

**ORDINANCE 2019-023**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLUTE, TEXAS, AMENDING CHAPTER 22, BUILDINGS AND BUILDING REGULATIONS OF THE CITY OF CLUTE CODE OF ORDINANCES, AND ADOPTING A NEW ARTICLE XIII, 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 Council finds that there exists a number of substandard and abandoned buildings in the City of Clute, that present a danger to the health, safety and general welfare of the citizens; 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. That Article XIII, Substandard and Abandoned Building Abatement, of Chapter 22, Buildings and Building Regulations , of the City of Clute Code of Ordinances, is hereby adopted and established to read as follows:

## CHAPTER 22 – BUILDINGS AND BUILDING REGULATIONS

### ARTICLE V. SUBSTANDARD AND VACANT BUILDING ABATEMENT

#### DIVISION 1. SUBSTANDARD BUILDING ABATEMENT

##### **Sec. 22-501. Minimum standards.**

The standards set forth in the International Building Code and the International Property Maintenance Code adopted in this Chapter are hereby adopted as the minimum standards for the continued use and occupancy of all buildings within the city regardless of the date of their construction.

##### **Sec. 7-61.1. Authority.**

In accordance with this article, the City's Building Official may 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; or
- (2) 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) regardless of its structural condition, it is unoccupied by its owners, lessees, or other invitees and is inadequately secured to prevent unauthorized entry or the means used to secure the building are inadequate to prevent unauthorized entry or use of the building by vagrants or other uninvited persons as a place of harborage or could be entered or used by children.

When used in this Article, the term "Building Official" shall include the City's Building Official or a representative of that person.

##### **Sec. 7-61.2. Substandard buildings described.**

Any building that has any of following conditions or defects shall be considered dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare:

- (1) Any building with roof, ceiling, floors, sills, or foundations, or any combination thereof, rotted or decayed and falling apart, windows out, uninhabitable, and untenable, due to obsolescence and deterioration caused by neglect or vandalism or fire damage or old age or the elements;
- (2) Any building in danger of falling and injuring the person or property of another;

- (3) Any building which is a fire menace, to wit, by being in a dilapidated condition, as fully described in subsections (1) or (2) hereof, and which has an accumulation of rubbish, vegetation and solid waste which is likely to become a fire, or be set on fire, in and around said building and endanger the person or property of others;
- (4) Any building which is in the condition or conditions described in subsections (1) or (2) or (3) hereof, which is damp and in unsanitary condition, which is likely to foster disease and sickness;
- (5) Any building that is considered unsafe, unfit for human occupancy, or dangerous as described in Section 108.1 of the International Property Maintenance Code as it may be amended from time to time.

When used in this article the term "building" shall include any erection or structure of any kind or any part thereof. All substandard structures are declared to be public nuisances and shall be vacated, secured, repaired, removed, or demolished as provided in this article.

**Sec. 7-61.3. Placard warnings.**

The Chief building Official may place or cause to be placed a placard on a building that is dilapidated, substandard or otherwise unfit for human habitation or use as a warning of its substandard conditions. An offense is committed under this section if a person, without authority from the Chief Building Official:

- (1) defaces, removes or destroys a placard placed in accordance with this section;
- (2) enters, occupies, or otherwise uses a structure on which the Chief Building Official has placed a placard; or
- (3) as owner or operator of a structure, authorizes a person to enter, occupy, or otherwise use a structure on which the Chief Building Official has placed a placard.

