ARTICLE 3-10 DANGEROUS BUILDINGS*

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-1 Authority of city; conflicting regulations

(a) The provisions in this article shall supersede and control over article 3-2 of this chapter (building code) and the International Building Code as now adopted or as hereafter amended, to the extent of any conflict.

(b) The city invokes its authority to abate nuisances as a home-rule city and under section 214.001 et seq., Texas Local Government Code, as now adopted or as hereafter amended.

(c) The city may require the vacation, securing, repair, removal or demolition of a building that is:

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

(2) Regardless of its structural condition, unoccupied by its owner, 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;

(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 subsection (2) above; or

(4) Regardless of the date of its construction, does not meet the following safety standards:

(A) Any building that is uninhabitable, untenable and unsightly due to obsolescence and deterioration caused by neglect, vandalism, fire damage, old age or the elements as evidenced by such conditions as roof, ceiling, floors, sills or foundations or any combination thereof being decayed or falling apart;

(B) Any building in danger of falling and injuring persons or property;

(C) Any building which is a fire menace because of its dilapidated condition as described in subsections (A) and (B), or for other reasons;

(D) Any building which is damp and in an unsanitary condition and is likely to create disease and sickness because of being in a dilapidated condition as described in subsections (A) and (B), or for other reasons; or

(E) Any building which is open or insufficiently secured to prevent entry by children, vagrants or criminals or constitutes an attractive nuisance to children.

(d) The term “building” shall include a structure of any kind or part thereof.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; 1957 Code, sec. 4A-60)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-2 Board of survey

The board of survey as previously established shall continue as follows:

(1) Organization. The board of survey shall consist of five (5) members and two (2) alternate members, who shall be appointed by the city council. Their terms shall be two-year terms but shall be staggered so that no more than four (4) of said members’ terms shall expire at any one (1) time. A quorum shall consist of three (3) members. (The initial term may be less for three (3) members to permit the staggered terms.)

(2) Rules. The board of survey shall set its own procedural rules for the hearing of cases.

(3) Function; orders.

(A) The function of the board of survey is to determine what action should be taken regarding buildings which the dangerous building official has classified as not meeting the safety standards of the city and which the owners, mortgagees or lienholders have failed or refused to remove or repair.

(B) The board of survey, after notice and hearing, is authorized to order the securing, repair, removal or demolition of a building that does not meet certain safety standards and is:

(i) Dilapidated, substandard or unfit for human habitation; and

(ii) A hazard to the public health, safety and welfare.

(C) The order of the board of survey issued by the dangerous building official may specify a reasonable time for the building to be vacated, secured, repaired, removed or demolished by the owner and an additional reasonable time for the ordered action to be taken by any of the mortgagees or lienholders in the event the owner fails to comply with the order of the board of survey within the time provided for action by the owner.

(D) Within ten (10) days after the date that the order is issued, the city shall:

(i) File a copy of the order of the board of survey in the office of the city secretary; and

(ii) Publish in a newspaper of general circulation a notice containing:

a. The street address or legal description of the property;

b. The date of the hearing;

c. A brief statement indicating the results of the order of the board of survey; and

d. Instructions stating where a complete copy of the order of the board of survey may be obtained.

(E) After the hearing, the owner of the building and any lienholder or mortgagee of the building shall be promptly mailed by certified mail, return receipt requested, or personally delivered, a copy of the order of the board of survey. The city shall use its best efforts to determine the identity and address of any owner, lienholder, or mortgagee of the building.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; Ordinance 2006-07, sec. 1, adopted 2/14/06; 1957 Code, sec. 4A-61)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-3 Dangerous building official

The city manager shall designate a person to be the dangerous building official, who shall perform the duties and responsibilities listed in this article. The dangerous building official may delegate such duties to other employees in the department who have been employed by the city for such purpose, except with regard to obtaining a search warrant pursuant to article 18.05 of the Code of Criminal Procedure, and shall work with the building official to determine the structural integrity and code deficiencies of questionable structures. (Ordinance 2004-04, sec. 1, adopted 1/27/04; 1957 Code, sec. 4A-62)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-4 Inspection

The dangerous building official shall inspect any unoccupied building that is suspected of not meeting safety standards and shall perform the following duties:

(1) Obtain and consider the following information:

