



Substandard Structures and Nuisance Abatement Partnering with Outside Counsel

By: Scott Lemond, City Attorney
Baytown Texas

§ 214.001. Authority Regarding Substandard Building

(a) A municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal, or demolition of a building that is:

- (1) dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare;
- (2) regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or
- (3) boarded up, fenced, or otherwise secured in any manner if:
 - (A) the building constitutes a danger to the public even though secured from entry; or
 - (B) the means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by Subdivision (2).



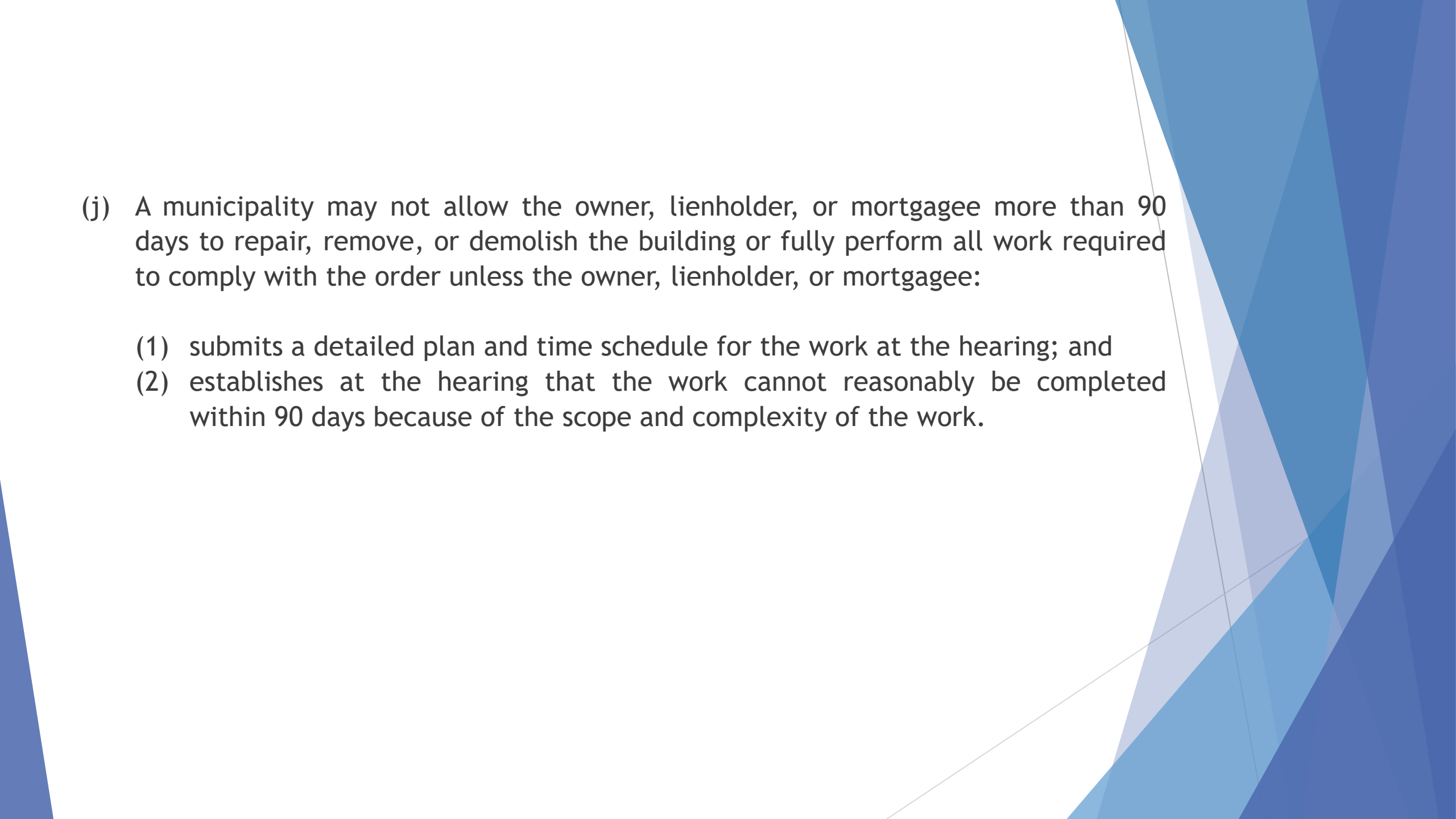
(b) The ordinance must:

- (1) establish minimum standards for the continued use and occupancy of all buildings regardless of the date of their construction;
- (2) provide for giving proper notice, subject to Subsection (b-1), to the owner of a building; and
- (3) provide for a public hearing to determine whether a building complies with the standards set out in the ordinance.

(d) After the public hearing, if a building is found in violation of standards set out in the ordinance, the municipality may order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time as provided by this section. The municipality also may order that the occupants be relocated* within a reasonable time.

*State and federal law require a Relocation Policy.

- (g) After the hearing, the municipality shall promptly mail by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service, or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building.
- (h) In conducting a hearing authorized under this section, the municipality shall require the owner, lienholder, or mortgagee of the building to within 30 days:
 - (1) secure the building from unauthorized entry; or
 - (2) repair, remove, or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within 30 days.
- (h) If the municipality allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the municipality shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the hearing official.

