

# **Substandard Building Abatement after *City of Dallas v. Stewart***

## **EXAMPLE FORMS\***

(Note: These forms are meant as examples only. Each city's local legal counsel must review any document to ensure that it conforms to local and state requirements.)

### **Presented at:**

The Texas Municipal League's *Stewart* Case Workshop  
April 6, 2012

### **Bonnie Lee Goldstein**

Bonnie Lee Goldstein, P.C.

P.O. Box 140940

Dallas, Texas 75214

214-321-3668

[www.blgpclaw.com](http://www.blgpclaw.com)

[bgoldstein@blgpclaw.com](mailto:bgoldstein@blgpclaw.com)

### **Scott Houston**

General Counsel

Texas Municipal League

1821 Rutherford Lane, Suite 400

Austin, Texas 78754

512-231-7400

[www.tml.org](http://www.tml.org)

[shouston@tml.org](mailto:shouston@tml.org)

\*Special thanks to Jennifer Richie, Senior Assistant City Attorney, Irving, for the Chapter 54 pleadings herein.

## CONTENTS

General Code Enforcement Procedure: Checklist.....	3
Administrative Abatement Checklist.....	6
Chapter 214 Substandard Structure Abatement Notice Letter.....	9
Substandard Structure Example Order.....	15
Substandard Structure Example Order – Agreed Demolition.....	18
Property Owner Release for Nuisance Abatement .....	21
Chapter 54 Pleadings.....	23

**General Code Enforcement Procedure: Checklist**

- I. INSPECTION OF PREMISE FOR VIOLATION BASED UPON:
  - a. RECEIPT OF COMPLAINT – CITIZEN
    - i. MAINTAIN CONTACT INFORMATION OF COMPLAINANT
    - ii. MAINTAIN ANY WRITTEN COMPLAINT RECEIVED
    - iii. INFORMATION ON COMPLAINANT MAY BE CONFIDENTIAL – CHECK WITH CITY SECRETARY IF REQUEST FOR INFORMATION MADE BEFORE RELEASE
  - b. PERSONAL OBSERVATION – POLICE REPORT
    - i. MAINTAIN LOG/NOTES OF OBSERVATION OR REPORT BY POLICE OFFICER
    - ii. MAY TAKE PHOTOGRAPH OF VIOLATION
    - iii. KEEP NOTES OF ANY CONTACT (PERSONAL OR TELEPHONIC) WITH OWNER OR PERSON WITH CARE, CUSTODY OR CONTROL, INCLUDING STATEMENTS RELATIVE TO THE VIOLATION
- II. INSPECTION OF INTERIOR OF STRUCTURE
  - a. INITIAL REQUEST OF CONSENT TO SEARCH
  - b. ADMINISTRATIVE SEARCH WARRANTS
    - i. PREPARE PROBABLE CAUSE AFFIDAVIT
    - ii. OBTAIN ADMINISTRATIVE SEARCH WARRANT FROM JUDGE
    - iii. MAY ONLY BE ISSUED TO CODE ENFORCEMENT OFFICER, FIRE MARSHAL OR HEALTH OFFICER
- III. DETERMINE ALL ORDINANCES VIOLATED – VERIFY IN CODE OF ORDINANCES OR WITH ACTUAL ORDINANCE
  - a. IF UNSURE, CHECK WITH CITY SECRETARY ON LATEST ORDINANCE
  - b. CONFIRM WHO IS HELD RESPONSIBLE UNDER THE ORDINANCE
  - c. CONFIRM SPECIFICS OF VIOLATION
  - d. CONFIRM NOTIFICATION REQUIREMENTS BECAUSE THEY MAY VARY WITH SPECIFIC ORDINANCES
- IV. NOTIFICATION OF VIOLATION
  - a. INFORMAL: VERBAL, DOOR HANGER OR OTHER APPROVED METHOD – KEEP RECORDS OF TYPE OF CONTACT.

- b. FORMAL
    - i. WRITTEN NOTICE OF VIOLATION AND NOTICE TO ABATE – NOT CITATION/NOTICE OF VIOLATION FOR COURT
      - 1. TIME TO ABATE WILL BE CONSISTENT WITH ORDINANCE
      - 2. INCLUDE ALL REQUIRED STATEMENTS CONSISTENT WITH ORDINANCE
      - 3. NOTICE MUST BE CLEAR AS TO VIOLATION AND ABATEMENT REQUIREMENT
    - ii. ONE YEAR ANNIVERSARY NOTICE IF APPLICABLE
- V. REINSPECTION AFTER TIME HAS ELAPSED AS STATED IN NOTICE OF VIOLATION
- a. IF CORRECTED, MAKE NOTATION IN FILE OF DATE AND CONDITION OF VIOLATION
  - b. IF NOT CORRECTED:
    - i. CITATION/NOTICE OF VIOLATION FOR APPEARANCE IN COURT MAY BE ISSUED AND SENT BY CERTIFIED MAIL OR COURT ISSUED SUMMONS
    - ii. TAKE PHOTOGRAPH OF VIOLATION AS OF DATE OF OFFENSE
    - iii. ABATEMENT PROCEEDINGS COMMENCED – IF NO HEARING REQUIRED
      - 1. DISCRETIONARY TO CLEAN UP PROPERTY
      - 2. MAY BE BASED UPON BUDGETARY CONSTRAINTS
    - iv. APPROPRIATE ABATEMENT HEARINGS CONDUCTED – *SEE # VIII.*
- VI. REINSPECTION AFTER CITATION/NOTICE OF VIOLATION ISSUED – IF NO CORRECTION, SUPERVISOR SHOULD BE INVOLVED
- a. DAILY CITATIONS MAY BE ISSUED
  - b. SUBSTANDARD STRUCTURE – CIVIL ABATEMENT HEARING SHOULD BE INITIATED.
  - c. SUPERVISOR TO DIRECT WHETHER TO INCLUDE CITY MANAGER, PROSECUTOR OR CITY ATTORNEY IN STRATEGY FOR ABATEMENT OF NUISANCE
- VII. PROSECUTION
- a. IDENTIFY ALL POTENTIAL WITNESSES

- b. HAVE PHOTOGRAPHS PROPERLY IDENTIFIED
- c. BE FAMILIAR WITH ORDINANCE AND NOTICE REQUIREMENTS TO BE ABLE TO CLEARLY ARTICULATE THE VIOLATION AND ORDINANCE REQUIREMENTS
- d. HAVE COPY OF ORDINANCE/CODE AS PART OF FILE
- e. CONFER WITH PROSECUTOR RELATIVE TO DETAILS OF OFFENSE

VIII. ABATEMENT PROCEEDINGS

- a. ENSURE ALL NOTIFICATION REQUIREMENTS HAVE BEEN SATISFIED AND DOCUMENTATION EXISTS FOR SUCH NOTICE.
  - i. INCLUDE HEARING DATE ON NOTICE
    - 1. AFTER CONTACTING COURT OR CITY SECRETARY TO ARRANGE FOR HEARING DATE ON REGULARLY SCHEDULED COURT DATE OR COUNCIL MEETING
    - 2. CONFIRM THAT ALL NECESSARY CITY PARTICIPANTS ARE AWARE OF HEARING DATE AND TIME
- b. PREPARE FOR HEARING
  - i. INCLUDE NOTICES
  - ii. DETAILS OF VIOLATION – PHOTGRAPHS
  - iii. COPIES OF ORDINANCE
- c. ENSURE PROPER AUTHORITY TO ENFORCE ORDINANCE IS INVOLVED IN PROCESS

## Administrative Abatement Checklist

### **I. IDENTIFY PROPERTY AS SUBSTANDARD**

- A. REPORT:
  - a. Identify structural deficiencies based upon minimum standards
  - b. Identify whether property owner-occupied, tenant-occupied, or abandoned
  
- B. RECOMMEND:
  - a. Repair or demolition
  - b. Note whether vacation of property is required
  
- C. PREPARATION
  - a. ADMINISTRATIVE SEARCH WARRANT
  - b. DOCUMENT INTERIOR AND EXTERIOR OF STRUCTURE
  - c. SPECIFICALLY IDENTIFY MINIMUM STANDARDS AND VIOLATIONS
  - d. PHOTOGRAPHIC AND VIDEO RECORDINGS RECOMMENDED

### **II. NOTICE OF PUBLIC HEARING**

- A. IDENTIFY ALL OWNERS, LIENHOLDERS, MORTGAGEES. BY SEARCHING
  - COUNTY REAL PROPERTY RECORDS
  - COUNTY ASSUMED NAME RECORDS
  - APPRAISAL DISTRICT RECORDS
  - SECRETARY OF STATE
  - CITY TAX RECORDS
  - CITY UTILITY RECORDS
  
- B. INFORMATION REQUIRED:
  - (1) an identification, which is not required to be a legal description, of the structure and the property upon which it is located;
  - (2) a statement that the official has found the structure to be substandard with a brief and concise description of the conditions found to render the structure substandard;
  - (3) a statement of the action recommended to be taken, as determined by the official;

- (4) 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; and
  - (5) the date, time and place of the public hearing.
- C. MAIL CERTIFIED MAIL RETURN RECEIPT REQUESTED AND REGULAR MAIL TO ALL LIENHOLDERS, OWNERS, AND MORTGAGEES
  - D. FILE NOTICE IN COUNTY DEED RECORDS
  - E. POST NOTICE OF HEARING PER OPEN MEETINGS ACT
  - F. POST NOTICE IN NEWSPAPER – ON OR BEFORE 10<sup>TH</sup> DAY BEFORE DATE OF HEARING

### **III. PUBLIC HEARING**

### **IV. ACTION AFTER HEARING – Administrative body issues order**

### **V. AFTER MEETING – CITY SECRETARY SHALL**

- A. WITHIN 10 DAYS AFTER DATE OF ORDER
  - 1. FILE COPY OF ORDER IN OFFICE OF CITY SECRETARY
  - 2. PUBLISH IN NEWSPAPER OF GENERAL CIRCULATION A NOTICE CONTAINING:
    - a. STREET ADDRESS OR LEGAL DESCRIPTION OF PROPERTY
    - b. DATE OF HEARING
    - c. BRIEF STATEMENT INDICATING RESULTS OF ORDER
    - d. INSTRUCTIONS WHERE COMPLETE COPY OF ORDER MAY BE OBTAINED
  - 3. MAIL BY CERTIFIED MAIL RETURN RECEIPT REQUESTED A COPY OF THE ORDER TO THE OWNER AND ANY LIENHOLDER AND MORTGAGEE.