(A) The approximate age and general condition of the premises;

(B) Previous violations or hazards found present in the premises;

(C) The type of premises;

(D) The purpose for which the premises are used or last known use; and

(E) The presence of hazards or violations in and the general condition of the premises near the premises to be inspected;

and determine if the building is unsafe and does not meet the described safety standards and should be boarded up and/or reported to the board of survey and notice issued;

(2) Verify ownership and property description by such sources as the county real property records of the county in which the building is located, the tax rolls, utility rolls, the appraisal district records of the appraisal district in which the building is located, records of the secretary of state, assumed name records of the county in which the building is located and any other reasonable and available sources of information;

(3) Inspect the property and generally report any items that violate the safety standards;

(4) Photograph the property;

(5) Determine if there is any personal property in the building and if it has any value or not ("value" means that it would sell for a price that is over and above the cost of collecting, transporting, storing and selling at a city auction and administering such property pursuant to this article);

(6) Obtain inspections by police, fire and health officials, except for board-up only;

(7) If the dangerous building official finds that the utilities serving the property are hazardous, he may order that they be disconnected;

(8) Prepare a notice and report to the board of survey and to the city council in case of an appeal;

(9) Obtain necessary search warrants when there is probable cause pursuant to article 18.05, Code of Criminal Procedure;

(10) After consultation with the building official or health department representative, determine if unsafe conditions should be abated by removing the structure.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; 1957 Code, sec. 4A-63)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-5 Notice

Before the public hearing, the dangerous building official shall provide notice as herein provided, but shall not be responsible for actual notice, to the owner and any mortgagee or lienholder of a building that does not meet the safety standards.

(1) The dangerous building official shall make a diligent effort to discover the identity and address of any owner, mortgagee and lienholder before conducting the public hearing and shall give them notice of, and an opportunity to comment at, the hearing.

(2) The dangerous building official will have made a diligent effort to discover the identity and address of any owner, mortgagee and lienholder by using such sources as:

(A) The county real property records of the county in which the building is located;

(B) The tax rolls;

(C) The utility rolls;

(D) The appraisal district records of the appraisal district in which the building is located;

(E) Records of the secretary of state;

(F) Assumed name records of the county in which the building is located; and

(G) Any other reasonable and available sources of information.

(3) The dangerous building official shall post a notice at least fourteen (14) days prior to the hearing before the board of survey to all unknown owners on the front door or in the proximity of the front door of the building;

(4) The dangerous building official shall mail a notice to any known owners, mortgagees and lienholders at their last known address by certified mail, return receipt requested, or by delivery by the United States Post Service using signature confirmation service, which notice shall be mailed at least fourteen (14) days prior to the hearing before the board of survey;

(5) The notice of the hearing must contain the following information:

(A) The name and address of the owner of the affected property, if the information can be determined.

(B) 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 this article and the time it will take to reasonably perform the work.

(C) A legal description of the building and affected property.

(D) The date, time and place for the public hearing before the board of survey.

(6) The city shall file notice of the hearing in the official public records of real property in the county in which the property is located. The notice must contain:

(A) The name and address of the owner of the affected property if that information can be determined;

(B) A legal description of the affected property; and

(C) A description of the hearing.

The filing of the notice is binding on subsequent grantees, lienholders or other transferees of an interest in the property who acquire such interest after the filing of the notice and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice.

(7) When a notice is mailed 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.

(8) After the public hearing, if a building is found in violation of the standards set out in this article, the city shall:

(A) Promptly mail by certified mail, return receipt requested, or personal delivery, a copy of the order to the owner of the building and any lienholder or mortgagee of the building.

(B) The order may specify the following information:

(i) A description of the violation of municipal safety standards that are present at the building, such as dilapidated, unsanitary, fire menace, open;

(ii) A statement that the city will secure or remove the building if the ordered action is not taken within thirty (30) days by the owner or within forty-five (45) days by any known lienholder or mortgagee after the hearing of the board of survey or the city council if appealed;

(iii) That, in the event of demolition, the owner within thirty (30) days after the hearing, and any known lienholder or mortgagee within forty-five (45) days after the hearing, shall be responsible for removing from the building any personal property, fixtures or other property of value;

(iv) That, if the owner fails to remove any personal property, fixtures or other property in the building, the dangerous building official shall dispose of such personal property pursuant to this article.

