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Section 1983: Demolitions and Due Process

Practical Considerations in Municipal Prosecution
City of Galveston's Housing Abatement Program

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42 U.S.C. §1983
Practical Safeguards in Municipal Demolitions
City of Galveston Housing Abatement Program

By: Donna Fairweather

Introduction.

The Problem: I cannot think of any city that does not have at least one house or property that isn't an issue for that city. The property is dangerous, unsanitary, deteriorated, run down, and unsightly. Whatever the issue, the city wants it repaired or gone. Galveston is no exception.[1] In 2008, Galveston was devasted by Hurricane Ike. The number of vacant, dilapidated, substandard and dangerous properties increased as the population of the city decreased. Some owners had repaired, demolished or rebuilt their properties; however, there were many owners that had not. Absentee ownership and abandonment of properties exacerbated the problems, which resulted in many areas of blight.

A Solution: After Hurricane Ike, the task created was how best to address the issues of these large number of properties that remained damaged, destroyed, vacant, or otherwise substandard. Many properties had reached high levels of deterioration, danger, unsanitariness or were attractive nuisances. Such properties posed substantial threats to the health and safety of the city and its population. Demolition of these properties became a necessary evil when owners were not able or refused to repair or abate them. Consequently, an effective demolition program was needed when the city, itself, took the reins to destroy a person's property. The city became a municipal court of record (municipal court) and then the city developed the Housing Abatement (HA) Program to specifically handle these problem properties.

42 U.S.C. § 1983.

Constitutional considerations. Property owners possess certain constitutional rights to their property. A city has to deal with a myriad of problems resulting from derelict properties and demolition may be a quick fix. However, this remedy by the city over a property does not surpass an owner's rights to their property nor abridge them without due constitutional review.

42 U.S.C. § 1983, provides the right of an individual to sue persons "acting under color of state law" for civil rights violations. The elements necessary of a 42 U.S.C §1983 claim consist of:

1. The conduct complained of was committed by a person acting under the color of state law; and
2. The conduct deprived the person of rights, privileges or immunities secured by the Constitution or the laws of the United States.

Prospective 42 U.S.C. §1983 claims that result from the demolition of a person's property are alleged violations of:

[1] Author's Note: For the purposes of this paper, I have included full cites to assist the reader in research and review.

- The 4th Amendment protections against unreasonable search and seizure and of substantive due process. "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[2]

- The 5th Amendment protection against unlawful takings. "No person shall…be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."[3] and,

- The 14th Amendment protections of due process and the equal protection of the laws. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[4]

The Texas Constitution equally provides these protections and reads in part:

- Takings - "[n]o person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation."[5]

- Due Process - "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law of the land."[6]

Constitutional Safeguards.

Texas courts, (the 5th Circuit), have provided fundamental ways for cities to prevent violations of 42 U.S.C. §1983 rights, and how to ensure successful outcomes when a city is accused of those violations.

Procedural due process requires notice and an opportunity to be heard. Due Process requirements of the **4th and 14th amendments** require notice and an opportunity to be heard at a meaningful time and in a meaningful manner.[7] The Supreme Court has held that deprivations of property rights do not violate the Due Process Clause if adequate and meaningful opportunity to be heard is made available.

Substantive due process bars government actions that are deemed arbitrary, or conscience shocking in a constitutional sense.[8] In order to withstand against this challenge, the city ordinance,

[2] U.S. Const. Amend. IV. Art. 6.
[3] U.S. Const. Amend. V. Art. 7.
[4] U.S. Const. Amend XIV. §1.
[5] Tex. Const. Art. 1. §17(a).
[6] Tex. Const. Art. 1. §19.
[7] Rhone v. City of Texas City, 2022 U.S. Dist. Lexis 150282, *9; 2022 WL 3453351 (S.D. Tex., July 12, 2022), (Citing Mathews v. Eldridge, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).
[8] Reynolds v. City of Com., Tex., 3:19-CV-01577-E, 2020 U.S. Dist. LEXIS 68330,*10; 2020 WL 1915713 (N.D. Tex. Apr. 17, 2020).

policy, or regulation must ensure that it bears some rational basis for the city action. In demolition cases, the protection of health and safety will usually meet a rational/reasonableness standard that safeguards the city from violation.

One of the easiest and most effective safeguards to ensure due process is by providing appropriate and accurate notice to the owner of the property.

