

ORDINANCE NO. 179A

AN ORDINANCE AMENDING ORDINANCE NO. 179; REGULATING DANGEROUS BUILDINGS AND STRUCTURES WITHIN THE CITY; PROVIDING DEFINITIONS; ADOPTING THE STANDARD UNSAFE BUILDING ABATEMENT CODE, 1985 EDITION (THE "CODE"); ADOPTING CHAPT. 214, TEX. LOC. GOV'T. CODE, BY REFERENCE; AMENDING SECTIONS OF THE CODE AS ADOPTED; PROVIDING FOR INSPECTIONS OF BUILDINGS AND STRUCTURES WITHIN THE CITY; PROVIDING FOR NOTICE TO OWNERS AND PERSONS WITH INTERESTS IN DANGEROUS BUILDINGS; PROVIDING FOR HEARINGS TO DETERMINE IF A BUILDING COMPLIES WITH THE MINIMUM STANDARDS SET OUT IN THIS ORDINANCE; REQUIRING THE OWNER(S) OR PERSONS WITH INTERESTS IN DANGEROUS BUILDINGS TO REPAIR, REMOVE OR DEMOLISH SUCH BUILDINGS; PROVIDING FOR REPAIR AND DEMOLITION OF DANGEROUS BUILDINGS; PROVIDING FOR THE ASSESSMENT OF EXPENSES ON THE PROPERTY ON WHICH THE DANGEROUS BUILDING IS LOCATED; PROVIDING PENALTIES; PROVIDING FOR THE REPEAL OF ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, the Board of Commissioners recognizes the need to regulate and control unsafe, dangerous, dilapidated and substandard buildings within the City of Sunrise Beach Village (the "City") in order to preserve and protect the public health and safety and to preserve property values;

WHEREAS, *Chapt. 214, Tex. Loc. Gov't. Code*, ("Chapter 214") specifically authorizes the City to adopt this Ordinance and to regulate, control and abate dangerous structures and buildings;

WHEREAS, the Board of Commissioners seeks to adopt regulations outlining minimum criteria for all permanent commercial and residential buildings erected within the City and to provide procedures for the repair or demolition of unsafe, dangerous and substandard buildings;

WHEREAS, the Southern Building Code Congress International, Incorporated has published the Standard Unsafe Building Abatement Code 1985 Edition; and

WHEREAS, it has been determined that adoption of such 1985 edition of the Standard Unsafe Building Abatement Code, together with certain deletions, additions, and amendments thereto, is in the best interest of the health, safety, and welfare of the citizens and will more adequately protect life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of buildings, structures and premises;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF SUNRISE BEACH VILLAGE, TEXAS, THAT:

Section One. Findings of Fact. The findings and recitations set out hereinabove are found to be true and correct and are hereby adopted by the Board of Commissioners and made a part hereof for all purposes as findings of fact.

Section Two. Definitions. As used in this Ordinance the following terms shall have the meanings given below:

(a) "Building Official" means the City Building Inspector or a person employed, appointed, or designated by the Board of Commissioners for purposes of making inspections, sending notices, and otherwise enforcing the provisions of this Ordinance.

(b) "Dangerous Building" or "Unsafe Building" means any structure or building located within the incorporated limits of the City that is:

(1) in such a state or condition of repair or disrepair that all or any of the following conditions exist:

- (i) Walls or other vertical structural members list, lean, or buckle;
- (ii) Damage or deterioration exists to the extent that the building is unsafe;
- (iii) Loads on floors or roofs are improperly distributed or the floors or roofs are of insufficient strength to be reasonably safe for the purposes used;
- (iv) Damage by fire, wind, or other cause has rendered the building or structure dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the City;
- (v) The building or structure is so dilapidated, substandard, decayed, unsafe, unsanitary or otherwise lacking in the amenities essential to decent living or use that the same is unfit for human habitation or occupancy, or is likely to cause sickness, disease or injury or otherwise to constitute a detriment to the health, morals, safety or general welfare of those persons assembled, working, or living therein or is a hazard to the public health, safety and welfare;
- (vi) Light, air, and sanitation facilities are inadequate to protect the health, morals, safety, or general welfare of persons who assemble, work, or live therein;

- (vii) Stairways, fire escapes, and other facilities of egress in case of fire or panic are inadequate;
- (viii) Parts or appendages of the building or structure are so attached that they are likely to fall and injure persons or property;
- (2) dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare of the City's residents;
- (3) 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
- (4) boarded up, fenced or otherwise secured in any manner if:
 - (i) the building constitutes a danger to the public even though secured from entry; or
 - (ii) the means used to secure the building are inadequate to prevent unauthorized entry or use of the building to the extent 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;
 - (iii) defined as a dangerous or unsafe building by the Standard Unsafe Building Abatement Code, 1985 Edition, published by the Southern Building Code Congress International, Incorporated.

