



CITY OF KERRVILLE
BUILDING BOARD OF ADJUSTMENT & APPEALS AGENDA
REGULAR MEETING, FEBRUARY 23, 2023 03:00 P.M.
CITY HALL COUNCIL CHAMBERS
701 MAIN STREET, KERRVILLE, TEXAS

1. CALL TO ORDER

2. APPROVAL OF MINUTES

2A. Approval of the minutes from the February 10, 2022 meeting.

3. PRESENTATION

3A. Orientation for Business Meetings

3B. Presentation on the Adoption of 2021 ICC and relevant codes

4. CONSIDERATION AND ACTION

4A. Adoption of proposed amendments in its entirety article VIII "Unsafe Building Abatement" of Chapter 26 "Building and Building Regulations"

5. STAFF REPORT

6. ADJOURNMENT

I hereby certify that this agenda was posted as notice of the meeting on the bulletin board at the City Hall of the City of Kerrville, Texas, and on the City's website on the following date and time: 2/17/2023 at 12:00 p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of the meeting.

Kesha Franchina

Kesha Franchina, Deputy City Secretary, City of Kerrville, Texas



**City of Kerrville
Building Division
Report**

To: Building Board of Adjustment and Appeal
Agenda Item: 2A Minutes February 10, 2022 Board meeting
Action: Approval, approval with specific changes
Representative: Staff

MEMBERS PRESENT:

Bruce Motheral, Chair
Mack Edmiston, Board Member
Jennifer Hyde, Board Member
Daniel Lowery, Board Member

MEMBERS ABSENT:

Bob Rue, Board Member

STAFF PRESENT:

Guillermo Garcia, Executive Director for Innovation
Stephen Riggs, Chief Building Official
Eric Maloney, Fire Chief
Jason Lackey, Fire Marshal
Stuart Barron, Executive Director of Public Works & Engineering
Kyle Burow, Director of Engineering
Drew Paxton, Planning Director
Dorothy Miller, Recording Secretary

1. CALL TO ORDER:

On February 10, 2022, the Kerrville Building Board of Adjustment and Appeals regular meeting was called to order at 2:00 p.m. in the City Hall council chambers, 701 Main Street.

2. APPROVAL OF MINUTES

2A. Approval of the minutes from the August 11, 2021 meeting.

Mrs. Hyde moved to approve the minutes as presented; the motion was seconded by Mr. Lowery and passed 4-0.

3. CONSIDERATION AND ACTION

3A. Adoption of NFPA 1194

Mr. Paxton presented the NFPA 1194 Standard for Recreational Vehicle Parks and Campgrounds, which city staff proposes to adopt with one amendment related to fire lanes.

The NFPA 1194 includes several example arrangements for RV spaces.

The recommended amendment changes the minimum widths of recreational vehicle park and campground roads from 10 ft. to 20 ft. and may have an additional 8 ft. per parallel parking lane. All park/campground roads also serve as fire access roads and shall be marked as per city ordinance.

Mr. Lowery motioned to recommend the adoption of the NFPA 1194 with the amendment as presented. The motion was seconded by Mr. Edmiston and passed 4-0.

3B. Adoption of proposed changes to Fire Code sections D107.1 and D107.2

Mr. Paxton presented the proposed changes to Fire Code sections D107.1 and D107.2. The proposed change to D107.1 includes increasing the number of dwelling units exceeded that would be provided two separate and approved fire apparatus access roads from 30 to 60. Exceptions would apply.

The proposed change to D107.2 include exceptions that are not currently part of the existing code.

Mrs. Hyde moved to recommend the adoption of the proposed changes as presented. The motion was seconded by Mr. Lowery and passed 4-0.

3C. Adoption of the definition of “Development” from the sub-division code into the Fire Code by referencing the definition

Mr. Paxton presented the adoption of the definition of “Development” from the sub-division code into the Fire Code.

Mr. Lowery moved to recommend the adoption of the definition of “Development” from the sub-division code into the Fire Code by referencing the definition as presented. The motion was seconded by Mr. Edmiston and passed 4-0.

