

ORDINANCE NO. _____

AN ORDINANCE DECLARING DANGEROUS BUILDINGS TO BE ILLEGAL IN THE CITY; DEFINING WHAT CONSTITUTES A DANGEROUS BUILDING; PROVIDING FOR NOTICE AND A PUBLIC HEARING; PROVIDING FOR THE CREATION OF A BUILDING STANDARDS COMMISSION TO ENFORCE THIS ORDINANCE; PROVIDING FOR ENFORCEMENT AND CIVIL PENALTIES AND A SEVERABILITY CLAUSE.

WHEREAS, the City of Buda has determined that dangerous buildings are a threat to the health, safety, and welfare of the citizens of Buda, Texas; and

WHEREAS, Chapter 214 of the Texas Local Government Code specifically authorizes a city to protect its citizens from the effects of dangerous buildings; and

WHEREAS, the City has determined that the provisions of this ordinance are consistent with the powers authorized in Chapter 214 of the Texas Local Government Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BUDA, TEXAS:

1. That the provisions attached as Exhibit "A" hereto related to dangerous buildings are hereby adopted and shall be published in the Buda Code of Ordinances.

2. If any sentence, section, subsection, clause, phrase, part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part declared to be invalid.

3. This ordinance shall be effective on _____, 2003.

PASSED AND APPROVED this _____ day of _____, 2003.

THE CITY OF BUDA, TEXAS,
a Municipal Corporation

By: _____
Mayor

ATTEST:

City Clerk

EXHIBIT "A"

Section 1. Dangerous Buildings Prohibited

Pursuant to the authority granted to the City in Texas Local Government Code, Chapter 214, the City adopts this ordinance to 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 a hazard to the public health, safety, and welfare;

(2) regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or

(3) boarded up, fenced, or otherwise secured in any manner if:

(A) the building constitutes a danger to the public even though secured from entry; or

(B) the means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described in subparagraph (2) above.

(4) all buildings described in subparagraphs (1) through (3) above are hereby declared

illegal and shall be abated by repair, rehabilitation, or by demolition.

Section 2. Building Standards

(1) The standards set forth below apply to all buildings in the City regardless of the date of their construction and these standards shall be used by the Building Standards Commission in determining whether a building should be declared unsafe and ordered vacated, secured, repaired, removed, demolished, and/or the occupants relocated:

- (A) The building, structure, or any part thereof is liable to partially or fully collapse.
- (B) The structure or any part thereof was constructed or maintained in violation of any provision of the City's building code, or any other applicable ordinance or law of the City, county, state or federal government.
- (C) Any wall or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third (1/3) of its base.
- (D) The foundation or the vertical or horizontal supporting members are twenty-five (25) percent or more damaged or deteriorated.
- (E) The nonsupporting coverings of walls, ceilings, roofs, or floors are fifty (50) percent or more damaged or deteriorated.
- (F) The structure has improperly distributed loads upon the structural members, or they have insufficient strength to be reasonably safe for the

purpose used.

- (G) The structure or any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public health, safety, or welfare.
- (H) The structure or any part thereof has inadequate means of egress as required by the City's building code.
- (I) The structure does not have adequate light, ventilation, or sanitation facilities as required by the City's building code and plumbing code.
- (J) The structure has parts thereof which are so attached that they may fall and injure persons or property.

(2) Minimum Standards. The minimum standards that shall determine the suitability of a building for continued use or occupancy, regardless of the date of construction, are those found in the City's adopted standard building, electrical, plumbing, gas, mechanical, existing buildings and fire prevention codes.

Section 3. Notice of Violation

In the event the City's Building Inspector determines that there are reasonable grounds to believe that a building or any part thereof violates the standards set forth above, he shall take the following acts:

(1) Notify the owner of the building and any interested lienholder or mortgagee of his determination in reasonable detail to enable the owner to commence repairs as may be needed. The notice shall be sent certified mail to the owner at the address as shown on the City tax

records and to any person who holds a lien or mortgage on the property in question.

(2) He shall request a public hearing before the Building Standards Commission (herein referred to as the Commission) to determine whether there exists a violation of this ordinance;

(3) He shall include in his notice the date, time, and location of the hearing before the Commission; and

(4) He shall include in the notice sent to the owner, lienholder and mortgagee a statement that the owner, lienholder or mortgagee shall be required to submit at the public hearing proof of the scope of any work that may be required to comply with this ordinance and the time it will take to reasonably perform the work.

Section 4. Compliance

In conducting a hearing authorized under this section, the Commission shall require the owner, lienholder, or mortgagee of the building to within 30 days:

- (A) secure the building from unauthorized entry; or
- (B) 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.

If the Commission allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the Commission 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.

Section 5. Time to Comply

The Commission 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:

- (A) submits a detailed plan and time schedule for the work at the hearing; and
- (B) establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.