(c) "Responsible Parties" means the owner, occupant or person in custody of the building or structure, and any mortgagee or lienholder.

Section Three. Standard Unsafe Building Abatement Code, 1985 Edition. The Standard Unsafe Building Abatement Code, 1985 Edition, published by the Southern Building Code Congress International, Incorporated, a copy of which has this day been exhibited to and approved by the Board of Commissioners of the City of Sunrise Beach Village, and certified copies of which are on file in the offices of the City Secretary of the City of Sunrise Beach Village, is hereby adopted by reference and declared to be the Unsafe Building Abatement Code of the City of Sunrise Beach Village for the regulation, vacation, removal, repair, or demolition of unsafe buildings in a timely and legal manner in the City of Sunrise Beach Village; save and except Section 105.1 which deals with the composition of the membership of the Board of Adjustments and Appeals which is hereby amended to provide that the composition of the Board of Adjustments and Appeals of the City of Sunrise Beach Village shall be five (5) citizens of the City and, further provided that preference shall be given to qualified architects, engineers, and citizens knowledgeable in the construction industry, for such

board appointments; and save and except sections 302, 304, 401, 501.1, 501.4 504.2, 601, and 602 which are deleted in their entirety and replaced by the provisions of this Ordinance.

Section Four. Unsafe Buildings Declared a Nuisance. (a) It shall be unlawful for any person to maintain or permit the existence of any Unsafe Building in the City; and it shall be unlawful for any person to permit same to remain in such condition.

(b) All Unsafe Buildings are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures provided in this Ordinance.

(c) The Building Official shall enforce the provisions of this Ordinance.

Section Five. Inspections and Duties of the Building Official. The Building Official shall inspect, or cause to be inspected, every building, or portion thereof, reported to be unsafe. If such building, or any portion thereof, is determined to be unsafe, the Building Official shall give the responsible parties notice in accordance with the requirements set forth in Sections Six and Seven of this Ordinance. The Building Official shall further:

- (a) Inspect or cause to be inspected, when necessary, any building or structure within the incorporated limits of the City, including public buildings, schools, halls, churches, theaters, hotels, tenements, or apartments, multifamily residences, single-family residences, garages, warehouses, and other commercial and industrial structures of any nature whatsoever for the purpose of determining whether any conditions exist which render such places a "Dangerous Building" as defined herein.
- (b) Inspect any building, wall or structure about which complaints have been filed by any person to the effect that a building wall or structure is or may be existing in violation of this Ordinance.
- (c) Report to the Board of Adjustments and Appeals any non-compliance with the minimum standards set forth in this Ordinance. The City Building Official shall obtain from the secretary of the Board of Adjustments and Appeals a hearing date for a public hearing by the Board of Adjustments and Appeals on any structure believed to be a Dangerous Building and shall provide the secretary of the Board of Adjustments and Appeals with copies of the written notice to persons with interests in the property as provided for in Section Six hereof.
- (d) Appear at all hearings conducted by the Board of Adjustments and Appeals and testify as to the conditions of Dangerous Buildings within the City.
- (e) Place a notice on all Dangerous Buildings reading as follows: "This building has been found to be a dangerous building by the City of Sunrise Beach Village

Building Official. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given to the owner(s), occupant(s) and person(s) with interests in the property as shown by the records of the City Secretary and the Tax Appraisal District. It is unlawful to remove this notice until such notice is complied with."

- (f) Perform the other requirements with respect to notification of public hearings as are set forth more specifically in this Ordinance.