**Sec. 7-61.4. Notice of hearing**

- (a) Generally. Whenever the Chief Building Official determines that a building within the City does not comply with the standards set forth in this Chapter and is substandard as described in section 7-61.2, notice of a public hearing must be sent to the owner, lienholder and mortgagee of the property.
- (b) Contents of notice. The notice shall contain the following:
  - (1) The name and address of the owner of the affected property if the information can be determined;
  - (2) A legal description of the affected property;

- (3) an identification of the building subject to the hearing;
  - (4) a description of the violation of minimum standards set forth in this Article that is present at the building;
  - (5) a description of the hearing;
  - (6) a statement that the city will vacate, secure, remove, or demolish the building or relocate the occupants of the building if the ordered action is not taken within a reasonable time; and
  - (7) a statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with this Article and the time it will take to reasonably perform the work.
- (c) Identity of persons to receive notice. To determine the identity and address of each owner, mortgagee, and lienholder, the chief building official shall search the following records:
- (1) county real property records of the county in which the building is located;
  - (2) appraisal district records of the appraisal district in which the building is located;
  - (3) records of the Secretary of State;
  - (4) assumed name records of the county in which the building is located;
  - (5) tax records of the City; and
  - (6) utility records of the City.
- (d) Delivery of notice.
- (1) Notice of a hearing shall be personally delivered, sent by certified mail with return receipt requested, or delivered by the United States Postal Service using signature confirmation service, to each identified owner, mortgagee and lienholder. If personal service cannot be obtained and the owner's post office address is unknown, notice shall be given by publishing it at least twice within a 10-day period in a newspaper of general circulation in the county in which the building is located and posting the notice on or near the front door of the building.

- (2) The notice will be considered delivered if notice is mailed in accordance with this section to a property owner, lienholder, mortgagee, or registered agent and the United States Postal Service returns the notice as “refused” or “unclaimed.”
- (e) Filing notice. In addition to providing notice of the hearing in accordance with subsection (d) of this section, the Chief Building Official shall also file notice of the hearing in the official public records of real property in the county in which the property is located. Such notice must contain the name and address of the owner of the affected property if that information can be determined, a legal description of the affected property, and a description of the hearing.

**Sec. 7-61.5. Public hearing.**

- (a) Hearing. The **Board of Adjustments** shall hold a public hearing to determine whether a building complies with the standards set forth in this Article. At the public hearing, the owner, lienholder and mortgagee will be given the opportunity to comment, testify or present witnesses or written information about any matter relating to the substandard building.
- (b) Burden of proof.
  - (1) In the public hearing, the City shall have the burden of proof to demonstrate by a preponderance of the evidence that the building is substandard as described by section 7-61.2.
  - (2) In a public hearing, the owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with this Article and the time it will take to reasonably perform the work.

**Sec. 7-61.6. Order.**

- (a) Generally. After the public hearing, if a building is found in violation of standards set out in this article, the Board of Adjustments may order that the building be vacated, secured, repaired, removed, or demolished and may also order that the occupants be relocated within a reasonable time. The order issued by the Board of Adjustments shall specify a reasonable period of time for the owner to take the ordered action and may specify an additional reasonable period of time for the ordered action to be taken by the mortgagees or lienholders in the event the owner fails to comply with the order within the time period provided for action by the owner. The order shall require the owner, lienholder or mortgagee to file proof of compliance with the City Clerk as specified in Subsection (g) below.

- (b) Conditions of order.
- (1) Submission of reports. If the Board of adjustments 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 order shall require the owner, lienholder, or mortgagee to regularly submit progress reports (including inspection results) to the Chief Building Official to demonstrate compliance with the time schedules established for commencement and performance of the work.
  - (2) Appearance before the Board. If the Board of Adjustments 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 order may require that the owner, lienholder, or mortgagee appear before the Board to demonstrate compliance with the Board's order.
- (c) Filing the order. Within 10 days after the date that the order is issued, the Chief Building Official shall file a copy of the order in the office of the City Secretary.
- (d) Publishing the order. Within 10 days after the date that the order is issued, the Chief Building Official shall publish in a newspaper of general circulation in the city in which the building is located a notice containing:
- (1) the street address or legal description of the property;
  - (2) the date of the hearing;
  - (3) a brief statement indicating the results of the order; and
  - (4) instructions stating where a complete copy of the order may be obtained.
- (e) Mailing the order. After the hearing, the Chief Building Official shall promptly mail by certified mail with return receipt requested, delivered 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 in the event the owner fails to timely take the ordered action. The order will be considered delivered if notice is mailed to a property owner, lienholder, mortgagee, or registered agent and the United States Postal Service returns the notice as "refused" or "unclaimed."
- (f) Reasonable period of time to comply with order.
- (1) Thirty days. The order shall require the owner, lienholder, or mortgagee of the building, within 30 days, to:
    - (a) secure the building from unauthorized entry; or