4. STAFF REPORTS

Mr. Lackey, Fire Marshal, presented a Fire Code Tech Plat Sheet, which would be given to developers early on so they will know exactly what is required. This tech sheet has been used in other cities and has been very favorable. This would help to alleviate the extra time spent by the Fire Marshal answering the same standard questions repeatedly. The tech sheet in and of itself does not list all fire codes, but it is a starting point of reference.

5. ADJOURNMENT

The meeting was adjourned at 2:22 p.m.

ATTEST:

Bruce Motheral, Chair

Dorothy Miller, Recording Secretary



**City of Kerrville
Building Division
Report**

To: Building Board of Adjustment and Appeal
Agenda Item: 3A. Orientation for Business Meetings
Representative: Staff

Summary Statement:

With new members joining the Building Board of Adjustment and Appeals, it is important to conduct an orientation on the responsibilities of board members and their roles while on the board.

Recommended Action

No Action



**City of Kerrville
Building Division
Report**

To: Building Board of Adjustment and Appeal
Agenda Item: 3B. Presentation on the Adoption of 2021 ICC and relevant codes
Representative: Staff

Summary Statement:

The City of Kerrville adopted the 2018 ICC and relevant codes in February 2021. Before this adoption, the City of Kerrville had adopted the 2006 ICC and relevant codes in November 2009. To prevent the city from falling behind the most current or newest building codes the City of Kerrville will proceed to adopt the 2021 ICC and relevant codes. The City will proceed to fall into a five-year cycle to maintain the most current or newest ICC and relevant codes that are available.

Recommended Action

No Action



**City of Kerrville
Building Division
Report**

To: Building Board of Adjustment and Appeal
Agenda Item: 4A. Adoption of proposed amendments in its entirety article VIII "Unsafe Building Abatement" of Chapter 26 "Building and Building Regulations"
Representative: Staff

Summary Statement:

The City of Kerrville to continually improve its ordinances has conducted a review of Article VII Unsafe Building Abatement Ordinance. The ordinance was last updated on 10-27-1998. The purpose of this ordinance is to provide a just, equitable, and practicable method, to be cumulative with and in addition to, any other remedy provided by the building code, or any other ordinances, rules and regulations of the city or the laws of the state, whereby buildings or structure which endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants, may be required to be vacated, secured, repairs or demolished.

Recommended Action

Recommend the adoption of changes to the Artricle VIII "Unsafe Building Abatement Ordinance" of Chapter 26 "Building and Building Regulation".

DRAFT 5/3/22

CITY OF KERRVILLE, TEXAS ORDINANCE NO. 2022-__

AN ORDINANCE AMENDING IN ITS ENTIRETY ARTICLE VIII “UNSAFE BUILDING ABATEMENT” OF CHAPTER 26 “BUILDING AND BUILDING REGULATIONS” OF THE CODE OF ORDINANCES OF THE CITY OF KERRVILLE, TEXAS; REGARDING THE ABATEMENT OF UNSAFE BUILDINGS...; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, City Council finds that substandard structures and properties with an accumulation of refuse, trash, debris, junk, materials, uncultivated vegetation and similar matter, pose an immediate and substantial threat to public safety and welfare in numerous ways: fire fuel; breeding of mosquitoes, mice, snakes, and other vermin and insects; harboring of vagrants, runaway minors, stray animals, drug dealers and users; and poor aesthetic appearance-all of which singly and jointly tends to devalue neighboring properties and encourages crimes such as graffiti, vandalism, and others; and

WHEREAS, City Council desires to expedite the notice and hearing process on such properties to the extent feasible, while also giving due regard to private property rights of the owners, occupants, and lien holders of such properties; and,

WHEREAS, City Council adopts this ordinance pursuant to state law, including Sections 216.001, 217.042, 54.032, and 54.043 of the Texas Local Government Code, defining nuisances and establishing an alternative adjudication process while still assuring due process in the enforcement of such ordinance relating to dangerously damaged or deteriorated buildings or conditions caused by accumulations of refuse, vegetation and other matter, and as otherwise provided for in Section 54.032 thereof;

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to amend Article VIII, Chapter 26, in its entirety;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. Article VIII “Unsafe Building Abatement”, Chapter 26 “Buildings and Building Regulations,” of the Code of Ordinances of the City of

Kerrville, Texas, is amended by repealing it and replacing it in its entirety with new language that is underlined (added) as follows:

“ARTICLE VIII. - UNSAFE BUILDING ABATEMENT

Sec. 26-225. - Purpose.