Proper notice must:

- be to the owner, lien holder, or mortgagee, (herein owner) of the property,
- provide for a public hearing to determine whether the property complies with the regulations set out in the city's ordinance, and,
- include a statement that the owner is required to submit proof of the scope of work and a reasonable timeframe to comply with the city ordinance.[9]
- The notice itself shall be personally delivered, sent by certified mail with return receipt requested, or delivered by U.S postal service.[10]
- The notice shall contain an identification and location of the subject property, a description of the violation(s), at the property, and a statement the city will "vacate, secure, remove, or demolish"[11] the property if action is not taken by them in a reasonable time.[12]

However, the satisfaction of due process notice requirements, does not always rely solely through the above, as "it is not required that a property owner receive actual notice" before demolition of the property.[13] A city can establish proper service by showing that it has made a diligent effort to discover each mortgagee, and lienholder before the scheduled public hearing begins. Additionally, and alternatively, notice requirements can be met by filing notice of the public hearing in the County Official Public Records of Real Property where the city is located.[14]

The City of Galveston files each housing abatement petition and subsequent court orders in the Galveston County records for real property. As a side note, these petitions not only provide notice of each public hearing regarding the property, but is documentation for the owner, and any future owner of the action(s). Also, the filings in the real property records allows the court action to "follow with the land". I have had numerous requests from title companies who discover the filed actions and/or liens assessed against the property, and need to have the case closed out in court. This has afforded the city to recoup their assessed costs in liens and moreover, this property has likely been demolished or rehabilitated to acceptable health and safety code standards.

Along with the above, cities have another mechanism to effectuate proper service. Texas is a state that legislatively deemed codes promulgated by the International Code Council (ICC) as standard codes for cities. The ICC "I-Codes" are the most widely accepted, comprehensive set of model

[9] Tex. Loc. Gov't Code § 214.001(b)(2); §214.001 (b)(3); §214.001(c) (2022).
[10] Tex. Loc. Gov't Code § 214.001(d) (2022).
[11] Tex. Loc. Gov't Code §214.001(d) (2022).
[12] Autor's note: For the purposes of this paper, my focus is on property that is unoccupied.
[13] Amaya v. City of San Antonio, No. SA: 12-CV-574-DAE, 2014 U.S. Dist. LEXIS 176572,*11-12; 2014 WL 7339077 (W.D. Tex. Dec. 23, 2014).
[14] Tex. Loc. Gov't Code § 214.001(e).

codes used in the United States. These "I-Codes" are found in state statutes but are adopted at the local level. Cities can make local amendments to a respective I-Code that better fits their city's situation and government. The City of Galveston adopted the International Property Maintenance Code (IPMC) as a part of their property maintenance code and corresponding *dangerous and substandard buildings* section. The IPMC provides notice requirements for code officials and establishes minimum requirements for the maintenance of existing buildings through model code regulations. Although, these model codes can be locally amended according to the needs of an individual city they contain clear and specific property maintenance and property improvement provisions useful in any health and safety nuisance regulation.[15]

A violation notice should list each observed violation, the code in violation, and how it violates the city regulation, as well as, give the owner knowledge as to the correction needed. The owner is able to look at the notice and can prepare themselves to respond accordingly. No Owner should legitimately be able to come to court and say, "I didn't know" or where can I find the law on that?", on a properly worded violation notice. Cities often physically post the violation notice on the subject property as well. The physical posting of the notice on the subject property also constitutes a means of accomplishing service.[16] Here in Galveston, the city marshal code enforcement personnel must have a picture of the posting and add it to the case file

Emergency situations that require immediate attention may not give an owner the benefit of a thirty day notice to correct/abate. The 5th circuit (and I suspect most courts), recognize that the protection of the health and safety of the public is a paramount governmental interest which take precedence over notice and hearing requirements.[17] Demolitions that fall into this category are usually in line with a city's police power, which will be discussed further in.

Cities that satisfy procedural due process requirements may continue to face substantive due process claims. "Substantive due process 'bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." To succeed a claimant must prove that a state actor unreasonably decided to deprive them of their property.[18] As stated previously, in order for a substantive due process claim to prevail, the claimant must show the city's actions were arbitrary or conscience shocking, in a constitutional sense.[19] Substantive due process claims have a tough burden to overcome when a city employs ordinances or laws regulating nuisance property. Courts have succinctly held that city regulations (including provisions for demolition) regarding nuisance property is reasonable and rational regulation.

