

**CITY OF JAMAICA BEACH, TEXAS  
ORDINANCE NO. 2010-1**

**AN ORDINANCE REGARDING DANGEROUS BUILDINGS, DEFINITIONS, DISTRESSED PROPERTIES, DECLARATION OF NUISANCE, STANDARDS FOR REPAIR, VACATION OR DEMOLITION, INSPECTION, HEARINGS, NOTICE OF HEARINGS, BURDEN OF PROOF, RESPONSIBLE PARTIES, FAILURE TO ABATE, ADMINISTRATION LIABILITY, ENFORCEMENT, APPEALS AND OTHER REMEDIES RELATING TO DANGEROUS BUILDINGS.**

**Sec. 1. Definitions.**

*Dangerous building:* Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building and a hazard to the public health, safety and welfare, provided that such conditions or defects of dilapidation, substandardness, or unfitness for human habitation, pose a threat or potential threat to life, health, property, or human safety.

- (1) Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide a safe and adequate means of exit in case of fire or panic.
- (2) Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
- (3) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
- (4) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.
- (5) Whenever any portion, member, or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- (6) Whenever any portion of the building, any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting

wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in the Building Code for such buildings.

(7) Whenever the building or structure, or any portion thereof, because of: (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) the removal, movement, or instability of any portion of the ground necessary to support such building; (iv) the deterioration, decay, or inadequacy of the foundation; or (v) any other cause, is likely to partially or completely collapse.

(8) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

(9) Whenever the exterior walls or other vertical structure members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle of the third base.

(10) Whenever the building or structure, exclusive of the foundation, shows thirty-three (33) percent or more damage or deterioration of its supporting member or members, or fifty (50) percent damage or deterioration of its nonsupporting members, or fifty (50) percent damage or deterioration of enclosing or outside walls or covering.

(11) Whenever the building or structure has been damaged by fire, wind, earthquake, or flood, or has been so dilapidated or deteriorated or neglected as to become a harbor for vagrants or criminals.

(12) Whenever any building or structure has been constructed, exists, or is maintained in violation of the city's minimum housing standards or technical building codes, to the extent violation poses a threat or potential threat to life, health, safety, or property.

(13) Whenever a building or structure is used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction, arrangement, inadequate light, air, or sanitation facilities, is determined by the health director to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.

(14) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections, or heating apparatus, or other mechanical, structural or social cause, is determined by the fire chief to be a fire hazard.

(15) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

(16) Whenever any portion of a building or structure remains for any period of time on a site after the demolition or destruction of the building or structure, unless such structure has been approved for partial demolition by the DSDB or the department of development services in its permitting process.

(17) Whenever any building or structure, regardless of its structural condition, is 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 by children.

(18) Whenever any building or structure is secured by a means inadequate to prevent unauthorized entry or use in the manner described in condition subsection (17) above.

## **Sec. 2. Distressed property.**

*Distressed property:* A property or premises on which there is located a building or structure believed, by an appropriate city official, to suffer from one or more of the conditions or defects described in this section.

## **Sec. 3. Declaration of nuisance.**

Any building or structure which has any or all of the conditions or defects described above in Section 1, where such condition or conditions pose a threat or potential threat to life, health, property, or human safety, is hereby declared to be a public nuisance, is prohibited as unlawful, and shall be abated according to provisions of this ordinance.

It is an offense for an owner or occupant or other person having control of the building or structure to fail to abate such public nuisance.

Therefore failure to abate such condition may also be prosecuted as a criminal misdemeanor offense. It is a further offense and unlawful for any person to cause, permit, or allow a dangerous building after the thirtieth (30<sup>th</sup>) day after the day on which a condition of nuisance or other extended date as may be lawfully permitted, is found and abatement is ordered.

## **Sec. 4. Standards for repair, vacation, or demolition: review of demolition settlement.**

The following standards shall guide the building inspector in his direction in ordering a hearing to repair, vacate, secure, and/or demolish a dangerous building and these standards shall be observed and applied by the hearing officers who comprise the dangerous structures determination board.

(1) If the alleged dangerous building can be feasibly repaired or the condition remedied so that it will no longer exist a violation of the terms of this article, it shall first be ordered remedied or repaired by the hearing officers. Demolition shall be regarded as a remedy of last resort.

