

AN ORDINANCE **2011-05-05-0354**

REPEALING CHAPTER 6, ARTICLE X "COMMERCIAL AND INDUSTRIAL BUILDING" AND AMENDING ARTICLE IV ENTITLED "HOUSING CODE" OF THE CITY CODE OF SAN ANTONIO, TEXAS, BY ADOPTING THE SAN ANTONIO PROPERTY MAINTENANCE CODE AND AMENDING CHAPTER 6, ARTICLE VIII, "DANGEROUS BUILDINGS AND DISTRESSED PROPERTIES" CHANGING THE MEMBERSHIP OF THE DANGEROUS STRUCTURES DETERMINATION BOARD (DSDB) TO 14 CITIZEN MEMBERS, EXPANDING THE DSDB'S AUTHORITY TO ALLOW FOR THE QUASI-JUDICIAL ADJUDICATION OF VIOLATIONS OF THE SAN ANTONIO PROPERTY MAINTENANCE CODE, RENAMING THE DSDB THE "BUILDING STANDARDS BOARD," AUTHORIZING A LICENSING AGREEMENT TO SELL COPIES OF THE SAN ANTONIO PROPERTY MAINTENANCE CODE, AND PROVIDING FOR PENALTIES, PUBLICATION AND AN EFFECTIVE DATE.

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WHEREAS, City staff received direction to update the minimum housing code for the City of San Antonio; and

WHEREAS, City Council appointed a Code Review Task Force (CRTF) with direction to work with Code Enforcement Services on recommendations for adoption of the International Property Maintenance Code (IPMC) into our San Antonio Property Maintenance Code; and

WHEREAS, city staff has explored various options available under state law to accommodate the City Council direction; and

WHEREAS, Chapter 54 of the Texas Local Government Code allows an expansion of authority for the building standards commission, known locally as the "Dangerous Structures Determination Board;" and

WHEREAS, state law authorizes a citizen staffed Board to hear matters relating to the SAPMC and dangerous buildings and distressed properties;

NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO

SECTION 1. Chapter 6 of the City Code of San Antonio, Texas, is hereby amended by repealing Article X, Commercial and Industrial Buildings.

SECTION 2. Chapter 6, Article IV, Housing Code of the City Code of San Antonio, Texas, is hereby amended to be the "Minimum Property Maintenance Code" and by adopting the "San

Antonio Property Maintenance Code” as the minimum housing code for the City as delineated below:

Chapter 6

BUILDINGS

ARTICLE IV. MINIMUM PROPERTY MAINTENANCE CODE ~~[HOUSING CODE]~~

Sec. 6-51. Adoption of the San Antonio Property Maintenance Code. ~~[Code adopted.]~~

The 2009 San Antonio Property Maintenance Code is hereby adopted as the minimum housing code for the City of San Antonio. Three (3) copies of the code, which is incorporated by reference in this section marked “Exhibit A,” have been filed with the office of the City Clerk pursuant to Section 17 of the City Charter for permanent record and inspection. From the date on which the Ordinance shall take effect, the provisions thereof are controlling within the limits of the City of San Antonio, Texas. ~~[(a) The Neighborhood Housing Enforcement Code 2001 City of San Antonio is hereby adopted as the Minimum Housing Code of the city. Three(3) copies of the code, which is hereby incorporated by reference in this section marked “Exhibit A” have been filed with the office of the city clerk pursuant to Section 17 of the City Charter for permanent record and inspection.]~~

Sec. 6-52. Fee Schedule.

San Antonio Property Maintenance Code (paper copy)

\$16.98

Sec. 6-53 – 6-65. Reserved. ~~[Sec. 6-52 – 6-65].~~

SECTION 3. Chapter 6, Article VIII of the City Code of San Antonio, Texas is amended by adding the language that is underlined (added) and deleting the language that is stricken (~~deleted~~) as follows:

ARTICLE VIII. BUILDING STANDARDS BOARD ~~[DANGEROUS BUILDINGS AND DISTRESSED PROPERTIES]~~

DIVISION 1. GENERALLY

Sec. 6-155.1. Building Standards Board established and authority.