The 14th Amendment includes an equal protection clause which protects against violations by a "state actor" intentionally discriminating against a claimant because of membership in a protected class. There must be a showing that the claimant was "intentionally treated differently from others

[15] International Property Maintenance Code (IPMC) (2021).
[16] International Property Maintenance Code (IPMC) §114. (2021).
[17] Amaya v. City of San Antonio, No. SA: 12-CV-574-DAE, 2014 U.S. Dist. LEXIS 176572,*12; 2014 WL 7339077 (W.D. Tex. Dec. 23, 2014).
[18] Reynolds v. City of Com., Tex., 3:19-CV-01577-E, 2020 U.S. Dist. LEXIS 68330,*11; 2020 WL 1915713 (N.D. Tex. Apr. 17, 2020); (citing Marco Outdoor Adver., Inc. v. Reg'l Transit Auth., 489 F.3d 669, 672 n.3 (5th Cir. 2007) (quoting Zinermon v. Burch, 494 U.S. 113, 125, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990)).
[19] Reynolds v. City of Com., Tex., 3:19-CV-01577-E, 2020 U.S. Dist. LEXIS 68330,*11; 2020 WL 1915713 (N.D. Tex. Apr. 17, 2020).

similarly situated, and moreover, that there is no rational basis for the difference in the treatment."[20] For the purpose of this paper, and in my experience, it's difficult for a plaintiff to succeed in an equal protection violation claim regarding demolition of property by a city. Texas courts have held that under a rational basis analysis, as long as a classification is rationally related to a legitimate government objective, it will survive an equal protection challenge.[21] Abatement, which includes demolition, of dangerous property is a legitimate government objective able to withstand against such allegations.

Respectively, 4th Amendment allegations against illegal search and seizure (in a nuisance property abatement scenario) has difficulty withstanding court scrutiny as well. If the evidence shows the city has complied with due process procedures and is related to nuisance abatement, it will pass a rational/reasonableness test if put under review.

Takings – 5th Amendment.

Demolition by its very nature is the destruction of a person's property. Court's recognize that there are two (2) types of takings, 'regulatory' taking and 'physical' taking that can be espoused in a 5th Amendment takings claim. The 5th Amendment "requires payment of compensation whenever the government acquires private property for a public purpose, whether the acquisition is a result of a condemnation proceeding or a physical appropriation".[22] An analysis of a physical takings claim relies upon whether the city breached its duty to justly compensate the property owner. Commonly known as *eminent domain*, Texas statutes outline the procedures by which municipalities may acquire private property for public purposes.[23] If the municipality takes private property without following the required procedures, the property owner can file an inverse condemnation proceeding against the city in state court. However, the goal of a city in enforcing a nuisance abatement via demolition, is not to acquire property, but to abate a dangerous situation.

The court review of a regulatory takings claim, focuses not only on whether the governmental entity failed to justly compensate a property owner after taking their property, but also on whether the regulation advances a substantial governmental interest and/or deprives the property owner of all economically valuable use of their land.[24] The test in a regulatory takings claim is whether the legislation unreasonably interferes with a landowner's right to use and enjoy property. Clearly, one could argue that the demolition of one's property is at best a physical taking and based upon the elements of the city regulation could amount to a regulatory taking. However, a city does not gain legal rights to the owner's fee simple or other ownership right to their land, even though the dangerous structure is removed. Demolition is not an acquisition of the underlying property. In

[20] Reynolds v. City of Com., Tex., 3:19-CV-01577-E, 2020 U.S. Dist. LEXIS 68330,*12; 2020 WL 1915713 (N.D. Tex. Apr. 17, 2020) (Citing Village of Willowbrook v. Olech, 528 U.S. 562, 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000).
[21] Korndorffer v. City of Galveston, No. G-02-144, 2002 U.S. Dist. LEXIS 28116, *27; 2002 WL 34185626 (S.D. Tex. July 8, 2002) (Citing Vulcan Materials Co. v. City of Tehuacana, 238 F. 3d 382, 389 (5th Cir. 2001).
[22] Korndorffer v. City of Galveston, No. G-02-144, 2002 U.S. Dist. LEXIS 28116, *15; 2002 WL 34185626 (S.D. Tex. July 8, 2002), (Citing Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 122 S. Ct. 1465, 1478, 152 L.Ed. 2d 517 (2002).
[23] Tex. Prop. Code §§21.001 et seq., Tex. Loc. Gov't Code §§251.001-02. (2022).
[24] Korndorffer v. City of Galveston, No. G-02-144, 2002 U.S. Dist. LEXIS 28116, *3; 2002 WL 34185626 (S.D. Tex. July 8, 2002).