It is the purpose of the provisions of this Article to provide a just, equitable, and practicable method, to be cumulative with and in addition to any other remedy provided by City building codes or any other ordinances, rules, and regulations of the City or the laws of the state, whereby buildings or structures which from any cause endanger the life, limb, health, property, safety, or welfare of the general public or their occupants, may be required to be vacated, secured, repaired, or demolished.

Sec. 26-226. - Scope.

This Article applies to all unsafe buildings or structures and imminently dangerous buildings or structures, as defined, and applies equally to new and existing conditions.

Sec. 26-227. - Definitions.

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

Appraised value means the value given the structure by the county tax assessor’s office.

Building means any structure or part thereof, erected for the support, shelter, or enclosure of persons, animals, belongings, or property of any kind.

Chief building official means the official designated by the City Manager within the department or, his/her designated representative.

Board means the Building Board of Adjustment and Appeals of the City of Kerrville.

Building codes means any standardized building code adopted by the City Council, to include building codes for residential and commercial buildings, plumbing code, electrical code, mechanical code.

Department means the Development Services Department of the City of Kerrville, or its successor.

Imminent danger means a structure where there is a considerable risk, danger, or peril and where accidents or injuries are likely to occur.

Owner means any person, agent, firm, or corporation named in the real property records of the county as owning the property.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, or any part thereof.

Unoccupied building means any structure that currently has no legitimate occupant or tenant or is occupied by persons who have no right to possession.

Unsafe building means any building or structure that has been determined by the Board to be unsafe as provided within this Article, the building codes, or by any other law.

Unsecured, unoccupied building means any structure that currently has no legitimate occupant or tenant or is occupied by persons who have no right to possession and which has missing or unlocked doors and windows or other unsecured openings into the building through which an unauthorized person including a child, could enter. Any unoccupied, unsecured building is declared to be a public nuisance.

Sec. 26-228. - Declaration.

The City declares all unsafe buildings and structures, as defined, to be public nuisances and illegal and shall vacate, secure, repair, demolish, and/or relocate any occupants, as provided herein.

Sec. 26-229. - Enforcement official.

The Chief Building Official shall enforce the provisions of this Article.

Sec. 26-230. - Restrictions on employees.

An officer or employee connected with the department, including a member of the Board, shall not have a financial interest in the furnishing of labor, material, or appliances for the construction, alteration, demolition, repair,

or maintenance of a building, or in the making of plans or specifications therefor, unless he/she is the owner of the building. An officer or employee shall not engage in any work which is inconsistent with his/her duties or with the interest of the department. Nothing contained herein prohibits a member of the Board from having financial interests in buildings which are not the subject of a hearing before the Board.

Sec. 26-231. - Liability.

An officer, employee, or member of the Board charged with enforcement of this Article, acting for the City in the consequent scope of his/her office or employment, shall not thereby render himself/herself liable personally, and he/she is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the consequent scope of his/her office or employment. Any suit brought against any officer, employee, or member of the Board because of such act performed by him/her in the enforcement of any provision of this Article shall be defended by the City Attorney until the final determination of the proceedings.

Sec. 26-232. - Right of entry.

- (a) The Chief Building Official and/or authorized representative may enter a building, structure, or premises at all reasonable times to make an inspection or enforce any of the provisions of this Article.
- (b) When entering a building, structure, or premises that is occupied, the Chief Building Official shall first present proper identification and request entry. If entry is refused, the Chief Building Official shall have recourse to every legal remedy to secure entry.
- (c) No person, owner, or occupant of any building or premises shall fail, after proper identification, to permit entry into any building or onto any property by the Chief Building Official for the purpose of inspections pursuant to this Article.
- (d) The Chief Building Official, fire marshal, and other authorized representatives are hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this Article.

Sec. 26-233. - Public utilities.

(a) The Chief Building Official may request the disconnection of public utilities without notice to the owner where a known dangerous condition related to the type of service provided exists, for as long as such condition exists. In all other instances, the Chief Building Official may seek the disconnection of public utilities only after the owner has received notice and an opportunity to have a public hearing on the matter.