- (a) The Building Standards Board (BSB) is hereby established, and shall consist of fourteen (14) members. Ten (10) members of the Board shall be district appointments. One (1) member shall be appointed by the Mayor. Three (3) members of the Board shall be appointed at large by the City Council.

The Mayor and City Council at large shall appoint to the BSB:

- (1) One (1) professional manager of single family rental properties;
- (2) One (1) professional manager of multifamily rental property;
- (3) One (1) professional manager of retail/office/commercial rental property;
- (4) One (1) professional in one of the following disciplines: Architecture (licensed in the State of Texas), History, Architectural History, Archaeology, or Planning, - all having demonstrated experience addressing adaptive reuse of existing and historic buildings.

Appointments shall be governed by City Code Chapter 2, Article IX entitled "Boards and Commission Rules."

- (b) A panel of the BSB shall consist of seven (7) members.
- (c) All cases to be heard by the BSB may be heard by a panel of the BSB.
- (d) The BSB shall adopt rules of procedure in accordance with the Texas Local Government Code. City Code Chapter 2, Article IX entitled "Boards and Commissions Rules", shall apply to the BSB to the extent that it does not conflict with this article and state law. The BSB shall render all decisions and findings in writing to the citizen with copies to the Code Official.
- (e) Authority of the BSB is described below in Divisions 2 "Dangerous Buildings Procedures" and 3, "Quasi-Judicial Enforcement of the San Antonio Property Maintenance Code."
- (f) A quorum of the BSB shall be required to call a hearing or meeting to order. For cases to be heard by the full membership of the board and advisory meetings, a quorum shall require the presence of fifty (50) percent of the board's membership, plus one. For cases to be heard by a panel of the board, a quorum shall require fifty (50) percent of the panel's membership, plus one. Lacking a quorum, the BSB or a panel of the BSB may not take any action.
- (g) A majority vote of the members voting on a matter is necessary for the BSB to take any action.
- (h) Under guidance of and subject to applicable statutes and laws, the BSB shall devise its administrative procedures, review and adjust such procedures annually, and make available to any interested person, a copy of such procedures.

Sec. 6-155.2 Building Standards Board administration

- (a) Chairman. Each panel of the BSB shall select one of its members to serve as chairman.
- (b) Disqualification of member. A member shall not hear a case in which that member has a personal, professional or financial interest. Where charges are initiated against a member of the BSB, such member shall not sit as a member of the BSB during the hearing of the case. The BSB shall abide by the City Ethics Code.
- (c) Secretary. The Code Official shall designate a qualified clerk from the Department to serve as secretary to the BSB. The secretary shall file the minutes and any records of all BSB proceedings in the office of the BSB as public records. The minutes must show the vote of each member on each question or the fact that a member is absent or fails to vote.
- (d) Meetings and Open hearing. Meetings of the panels shall be held at predetermined times. All hearings before any panel of the BSB shall be open to the public. The appellant, the appellant's representative, the code official and any person whose interests are affected shall be given an opportunity to be heard. Each chairman may administer oaths and compel witness attendance.
- (e) Postponed hearing. If there is no quorum, either the citizen or the citizen's representative, and the Code Official or designee shall have the right to request a postponement of the hearing.
- (f) Terms. Appointment shall be for terms of two years. A member may serve no more than two consecutive two year terms for a total of four years.

Sec. 6-155.3. Administrative liability.

No officer, attorney, agent, or employee of the city shall render himself or herself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted and performed in good faith in the discharge of his or her duties under this article so long as such officer, agent, or employee is acting within the scope of his or her official capacity. Any suit brought against any attorney, officer, agent, or employee of the city acting within his or her official capacity and scope, as a result of any act required or permitted and performed in good faith in the discharge of duties under this article shall be defended by the city attorney until the final determination of the proceedings therein.