### **VI. ACTION UPON ORDER**

- a. VERIFY COMPLIANCE WITH ORDER AND TIME FRAMES**
- b. TAKE PICTURES OF PROGRESS OR NON-COMPLIANCE**
- c. PROVIDE PROGRESS REPORTS AS REQUIRED**
- d. ENSURE PERMIT DEPARTMENT ADVISED OF ORDER**
- e. TAKE PICTURES PRIOR TO ANY ABATEMENT, INTERIOR AND EXTERIOR OF STRUCTURE**



**Chapter 214 Substandard Structure Notice Letter**

\_\_\_\_\_, 201\_

CMRRR

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subject:

**NOTICE OF VIOLATION; NOTICE TO ABATE  
NOTICE TO REPAIR**

Repair and/or Demolition of Structures located at  
975 W. \_\_\_\_\_ Drive, \_\_\_\_\_, Texas 75\_\_\_\_  
a/k/a \_\_\_\_\_ Lane, \_\_\_\_\_, Texas 75\_\_\_\_  
Legal Description: Lot \_\_, 1.85 acres, \_\_\_\_\_ Addition  
(single story residential/commercial structure)

**NOTICE OF HEARING: \_\_\_\_\_, 201\_, 7:00 P.M. 123**  
**W. \_\_\_\_\_ Drive, \_\_\_\_\_, Texas 75\_\_\_\_**

Dear \_\_\_\_\_:

According to the real property records of \_\_\_\_\_ County, and appropriate records of the Secretary of State, Central Appraisal District, tax rolls, among others, \_\_\_\_\_ LLC is the owner, or a lienholder or mortgagee of the real property described in this notice. If you no longer own or have interest in the Property, you must execute an affidavit stating that you no longer own or have an interest in the property and stating the name and last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office not later than the 20th day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own or have an interest in the property described in this notice, even if you do not.

**Chronology of Events**

The final plat of the property was filed on or about \_\_\_\_\_. The plat reflects uses of a \_\_\_\_\_ on Tract \_\_ (the "Property"), and general business or commercial on the front three lots, which are currently vacant. The City's Zoning Map indicates that the property is zoned \_\_\_\_\_. It has been used for at least the last decade as a \_\_\_\_\_ with no change

of use officially approved, or certificate of occupancy granted. The City has treated the Property as a legal non-conforming use.

On or about \_\_\_\_\_, 201\_, inspections were conducted, and an Administrative Order issued by the Fire Marshal. Subsequent to the issuance of the Fire Marshal's Administrative Order, the Building Official who inspected the Property on \_\_\_\_\_, 201\_, through consent to inspection by the property owner's on-site representative. Several meetings have been conducted between City staff and the property owner's representative to identify the violations and requisite compliance to meet the minimum standards.

### **Chapter 214 Notice of Violation and Notice to Abate**

This letter is your official notice of violation and order to abate the violations located at 975 West \_\_\_\_\_ Drive, \_\_\_\_\_, Texas 75\_\_\_\_\_. (the Property).

The City's Building Official, Fire Marshal and Code Enforcement/Compliance Officer have found the structure to be substandard based upon violations of the minimum standards adopted under the 2006 Building Codes (building, fire, electrical, plumbing, and mechanical) in the following particulars:

1. The Fire Marshal's Administrative Order is attached hereto and outlines findings from inspections on \_\_\_\_\_, 201\_ and actions required. On or about \_\_\_\_\_, 201\_, due to the determination that serious life safety hazards existed on the property, electrical service to the Property was terminated. Violations evidenced by the Order, the attached code references, and photographic evidence include but are not limited to the following:
  - a. Fire Lane drawn to only 15' wide; 20' required.
  - b. No electrical inspections or permits for any installations of AC or wiring extensions.
  - c. Fire hazards evidenced by
    - i. wires passing through the framing with insulation missing all the way to the copper wiring.
    - ii. Extension cords used for permanent wiring and power source, extending circuit, no load calculations.
    - iii. Extension cords wired to non-approved circuits
    - iv. Light fixtures hanging on wires with no support create a risk of arcing.
    - v. Exterior fixtures, unprotected, exposed wiring, risk of arcing.
    - vi. Exposed wiring in units with improperly stored combustibles
    - vii. Mixed paint improperly stored, IFC Sec. 315.
    - viii. 900 amp battery hooked up with 14 gauge wire
    - ix. Toaster oven used as heating element, close to combustibles, not on a permitted circuit.
    - x. High Piled Storage IFC Sec. 315
  - d. Electrical Panels and Improper wiring: NFPA 70, 250.4, IFC 300.15

- i. No blank covers or protective covers
  - ii. panel not properly grounded,
  - iii. installed with no permits and no inspections.
  - iv. Panels not sealed properly allowing animals/insects to enter and build nests.
  - v. Four circuits under one lug on breaker.
  - vi. No GFCI.
  - vii. Additional circuits added without permit or load calculations.
  - viii. Electrical receptacles/plugs held in place with tape.
  - ix. Outlet installed without junction box
- e. NFPA 70
  - i. Abandoned wiring not removed from raceway.
  - ii. Not approved wiring method, unprotected, frayed wires, in unapproved locations 300.4(B)
  - iii. Conduit to AC units not approved for exterior use and circuit extended without load calculations. 220.10.
  - iv. Refrigerator overloads circuit designed only for lighting.
- f. NFPA 70, 408.36(B)
  - i. Panel improperly installed, without permit, grounding – no means of disconnect the main power in an emergency.
  - ii. Main wiring of panel installed without conduit from meter.
- g. Defective Equipment NFPA 70, 408.36(F)
  - i. Main breaker handle broken off, not functional.
  - ii. Breakers require additional fastener, double lugged not approved.
  - iii. Back fed devices require additional fastener.
  - iv. No knock out cover
  - v. Wiring not approved for exterior use

2. As the Building Official, I inspected the Property on \_\_\_\_\_, 201\_, and generated an additional Administrative Order with reference to identified substandard conditions, constituting violations of specific minimum standards, which are unsafe under the 2006 Building Code and National Electrical Code. I have also reviewed the Fire Marshal's Administrative Order and photographs and confirmed the identified violations based upon my own visual observation. Based upon the inspection, the structures are deemed to be unsafe and substandard and unfit for human habitation, and constitute a public nuisance for failing to comply with the minimum standards as outlined in Section \_\_\_\_, Article \_\_\_\_ of the City Code of Ordinances, and the referenced sections of the 2006 International Building Code ("IBC"), 2006 International Plumbing Code ("IPC"), 2006 International Mechanical Code ("IMC") and the 2005 National Electrical Code ("NEC"), including but not limited to:

- a. **Structural:** Chapter 16, IBC
  - i. Removal of load bearing walls, altering the structure and adversely affecting the structural integrity due to visible sagging of the ceiling where the walls were once located.