Texas, the courts have held that if the property was in fact a nuisance, a takings analysis does not apply."[25]

Cities can lawfully rely on their "Police Powers" to demolish a structure. Municipalities through their police powers have the ability to abate public nuisances, as "regulation of nuisance properties is at the heart of the municipal police power. It is eminently reasonable for a city to prescribe minimum property maintenance standards to protect the public and to maintain adjacent land values."[26] A city's police power authority does not give it carte blanche to do what it likes, when it likes. Without following certain procedures, a city may not arbitrarily enter abatement orders or declare the existence of nuisances with no underlying standards.[27] Police powers are typically engaged based upon an emergent situation or circumstance and typically where time is or becomes of the essence for the protection of persons, adjacent property, and the like. Cities may regulate property use in a way that assures the prevention and abatement of dangerous conditions so long as due process rights are honored.[28] Thus, even in situations of emergency, it would benefit the city to provide post-demolition notice and due process procedures for its own protection and that of the owner.

Municipal Prosecution: City of Galveston Housing Abatement Program. Why it works.

The City of Galveston is a Home Rule municipality which operates under its own established city charter. Home rule cities derive their power from their state Constitution and look to their state legislature only as a limit on their authority, i.e. *preemption*. A simpler view is that a home rule municipality may do anything that is not specifically prohibited by its state law.

The City became a Municipal Court of Record on January 1, 2014. In Texas, a municipal court of record is governed by the same jurisdictional boundaries of a standard municipal court pursuant to Chapter 29 of the Texas Government Code and Article 45 of the Code of Criminal Procedure. In addition, the Texas Government Code, Chapter 30, gives a municipal court of record additional jurisdictional authority.[29] Chapter 30, in part, states that a governing body via ordinance, may grant in their municipal court of record, civil jurisdiction under Chapter 54 of the local government code and civil jurisdiction under Chapter 214 of the local government code. These particular state statutes pertain to enforcement of municipal ordinances and nuisance abatement authority.

The municipal court of records allows prosecution of subject nuisance properties through the city's housing abatement program and housing abatement court docket. The housing abatement docket gives the ability of the court to order demolition of a structure and authorize the demolition by the city and to place applicable liens against the property. Galveston has been able to enforce its substandard and dangerous building code regulations more effectively and successfully, via its

[25] Rhone v City of Texas City, 2022 U.S. Dist. Lexis 150282, 2022 WL 3453351 *5-6, (S.D. Tex., July 12, 2022) (Citing City of Dallas, v. Stewart, 361. S.W.3d 562, 575 (Tex. 2012).
[26] Freeman v. City of Dallas, 242 F.3d 642, 652 (5th Circ. 2001).
[27] Freeman v. City of Dallas, 242 F.3d 642,652 (5th Circ. 2001).
[28] Rhone v. City of Texas City, 2022 U.S. Dist. Lexis 150282, 2022 WL 3453351 *6, (S.D. Tex., July 12, 2022) (Citing Freeman v. City of Dallas, 242 F.3d 642, 652 (5th Cir. 2001).
[29] Tex. Gov't Code §30.005 (2022).

housing abatement program. Distinctive elements of the housing abatement program and its management are exemplified in that:

1. The housing abatement docket strictly handles properties that the city, according to applicable codes, has determined are substandard and dangerous such that demolition may be warranted,
2. Assistant City Attorney's solely prosecute these cases in the municipal court of record,
3. The City Marshal's Code Enforcement personnel bring these properties to the Assistant City Attorney for prosecution,
4. The cases are heard before a Judge who is a licensed attorney in the state,
5. All cases are heard in a public hearing,
6. All documents and notices of hearings are filed in the municipal court of record, as well as, the real property records in Galveston County,
7. Original Petitions are published in the general local paper,
8. All violation notices and hearing notices are physically posted on the property,
9. Notice of subsequent hearings comply with as applicable, city and/or state notice requirements.

