

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, AMENDING CHAPTER 3 (BUILDING REGULATIONS), ARTICLE 3.12 (SUBSTANDARD BUILDINGS) OF PROSPER'S CODE OF ORDINANCES; ADOPTING REGULATIONS FOR THE SECURING OF VACANT STRUCTURES AND THE REPAIR, REMOVAL, OR DEMOLITION OF SUBSTANDARD OR UNINHABITABLE BUILDINGS OR STRUCTURES; PROVIDING FOR FINDINGS OF FACT, PURPOSE, DEFINITIONS, DECLARATION, INSPECTION, NOTICE OF VIOLATION, APPLICATION OF STANDARDS, HEARINGS, ORDERS, NOTICE OF REPAIR, REMOVAL, AND/OR DEMOLITION, APPEAL, DEMOLITION, REMOVAL, AND REPAIR EXPENSES, ASSESSMENT OF LIEN; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas ("Town Council") has investigated and determined that it would be advantageous and beneficial to the citizens of the Town of Prosper, Texas (the "Town") to amend Chapter 3 (Building Regulations), Article 3.12 (Substandard Buildings) of Prosper's Code of Ordinances, as set forth below; and

WHEREAS, the Town Council seeks to promote the health, safety and general welfare of the community by preventing death, injuries and property damage within the Town limits; and

WHEREAS, the Town Council seeks to protect property values within the Town limits; and

WHEREAS, the Town Council finds that substandard buildings or structures pose aesthetic harm to the Town; and

WHEREAS, the Town Council finds that substandard buildings or structures are fire hazards and often attract vermin and insects; and

WHEREAS, the Town Council finds that unsecure vacant structures create a nuisance to the community; and

WHEREAS, the Town Council finds that uncontrolled boarded buildings send a negative signal about a neighborhood and that the presence of a boarded house can bring down the value of other properties in the area; and

WHEREAS, pursuant to the laws of the State of Texas, including Texas Local Government Code Section 51.001, the Town Council has the authority to adopt, publish, amend or repeal an ordinance that is for the good government, peace or order of the Town; and

WHEREAS, pursuant to Texas Local Government Code Section 214.001, the Town Council has authority to regulate substandard buildings or structures; and

WHEREAS, pursuant to Texas Local Government Code Section 214.002, the Town Council has authority to order the repair, removal or demolition of a substandard building or structure and to repair, remove, or demolish a substandard structure and assess such costs against the property.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1. Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. Amendment to Chapter 3 (Building Regulations), Article 3.12 (Substandard Buildings) of Prosper's Code of Ordinances. Chapter 3 (Building Regulations), Article 3.12 (Substandard Buildings) of Prosper's Code of Ordinances, is hereby amended to read as follows:

“Article 3.12. Vacant and Substandard Structures

Sec. 3.12.001. Purpose.

This Ordinance is adopted so that the Town Council may promote the public health, safety, and general welfare within the Town through the proper securing of vacant structures and the regulation of substandard buildings. By requiring the securing of vacant structures and the repair, removal, and/or demolition of substandard buildings, the Town Council seeks to protect property values and prevent bodily injury, death, and property damage within the Town limits.

Sec. 3.12.002. Definitions.

As used in this Ordinance, the following terms shall be defined as follows:

Appraised value means the value given the structure by the applicable County's tax assessor's office.

Artistic Boarding means painting material used to secure door, window, or other openings to resemble the opening which they are covering. Refer to Standards for Securing and Artistic Board-Up.

Building means any structure of any kind or any part thereof, including a wall, slab, porch, foundation, the collapsed remains of a structure, or any other portion of a building, wall, or fence that was erected for the support, shelter or

enclosure of persons, animals, chattel or property of any kind.

Town means the Town of Prosper, Texas.

Town Council means the Town Council of the Town of Prosper.

Demolish means to tear down, destroy, dismantle, or otherwise abolish the existence of a building or structure in a lawful manner and to remove all remaining pieces, parts, rubbish, and traces of the building or structure.

Diligent effort means best or reasonable effort to determine the identity and address of an owner, a lien holder, or a mortgagee including a search of the following records:

- (a) County real property records of the county in which the building is located;
- (b) Appraisal District records of the Appraisal District in which the building is located;
- (c) Records of the Secretary of State;
- (d) Assumed name records of the county in which the building is located; and
- (e) Town utility records.