- (b) repair, remove, or demolish the building, unless the owner, lienholder, or mortgagee establishes at the hearing that the work cannot reasonably be performed within 30 days.
- (2) **Securing.** If the Board of Adjustments allows the owner, lienholder, or mortgagee more than 30 days to complete any part of the work required to repair, remove, or demolish the building, the order shall require the owner, lienholder, or mortgagee to secure the property (in accordance with Section 7-61.15 of this Chapter) from unauthorized entry while the work is being performed.
- (3) **Thirty-one to ninety days.** If the Board of Adjustments grants the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the order shall set forth specific time schedules for the commencement and performance of the work.
- (4) **Over ninety days.** The order shall 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:
  - (a) submits a detailed plan and time schedule for the work at the hearing; and
  - (b) establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.
- (g) **Proof of compliance.** The following shall be proof of compliance with the order of the Board of Adjustments:
  - (1) a certificate of completion issued by the Chief Building Official if the building is secured in accordance with section 7-61.19 of this Chapter;
  - (2) a certificate of completion issued by the Chief Building Official if the building is demolished in accordance with a Board of Adjustments order;
  - (3) a certificate of occupancy issued by the Chief Building Official if the building is repaired in accordance with a Board of Adjustments order.

**7-61.7. Failing to comply with order**

- (a) If the building is not repaired, vacated, secured, removed, or demolished, or the occupants are not relocated within the allotted time, the Board of Adjustments shall hold a show cause hearing pursuant to section 7-61.5 and issue another order pursuant

to section 7-61.6 authorizing the City to vacate, secure, remove, or demolish the building or relocate the occupants at its own expense.

- (b) If the City incurs expenses under subsection (a), the City may assess the expenses, including the actual cost of elimination procedures plus an administrative charge of \$100.00, and the City shall have a lien against the property on which the building was located unless it is a homestead as protected by the Texas Constitution. The lien will be extinguished if the property owner or another person having an interest in the legal title to the property reimburses the City for its expenses. The lien arises and attaches to the property at the time the notice of 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 if that information has been determined in accordance with section 7-61.4(c), a legal description of the real property on which the building was located and the amount of expenses incurred by the City and the balance due. Any lien filed pursuant to this section shall be security for the expenditures made and interest accruing at the rate of ten percent on the amount due from the date of payment by the City. The lien shall be superior to all other liens except tax liens.
- (c) The Chief Building Official may revoke any permit issued in furtherance of an order to secure, repair, remove or demolish if the action ordered by the Board of Adjustments is not performed within the time schedules established for commencement and performance of the work pursuant to the Board of Adjustments order.

## **DIVISION 2. VACANT BUILDING ABATEMENT**

### **Sec. 7-61.13. - Purpose.**

- (a) The City Council finds and declares that:
  - (1) Buildings that are vacant and unsecured or not properly maintained attract criminals and serve as prime locations to conduct illegal criminal activities.
  - (2) Buildings that are vacant and unsecured or not properly maintained are vulnerable to being set on fire by unauthorized persons.
  - (3) Buildings that are vacant and unsecured or not properly maintained are a blight and cause deterioration and instability in neighboring properties and surrounding areas.
  - (4) Buildings that are vacant and unsecured or not properly maintained pose serious threats to the public's health and safety.



- (5) Abatement and rehabilitation of buildings that are vacant and unsecured or not properly maintained are necessary.
  - (6) Buildings that are vacant and unsecured or not properly maintained are declared to be public nuisances.
- (b) The purpose of this article is to protect the public health, safety, and welfare of the city and its citizens.