In practice, prior to the filing of any case in the municipal court of record, the attorney reviews each case file with the city marshal personnel to make sure that the elements of the notice violations have been met, that all requisite documents are included, and that service was properly effectuated. There are several checks and balances along the way to ensure the housing abatement process will proceed in accordance with the laws of the city and state. For the purpose of this paper topic, I have provided examples of several documents used in prosecuting a housing abatement case in the city. I hope you find the information helpful.

Conclusion.

The housing abatement program has been an extremely effective tool for the city. While this subject has been in regard to demolition and due process, demolition itself is not always the goal in a housing abatement case. There has been increased compliance by owners that choose to repair their properties (and/or demolish), which has decreased areas of blight. In turn, property development has increased, as well as, the city's positive housing stock. There have been little challenges against the housing abatement program since its inception, which speak to the city's demonstrated compliance with due process requirements.

Storms will come and storms will go. The City of Galveston is still a work in progress; however, the decrease in substandard and dangerous properties have made substantial positive impacts on the city to create a more vibrant, healthy and safe community.

GALVESTON HOUSING ABATEMENT (HA) DOCUMENT EXAMPLES:

EXHIBIT "A"
PROPERTY ADDRESS
VIOLATIONS

1. Damage and deterioration to the front porch, walls, ceilings, evidence of termite damage: 10-63 (8), 10-63 (5) and 10-62 B(6) (DSBC), and 116.1 (IBC).
2 Loose lumber, siding, and debris and broken windows: 10-62 A(2) (DSBC).
3 Property vacant and apparently abandoned: 10-62 A (4, 7) (DSBC).
4. Structure not weather tight or secure from the elements: 10-62 A(2) (DSBC).
5. Floors deteriorated/missing and noting deteriorated foundation piers: 10-62 B (1) (DSBC).
6. Interior contains filth, mold, debris, and possible contamination: 10-63 (13) (DSBC).
7. Property constitutes a nuisance: 343.011 (5) (THSC), 23-1 (CCG).

(DSBC) Dangerous and Substandard Building Code
(IBC) 2012 International Building Code
(CCG) City Code of Galveston
(THSC) Texas Health and Safety Code

EXHIBIT "B"

PICTURES: DATED AND SIGNED ON THE BACK

Sample Original Petition and Notice of Hearing
HA - Cause Number

CITY OF GALVESTON	§	IN THE MUNICIPAL
Plaintiff	§	
	§	COURT OF RECORD
V.	§	
	§	FOR THE
Property Address	§	
Defendant	§	CITY OF GALVESTON

ORIGINAL PETITION AND NOTICE OF HEARING

Pursuant to Chapter 22, of the Galveston City Code, Chapter 10 of the Galveston City Code, and Section 214.001 of the Local Government Code; Plaintiff, the City of Galveston, files this Petition and Notice of Hearing and would respectfully show unto the Court the following:

I. FACTS

A vacant structure intended for human occupancy exists on the property legally described and located at **Legal Property Address** and commonly referred to as **____Street,** in the City and County of Galveston, Texas (hereinafter "Structure" or "Property").

Upon information and belief, said structure and property is owned by **_____,** with a mailing address of _____, **Galveston, TX 77553**.

1. The property is not being maintained in good repair and safe condition and is not fit for human occupancy. The structure and any accessory structure violate numerous provisions and standards of Chapter 10, the "Building Code", of the City of Galveston, and as more specifically set forth below:

1.1. Failure to maintain a structure safe from danger of collapse. There is damage and deterioration to the front porch, walls, ceilings and there is evidence of termite damage in violation of sections 10-63 (8), 10-63 (5) and 10-62 B(6) of the Dangerous Building Code, and 116.1 of the International Building Code.

1.2 Failure to adequately maintain structure. There is loose lumber, siding, and debris and broken windows, in violation of section 10-62 A(2) of the Dangerous Building Code.

1.3 The property is vacant, not weather tight or secure from the elements and apparently abandoned in violation of section 10-62 A (4, 7) of the Dangerous and Substandard Building Code

1.4 Failure to maintain structure capable of supporting imposed loads. The floors are deteriorating and there are missing or deteriorated foundation piers, in violation of section 10-62 B (1) of the Dangerous Building Code.

1.5 Failure to maintain structure free from accumulations of litter. The interior contains filth, mold, debris, and possible contamination in violation of section 10-63 (13) of the Dangerous Building Code.

1.6 All of the aforementioned existing defects are, in addition, in violation of Section 343.011 (5) of the Texas Health and Safety Code and Section 23-1 of the Nuisance Code of the City of Galveston.