Minimum housing standards means those standards found in the Town's adopted standard building, electrical, plumbing, gas, mechanical, and fire prevention codes.

Owner means any person, agent, firm or corporation, named in the real property records of the county where the building is located as owning or having a financial interest in the property.

Securing means measures that assist in making the property inaccessible to unauthorized persons, including but not limited to the repairing of fences and walls, erecting fences or walls, chaining/pad locking of gates, the repair or artistic boarding of door, window or other openings. Refer to Standards for Securing and Artistic Board-Up.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built or composed of parts joined together in some definite manner, or any part thereof, including a wall, slab, portion, foundation, or the collapsed remains of a structure.

Vacant means a property which is lacking habitual presence of human beings who have a legal right to be on the property, or at which substantially all lawful business operations or residential occupancy has ceased. In determining whether a property is vacant, it is relevant to consider, among other factors, the percentage of overall square footage of any building on the property or floor to the occupied space, the condition and value of any items in the property and the

presence of rental or for sale signs on the property; provided that multi-family residential property containing three (3) or more dwelling units shall be considered vacant when the majority of all of the dwelling units become unoccupied and a majority remain unoccupied. A property shall not be considered vacant which is being currently marketed by a licensed real estate professional hired by the former or current occupant of the property (currently marketed shall mean that the structure is listed on the multiple listing service, the structure is available to prospective buyers for viewing, and a reasonable asking price has been disclosed. The Building Official may use the assessed market value of the property as last determined by the tax assessor to determine if the asking price disclosed by the owner is reasonable), and to which the water service has not been shut-off.

Sec. 3.12.003. Securing Vacant Structures.

- (a) Owners shall have the responsibility for maintaining all vacant structures, including dwellings units, dwellings, principal buildings, pools or spas, and accessory buildings in a locked or closed condition so that they cannot be entered without an unlawful break-in. If a structure is vacant, the Building Official may, to assure compliance with this section, order an owner to board additional areas of the structure.
 - (1) Owners shall obtain a permit prior to boarding.
 - (2) If a structure is vacant, Boarding of a structure shall be required for all doors and windows on ground level and those doors and windows accessible to grade by stairs or permanently fixed ladders or within ten (10) feet of grade.
 - (3) Boards shall be cut and attached in accordance with Standards for Securing and Artistic Board-Up.
 - (4) At least one door boarded at the grade level shall be maintained with locks or hinges to permit entry for inspection purposes.
 - (5) Boards shall be painted in accordance with Standards for Securing and Artistic Board-Up.
 - (6) Screening or alternate methods of boarding may be permitted when approved by the Building Official.
 - (7) The owner of a structure boarded under this section shall be required, upon notification, to provide entry to the structure to the Building Official at least once every twelve (12) months, for inspection purposes, or at any time when the structure has been unlawfully entered.

- (8) The owner of a structure boarded under this section shall notify the Building Official in writing no later than ten (10) days after the sale of the structure or the unboarding of the property.
- (9) The owner shall also properly post a no-trespass sign on the property where the vacant structure is located as required by the Police Department.
- (b) In all cases where a building or structure constitutes a nuisance to the general public because it is vacant and open to unauthorized entry, the Building Official may notify the owner to secure the building or structure within twenty-four (24) hours. In the event the owner fails to secure the building or structure in that time, the Building Official may take whatever measures are necessary to secure the building. The cost of such measures shall be recovered in the same manner as described in Section 3.12.012 of this Ordinance.
- (c) Alternatives to boarding. The Building Official may determine if a method such as fencing is better suited to properly secure the structure.

Sec. 3.12.004. Emergencies.

- (a) Emergency defined. For the purpose of this article, an emergency is hereby defined as any case where it reasonably appears there is immediate danger to the health, life, safety or welfare of any person because of a dangerous condition which exists in violation of this article.
- (b) Authority. In any emergency case, the Building Official shall have the power to take emergency measures to abate or to correct such dangerous condition. The emergency power herein granted shall include power to cause the immediate vacation of any building and the summary correction of any emergency condition which exists in violation of this article, including but not limited to demolition of dangerous buildings.
- (c) Emergency order not appealable. No appeal to the Construction Board of Appeals shall lie from an emergency order, and such order shall not be reviewed or stayed other than by the district court of the county in which the premises or structure is located on which the emergency condition exists.
- (d) Costs of abatement. The costs of emergency abatement shall be recovered as provided in Sec. 3.12.012 of this Ordinance for the recovery of costs.