(2) If the building is in such condition as to make it dangerous to the health or safety of its occupants, it shall be ordered by the hearing officers to be vacated.

(3) In any case where a dangerous building is fifty (50) percent or more damaged or decayed or deteriorated in its structure or fifty (50) percent or more diminished in its value due to damage, decay, or deterioration, a presumption shall arise that the building cannot be repaired. Such presumption may be appropriately rebutted by the weight of the evidence.

(4) Principals of sound engineering practices shall be respected.

(5) In all cases of settlement in which a responsible party enters into a voluntary demolition agreement to accept city serviced demolition, all settlement agreements shall be reviewed by the mayor prior to execution by a duly authorized city official possessing settlement authority.

#### **Sec. 5. Additional state authority.**

Under authority of Texas Local Government Code, Sec. 214.004, Subchapter A. Dangerous Structures, upon hearing, a building or structure shall be ordered demolished, vacated, secured, or repaired, and/or its occupant's relocated if found to be:

(1) Dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare; or

(2) Regardless of its structural condition, but having be subject to repeated criminal enforcement efforts, unoccupied by its owners, lessees, or other invitees, the building 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.

#### **Sec. 6. Inspection of buildings, schools, churches, etc.**

The building inspector or development services may inspect or cause to be inspected periodically, all public buildings, schools, halls, churches, theaters, hotels, tenements, commercial buildings, manufacturing buildings, or loft buildings, flea markets, and tents for the purpose of determining whether any conditions exist which render any such place a dangerous building or structure within this article. The inspector may also inspect buildings under the following conditions:

(1) Any premises, building, wall, or structure about which complaints are filed by any persons alleging that any premises or a building, wall, or structure is or may be existing in violation of this article;

(2) Any premises, building, wall or structure, as provided for in this article, alleged by the health, fire or police departments of this city to be in violation of the terms of this article. Good faith shall be sufficient to support the inspector's inspection effort.

(3) Any premises, building, wall, or structure which the inspector in good faith has reason to believe may be violation of this article.

**Sec. 7. Notice of hearing.**

(a) When the building inspector has probable cause to believe a building or structure to be dangerous, the building inspector shall order a public hearing before the Municipal Court Judge and make a diligent effort to discover and notify in writing the owner and each lienholder or mortgagee, before the public hearing. The inspector must make a reasonable search of the instruments on file in the office of the county clerk to find the owner. Reliance on the real property lien and tax records of Galveston County, Texas, shall be sufficient to identify mortgagees and lienholders.

(b) The pre-hearing notice to the owner shall be:

(1) Personally to the owner in writing; or

(2) By letter addressed to the owner at the owner's post office address;

(3) If the personal service cannot be obtained or the owner's post office address is unknown:

a. By publication at least twice within ten (10) consecutive days; and

b. By posting the notice on or near the front door of each building on the property to which the violation relates.

(c) The pre-hearing notice to lienholders/mortgages shall be directed to them at addresses provided by the real property tax records of Galveston County, Texas, and deposit of the notice with the United States Postal Service, first class, shall be deemed sufficient for delivery.

(d) The notice shall state:

(1) The observations of the building inspector:

- Identifying conditions enumerated above in section 1 of the alleged dilapidation, substandard conditions, unfitness for human habitation, and hazard to the public health, safety and welfare; or
- In the alternative, regardless of structural condition, a building or structure is unoccupied by its owners, lessees, or other invites and unsecured to the extent that it could be, or has been, entered by vagrants or other uninvited persons as a place of harborage or could be entered or used by children, and that the building has been subject to repeated criminal enforcement efforts; and

(2) Identification of the building and the property upon which the building is located. (This identification is not required to be a legal description.); and

(3) A statement that the owner, lienholder, or mortgagee shall be required at the hearing to present proof of the scope of any work that may be required to comply with this article and the time it will reasonably take to perform the work; and

(4) A statement that the lienholder/mortgagee, as well as the owner, is entitled to attend the hearing and shall be afforded opportunity to comment.

(e) If the city files a notice in the official public records of the real property for Galveston County, Texas, pertaining to the hearing, as set forth above, the notice shall bind all subsequent holders of interest in the property, according to state law.

