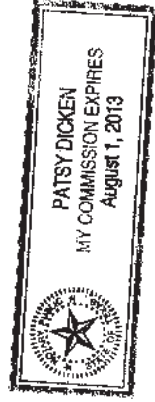
a weekly newspaper published in San Patricio County, Texas.

2. That the *City of Ingleside on the Bay* published passed the following Ordinance hereto annexed, was published in the regular issues of said Aransas Pass Progress once each week for *One (1) week* successive weeks said publications having been made on the *May 12, 2010*

3. That a printed copy of said *Notice*

as the same appeared in said issues is attached hereto.

[Signature]



Sworn to and subscribed before me this *13th*

day of *May*, 2010. *Patsy Dicken*

PUBLICATION FEE: \$ *44.50*

Notary Public/San Patricio County, Texas