(C) Within ten (10) days after the date the order of the board of survey is issued:

(i) File a copy of the order of the board of survey in the office of the city secretary; and

(ii) Publish in a newspaper of general circulation a notice containing:

a. The street address or legal description of the property;

b. The date of the hearing;

c. A brief statement indicating the results of the order; and

d. Instructions where a complete copy of the order may be obtained.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; Ordinance 2006-07, sec. 1, adopted 2/14/06; 1957 Code, sec. 4A-64; Ordinance 2008-37, sec. 11, adopted 9/9/08)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-6 Disposition of personal property located in building to be demolished

Personal property located in a building to be demolished shall be administered in the following way:

(1) The owner within thirty (30) days after the hearing and any known lienholder or mortgagee within forty-five (45) days after the hearing shall be responsible for removing from the building any personal property;

(2) If personal property is not removed by the owner and/or any known lienholder or mortgagee from the building, the dangerous building official shall dispose of the same pursuant to this article;

(3) The dangerous building official may make a determination regarding the value of the personal property, and the dangerous building official's determination shall be conclusive and binding on all interested parties;

(4) Any property that in the opinion of the dangerous building official would not be of sufficient value to offset the cost of removing, transporting, storing and selling at a city auction shall not be removed from the building at the time of demolition and shall be demolished within the building;

(5) Any personal property that is considered by the dangerous building official to have sufficient value shall be removed and offered to the public for sale, and the consideration received shall be used to reimburse the city for the cost of demolition and the cost of transporting, storing and selling such personal property;

(6) In the event that the property is offered for sale to the public and the property does not sell for more than the costs incurred by the city, it may be disposed of in any manner authorized by the city council;

(7) In the event that the property is sold for an amount in excess of the cost of abating the nuisance, the dangerous building official shall prepare and file a report and mail a notice to any known owner, mortgagee or lienholder and advise that such amount shall be paid to such owner, known mortgagee or lienholder on receipt of a written request for payment within one (1) year of the date the notice is mailed.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; 1957 Code, sec. 4A-65)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-7 Disposition of materials or fixtures in building to be demolished

In the event that there are materials or fixtures in a building that are of sufficient value to reimburse the city for its costs, the dangerous building official is authorized but not required to salvage and dispose of such materials, in the same manner as authorized for the disposition of personal property located in a building to be demolished. (Ordinance 2004-04, sec. 1, adopted 1/27/04; 1957 Code, sec. 4A-66)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-8 Collection of city's expenses; lien

If a building is not vacated, secured, repaired, removed or demolished, the municipality may vacate, secure, remove or demolish the building at its own expense. This section does not limit the city's ability to collect on a bond or other financial guarantee. If the city incurs expenses on commercial property (includes residential or [of] more than four (4) units) the city may assess the expenses on and the municipality has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the building was located. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the municipality for the expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which the property is located. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the building was located, the amount of expenses incurred by the municipality and the balance due. If the notice is given and the opportunity to repair, remove or demolish the building is afforded to each mortgagee and lienholder, the lien is a privileged lien subordinate only to tax liens. (Ordinance 2004-04, sec. 1, adopted 1/27/04; 1957 Code, sec. 4A-67)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-9 Method of decision

(a) Subject to an appeal to the city council, the order of the board of survey shall be final, and the order of the board of survey shall be kept by the dangerous building official and sent to the owner and any known mortgagee or lienholder or their representative and shall be binding on all parties in interest.

(b) The municipality is not required to furnish any notice to a mortgagee or lienholder other than a copy of the order of the board of survey in the event the owner fails to timely take the ordered action.

(c) The action to be taken shall be reasonably related to the conditions that exist and the nuisance to be abated.

(d) The board and the city council, in the event of an appeal, shall be authorized to vary and make exceptions to the provisions of this article in the event of hardship or other conditions.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; Ordinance 2006-07, sec. 1, adopted 2/14/06; 1957 Code, sec. 4A-68)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-10 Public hearing

(a) In the event that the owner, mortgagee or lienholder fails to abate the nuisance prior to the hearing, the board of survey shall conduct a public hearing at the time and place stated in the notice to determine whether the building complies with the safety standards because of one (1) or more of the stated conditions. In the event that the building is found not to be in compliance, the board of survey shall determine the appropriate action to take to abate the nuisance and whether the same shall be secured, demolished or removed. The owner, mortgagee and lienholder shall have the right to appear at such hearing and present evidence concerning the condition of the building in question.