(f) The city is not required to furnish any further notice to a mortgagee or lienholder, other than a copy of the dangerous structures determination board's order, when the city has filed the notice requirements set forth here.

(g) The order, in regard to the mortgagees and lienholders, shall notify them, as set forth in this section, of the owner's obligations and shall allow an additional reasonable time for the mortgagee/lienholder to perform the order if the owner fails to do so.

**Sec. 8. Notice of dangerous structures determination board – Findings and order; statutory limits on demolition time,**

(a) After the hearing the building inspector shall promptly notify by certified mail, return receipt requested, the owner and any mortgagee or lienholders, of the Municipal Court Judge's order, setting forth the description of the building or structure found unsafe, a statement of the particulars which made the building or structure a dangerous building, a reasonable time for the building to be vacated, secured, repaired, removed, or demolished, and the occupants relocated, if any,

and an order requiring the same to be put in such condition as to comply with the terms of this article within such length of time, not exceeding thirty (30) days as is reasonable.

Within ten (10) days after the date the order is issued, the city shall also file a copy of the order in the city clerk's office and publish once in the newspaper of general circulation within the city a notice of:

- (1) Street address or legal description of the property;
- (2) Date of the hearing;
- (3) Brief statement of the results of the hearing; and
- (4) Instructions stating where a complete copy of the order may be obtained.

(b) As prescribed by the Local Government Code, Sec. 214.001(h), in conducting a hearing authorized under this article and upon a finding that the building is dangerous, the building inspector shall require the owner, lienholder, or mortgagee of the building to within thirty (30) days:

- (1) Secure the building from unauthorized entry; and/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 thirty (30) days.

(c) If the building inspector allows the owner, lienholder, or mortgagee more than thirty (30) days to repair, remove, or demolish the building, the building inspector 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 authorized entry while the work is being performed, as determined by the building inspector. Local Government Code, Sec. 214.001(l).

(d) The building inspector may not allow the owner, lienholder, or mortgagee more than ninety (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 ninety (90) days because of the scope and complexity of the work. Local Government Code, Sec. 214.001(i).

(e) If the building inspector allows the owner, lienholder, or mortgagee more than ninety (90) days to complete any part of the work required to repair, remove or demolish the building, the building inspector shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the building inspector to demonstrate that the owner, lienholder, or mortgagee has complied with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the building inspector or the director of code compliance to demonstrate compliance with the time schedules. Local Government Code, Sec. 214.004(k).

### **Sec. 9. Burden of proof.**

In any public hearing before the Municipal Court to determine whether a building is in violation of the conditions set forth in this article, which may result in a finding of public nuisance and an abatement order, the owner, mortgagee, or lienholder has the burden of proof to demonstrate the scope of any work that may be required to abate the nuisance and the time it will take to reasonably perform the work. This burden is imposed under authority of the Texas Local Government Code, Dec. 214.001(l).

### **Sec. 10. Responsible party's failure to abate; costs,**

(a) If the building or structure, subject to the order, is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, the city may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense.

(b) If the city incurs expenses under subsection (a) above, the city may assess its costs and secure same by a lien.

(c) In the event of city serviced demolition, following review and approval by the Municipal Court, to abate the public nuisance, the owner shall be charged and billed for the expense of demolition of the structure or building, to prepare the premises for demolition, collapse the structure, remove and dispose of all debris to a legal disposal facility, plus any handling, transportation and disposal fees incurred, including any and all costs necessary to address special or hazardous wastes, and a ten (10) percent administration expense charge.

(d) Any case referred to the Municipal Court for consideration shall also have attached as costs all expenses incurred by the city to research ownership and mortgagee/lienholder interests, as such research is required by state law to fix enforceable orders and liens.



