

NOTICE OF CITY COUNCIL WORKSHOP MEETING

NOTICE IS HEREBY GIVEN THAT THE CITY COUNCIL, CITY OF ROSENBERG, FORT BEND COUNTY, TEXAS, WILL MEET IN A WORKSHOP SESSION OPEN TO THE PUBLIC AS FOLLOWS:

DATE: Tuesday, October 28, 2014

TIME: 6:00 p.m.

PLACE: Rosenberg City Hall
City Hall Council Chamber
2110 4th Street
Rosenberg, Texas 77471

PURPOSE: City Council Workshop Meeting, agenda as follows:

During a City Council Workshop, the City Council does not take final action on the agenda items and any consideration of final action will be scheduled at a Regular or Special City Council Meeting. Public comments are welcomed at Regular or Special City Council Meetings. No public comments will be received at a Workshop Meeting.

The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by Title 5, Chapter 551, of the Texas Government Code.

Call to order: City Hall Council Chamber

AGENDA

1. Review and discuss the "Dangerous Buildings" Ordinance, and take action as necessary to direct staff. (Robert Gracia, City Manager)
2. Review and discuss City Council staggered terms and the order of positions for election, and take action as necessary to direct staff. (Scott Tschirhart, City Attorney)
3. Adjournment.

[EXECUTION PAGE TO FOLLOW]

DATED AND POSTED this the _____ day of _____ 2014, at _____m.,

by _____.

Attest:
Christine Krahn, Acting City Secretary

Approved for Posting:
Robert Gracia, City Manager

Approved:
Vincent M. Morales, Jr., Mayor

Reasonable accommodation for the disabled attending this meeting will be available; persons with disabilities in need of special assistance at the meeting should contact the City Secretary at (832) 595-3340.



CITY COUNCIL COMMUNICATION

October 28, 2014

ITEM #	ITEM TITLE
1	“Dangerous Buildings” Ordinance Discussion
ITEM/MOTION	
Review and discuss the “Dangerous Buildings” Ordinance, and take action as necessary to direct staff.	
FINANCIAL SUMMARY	ELECTION DISTRICT

Annualized Dollars:

- One-time
- Recurring
- N/A

Budgeted:

- Yes No N/A

Source of Funds: N/A

- District 1
- District 2
- District 3
- District 4
- City-wide
- N/A

SUPPORTING DOCUMENTS:

MUD #: N/A

1. Code of Ordinances Excerpt – Chapter 6, Article IX. – Dangerous Buildings
2. Texas Municipal League – Substandard Structures after *City of Dallas v. Stewart* – 02-16-12

APPROVALS

Submitted by:

Robert Gracia
City Manager

Reviewed by:

- Exec. Dir. of Administrative Services
- Asst. City Manager of Public Services
- City Attorney
- City Engineer
- (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

This item has been included to allow City Council an opportunity to discuss possible revisions to the “Dangerous Buildings” Ordinance, and to direct staff accordingly.

**CODE OF ORDINANCES EXCERPT
CHAPTER 6 – BUILDINGS AND BUILDING REGULATIONS
ARTICLE IX. - DANGEROUS BUILDINGS**

FOOTNOTE(S):

--- (12) ---

Cross reference— Fire prevention and protection, Ch. 11; flood prevention and protection, Ch. 12; health, sanitation and nuisances, Ch. 14 nuisance abatement, § 14-26 et seq.; rodent control, § 14-50 et seq.; manufactured housing, mobile homes and travel trailers and parks, Ch. 17; solid waste, Ch. 23; utilities, Ch. 29. (Back)

Sec. 6-271. - Definitions.

- (a) All buildings or structures which have any or all of the following defects shall be deemed dangerous buildings:
- (1) Those which have interior walls or other vertical structural members that list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base;
 - (2) Those which, exclusive of the foundation, show thirty-three (33) percent or more of damage of structural members or fifty (50) percent of damage or deterioration of the nonsupporting enclosing or outside walls or covering;
 - (3) Those which have improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used;
 - (4) Those which have been damaged by fire, wind or other causes so as to have become dangerous to life, morals or the general health and welfare of the occupants or the people of the city;
 - (5) Those which are so dilapidated, decayed, unsafe, unsanitary, or which so utterly fail to provide the amenities essential to decent living that they are unfit for human habitation or are likely to cause sickness or disease so as to work injury to the health, morals, safety or general welfare of those occupying such building;
 - (6) Those having light, air and sanitation facilities which are inadequate to protect the health, morals, safety or general welfare of human beings who live therein;
 - (7) Those, regardless of their structural condition, which have, during times that they were not actually occupied by their owners, lessees or other invitees, been left unsecured from unauthorized entry to the extent that they may be entered and utilized by vagrants or other uninvited persons as a place of harborage or may be entered and utilized by children as a play area;
 - (8) Those which have parts thereof which are so attached that they may fall and injure members of the public or property;
 - (9) Those which because of their condition are unsafe, unsanitary or dangerous to the health, morals, safety or general welfare of the people of this city; and/or
 - (10) Those buildings existing in violation of any provisions of this article, the Texas Local Government Code, Section 214.001 et seq., the building code, the fire code, or other ordinances of this city, if the violation is of such a nature that the building constitutes a danger to its occupants and to others.
- (b) A building that is boarded up, fenced or otherwise secured in any manner may, nevertheless, be deemed to be a dangerous building under the foregoing criteria if:
- (1) The building constitutes a danger to the public, even though secured from entry; or

- (2) It is found that the means utilized to secure the building are not adequate to prevent unauthorized entry of the building in contravention of item (7) of subsection (a) above.
- (c) Any building or structure which has any or all of the conditions or defects described herein, where such condition or conditions pose a threat or potential threat to life, health, property, or human safety, is also hereby declared to be a public nuisance, and is prohibited as unlawful, and shall be abated according to provisions of this Article IX. It is an offense for an owner or occupant or other person having control of the building or structure to fail to abate such public nuisance. Therefore, failure to abate such condition may also be prosecuted as a criminal misdemeanor offense. It is a further offense and it is unlawful for any person to cause, permit, or allow a dangerous building after the thirtieth day after the date on which the hearing officer finds a condition of dangerous building, nuisance and orders abatement or after such extended date as may be lawfully permitted by the hearing officer.
- (d) The city council hereby finds and determines that any building which has any or all of the defects set forth in (a) or (b) above is dilapidated, substandard, a nuisance or unfit for human habitation and is a hazard to the public health, safety and welfare.

(Code 1960, § 5-14; Ord. No. 89-22, § 1, 3-21-89; Ord. No. 2002-39, § 2, 11-5-02)

Sec. 6-272. - Duties of public works director.

The planning director or his/her designee shall:

- (1) Inspect any building, wall or structure about which complaints are filed by any person to the effect that a building, wall or structure is or may be existing in violation of the terms of this article;
- (2) Inspect any building, wall or structure reported (as hereafter provided for) by the fire, health or police departments of this city as probably in violation of the terms of this article;
- (3) Inspect buildings in the city to determine whether they are dangerous buildings within the terms of Section 6-271;
- (4) Notify the city manager or his/her designee of buildings that are found to be dangerous so that hearings may be scheduled pursuant to Section 6-274 et seq.; and
- (5) Appear at all hearings conducted pursuant to Section 6-274 et seq. and testify as to the conditions existing in the dangerous building.

(Code 1960, § 5-15; Ord. No. 2002-39, § 2, 11-5-02)

Sec. 6-273. - Duties of city attorney.

The city attorney may:

- (1) Prosecute any person failing to comply with the terms of the notices and orders provided for in this article;
- (2) Appear at hearings before the city manager or his designee in regard to dangerous buildings;
- (3) Bring suit to collect municipal charges, liens, or costs incurred by the city in preparing or causing to be vacated or demolished dangerous buildings; or
- (4) Take such other legal action as is necessary to carry out the terms and provisions of this article.

(Code 1960, § 5-19; Ord. No. 2006-34, § 1, 11-7-06)

Sec. 6-274. - Hearing—Notice.