Section 6. Progress Reports

If the Commission 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 Commission shall require the owner, lienholder, or mortgagee to regularly submit progress reports to the City Administrator to demonstrate compliance 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 Commission or the Commission's designee to demonstrate compliance with the time schedules.

Section 7. Security for Performance

If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the City that exceeds \$100,000 in total value, the Commission may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing a building under this

subsection. In lieu of a bond, the Commission may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the Commission. The bond must be posted, or the letter of credit or third party guaranty provided, not later than the 30th day after the date the Commission issues the order.

Section 8. Burden of Proof

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

Section 9. Commission Order

(1) After the public hearing, if the building is found in violation of the standards set out above, the Commission may:

- (A) order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time;
- (B) order that all occupants of the building be relocated within a reasonable time.

(2) After the public hearing at which a building is found in violation of this ordinance, the City Administrator shall deliver or send by certified mail, return receipt requested, to each identified mortgagee and lienholder a notice stating:

- (A) an identification, which is not required to be a legal description, of the building and the property on which it stands;
- (B) a description of the violation of the standards set forth above that is present at the building; and
- (C) a statement that the City 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.

Section 10. Publication and Service of Order

Within 10 days after the date that the order is issued, the Commission shall:

- (A) file a copy of the order in the office of the City secretary; and
- (B) publish in a newspaper of general circulation in the City of Buda a notice containing:
 - (i) the street address or legal description of the property;
 - (ii) the date of the hearing;
 - (iii) a brief statement indicating the results of the order; and
 - (iv) instructions stating where a complete copy of the order may be obtained.

After the hearing, the City Administrator shall promptly mail by certified mail, return receipt requested, or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building. The City Administrator shall use its best efforts to determine the identity and address of any owner, lienholder, or mortgagee of the building.

Section 11. Failure to Comply

If the building 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. This section does not limit the ability of the City to collect on a bond or other financial guaranty that may be required by Section 7.

Section 12. Lien

If the City incurs expenses under Section 10, the City may assess the expenses on, and the City 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 City 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 of Hays County, Texas. 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 City, and the balance due.

If the notice is given and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by Sections 3, 9, and 10, the lien is a privileged lien subordinate only to tax liens.

Section 13. Effort to Locate Interested Parties

The City's agents satisfy the requirements of this section to make a diligent effort, to use

their best efforts, or to make a reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee if they search 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;
- (E) city tax records; and
- (F) city utility records.

When an agent of the City mails a notice in accordance with this section to a property owner, lienholder, or mortgagee and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

Section 14. Appeals

Any appeal of a Commission order must be filed with a court of competent jurisdiction within 20 days after the notice of the order is either personally delivered or deposited in the United States mail addressed to the owner, lienholder, or mortgagee by certified mail, return receipt requested.

Section 15. Civil Penalties for Failure to Comply

In addition to the authority granted to the Commission above, the Commission may assess a civil penalty against the property owner for failure to repair, remove, or demolish the

building. To secure the payment of the civil penalty, there is hereby imposed a lien against the land on which the building stands or stood, unless it is a homestead as protected by the Texas Constitution. Promptly after the assessment of the civil penalty, the City Administrator must file for record, in recordable form in the office of the county clerk of the county in which the land is located, a written notice of the imposition of the lien. The notice must contain a legal description of the land.

Section 16. Lien Priority

Except as provided above, the City's lien to secure the payment of a civil penalty is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the City's lien attaches if the mortgage lien was filed for record in the office of the county clerk of the county in which the real property is located before the date the civil penalty is assessed. The City's lien is superior to all other previously recorded judgment liens.

Section 17. Interest

Any civil penalty or other assessment imposed under this section accrues interest at the rate of 10 percent a year from the date of the assessment until paid in full.

Section 18. Amount of Civil Penalty

The Commission by order may assess and recover a civil penalty against a property owner at the time of an administrative hearing on violations of an ordinance, in an amount not to exceed \$1,000 a day for each violation or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed \$10 a day for each violation, if the City proves:

- (A) the property owner was notified of the requirements of the ordinance and

the owner's need to comply with the requirements; and

- (B) after notification, the property owner committed an act in violation of the ordinance or failed to take an action necessary for compliance with the ordinance.

Section 19. Effect of Assessment

An assessment of a civil penalty under this ordinance is final and binding and constitutes prima facie evidence of the penalty in any suit brought by the City in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty.

Section 20. Filing Order Assessing Civil Penalty

Promptly after the assessment of the civil penalty, the City Secretary must file with the District Clerk of Hays County a certified copy of an order issued under Section 18 stating the amount and duration of the penalty. No other proof is required for a district court to enter a final judgment on the penalty.

Section 21. Building Standards Commission

There is hereby created a Building Standards Commission that is granted jurisdiction to conduct public hearings, issue orders, assess penalties, and take all action authorized in this ordinance. The members of the Planning and Zoning Commission shall sit as the Building Standards Commission unless otherwise appointed by the City Council. The Chairman of the Planning and Zoning Commission shall be the presiding officer at hearings conducted under this ordinance.