- ii. A double header was cut in half on the exterior load bearing wall to install an electrical switch, thereby compromising the interior and exterior load bearing walls.
    - iii. Wall removed, 3" sag observed, center of units, raises structural concern.
    - iv. Interior walls have been removed without determination as to whether the same are load bearing and/or have affected the structural integrity of the buildings; dead loads, live load.
    - v. Exterior Walls show deterioration and rotting wood.
    - vi. *See* Administrative Order.
  - b. Remodeling of the structure and restrooms has occurred without permit, both in the last 6 months and over time since initial construction of the mini-warehouses. IBC, 105.1
    - i. The restrooms have been modified without permits.
    - ii. Despite notification, new restroom constructed without permit, electrical system altered, plumbing system altered, not ADA compliant.
    - iii. The structure(s) have been modified without permits; specifically, personnel doors have been added, and individual units enlarged, walls removed without permit or inspection.
  - c. **Mechanical**
    - i. Air condition unit installed without a permit or inspections. Permits. IMC 106.1
    - ii. *See* Administrative Order for HVAC.
  - d. **Electrical:**
    - i. Hand dryers added in restrooms with no permit, no load calculations, and no inspections.
    - ii. *See* Administrative Order and Fire Marshal's Administrative Order.
  - e. **Plumbing:** Violation of IPC 2006, Section 403, Minimum Plumbing Facilities
    - i. Restrooms installed without inspection; require exposure of plumbing for inspections.
    - ii. Plumbing for new toilet installed without permit or inspection.
    - iii. Sink installation with no hot water, no pipe wrap, not approved venting, not ADA compliant, no inspection, no permits
    - iv. Due to lack of inspection, no determination of approved solid waste disposal.
    - v. *See* Administrative Order

3. Additional Code of Ordinance violations that exist on the property are as follows and are more fully set forth below:

- a. **Parking on Unimproved Surface.** Parking has occurred from the paved surface to \_\_\_\_\_ on the tracts identified on the plat as general business, that are unimproved surfaces, causing mud to create hazardous conditions on the Interstate during wet weather, and additional drainage problems for the Property and adjacent properties. Ord No. \_\_\_\_\_ Sec. \_\_\_\_\_.

- i. Remedies required include engineered plans for parking, including a drainage study.
- ii. Parking improvements required to meet City and ADA requirements for grades, dimensions and construction.
- iii. See Building Official's Administrative Order
- b. Sign on one unit indicates improper use. "Se arreglan lavadoras y secadoras" indicates that the repair of washers and dryers is being conducted on premises, which is not a permitted use on the Property.
- c. Conducting sales without a sales tax permit. Ord. No. \_\_\_\_\_.
- d. Work performed without inspection. Work for which a permit is required shall be subject to inspection by the building official and work shall remain accessible and exposed for inspection purposes until approved. IBC 109.1.

My findings, based upon personal inspections, investigations, and observations, as referenced above and in the attached Administrative Order, reflect that such repairs made to the structural elements of an existing building and uncovered structural elements have been found to be unsound or otherwise structurally deficient, therefore, in accordance with Section 3403.1 of the 2006 International Building Code, such elements shall be made to conform to the requirements for new structures. *See also*, Code of Ordinances Section \_\_\_\_\_. (a structure deemed substandard must be repaired to minimum standards enumerated in the current building code). *See also* Section 115, IBC relative to the declaration of unsafe structures by building official. Further, such fire, electrical, plumbing, mechanical, and structural violations make the property uninhabitable therefore, the Fire Marshal has declared the structures to be of life safety concerns and the Building Official is declaring the structure to be substandard, constituting a public nuisance and is ordering that the structure be demolished, unless you provide proof at time of the hearing of the ability to repair, including financial ability, scope of work and time necessary to complete the work. The Building Official concurs with the Fire Marshal's determination to terminate electrical service to the Property, and would have done so in accordance with his authority under Section 111, IBC.

Please be advised that as the structures in questions are commercial buildings and facilities, open to the public, prior to any renovation or dismantling, an asbestos survey will be required consistent with 25 TAC 295, Subchapter C and the Texas Asbestos Health Protection Act, Tex. Occupations Code, Chapter 1954, and the same should be submitted with any scope of work proposed hereunder.

**A hearing has been set for \_\_\_\_\_, 201\_, at \_\_\_\_\_, 123 West \_\_\_\_\_ Drive, at \_\_:\_\_ p.m., wherein you as the owner, lien holder, or mortgagee will be required to submit proof of the scope of any work that may be required to comply with the City's Ordinances and the time it will take to reasonably perform the work.**

**FAILURE OF THE OWNER AND/OR LIENHOLDER OR MORTGAGEE TO TAKE THE ORDERED ACTION MAY RESULT**

**IN THE CITY TAKING THE ORDERED ACTION AND FILING A LIEN AGAINST THE PROPERTY.**

We appreciate your continued cooperation and prompt attention to remedying the nuisances on the property. Please do not hesitate to contact me should you have any additional questions, comments or concerns relative to the above.

Sincerely,

Building Official  
City of \_\_\_\_\_

Cc: City Manager, \_\_\_\_\_  
City Attorney, \_\_\_\_\_

**Substandard Structure Example Order**

**ORDER NO. \_\_\_\_\_**

**AN ORDER OF THE CITY OF \_\_\_\_\_ CITY COUNCIL WITH REGARD TO THE ABATEMENT OF THE SUBSTANDARD AND DANGEROUS STRUCTURES LOCATED AT \_\_\_\_\_, \_\_\_\_\_, TEXAS**

WHEREAS, the City Council for the City of \_\_\_\_\_ conducted a public hearing on \_\_\_\_\_, 20\_, wherein the structures located at \_\_\_\_\_, Texas, (“Property”) was agenda item number \_\_\_\_\_, legal description being: \_\_\_\_\_.

WHEREAS, the City Council specifically finds that all proper notices have been sent consistent with City Ordinances; and

WHEREAS, based upon the evidence presented, the City Council finds that the Property is in violation of the ordinances relative to substandard structures under Article \_\_\_\_ of Chapter \_\_\_\_\_, \_\_\_\_\_ of the City Code of Ordinances; and

WHEREAS, the City Council finds that the structure is unoccupied and has been secured against unauthorized entry; and

WHEREAS, the City Council finds that the interior of the structure contains nuisance conditions that constitute a hazard to the health, safety, and welfare of the citizen and likely to endanger persons and property; and

WHEREAS, the City Council takes notice of and incorporates all evidence presented to the Commission, including the issuance of notices, for its consideration of this matter and incorporates the same into the body of this Order for all purposes

WHEREAS, based upon the evidence presented, the City Council finds that the Property is in violation of the ordinance; and

WHEREAS, the City Council finds that the main structure is dilapidated, substandard and/or unfit for human habitation, constitutes a hazard to the health, safety and welfare of the citizen and likely to endanger persons and property; and

**THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL CITY OF \_\_\_\_\_ THAT:**

1. The owner is hereby ordered to repair, remove or demolish the structure located at \_\_\_\_\_ by no later than \_\_\_\_ days from the date of this Order;

2. The owner has requested, and the City Council is permitting the owner \_\_\_ days to conduct the repairs. Since the City Council is permitting more than 30 days to repair, remove, or demolish the structure, the following specific time schedule is established for the commencement and performance of the work,
  - a. By no later than \_\_\_\_, owner must pull the following permits:
    - b. By no later than \_\_\_\_\_, owner must secure the property against unauthorized entry.
    - c. \_\_\_\_\_
    - d. \_\_\_\_\_
- 3 The property owner or lienholder report to the City the progress on the performance of the work to be performed by \_\_\_\_\_;
- 4 The owner must secure the property against unauthorized entry by no later than \_\_\_\_\_ and while the work is being performed as determined by \_\_\_\_\_;
- 5 No work be performed until such time as a permit is issued consistent with City ordinances;
- 6 An asbestos study be conducted and submitted to the state and city for approval prior to performing any work ordered herein;
- 7 All work to be performed be conducted consistent with City ordinances, state and federal regulations and statutes;
- 8 The structure be vacated;
- 9 No person or entity may occupy the structure until such time as a final inspection is conducted and certificate of occupancy issued;
- 10 A sign be posted at the front and rear entrance to the property in substantially similar form: **SUBSTANDARD BUILDING - DO NOT ENTER – UNSAFE TO OCCUPY**;
- 11 Should the owner, lien holder, or mortgagee fail to do so within the time frame ordered, the City may do the ordered work, and place a lien on the property in accordance with applicable law.
- 12 Should the property owner violate the terms of this order, that the City may seek administrative penalties in an amount not to exceed \$1000 per day.
- 13 The owner must remove and abate all nuisance conditions within the interior of the structure no later than thirty (30) days from the date of the Order, or \_\_\_\_\_ 20\_\_, that are the source of the public nuisance, specifically, \_\_\_\_\_ and other hazards to the community as depicted in photographs submitted into evidence before the City Council.
- 14 The owner pull the appropriate permits within \_\_\_ days of this Order to commence the repairs of the following: \_\_\_\_\_.
- 15 The City Council has heard evidence presented by the owner that he work cannot reasonably be completed within 90 days due to the scope and complexity of work; therefore, the City Council is accepting the detailed



plan and time schedule for the work, which detailed plan and schedule of work is hereby approved and attached hereto as Exhibit 1.

- 16 This property be brought back to the City Council for review at the next scheduled meeting to ensure compliance with this Order.
- 17 The owner must allow entry to city staff no later than \_\_\_\_\_ to inspect the interior of the property. The grass must be cut no later than the close of business on \_\_\_\_\_, 200\_. The cars, debris, tires, and other hazards to the community be removed no later than \_\_\_\_\_, 20\_.
- 18 This property be brought back to the Council for review at the next scheduled meeting. Failure to take the ordered actions within the specified time may result in the city taking requisite actions to remove any unsafe or unsanitary conditions and establish a lien on the property. Whatever actions are necessary for the staff to gain entry should be taken and/or to include administrative judicial action.
- 19 The owner of the property, and/or any lienholder or mortgagee, must demolish the structure located at \_\_\_\_\_, \_\_\_\_\_, Texas \_\_\_\_\_, and eliminate all unhealthy and unsafe conditions within thirty days of this order, including cleaning and grading the property. Failure to take the ordered actions within the specified time may result in the City taking requisite actions to demolish the structures, clean and grade the lot, and establish a lien on the property without further notice or hearing.
- 20 The City Secretary shall file a copy of this order with the City within 10 days of the date of this order and publish in a newspaper of general circulation the street address/legal description of the Property, the date of the hearing, a brief statement of the results of this order and provide notice that a copy of this order and the minutes of the meeting may be reviewed and/or obtained during regular business hours in the office of the City Secretary.

**ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_**

\_\_\_\_\_  
\_\_\_\_\_, Mayor

\_\_\_\_\_  
\_\_\_\_\_, City Secretary

**Substandard Structure Example Order – Agreed Demolition**

ORDER NO. \_\_\_\_\_

**AN ORDER OF THE CITY OF \_\_\_\_\_ CITY COUNCIL WITH REGARD TO THE ABATEMENT OF THE SUBSTANDARD AND DANGEROUS STRUCTURES LOCATED AT 975 W. \_\_\_\_\_ DRIVE, \_\_\_\_\_, TEXAS 7\_\_\_\_ Legal Description: Lot \_\_, \_\_\_\_\_ acres, \_\_\_\_\_ Addition (three single story structures)**

**WHEREAS**, the City Council for the City of \_\_\_\_\_ noticed conducted a public hearing on \_\_\_\_\_, 201\_, wherein the structures located at 975 \_\_\_\_\_ Drive, \_\_\_\_\_, Texas 7\_\_\_\_\_: Legal Description: Lot \_\_, \_\_\_\_\_ acres, \_\_\_\_\_ Addition (three single story structures) (“Property”) was agenda item number \_\_\_\_\_; and

**WHEREAS**, the Property Owner, after receipt of the Chapter 214 notification, determined that it is not economically feasible to bring the structures up to the minimum standards; and

**WHEREAS**, the City Council and the Property Owner agree that the Property is in violation of the ordinances relative to substandard structures under Article II of Chapter 14, “Substandard Buildings” of the City Code of Ordinances; and

**WHEREAS**, the City Council finds that the structure is unoccupied and has been secured against unauthorized entry; and

**WHEREAS**, the City Council takes notice of and incorporates all evidence presented, including the issuance of notices, the minimum standards violated as set forth in the Administrative Orders and Reports attached to the Chapter 214 letter dated \_\_\_\_\_, 201\_, for its consideration of this matter and incorporates the same into the body of this Order as specific findings of fact for all purposes; and

**WHEREAS**, based upon the evidence presented, the City Council finds that the Property is in violation of the minimum standards required by applicable ordinances; and

**WHEREAS**, the City Council finds that the Property is dilapidated, substandard and/or unfit for human habitation, constitutes a hazard to the health, safety and welfare of the citizen and likely to endanger persons and property; and

**THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL CITY OF \_\_\_\_\_ THAT:**

3. The owner must remove and abate all nuisance conditions within the interior of the structure no later than thirty (30) days from the date of the Order, or \_\_\_\_\_ 201\_, that are the source of the public nuisance, specifically,

\_\_\_\_\_ and other hazards to the community as depicted in photographs submitted into evidence before the City Council.

4. The owner pull the appropriate permits within \_\_\_\_ days of this Order to commence the repairs of the following: \_\_\_\_\_.
5. The owner has requested, and the City Council is permitting the owner 90 days to conduct the demolition. The owner has requested the 90 days in order to contact tenants and permit them sufficient time to remove personal property.
6. The owner is hereby ordered to demolish the structure no later than 90 days from the date of this Order, or by \_\_\_\_\_, 201\_.
7. Since the City Council is permitting more than 30 days to demolish the structure, the following specific time schedule is established for the commencement and performance of the work,
  - e. By no later than \_\_\_\_\_, 201\_, owner must submit an application for a demolition permit.
  - f. By no later than \_\_\_\_\_, 201\_, owner must secure the property against unauthorized entry.
  - g. By no later than \_\_\_\_\_, 201\_, and \_\_\_\_\_, 201\_, the owner must submit a progress report on notification of the tenants and percentage of removal of personal items.
8. The City Council has heard evidence presented by the owner that he work cannot reasonably be completed within 90 days due to the scope and complexity of work and the need to contact tenants to remove personal property; therefore, the City Council is accepting the time schedule for the work.
9. This property be brought back to the City Council for review at the \_\_\_\_\_, 2011 and \_\_\_\_\_, 2011, regularly scheduled meeting to ensure compliance with this Order.
10. The Owner must secure the property against unauthorized entry while the work is being performed as determined by the Building Official.
11. Failure to take the ordered actions within the specified time may result in the City taking requisite actions to demolish the structures, clean and grade the lot, and establish a lien on the property without further notice or hearing.
12. The City Secretary shall file a copy of this order with the City within 10 days of the date of this order and publish in a newspaper of general circulation the street address/legal description of the Property, the date of the hearing, a brief statement of the results of this order and provide notice that a copy of this order and the minutes of the meeting may be reviewed and/or obtained during regular business hours in the office of the City Secretary.

**ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_**

\_\_\_\_\_  
Mayor

---

City Secretary

**Property Owner Release for Nuisance Abatement**

RELEASE BY PROPERTY OWNER FOR NUISANCE ABATEMENT

The undersigned, being the owner or owners of the real estate located in the City of \_\_\_\_\_, Texas, described as follows:

ADDRESS: \_\_\_\_\_

LEGAL DESCRIPTION: \_\_\_\_\_

PROPERTY TAX NO.: \_\_\_\_\_

**Hereby recognize that there is situated on such real estate a nuisance, to wit: {*substandard structure; stagnant water in swimming pool, junked vehicle*}, as that term is defined by applicable ordinances of the City of \_\_\_\_\_, Texas, and hereby request that the City of \_\_\_\_\_ abate such nuisance by [*demolishing the structure and cleaning and grading the surface* ]. I understand that I am entitled to a public hearing wherein I may present proof of compliance with City ordinances. By my signature below I hereby waive my right to the public hearing and admit that the [*structure, swimming pool, junked vehicle*] constitutes a nuisance and constitutes a danger to the public health, safety and welfare.**

And in consideration therefore, I/we hereby release the City of \_\_\_\_\_, its agents, servants, representatives, officials, officers and employees from any and all liability that arises or may arise from the abatement of the nuisance, including [*any damage to other structure, vegetation, trees; any damage resulting from the pool floating out of the ground due to hydrostatic pressure*].

The City of \_\_\_\_\_ agrees to abate the nuisance [*demolishing the structure, cleaning and grading the surface; by draining all water from the swimming pool.*]

It is further agreed that the City shall have a lien on the above referenced property to recoup the total cost of the abatement, including any administrative charges and any other charges incurred by the City in abating the nuisance.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
OWNER

\_\_\_\_\_

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SIGNATURE OF PROPERTY OWNER

\_\_\_\_\_  
SIGNATURE OF PROPERTY OWNER

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ as owner(s) of the property.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

CITY OF \_\_\_\_\_

BY \_\_\_\_\_

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ of the City of \_\_\_\_\_, a Texas municipal corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**Chapter 54 Pleadings**

Cause No. \_\_\_\_\_

CITY OF IRVING, TEXAS  
*Plaintiff,*

vs.

SAMANIEGO GOMEZ AND  
FRANCISCA GOMEZ  
*Defendants.*

§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**CITY OF IRVING’S ORIGINAL PETITION, REQUEST FOR PERMANENT  
INJUNCTION, AND REQUESTS FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF THE COURT:

**COMES NOW, the City of Irving, Plaintiff, and files this Original Petition, Request for Permanent Injunction, and Requests for Disclosure and shows the Court as follows:**

**I. DISCOVERY CONTROL PLAN**

1. Discovery is intended to be conducted under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.
2. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose, within 50 days of this request, the information or material described in Rule 194.2 regarding the Property located at 307 and 307 ½ High School Lane, Irving, Texas.

**II. PARTIES**

3. **The City of Irving (the “Plaintiff”) is a home-rule municipal corporation situated in Dallas County, Texas, incorporated and operating under the laws of the State of Texas.**

4. Samaniego Gomez and Francisca Gomez (the “Defendants”) are individuals owning property in the City of Irving, Texas, and may be served at 1843 W. Pioneer #180, Irving, Texas 75060.

### III. VENUE AND JURISDICTION

5. Plaintiff brings this cause of action to obtain permanent injunctive relief and to recover civil penalties against Defendants pursuant to Subchapter B of Chapter 54 of the Texas Local Government Code.

6. Venue is proper and this Court has jurisdiction pursuant to Section 54.013 of the Texas Local Government Code.

### IV. FACTS

7. The “Property” is located at Lot 2, Block B of the C.P. Caldwell, Jr. Addition of the Town of Irving, Texas, according to the Map thereof recorded in Volume 9, Page 199, Map Records, Dallas County, Texas and otherwise known as 307 and 307 ½ High School Lane, Irving, Texas. (the “Property”).

8. The Property consists of a single family residence owned by Defendants.

9. The Property is in violation of numerous city ordinances, many of which may create health and safety problems to neighbors and the general public.

10. The following violations of the Irving City Code exist or have existed on the Property:

- a. Failure to maintain all glazing materials free from cracks and holes in violation of Section 8-26 (b)(1)(l) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- b. Failure to maintain all exterior surfaces, including, but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks, and fences in good condition in violation of Section 8-26 (b)(1)(a) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- c. Failure to maintain food-contact surfaces smooth and easily cleanable; impermeable to liquid; unpainted; not resurfaced; free from areas which are inaccessible to cleaning and



inspection; free from breaks, seams, cracks, chips, pits, or similar imperfection; and free from difficult-to-clean internal corners or crevices in violation of Section 8-26 (c) (1) (e) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;

- d. Failure to maintain all structures free from insect and rodent infestation in violation of Section 8-26 (c)(1)(e) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- e. Failure to maintain all interior surfaces, including windows and doors, in good, clean, and sanitary condition; failure to correct cracked or loose plaster, decayed wood, and other defective surface conditions in violation of Section 8-26 (c) (1) (b) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- f. Failure to keep receptacles enclosed so that live wiring terminals are not exposed to contact in violation of NEC Article 406.4 (f) as adopted by the City of Irving, Texas;
- g. Failure to provide and maintain all systems, devices, and equipment to detect a fire, smoke, or carbon monoxide, actuate an alarm, or suppress or control a fire or any combination thereof in operable condition at all times in accordance with the International Fire Code in violation of Section 8-26 (i) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- h. Failure to maintain a window latch on each exterior window of the dwelling and failure to provide a keyless bolting device and a door viewer on each exterior door of the dwelling in violation of the Texas Property Code Section 92.153 as adopted by Section 8-26 (b)(2) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- i. Failure to properly install and maintain all electrical equipment, wiring, and appliances in a safe manner, including, but not limited to: ground-fault circuit-interrupter protected receptacles shall be provided for the following locations: Bathrooms; Kitchens (where the receptacles are installed to serve the countertop surfaces); and Laundry (utility, and wet bar sinks where the receptacles are installed within six (6) feet of the outside edge of the sink) in violation of Section 8-26 (c)(4)(c) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- j. Failure to maintain all interior surfaces, including windows and doors, in good, clean, and sanitary condition; failure to repair or remove peeling, chipping, flaking, or abraded paint; failure to correct cracked or loose plaster, decayed wood, and other defective surface conditions in violation of Section 8-26 (c)(1)(b) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- k. Failure to maintain internal parts of electrical equipment, including busbars, wiring terminals, insulators, and other surfaces, free from damaged or contaminated by foreign materials such as paint, plaster, cleaners, or abrasives, and corrosive residues; failure to repair damaged parts that might adversely affect safe operation or mechanical strength of the equipment such as parts that are broken; bent; cut; deteriorated by corrosion, chemical action,

or overheating; failure to remove foreign debris from equipment in violation of International Residential Code Section E3304.6., as adopted by the City of Irving, Texas.

- l. Failure to maintain all occupied areas and all plumbing equipment and facilities in a clean, sanitary condition at all time and to connect plumbing fixtures and heating equipment that the occupant supplies in compliance with applicable laws in violation of Section 8-26 (g)(2) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- m. Failure to maintain exterior lighting at appropriate points adjacent to all building entrances, including individual dwelling units, sufficient to illuminate areas where hazards may reasonably exist, and operable between a half hour after sunset and a half hour before sunrise; failure to repair all inoperable exterior lighting fixtures within a reasonable period of time after being notified that the fixture is not working in violation of Section 8-27 (f)(3) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- n. Failure to maintain all exterior doors, door assemblies, and hardware in good condition with locks at all entrances to dwelling units and sleeping units that tightly secure the door in violation of Section 8-26 (b)(1)(m) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- o. Failure to maintain intake and exhaust air ducts in such a manner as to prevent the entrance of dust, dirt, and any other contaminating material in violation of Section 8-26 (c)(3)(e) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- p. Failure to maintain parking lots, fire lanes, driveways, sidewalks, porches, patios, and other paved areas free from deterioration, holes, excavations, sharp protrusions, or any other object or condition which may cause injury to a person in violation of Section 8-26 (a)(1) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- q. Failure to remove trees and tree limbs that are reasonably capable of damaging a structure, or that are reasonably capable of causing injury to a person, or which are within fourteen (14) feet of a fire lane measured vertically from the surface of the fire lane to the lowest point of the tree limb or branch in violation of Section 8-26(a)(6) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- r. Failure to maintain every exterior stairway, deck, porch, and balcony, and all appurtenances attached thereto, structurally sound, in good condition, with proper anchorage and capable of supporting the imposed loads in violation of Section 8-26 (b)(1)(j) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- s. Failure to maintain the roof and flashing sound, tight and without defects that admit rain with roof drainage adequate to prevent dampness or deterioration in the walls or interior portion of the structure and roof drains, gutters, and downspouts maintained in good condition and free from obstructions in violation of Section 8-26 (b)(1)(g) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;

- t. Failure to maintain all exterior walls free from holes, breaks, and loose or rotting materials and to maintain all exterior walls and exposed surfaces of metal or wood to protect them from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment in violation of Section 8-26 (b)(1)(e & f) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- u. Failure to remove all graffiti from the Property in violation of Section 57-4 of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- v. Failure to maintain the roof and flashing sound, tight, and without defects such that drainage is adequate to prevent dampness or deterioration and failure to maintain roof drains and gutters in sound condition in violation of Section 8-26 (b)(1)(g) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas
- w. Failure to remove outside storage in violation of Section 52-56 of the Land Development Code;
- x. Failure to legibly identify all circuits and circuit modifications as to their clear, evident, and specific purpose or use in violation of the International Residential Code Section E3606.2 as adopted by the City of Irving, Texas; and
- y. Failure to maintain all exterior surfaces, including, but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks, and fences in good condition. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking, and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. It is an affirmative defense to the oxidation removal requirement if the surface is designed for stabilization by oxidation or that the structure is a manufactured home or recreational vehicle that will not be in place longer than ninety (90) days in violation of Section 8-26 (b).

11. A true and correct copy of the ordinances violated by the conditions of the Property is attached to this Petition as Exhibit A. These ordinances relate to:

- a. the preservation of public safety, relating to the material or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing fixtures, entrances, or exits;
- b. the preservation of public health or to the fire safety of a building or other structure or improvement;

- c. dangerously damaged or deteriorated structures or improvements;
- d. conditions caused by accumulation of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
- e. zoning that provides for the use of land or classifies a parcel of land according to the city's classification scheme.

12. In regards to the Property, persons other than the Defendants and property other than Defendants' will continue to suffer from adverse impacts and risk substantial danger of injury unless Defendants comply with one or more of these ordinances. These violations of the ordinances threaten harm that is irreparable.

13. The Property is dilapidated, substandard, and unfit for human habitation and a hazard to the public health, welfare, and safety, and constitutes a nuisance. The Property cannot be repaired without substantial reconstruction. Further, regardless of its structural condition, the Property at various times is unsecured from unauthorized entry to the extent, it could be entered by vagrants or uninvited persons or could be entered by children or the means to secure the vacant portions are inadequate.

#### **V. CAUSES OF ACTION**

14. Subchapter B of Chapter 54 of the Texas Local Government Code applies to these ordinances.

15. Pursuant to Sections 54.016, and 54.018 of the Texas Local Government Code, Plaintiff requests permanent injunctive relief ordering Defendants to demolish the Property such that it is blade clean, with all improvements removed including foundations, porches, driveways, concrete slabs, fences, and steps, and in a fashion to prevent ponding of water. The City further requests that Defendants place a silt fence around the Property to prevent erosion until vegetation can be established. If Defendants fail to demolish the Property, in addition to the other remedies of

Plaintiff, Plaintiff requests this Court allow Plaintiff to perform asbestos testing and/or remediation if needed, demolish the Property, remove all personalty and dispose of it, remove the components and demolition debris, and charge the costs against Defendants, and place a lien upon the Property for these costs.

16. Pursuant to Section 54.017 of the Texas Local Government Code, Plaintiff requests civil penalties not to exceed \$1,000 per day for each violation of the ordinances.

**17. Plaintiff also requests post-judgment interest and costs of court.**

#### **VI. REQUEST FOR JURY TRIAL**

18. Plaintiff respectfully requests a trial by jury on all issues so triable.

#### **VII. PRAYER FOR RELIEF**

**19. WHEREFORE, PREMISES CONSIDERED, the Plaintiff, prays for the following relief:**

- 1) Plaintiff be granted permanent injunctive relief as provided herein;**
- 2) Plaintiff be awarded judgment for a civil penalty not to exceed \$1,000 per violation, per day, for each day that the Property remains in violation of the Irving City Code;
- 3) Plaintiff be granted judgment for all costs of court;
- 4) Plaintiff be granted judgment for post-judgment interest at the highest legal rate; and

5) All such other and further relief, both general or special, at law or in equity, to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

CITY ATTORNEY'S OFFICE  
CITY OF IRVING, TEXAS

By: \_\_\_\_\_  
Jennifer Richie  
Senior Assistant City Attorney  
State Bar of Texas No. 24007916  
City of Irving, Texas  
825 West Irving Boulevard  
Irving, Texas 75060  
Tel.: 972-721-2541  
Fax: 972-721-2750

**NOTICE OF LIS PENDENS**

**STATE OF TEXAS** §  
**COUNTY OF DALLAS** §

Notice is hereby given that there has been filed with the Clerk of the District Court of Dallas County, Texas a certain Plaintiff’s Original Petition, Cause Number 11-11208 styled *City of Irving v. Samaniego Gomez and Francisca Gomez* wherein the City of Irving is Plaintiff and Samaniego Gomez and Francisca Gomez are the Defendants in said proceeding now pending; that said proceeding affects the hereinafter described real estate and real property situated at Lot 2, Block B of the C.P. Caldwell, Jr. Addition of the Town of Irving, Dallas County, Texas, according to the Map thereof recorded in Volume 9, Page 199, Map Records, Dallas County, Texas and otherwise known as:

**307 and 307 ½ High School Lane, Irving, Texas** (the “Property”).

Said lawsuit also seeks to establish that conditions existing on the Property violate Irving City Code and requests temporary and permanent injunctive relief ordering compliance with the Irving City Code thereon through repair or demolition and to assess civil penalties against the Defendant pursuant to Subchapter B of Chapter 54 of the Texas Local Government Code. Pursuant to Section 54.018 of the Texas Local Government Code, a subsequent purchaser or mortgagee who acquires an interest in this Property takes the Property subject to the enforcement proceeding and subsequent orders of the Court.

Witness my hand this 2nd day of September 2011.

Respectfully submitted,  
CITY ATTORNEY'S OFFICE  
CITY OF IRVING, TEXAS

By: \_\_\_\_\_  
Jennifer Richie  
Senior Assistant City Attorney  
State Bar of Texas No. 24007916  
City of Irving, Texas  
825 West Irving Boulevard  
Irving, Texas 75060  
Tel.: 972-721-2541  
Fax: 972-721-2750

Cause No. \_\_\_\_\_

CITY OF IRVING, TEXAS  
*Plaintiff,*

§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

vs.

DALLAS COUNTY, TEXAS

SAMANIEGO GOMEZ AND  
FRANCISCA GOMEZ  
*Defendants.*

\_\_\_\_\_ JUDICIAL DISTRICT

**CITY OF IRVING’S VERIFIED MOTION FOR PREFERENTIAL TRIAL SETTING**

TO THE HONORABLE JUDGE OF THE COURT:

**COMES NOW, the City of Irving, Plaintiff, and files this Motion for Preferential Trial Setting and shows the Court as follows:**

**I. SUMMARY**

1. On March 17, 2011, the City of Irving Building and Standards Commission (“Commission”) ordered the demolition of a vacant, single-family house located at 307 and 307 ½ High School Lane, Irving, Texas. (the “Property”). The Property is a nuisance and substandard and poses a risk to persons or property.

2. On July 1, 2011, the Texas Supreme Court issued a ruling in *City of Dallas v. Heather Stewart*, \_\_ S.W. 3d. \_\_, 2011 WL 2586882 (Tex. 2011), upholding a de novo consideration of orders of demolition issued by Building and Standards Commission. Thus, the City of Irving (the “City”) is seeking a preferential trial setting in order to have its request for demolition heard as quickly as possible.

**II. FACTUAL BACKGROUND**

3. **The City of Irving (the “City”) filed a verified Original Petition, Request for Permanent Injunction, and Requests for Disclosure (“Petition”) on the same day that this**



**motion was filed. The City incorporates the Petition, especially paragraphs 7-13, by reference.**

**4. The Property is in violation of numerous city ordinances, many of which may create health and safety problems to neighbors and the general public. The following violations of the Irving City Code exist on the Property:**

- a. Failure to maintain all glazing materials free from cracks and holes in violation of Section 8-26 (b)(1)(l) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- b. Failure to maintain all exterior surfaces, including, but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks, and fences in good condition in violation of Section 8-26 (b)(1)(a) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- c. Failure to maintain food-contact surfaces smooth and easily cleanable; impermeable to liquid; unpainted; not resurfaced; free from areas which are inaccessible to cleaning and inspection; free from breaks, seams, cracks, chips, pits, or similar imperfection; and free from difficult-to-clean internal corners or crevices in violation of Section 8-26 (c) (1) (e) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- d. Failure to maintain all structures free from insect and rodent infestation in violation of Section 8-26 (c)(1)(e) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- e. Failure to maintain all interior surfaces, including windows and doors, in good, clean, and sanitary condition; failure to correct cracked or loose plaster, decayed wood, and other defective surface conditions in violation of Section 8-26 (c) (1) (b) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- f. Failure to keep receptacles enclosed so that live wiring terminals are not exposed to contact in violation of NEC Article 406.4 (f) as adopted by the City of Irving, Texas;
- g. Failure to provide and maintain all systems, devices, and equipment to detect a fire, smoke, or carbon monoxide, actuate an alarm, or suppress or control a fire or any combination thereof in operable condition at all times in accordance with the International Fire Code in violation of Section 8-26 (i) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- h. Failure to maintain a window latch on each exterior window of the dwelling and failure to provide a keyless bolting device and a door viewer on each exterior door of the dwelling in violation of the Texas Property Code Section 92.153 as adopted by Section 8-26 (b)(2) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;

- i. Failure to properly install and maintain all electrical equipment, wiring, and appliances in a safe manner, including, but not limited to: ground-fault circuit-interrupter protected receptacles shall be provided for the following locations: Bathrooms; Kitchens (where the receptacles are installed to serve the countertop surfaces); and Laundry (utility, and wet bar sinks where the receptacles are installed within six (6) feet of the outside edge of the sink) in violation of Section 8-26 (c)(4)(c) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- j. Failure to maintain all interior surfaces, including windows and doors, in good, clean, and sanitary condition; failure to repair or remove peeling, chipping, flaking, or abraded paint; failure to correct cracked or loose plaster, decayed wood, and other defective surface conditions in violation of Section 8-26 (c)(1)(b) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- k. Failure to maintain internal parts of electrical equipment, including busbars, wiring terminals, insulators, and other surfaces, free from damaged or contaminated by foreign materials such as paint, plaster, cleaners, or abrasives, and corrosive residues; failure to repair damaged parts that might adversely affect safe operation or mechanical strength of the equipment such as parts that are broken; bent; cut; deteriorated by corrosion, chemical action, or overheating; failure to remove foreign debris from equipment in violation of International Residential Code Section E3304.6., as adopted by the City of Irving, Texas.
- l. Failure to maintain all occupied areas and all plumbing equipment and facilities in a clean, sanitary condition at all time and to connect plumbing fixtures and heating equipment that the occupant supplies in compliance with applicable laws in violation of Section 8-26 (g)(2) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- m. Failure to maintain exterior lighting at appropriate points adjacent to all building entrances, including individual dwelling units, sufficient to illuminate areas where hazards may reasonably exist, and operable between a half hour after sunset and a half hour before sunrise; failure to repair all inoperable exterior lighting fixtures within a reasonable period of time after being notified that the fixture is not working in violation of Section 8-27 (f)(3) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- n. Failure to maintain all exterior doors, door assemblies, and hardware in good condition with locks at all entrances to dwelling units and sleeping units that tightly secure the door in violation of Section 8-26 (b)(1)(m) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- o. Failure to maintain intake and exhaust air ducts in such a manner as to prevent the entrance of dust, dirt, and any other contaminating material in violation of Section 8-26 (c)(3)(e) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- p. Failure to maintain parking lots, fire lanes, driveways, sidewalks, porches, patios, and other paved areas free from deterioration, holes, excavations, sharp protrusions, or any other object

or condition which may cause injury to a person in violation of Section 8-26 (a)(1) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;

- q. Failure to remove trees and tree limbs that are reasonably capable of damaging a structure, or that are reasonably capable of causing injury to a person, or which are within fourteen (14) feet of a fire lane measured vertically from the surface of the fire lane to the lowest point of the tree limb or branch in violation of Section 8-26(a)(6) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- r. Failure to maintain every exterior stairway, deck, porch, and balcony, and all appurtenances attached thereto, structurally sound, in good condition, with proper anchorage and capable of supporting the imposed loads in violation of Section 8-26 (b)(1)(j) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- s. Failure to maintain the roof and flashing sound, tight and without defects that admit rain with roof drainage adequate to prevent dampness or deterioration in the walls or interior portion of the structure and roof drains, gutters, and downspouts maintained in good condition and free from obstructions in violation of Section 8-26 (b)(1)(g) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- t. Failure to maintain all exterior walls free from holes, breaks, and loose or rotting materials and to maintain all exterior walls and exposed surfaces of metal or wood to protect them from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment in violation of Section 8-26 (b)(1)(e & f) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- u. Failure to remove all graffiti from the Property in violation of Section 57-4 of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- v. Failure to maintain the roof and flashing sound, tight, and without defects such that drainage is adequate to prevent dampness or deterioration and failure to maintain roof drains and gutters in sound condition in violation of Section 8-26 (b)(1)(g) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas
- w. Failure to remove outside storage in violation of Section 52-56 of the Land Development Code;
- x. Failure to legibly identify all circuits and circuit modifications as to their clear, evident, and specific purpose or use in violation of the International Residential Code Section E3606.2 as adopted by the City of Irving, Texas; and
- y. Failure to maintain all exterior surfaces, including, but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks, and fences in good condition. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking, and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints

as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. It is an affirmative defense to the oxidation removal requirement if the surface is designed for stabilization by oxidation or that the structure is a manufactured home or recreational vehicle that will not be in place longer than ninety (90) days in violation of Section 8-26 (b).

5. Attached as Exs. 1-18 are photographs of the Property. The Property is dilapidated, substandard, and unfit for human habitation and a hazard to the public health, safety, and welfare and constitutes a nuisance. The Property cannot be repaired without substantial reconstruction. Further, regardless of its structural condition, the Property at various times is unsecured from unauthorized entry to the extent that it could be entered by vagrants or uninvited persons or could be entered by children or the means to secure the vacant portions are inadequate.

6. In September 2010, the City received an affidavit from Samaniego and Francisca Gomez stating that they no longer own the Property and that the lienholder Beneficial Texas, Inc. owns the Property. It appears that on January 20, 2011, the 162<sup>nd</sup> Judicial District Court in Cause No. DC-10-07817 issued an order allowing Beneficial Texas, Inc. to foreclose. To date, no deed has been filed with Dallas County deed records reflecting a change in ownership.

7. On August 12, 2011, the attorney for the City exchanged voice mails with Ms. Rachel Donnelly who is the record attorney for Beneficial Texas, Inc. in Cause No. DC-10-07817; Ms. Donnelly stated that Beneficial Texas, Inc. had decided not to foreclose on the Property and had “written the property off.”

8. After notice and hearing and pursuant to Sections 54.031-54.044 and Chapter 214 of the Texas Local Government Code, the Commission on November 18, 2010 issued an order, ordering the owners or any persons with interest in the Property to repair or demolish the Property on or before January 9, 2011. Thereafter, no repair or demolition occurred. On March

17, 2011, the Commission entered a demolition order for the owner to demolish the Property and allowed the City to do so if the owner did not. Attached as Exs. 19 and 20 are copies of these orders.

9. The City sent the owners and lien holders notice of the hearings; no one appeared at these hearings. The City sent the owners and lien holders copies of the Commission's orders, and no one appealed these orders. See Exs. 19 and 20.

10. Further, the City has had to maintain the exterior of the Property due to the lack of owner/lienholder involvement. On April 1, 2010, the City had to mow and remove trash and debris from the exterior of the Property and secure the Property from unauthorized entry. On May 31, 2010, the City had to mow the grass at the Property. In February 2011, the City again found the Property open to unauthorized persons; it posted the Property for closure. On March 17, 2011, when neither the owner nor the lien holder had secured the Property, the City had to secure this Property from unauthorized entry. On May 13, 2011, the City again had to mow the Property.

11. Out of an abundance of precaution, the City will send a copy of its Petition and of this motion to Beneficial of Texas, Inc. through its attorney in Cause No. DC-10-07817 and through its registered agent.

### **III. ARGUMENT AND AUTHORITIES**

12. Section 54.014 of the Texas Local Government Code allows a City to request a preferential trial setting when it can demonstrate that a "delay will unreasonably endanger persons or property."

13. The City has had to secure this Property from unauthorized entry. As can be seen in Exhibits 1-18, the Property is in extremely substandard condition and is a nuisance. This continued condition endangers persons and property.

14. As detailed in the above-stated facts, the City has obtained a demolition order from its Building and Standards Commission after notice to the owner and a chance to be heard. This order has not been appealed and thus is final.

15. Because of *City of Dallas v. Heather Stewart*, \_\_\_ S.W. 3d. \_\_\_, 2011 WL 2586882 (Tex. 2011), the City is seeking another demolition order from this Court. Because of the condition of the Property, the City seeks a preferential trial setting in this case.

16. The City would like this Court to set this matter for trial 90 days from the hearing of this motion.

#### VII. PRAYER FOR RELIEF

**17. WHEREFORE, PREMISES CONSIDERED, the Plaintiff, prays that this case be set preferentially for trial 90 days from the hearing of this motion and for all such other and further relief, both general or special, at law or in equity, to which Plaintiff may show itself to be justly entitled.**

Respectfully submitted,

CITY ATTORNEY'S OFFICE  
CITY OF IRVING, TEXAS

By: \_\_\_\_\_  
Jennifer Richie  
Senior Assistant City Attorney  
State Bar of Texas No. 24007916  
City of Irving, Texas  
825 West Irving Boulevard  
Irving, Texas 75060  
Tel.: 972-721-2541

Fax: 972-721-2750

**VERIFICATION**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

I, Jesse Aguilar, a Building Standards Inspector with the City of Irving, after being duly sworn, hereby certify that I am qualified and authorized to make this affidavit, and that I have read the factual allegations paragraphs 4-6 and 8-10 contained in this motion and said factual allegations are within my personal knowledge or based upon my review of the file and are true and correct.

\_\_\_\_\_  
Jesse Aguilar

**Subscribed and sworn to before me this \_\_\_\_\_ day of September 2011.**

\_\_\_\_\_  
Notary Public



**VERIFICATION**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

I, Jennifer Richie, an attorney for the City of Irving, after being duly sworn, hereby certify that I am qualified and authorized to make this affidavit, and that I have read the factual allegations paragraph 7 contained in this motion and said factual allegations are within my personal knowledge and are true and correct.

\_\_\_\_\_  
Jennifer Richie

**Subscribed and sworn to before me this \_\_\_\_\_ day of September 2011.**

\_\_\_\_\_  
Notary Public

**FIAT**

The hearing on CITY OF IRVING'S VERIFIED MOTION FOR PREFERENTIAL TRIAL SETTING is set for the \_\_\_\_\_ day of \_\_\_\_\_, 2011, at \_\_\_\_\_ o'clock a.m./p.m.

**STATE OF TEXAS**

§  
§  
§

**COUNTY OF DALLAS**

BEFORE ME, the undersigned authority, on this day personally appeared Jennifer Richie, known to me to be the person whose name is subscribed to the foregoing Notice of Lis Pendens as Attorney for Plaintiff, and acknowledged to me that she executed the same as Attorney for Plaintiff for the purposes and in the capacity therein stated.

Given under my hand and seal of office this \_\_\_\_\_ day of September 2011.

\_\_\_\_\_  
NOTARY PUBLIC  
IN AND FOR THE STATE OF TEXAS

CITY OF IRVING, TEXAS  
*Plaintiff,*

§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

vs.

DALLAS COUNTY, TEXAS

SAMANIEGO GOMEZ AND  
FRANCISCA GOMEZ  
*Defendants.*

14th JUDICIAL DISTRICT

**AGREED PERMANENT INJUNCTION AND FINAL JUDGMENT**

On this day City of Irving, Plaintiff, and Defendants Samaniego Gomez and Francisca Gomez submitted this Agreed Permanent Injunction and Final Judgment for entry by the Court. Upon consideration of the pleadings, the evidence presented, and the arguments of the parties, the Court finds good cause to enter this Agreed Permanent Injunction and Final Judgment (“Judgment”).

By the proper and duly authorized signatures at the end of this Judgment, the City of Irving and Defendants Samaniego Gomez and Francisca Gomez have represented to the Court the following:

- a) that they understand the terms of this Judgment;
- b) that they have agreed to the terms of the Judgment;
- c) that the Judgment represents a compromise and settlement of all matters placed in issue by Plaintiff’s Original Petition, Request for Permanent Injunction, and Requests for Disclosure (“Petition”);
- d) that they willingly and freely sign this Judgment;
- e) that they have requested the Court to approve this Judgment;
- f) that they have waived the right of appeal of this Judgment;

- g) that they acknowledge that this Judgment is sufficiently clear and unambiguous so as to comply with the Texas Rules of Civil Procedure;
- h) that they acknowledge receipt of copies of this Judgment and waive service of this Judgment;
- i) that they have actively participated in the negotiations leading up to this Judgment and are well aware of the duties placed on them by it;
- j) that this Judgment does not settle or resolve any outstanding taxes, liens, including liens for mowing and securing, or citations that have been or may be assessed against Defendants or on this Property; and
- k) that this Judgment does not create any duties on the part of the Plaintiff City of Irving.

Further, the Court hereby finds and the parties agree to the following:

**The City of Irving (the “Plaintiff”) is a home-rule municipal corporation situated in Dallas County, Texas, incorporated and operating under the laws of the State of Texas.**

Samaniego Gomez and Francisca Gomez (the “Defendants”) are individuals owning property in the City of Irving, Texas.

Venue is proper and this Court has jurisdiction pursuant to Section 54.013 of the Texas Local Government Code.

The “Property” is located at Lot 2, Block B of the C.P. Caldwell, Jr. Addition of the Town of Irving, Texas, according to the Map thereof recorded in Volume 9, Page 199, Map Records, Dallas County, Texas and otherwise known as 307 and 307 ½ High School Lane, Irving, Texas. (the “Property”).

The Property consists of a single family residence and garage with apartment owned by Defendants.

The Property is in violation of numerous city ordinances, many of which may create health and safety problems to neighbors and the general public.

Defendants no longer wish to maintain the Property or repair the Property.

The following violations of the Irving City Code exist on the Property:

- a. Failure to maintain all glazing materials free from cracks and holes in violation of Section 8-26 (b)(1)(l) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- b. Failure to maintain all exterior surfaces, including, but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks, and fences in good condition in violation of Section 8-26 (b)(1)(a) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- c. Failure to maintain food-contact surfaces smooth and easily cleanable; impermeable to liquid; unpainted; not resurfaced; free from areas which are inaccessible to cleaning and inspection; free from breaks, seams, cracks, chips, pits, or similar imperfection; and free from difficult-to-clean internal corners or crevices in violation of Section 8-26 (c) (1) (e) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- d. Failure to maintain all structures free from insect and rodent infestation in violation of Section 8-26 (c)(1)(e) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- e. Failure to maintain all interior surfaces, including windows and doors, in good, clean, and sanitary condition; failure to correct cracked or loose plaster, decayed wood, and other defective surface conditions in violation of Section 8-26 (c) (1) (b) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- f. Failure to keep receptacles enclosed so that live wiring terminals are not exposed to contact in violation of NEC Article 406.4 (f) as adopted by the City of Irving, Texas;
- g. Failure to provide and maintain all systems, devices, and equipment to detect a fire, smoke, or carbon monoxide, actuate an alarm, or suppress or control a fire or any combination thereof in operable condition at all times in accordance with the International Fire Code in violation of Section 8-26 (i) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- h. Failure to maintain a window latch on each exterior window of the dwelling and failure to provide a keyless bolting device and a door viewer on each exterior door of the dwelling in

violation of the Texas Property Code Section 92.153 as adopted by Section 8-26 (b)(2) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;

- i. Failure to properly install and maintain all electrical equipment, wiring, and appliances in a safe manner, including, but not limited to: ground-fault circuit-interrupter protected receptacles shall be provided for the following locations: Bathrooms; Kitchens (where the receptacles are installed to serve the countertop surfaces); and Laundry (utility, and wet bar sinks where the receptacles are installed within six (6) feet of the outside edge of the sink) in violation of Section 8-26 (c)(4)(c) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- j. Failure to maintain all interior surfaces, including windows and doors, in good, clean, and sanitary condition; failure to repair or remove peeling, chipping, flaking, or abraded paint; failure to correct cracked or loose plaster, decayed wood, and other defective surface conditions in violation of Section 8-26 (c)(1)(b) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- k. Failure to maintain internal parts of electrical equipment, including busbars, wiring terminals, insulators, and other surfaces, free from damaged or contaminated by foreign materials such as paint, plaster, cleaners, or abrasives, and corrosive residues; failure to repair damaged parts that might adversely affect safe operation or mechanical strength of the equipment such as parts that are broken; bent; cut; deteriorated by corrosion, chemical action, or overheating; failure to remove foreign debris from equipment in violation of International Residential Code Section E3304.6., as adopted by the City of Irving, Texas.
- l. Failure to maintain all occupied areas and all plumbing equipment and facilities in a clean, sanitary condition at all time and to connect plumbing fixtures and heating equipment that the occupant supplies in compliance with applicable laws in violation of Section 8-26 (g)(2) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- m. Failure to maintain exterior lighting at appropriate points adjacent to all building entrances, including individual dwelling units, sufficient to illuminate areas where hazards may reasonably exist, and operable between a half hour after sunset and a half hour before sunrise; failure to repair all inoperable exterior lighting fixtures within a reasonable period of time after being notified that the fixture is not working in violation of Section 8-27 (f)(3) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- n. Failure to maintain all exterior doors, door assemblies, and hardware in good condition with locks at all entrances to dwelling units and sleeping units that tightly secure the door in violation of Section 8-26 (b)(1)(m) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- o. Failure to maintain intake and exhaust air ducts in such a manner as to prevent the entrance of dust, dirt, and any other contaminating material in violation of Section 8-26 (c)(3)(e) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;

- p. Failure to maintain parking lots, fire lanes, driveways, sidewalks, porches, patios, and other paved areas free from deterioration, holes, excavations, sharp protrusions, or any other object or condition which may cause injury to a person in violation of Section 8-26 (a)(1) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- q. Failure to remove trees and tree limbs that are reasonably capable of damaging a structure, or that are reasonably capable of causing injury to a person, or which are within fourteen (14) feet of a fire lane measured vertically from the surface of the fire lane to the lowest point of the tree limb or branch in violation of Section 8-26(a)(6) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- r. Failure to maintain every exterior stairway, deck, porch, and balcony, and all appurtenances attached thereto, structurally sound, in good condition, with proper anchorage and capable of supporting the imposed loads in violation of Section 8-26 (b)(1)(j) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- s. Failure to maintain the roof and flashing sound, tight and without defects that admit rain with roof drainage adequate to prevent dampness or deterioration in the walls or interior portion of the structure and roof drains, gutters, and downspouts maintained in good condition and free from obstructions in violation of Section 8-26 (b)(1)(g) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- t. Failure to maintain all exterior walls free from holes, breaks, and loose or rotting materials and to maintain all exterior walls and exposed surfaces of metal or wood to protect them from the elements and against decay or rust by periodic application of weather coating materials, such as paint or similar surface treatment in violation of Section 8-26 (b)(1)(e & f) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- u. Failure to remove all graffiti from the Property in violation of Section 57-4 of the Code of Civil and Criminal Ordinances of the City of Irving, Texas;
- v. Failure to maintain the roof and flashing sound, tight, and without defects such that drainage is adequate to prevent dampness or deterioration and failure to maintain roof drains and gutters in sound condition in violation of Section 8-26 (b)(1)(g) of the Code of Civil and Criminal Ordinances of the City of Irving, Texas
- w. Failure to remove outside storage in violation of Section 52-56 of the Land Development Code;
- x. Failure to legibly identify all circuits and circuit modifications as to their clear, evident, and specific purpose or use in violation of the International Residential Code Section E3606.2 as adopted by the City of Irving, Texas; and
- y. Failure to maintain all exterior surfaces, including, but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks, and fences in good condition. Exterior wood surfaces, other than decay resistant woods, shall be protected from the



elements and decay by painting or other protective covering or treatment. Peeling, flaking, and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. It is an affirmative defense to the oxidation removal requirement if the surface is designed for stabilization by oxidation or that the structure is a manufactured home or recreational vehicle that will not be in place longer than ninety (90) days in violation of Section 8-26 (b).

These ordinances relate to:

- a. the preservation of public safety, relating to the material or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing fixtures, entrances, or exits;
- b. the preservation of public health or to the fire safety of a building or other structure or improvement;
- c. dangerously damaged or deteriorated structures or improvements;
- d. conditions caused by accumulation of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
- e. zoning that provides for the use of land or classifies a parcel of land according to the city's classification scheme.

Persons other than the Defendants and property other than Defendants' will continue to suffer from adverse impacts and risk substantial danger of injury unless Defendants comply with one or more of these ordinances. These violations of the ordinances threaten harm that is irreparable. The Property is dilapidated, substandard, and unfit for human habitation and a hazard to the public health, welfare, and safety, and constitutes a nuisance. The Property cannot be repaired without substantial reconstruction. Further, regardless of its structural condition, the Property at various times is unsecured from unauthorized entry to the extent, it could be entered by vagrants or uninvited persons or could be entered by children or the means to secure the vacant portions are inadequate.

Defendants agree that this Property should be demolished but do not want to perform the demolition themselves.

**IT IS THEREFORE ORDERED AND AGREED** that the City of Irving may perform asbestos testing on the Property and/or remediation if needed, remove all personalty from the Property and dispose of it, demolish the Property, remove the components and demolition debris, and charge the costs against Defendants, and place a lien upon the Property for these costs.

**IT IS FURTHER ORDERED AND AGREED** that the City of Irving may enter the Property and inspect the Property at any time with or without notice to Defendants but Defendants shall make the Property available for inspection for compliance with this Judgment.

**IT IS FURTHER ORDERED AND AGREED** that Defendants shall provide notice of this Judgment to any subsequent holder, successor in interest, purchaser, or owner, and inform such subsequent holder, successor in interest, purchaser, or owner that he or she shall be bound by the terms and conditions contained within this Judgment.

**IT IS FURTHER ORDERED AND AGREED** that this Judgment will be filed in the real property records of Dallas County, Texas.

**THE PARTIES SHALL TAKE NOTE** that the Court expressly retains its jurisdiction to amend this Permanent Injunction and Final Judgment upon a showing of changed circumstances.

No bond is required to be posted by Plaintiff City of Irving.

Each party shall bear its own costs and expenses.

Plaintiff is allowed such writs and processes as may be necessary in the enforcement and collection of judgment.

This judgment disposes of all parties and all issues, and accordingly is a final judgment. Thus, all other relief not expressly granted herein is denied.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

---

PRESIDING JUDGE

AGREED AS TO FORM AND SUBSTANCE:

---

Jennifer Richie  
Attorney for Plaintiff, City of Irving

---

Samaniego Gomez  
Defendant

---

**Francisca Gomez**  
Defendant