- (a) Upon inspection, if a building has been found to be a dangerous building, written notice, by personal service or by certified mail, return receipt requested, shall be served on persons having an interest in the property, the owner, lienholder, or mortgagee for the property, as shown by the county real property records of the county where the land is located; 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; tax records of the city; and utility records of the city. This notice shall inform such persons that a hearing will be held before the city manager or his designated representative in which the city will seek an order requiring the building to be vacated, and/or requiring the building to be repaired and/or demolished and/or secured upon a finding that the building is dangerous and that it constitutes a hazard to the health, safety or welfare of its occupants and/or citizens of this city. Such notice shall also set forth:

- (1) The specific conditions which render the building a dangerous building within the standards set forth in Section 6-271;
 - (2) That a hearing will be held before the city manager or his designated representative in which the city will seek an order that the building be vacated and/or that the building also be repaired and/or demolished and/or secured as provided in Section 6-276;
 - (3) The date, time and place of such hearing;
 - (4) That all persons having an interest in the property may appear in person and/or be represented by an attorney and may present testimony and may cross examine all witnesses; and
 - (5) That all persons having an interest in the property 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.
- (b) If the address of any person having an interest in the property is unknown, or if notice to any person having an interest in the property is returned undelivered, a copy of such notice shall be posted in a conspicuous place on the building found by the city manager or his designee to be dangerous and such notice shall be published in a newspaper of general circulation within the city. The posting and publishing of such notice shall constitute notice to any person having an interest in the property who does not receive personal notice or notice by mail.

(Code 1960, § 5-16(a); Ord. No. 2002-39, § 2, 11-5-02; Ord. No. 2006-34, § 2, 11-7-06)

State law reference— Authority of city regarding substandard building, V.T.C.A., Local Government Code § 214.001.

Sec. 6-275. - Same—Conduct.

- (a) All hearings shall be held by the city manager or a person designated by the city manager to conduct such hearings. Such official shall be referred to as the hearing officer; provided, however, that the city manager shall not designate any person to perform the duties of hearing officer under this section who has participated in the inspections of such building or has had prior knowledge of the conditions of such building, except such person designated as hearing officer may, prior to the hearing, receive a copy of the notice given to the owners.
- (b) All hearings shall be conducted under rules consistent with the nature of the proceedings; provided, however, the following rules shall apply to such hearings:
 - (1) All parties shall have the right to representation by a licensed attorney, though an attorney is not required.
 - (2) Each party may present witnesses in his own behalf.
 - (3) Each party has the right to cross-examine all witnesses.
 - (4) Only evidence presented before the hearing officer at such hearing may be considered in rendering the order.
 - (5) The person having an interest in the building has the burden of proof to demonstrate the scope of any work that may be required to comply with ordinance and the time it will take to reasonably perform the work.

- (c) If no person having an interest in the building appears before the hearing officer at the date and time specified, the city shall produce evidence showing the building to be a dangerous building within the standards set forth in Section 6-271 and that the same constitutes a hazard to the health, safety and welfare of the citizens.
- (d) The city may request that public utilities be disconnected in order that demolition or other nuisance abatement actions may be accomplished without delay in those cases where the structure is open, vacant, dilapidated, or subject to any of the conditions defining dangerous building and public nuisance in this article.

(Code 1960, § 5-16(b), (c); Ord. No. 2002-39, § 2, 11-5-02; Ord. No. 2006-34, § 3, 11-7-06)

Sec. 6-276. - Same—Findings; placards.

- (a) After completion of the presentation of testimony by all parties appearing, the hearing officer shall make written findings of fact as to whether or not the buildings are dilapidated, substandard or unfit for human habitation and constitute a hazard to the health, safety or welfare of occupants and/or the citizens, and whether or not the buildings in question are dangerous within the standards set forth in Section 6-271, setting out the underlying facts supporting the findings.
- (b) If the hearing officer finds that any building is dilapidated, substandard or unfit for human habitation and that same constitutes a hazard to the health, safety or welfare of its occupants and/or the citizens, and that same is a dangerous building within the terms of Section 6-271, he shall issue an order directing the owner, occupant and all other persons having an interest in such building, as shown by the deed records of the county clerk of the county where the land is located:
 - (1) That the building shall be vacated if same is occupied and the hearing officer finds that the building is in such condition as to make it dangerous to the health, safety or welfare of its occupants;
 - (2) That, at the owner's option, the building shall be either demolished or repaired (if it can reasonably be brought into compliance by repair);
 - (3) That the building shall be demolished if it cannot reasonably be repaired; and/or
 - (4) If the building is unoccupied and the condition of the building is such that it may be brought into compliance by securing it from unauthorized entry, then the order may provide that it be so secured and be kept secured and may include or adopt written specifications that must be complied with in securing the building, and the order may provide that the building be demolished if it is not secured in compliance therewith.
- (c) If the hearing officer finds that the building is substandard as above described and in such condition as to make same dangerous to the health, safety or welfare of its occupants or to the citizens, the hearing officer shall order that the city place a notice in a conspicuous place on such building. Such notice to have the heading "DANGEROUS BUILDING" in letters one and one-fourth (1¼) inches high and to read, in letters at least one and one-fourth (1¼) inches high, the words:

DANGEROUS BUILDING

"THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING. OCCUPANCY OF THIS BUILDING IS PROHIBITED BY LAW, AS SUCH OCCUPANCY IS DANGEROUS TO THE HEALTH, SAFETY OR WELFARE OF ITS OCCUPANTS. THIS NOTICE IS POSTED (here the notice shall set forth the date and hour such notice is posted). ALL PERSONS MUST VACATE THIS BUILDING NOT LATER THAN FORTY-EIGHT (48) HOURS AFTER THE TIME OF POSTING AND SHALL NOT RE-ENTER THE SAME UNTIL THE PLANNING DIRECTOR FINDS THAT THE BUILDING HAS BEEN REPAIRED SO AS TO BE IN COMPLIANCE WITH THE ORDINANCES OF THE CITY OF ROSENBERG. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED."

- (d) If the hearing officer finds that the building is in such condition that it is dangerous for anyone to enter, the hearing officer shall order that the city place a notice in a conspicuous place on such

building. Such notice to have a heading stating DANGEROUS BUILDING in letters at least one and one-fourth (1¼) inches high and read in letters at least one and one-fourth (1¼) inches high, the words:

DANGEROUS BUILDING

"THE PLANNING DIRECTOR OF THE CITY OF ROSENBERG HAS FOUND THIS BUILDING TO BE A DANGEROUS BUILDING. NO PERSON SHALL ENTER THIS BUILDING EXCEPT INSPECTORS OF THE CITY OF ROSENBERG AND PERSONS AUTHORIZED BY THE OWNER WHO ENTER SOLELY FOR THE PURPOSE OF CORRECTING THE HAZARDOUS CONDITIONS THEREIN. THIS NOTICE SHALL REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED OR DEMOLISHED."

(Code 1960, § 5-16(d); Ord. No. 2002-39, § 2, 11-5-02)

Sec. 6-277. - Opportunity to bring property into compliance.

- (a) The persons having an interest in the property coming under this article shall be given a reasonable period of time in which to comply with the hearing officer's order. Such period not to exceed thirty (30) days unless, in the judgment and discretion of the hearing officer, it is determined that a greater period of time is necessary. The order shall state the date by which the action ordered must be completed and state that the planning director shall cause the building to be vacated, repaired and/or demolished if the persons having an interest in the property do not comply with the order.
- (b) The order of the hearing officer shall be served on all persons having an interest in the property, as shown on the deed records of the county in which the land lies, by registered mail or certified mail, return receipt requested. If the address of a person having an interest in the property as shown on the deed records is unknown, or if such order is returned undelivered, a copy of such order shall be posted in a conspicuous place on such building. Such posting of the order shall constitute notice to any person having an interest in the property who does not receive personal service.
- (c) A copy of the order of the hearing officer shall also be filed in the deed records of the county in which the land lies.
- (d) If the persons having an interest in the property fail to comply with the order of the hearing officer within the time specified in the order for compliance, the planning director shall cause such building to be vacated, repaired and/or demolished as the facts may warrant.
- (e) In any instance in which an order has been issued, pursuant to Section 6-276(b)(4), that a building be secured and the owner complies with the order by securing the building, the hearing officer's case file shall, nevertheless, remain active for a period of three (3) years from the date of signature of the order. The planning director may request that the hearing official reconvene the hearing if he receives evidence that the building has not remained secured and is in contravention of Section 6-271(a)(7) of this Code. Upon notice to the owner, lienholders, occupants and other persons having an interest in the property, the hearing officer shall reconvene the hearing. If the hearing officer finds that the building remains a dangerous building, notwithstanding the owner's efforts to secure it, he/she may issue a revised order that the building be demolished.