2. The Structure is dilapidated, substandard, unfit for human habitation, a hazard to the public health, safety and welfare, and constitutes a dangerous, substandard building and a nuisance.

3. The property poses a serious threat to the health, safety, and welfare to the public, now and in the future.

II. REQUEST FOR REPAIR, REMOVAL OR DEMOLITION

After a hearing, the City of Galveston requests that this Court Order the Structure and any accessory structure to be repaired, removed, or demolished. The City of Galveston further requests that the City of Galveston, through its agents and contractors, is authorized to: (1) remove doors, gates, windows, locks, walls, boards and other barriers preventing entry onto the property; (2) enter the property to inspect, photograph, and measure the property for purposes of documentation; (3) demolish the structure and any accessory structure(s) on the property; (4) remove all components and personalty; (5) place a lien on the property where allowed by law for the City's incurred expenses; (6) seek other remedial action deemed appropriate by the Court, including a request for fines not exceeding two thousand dollars ($2,000.00) for each day the property remains in noncompliance and (7) Grant Plaintiff such other and further relief as the Court deems just and proper.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF GALVESTON, TEXAS

By: _____
Name Atty and Bar Info.

III. NOTICE OF HEARING

A hearing will be held in the Municipal Court of Record for the City of Galveston, at 601 54th Street, #300, Galveston, TX 77551 on **June 26, 2019 at 8 A.M**., to determine whether the aforementioned structure on the property located at and legally described as _____ **a**nd commonly referred to as _____ **Street,** in the City of Galveston should be repaired, removed or demolished. At this hearing, each owner, lienholder or mortgagee will be required to submit proof of the scope of any work that may be required to comply with the ordinances mentioned in this Petition and the time it will take to reasonably perform the work.

Signed this _____ day of _____, 2019.

_____
Hon. _____, Presiding Judge

IV. NOTICE TO SUBSEQUENT GRANTEES, LIENHOLDERS OR TRANSFEREES

Pursuant to Chapter 22, of the Galveston City Code and Section 214.001 of the Local Government Code, notice is hereby given that the filing of this notice of hearing is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of this notice, and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such an interest after the filing of this notice.

Sample Agreed Order
HA - Cause Number

CITY OF GALVESTON	§	IN THE MUNICIPAL
Plaintiff	§	
	§	COURT OF RECORD
V.	§	
	§	FOR THE
Property Address	§	
Defendant	§	CITY OF GALVESTON

AGREED ORDER

On this day came on for hearing the above-styled and numbered cause. Pursuant to Chapter 22 of the Galveston City Code and Section 214.001 of the Local Government Code, this Court has jurisdiction. Having found that the parties agree to the following findings:

1. A vacant structure intended for human occupancy exists on the property legally described and located at **Legal Address** commonly referred to as ____ Street**,** in the city and county of Galveston, Texas (hereinafter "Structure").
2. The structure continues to violate numerous minimum housing standards in Chapter 10 of the Galveston City Code. The structure is not being maintained in good repair or safe condition. The structure was found to be dilapidated, substandard, unfit for human habitation, a hazard to the public health, safety and welfare, and constituted a nuisance. The structure could not be repaired without substantial reconstruction.
3. Upon information and belief, said structure and property is owned by **Name of Owner.**

IT IS THEREFORE ORDERED this **14th day of October, 2019**, that:

A. The structure shall be repaired by the owner(s), mortgagee(s), lienholder(s) and other persons having an interest in the structure.

B. Applicable building or fire related codes shall be complied with and necessary permits shall be obtained prior to repair of the subject structure.

C. Substantial progress towards completion of repairs by **November 8, 2019.** Substantial work shall include repair to the siding, roof, porches and the removal of trash, litter and debris and continued other landscaping needs.

IT IS ORDERED that a compliance hearing shall be set for **November 13, 2019**, to determine compliance with the Court's Order.

IT IS FURTHER ORDERED, that if said persons fail to abide by the Order of this Court within the allotted time, the City of Galveston, through its agents and contractors, is authorized to: (1) remove doors, gates, windows, locks, walls, boards and other barriers preventing entry onto the Property; (2) enter the Property to inspect, photograph, and measure the Property for purposes of documentation; (3) and place a lien on the Property where allowed by law for the City's incurred expenses.

SO ORDERED.

SIGNED on this the ___ day of _____, 2019.