Sec. 6-155.4. Severance.

Should any section, clause, sentence, or provision of this article be held illegal, invalid, or unenforceable in whole or part by a final judgment of a court of competent jurisdiction, such judgment shall not affect or invalidate the remaining provisions of this article which shall be

treated as having been duly legislated without inclusion of such illegal, invalid, or unenforceable section, clause, sentence, or provision.

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Sec. 6-156. Definitions.

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BSB: Building Standards Board. is constituted as prescribed by the Texas Local Government Code. Authority of the BSB is described in Division 2 and Division 3.

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Business Days. Work days excluding weekends, and City, State and Federal holidays.

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Code Official. The Director of Code Enforcement Services or his designee who is charged with the administration and enforcement of this chapter.

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DIVISION 2. DANGEROUS BUILDINGS PROCEDURES

Sec. 6-158. Dangerous Buildings or Structures Cases. [~~Dangerous structure determination board established; composition; public hearing authority; duties; quorum.~~]

(a) Authority [~~The dangerous structure determination board (DSDB) is hereby established, and shall consist of the directors or their designees from the departments of fire, planning and development services, community initiatives, grants monitoring and administration, office of historic preservation, and public works.~~]

(1) The building standards board is hereby authorized to hear and decide cases relating to dangerous buildings or structures.

(2) Any panel of the BSB may hear and decide a dangerous buildings or structures case.

(3) A majority of the members of the panel must hear a dangerous buildings or structures case.

- (b) Concurrent with preparation of a dangerous building or structure case for referral to the BSB ~~{DSDB}~~, and before a hearing, the code compliance director shall advise in writing the city's historic preservation officer of the location of the subject building or structure and the nature of the violation. Such advisement shall commence the time frame for status determination, in lieu of an application for demolition. Within thirty (30) days of receipt of the information, the city historic preservation officer shall advise the BSB ~~{DSDB}~~ in writing whether or not the building or structure is a landmark or is in an historic district, and if neither a landmark nor in an historic district, whether or not the building or structure has historical, cultural, architectural, or archaeological significance (structure having significance).

If the building or structure is a landmark, in an historic district, listed or eligible for listing in the National Register of Historical Places, or possesses historical, cultural, architectural, or archaeological significance, BSB ~~{DSDB}~~ shall ensure that an order, finding, or other action taken complies with the requirements set out in the Uniform Development Code § 35-617. Provided, however, within sixty (60) days from the date of receipt of the information from the code compliance director, the historic preservation officer must have obtained the historic and design review commission concurrence that a building or structure having significance should be designated a landmark. Further, the structure having significance must be so designated by city council one hundred eighty (180) days after the date of receipt of the information from the code compliance director. If any one of the deadlines set out above is not met, the BSB ~~{DSDB}~~ may presume the building or structure does not have historical, cultural, architectural or archaeological significance.

- (c) The BSB ~~{DSDB}~~ shall act as authorized under all applicable statutes and laws.
- (d) BSB ~~{DSDB}~~ duties shall include review of the procedures for each case brought before the board to confirm notice requirements have been satisfied; conduct a public hearing as required by this article to determine whether a building is a public nuisance, and issue abatement orders. In hearing cases pertaining to distressed buildings and structures, the BSB ~~{DSDB}~~ shall regard potential for curing title and to advise, when appropriate, property owners of programs which may be available to assist in preserving buildings as affordable housing.
- (e) In addition to the city's authority under the V.T.C.A., Local Government Code § 214.001(m)(n) to perform public nuisance abatement of dangerous buildings or structures and secure its costs with a lien, whenever remediation is not accomplished within the allotted time, the city shall further exercise its authority, under V.T.C.A., Local Government Code § 214.0015, additional authority, to allow the BSB ~~{DSDB}~~ to elect to have the city perform limited repairs, as described below. Assessment for repairs, notice, and recovery of the assessment shall be performed by the city in the same manner as required for the fixing, filing, and foreclosure of liens arising from city services rendered to remediate other premises violations.