## **Sec. 11. Hearing proceedings.**

- (a) The building inspector or his/her designee shall prepare a notice to the owner, mortgagee, or lienholder, if any, having an interest in such alleged dangerous building notify such persons that a hearing on the matter will be heard by the dangerous structures determination board at a certain time on a certain day, not less than five (5) days and not more than sixty (60) days after receipt thereof, at a city facility appropriate to public hearings.
- (b) The notice shall be served by verified personal delivery to such persons or by U.S. mail, certified return receipt requested. Where any such person is a corporation, service upon an officer thereof or designated agent shall be deemed sufficient. Where such entity's or person's principal place of business is located outside of the county, service upon the person in charge of the local office shall be deemed sufficient. Such notice shall be published one (1) time in the city's official publication in the event any persons having an interest in such premises, or their heirs, cannot be located after reasonable efforts.
- (c) The building inspector or his/her designee shall present at such hearing facts bearing on the condition of the premises, and reports may be made by personnel of the departments of fire, development services, planning, other city departments, or other appropriate agencies.
- (d) Any person having an interest in the property or who may be affected by conditions of the property shall be allowed to present evidence at such hearing, in person or by attorney, regarding condition of the premises and to hear the reports of any city personnel or of any other persons who may be present. The city shall have only those obligations to notify persons or entities as prescribe by statute.
- (e) The Municipal Court may require the posting of a performance bond not to exceed ten thousand dollars (\$10,000.00) to ensure performance of any formal agreement that may be reached between the city and a person having an interest in the property to accomplish the remediation contract.
- (f) The remedy of this section shall be available to the city in addition to any penal or other civil remedy which the city, state or other person may have to remedy public nuisance conditions.

## **Sec. 12. 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. 13. Reports of suspected dangerous buildings.**

The heads of the fire, police, and other city departments shall make prompt reports in writing to the building inspector of all buildings or structures which are, or may be suspected to be dangerous buildings or structures within the terms of this article.

**Sec. 14. Disconnecting public utilities.**

The building inspector may request that public utilities be disconnected in order that demolition or other nuisance abatement actions may be accomplished without delay in those cases where the structure is open, vacant, dilapidated, or subject to any of the conditions defining public nuisance in this article.

**Sec. 15. Enforcement; appeal to district court under substantial evidence rule; lien priority.**

- (a) Any owner, lienholder, or mortgagee of record, aggrieved by an order of the Municipal Court Judge under this article VIII may file in district court a verified petition setting forth that the decision is illegal, in whole or part, and specifying the grounds of the illegality. The petition must be filed within thirty (30) calendar days after the respective dates a copy of the final decision of the Municipal Court is mailed to them by first class mail, certified return receipt requested, or such decision shall become final as to each of them upon expiration of each such thirty-calendar-day period.
- (b) In any judicial contest challenging the city's rights under this ordinance, the city shall pursue recovery of its attorney's fees as allowed by the Texas Local Government Code.
- (c) An aggrieved party's appeal from an order of the Municipal Court Judge, when made to the district court, shall be limited, according to the law, to a hearing under the substantial evidence rule, under the court may reverse or affirm, in whole or part, the Municipal Court Judge's decision. Accordingly, costs may not be allowed against the city.
- (d) The lien securing payment of civil penalties or the costs of repairs, removal or demolition, as the case may be, is inferior only to any previously and duly recorded bona fide mortgage liens, as prescribed by state law. The city's lien is superior to all other previously recorded judgment liens, and shall accrue interest at the rate of ten (10) percent a year, or as allowed by law, from the date of assessment until paid in full.

**Sec. 16. Other remedies; Chapters 54 and 214, Texas Local Government Code.**

Nothing in this article shall preclude the city's pursuit of any and all other remedies allowed under the civil and criminal statutes, and in equity, to address conditions which are treated in this article, under the theory of public nuisance and abatement of dangerous structures or buildings. Neither shall the city be required, nor prohibited, to issue criminal citations before, after, or during any proceeding prescribed in this article.

Specifically, in addition to provisions of this article and remedies afforded under the Texas Local Government Code, Chapter 214, Municipal Regulation of Structures, the city further asserts full authority to exercise its right to remedy under all provisions of the Texas Local Government Code, including, but not limited to, Chapter 54, Subchapter B, Municipal Health and Safety Ordinances, in prosecution of civil suits for enforcement, injunctive relief, and civil penalties to remedy conditions of public concern described in this article.

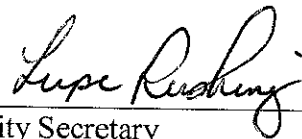
**Sec. 17. Severance.**

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.

Approved and adopted this the 5th day of April, 2010.



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Mayor



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City Secretary