

CHAPTER 836

H.B. No. 333

AN ACT

relating to the authority and procedures of municipalities for the inspection and regulation of buildings in the interest of public safety.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 54.033(b) and (e), Local Government Code, are amended to read as follows:

(b) A commission appointed for the purpose of hearing cases under this subchapter shall consist of *one or more five-member panels* [~~five members~~] to be appointed for terms of two years.

(e) The governing body, by charter or ordinance, may provide for the appointment of *eight or more* [~~four~~] alternate members of the commission who shall serve in the absence of one or more regular members when requested to do so by the mayor or city manager. The alternate members serve for the same period and are subject to removal in the same manner as the regular members. A vacancy is filled in the same manner as a vacancy among the regular members.

SECTION 2. Section 54.034, Local Government Code, is amended to read as follows:

Sec. 54.034. PROCEEDINGS OF COMMISSION PANELS. (a) All cases to be heard by the commission *may be heard by any panel of the commission, but* [~~must be heard by~~] at least four members *of a panel must hear a case.*

(b) *A majority of the entire* [~~The~~] commission shall adopt rules for the entire commission in accordance with any ordinances adopted pursuant to this subchapter. The rules shall establish procedures for use in hearings, providing ample opportunity for presentation of evidence and testimony by respondents or persons opposing charges brought by the municipality or its building officials relating to alleged violations of ordinances.

(c) The governing body of the municipality by ordinance shall designate the appropriate official of the municipality who shall present all cases before the commission *panels.*

(d) Meetings of the commission *panels* shall be held at the call of the chairman *of each panel* and at other times as determined by the commission. All meetings of the commission *and its panels* shall be open to the public. *Each* [~~The~~] chairman *of a panel*, or in the chairman's absence *each* [~~the~~] acting chairman, may administer oaths and compel the attendance of witnesses.

(e) *Each* [~~The~~] commission *panel* shall keep minutes of its proceedings showing the vote of each member on each question or the fact that a member is absent or fails to vote. *Each* [~~The~~] commission *panel* shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the office of the commission as public records.

SECTION 3. Section 54.035, Local Government Code, is amended as follows:

Sec. 54.035. NOTICE. (a) Notice of all proceedings before the commission *panels* must be given:

(1) by certified mail, return receipt requested, to the record owners of the affected property, and each holder of a recorded lien against the affected property, as shown by the records in the office of the county clerk of the county in which the affected property is located if the address of the lienholder can be ascertained from the deed of trust

establishing the lien *and/or* [or] other applicable instruments on file in the office of the county clerk; and

(2) to all unknown owners, by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable.

(b) The notice shall be mailed and posted *on or before* the 10th day before the date of the hearing before the commission *panel* and must state the date, time, and place of the hearing. In addition, the notice must be published in a newspaper of general circulation in the municipality on one occasion *on or before* the 10th day before the date fixed for the hearing.

(c) *The commission may file notice of a proceeding before a commission panel in the Official Public Records of Real Property in the county in which the affected property is located. The notice must contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the instruments on file in the office of the county clerk, a legal description of the affected property, and a description of the proceeding. The filing of the notice is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice and constitutes notice of the proceeding on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice.*

SECTION 4. Section 54.036, Local Government Code, is amended to read as follows:

Sec. 54.036. FUNCTIONS. A [~~The~~] commission *panel* may:

(1) order the repair, within a fixed period, of buildings found to be in violation of an ordinance;

(2) declare a building substandard in accordance with the powers granted by this subchapter;

(3) order, in an appropriate case, the immediate removal of persons or property found on private property, enter on private property to secure the removal if it is determined that conditions exist on the property that constitute a violation of an ordinance, and order action to be taken as necessary to remedy, alleviate, or remove any substandard building found to exist;

(4) issue orders or directives to any peace officer of the state, including a sheriff or constable or the chief of police of the municipality, to enforce and carry out the lawful orders or directives of the commission *panel*;

(5) determine the amount and duration of the civil penalty the municipality may recover as provided by Section 54.017.

SECTION 5. Section 54.037(b), Local Government Code, is amended to read as follows:

(b) To enforce any civil penalty under this subchapter, the municipal secretary or clerk must file with the district clerk of the county in which the municipality is located, a certified copy of the order of the commission *panel* establishing the amount and duration of the penalty. No other proof is required for a district court to enter final judgment on the penalty.