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~~{(h)} [A quorum of the DSDB shall be required to call the hearing to order. A quorum shall require presence of fifty (50) percent of the board's membership, plus one. Lacking a quorum, the DSDB may not take any action.]~~

~~{(i)} [DSDB decisions shall require a simple majority of the voting members present.]~~

~~{(j)} [Under guidance of and subject to applicable statutes and laws, the DSDB shall devise its administrative procedures, review and adjust such procedures annually, and make available to any interested person, a copy of such procedures.]~~

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~~**{Sec. 6-169. Administrative liability.**~~

~~No officer, attorney, agent, or employee of the city shall render himself or herself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted and performed in good faith in the discharge of his or her duties under this article so long as such officer, agent, or employee is acting within the scope of his or her official capacity. Any suit brought against any attorney, officer, agent, or employee of the city acting within his or her official capacity and scope, as a result of any act required or permitted and performed in good faith in the discharge of duties under this article shall be defended by the city attorney until the final determination of the proceedings therein.]~~

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~~**{Sec. 6-176. Severance.**~~

~~Should any section, clause, sentence, or provision of this article be held illegal, invalid, or unenforceable in whole or part by a final judgment of a court of competent jurisdiction, such judgment shall not affect or invalidate the remaining provisions of this article which shall be treated as having been duly legislated without inclusion of such illegal, invalid, or unenforceable section, clause, sentence, or provision.]~~

~~**{Sec. 6-177-6-180. Reserved.}**~~

**DIVISION 3. QUASI-JUDICIAL ENFORCEMENT OF THE SAN ANTONIO
PROPERTY MAINTENANCE CODE**

Sec. 6-177.1. Statutory Authority.

The Building Standards Board (BSB) derives its authority to hear and decide San Antonio Property Maintenance Code cases from the Texas Local Government Code, Section 54, Subchapter C. Quasi-Judicial Enforcement of Health and Safety Ordinances

Sec. 6-177.2. San Antonio Property Maintenance Code Cases.

- (a) The building standards board (BSB) is hereby authorized to hear and decide cases relating to alleged violations of the San Antonio Property Maintenance Code (SAPMC).
- (b) Any panel of the BSB may hear and decide a SAPMC case.
- (c) A majority of the members of the panel must hear a case.
- (d) The BSB shall have no authority to waive SAPMC requirements.

Sec. 6-177.3. Advisory Authority.

- (a) The full membership of the BSB may meet to review and consider amendments to the San Antonio Property Maintenance Code and shall make recommendations to the Code Official for adoption thereof.
- (b) A panel of the BSB does not have advisory authority.
- (c) The BSB has no other advisory authority.

Sec. 6-178. Initiation of Cases under the SAPMC.

- (a) Either the code official, a property owner, registered agent, lienholder, or a person in receipt of a notice of violation of the San Antonio Property Maintenance Code may initiate a case to be brought before the BSB.
- (b) Whenever the code official has inspected or caused to be inspected any building, structure, or property and has found that the building, structure, or property is in violation of the San Antonio Property Maintenance Code the code official may initiate a case to be brought before the BSB if a property owner, registered agent, lienholder, or a person in receipt of a notice of violation fails to comply with the terms of the notice within ten (10) business days after service of notice as provided by the SAPMC.
- (c) A property owner, registered agent, lienholder, or a person in receipt of a notice of violation of the San Antonio Property Maintenance Code shall have a right to appeal a notice of violation based on the claim that:
 - (1) The true intent of this code or the rules adopted thereunder have been incorrectly interpreted; and/or
 - (2) There is a special individual reason that makes the strict letter of this code impractical and the alternative proposal is in compliance with the intent and purpose of the SAPMC and that the alternative proposal does not lessen health, life and fire safety requirements or that the provisions of this code do not fully apply.