(Code 1960, § 5-16(d)—(f); Ord. No. 2002-39, § 2, 11-5-02)

Sec. 6-278. - Charges; lien.

- (a) The city council hereby finds and declares that the general administrative expenses of inspecting buildings, locating owners, conducting hearings, issuing notices and orders, together with all associated administrative functions, require the reasonable charge of five hundred dollars (\$500.00) for each lot, adjacent lots under common ownership or tract of land. Such minimum charge is hereby established and declared to be the charge for such administrative expenses to be assessed in each instance where the hearing officer determines that the building or structure is a dangerous building and the city is required to proceed with notice and hearing as provided for in Section 6-274. Notwithstanding any tabulation of recorded costs, a charge of five hundred dollars (\$500.00) is

hereby expressly stated to be the minimum charge, unless otherwise determined by the hearing officer. Further, the cost of securing, repairing, demolishing the building or buildings, either by the city or by persons doing so under contract with the city, shall be separately calculated and assessed in each instance where the city demolishes or causes the demolition of a building or buildings pursuant to this article.

- (b) The city shall certify all administrative expenses and costs of demolishing a building or buildings by the city or by persons doing so under contract with the city, as a charge which shall be assessed the owner thereof, and which shall constitute a lien on the land on which the building or buildings are or were situated. Such charge shall bear interest at the rate of ten (10) percent per annum until paid.
- (c) If an order has been issued pursuant to this article for the repair or demolition of a building or buildings and the city has let a contract for demolition, and the building or buildings are subsequently repaired or demolished by the owners prior to completion of the contracts let by the city, the administrative expenses and all costs for cancellation of the contract shall be certified as a charge which shall be assessed against the owners thereof, and which shall constitute a lien on the land on which the building or buildings are or were situated. Such charge shall bear interest at the rate of ten (10) percent per annum until paid.

(Code 1960, § 5-16(g); Ord. No. 2002-39, § 2, 11-5-02)

Sec. 6-279. - Execution of release, notice of compliance.

- (a) Upon full payment of the charges assessed against any property, or in the event the lien is placed on the property through error, the finance director or his/her designee is hereby authorized to execute, for and in behalf of the city, a written release approved in each case by the city attorney.
- (b) Upon compliance with an order of the hearing officer to repair or demolish a building, the planning director shall be and is hereby authorized to execute a written "notice of compliance" setting forth the date the notice of compliance is issued, the date the building was found to be repaired or demolished in compliance with the order; and if the building has not been demolished, whether or not the building is in such condition that it may be occupied.
- (c) A fee in the amount of fifty dollars (\$50.00) shall be imposed for such release of lien provided hereunder.

(Code 1960, § 5-17; Ord. No. 94-08, § 3, 4-19-94; Ord. No. 2002-39, § 2, 11-5-02)

Sec. 6-280. - Violations.

- (a) The owner of any dangerous building who shall fail to comply with any order to repair, vacate, demolish or secure such building by any person authorized by this article to give such order shall be guilty of a misdemeanor.
- (b) The occupant or lessee in possession, who fails to comply with any order to vacate, and anyone having an interest in such building as shown by the deed records of the county clerk of the county where the land is located, and under a legal duty to repair, who fails to repair or secure such building in accordance with any order given as provided for in this article, shall be guilty of a misdemeanor.
- (c) Any person removing any notice provided in this article shall be guilty of a misdemeanor.
- (d) The penalty upon conviction for violation of this section shall be as provided in Section 1-13 of this Code.

(Code 1960, § 5-18; Ord. No. 90-55, § 2, 9-4-90)

Sec. 6-281. - Emergencies.

- (a) In cases where it reasonably appears that there is immediate danger to the health, life or safety of any person unless a dangerous building is immediately repaired, vacated, demolished or secured, the public works director or planning director shall report such facts to the city manager. If the city manager finds there is in fact an immediate danger to the health, life or safety of any person unless

the building is immediately repaired, vacated, demolished or secured, he/she shall cause the immediate repair; vacation, demolition or securing of such building.

- (b) Whenever the city manager causes a building to be repaired, vacated, demolished or secured pursuant to this section, he shall cause a notice, as described in Section 6-276 to be posted on the building.
- (c) Whenever the city manager causes a building to be repaired, vacated, demolished or secured pursuant to this section, he/she shall also cause notice to be given that a hearing will be held concerning the orders issued in connection therewith, and whether the building constitutes a dangerous building. Such notice shall be given to the owners and lienholders of the building, all persons having possession of any portion thereof, and all other persons who may have an interest in the building. The notice shall set forth the specific conditions which render the building a dangerous building within the standards set forth in Section 6-274 et seq., the date, time and place of such hearing, that all persons having an interest in the building may appear in person and/or be represented by an attorney and may present testimony and may cross examine all witnesses. Such notice shall comply with the provisions set out in Section 6-274 et seq.; however, the hearing shall be held as soon as it is reasonably possible, but in no case later than ten (10) days, after the city manager has caused the building to be repaired, vacated, demolished or secured, unless all persons having either an ownership interest or a possessory interest in the building request a continuance of the hearing. All such hearings shall be held by the city manager or a person designated by him/her in accordance with the provisions of Section 6-274 et seq. At such a hearing, the burden shall be upon the city to show that there was an immediate danger to health, life or safety necessitating the immediate action and whether the building constitutes a dangerous building within the provisions of this article at the time of the hearing.
- (d) After completion of the presentation of the testimony by all parties appearing, the hearing official shall make written findings of fact as to whether or not the building was an immediate danger to health, life or safety necessitating the action taken by the city manager, and whether the building was a dangerous building within the provisions of this article. If the hearing official finds that there was an immediate danger to public health, life or safety that required the action that was taken, all administrative expenses and any cost of repair or demolition shall be calculated and assessed with the owners of the building, and shall constitute a lien on the land on which the building stands or stood, which shall bear interest as provided in Section 6-278. If the hearing official finds that the building, at the time of the hearing, constitutes a dangerous building within the provisions of this article, he shall issue an order for its abatement as set out in Section 6-277(d). The provisions of Section 6-274 et seq. shall be applicable to any such order.

(Code 1960, § 5-20; Ord. No. 2002-39, § 2, 11-5-02)

Sec. 6-282. - Where owner absent from city.

In cases, except emergency cases, where the owner, occupant, lessee or mortgagee is absent from the city, all notices or orders provided for herein shall be sent by registered mail or certified mail. Notices and/or orders shall be served on persons having an interest in the property, the owner(s), lienholder(s), or mortgagee for the property, as shown by the county real property records of the county where the land is located; 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; tax records of the city; and utility records of the city to the owner, occupant, mortgagee, lessee and all other persons having an interest in any building coming under this article, as shown by the deed records of the county clerk of the county where the land is located, to the last known address of each. A copy of such notice shall be posted in a conspicuous place on the dangerous building to which it relates. Such posting and mailing shall be deemed adequate service.

(Code 1960, § 5-21; Ord. No. 2002-39, § 2, 11-5-02)

Sec. 6-283. - Duty of city employees to report dangerous buildings.

It shall be the duty of all city employees to make a report in writing to the planning director of all buildings or structures which they believe are, may be or are suspected to be dangerous buildings within the terms of this article. Such reports are to be made within a reasonable time after the discovery of such buildings or structures.

(Code 1960, § 5-22; Ord. No. 2002-39, § 2, 11-5-02)

Sec. 6-284. - Other remedies; Chapters 54 and 214, Texas Local Government Code.

- (a) Nothing in this article shall preclude the city's pursuit of any and all other remedies allowed under the civil and criminal statutes, and in equity, to address conditions which are treated in this article, under the theory of public nuisance and abatement of dangerous structures or buildings. Neither shall the city be required, nor prohibited, to issue criminal citations before, after, or during any proceeding prescribed in this article.
- (b) Specifically, in addition to provisions of this article and remedies afforded under the Texas Local Government Code, Chapter 214, Municipal Regulation of Structures, the city further asserts full authority to exercise its right to remedy under all provisions of the Texas Local Government Code, including, but not limited to, Chapter 54, Subchapter B, Municipal Health and Safety Ordinances, in prosecution of civil suits for enforcement, injunctive relief, and civil penalties to remedy conditions of public concern described in this article.

(Ord. No. 2002-39, § 3, 11-5-02)

Substandard Structures after *City of Dallas v. Stewart*

Prepared February 16, 2012

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What statutory authority does a city have to abate a substandard structure?