Sec. 3.12.005. Substandard Declaration.

If the Construction Board of Appeals finds that a structure qualifies as a

substandard structure, as defined and described herein, such structure shall automatically be deemed to be a danger to the public health and welfare, a public nuisance, and in violation of this Ordinance. Compliance is required with any orders issued by the Construction Board of Appeals relating to the repair, removal, or demolition of the substandard structure.

Sec. 3.12.006. Inspections.

An inspection shall be made of any building located within the Town which is suspected of being in violation of this Ordinance. The Town's Building Official or Fire Marshall is hereby authorized to conduct inspections of buildings suspected of being in violation of this article and take such actions as may be required to enforce the provisions of this article. If the Town's Building Official, or Fire Marshall believe that a structure is substandard, as described and defined herein below, they shall provide the notice and schedule a hearing before the Construction Board of Appeals, as described herein.

Sec. 3.12.007. Notice of Violation.

- (a) Whenever the Chief Building Official believes that a structure violates this Ordinance, a public hearing by the Construction Board of Appeals shall be provided to determine whether the building should be declared a substandard structure.
- (b) A notice of the violation shall be sent to the occupant, if any, and record owner/s, lien holder/s or mortgagee/s. Such notice shall be in writing and shall be served by personal delivery or by certified mail, return receipt requested. Notice to the occupant of the property does not require the occupant's name.
- (c) The Town shall make a diligent effort to discover each mortgagee and lien holder before issuing notice of the hearing.
- (d) Notice shall be served to all unknown owners, lien holders, or mortgagees, by posting a copy of the notice on the front door of each affected structural improvement situated on the property and as close to the front door as practicable.
- (e) If the owner's address is different than the address shown for the property involved, notice shall be served to the other address of the owner. Service of this notice may be accomplished by the first class U.S. mail or by personal delivery to any occupant of the property who is above the age of eighteen (18) years.
- (f) The notice of violation shall be filed in the Official Public Records of Real Property in the county in which the property is located.
- (g) The notice shall contain:

- (1) The name and address of the owner of the property;
 - (2) The names of all persons to whom notice is being served;
 - (3) The street address and legal description of the premises;
 - (4) The date of inspection;
 - (5) The nature of the violation;
 - (6) The date, time and location of the hearing; and
 - (7) A statement that the owner, lien holder, or mortgagee will be required to submit at the public hearing proof of the scope of any work that may be required to comply with the Town's Building Ordinances and Fire Code and the time it will take to reasonably perform the work.
- (h) After all attempts to notify owners, lien holders and mortgagees under this Ordinance have been made and documented, any refusal to accept or claim hand-delivered, mailed or posted notice will not affect the validity of the notice.

Sec. 3.12.008. Application of Standards.

- (a) The Construction Board of Appeals is authorized to find that a structure is a substandard structure if:
- (1) The building or structure has been damaged by fire, earthquake, tornado, wind, flood, vandals or any other cause, to such an extent that the structural strength or stability thereof is subject to partially or fully collapsing.
 - (2) The building or structure was constructed or maintained in violation of any provision of the Town's Building Codes, Fire Code or any other applicable ordinance or law of the Town, county, state, or federal government.
 - (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 one-third (1/3) of its base.
 - (4) The foundation or the vertical or horizontal supporting members are twenty-five (25) percent or more damaged or deteriorated.
 - (5) The nonsupporting coverings of walls, ceilings, roofs, or floors are fifty (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, tornado, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety and welfare.
- (8) A portion of a building or structure remains on a site when construction or demolition work is abandoned.
- (9) A door, aisle, passageway, stairway, fire escape or other means of egress is not of sufficient width or size, or is damaged, dilapidated, obstructed or otherwise unusable, or so arranged so as not to provide safe and adequate means of egress in case of fire or panic.
- (10) The structure, because of its condition, is unsafe, unsanitary, or dangerous to the health, safety or general welfare of the Town's citizens including all conditions conducive to the harboring of rats or mice or other disease carrying animals or insects reasonably calculated to spread disease.
- (11) The structure has been found to contain molds which are known to be harmful to humans, and that remediation of such mold contamination would exceed fifty (50) percent of the value of the structure.
- (12) Whenever the building or structure has been so damaged by fire, wind, tornado, earthquake or flood, or has become so dilapidated or deteriorated as to become:
 - (A) An attractive nuisance to children;
 - (B) A harbor for vagrants, criminals or trespassers; or as to
 - (C) Enable persons to resort thereto for the purpose of committing unlawful acts.
- (13) A portion of the building or member or appurtenance thereof (e.g. porch, chimney, signs) is likely to fall, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- (14) The building or structure has any portion, member or appurtenance, ornamentation on the exterior thereof which is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of safely resisting wind pressure, snow, ice, or other loads.