(b) Once utility services to a building, structure, or premises are disconnected pursuant to this Article, reconnection of the services may not occur without the prior written approval of the Chief Building Official.

Sec. 26-234. - Requirements not covered by this Article.

The Chief Building Official shall determine any requirement necessary for the strength or stability of an existing or proposed building or structure, or for the safety or health of the occupants thereof, which is not specifically covered by this Article.

Sec. 26-235. - Emergency actions.

In cases where the condition of a building constitutes an imminent danger to the health, life, or safety of any person unless immediately vacated, repaired, or demolished, the Chief Building Official, fire marshal, or designees, may cause such immediate vacation, repair, or demolition to the extent necessary to alleviate the imminent danger. The Chief Building Official shall mail notice of any such emergency action to the owner listed on the ad valorem tax roll to the address therein provided. The City shall collect the costs of such emergency action in the same manner as provided for in Section 26-250.

Sec. 26-236. - Offenses.

It is unlawful for any person to fail or refuse to:

(1) Comply with a lawful order of the Chief Building Official or the Board;

(2) Obstruct or interfere with the implementation of any action required by an order of the Chief Building Official or the Board; or

(3) Remove a posted unsafe building placard without the permission of the Chief Building Official, or to enter a posted unsafe building, except for the purpose of inspection, making required repairs, or working to demolish.

Sec. 26-237. - Required actions.

The owner, lienholder, and/or mortgagee, as applicable, and in accordance with an order issued by the Board, is required to vacate, relocate occupants, secure, repair, and/or demolish a building that is:

- (1) Dilapidated, substandard, or otherwise unfit for human habitation, and is a hazard to the public health, safety, and welfare;
- (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:
 - a. The building constitutes a danger to the public even though secured from entry; or
 - b. The means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described in subsection (2) of this section.

Sec. 26-238. - Hearing before the Board.

- (a) The Chief Building Official shall request a public hearing before the Board for the purpose of determining whether a structure is an unsafe building. The Chief Building Official shall present all cases before the Board.
- (b) In a public hearing to determine whether a building complies with the standards set out in this Article, the owner, lienholder, and/or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with this Article and the time it will take to reasonably perform the work.
- (c) The Board may inspect any involved building, structure, or premises during the course of a hearing provided the following are complied with:
 - (1) Notice of such inspection is given to the parties involved prior to making the inspection;
 - (2) The parties are allowed to be present during the inspection; and

(3) The facts observed and any conclusions are stated for the record.

(d) The Board has the authority to grant a continuance from the proceedings upon good cause shown.

Sec. 26-239. - Time of notices.

(a) The Chief Building Official shall issue a written notice of the public hearing to the owner of the building, and if applicable, the occupant. The notice must be served at least ten calendar days prior to the hearing date upon the owner of record and any occupant. The notice may be served either personally or by certified mail, return receipt requested. The executed return receipt is prima facie evidence of service. If the owner cannot be identified, notice must be posted on or near the front entrance of the building.

(b) A notice must also be published in a newspaper of general circulation in the City once on or before the tenth calendar day before the date fixed for the hearing.

(c) Written notice must also be provided to any mortgagee and lienholder in the same manner provided for in subsection (a) of this Section. Notice shall also be filed in the real property records of the county.

(d) Failure of the Chief Building Official to serve any person required to be served does not invalidate any proceeding as to any other person properly served or relieve that person from any duty or obligation imposed by this Article.

Sec. 26-240. - Content of notices.

The Chief Building Official shall ensure that the written notice includes:

(1) The date, time, and place of the public hearing.

(2) A statement that the City may, in accordance with state law, assess expenses on, and the City will then have a lien against, the property upon which the building is located. Such expenses may include any and all costs that the City has incurred in abating an unsafe building.