Municipal authority to abate substandard structures comes from several statutory provisions. Essentially, the authority to define and abate a substandard structure stems from Chapter 214 of the Local Government Code, and the process by which it is carried out (with some exceptions) comes from a combined application of Chapters 214 and 54 of the Local Government Code. Historically, cities have used one of three methods for the substandard building abatement process:

1. adopt an ordinance under Chapter 214 relating to the condition of structures in the city, and provide for notice and a public hearing, generally before the city council, an appointed building and standards commission, or the city's municipal court acting in a civil capacity (the council, commission, or municipal court, pursuant to Subchapter C of Chapter 54, acts as the administrative municipal body to carry out the required procedures);
2. bring a civil action under Chapter 54 in district court, county court, or the city's municipal court of record to make a judicial determination that a structure is substandard; or
3. provide for an alternative enforcement process under Section 54.044 by creating an administrative adjudication hearing under which an administrative penalty may be imposed for the enforcement of a substandard structure ordinance.

How did the Texas Supreme Court's first opinion in *City of Dallas v. Stewart* affect the abatement process?

In *City of Dallas v. Stewart*, the Texas Supreme Court held that an appointed city board's determination that a building is a public nuisance should not be given deference by a court, but should be reviewed *de novo* ("from the beginning" or "as if the first determination never happened). No. 09-0257 (Tex. July 1, 2011), available at <http://www.supreme.courts.state.tx.us/opinions/HTMLopinion.asp?OpinionID=2001733>. The opinion meant that the administrative determination by city officials (e.g., a building and

standards commission, a city council, and perhaps even a judge in a municipal court of record) that a building is substandard was no longer entitled to deference by a court.

The lawsuit started when Stewart's house fell into disrepair, had been inhabited by vagrants, and suffered from numerous code violations. The city building standards board determined that the house was an urban nuisance and ordered its demolition. Before the demolition, the owner appealed the board's decision to district court. The appeal did not stay the demolition, and the house was demolished.

After the demolition, the owner added a takings claim to her suit. The trial court judge affirmed the board's decision to demolish. However, a jury decided that the home was not a public nuisance, that the demolition resulted in a "taking" by the city of the property, and awarded the owner damages. The city appealed the issue of whether the board's decision that the house was a public nuisance precluded a finding of a taking.

Local Government Code Chapter 214 defines a building as a nuisance if it is "dilapidated, substandard, or unfit for human habitation" based upon minimum standards that a city adopts in its ordinance. Chapter 214 does not identify a particular administrative municipal body that makes the nuisance determination, but it does authorize the use of a municipal court acting in a civil capacity. Local Government Code Chapter 54 authorizes a city to create a board to determine violations of public safety ordinances like those in Chapter 214. Pursuant to Chapter 214, a property owner is entitled to notice and a hearing as to whether a structure constitutes a public nuisance based upon violation of the city's adopted minimum standards, a decision relating to whether it can be repaired or must be demolished, and a limited appeal of a decision to a trial court. That statutory appeal is based on deference to the board's decision under what is known as the "substantial evidence" standard of review. However, the Court concluded that the statutory appeal and its substantial evidence standard does not comply with the Texas Constitution's "takings" clause.

The takings clause, found in Article I, Section 17, of the Texas Constitution, provides that the government may not take a person's property without just compensation. The twist in the *Stewart* case is that, in addition to holding that an appointed board's decision is not entitled to deference, the Court also added the requirement that the nuisance determination be made by a judge rather than an appointed administrative body. In other words, the Court held that a city board's decision that a piece of property is a "nuisance" should not be given deference, but can be reviewed *de novo* by a court in a manner similar to eminent domain cases:

Because we believe that unelected municipal agencies cannot be effective bulwarks against constitutional violations, we hold that the URSB's nuisance determination, and the trial court's affirmance of that determination under a substantial evidence standard, were not entitled to preclusive effect in Stewart's takings case, and the trial court correctly considered the issue de novo.

The City of Dallas sought a rehearing of the case, and the Texas Municipal League provided amicus support in that effort. In addition, numerous cities and the International Municipal Lawyers Association filed briefs in support of the city.

Did the Texas Supreme Court's second, "substituted" opinion make things any better?

Perhaps. In response to the motion by the City of Dallas for a rehearing (a request that the court reconsider its first opinion), the Texas Supreme Court withdrew its original opinion (meaning that it is no longer legal authority) and substituted a new opinion. *City of Dallas v. Stewart*, No-09-0257, 2012 WL 247966 (Jan. 27, 2012). The Court held essentially the same thing in its second opinion:

Today we hold that a system that permits constitutional issues of this importance to be decided by an administrative board, whose decisions are essentially conclusive, does not correctly balance the need to abate nuisances against the rights accorded to property owners under our constitution. In the context of a property owner's appeal of an administrative nuisance determination, independent court review is a constitutional necessity

Because we believe that unelected municipal agencies cannot be effective bulwarks against constitutional violations, we hold that the URSB's nuisance determination, and the trial court's affirmance of that determination under a substantial evidence standard, were not entitled to preclusive effect in Stewart's takings case, and the trial court correctly considered the issue de novo.

Id. at *1. The Court attempted to soften the blow of the case by stating that "property owners rarely invoke the right to appeal." *Id.* at *13. It further stated that "*de novo* review is required only when a nuisance determination is appealed. Thus, the City need not institute court proceedings to abate every nuisance. Rather, the City must defend appeals of nuisance determinations and takings claims asserted in court by property owners who lost before the agency." *Id.* Those things may be true, but they are probably of little comfort to cities that could now incur liability for takings damages when they demolish a substandard building.

The potentially good news in the second opinion is that the Court recognized that Section 214.0012(a) provides a "narrow thirty day window for seeking review." *Id.* This may mean that a city could continue to use the city council or building and standards commission abatement process and simply wait until the time for appeal has passed before demolishing a structure. However, not all city attorneys are in agreement that such is the case. The questions and answers below explain the processes a city can use in some detail, with analysis of the impact of the *Stewart* case where appropriate.

What procedures must a city follow when using the administrative abatement authority in Chapters 214 and 54?

If a city decides to use its city council, building and standards commission, or municipal court of record to abate substandard structures administratively, it is required to adopt an ordinance requiring the vacation, securing, and demolition of dilapidated structures. TEX. LOCAL GOV'T CODE § 214.001. The ordinance must establish minimum standards for the continued use and occupancy of buildings, provide for the giving of proper notice of a substandard building, and

provide for a public hearing. *Id.* (Building codes are often used for the minimum standards required by Chapter 214.) The procedures to use Chapter 214 are as follows:

1. Identify Substandard Structures Based Upon Minimum Standards

Following the adoption of the ordinance, the initial step to demolish a substandard structure is to identify the structure as substandard. A city official (most commonly the building official or code enforcement official) prepares a report stating the structural deficiencies and makes a recommendation as to whether the structure can be repaired or should be demolished.

The report is submitted to the municipal body designated in the ordinance to conduct a hearing for the purpose of determining whether the structure complies with the minimum standards in the ordinance. (The administrative “municipal body” is usually the city council, a building and standards commission created under Section 54.033 of the Texas Local Government Code, or – in a few cities – the city’s municipal court of record acting as a civil court.)

2. Notice of Public Hearing

After the structure has been identified as substandard, the city official who made the determination should issue a notice of public hearing to every known owner, lienholder, or mortgagee of the structure. *See* TEX. LOC. GOV’T CODE § 214.001(d) & (e). The notice should contain the following information:

1. name and address of the owner of the affected property;
2. an identification, which is not required to be a legal description (unless the notice is also going to the lienholders and mortgagees), of the structure and the property upon which it is located;
3. 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;
4. a statement of the action recommended to be taken, as determined by the official;
5. 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
6. the date, time, place, and brief description of the public hearing.

The notice should also be filed with the county in order to provide notice to, and be binding upon, subsequent grantees, lienholders or other transferees who acquire an interest in the property after the filing. *Id.* at § 214.001(e).

3. Public Hearing

Once the notice of public hearing has been mailed and all Open Meetings Act posting requirements have been satisfied, the public hearing is held. Prior to opening the public hearing, the municipal body should hear the report detailing the structural deficiencies and recommending that the structure be repaired or demolished. The lienholders, mortgagees, or owners of the property are given an opportunity to be heard and to address the nuisance issues as they relate to

the minimum standards, including the scope of the work and financial capability of repairing the structure. The municipal body should then open the public hearing to those who wish to speak on behalf of or against the recommended action. The burden is on the owner, lienholder, or mortgagee to demonstrate the scope of the work required to comply with the ordinance and the time it will take to perform the work. TEX. LOC. GOV'T CODE § 214.001(l).