Section Six. Notice to Repair Required. (a) Should the Building Official determine that any building or structure within the incorporated limits of the City is a Dangerous Building or Unsafe Building he/she shall cause written notification to be sent, by certified mail, to the owner and all other persons having an interest in the building after a diligent effort to discover each owner, mortgagee, and lienholder. Such notice shall contain:

- (i) a description of the building or structure deemed unsafe and its location;
- (ii) a statement of the particulars which make the building or structure a Dangerous Building;
- (iii) notice of the date and time of a public hearing before the Board of Adjustments and Appeals to determine whether the building complies with the standards set out in this Ordinance;
- (iv) a statement that the owner, lienholder, mortgagee, or persons with a legal interest in the building 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 amount of time it will take to reasonably perform the work.
- (v) Such notice be served upon the Responsible Parties as set out in this Ordinance.

(b) The requirements to make a diligent effort, to use its best efforts, or to make a reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee, are satisfied if the municipality searches the following records:

- (i) county real property records of the county in which the building is located;
- (ii) appraisal district records of the appraisal district in which the building is located;
- (iii) records of the secretary of state;
- (iv) assumed name records of the county in which the building is located;
- (v) tax records of the City; and

- (vi) utility records of the City.

Section Seven. Sufficiency of Notice. (a) A Notice to Repair and a notice of a public hearing pursuant to this Ordinance shall be deemed properly served upon the Responsible Parties if a copy thereof is:

- (i) served upon him/her personally;
- (ii) sent by registered or certified mail, return receipt requested, to the last known address of such person as shown on the records of the City; and
- (iii) posted in a conspicuous place in or about the building affected by the notice.

(b) The City may file notice of the hearing in the Official Public Records of Real Property of Llano County.

Section 8. Duties of the Board of Adjustments and Appeals. The Board of Adjustments and Appeals shall:

- (a) Schedule and hold a hearing and hear testimony from the Building Official, the owner and other persons having an interest in the Dangerous Building, and any person desiring to present factual evidence relevant to the Unsafe Building. Such testimony shall relate to the determination of the question of whether the building or structure in question is a Dangerous Building and the scope of any work that may be required to comply with this Ordinance and the amount of time it will take to reasonably perform the work. The owner or a person having an interest in the Dangerous Building shall have the burden of proof to demonstrate the scope of any work that may be required to comply with this Ordinance and the time it will take to reasonably perform the work.
- (b) Upon conclusion of the hearing, the Board of Adjustments and Appeals shall determine by majority vote whether the building or structure in question is a Dangerous Building. Upon a determination that the building or structure in question constitutes a Dangerous Building, the Board of Adjustments and Appeals shall issue an Order:
 - (i) containing an identification of the building and the property on which it is located;
 - (ii) making written findings of the violations of the minimum standards that are present at the building;
 - (iii) requiring the owner and persons having an interest in the building to repair, vacate, or demolish the building within thirty (30) Days

from the issuance of such Order, unless the owner or a person with an interest in the building establishes at the hearing that the work cannot reasonably be performed within thirty (30) days, in which instance the Board of Adjustments and Appeals shall specify a reasonable time for the completion of the work; and

- (iv) containing a statement that the City will vacate, secure, remove or demolish the Dangerous Building and relocate the occupants of the building if the ordered action is not taken within the time specified by the Board of Adjustments and Appeals.
- (c) If repair or demolition is ordered, the Board of Adjustments and Appeals shall send a copy of the Order by certified mail to the owner and all persons having an interest in the property, including all identifiable mortgagees and lienholders within a reasonable period of time after the hearing. Within 10 days after the date that the Order is issued, the City shall:
- (i) file a copy of the Order in the office of the municipal secretary or clerk; and
 - (ii) publish in a newspaper of general circulation in the municipality in which the building is located 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 (may be a copy of the Order; and
 - (D) if not provided in the notice, instructions stating where a complete copy of the Order may be obtained.
- (d) If repair or demolition is ordered and notice of public hearing was not filed in the Official Public Records of Real Property of Llano County, the City may file and record a copy of the Order in such records of Llano County.
- (e) If the Board of Adjustments and Appeals allows the owner or a person with an interest in the Dangerous Building more than thirty (30) days to repair, remove, or demolish the building, the Board of Adjustments and Appeals in its written Order shall establish specific time schedules for the commencement and performance of the work and shall require the owner or person to secure the property in a reasonable manner from unauthorized entry while the work is

being performed. The securing of the property shall be in a manner found to be acceptable by the City Building Official.