(3) A statement that the owner, lienholder, and/or mortgagee, as applicable, is required to submit at the hearing proof of the scope of any work that

may be required to comply with this Article and the time it will take to reasonably perform the work;

- (4) The name and address of the owner of the affected property, if that information can be determined from a reasonable search of the real property records on file with the county, a legal description of the affected property, and a description of the proceedings;
- (5) An identification of the building, a description of each violation which allegedly exists at the building, a statement that the City may perform the required work to abate the violation if the owner fails to do so, and an explanation of the owner's right to a hearing; and
- (6) The published notice must contain only the address, legal description, and property owner(s) name(s).

Sec. 26-241. Minimum standards.

The City's adopted building, electrical, plumbing, gas, mechanical, existing building, and fire codes, as may be amended, are the minimum standards that determine the suitability of a building for continued use or occupancy, regardless of the date of construction.

Sec. 26-242. – Application of standards.

The Board shall use the following standards in determining whether to declare a building unsafe and ordering the building to be vacated, secured, repaired, removed, demolished, and/or the occupants relocated:

- (1) The building, structure, or any part thereof is likely to partially or fully collapse.
- (2) The structure or any part thereof was constructed or maintained in violation of any provision of the building codes, or any other applicable ordinance or state or federal law.
- (3) Any wall or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base.
- (4) The foundation or the vertical or horizontal supporting members are 25 percent or more damaged or deteriorated.

- (5) The nonsupporting coverings of walls, ceilings, roofs, or floors are 50 percent or more damaged or deteriorated.
- (6) The structure has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the purpose used.
- (7) The structure or any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety, and welfare.
- (8) The structure or any part thereof has inadequate means of egress as required by the building code.
- (9) The structure does not have adequate light, ventilation, or sanitation facilities as required by the building codes.
- (10) Regardless of its structural condition, the building is not occupied by the owner, lessees, or other invitees, and is unsecured from authorized 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.

Sec. 26-243. Board orders.

(a) If the Board determines that a building is unsafe, it shall proceed to determine whether the building shall be vacated, repaired, secured, demolished, and/or the occupants relocated under the standards contained herein and in accordance with the following:

- (1) If the structure is in such a condition as to make it hazardous to the health, safety, or general welfare of its occupants or the public, it shall be ordered vacated and secured, and the order may also require the occupants to be relocated.
- (2) If the structure can be feasibly repaired or the condition remedied so that it will no longer exist in violation of the provisions of this Article, it shall be ordered remedied or repaired. Repairs may only be deemed feasible if less than 50 percent of the structure or the building must be repaired or replaced.

(3) In any case where more than 50 percent or more of its value or structure is damaged or deteriorated, a building shall be demolished or removed, and in all cases where a structure cannot be repaired so that it will no longer exist in violation of the provisions of this article, it shall be demolished or removed.

(b) If the Board determines the building to be unsafe, it shall issue an order based upon this determination, requiring the owner of the building to vacate, repair, secure, demolish, and/or relocate the occupants from the building. The order shall specify a reasonable time as provided in Section 26-244 for the ordered actions to be taken by the owner and an additional reasonable time as provided in Section 26-244 for the ordered actions to be taken by the mortgagees or lienholders in the event the owner fails to comply with the order within the time provided by the order. Each order requiring the repair, removal, or demolition of a building shall require that a permit for such repair or demolition be obtained by the owner prior to commencing work required by the order.

(c) The chief building official shall, no later than the next working day after the Board issues an order:

- (1) Mail a copy of the order by certified mail, return receipt requested, to the owner and any record lienholder and mortgagee of the building; and
- (2) Post an unsafe building placard in a conspicuous location at each entrance to the unsafe building. Such placard shall remain posted until the required action is completed.

(d) The chief building official shall, no later than ten calendar days after the date that the Board issues an order:

- (1) Submit a copy of the order to the office of the City Secretary; and
- (2) Publish in a newspaper of general circulation in the City a notice containing 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.

Sec. 26-244. Compliance time schedule.

(a) The Board in each unsafe building order shall, unless otherwise provided herein, require the owner, mortgagee, and/or lienholder to:

- (1) Secure the building from unauthorized entry within 30 calendar days;
or
- (2) Repair, remove, or demolish the building, unless the owner, mortgagee, and/or lienholder establishes at the hearing that the work required cannot reasonably be performed within 30 calendar days.