4. Determination

After the public hearing, if the structure is found to be in violation of the standards in the ordinance, the municipal body may order the owner, lienholder, or mortgagee to, within 30 days:

1. secure the structure from unauthorized entry. TEX. LOC. GOV'T CODE § 214.0011 (If the city secures the structure prior to a hearing, notice and similar procedures are still required.); or
2. repair, remove, or demolish the structure, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within 30 days. *Id.* at § 214.001(h).

The body may also order that the occupants be relocated within a reasonable time. *Id.* If the municipal body allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the body must establish specific time schedules for the commencement and completion of the work and must require that the building be secured to prevent unauthorized entry while the work is being performed. *Id.* at § 214.001(i).

Within ten days after the date that the order to vacate, secure, repair, or demolish the structure is issued, the city must:

1. file a copy of the order in the office of the city secretary; and
2. publish in a newspaper of general circulation in the city 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 stating where a complete copy of the order may be obtained. *Id.* at § 214.001(f).

Also, after the hearing, the city must promptly send by certified mail, return receipt requested, signature confirmation through United States Postal Service, or personal delivery, a copy of the order to the owner and to any lienholder or mortgagee of the structure, as determined through the use of the city's best efforts. For purposes of this provision, the city has used its best, reasonable, or diligent effort if it has searched the county real property and assumed name records, appraisal district records, records of the secretary of state, and the city's tax and utility records. *Id.* at § 214.001(q). If the notice is mailed and, if the United States Postal Service returns the notice as "refused" or "unclaimed," the notice is deemed delivered. *Id.* at § 214.001(r).

5. Appeal

Chapter 214 provides that any owner, lienholder, or mortgagee of record of a structure for which an order is issued by the municipal body may, within 30 days after the order is mailed to them, appeal the order by filing a verified petition in district court stating that the decision is illegal, either in whole or in part, and specifying the grounds for the illegality. TEX. LOC. GOV'T CODE § 214.0012(a).

The district court may issue a *writ of certiorari* (a legal term for a request for the record of the municipal body) directing the city to review the order and return certified or sworn copies of the papers within a period of time, which must be longer than 10 days. *Id.* at § 214.0012(b) & (c). Upon making the return of the writ, the city is required to concisely set forth verified facts supporting the decision that do not appear in the returned papers. *Id.* at §§ 214.0012(c) & (d). Chapter 214 provides that the district court, upon review of the record under the substantial evidence rule, may either reverse or affirm, in whole or in part, or modify the municipal body's decision. *Id.* at § 214.0012(f). If the decision is affirmed or not substantially reversed but only modified, the district court must award the city all attorney's fees and other costs and expenses incurred by it. *Id.* at § 214.0012(h).

The issue in the *Stewart* case was “whether, in Stewart's takings claim, the [building and standards commission]'s nuisance determination is *res judicata*. That is, should it have been a dispositive affirmative defense to her claim?” *City of Dallas v. Stewart*, at *9. “Res Judicata” is a doctrine that precludes a subsequent claim on a matter that has already been adjudicated, and loosely translates to “a matter already judged.” In plain – and perhaps oversimplified – English, the Court concluded that the appeal from a nuisance determination using the substantial evidence rule “does not sufficiently protect a person's rights under [the Takings Clause in] Article I, Section 17 of the Texas Constitution.” *Id.* at *2. The substantial evidence rule prohibits a court from substituting its judgment for the judgment of the municipal body on the weight of the evidence. Under that standard, a court would uphold the municipal body's decision if enough evidence suggests the body's determination was within the bounds of reasonableness (i.e., if substantial evidence supports the body's determination). The Court held that the standard does not protect a property owner's constitutional rights and that the only way to do so is to allow a judge – by implication, one who is elected – to review the body's decision *de novo*:

Accountability is especially weak with regard to municipal-level agencies such as the [building and standard's commission]....,

Our precedents make clear that nuisance determinations must ultimately be made by a court, not an administrative body, when the property owner contests the administrative finding.

Id. at *8. It appears that, pursuant to the *Stewart* opinion and another opinion (*Patel v. City of Everman*, No-09-0506, 2012 WL 247983 (Jan. 27, 2012).) issued on the same day, an appeal from the decision of the municipal body—including a takings claim as Stewart made—must be raised by a property owner within 30 days of certain city actions. *Id.* at *2. (The appeal petition “must be filed by an owner, lienholder, or mortgagee within 30 calendar days after the respective dates a copy of the final decision of the municipality is personally delivered to them, mailed to

them by first class mail with certified return receipt requested, or delivered to them by the United States Postal Service using signature confirmation service, or such decision shall become final as to each of them upon the expiration of each such 30 calendar day period.”) In *Patel*, the Court stated that:

We recently held that a party asserting a taking based on an allegedly improper administrative nuisance determination must appeal that determination and assert his takings claim in that proceeding. See City of Dall. v. Stewart, ___ S.W.3d ___ (Tex. 2012). We noted that “[a]lthough agencies have no power to preempt a court’s constitutional construction, a party asserting a taking must first exhaust its administrative remedies and comply with jurisdictional prerequisites for suit.” Id. (footnote omitted). We also held that “a litigant must avail [himself] of statutory remedies that may moot [his] takings claim, rather than directly institute a separate proceeding asserting such a claim.” Id. (citing City of Dall. v. VSC, 347 S.W.3d 321 (Tex. 2011)).

Id. Most city attorneys will read the Court’s opinions in *Stewart* and *Patel* to collectively mean that a property owner or other aggrieved person must appeal from an administrative decision to demolish a structure within 30 days, and must include in that appeal the takings challenge. The failure to do so should bar a later takings claim. But until an actual challenge occurs, the topic will be hotly-debated.

6. City Action and Liens

The city may vacate, secure, remove, or demolish the structure or relocate the occupants at its own expense if the structure is not vacated, secured, repaired, removed, demolished, or the occupants are not relocated within the allotted time. TEX. LOC. GOV’T CODE § 214.001(m). However, the city may not repair the structure. *Id.* To initiate a proceeding to secure, vacate, remove, or demolish the structure or relocate the occupants, the city must first make diligent efforts to discover each mortgagee and lienholder having an interest in the structure or the property upon which it is located. To save time and expense, the lienholders, mortgagees, and other interested parties should be notified at the time of the initial hearing. *Id.* at § 214.001(e).

All expenses incurred by the city in vacating, securing, removing, or demolishing the structure or relocating the occupants may be assessed and a lien placed on the property upon which the structure is located, *unless the structure is a homestead.* *Id.* at § 214.001(n)(emphasis added). The lien arises and attaches to the property when it is filed with the county clerk. *Id.* It constitutes a “privileged lien” inferior only to tax liens, if mortgagees and lienholders were previously notified as to the result of the city’s “diligent effort” to identify these parties. *Id.* at § 214.001(o). The lien is extinguished if the property owner or another party having an interest in the legal title to the property reimburses the city for the expenses incurred. *Id.* at § 214.001(n). In relation to *Stewart*, note that damages awarded under a takings challenge may not be assessed as a lien.

What procedures must a city follow when using the judicial abatement authority in Chapter 54 to bring an action in district or county court?

Rather than hold an administrative hearing under Chapter 214, many cities opt for an alternative provided by Chapter 54 of the Local Government Code. Under Section 54.012, a city may bring a civil action for the enforcement of its ordinances “relating to dangerously damaged or deteriorated structures or improvements.”

The jurisdiction and venue of a suit brought pursuant to Section 54.012 are in the district court or the county court at law of the county in which the city bringing the civil action is located. TEX. LOC. GOV’T CODE § 54.013 The Chapter 54 proceeding is the clearest way to comply with *Stewart’s* holding that “unelected municipal agencies cannot be effective bulwarks against constitutional violations” because it is brought in district or county court, which are presided over by an elected judge. *Id.* at *13. Of course, the process – like any civil lawsuit – can be lengthy and expensive, and requires the services of an attorney.

1. Procedure

The procedure for filing a civil suit for enforcement of an ordinance is fairly straightforward. The only allegations required to be pleaded in such a civil action are:

1. the identification of the real property involved in the violation;
2. the relationship of the defendant to the real property or activity involved in the violation;
3. a citation to the applicable ordinance;
4. a description of the violation; and
5. a statement that Subchapter B of Chapter 54 of the Local Government Code, which contains the provisions concerning civil suits brought by municipalities for the enforcement of ordinances, applies to the violated ordinance.