- (f) The Board of Adjustments and Appeals may not allow the owner or person with an interest in the Dangerous Building more than ninety (90) days to repair, remove, or demolish the building or fully perform all work required to comply with the written Order unless the owner or person:
 - (i) submits a detailed plan and time schedule for the work at the hearing; and
 - (ii) establishes at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work.
- (g) If the Board of Adjustments and Appeals allows the owner or person with an interest in the Dangerous Building more than ninety (90) days to complete any part of the work required to repair, remove, or demolish the building, the Board of Adjustments and Appeals shall require the owner or person to regularly submit progress reports to Board of Adjustments and Appeals to demonstrate that the owner or person has complied with the time schedules established for commencement and performance of the work. The written Order may require that the owner or person with an interest in the building appear before the City Building Official to demonstrate compliance with the time schedules.
- (h) In the event the owner or a person with an interest in a Dangerous Building fails to comply with the Order within the time specified therein, the City may cause any occupants of the Dangerous Building to be relocated, and may cause the Dangerous Building to be secured, removed, or demolished at the City's expense. The City may assess the expenses on, and the City has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the Dangerous Building was located. The lien is extinguished if the property owner or a person having an interest in the building reimburses the City for the expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the County Clerk in the county in which the property is located. The notice of lien must contain the name and address of the owner of the Dangerous Building if that information can be determined by a diligent effort, a legal description of the real property on which the building was located, the amount of expenses incurred by the City, and the balance due. Such lien is a privileged lien subordinate only to tax liens and all previously recorded bona fide mortgage liens attached to the real property.
- (i) In addition to the authority set forth in Subsection (g) above, after the expiration of the time allotted in the Order for the repair, removal, or demolition of a

Dangerous Building, the City may repair the building at its expense and assess the expenses on the land on which the building stands or to which it is attached. The repairs contemplated by this Section may only be accomplished to the extent necessary to bring the building into compliance with the minimum standards established by this Ordinance, and to the extent such repairs do not exceed minimum housing standards. This Section shall be applicable only to residential buildings with ten (10) or fewer dwelling units. The City shall follow the procedures set forth in Subsection (g) above for filing a lien on the property on which the building is located.

Section Nine. Board Action. If the owners or persons having an interest in a building or structure that is, pursuant to this Ordinance, ordered to be repaired, rehabilitated, demolished, or removed, fails to timely comply with such Order, the Board of Adjustments and Appeals may:

- (a) authorize the Building Official to obtain the repair, securing or demolition of the building or structure as authorized by this Ordinance, and to file a lien against such property for the cost and expense of such work;
- (b) by ordinance, assess a civil penalty of up to \$1,000.00 per day against the owners and persons having an interest in the property; and
- (c) authorize and take such other action as contemplated by this Ordinance, or *Chapter 214*, as is necessary or advisable in the judgment of the Board to protect the public health, safety or welfare.

Section Ten. Assessment of Expenses and Penalties. (a) If the time allotted for the repair, removal or demolition of a building under this Ordinance has expired, then the Board of Commissioners may, in addition to the authority granted under *Chapt. 214, Tex. Loc. Gov't. Code*, and the foregoing sections of this Ordinance:

- (i) order the repair of the building at the City's expense and assess the expenses on the land on which the building stands or to which it is attached, or
- (ii) assess a civil penalty of up to \$1,000.00 per day against the responsible party for failure to repair, remove, or demolish the building.
- (iii) authorize the City Building Official to invite at least two (2) or more building contractors to make estimates pertaining to the needed repair, removal or demolition of a building. The Building Official shall cause to be made an assessment of expenses, and may also recommend civil penalties, based on such estimates. The Building Official shall endeavor

to minimize the expenses of any building repairs, removal or demolitions Order pursuant to this Ordinance.

(b) The City may repair a building under Subsection (a) only to the extent necessary to bring the building into compliance with the minimum standards of the City and only if the building is a residential building with 10 or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum standards prescribed by the City.

(c) The City 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. Promptly after the imposition of the lien, the City shall file for record, in recordable form in the office of the Llano County Clerk, a written notice of the imposition of the lien. The notice shall contain a legal description of the land.

(d) The City'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 City's lien attaches if the mortgage lien was filed for record in the office of the Llano County Clerk before the date the civil penalty is assessed or the repair, removal, or demolition is begun by the City. The City's lien is superior to all other previously recorded judgement liens.

(e) 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. The City may further file with the district clerk a copy of an ordinance assessing a civil penalty pursuant to this Ordinance.

(f) In any judicial proceeding regarding enforcement of the City's rights under this section, the prevailing party is entitled to recover reasonable attorney's fees as otherwise provided by statute.

(g) A lien acquired under this section by the City 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.

Section Eleven. Violations. (a) The owner of any Unsafe Building or Dangerous Building who shall fail to comply with any notice or Order to repair, vacate or demolish said building or structure, such notice or Order given by the authority of the Board of Adjustments and Appeals shall be guilty of a misdemeanor.

(b) An occupant or lessee in possession of any Unsafe Building or Dangerous Building who fails to comply with any notice or Order to vacate such building and fails to repair such building in accordance with an Order given by the Board of Adjustments and Appeals shall be guilty of a misdemeanor.

(c) Any person removing the notice of a Dangerous Building as provided for in Section Five (e) of this Ordinance, shall be guilty of a misdemeanor.

(d) The violation of any provision of this Ordinance shall be unlawful and a misdemeanor offense punishable by a fine not exceeding Five Hundred (\$500.00) Dollars. Each day a violation of this Ordinance continues shall constitute a separate offense.

Section Twelve. Appeal to the Board of Commissioners and Public Hearing. Any responsible party that is aggrieved by the decision of the Board of Adjustments and Appeals may appeal such decision to the Board of Commissioners within ten (10) days from the date of the decision appealed from. In such event, the Board of Commissioners shall set a time and date for hearing such appeal and hold such hearing within thirty (30) days from the date of the appeal.

(a) The purpose of the public hearing of the appeal shall be to determine whether or not the building is an Unsafe Building or a Dangerous Building in accordance with the standards set forth in Section Two (b), and to uphold, reverse or modify the decision of the Board of Adjustments and Appeals.

(b) The matter shall be set for hearing before the Board of Commissioners at the earliest practicable date, and notice of said hearing shall be served only on the responsible party, or parties, that filed the appeal, and the Building Official not less than ten (10) days prior to date of said hearing. All interested persons shall have the opportunity to be heard and may introduce evidence to the Board of Commissioners for its consideration. All responsible parties shall be and continue on notice of any such proceeding from the date of original notice given to them pursuant to this Ordinance, until the date of the final action on the appeal, if any, to the Board of Commissioners.

(c) After the public hearing, the Board of Commissioners shall make such findings and orders as it shall deem appropriate. If the Board of Commissioners sustains a decision of the Board that orders repair or demolition, the Board shall give all the notices provided hereinabove to be given by the Board after public hearing and decision by the Board. If the Board of Commissioners reverses a Board decision that orders repair or demolition, the Board shall recall and cancel any notices that ordered repair or demolition that were issued by the Board. In any event, provided the notices otherwise required by this Ordinance are given, no additional notice shall be required if the Board of Commissioners sustains the decision of the Board, except for notice to the responsible party, or parties, that filed the appeal.

Section Thirteen. Chapter 214. Chapter 214, Tex. Loc. Gov't. Code, is hereby adopted by the City and made a part of this Ordinance. In the event of any conflict or inconsistency between the terms and provisions of this Ordinance and Chapter 214, the terms and provisions of Chapter 214 shall govern and control.

Section Fourteen. Repeal Of Conflicting Ordinances. Ordinance No. 179 is hereby amended in its entirety, and all Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

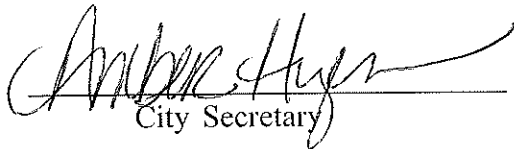
Section Fifteen. Severability. It is hereby declared to be the intention of the Board of Commissioners that the section, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the Board of Commissioners without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section Sixteen. Effective Date. This ordinance shall take effect immediately upon its approval and passage and publication as required by law.

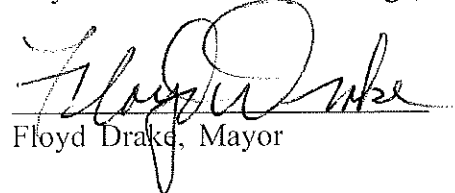
Section Seventeen. Open Meeting. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Government Code.

PASSED AND APPROVED by the Board of Commissioners on this 15 day of May, 2001.

Attest:


City Secretary

City of Sunrise Beach Village, Texas


Floyd Drake, Mayor