(b) If the Board allows the owner, mortgagee, and/or lienholder more than 30 calendar days to repair, remove or demolish the building, the Board shall establish specific time schedules for the commencement and performance of the work and shall require the owner, mortgagee, and/or lienholder to secure the property in a reasonable manner from unauthorized entry while work is being performed, as determined by the Board.

(c) The Board may not allow the owner, mortgagee, and/or lienholder more than 90 calendar days to repair, remove, or demolish the building or fully perform all work required to comply with the order unless the owner, mortgagee, and/or lienholder:

- (1) Submits a detailed plan and time schedule for the work at the hearing;
and
- (2) Establishes at the hearing the work cannot reasonably be completed within 90 calendar days because of the scope and complexity of the work.

(d) If the Board allows the owner, mortgagee, and/or lienholder more than 90 calendar days to complete any part of the work required to repair, remove, or demolish the building, the Board shall require the owner, mortgagee and/or lienholder to regularly submit progress reports to the chief building official to demonstrate that the owner, mortgagee, and/or lienholder has complied with time schedules established for commencement and performance of the work. The order may require the owner, lienholder, and/or mortgagee to appear before the Board or the Chief Building Official to demonstrate compliance with such time schedules.

Sec. 26-245. Appeal.

The owner, lienholder, and/or mortgagee have the right to appeal the decision of the Board to district court. A notice of appeal must be filed with the district court clerk within 30 calendar days from the date the Board's order is mailed to the owner, lienholder and/or mortgagee, as provided herein.

Sec. 26-246. Performance of work; acceptable materials.

- (a) Work shall be performed in an expeditious and workmanlike manner in accordance with the requirements of this Article, all other applicable laws of the City, and accepted engineering practice standards.
- (b) The securing of windows, doors, or any other opening allowing access to an unsecured unoccupied building shall be done with such materials and in such a manner as to effectively bar entrance to the structure. Upon receipt of an order that requires the building to be secured, each and every accessible means of entry must be secured.
- (c) Materials approved for use include plywood, lumber, steel, replacement glass, nails, screws, and bolts and other materials approved by the Chief Building Official.
- (d) The use of cardboard, tar paper, window and door screens or any other material that will not effectively prevent entrance is not sufficient to meet the requirements of this Article or a Board order.

Sec. 26-247. Duty to secure unoccupied building.

An owner or person in control of an unoccupied building shall ensure that the building is in such condition that an unauthorized person, including a child, cannot enter into it through missing or unlocked doors or windows, or through other openings into the building.

Sec. 26-248. Offense.

It is unlawful to knowingly permit, allow, or suffer any unoccupied building under any person's ownership or control to be or remain in such a condition as to constitute an unsecured, unoccupied building as defined in this Article. The issuance of an order by the Board under this Article establishing times for the securing, vacating, repairing, and/or demolishing of any building shall not be construed to condone the violation of this section prior to the deadlines therefor established in such order. No testimony or other evidence provided by any person in a hearing conducted under this Article may be used in any criminal prosecution against that person under this Section.

Sec. 26-249. City's authority to secure a dangerous structure.

(a) The City may secure a building that the Chief Building Official determines:

- (1) Violates the minimum standards; and
- (2) Is unoccupied or is occupied only by persons who do not have a right of possession to the building.

(b) Before the 11th day after the building is secured, the Chief Building Official shall give notice to the owner by:

- (1) Personally serving the owner with written notice;
- (2) Depositing the notice in the United States mail addressed to the owner at the owner's post office address;
- (3) Publishing the notice at least twice within a ten-day period in a newspaper of general circulation within the City if personal service cannot be obtained and the owner's post office address is unknown; or
- (4) 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.

(c) The notice must contain:

- (1) An identification, which is not required to be a legal description, of the building and the property on which it is located;
- (2) A description of the violation of the municipal standards that is present at the building;
- (3) A statement that Chief Building Official will secure or has secured, as the case may be, the building; and
- (4) A detailed explanation of the owner's entitlement to request a hearing about any matter relating to the City's securing of the building.

(d) The Board shall conduct a hearing 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 Board a written request for the hearing. The Board shall conduct the hearing within 20 calendar days after the date the request is filed.