- (d) The appeal must be filed not later than ten (10) business days after the service of notice as provided by the SAPMC. A request for additional time to comply with the notice due to financial inability or other extenuating circumstance is not a proper basis for appeal, but can be presented to the BSB upon hearing. An appeal must contain a brief statement identifying the notice or action being appealed, describing the relief being sought, and concluding with a statement as to whether the order should be reversed, modified or otherwise set aside. Filing a timely appeal stays further City action under the notice being appealed unless, in the opinion of the code official, a delay would present an immediate danger or unreasonable risk to any person or property.
- (e) This division does not affect the ability of the City to proceed under the jurisdiction of the municipal court or to seek other available civil remedies.

Sec. 6-179. Notice Procedures.

- (a) Notice of a San Antonio Property Maintenance Code (SAPMC) case hearing must be given in accordance with Texas Local Government Code § 54.035.
- (b) Notice of a SAPMC case hearing before the BSB must be given:
 - (1) To the person who files a timely written appeal of a notice of violation of the SAPMC;
 - (2) By personal delivery, by certified mail with return receipt requested, or by delivery by the United States Postal Service using signature confirmation service, 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 lien holder can be ascertained from the deed of trust establishing the lien or other applicable instruments on file in the office of the county clerk; and
 - (3) 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.
- (c) The notice of the hearing must be posted and either personally delivered or mailed on or before the 10th day before the date of the hearing before the BSB panel and must state the date, time, and place of the hearing. In addition, the notice must be published in a news paper of general circulation in the municipality on one occasion on or before the 10th day before the date fixed for the hearing.
- (d) The BSB may file a notice of a hearing before the BSB panel in the Bexar County official public records of real property.

Sec. 6-180.1 Hearing Procedures.

- (a) The code official or his designee shall present at a SAPMC hearing facts bearing on the alleged violation of the San Antonio Property Maintenance Code. Personnel from other City departments or governmental agencies may also present facts before the BSB.
- (b) Any person owning a legal interest in the property or who may be affected by the condition of the property in question shall be allowed to present evidence at the hearing, in person or by designated representative, regarding the alleged violation of the San Antonio Property Maintenance Code.
- (c) BSB members may question any witness testifying before the board.
- (d) The BSB shall not be bound by the strict rules of evidence, and may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence, or any evidence that does not comply with these rules.
- (e) A majority vote of the members voting on a matter is necessary for the BSB to take any action.
- (f) At the conclusion of the hearing, the BSB shall determine whether the person is in violation of the SAPMC. Upon a finding that a violation exists, the BSB is authorized to:
 - (1) Order the repair, within a fixed period, of buildings found to be in violation of the San Antonio Property Maintenance Code;
 - (2) Declare a building in violation of the San Antonio Property Maintenance Code to be substandard;
 - (3) Order action to be taken as necessary to remedy or alleviate a violation of the San Antonio Property Maintenance Code relating to a building and property;
 - (4) Order or direct any peace officer of the state, including a sheriff or constable or the City Chief of Police, to enforce and carry out the lawful orders or directives of the BSB;
 - (5) Determine the amount and duration of the civil penalty.
- (g) If the BSB issues any order or assesses a civil penalty, the person in receipt of a notice of violation is liable for the violation of the SAPMC and shall be responsible for compliance with the BSB order and payment of the civil penalty subject to the requirements of the Texas Local Government Sec. 250.003 and their right to appeal to District Court.

- (h) Except for good cause, failure to appear at a SAPMC case hearing for which proper notice has been given shall result in a finding that the person is in violation of the SAPMC subject to the requirements of the Texas Local Government Sec. 250.003 and their right to appeal to District Court.

Sec. 6-180.2 Judicial Review of SAPMC Cases.