TEX. LOC. GOV’T CODE § 54.015. Therefore, in order to properly file a suit for enforcement of the city’s ordinances, the city need only file an original petition that: includes the above-mentioned elements; requests that the property owner be served and made to appear before the court; and requests that upon final hearing of the matter a mandatory injunction be issued compelling the property owner to comply with the city’s ordinances or allowing the city to conduct the appropriate abatement.

Civil suits of this nature can last for months, even years, before a trial. However, a city can seek a “preferential setting” for the suit if it submits to the court a verified motion that includes facts that demonstrate that the delay in deciding the matter will unreasonably endanger persons or property. *Id.* at § 54.014. If the city prevails in the civil action brought for enforcement of its ordinances, it may be entitled to injunctive relief and civil penalties. *See generally, Id.* at §§ 54.016-54.017.

2. Burden to Establish Entitlement to Injunctive Relief

In order to establish its right to injunctive relief in a suit brought for enforcement of an ordinance, a city must show the court that there is a “substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant.” TEX.

LOC. GOV'T CODE § 54.016. If the city makes that showing, it may obtain against the owner, or owner's representative with control over the premises, an injunction that:

1. prohibits specific conduct that violates the concerned ordinance; and
2. requires specific conduct that is necessary for compliance with the ordinance.

Id. Thus, if the city prevails in a civil action against the property owner for enforcement of the ordinances, the city may be entitled to an injunction that not only requires the property to comply, but may also allow the city to conduct the necessary abatement proceedings. *Id.* at § 54.018 (City may bring action to compel the repair or demolition of a structure or to obtain approval to remove the structure and recover removal costs).

3. Civil Penalty

The city may recover a civil penalty, not to exceed \$1,000.00 per day, for a violation of the ordinance if it proves that the property owner was:

1. actually notified of the provisions of the city's ordinances; and
2. after he received notice of the ordinance provisions, he committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.

TEX. LOC. GOV'T CODE § 54.017. Prior to initiating suit, to invoke the full protection of the law, notice should be sent to the property owner specifically outlining the violations, including the ordinance provisions, with a set number of days for compliance. While civil penalties may be assessed against the property owner, he is not subject to personal attachment or imprisonment for failure to pay such penalties. *Id.* at § 54.019. However, if the penalties are reduced to judgment, the city may attach a lien to the property if it is otherwise unable to recover on the judgment.

What is the authority for a municipal court of record to make a judicial determination that a structure is substandard?

Section 30.00005 of the Government Code grants additional authority to municipal courts of record relative to health and safety and nuisance abatement ordinances. Specifically, a city may, by ordinance, provide that its municipal court of record has civil jurisdiction for purposes of enforcing municipal ordinances enacted under Chapter 214 of the Texas Local Government.

The civil authority of municipal courts, found in Section 54.015 of the Local Government Code, is an unclear area of law, and only those cities with judges and city attorneys who are intimately familiar with the area should use them for civil purposes. As stated previously, a municipal court of record can arguably act in a civil capacity to be the municipal body that makes administrative determinations about whether a structure is substandard. To take advantage of the municipal court of record in the administrative process, a city should designate the municipal court of record as the municipal body under Chapter 214 (as opposed to the city council or building and standards commission). TEX. LOC. GOV'T CODE § 214.001(p)(referencing a "civil municipal court" rather than a court of record).

In addition, Section 30.00005 provides that a municipal court of record has concurrent jurisdiction with a district court or county court at law under Subchapter B of Chapter 54 of the Local Government Code within the corporate city limits and the city's extraterritorial jurisdiction for purposes of enforcing health and safety and nuisance abatement ordinances. That means that a city could file a chapter 54 judicial abatement proceeding in a municipal court of record as it could in a district or county court. The *Stewart* problem with filing in a municipal court of record is that judges in that court are not elected. Thus, the decision of the court may not – by itself – satisfy the Texas Supreme Court's edict.

Are there any other lingering issues to be aware of in the substandard structure abatement process?

In 1999, a panel of the Fifth Circuit Court of Appeals ruled in *Freeman v. City of Dallas* that a city must obtain a warrant from a judge or magistrate before a substandard structure may be demolished. *Freeman v. City of Dallas*, 186 F.3d 601 (5th Cir. 1999), *rehearing en banc granted*, 200 F.3d 884 (5th Cir. 2000), *on rehearing*, 242 F.3d 642 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 47 (2001). As a result, many cities opted for a Chapter 54 judicial proceeding rather than seeking relief under Chapter 214 due to the additional warrant requirement.

In a later opinion issued *en banc* (by all of the court's judges rather than a panel), the Fifth Circuit held that the original panel erred, and that the U.S. Constitution does not require a warrant. *Freeman*, 242 F.3d at 644. The court, as a threshold determination, acknowledged that the demolition of a structure constituted a "seizure" of property under the Fourth Amendment. However, the Fourth Amendment does not state that there shall be no seizure without a warrant. Rather, it provides only that there shall be no "unreasonable" searches or seizures. To determine the reasonableness of the seizure, the court examined the procedures under state law and the City of Dallas' ordinances. The court determined that the process, along with the defined standards in the municipal code for finding that a structure is a nuisance, offered greater protection against unreasonable actions than an application for a warrant before a judge (which is usually done without notice to the landowner or the opportunity to participate). *Id.* at 653. Thus, substandard building abatement does not appear to pose a Fourth Amendment problem.

What is the bottom line regarding *Stewart's* effect on the substandard building abatement process?

The bottom line is that it appears that the only way to be certain to "head off" a takings claim after *Stewart* is to seek a decision from a court in which the judge is elected (e.g., a county or district court). That means the judicial abatement process under Chapter 54 is the safest, albeit most expensive and time-consuming, route.

Of course, the *Stewart* opinion may be right that "property owners rarely invoke the right to appeal." And, if the court's opinion in the case – read in conjunction with the *Patel* opinion – truly means that an appeal from the decision of an administrative municipal body (e.g., the city council, a building and standards commission, or a municipal court acting in a civil capacity)

must be raised by a property owner within 30 days of certain city actions, it may not be as big of a problem as some thought.

Only time will tell. Each city should consult with its city attorney prior to taking action on a substandard building.



CITY COUNCIL COMMUNICATION

October 28, 2014

ITEM #	ITEM TITLE
2	Council Member Staggered Terms and Election Position Discussion

ITEM/MOTION

Review and discuss City Council staggered terms and the order of positions for election, and take action as necessary to direct staff.

FINANCIAL SUMMARY

Annualized Dollars:

One-time
 Recurring
 N/A

Budgeted:

Yes No N/A

Source of Funds: N/A

ELECTION DISTRICT

District 1
 District 2
 District 3
 District 4
 City-wide
 N/A

SUPPORTING DOCUMENTS:

1. City Charter Excerpt – Section 3.01
2. Presentation - Staggered Election Terms
3. Timeline – Staggered Election Terms
4. City Council Meeting Draft Minute Excerpt – 08-26-14

MUD #: N/A

APPROVALS

Submitted by:

Scott Tschirhart/rl

Scott Tschirhart
City Attorney

Reviewed by:

Exec. Dir. of Administrative Services
 Asst. City Manager of Public Services
 City Attorney
 City Engineer
 (Other)

Approved for Submittal to City Council:

Robert Gracia
City Manager

EXECUTIVE SUMMARY

This item has been included to allow City Council to hold discussion regarding staggered terms and the order of positions for election.

PART I – THE CHARTER
ARTICLE III. – THE CITY COUNCIL

SEC. 3.01. - NUMBER, SELECTION AND TERM.

The legislative and governing body of the city shall consist of the mayor and six (6) council members and shall be known as the "City Council of the City of Rosenberg."

- (a) The mayor and two members of the city council shall be elected from the city at large.
- (b) The mayor shall be the presiding officer of the city council and shall be recognized as the head of city government for all ceremonial purposes and by the government [governor] for purposes of military law but shall have no regular administrative duties. The mayor shall be entitled to vote on all matters under consideration by the city council.
- (c) The mayor and six (6) council members, including two (2) at large council members and four (4) council members elected by districts shall be elected to two-year terms. The mayor and (2) council members shall be elected at-large in odd number years. The two (2) at-large council members positions shall be respectively designated as Position 1 and Position 2. The remaining four (4) council members shall be elected by districts, designated as Districts one (1), two (2), three (3) and four (4), in even numbered years.