SECTION 6. Section 54.038, Local Government Code, is amended to read as follows:

Sec. 54.038. VOTE. The concurring vote of four members of a [~~the~~] commission *panel* is necessary to take any action under this subchapter and any ordinance adopted by the municipality in accordance with this subchapter.

SECTION 7. Section 54.039, Local Government Code, is amended to read as follows:

Sec. 54.039. JUDICIAL REVIEW. (a) Any owner, lienholder, or mortgagee of record [~~persons~~] jointly or severally aggrieved by any decision of a [~~the~~] commission *panel* may present a petition to a district court, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 calendar days after the date a copy of the final decision of the commission *panel* is mailed by first class mail, certified return receipt requested, to all persons to whom notice is required to be sent under Section 54.035. The commission *panel* shall mail that copy promptly after the decision becomes final. In addition, *an abbreviated copy of the order* [~~a copy~~] shall be published one time in a newspaper of general circulation in the municipality within 10 calendar days after the date of the mailing of the copy as provided

by this subsection, *including 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, and a copy shall be filed in the office of the municipal secretary or clerk.*

(b) On presentation of the petition, the court may allow a writ of certiorari directed to the commission *panel* to review the decision of the commission *panel* and shall prescribe in the writ the time, which may not be less than 10 days, within which a return on the writ must be made and served on the relator or the relator's attorney.

(c) The commission *panel* may not be required to return the original papers acted on by it. It is sufficient for the commission *panel* to return certified or sworn copies of the papers or of parts of the papers as may be called for by the writ.

(d) The return must concisely set forth other facts as may be pertinent and material to show the grounds for the decision appealed from and shall be verified.

(e) The allowance of the writ does not stay proceedings on the decision appealed from[, ~~but the district court, on application, on notice to the commission and for due cause shown, may grant a restraining order or injunction.~~].

(f) ~~The district court's review shall be limited to a hearing under the substantial evidence rule. [If, on a hearing by the district court, it appears to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the proceedings on which the determination of the court shall be made.] The court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.~~

(g) ~~Costs may not be allowed against the commission *panel* [unless it appears to the court that the commission acted with gross negligence, in bad faith, or with malice in making the decision appealed from].~~

(h) If the decision of the commission *panel* is affirmed or not substantially reversed but only modified, the district court shall allow to the municipality all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those items, which may be entered against the property owners as well as all persons found to be in occupation of the property subject to the proceedings before the commission *panel*.

SECTION 8. Section 54.040(b), Local Government Code, is amended to read as follows:

(b) A lienholder does not have standing to bring a proceeding under Section 54.039 on the ground that the lienholder was not notified of the proceedings before the commission *panel* or was unaware of the condition of the property, unless the lienholder had first appeared before the commission *panel* and entered an appearance in opposition to the proceedings.

SECTION 9. Section 54.041, Local Government Code, is amended to read as follows:

Sec. 54.041. COMMISSION PANEL DECISION FINAL. If no appeals are taken from the decision of the commission *panel* within the required period, the decision of the commission *panel* is, in all things, final and binding.

SECTION 10. Section 214.001, Local Government Code, is amended to read as follows:

Sec. 214.001. AUTHORITY REGARDING SUBSTANDARD BUILDING. (a) A municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal, or demolition of a building that is:

(1) dilapidated, substandard, or unfit for human habitation[;] and [(2)] 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 by Subdivision (2).

(b) The ordinance must:

- (1) establish minimum standards for the continued use and occupancy of all buildings regardless of the date of their construction;
- (2) provide for giving proper notice to the owner of a building; and
- (3) provide for a public hearing to determine whether a building complies with the standards set out in the ordinance.

(c) *A notice of a hearing sent to an owner, lienholder, or mortgagee under this section 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 ordinance and the time it will take to reasonably perform the work.*

(d) After the public hearing, if a building is found in violation of standards set out in the ordinance, the municipality may order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time *as provided by this section*. The municipality 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 municipality 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 municipality shall send to each identified mortgagee and lienholder 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 municipal standards that is present at the building; and
- (3) a statement that the municipality 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.