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- (j) A municipality may not allow the owner, lienholder, or mortgagee more than 90 days to repair, remove, or demolish the building or fully perform all work required to comply with the order unless the owner, lienholder, or mortgagee:
 - (1) submits a detailed plan and time schedule for the work at the hearing; and
 - (2) establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.

(k) If the municipality allows the owner, lienholder, or mortgagee more than 90 days to complete any part of the work required to repair, remove, or demolish the building, the municipality shall require the owner, lienholder, or mortgagee to regularly submit progress reports If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the municipal boundaries that exceeds \$100,000 in total value, the municipality may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing a building under this subsection. In lieu of a bond, the municipality may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the municipality

- (l) In a public hearing to determine whether a building complies with the standards set out in an ordinance adopted under this section, the owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.
- (m) If the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, the municipality may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense. This subsection does not limit the ability of a municipality to collect on a bond or other financial guaranty that may be required by Subsection (k).
- (n) If a municipality incurs expenses under Subsection (m), the municipality may assess the expenses on, and the municipality has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the building was located.
- (o) If the notice is given and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by Subsection (d), (e), or (g), *the lien is a privileged lien subordinate only to tax liens*

(p) A hearing under this section may be held by a civil municipal court.

§ 214.0015. Additional Authority Regarding Substandard Building

- (a) This section applies only to a municipality that has adopted an ordinance under [Section 214.001](#).
- (b) In addition to the authority granted to the municipality by [Section 214.001](#), after the expiration of the time allotted under [Section 214.001\(d\)](#) or [\(e\)](#) for the repair, removal, or demolition of a building, the municipality may:
 - (1) repair the building at the expense of the municipality and assess the expenses on the land on which the building stands or to which it is attached and may provide for that assessment, the mode and manner of giving notice, and the means of recovering the repair expenses; or
 - (2) assess a civil penalty against the property owner for failure to repair, remove, or demolish the building and provide for that assessment, the mode and manner of giving notice, and the means of recovering the assessment.

- (d) The municipality shall impose a lien against the land on which the building stands or stood, unless it is a homestead as protected by the Texas Constitution, to secure the payment of the repair, removal, or demolition expenses or the civil penalty.
- (e) Except as provided by [Section 214.001](#), the municipality's lien to secure the payment of a civil penalty or the costs of repairs, removal, or demolition is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the municipality's lien attaches if the mortgage lien was filed for record in the office of the county clerk of the county in which the real property is located before the date the civil penalty is assessed or the repair, removal, or demolition is begun by the municipality. The municipality's lien is superior to all other previously recorded judgment liens.
- (f) Any civil penalty or other assessment imposed under this section accrues interest at the rate of 10 percent a year from the date of the assessment until paid in full.

- (i) A lien acquired under this section by a municipality for repair expenses may not be foreclosed if the property on which the repairs were made is occupied as a residential homestead by a person 65 years of age or older.
- (j) The municipality by order may assess and recover a civil penalty against a property owner at the time of an administrative hearing on violations of an ordinance, in an amount not to exceed \$1,000 a day for each violation or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed \$10 a day for each violation
- (l) To enforce a civil penalty under this subchapter, the clerk or secretary of the municipality must file with the district clerk of the county in which the municipality is located a certified copy of an order issued under Subsection (j) stating the amount and duration of the penalty. No other proof is required for a district court to enter a final judgment on the penalty.

- Civil action may be brought under Chapter 54.
- § 54.012(6) “A municipality may bring a civil action for the enforcement of an ordinance . . . relating to dangerously damaged or deteriorated structures or improvements”
 - Preferential setting
 - Injunction “[o]n a showing of substantial danger of injury or an adverse health impact”
 - Civil penalty of up to \$1,000.00/day
 - Cost of repair or demolition

International Property Maintenance Code

My city has adopted the IPMC

International Code Council

Broad definitions

Construction and maintenance of buildings and structures:

- §108.1.1 An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing the minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.
- 108.1.2 Unsafe equipment
- 108.1.3 Structure unfit for human occupancy - “unsafe, unlawful or, because the degree to which the structure is in disrepair or lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment . . . or because the location constitutes a hazard”

- 108.1.5 Dangerous structure or premises
 - Unapproved means of exit/egress
 - Unsafe walking surface
 - Damaged so as likely to partially or completely collapse, detach, or dislodge
 - insufficient to resist natural or artificial loads of 1½ the original designed value
 - attractive nuisance
 - threat to life or health
- 108.2/108.2.1 - authority of building official to close vacant structures and disconnect utilities
- 109.1-.2 - “Emergency Measures”
 - Immediate vacancy
 - “Temporary safeguards” to make the structure temporarily safe
- Section 110 Demolition
- Section 112 Stop Work Orders

The real world

- The job of a City Attorney or Assistant City Attorney is diverse
- The job of a City Attorney or Assistant City Attorney is fast-paced
- The job of a City Attorney or Assistant City Attorney is stressful
- Small staff
- Litigation is time consuming
- Appeals go downtown

The real world

- Outsourcing
- Increased efficiency
- Increased productivity
- More political cover
- Innovation
 - Fresh set of eyes
 - Fresh set of ears



Thank you for your time!