At the general election in May 2015, the four (4) designated district positions, one (1), two (2), three (3), and four (4) shall be placed on the ballot for election for a one-year term. The two (2) at-large council member positions and the position of mayor shall be placed on the ballot for election to two-year terms. At the City general election May 2016, the district positions designated as Districts one (1), two (2), three (3) and four (4) shall be placed on the ballot for two-year terms. At the City general election May 2017, the two (2) at-large council member positions and the position of mayor shall be elected to two-year terms.

All positions shall be elected to two-year terms after the foregoing provisions have been effected.

- (d) The four (4) members of the city council elected by districts shall be elected from districts which shall be designated Districts one (1), two (2), three (3) and four (4). The area or territory includable in the district shall be adjusted from time to time or reconfigured as the city may annex or de-annex territory or area within the city. A legal description of all property to be includable in any of the several districts shall be on file in the office of the city secretary of the City of Rosenberg.

(Ord. No. 60-4, § 1, 9-6-60; Ord. No. 85-8, § 1, 6-18-85; Ord. No. 87-54, § 4, 8-10-87; Ord. No. 96-44, 12-3-96; Ord. No. 97-07, § 1, 1-21-97; [Ord. No. 2013-10, § 3, 2-19-13](#) ; [Ord. No. 2013-26, § 1, 5-21-13](#))

City of Rosenberg

Staggered Election Terms

DNRBHZ

By: Scott Tschirhart

	Current				
	2015	2016	2017	2018	2019
District 1	Yellow	Blue	Blue		
District 2	Yellow	Blue	Blue		
District 3	Yellow	Blue	Blue		
District 4	Yellow	Blue	Blue		
At Large 1	Green	Green	Purple	Purple	
At Large 2	Green	Green	Purple	Purple	
Mayor	Green	Green	Purple	Purple	

Note: The color coding of this exhibit is for the purpose of distinguishing between potential terms in office that would result from a Charter amendment.

	Current				
	2015	2016	2017	2018	2019
District 1	Yellow	Blue	Blue		
District 2	Yellow	Blue	Blue		
District 3	Yellow	Blue	Blue		
District 4	Yellow	Blue	Blue		
At Large 1	Green	Green	Purple	Purple	
At Large 2	Green	Green	Purple	Purple	
Mayor	Green	Green	Purple	Purple	

	3 Year Terms					
	2015	2016	2017	2018	2019	2020
District 1	Yellow	Blue	Blue	Blue		
District 2	Yellow	Blue	Blue	Blue		
District 3	Yellow	Blue	Blue	Blue		
District 4	Yellow	Blue	Blue	Blue		
At Large 1	Green	Green	Purple	Purple	Purple	
At Large 2	Green	Green	Purple	Purple	Purple	
Mayor	Green	Green	Purple	Purple	Purple	

	Current				
	2015	2016	2017	2018	2019
District 1	Yellow	Blue	Blue		
District 2	Yellow	Blue	Blue		
District 3	Yellow	Blue	Blue		
District 4	Yellow	Blue	Blue		
At Large 1	Green	Green	Purple	Purple	
At Large 2	Green	Green	Purple	Purple	
Mayor	Green	Green	Purple	Purple	

	3 Year Terms					
	2015	2016	2017	2018	2019	2020
District 1	Yellow	Blue	Blue			
District 2	Yellow	Blue	Blue			
District 3	Yellow	Blue	Blue			
District 4	Yellow	Blue	Blue			
At Large 1	Green	Green	Purple	Purple	Purple	
At Large 2	Green	Green	Purple	Purple	Purple	
Mayor	Green	Green	Purple	Purple	Purple	

	Swap								
	2015	2016	2017	2018	2019	2020	2021	2022	2023
District 1	Yellow	Blue	Blue	Blue	Yellow	Yellow	Yellow		
District 2	Yellow	Blue	Blue	Blue	Yellow	Yellow	Yellow		
District 3	Yellow	Blue	Blue	Blue	Yellow	Yellow	Yellow		
District 4	Yellow	Blue	Purple	Purple	Purple	Green	Green	Green	
At Large 1	Green	Green	Purple	Purple	Yellow	Yellow	Yellow		
At Large 2	Green	Green	Purple	Purple	Purple	Green	Green	Green	
Mayor	Green	Green	Purple	Purple	Purple	Green	Green	Green	

2016

Mayor shall be elected to a three year term to expire	2019
Place 2 shall be elected to a three year term to expire	2019
Place 4 shall be elected to a three year term to expire	2019
Place 6 shall be elected to a two year term to expire	2018

2017

Place 1 shall be elected to a three year term to expire	2020
Place 3 shall be elected to a three year term to expire	2020
Place 5 shall be elected to a one year term to expire	2018

2018

Place 5 shall be elected to a three year term to expire	2021
Place 6 shall be elected to a three year term to expire	2021

2019

Mayor shall be elected to a three year term to expire	2022
Place 2 shall be elected to a three year term to expire	2022
Place 4 shall be elected to a three year term to expire	2022

2020

Place 1 shall be elected to a three year term to expire	2023
Place 3 shall be elected to a three year term to expire	2023

2021

Place 5 shall be elected to a three year term to expire	2024
Place 6 shall be elected to a three year term to expire	2024

Council. We did three outreach sites this year at the schools and those not at the schools are serving all Rosenberg children.

- Jess Stewart provided an overview of the present program and the future programs. He outlined each school and how many children are served at each.
- The City of Rosenberg donates \$10,000 to the two sites within the City. It takes \$305,000 to fund 1585 children in the programs.
- Council thanked Darren McCarthy for presenting this as partnership to the City and thanked Jess Stewart for the presentation.
- No action was taken on the item.

2. **REVIEW AND DISCUSS COUNCIL MEMBER TERM LIMITS, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

Executive Summary: This Agenda item was requested to provide City Council the opportunity to discuss potential term limits for the Mayor and Council Members.

Key discussion points:

- Councilor McConathy stated she added the item to give Council Members the opportunity to discuss term limits. To provide some direction for the discussion there are two key points we should consider as we open this up. One is the term duration as well as the maximum years a Council Member can serve in that term. The former Council including Mayor, Councilors Benton, Grigar and she talked about two years, three years and four years as a term and also the duration whether that means two or three – two year terms or two-three year terms or two-four year terms. We are starting fresh with a new Council. She asked Council to keep those two points in mind during discussion on what we want term limits to look like as we present it to the voters in May as a Charter change.
- Councilor Euton asked if we need to spell it out ahead of time or do we want to leave it open like previously on the staggered terms but the “how to” was not part of the amendment that the voters saw.
- Scott Tschirhart, Attorney for the City explained that is a bit of a misconception. On February 19, 2013, Council passed Ordinance 2013-10 that laid out specifically which Council positions would be staggered and how it would be staggered. The voters saw a caption which is typical in a Charter election. The caption tells them what this is going to do. If you have a lot of amendments it could be confusing for a voter. The City generally publishes what it will do to the Charter and in this case it was published in the newspaper in English and Spanish and on the website. A copy of what this amendment was going to do was mailed with the water bills to educate the public. The Ordinance was passed prior to the Charter election.
- Councilor Euton asked if we change terms to three years what will that do to our staggering?
- Scott Tschirhart said it complicates things. The election that comes up in May has to follow the rules in the Charter currently. We will have some terms expiring one year out and some terms two years out. To go to a three year term we can make that work but it will require a Charter amendment to balance everything out. It would have to be approved by the voters.
- Councilor Euton said she is in favor of three year terms but she feels it would be too confusing to the voters. Two years is simpler and a four year maximum term in one position should be the limit.
- Councilor Pena stated it is confusing and we already have the staggered years. District 1, 2, 3 and 4 have to run one year concurrently. It is two years to catch up the at-large and mayor. He agrees with Councilor Euton. He thinks a three year term would be a good gauge. He suggested two – three year terms. He favors the three year term but if it stays at two, then he favors two – two year terms.
- Councilor Grigar stated he thinks we already have term limits and that’s an election every two years. Term limits are good in certain cities. He does not think it is a good thing for Rosenberg at this time until we grow. It is hard to get volunteers for committees. He is not for term limits at this time.
- Councilor Bolf agreed with Councilor Grigar to a point. We do have elections but when people are there a long time they will not step-up and run against an incumbent. She would suggest three – three year terms.
- Councilor Benton stated he believes in term limits. He likes the four – two year terms. This is a Charter change issue and a Charter change committee should see what the voters want.
- Councilor McConathy stated in the previous discussion we complicated it in separating the mayor position from Council positions and staggering and terming it in that fashion. It sounds like the consensus is for term limits, that it would be broad across all positions and that the term would apply to everyone equally. She favors the three year. It will require another Charter change but we are going to be creating a Charter change by implementing this proposal. When we had the discussion about staggered terms we talked about the complication at the ballot in helping the voters to understand what staggering meant versus a term limit. It was decided at that time to separate staggering from the term limits. The voters decided for staggering so now if we stand by the three year term then we need

to make the staggering work with that term limit. You can't discuss one without impacting the other. She prefers the three year with a maximum of two terms.