(e) [(d)] As an alternative to the procedure prescribed by Subsection (d) [(e)], the municipality may make a diligent effort to discover each mortgagee and lienholder before conducting the public hearing and may give them a notice of and an opportunity to comment at the hearing. *In addition, the municipality may file notice of the hearing in the Official Public Records of Real Property in the county in which the property is located. The notice must contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the instruments on file in the office of the 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, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice, and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice.* If the municipality operates under this subsection, the order issued by the municipality may specify a reasonable time *as provided by this section* for the building to be vacated, secured, repaired, removed, or demolished by the owner or for the occupants to be relocated by the owner and an additional reasonable time *as provided by this section* for the ordered action to be taken by any of the mortgagees or lienholders in the event the owner fails to comply with the order within the time provided for action by the owner. Under this subsection, the municipality is not required to furnish any notice to a mortgagee or lienholder other than a copy of the order in the event the owner fails to timely take the ordered action.

(f) *Within 10 days after the date that the order is issued, the municipality shall:*

- (1) *file a copy of the order in the office of the municipal secretary or clerk; and*
- (2) *publish in a newspaper of general circulation in the municipality in which the building is located 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 results of the order; and*
 - (D) *instructions stating where a complete copy of the order may be obtained.*

(g) After the hearing, the municipality 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 municipality shall promptly mail by certified mail, return receipt requested, a copy of the order to any lienholder or mortgagee of the building. The municipality shall use the records in the office of the county clerk in the county in which the building is located to determine, if possible, the identity and address of any owner, lienholder, or mortgagee of the building.

(h) In conducting a hearing authorized under this section, the municipality 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 lienholder establishes at the hearing that the work cannot reasonably be performed within 30 days.

(i) If the municipality allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the municipality 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 hearing official.

(j) A municipality 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 hearing; and

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

(k) If the municipality 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 municipality shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the municipality 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 hearing official or the hearing official's designee to demonstrate compliance with the time schedules.

(l) In a public hearing to determine whether a building complies with the standards set out in an ordinance adopted under this section, the owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

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

(n) [(f)] If a municipality incurs expenses under Subsection (m) [(e)], the municipality may assess the expenses on, and the municipality has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the building was located. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the municipality for the expenses. 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 county clerk in the county in which the property is located. 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 expenses incurred by the municipality, and the balance due.

(o) [(g)] If the notice is given and the opportunity to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by Subsection [(e)-(f)] (d) or (e), the lien is a privileged lien subordinate only to tax liens and all previously recorded bona fide mortgage liens attached to the real property to which the municipality's lien attaches.

SECTION 11. Subchapter A, Chapter 214, Local Government Code, is amended by adding Section 214.0012 to read as follows:

Sec. 214.0012. JUDICIAL REVIEW. (a) Any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of a municipality issued under Section 214.001 may file in 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 municipality is mailed to them by first class mail, certified return receipt requested, or such decision shall become final as to each of them upon the expiration of each such 30 calendar day period.

(b) On the filing of the petition, the court may issue a writ of certiorari directed to the municipality to review the order of the municipality and shall prescribe in the writ the time within which a return on the writ must be made, which must be longer than 10 days, and served on the relator or the relator's attorney.

(c) The municipality may not be required to return the original papers acted on by it, but it is sufficient for the municipality to return certified or sworn copies of the papers or of parts of the papers as may be called for by the writ.

(d) The return must concisely set forth other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(e) The issuance of the writ does not stay proceedings on the decision appealed from.

(f) Appeal in the district court shall be limited to a hearing under the substantial evidence rule. The court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.

(g) Costs may not be allowed against the municipality.

(h) If the decision of the municipality is affirmed or not substantially reversed but only modified, the district court shall allow to the municipality all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those items, which may be entered against the property owners, lienholders, or mortgagees as well as all persons subject to the proceedings before the municipality.

SECTION 12. The changes in law made by this Act apply only to proceedings or actions instituted on or after the effective date of this Act. Proceedings or actions instituted before the effective date of this Act are covered by the law in effect when the proceeding or action was instituted, and the former law is continued in effect for that purpose.

SECTION 13. This Act takes effect September 1, 1993.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 21, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 333 on May 28, 1993, by a non-record vote; passed by the Senate, with amendments, on May 26, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.