_____
HONORABLE,
PRESIDING JUDGE

AGREED TO BY:

_____
OWNER

_____
ASSISTANT CITY ATTORNEY
CITY OF GALVESTON

NOTICE OF PUBLIC HEARING

A public hearing will be held in the Municipal Court of Record for the City of Galveston, at 601 54th Street, #300, Galveston, TX 77551 on **November 13, 2019, at 8 A.M**., to determine whether the aforementioned structure on the property located at and legally described as _____ and commonly referred to as _____ Street**,** in the City of Galveston should be repaired, removed or demolished. At this hearing, each owner, lienholder or mortgagee will be required to submit proof of the scope of any work that may be required to comply with the ordinances mentioned in this Petition and the time it will take to reasonably perform the work.

Signed this _____ day of _____, 2019.

_____
Presiding Judge

NOTICE TO SUBSEQUENT GRANTEES, LIENHOLDERS OR TRANSFEREES

Pursuant to Chapter 10, Section 10-62 of the Galveston City Code and Section 214.001 of the Local Government Code, notice is hereby given that the filing of this Order is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of this Order, and constitutes notice of the Order on any subsequent recipient of any interest in the property who acquires such an interest after the filing of this Order.

Sample Default Order
HA Cause Number

CITY OF GALVESTON	§	IN THE MUNICIPAL
Plaintiff	§	
	§	COURT OF RECORD
V.	§	
	§	FOR THE
Property Address	§	
Defendant	§	CITY OF GALVESTON

ORDER (Default)

On this day came on for hearing the above-styled and numbered cause. Pursuant to Chapter 22 of the Galveston City Code and Section 214.001 of the Local Government Code, this Court has jurisdiction. Having found that the parties agree to the following findings:

1. A vacant structure intended for human occupancy exists on the property legally described and located at **Legal Property Address** and commonly referred to as ____ Street**,** in the city and county of Galveston, Texas (hereinafter "Structure").
2. The structure continues to violate numerous minimum housing standards in Chapter 10 of the Galveston City Code. The structure is not being maintained in good repair or safe condition. The structure was found to be dilapidated, substandard, unfit for human habitation, a hazard to the public health, safety and welfare, and constituted a nuisance. The structure could not be repaired without substantial reconstruction.
3. The structure and property is owned by _____**,** with a last known mailing address of _____.

IT IS THEREFORE ORDERED this **26th day of June, 2019**, that:

A. The structure shall be repaired by the owner(s), mortgagee(s), lienholder(s) and other persons having an interest in the structure.

B. Applicable building or fire related codes shall be complied with and necessary permits shall be obtained prior to repair of the subject structure. Responsible party shall furnish to City officials an engineer's report and a scope of work.

C. For Repair: Substantial progress towards completion of repairs by **August 9, 2019.** Substantial work shall include repair to loose siding, securing portions of the property from unauthorized entry and removal of trash, litter and debris, compliance with approved scope of work and other landscaping needs.

IT IS ORDERED that a compliance hearing shall be set for **August 12, 2019**, to determine compliance with the Court's Order.

IT IS FURTHER ORDERED, that if said persons fail to abide by the Order of this Court within the allotted time, the City of Galveston, through its agents and contractors, is authorized to: (1) remove doors, gates, windows, locks, walls, boards and other barriers preventing entry onto the Property; (2) enter the Property to inspect, photograph, and measure the Property for purposes of documentation; (3) demolish the Structure and any accessory structure(s) on the Property; (4) remove all components and personalty; (5) and place a lien on the Property where allowed by law for the City's incurred expenses.

SO ORDERED.
SIGNED on this the ___ day of _____, 2019.

_____
HONORABLE, JAMES SCHWEITZER
PRESIDING JUDGE

NOTICE OF PUBLIC HEARING

A public hearing will be held in the Municipal Court of Record for the City of Galveston, at 601 54th Street, #300, Galveston, TX 77551 on **August 12, 2019 at 8 A.M**., to determine whether the aforementioned structure on the property located at and legally described as _____ and commonly referred to as ____Street**,** in the City of Galveston should be repaired, removed or demolished. At this hearing, each owner, lienholder or mortgagee will be required to submit proof of the scope of any work that may be required to comply with the ordinances mentioned in this Petition and the time it will take to reasonably perform the work.

Signed this _____ day of _____, 2019.