- Councilor Bolf said it would need to be position specific. She would agree with the two – three year terms if no one else went with the three – three year terms.
- Mayor Morales stated going back to the last Council, he proposed three year terms. He is not opposed to having three year terms. We weren't sure of the term limits at that time. He agrees with what Councilor Grigar says but he doesn't have a problem with what the voters want. The voters make that decision. If you go back to the minutes several years ago, he proposed three year terms but no one agreed to it.
- At this point we need to form a Charter Review Committee to determine which items will be on the Charter.
- Councilor Grigar commented that he thinks there needs to be a standing Charter Review Committee that looks at the Charter every two years because you can only change the Charter every two years. The standing committee needs to be formed and look at all of the Charter in detail, taking it a little at a time with the most important areas and add that to a referendum every two years.
- Mayor Morales asked how this committee would be made up.
- Councilor Pena stated since there has been a committee we need to move on this term limit and get it done. If we do the three – two year terms move forward with it. He agrees that a committee would be good that could look at other items as they come up, but feels we should move on the term limit item now.
- Councilor McConathy stated in order to form a committee we would have to set aside some budget funds for staff and those meetings. She suggested we look at adding dollars to our budget this year or maybe next year so the committee can be formulated and begin work to scrub the Charter as a whole.
- Joyce Vasut recommended that if we are going to change the budget we first pass our FY2015 budget next week and then we can come back with a budget adjustment in the future.
- Mayor Morales asked legal counsel how we would work out the staggering we have in place in 2015 and if we go to three year terms going forward?
- Scott Tschirhart stated it will be complicated. Two year terms are what the staggering is predicated on and it works well that way. A three year term can complicate this pretty dramatically. A Charter amendment can change things in a perspective but it will not change anything coming up in the May elections. It could change the next election cycle.
- Mayor Morales stated presently it reads you have the Mayor and the two At Large positions that will have two year terms and then the District seats have a one year term. Starting in 2016 the Districts would be for three years.
- Scott Tschirhart stated that is a potential way to do it but that would be the earliest you could affect a City election - May 2016. If you did a Charter amendment to go to three year terms you could start those three year terms at that time in 2016. Term limits would have to be prospective and it would not count anything that has already been served.
- Mayor Morales stated there is a general consensus of wanting to move forward with two – three year terms. Legal counsel needs to come back to Council with what that Charter change would be.
- Scott Tschirhart stated there is another issue that comes up with this. The Texas Constitution says no city charter shall be altered, amended or repealed oftener than every two years. There is an Attorney General opinion out there that says – you have an election on May 9th of this particular year and then two years later the election is to be held on May 4th that that is too short and you can't do the two years that way. Our office takes the opinion that the charter amendment doesn't take place until the city adopts it and it could be adjusted further out. But, that Texas Attorney General opinion is out there. In this case, the second Saturday in May is May 9th which would be before the May 11th election less than two full years we had in May 2013. It could be declared that it is oftener than two years because of these few days that would make is less than two years.
- Mayor Morales said so the change could not happen until May 2016.
- Scott Tschirhart stated it is possible or there could be a special election. There is a variety of ways we could work it out. He wanted to make Council aware that there is a potential we may not be able to do it at the May 2015 election to change the charter again.
- Legal counsel will bring it back to Council to be discussed and voted on.
- Councilor Grigar stated since the charter can't be changed except every two years we will miss the boat if there are other changes that need to be made. Could staff research to see if there are any important issues that may need to be added to that?
- Scott Tschirhart stated it does not work that way, it's just that we can't amend it oftener than every two years. He suggested that at any charter election we try to handle as much as we can identify at the same time because it does change the constitution of the City.
- Robert Gracia stated staff will check on that.

- No action was taken on the item.

3. **REVIEW AND DISCUSS CITY COUNCIL STAGGERED TERMS AND THE ORDER OF POSITIONS FOR ELECTION, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

Executive Summary: This Agenda item was requested to provide City Council an opportunity to discuss staggered terms and the order of positions for election for the Mayor and Council Members.

Key discussion points:

- Councilor Benton stated his concern is eventual lower voter turnout with the way these staggered terms are setup now. He thinks it would be beneficial when we go through this process to look at that. He feels it would be beneficial to have at least one at-large position in every election. It would be good to have a committee of citizens look at this and make suggestions.
- Scott Tschirhart stated he was asked to research this and check on how it came to be that an ordinance had changed the charter. In looking at Ordinance 2013-10 this is Proposition 2. Staff provided Council a copy. On the second page under Proposition 2 you see the caption that appeared on the charter election and underneath you see what the strikeout would have been changing Section C and what was added to Section C. This is what was approved by the voters. This was done by Ordinance on February 19, 2013 to be set before the voters in the 2013 May election.
- Councilor Benton stated for clarification the verbiage in C was not on the ballot. He said it was not approved by the voters but the Proposition was.
- Scott Tschirhart stated that is correct. The Proposition was approved by the voters.
- Mayor Morales stated the information was out there to the voters prior to the Proposition.
- Scott Tschirhart stated when the Proposition was passed that carried over and was placed into the Charter. The language is identical to what was in Proposition 2 that came out of this particular ordinance. That is why there is a reference to the Ordinance in the Charter. The Ordinance didn't modify the Charter it was the will of the voters that modified the Charter.
- Mayor Morales stated we would have to devise a plan because in 2015 it will be three at-large positions for two years and the districts for one year.
- Scott Tschirhart said it would be a complex way of going about it but we could figure out a way to do it. An elected official doesn't have a property right in their elected office so we don't have those kinds of issues to deal with. If we wanted to change that around and take at-large positions, it would be a complicated process because you would have to setup some at large positions with staggered to make it work out, but it can be done.
- Mayor Morales stated that all of Sugar Land's At-Large positions are at one time and then the districts at another time. He does not have a problem with it but how do you derive that?
- Scott Tschirhart stated we need to consider how this affects us from potential litigation standpoint from the Voting Rights Act because we had to go to geographical districts for that purpose. That analysis will have to be a part of this program because we don't want to draw another voting rights suit.
- Mayor Morales stated he had to deal with LULAC on this last staggered terms. We would have to involve LULAC as well in this. A lot of this was based on what they wanted too.
- Mayor Morales stated we have a request for three year terms with a limit of six years and wanting to move an at-large position into the staggering mix and engage LULAC in this entire process.
- Councilor Euton stated if we mix it she would suggest that District 1 be moved with the mayor and at-large because they had the lowest percentage of voter turn out.
- Mayor Morales stated that is a good suggestion.
- Scott Tschirhart stated they can start on it but it is not something that he can come back to Council with until another workshop and not at the next Council meeting.
- No action was taken on the item.

4. **REVIEW AND DISCUSS PROPOSED AMENDMENTS TO SECTION 6-367 OF THE CODE OF ORDINANCES PROVIDING RULES AND REGULATIONS GOVERNING THE PAINTING OF STREET NUMBERS ON CURBS, AND TAKE ACTION AS NECESSARY TO DIRECT STAFF.**

Executive Summary: On April 01, 2014, and April 22, 2014, City Council held discussions regarding the potential of amending the City's curb-painting regulations to include the Texas flag.

This item has been added to the Agenda to offer City Council the opportunity to discuss the potential amendment of the rules and regulations governing the painting of street numbers on curbs. You will find a copy of the current Code Section 6-367 which was included in the agenda packet.

Key discussion points:

- Councilor McConathy stated this was an item previously discussed and we reached a consensus that this was something we should bring back after budget discussions. We are talking about amending

ITEM 3

Adjournment.