- (a) Any owner, lienholder, or mortgagee of record jointly or severally aggrieved by the decision of the BSB hearing may appeal to District Court in the manner provided in Texas Local Government Code § 54.039.
- (b) If no appeals are taken from the decision of the BSB panel within the required period, the decision of the BSB is, in all things, final and binding.

Sec. 6-180.3 Failure to Comply with a BSB Order; Penalties.

- (a) Criminal Offense and Penalty. A person commits an offense if the person fails to comply with a final order issued by the BSB relating to a violation of the SAPMC. Each day that a person fails to comply with a final order is a separate occurrence. The maximum penalty shall be \$500 per offense, per occurrence. Proof of a culpable mental state is not required for conviction of an offense under this chapter.
- (b) Civil Offense and Penalty. A person must comply with a final order issued by the BSB relating to a violation of the SAPMC. A person who fails to comply with a final order commits a civil offense punishable by a maximum fine of \$1,000 a day for each day of noncompliance with the order as provided by Chapter 54 of the Texas Local Government Code. Criminal conviction under (a) does not preclude assessment or enforcement of applicable civil penalty for violation of a BSB Order.

SECTION 4. The City Manager or designee is hereby authorized to enter into a contract with the International Code Council, Inc. allowing for the licensing of copyrighted material in its 2009 San Antonio Property Maintenance Code.

SECTION 5. The publishers of the City Code of San Antonio, Texas, are hereby directed to modify all references to “dangerous structure determination board” and “DSDB” to read “building standards board” and “BSB” in Article VIII.

SECTION 6. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this Ordinance, or any appendix thereof, for any reason, be held illegal, inoperative, or invalid or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 7. All other provisions of Chapter 6, City Code of San Antonio, Texas, remain in full force and effect except as expressly amended and adopted by this Ordinance.

SECTION 8. The publishers of the City Code of San Antonio, Texas, are authorized to amend said Code to reflect the changes adopted herein, to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 9. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 261000000007 and General Ledger 4407725.

SECTION 10. Funding in the amount up to \$5,000.00 for this ordinance is available in Fund 11001000, Cost Center 6105010001 and General Ledger 5201040 as part of the Fiscal Year 2011 budget.

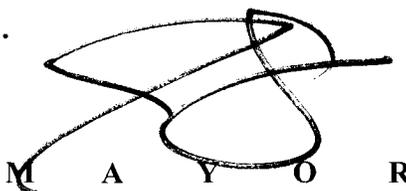
SECTION 11. Payment not to exceed the budgeted amount is authorized and should be encumbered with a purchase order.

SECTION 12. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 13. The City Clerk for the City of San Antonio is hereby directed to publish notice of this Ordinance in a newspaper published in the City of San Antonio, Texas, as required by the Charter of the City of San Antonio.

SECTION 14. This Ordinance shall become effective on the 1st day of January, 2012.

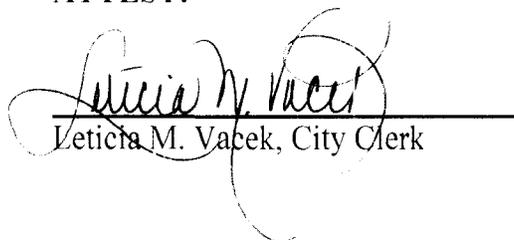
PASSED AND APPROVED this 5th day of May, 2011.



M A Y O R

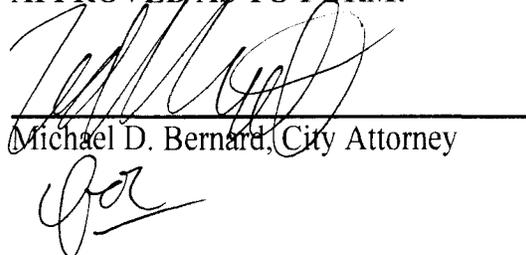
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney