

ORDINANCE 2020-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FREEPORT, TEXAS, AMENDING CHAPTER 150, BUILDINGS AND BUILDING REGULATIONS OF THE CITY OF FREEPORT CODE OF ORDINANCES, SUBSTANDARD AND VACANT BUILDING ABATEMENT; HAVING A SAVINGS CLAUSE, A SEVERABILITY CLAUSE, AND A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Freeport finds that there exists a number of substandard and abandoned buildings in the City of Freeport, that present a danger to the health, safety and general welfare of the citizens; and

WHEREAS, the condition and stability of commercial buildings throughout the City and in the historic downtown of Freeport, are of particular concern, specifically there have been recent incidents of building failure, such as an abandoned building collapsing, without warning, and crushing neighboring buildings with ongoing business, buildings with collapsed roofs or observed to be in the state of failure and nearing collapse of its roof, and failing, collapsing façade structure positioned over public walkway areas; and

WHEREAS, the commercial buildings in the historic downtown of Freeport, were built during the same time period, using similar construction techniques; and

WHEREAS, presenting an additional danger to the public, many of the commercial buildings throughout the City and in the historic downtown Freeport share common walls, such that structural failure of one building presents a severe risk to damage life and property of neighboring properties; and

WHEREAS, the City Council finds that it is necessary to establish a regular and standardized procedure to inspect commercial buildings throughout the City and in the historic downtown of Freeport, to protect the life and property of citizens, visitors, and property owners; and

WHEREAS the City Council further finds that a necessity exists to establish codified regulations and procedures regarding substandard and abandoned buildings, to abate such conditions in a fair and orderly manner; and

WHEREAS, the City Council further finds that the regulations and procedures contained in this ordinance are in addition to all other available remedies in state statutes, adopted building and maintenance codes, and remedies based upon nuisance; and

WHEREAS, the City Council finds that this Ordinance was adopted at a meeting which was open to the public and preceded by proper notice, as required by Chapter 551 of the Texas Local Government Code (the Open Meetings Act).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREEPORT, BRAZORIA COUNTY, TEXAS:

Section 1. Chapter 150, Buildings and Building Regulations , of the City of Freeport Code of Ordinances, is hereby adopted and established to read as follows:

SUBSTANDARD AND DANGEROUS BUILDINGS

Sec. 150.025. Attributes of dangerous buildings.

Any building or structure which has any or all of the conditions or defects described in this section shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property, welfare, or safety of the public or its occupants are endangered or adversely affected:

- (1) Whenever any door, aisle, passage, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- (2) Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn, or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

(3) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than 1 1/2 times the working stress allowed in the building code for new building of similar structure, purpose or location.

(4) Whenever any portion thereof has been damaged by fire, rain, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than the original design and is less than the minimum requirements of the building code for new building of similar structure, purpose or location.


(5) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

(6) Whenever any portion of a building or any member, appurtenance ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the building code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the building code for such buildings.

(7) Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds, rain or other forces of nature than is required in the case of similar new construction.

(8) Whenever the building or structure, or any portion thereof, because of:

- a. Dilapidation, deterioration or decay;
- b. Faulty construction;
- c. The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;
- d. The deterioration, decay or inadequacy of its foundation; or any other cause, is likely to partially or completely collapse.

(9) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for its zoned 

(10) Whenever, the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

(11) Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

(12) Whenever the building or structure has been so damaged by fire, wind, rain, flood or other force of nature, or has become dilapidated or deteriorated as to become:

- a. An attractive nuisance to children;
- b. A harbor for vagrants, vermin, criminals or immoral persons; or
- c. As to enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

(13) Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the building code or of any law or ordinance of state or jurisdiction relating to the condition, location or structure of buildings.

(14) Whenever, any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 66 percent of the strength; fire-resisting qualities or characteristics, or weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

(15) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

(16) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined to be a fire hazard.

(17) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

(18) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

(19) The term "building code" as used in this section, refers to the building code as adopted by the City.

Sec. 150.026. Dangerous buildings as public nuisance.

All dangerous buildings and structures within the terms of section 150.025 are hereby declared to be public nuisances and shall be repaired, vacated or demolished as provided in this article.

Sec. 150.027. Minimum standards for continued use or occupancy of buildings.

The minimum standards for the continued use and occupancy of all buildings or structures, regardless of the date of their construction, are that buildings or structures shall not be in a condition or have a defect which constitutes a dangerous building or structure as defined in section 150.025. The following standards shall be followed by the Building Official and the Board of Adjustments in ordering repair, vacation, or demolition.

(1) If the dangerous building or structure can reasonably be repaired so that it will no longer exist as a dangerous building or structure, it shall be ordered repaired.

(2) If the dangerous building or structure is in such a condition as to make it dangerous to the health, safety, morals or general welfare of its occupants, it shall be ordered to be vacated.

(3) In any case where a dangerous building or structure is 50 percent or more damaged, decayed or deteriorated from its original value or structure, it shall be demolished and in all cases where a building or structure cannot be repaired so that it will no longer exist in violation of the terms of this section, it shall be demolished. In all cases where a dangerous building or structure is a fire hazard existing or erected in violation of the terms of this section or any ordinances of the City or statutes of the state, it shall be demolished. Included in the terms "demolished" in this section is the cleaning of the property and removing all debris and trash, and sealing sewer service (belowground), to prevent infiltration into the City sanitary sewer system.

Sec. 150.028. Duties of Building Official

It shall be the duty of the Building Official or his designee to:

(1) *Inspections.* Inspect or cause to be inspected, when deemed necessary, public buildings, schools, halls, churches, theatres, hotels, dwellings, tenements or apartments, other multifamily residences and buildings zoned commercial for the purpose of determining whether any condition exist which render such a place a dangerous building or structure within the terms of section 150.025.

(2) *Investigations of complaints.* Inspect any building, wall or structure about which complaints are filed by any person to the effect that the building, wall, or structure is or may be a dangerous building or structure as defined in this article.

(3) *Closed/Occupied Buildings.* Upon probable cause to suspect that any building or premises are in violation of this article, if such building or premises are closed, or if a reasonable prudent person would have reason to believe that such premises are occupied, the Building Official may enter the building or premises for the purposes of inspecting such building or premises, with prior notice to the owner by certified mail as set forth in the tax rolls and shall have recourse to every procedure, right or remedy provided by law with prior notice to the owner as set forth in the tax rolls, to secure entry for the purpose of inspecting the building or premises.

(4) *Opened/Unoccupied Buildings.* The Building Official may enter an opened and clearly unoccupied building or premises for the purpose of securing the building or premises without notice to any person. The Building Official may take any action to secure an opened/unoccupied building or premises that is an attractive nuisance, and the cost of such action shall be assessed against the property owner. The Building Official shall have recourse to every procedure, right or remedy provided by law to secure any entry points to the building.

(5) *Inspection of Commercial Buildings Over 50 Years Old.* The Building Official may enter a commercial building or premises that is over 50 years old for the purpose of inspecting the building or premises with prior notice sent certified mail, to the owner as set forth in the tax rolls; The Building Official shall have recourse to every procedure, right or remedy provided by law to secure entry for the purpose of inspecting the building or premises. Inspection of buildings or premises under this section without specific complaint can be performed no more than once every 12 month period. The Building Official may inspect more often based upon other probable cause or complaint.

(6) *Inspection of Abandoned Building.* The Building Official may enter a building or premises that is abandoned for the purpose of inspecting the building or premises with prior notice to the owner by certified mail as set forth in the tax rolls, and without specific complaint. The Building Official shall have recourse to every procedure, right or remedy provided by law to secure entry for the purpose of inspecting the building or premises. Inspection of buildings or premises under this section without specific complaint can be performed no more than once every 12 month period. The Building Official may inspect more often based upon specific probable cause or complaint. All abandoned buildings shall be secured to prevent entry of trespassers and prevent attractive nuisance. The Building Official may take any action to secure an abandoned building or premises that is an attractive nuisance, and the cost of such action shall be assessed against the property owner. The Building Official must provide notice and opportunity to cure to the building owner of an abandoned building/attractive nuisance, prior to securing the building himself.

(7) *Commencement of proceedings.* When the Building Official has inspected or caused to be inspected any building or structure, and has found and determined that such building is

a dangerous building or structure, the Building Official shall commence proceedings to cause repair, vacation or demolition of the building or structure. The Building Official may commence criminal proceeding or civil proceedings, or both, as determined by the conditions existing on such premises.

(8) *Written notice to owner.* Notify in writing, by certified mail, the owner of the building or structure, as determined by using the records in the office of the county clerk in the county in which the building or structure is located, that the building is a dangerous building or structure as defined in this section. The notice to the owner shall further state their reason that the building does not meet the minimum standards for continued use and occupancy of a building and that unless the building is put in a condition so that the building is not a dangerous building or structure within a reasonable time not exceeding 30 days (as specified by the building official), then a hearing will be scheduled before the building Board to determine whether the building complies with the minimum standards set forth in this section.

(9) *Appearance at hearings.* Appear at all hearings conducted by the Board of Adjustments and testify as to the conditions of the dangerous building or structure.

(10) *Placement of notice on dangerous buildings; contents of notice.* Place a notice on all dangerous building or structures, upon a determination by the Building Official, reading as follows:

"THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING BY THE BUILDING OFFICIAL OF THE CITY OF FREEPORT. THIS NOTICE IS TO REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED, VACATED OR DEMOLISHED IN ACCORDANCE WITH THE NOTICE WHICH HAS BEEN GIVEN THE OWNER. IT IS UNLAWFUL TO REMOVE THIS NOTICE UNTIL SUCH NOTICE IS COMPLIED WITH."

Sec. 150.029. Criminal enforcement.

(1) The Building Official is hereby authorized to commence criminal proceedings whenever he finds that there has been a violation of any subsection of this section.

(2) It shall be unlawful for any owner, occupant or person in control to maintain a dangerous building or structure as defined in section 150.025. All buildings or structures which are determined to be dangerous buildings or structures are declared to be public nuisances. For purposes hereof, the term "maintain" shall mean keep, preserve, use, maintain status quo or permit to exist.

(3) After the notice described in section 150.028 is posted, it shall be unlawful for any person to use, enter, remain in or occupy such building or structure, or for the owner of such building to normally permit any person to use, enter, remain in or occupy such

building. It shall be a defense to any prosecution occurring under this subsection that entry was made for the sole purpose of repairing, demolishing or removing such building or structure.

(4) It shall be unlawful for any person to remove or deface the notice posted pursuant to section 150.028 until the required repairs, demolition or removal have been completed and a certificate of occupancy has been issued pursuant to the provisions of the building code.

(5) It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure without first obtaining the appropriate permits for each building or structure according to the applicable conditions prescribed in the building code.

(6) Violation of the section shall be a Class C misdemeanor with a fine not to exceed \$500.00. Each violation shall be considered a separate occurrence by separate fine.

Sec. 150.030. Civil enforcement.

(1) *Assessment lien or civil penalty.* If the dangerous building or structure is not vacated, secured, repaired, removed or demolished within the time allotted by order of the Board of Adjustments, the City may:

(a) Without further action by the Board of Adjustments, vacate, secure, remove or demolish the building at its own expense, by City personnel or its contractor. Any costs incurred by the City in securing, removing or demolishing the building or structures may be charged to the owner. The City may assess the expenses on, and the City shall have a lien against, the property on which the building was located, unless the property is a homestead as protected by the state Constitution. The lien arises and attaches to the property by the state Constitution. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in which the property is located. The notice of lien must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the building is located, the amount of expenses incurred by the municipality and the balance then due; or

(b) Acting by and through the Board of Adjustments , assess a civil penalty under the applicable state law not exceeding \$2,000.00 per day for failure to repair, remove or demolish the building or structure. Notice of the hearing in which the civil penalty will be considered shall be given to the owner by personally serving the owner with written notice; or by sending the notice in the United States mail by certified mail, return receipt requested, addressed to the owner at the owner's post office address at least ten days prior to the administrative hearing. Before holding

a hearing to consider a civil penalty, the board shall have evidence that the property owner was actually notified of the requirements of the order and his need to comply with such requirements. Any civil penalty assessed shall be imposed as a lien against the land on which the building stands or stood, unless it is a homestead as protected by the state Constitution, to secure the payment of such civil penalty.