_____
Presiding Judge

NOTICE TO SUBSEQUENT GRANTEES, LIENHOLDERS OR TRANSFEREES

Pursuant to Chapter 10, Section 10-62 of the Galveston City Code and Section 214.001 of the Local Government Code, notice is hereby given that the filing of this Order is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of this Order, and constitutes notice of the Order on any subsequent recipient of any interest in the property who acquires such an interest after the filing of this Order.

Sample Ct. Order to Demolish Property
HA - Cause Number

CITY OF GALVESTON	§	IN THE MUNICIPAL
Plaintiff	§	
	§	COURT OF RECORD
V.	§	
	§	FOR THE
Property Address	§	
Defendant	§	CITY OF GALVESTON

ORDER AUTHORIZING THE CITY OF GALVESTON TO DEMOLISH STRUCTURE ON PROPERTY

On **June 26, 2019**, the Court found that the structure located at **Legal Property Address,** and commonly referred to as **_____Street**, in the City and County of Galveston, Texas to be a vacant structure intended for human occupancy. The structure violated numerous minimum housing standards in Chapter 10 of the Galveston City Code as more specifically set forth in Plaintiff's Original Petition and Notice of Hearing. The structure is not being maintained in good repair or safe condition, and continues to be dilapidated, substandard, and unfit for human habitation, a hazard to the public health, safety and welfare, constitutes a nuisance, and cannot be repaired without substantial reconstruction.

The structure and property was last owned by _____. The owner(s), mortgagee(s), lienholder(s) and other persons, known to the City that may possibly have an interest in the structure were properly noticed to attend the hearings.

THEREFORE THE COURT FINDS:

A. The structure is not being maintained in good repair or safe condition.
B. The structure continues to be dilapidated, substandard, and unfit for human habitation
C. The structure is a hazard to the public health, safety and welfare, constitutes a nuisance, and cannot be repaired without substantial reconstruction.

IT IS THEREFORE ORDERED this **day of September, 2019**, that the structure shall be demolished by the owner(s), mortgagee(s), lienholder(s) and other persons having an interest in the structure.

Upon these findings and pursuant to Chapter 22 of the Galveston City Code and Section 214.001 of the Local Government Code, it is the intention of the City of Galveston to proceed with and act upon the Court's **June 26, 2019** findings and Order.

IT IS FURTHER ORDERED, that the City of Galveston is authorized, through its agents and contractors, is authorized to: (1) remove doors, gates, windows, locks, walls, boards and other barriers preventing entry onto the Property; (2) enter the Property to inspect, photograph, and measure the Property for purposes of documentation; (3) demolish the Structure and any accessory structure(s) on the Property; (4) remove all components and personalty; (5) place a lien on the property where allowed by law for the City's incurred expenses; (6) seek other remedial action deemed appropriate by the Court, including a request for fines not exceeding two thousand dollars ($2,000.00) for each day the property remains in noncompliance and (7) Grant Plaintiff such other and further relief as the Court deems just and proper.

SO ORDERED.
SIGNED on this the **14th day of September, 2019**.

_____
HONORABLE.
PRESIDING JUDGE

NOTICE TO SUBSEQUENT GRANTEES, LIENHOLDERS OR TRANSFEREES

Pursuant to Chapter 22, of the Galveston City Code and Section 214.001 of the Local Government Code, notice is hereby given that the filing of this notice of hearing is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of this notice, and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such an interest after the filing of this notice.

Sample No Further Hearings Order
HA - Cause Number

CITY OF GALVESTON	§	IN THE MUNICIPAL
Plaintiff	§	
	§	COURT OF RECORD
V.	§	
	§	FOR THE
Property Address	§	
Defendant	§	CITY OF GALVESTON

NO FURTHER HEARINGS REQUEST AND ORDER

On this day came on for hearing the above-styled and numbered cause. Pursuant to Chapter 22 of the Galveston City Code and Section 214.001 of the Local Government Code, this Court has jurisdiction.

Parties in the above cause request no further hearings be scheduled at this time and for reasons the Plaintiff states: The structure no longer poses a safety hazard. On or about ___, 2019, the property was demolished.

THEREFORE, upon request of the Parties and in the interests of justice, no further hearings are scheduled at this time. Plaintiff's right to set the matter for future hearing is reserved.

SO ORDERED.

SIGNED on this the _____ day of _____, 2019.

_____
HONORABLE,
PRESIDING JUDGE