- (15) The electrical system is totally or partially damaged, destroyed, removed or otherwise made inoperable, unsafe or hazardous.
- (16) The plumbing system is totally or partially damaged, destroyed, removed or otherwise made inoperable or unsanitary.
- (17) The mechanical system or any portion of the mechanical system is totally or partially damaged, destroyed, removed or otherwise made inoperable or unsafe.
- (18) The building or structure, because of obsolescence, dilapidated condition, deterioration or damage, is detrimental to the sale, loan or taxable values of surrounding properties or which renders such surrounding properties uninsurable or which constitutes a blighting influence upon the neighborhood or which constitutes an eyesore so as to deprive owners or occupants of neighboring property of the beneficial use and enjoyment of their premises or which presents an appearance which is offensive to persons of ordinary sensibilities.

Sec. 3.12.009. Hearing.

- (a) To determine if a structure is substandard, there shall be a public hearing scheduled with the Construction Board of Appeals. The date of the hearing shall not be less than ten (10) days after notice is made, as described in Section 3.12.007.
- (b) If at the public hearing evidence is provided that a substandard structure exists, the Town shall require the owner, lien holder, or mortgagee of the building to repair, remove, or demolish the building within thirty (30) days, unless it is proven at the hearing that the work cannot reasonably be done in thirty (30) days.
- (c) If the Construction Board of Appeals allows more than thirty (30) days for the building to be repaired, removed, or demolished, the Construction Board of Appeals shall establish specific time schedules for the work to be commenced and finished and shall require the owner, lien holder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the Building Official.
- (d) The Construction Board of Appeals shall not allow the owner, lien holder or mortgagee more than ninety (90) days to repair, remove, or demolish the building unless a detailed plan and time scheduled for the work are submitted at the hearing and it is proven at the hearing that the work cannot reasonably be completed within ninety (90) days. Additionally, the owner, lien holder, or mortgagee must submit work progress reports to

demonstrate compliance with the time schedule established.

- (e) In any case where the Construction Board of Appeals finds that fifty (50) percent or more of the value of the 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 Ordinance, it shall be demolished or removed.

Sec. 3.12.010. Appeal.

In accordance with Section 214.0012 of the Local Government Code, the owner, lien holder, or mortgagee shall have the right to appeal the decision made at the hearing to a district court. A notice of appeal must be filed with the district court within thirty (30) calendar days from the date the order is mailed to the owner, lien holder or mortgagee, as provided herein. The petitioner shall provide the Town with evidence that an appeal has been made to district court within thirty (30) days.

Sec. 3.12.011. Notice of repair, removal, or demolition.

- (a) If the building is ordered to be repaired, removed, or demolished, the Town shall promptly mail a copy of the order by certified mail, return receipt requested, to the owner of the building and to any lien holder or mortgagee of the building.
- (b) Within ten (10) days after the date that the order is issued, the Town shall:
 - (1) File a copy of the order in the office of the Town Secretary; and
 - (2) Publish a notice in a newspaper where the building is located stating:
 - (A) The street address or legal description of the property;
 - (B) The date of the hearing;
 - (C) A brief statement indicating the results of the order; and
 - (D) Instructions as to where a complete copy of the order may be obtained.
- (c) If demolition or removal of the building or structure is ordered, demolition or removal shall not occur until the Municipal Court Judge has issued a seizure and demolition warrant supported by a probable cause affidavit stating that:
 - (1) The Town has complied with the procedures set forth in this Ordinance;
 - (2) Demolition has been ordered by the Town; and

- (3) The time for appeal of the order to District Court has expired and no appeal has been taken or, in the alternative, the order was appealed to District Court but the appeal has been finally resolved in a manner that does not prevent the Town from proceeding with removal or demolition.

Sec. 3.12.012. Demolition, removal, and repair expenses.

- (a) Whenever it is discovered upon reinspection that the owner, mortgagee or lien holder has failed to either repair, remove, or demolish the building within the allotted time, the Town, or its authorized agent, may repair, remove, or demolish said building or cause the same to be done and charge the expenses incurred in doing such work or having the same done to the owner of said land.
- (b) If the owner fails or refuses to comply with the demand for compliance in the notification within the requirements of such notification, The Town of Prosper may do work or make improvements required to abate violation, pay for the work done or improvements made, and charge the expenses to the owner of the property as provided herein. The property owner will have twenty (20) days to reimburse the Town of Prosper from the completion date of such work to abate the violation(s) at the property.
- (c) In the event the owner fails or refuses to pay such expenses charged to the owner, within twenty (20) days after the abatement work is completed, a lien may be obtained. The lien and other expenses incurred to the Town of Prosper may be filed against the property. Expenses will include, but not be limited to, an Administrative Fee of one hundred fifty dollars and no/100 (\$150.00), fees to file lien, fees to release lien, postage fees, courier fees, legal fees, and any other fees charged to the Town of Prosper.
- (d) If such work is done at the expense of the Town, then said expense shall be assessed against any salvage resulting from the demolition of the building and against the lot, tract, or parcel of land, or the premises upon which such expense was incurred, and shall be considered a lien against the property as described in Section 3.12.002.
- (e) For the purposes of this section, any repair, alteration or improvement made to a building by the Town will only be to the extent necessary to bring the building into compliance with the Town's minimum Building and Fire Code standards and only if the building is a residential building with ten (10) or fewer dwelling units; provided however, the Town of Prosper may elect to obtain a judicial determination by a decree of a court of competent jurisdiction of the existence, in fact, of a public nuisance in cases contemplated by this Ordinance. Such judicial determination may include any available remedy for the abatement of such a nuisance.

Sec. 3.12.013. Assessment of Lien.

- (a) When the Town incurs expenses to repair, remove, or demolish a building under this Ordinance, the Town places a lien against the property on which the building is located, unless it is a homestead as protected by the Texas Constitution. The lien arises and attaches to the property when the notice of the lien is recorded and indexed with the County Clerk of Collin or Denton County, Texas. The notice shall contain:
 - (1) The name and address of the owner, if that information can be determined with a reasonable effort;
 - (2) A legal description of the property on which the building was located;
 - (3) The amount of expense incurred by the Town;
 - (4) The balance due; and
 - (5) The date on which said work was done or improvements made.
- (b) The Town shall have a privileged lien on such lot, lots, or other premises or real estate upon which said building was located, to secure the expenditure so made, which said liens shall be second only to tax liens and liens for street improvements; and said amount shall bear ten (10) percent interest from the date such statement was filed. It is further provided that for any such expenditure and interest, as aforesaid, suit may be instituted and recovered, and foreclosure of said lien may be made in the name of the Town; and the statement of expenses so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or expense.
- (c) The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the Town for the expenses.”

SECTION 3. Penalty Provision. Any person, firm, entity or corporation who violates any provision of this Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state, and federal law.

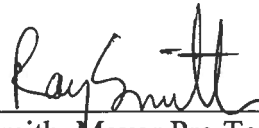
SECTION 4. Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal

prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5. Severability. Should any section, subsection, clause or phrase of this Ordinance be declared unconstitutional or invalid by any court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clauses and phrases be declared unconstitutional or invalid.

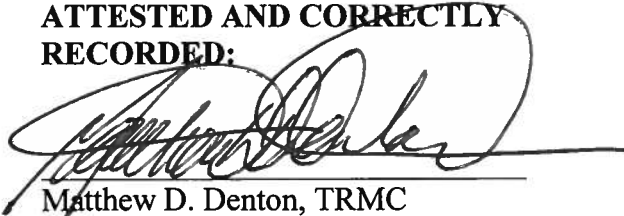
SECTION 6. Effective Date. This Ordinance shall be effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS on this 13th day of April, 2010.



Ray Smith, Mayor Pro Tem

**ATTESTED AND CORRECTLY
RECORDED:**



Matthew D. Denton, TRMC
Town Secretary



Date(s) of publication: APRIL 22, 2010 Prosper Enterprise