Promptly after the imposition of the lien, the City shall file for record, in recordable form in office of the county clerk of the county in which the land is situated, a written notice of the imposition of the lien. The notice must contain a legal description of the land. In addition to the filing of the lien, the City may seek a judgment against the owner for the civil penalty in accordance with applicable state law.

(2) *Additional remedies.* In addition to any remedy set forth in this section, the City may exercise any and all of its rights to abate any nuisance as defined in this section and seek appropriate relief as authorized by applicable state law.

Sec. 150.031. Notice of hearing to owner, lienholder or mortgagee.

Upon notification from the Building Official that he, or his designee, has determined that a building or structure is a dangerous building or structure as defined in this article, and does not meet the minimum standards for continued use and occupancy, the Board of Adjustments shall cause a notice of hearing to be issued to the owner, lienholder and mortgagee of the alleged dangerous building or structure. The notice of hearing must be sent by certified mail at least ten days prior to the hearing and must include a statement that the owner, lienholder or mortgagee will be required to submit at the hearing proof the scope of any work that may be required so that the building or structure will not constitute a dangerous building or structure and the time it will take to reasonably perform the work. The Building Official or his designee shall make diligent effort to discover each mortgagee and lienholder for purposes of giving them notice and an opportunity to comment at the hearing. The records in the office of the county clerk in the county in which the building or structure is located shall be used to determine, if possible, the identity and address of any owner, lienholder or mortgagee of the building or structure. The City may file notice of the hearing in the official public records of real property in the county in which the property is located. The notice shall contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the instruments on file in the office of the county clerk, a legal description of the affected property and a description of the hearing. The filing of the notice is binding on subsequent grantees, lienholder or other transferees of an interest in the property who acquire such interest after the filing of the notice and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquired such interest after the filing of the notice.

Sec. 150.032. Hearing.

On the date set forth in the notice, the Board of Adjustments shall hold a hearing to determine whether the building is a dangerous building or structure as defined in section 150.025. If the board determines that the building or structure is a dangerous building or structure, the Board of Adjustments may order that the building be vacated, secured, repaired, removed or demolished by the owner within a reasonable time as provided for by V.T.C.A., Local Government Code chapter 214. In addition, if there is a mortgagee or lienholder, the Board of Adjustments may provide in the order an additional reasonable time as provided by this section for the ordered action to be taken by any mortgagee or lienholder in the event the owner fails to comply with the order within the time provided for action by the owner. No notice to any mortgagee or lienholder shall be required other than a copy of the order in the event the owner fails to timely take the ordered action. The owner of the building or the lienholder or mortgagee may present proof at the hearing of the scope of any work that may be required so that the building or structure will not be dangerous building or structure and the time it will take to reasonably perform the work.

Sec. 150.033. Findings of fact.

The Board of Adjustments shall make written findings of facts from the testimony offered, as to whether or not the building in question is a dangerous building within the terms of section 150.025.

Sec. 150.034. Copy of order to owner.

After the hearing, a copy of the order issued by the Board of Adjustments, if any, shall be promptly mailed by certified mail, return receipt requested, to the owner of the building.

Sec. 150.035. Filing and publishing order.

Within ten days after the date that the order is issued, the City shall:

- (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 the street address of legal description of the property, the date of the hearing, a brief statement indicating the results of the order and instruction stating where a complete copy of the order may be obtained.

Sec. 150.036. Copy of order to mortgagee and lienholder.

After the hearing, if the owner does not take the ordered action within the allotted time, a copy of the building Board order shall be promptly mailed by certified mail, return receipt requested, to each identified mortgagee and lienholder.

Sec. 150.037. Citation for violation.

At the conclusion of the hearing, the Board of Adjustments may order the building or structure repaired, demolished or removed as the council may deem necessary. In no event, however, shall the time fixed for such repair, demolition or removal be more than 90 days from the date of the Board of Adjustments order, unless the Board of Adjustments allows for additional time which shall be entered only if the Board of Adjustments finds that the building is in violation of the standards set out herein and the applicable codes of the City.

Sec. 150.038. Demolition and assessment.

Should the owner or other person responsible for such building or structure fail or refuse to comply with the order of the Board of Adjustments , the board may order the fire marshal, fire chief, or Building Official to close the building or structure or to demolish or remove the same and to assess the expenses incurred against the property owner. Notice of the amount of the assessment shall be given the owner and all lienholder by certified mail, return receipt requested to the addressee only, and upon the owner's failure to pay the same within 30 days after notice, the mayor may proceed to file a sworn affidavit of such expenses in the office of the county clerk, Brazoria County, Texas, to establish the City's lien for such removal expenses against the property to which the building was attached. The lien shall be extinguished if the property owner or other interested party reimburses the City for the removal expenses.

Sec. 150.039. Criminal Violation, penalty.

Any person violating the provisions of this article shall upon conviction, be subject to a criminal fine not to exceed the sum of \$500.00 and that each day in violation shall constitute a separate offense.

150.040 - BOARD OF ADJUSTMENTS

Sec. 1-01. - Board of Adjustments.

The City of Freeport Board of Adjustments shall have jurisdiction to hear all matters and make all findings regarding this Chapter 150.

Sec. 2-01. - Proceedings.

- (a) *Board required for action.* All cases to be heard by the Board must be heard by at least four members and any action taken must be concurred in by the vote of four members.
- (b) *Presentation of cases.* All cases brought before the Board shall be presented by the Building Official or his designee, who may be assisted as he deems necessary, by the city attorney.

- (c) *Meetings.* Meetings of the Board shall be open to the public, held at the call of the chairman, and at other times as determined by the Board.
- (d) *Oaths; certification.* The chairman, or the acting chairman in the chairman's absence, may administer oaths and compel the attendance of witnesses.
- (e) *Record.* A record of the entire proceedings shall be made by tape recording, or by any other means of permanent recording determined to be appropriate by the Board. Minute of proceedings showing the vote of each member on each question or the fact that a member is absent or fails to vote and records of its examinations and other official actions shall be kept by the Board and filed immediately in the office of the city secretary as public records.
- (f) *Continuances.* The Board may grant continuances for good cause shown.

Sec. 2-02. - Conduct of hearings.

- (a) *Rules.* Hearings need not be conducted according to the technical rules relating to evidence and witnesses.
- (b) *Oral evidence.* Oral evidence shall be taken only on oath or affirmation
- (c) *Hearsay evidence.* Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.
- (d) *Admissibility of evidence.* Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.
- (e) *Exclusion of evidence.* Irrelevant and unduly repetitious evidence shall be excluded.
- (f) *Rights of parties.* Each party shall have these rights, among others:
 - (1) To call and examine witnesses on any matter relevant to the issues of the hearing;
 - (2) To introduce documentary and physical evidence;
 - (3) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 - (4) To impeach any witness regardless of which party first called him to testify;
 - (5) To rebut evidence against him;
 - (6) To represent himself or to be represented by anyone of his choice who is lawfully permitted to do so.
- (g) *Inspection of premises.* The Board may inspect upon notice to all parties any building or premises involved in a hearing before the Board only during the course of such hearing.

Sec. 2-03. - Purpose.

The Board is empowered to enforce ordinances:

- (1) For the preservation of public safety, relating to the materials used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances or exits;
- (2) Relating to the fire safety of a building or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fire, or location, design, or width of entrances or exits;
- (3) Relating to dangerously damaged or deteriorated buildings or improvements; or
- (4) Relating to conditions caused by accumulations of refuse, vegetation, junk vehicles and or other matter that creates breeding and living space for insects and rodents.

Sec. 2-04. - Board actions.

The Board may, upon notice and hearing, as provided herein:

- (1) Order the repair, within a fixed period, of buildings found to be in violation of this article;
- (2) Declare a building substandard in accordance with this article;
- (3) Order, in an appropriate case, the immediate removal of persons or property found on private property, enter private property to secure removal if it is determined that conditions exist on the property that constitute a violation of this article, and order action to be taken as necessary to remedy, alleviate, or remove any substandard building found to exist;
- (4) Issue orders or directives to any peace officer of the state, including the sheriff or constable or the chief of police of the city, to enforce and carry out the lawful orders or directives of the Board;
- (5) Determine the amount and duration of a civil penalty, not to exceed \$2,000.00 per day, the city may recover, when it finds that an owner or owner's representative:
 - (1) Was actually notified of the provisions of this article; and
 - (2) After receiving notice of the article provisions, committed acts in violation of the article or failed to take action necessary for compliance with the article.

Sec. 2-05. - Board orders.

- (a) *Written orders.* The Board shall cause a written final decision to be prepared when it has made its determination.
- (b) *Delivery; publication; filing.* A copy of the final decision shall be:
 - (1) Sent by certified mail, return receipt requested, to all those persons entitled to notice of hearing;
 - (2) Published one time within ten calendar days after mailing has herein provided; and
 - (3) Filed in the office of the city secretary.

- (c) *Evidence of penalty for judgment.* A Board decision to impose a civil penalty is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the city for final judgment. No other proof shall be required for a district court to enter final judgment on a penalty established by the building and standards Board other than filing of a certified copy of the order establishing the penalty with the district clerk.

Sec. 2-06. - Judicial review.

- (a) *Standing.* Any person or persons, jointly or severally aggrieved by a decision and/or order of the Board, may file a petition in a district court of the county, duly verified, setting forth that the decision and/or order of the Board is wrong, or illegal, in whole or in part, and specifying the grounds there for.
- (b) The petition must be filed in said district court within 30 days after the date of receipt by such person or persons aggrieved by the decision and/or order of the Board of a copy of such decision and/or order. If such copy of the decision and/or order is mailed and properly addressed and stamped, it shall be presumed in the court that the person or persons to whom the notice was addressed received the notice three days after the post mark on the envelope or other mailing container. Such notice of any decision and/or order may be hand delivered to the person or persons aggrieved by the decision and/or order of the Board.
- (c) An appeal to the district court of any decision and/or order of the Board shall be limited to a hearing under the substantial evidence rule except, if a decision and/or order of the Board orders removal and/or demolition of a building located on property subject of the decision and/or order, the proceedings in the appeal to the district court shall be de novo.
- (d) *Disposition.* The court may:
 - (1) Reverse, in whole or in part;
 - (2) Affirm, in whole or in part; or
 - (3) Modify the Board decision.
- (e) *Costs.* Costs may be allowed against the Board only when the court finds it acted with gross negligence, in bad faith, or with malice in making its decision.
- (f) *Attorney's fees.* The court shall enter a judgment on behalf of the city for its attorney's fees and all other costs and expenses incurred, which may be against the property owners as well as all persons found to be in occupation of the subject property, if the Board decision is affirmed or not substantially reversed but only modified.

Sec. 2-07. - Board decision final.

If no appeal or appeals are taken from the decision and/or order of the Board within the time period provided in the preceding section, the decision and/or order of the Board is, in all things, final and binding.

Sec. 2-08. - Penalty.

It shall be unlawful for any person to violate any provision of this division, and, except as otherwise provided for herein, any person violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount not more than \$2,000.00, and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 2. Renumbering Sections of the Housing Code. That the following Sections contained in the Housing Code shall be renumbered as follows;

150.035	International Property Maintenance Code adopted	150.041
150.036	City Council to act as Board of Appeals	150.042
150.037	Definitions	150.043
150.038	Conflicts	150.044

Section 3. Savings. All rights and remedies which have accrued in favor of the City under this Ordinance and amendments thereto shall be and are preserved for the benefit of the City.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid, unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 5. Repealer. All ordinances and parts of ordinances in conflict herewith are hereby repealed but only to the extent of such conflict.

Section 6. Effective Date This ordinance shall take effect and be in force from and after its descriptive caption has been published twice in the Brazosport Facts.

READ, PASSED AND ADOPTED this ____ day of _____, 2020

**Brooks Bass, Mayor,
City of Freeport, Texas**

ATTEST:

APPROVED AS TO FORM ONLY:

**Betty Wells, City Clerk,
City of Freeport, Texas**

**Christopher Duncan, City Attorney,
City of Freeport, Texas**