City of Houston, Texas, Ordinance No. 2014-_____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO HOARDING AND RELATED BEHAVIORS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the City of Houston (the "City") is authorized by Chapter 342, Texas Health & Safety Code; Chapter 214, Texas Local Government Code; and the City's home rule powers to enact ordinances related to rubbish and to unsanitary or unsafe property conditions;

WHEREAS, certain accumulations of objects or substances on real property may create hazards to human safety or health;

WHEREAS, such hazards may be the result of a "hoarding disorder" (as defined by the current edition of the *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-V")) or related behaviors by an occupant of real property;

WHEREAS, such hazards may be especially problematic for occupants of contiguous properties;

WHEREAS, the City Council finds that the health, safety, and general welfare of the public will be well served by amending the Code of Ordinances, Houston, Texas (the "Code of Ordinances") for the purposes of (a) addressing hazards to human safety or health that may result from hoarding behaviors; (b) reflecting new understandings of the role mental health may play in such behaviors; and (c) balancing the rights of property owners and occupants against the rights of neighbors and the public as a whole; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are adopted as a part of this Ordinance.

Section 2. That chapter 10 ("Buildings and Neighborhood Protection") of the Code of Ordinances is amended to add article XX, which shall read in its entirety as follows:

"ARTICLE XX. HOARDING AND RELATED BEHAVIORS

Sec. 10-751. Definitions.

When used in this article, the following words and phrases have the meaning stated, unless the context of their usage clearly indicates another meaning:

Dwelling unit means an interior space that provides an independent residential facility for one or more individuals (including permanent provisions for living, sleeping, eating, cooking, and sanitation) and that is used regularly for such purposes, together with any adjoining exterior space (such as a patio, carport, or fenced area) that reasonably appears to be part of the same independent facility. Notwithstanding the foregoing definition, space in any of the following structures does not constitute a *dwelling unit*:

(a) Jails;

(b) Hotels (as defined by article III of chapter 44 of this Code); and

(c) Buildings providing sleeping facilities primarily for the purpose of rendering services regulated by a department or agency of the federal government or of the State of Texas (including, but not limited to, the Texas Department of State Health Services).

Enforcing official is any person listed in section 10-752(b) of this Code and the said person's designees.

Occupant means an individual at least eighteen years old having lawful possession of a *dwelling unit.*

Property means a parcel of land to which a single account number has been assigned by an appraisal district.

Serious and immediate hazard means a condition that in the absence of immediate corrective action by the city presents a reasonable likelihood of causing serious bodily injury to a human being. The likelihood of a serious and immediate hazard may be determined from the personal observation of any person or from circumstantial evidence.

Sec. 10-752. Scope; responsibility for enforcement.

(a) This article applies to:

(1) Any property containing two or more dwelling units, without

regard to the form of the ownership of the property;

(2) Any dwelling unit that shares a common interior wall with another dwelling unit, without regard to the form of the ownership of the property or properties on which the dwelling units are located; and

(3) Any dwelling unit subject to a lawful condominium declaration within the meaning of either Chapter 81 or Chapter 82, Texas Property Code.

(b) The chief of police is primarily responsible for the enforcement of this article, in coordination with the fire chief, the city attorney, and the directors of the departments of health and human services, neighborhoods, and public works and engineering, as appropriate to the circumstances of the violation.

Sec. 10-753. Unlawful accumulations.

It is unlawful for an occupant of a dwelling unit within the scope of this article to store or otherwise to accumulate in or on the dwelling unit objects or substances of a nature or in a quantity reasonably likely to create a hazard to the safety or health of an occupant of another dwelling unit on the same or a contiguous property, even if the objects or substances are not visible from a public place or a public right-of-way.

Sec. 10-754. Penalty for violations.

(a) Unless a different penalty is provided elsewhere in this Code, a person violating this article shall be guilty of a misdemeanor and upon conviction shall be fined not less than $200.00 nor more than $500.00. Each day a violation continues shall constitute a separate offense.

(b) Upon discovery of a violation of this article, the enforcing official may issue to the violator a criminal citation enforceable in municipal court, provided that the violation remains after the enforcing official has issued to the violator a written warning affording a reasonable opportunity to cure the violation.

Sec. 10-755. Authority to enter property; warrants; emergencies.

(a) For purposes related to the enforcement of this article, authority to enter a dwelling unit includes authority to enter the property on which the dwelling unit is located, but only to the extent necessary to access the dwelling unit against which this article is being enforced.

(b) For purposes related to the enforcement of this article, an enforcing official may enter a dwelling unit, but only with written or verbal permission from an occupant, unless otherwise provided by this section.

(c) If circumstances exist that would lead a reasonable person to conclude the enforcing official does not have permission to enter a dwelling unit, entry shall be made only under authority of a warrant issued by a magistrate.

(1) In applying for a warrant, the official shall submit to the magistrate an affidavit, which may be based on information supplied by others, describing with reasonable specificity the dwelling unit into which entry is sought, stating facts giving rise to the official's reasonable belief that the dwelling unit is in violation of this article, and, to the extent known by the official after reasonable inquiry, the name and contact information of the occupant(s) of the dwelling unit.

(2) If the magistrate finds that probable cause exists for the enforcing official's entry into the dwelling unit, the magistrate shall issue a warrant authorizing the entry. The warrant shall constitute authority for the official to enter and to inspect the dwelling unit, to gather evidence by reasonable means, including photography and videography, and to procure samples and specimens as reasonably necessary to determine the existence and extent of a violation of this article. It is unlawful for a person to interfere or to refuse compliance with a warrant issued pursuant to this section.

(d) Notwithstanding anything to the contrary in this section, if the enforcing official reasonably believes that a serious and immediate hazard exists in or on a dwelling unit, the official may enter the dwelling unit at any time. In such circumstances the enforcing official:

(1) May be accompanied by other city employees, including officers of the police department;

(2) Shall make every reasonable effort to present proper identification to the owner, tenant, or other person who reasonably appears to have a right to occupy or to control the dwelling unit;

(3) Shall remain in or on the dwelling unit only for such time as is reasonably necessary to conduct inspections and to gather evidence required to determine whether a serious and

immediate hazard exists; and

(4) As soon as reasonably possible, shall memorialize the circumstances of the official's entry into the dwelling unit. The memorialization may be typed, handwritten, or in electronic form and shall be preserved in the records of the enforcing official.

After expiration of the time prescribed in subsection (d)(3) of this section, the official may enter a dwelling unit only under the authority of subsections (b) or (c) of this section.

Sec. 10-756. Authority to consult with mental health organization.

In a manner consistent with an operating procedure promulgated by the chief of police, an enforcing official may consult with MHMRA of Harris County (or with another nonprofit mental health organization approved in writing by the chief of police) when circumstances related to the enforcement of this article reasonably indicate that an occupant of a dwelling unit may suffer from a mental illness, including but not limited to a hoarding disorder as described in the then-current edition of the *Diagnostic and Statistical Manual of Mental Disorders*.

Sec. 10-757. Article supplemental.

The provisions of this article are cumulative of all other ordinances, laws, and applicable regulations."

Section 3. That, no later than 180 days after the day on which this Ordinance is effective, the Chief of Police, in consultation with the City Attorney, the Fire Chief, and the Directors of the Departments of Health and Human Services, Neighborhoods, and Public Works and Engineering, shall prepare a common operating procedure stating criteria and a protocol for consultations pursuant to Section 10-756 of this Code. The procedure shall be in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and with other federal and state laws as may be applicable.

Section 4. That the City Council declares its expectation that prosecutors assigned

to handle citations issued pursuant to Section 10-754 of this Code will be mindful of the relationship that may exist between mental illness and the conduct addressed by this Ordinance and will exercise their lawful prosecutorial discretion accordingly.

Section 5. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 6. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this ___ day of _____, 2014.

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Mayor of the City of Houston

Requested by David M. Feldman, City Attorney

Prepared by Legal Dept. _____
First Assistant City Attorney