(b) In a public hearing to determine whether a building complies with the standards set out in an 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 the ordinance and the time it will take to reasonably perform the work.

(c) If found in violation, the owner, lienholder or mortgagee of the building shall (consistent with the order of the board of survey) within thirty (30) days:

(1) Secure the building from unauthorized entry; or

(2) Repair, remove or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within thirty (30) days.

(d) If the owner, lienholder, or mortgagee is allowed more than thirty (30) days to repair, remove, or demolish the building, specific time schedules shall be established for the commencement and performance of the work and the owner, lienholder or mortgagee is required to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the dangerous building [official].

(e) The owner, lienholder or mortgagee may not be allowed more than ninety (90) days to repair, remove, or demolish the building or fully perform all work required to comply with the order of the board of survey unless the owner, lienholder or mortgagee:

(1) Submits a detailed plan and time schedule for the work at the hearing; and

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

(f) If the owner, lienholder or mortgagee is allowed more than ninety (90) days to complete any part of the work required to repair, remove or demolish the building, the owner, lienholder or mortgagee shall be required to regularly submit progress reports to the city to demonstrate compliance with the time schedules established for commencement and performance of the work. The owner, lienholder or mortgagee shall be required to appear before the dangerous building official or the dangerous building official's designee to demonstrate compliance with the time schedules. If the owner, lienholder or mortgagee owns property, including structures or improvements on property, within the municipal boundaries that exceeds one hundred thousand dollars ($100,000.00) in total value, the owner, lienholder or mortgagee may be required to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing or demolishing a building with the building official.

(g) In lieu of a bond, the owner, lienholder or mortgagee may be required to provide a letter of credit from a financial institution or guarantee from a third party approved by the municipality. If so required, the bond must be posted, or the letter of credit or third party guarantee provided, not later than the 30th day after the date the order of the board of survey is issued.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; Ordinance 2006-07, sec. 1, adopted 2/14/06; 1957 Code, sec. 4A-69)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-11 Appeals

There shall be a right to appeal to the city council pursuant to the following rules:

(1) Appearance required. In the event that the appealing party, in person or by representative, did not appear at the hearing before the board of survey, the first appeal shall first go to the board of survey and then, if timely requested by the appealing party, to the city council.

(2) Appeal to city council. Whenever an owner, mortgagee or lienholder or the dangerous building official is aggrieved by a decision of the board of survey, the party may make a written appeal to the city council by filing such appeal in the office of the dangerous building official within fifteen (15) calendar days after the decision of the board is mailed by the dangerous building official to the last known address of the parties. The appeal shall set forth the reasons for objection to the decision of the board. The dangerous building official shall present the written appeal, with the findings and decisions of the board, to the council at a regular meeting of the city council. Notice of the city council meeting shall be mailed to the last known address of the owner and any known mortgagee or lienholder at least five (5) days prior to the meeting of the city council. No further action shall be required by the city.

(3) Review by city council. The city council shall review every appeal from a decision of the board of survey. Any person appealing to the council shall have the right to make an oral argument. The written appeal, the oral argument of the appellant, if any, the record of proceedings of the board and the written findings and decisions of the board shall be reviewed and considered by the council.

(4) Vote of the council. The vote of the council shall be governed by the city charter and any rules of procedure adopted by the city council.

(5) Action by the council. The council shall approve the findings of the board of survey, adopt a new order, or table for the purpose of developing additional information consistent with section 3-10-10.

(6) Record of action. The finding and action of the council shall be in the form of a resolution, and a copy of the resolution shall be attached to the findings and decisions of the board. Additional copies of the resolution shall be forwarded to the dangerous building official and all persons affected by the council's action. The findings and decisions of the board and the council resolution shall be kept on file in the office of the dangerous building official and shall be available for public inspection.

(7) Effect of appeal. An appeal to the city council shall stay all proceedings until the council renders a decision.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; 1957 Code, sec. 4A-70)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-12 Additional authority to secure substandard buildings

(a) The dangerous building official shall authorize any building to be secured, regardless of the date of its construction, that he determines:

(1) Violates the safety standards;

(2) Is unoccupied or is occupied only by persons who do not have a right of possession to the building.

(b) Before the 11th day after the date the building is secured, notice shall be given to the owner by:

(1) Personally serving the owner with written notice;

(2) Depositing the notice in the United States mail addressed to the owner at the owner's post office address;

(3) Posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown; or

(4) Publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the county in which the building is located.

(c) The notice must contain:

(1) An identification, which is not required to be a legal description, of the building and the property on which it is located;

(2) A description of the violation of the municipal standards that is present at the building;

(3) A statement that the municipality will secure or has secured, as the case may be, the building; and

(4) An explanation of the owner's entitlement to request a hearing about any matter relating to the municipality's securing of the building.

(d) The assistant city manager, or his/her designee, shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the municipality's securing of the building, if, within thirty (30) days after the date the municipality secures the building, the owner files with the assistant city manager a written request for the hearing. The assistant city manager, or his/her designee, shall conduct the hearing within twenty (20) days after the date the request is filed.

(e) If the city secures a building that does not meet the safety standards, it may do so at its own expense. If the city incurs expenses, 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 is located. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the municipality for the expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which the property is located. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the building was located, the amount of the expenses incurred by the municipality and the balance due. If the notice is given and the opportunity to repair, remove or demolish the building is afforded to each mortgagee and lienholder, the lien is a privileged lien subordinate only to tax liens.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; 1957 Code, sec. 4A-71)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-13 Occupied unsafe structures

In the event that the building official shall receive notice that there is an occupied building that does not comply with the safety standards and such building, because of its dilapidated conditions, is in danger of falling and injuring a person or is a fire menace or is unsanitary and could cause disease and sickness, the building official shall inspect the property as outlined in section 3-10-4, provide notice as outlined in section 3-10-5 and proceed to abate the nuisance generally as prescribed for unoccupied unsafe structures with the following additional authority:

(1) The city shall also have the authority to order the building to be vacated or repaired, or that the occupants by relocated, by the owner, mortgagee or lienholder within a reasonable time.

(2) Upon refusal or neglect of the owner, mortgagee or lienholder to comply with a final findings of the board of survey or the city council, the city attorney shall be advised of all facts and shall institute the appropriate action to compel compliance.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; 1957 Code, sec. 4A-72)

ARTICLE 3-10 DANGEROUS BUILDINGS*

Sec. 3-10-14 Emergency measures

(a) Vacating structures. When, in the opinion of the building official, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building or structure, or when there are unsafe conditions with regard to electrical or plumbing structures of the building, or other reasons, the building official is hereby authorized and empowered to order and require the inmates and occupants to vacate the same forthwith. The building official shall cause to be posted at each entrance to such building a notice reading as follows:

> This Structure is Unsafe and its Use or Occupancy has been Prohibited by the Building Official. It shall be unlawful for any person to enter such building or structure except for the purposes of making the required repairs or of demolishing the same.

(b) Emergency board-up/demolition. When, in the opinion of the building official, there is actual and immediate danger of collapse or failure of a building or structure or any part thereof which would endanger life, or when there are unsafe conditions with regard to electrical or plumbing structures of the

building, the building official shall cause the necessary work to be done to render such building or structure or part thereof temporarily safe or authorize the demolition of such building or structure or part thereof whether or not the legal procedure herein described has been instituted.

(c) Closing of adjacent streets or buildings. When necessary for the public safety, the building official shall temporarily close sidewalks, streets, buildings and structures and places adjacent to such unsafe structure and prohibit the same from being used.

(d) Emergency repairs. For the purposes of this section, the building official may employ the necessary labor and materials to perform the required work as expeditiously as possible.

(e) Costs of emergency repairs. Costs incurred in the performance of emergency work shall be originally paid by the city on the certification of the building official. The legal counsel of the jurisdiction may institute appropriate action against the owner of the premises where the unsafe building or structure is or was located for the recovery of such costs.

(Ordinance 2004-04, sec. 1, adopted 1/27/04; Ordinance 2006-07, sec. 1, adopted 2/14/06; 1957 Code, sec. 4A-73)