(e) The City has the same authority to assess expenses under this section as it has to assess expenses under Section 26-250. A lien is created under this section in the same manner that a lien is created under Section 26-250 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 elsewhere by this Article.

Sec. 26-250. Abatement by City; imposition of lien for costs.

(a) If the unsafe building is not vacated, secured, repaired, removed, demolished, and/or the occupants are not relocated as specified in the unsafe building order within the allotted time, the Chief Building Official may cause the ordered action to be performed at the City's expense. If the ordered action is demolition of the unsafe building, demolition shall not occur until a magistrate has issued a seizure and demolition warrant supported by a probable cause affidavit stating that:

(1) The city has complied with the procedures set forth in this Article;

(2) The Board's order authorizes demolition; and

(3) The time for appeal of the Board's order to district court under section 26-245 has expired and no appeal has been taken or, in the alternative, that the Board's order was appealed to district court but the appeal has been finally resolved in a manner that does not prohibit the City from proceeding with demolition.

(b) The owner of an unsafe building that is vacated, secured, repaired, removed, demolished, and/or the occupants are relocated by the City shall be charged for the expense of the City's work. Charges may include the expenses of inspection or testing by third parties, photography, publication, title search, attorney's fees, court costs, labor, and equipment costs for preparation of the premises, work to secure, repair, demolish, clean up and/or remove debris, and landfill fees.

(c) The Chief Building Official shall certify the expenses incurred in enforcing the provisions of this Article and forward such certification document to the City's Finance Department. The City shall assess the expenses on, and have a lien against, the property on which the structure was located, unless it is a homestead as protected by the state Constitution.

(d) The Chief Building Official shall provide notice of the lien to the property owner and file the lien in the real property records of the county on a form approved by the City Attorney. The lien notice must contain the name and address of the owner if that information can be reasonably determined, a legal description of the real property on which the structure was located, the amount of expenses incurred by the City, the interest rate to be charged, and the balance due.

(e) The City's lien is a privileged lien subordinate only to tax liens. Such lien shall bear interest at the rate of ten percent per annum until paid.

(f) The City shall extinguish and file a release of lien in the real property records of the county if the property owner or another person having an interest in the legal title to the property reimburses the city for the total amount due.

Sec. 26-251. Other remedies.

(a) The remedies provided for herein are available to the City in addition to any penal or other remedy provided by law or equity which the City, state, or any other person may have to remedy the unsafe building condition.

(b) The City may direct the City Attorney to bring a civil action in a court of competent jurisdiction to collect the amount due plus all associated costs and fees. The City Attorney is authorized to make use of whatever legal or equitable remedies are available to collect said monies due.

Sec. 26-252. Civil penalties.

(a) The Board may assess and the City may recover a civil penalty against the owner at the public hearing, in an amount not to exceed \$1,000.00 a day for each violation, unless the owner provides proof that the property is the owner's lawful homestead, in which case the amount may not exceed \$10.00 per day for each violation, provided further, that the Chief Building Official has shown to the Board's satisfaction that:

(1) The owner was notified of the requirements of this Article and the owner's need to comply with the requirements;

(2) After notification, the owner committed an act in violation of this Article or failed to take an action necessary for compliance.

(b) If the Board assesses such a civil penalty, the City Secretary shall file a certified copy of the order containing such penalty with the county district clerk's office no later than three working days after such order from the Chief Building Official.

Sec. 26-252. Prior offenses.

An offense committed before the effective date of the ordinance from which this Article is derived is covered by those sections of this Article repealed herein as they existed on the date on which the offense was committed and the former ordinance is continued in effect for this purpose.”

SECTION TWO. The City Secretary is authorized and directed to submit this amendment to the publisher of the City's Code of Ordinances and the publisher is authorized to amend said Code to reflect the amendment adopted herein and to correct typographical errors and to index, format, and number and letter paragraphs to the existing Code as appropriate.

SECTION THREE. The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Kerrville, Texas hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Clerk is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner

and for the length of time prescribed by the law as an alternative method of publication.

PASSED AND APPROVED ON FIRST READING, this the _____ day of _____, A.D., 2022.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____ day of _____, A.D., 2022.

Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:

Michael C. Hayes, City Attorney

Shelley McElhannon, City Secretary