**Sec. 7-61.14. - Applicability.**

This Article applies only to buildings which are either (i) ordered by the Board of Adjustments to be secured in accordance with Article XIII, Division 1 of this Code or (ii) any building or structure regardless of whether it is used or intended for supporting or sheltering any use or occupancy as described in Division 2 of Article XIII.

**Sec. 7-61.15. - Definitions.**

Unless otherwise expressly stated, the following words, terms, and phrases, when used in this Article, have the meanings ascribed to them in this section, unless the context of their usage clearly indicates a different meaning:

**Administrator** means the city's Chief Building Official or a representative of that person.

**Board** when used as a verb means to cover an opening of a building or structure with lumber or panels of wood or other material.

**Boarded building** means a building on which any opening to the outside is covered with lumber or panels of wood or other material in accordance with section 7-61.22. The term does not include a building secured by normal measures.

**Building** means any structure used or intended for supporting or sheltering any use or occupancy to which this article applies, and includes an enclosed building, open building, and partially open building.

**Owner** means the owner of record in the county where the real property is situated; the holder of an unrecorded contract for deed; a mortgagee or vendee in possession; a mortgagor or vendor in possession; and an assignee of rents, receiver, executor, trustee, lessee, or other person in possession or with the right to control of the premises or a portion of the premises. Any person who is included in this definition as an owner has joint and several obligations for compliance with the provisions of this Article. A tenant who does not have the right of possession or control of a portion of the building that is unoccupied is not an owner for the purposes of this Article.

**Properly maintained** means taking measures to

- (1) Prevent the physical deterioration of the building;
- (2) Keep a building and in a clean, safe, secure, and sanitary condition, compliant with all applicable codes; and
- (3) Prevent the building from becoming a public nuisance.  
Secure means to take measures to ensure that the building is weatherproof and watertight and that the interior of the building cannot be accessed by:
  - (a) Unauthorized persons; or
  - (b) Birds, rodents or other animals through broken windows or other openings in the structure.

**Secured by normal measures** means the use of structural components of a building, including fixtures, such as doors, unbroken windows, locks, latches, electronic security systems, storm shutters, and security shutters which were installed while the building was constructed or added to the building while the building was occupied and being used for lawful purposes.

**Secured by other than normal measures** means a building secured by means other than those used in the design of a building or that are normally installed and utilized while a building is occupied and being used for lawful purposes. The term includes boarding any window or door opening.

**Solid waste** means any and all garbage, trash, refuse, and other discarded materials held or accumulated in containers, including without limitation, animal and waste materials resulting from the preparation, processing, or consumption of food; combustible waste materials such as paper, rags, cartons, boxes, plastics; noncombustible materials such as glass, crockery, and metal cans.

**Unoccupied** means not being used for a lawful occupancy. **Vacant building** means a building that is any of the following:

- a. Occupied by unauthorized persons and unsecured;
- b. Unoccupied and unsecured;
- c. Unoccupied and has had three or more violations of property maintenance ordinances within the previous 12-month period; or

**Sec. 7-61.16. - Enforcement authority**

The administrator is authorized to enforce the provisions of this Article and to make all necessary inspections, to issue citations, to give notice and to file applicable charges in the enforcement of this Article.

**Sec. 7-61.17. Notice of vacant building**

(a) Upon reasonable suspicion that a building may be a vacant building as determined by the administrator or receipt of a complaint about a vacant building, the administrator may inspect or cause an inspection of the property in order to determine if the building should be classified as a vacant building.

(b) If the administrator determines that a building may be classified as a vacant building under this Article, the administrator:

- (1) Shall attempt to contact the owner or an agent of the owner, identified by any sign posted on the property, by telephone or by electronic communication, and advise the owner or agent that the building is a vacant building and that the following measures need to be taken by the owner:
  - a. Take action to correct any code violations; and
  - b. Take measures to secure the building by normal or other than normal means within seven days from receipt of the notice given pursuant to subsection (b)(2) of this section;
- (2) Shall mail a notice to the owner, with a copy to any agent identified by any sign posted on the property that advises the owner that the building is a vacant building and that the following measures need to be taken by the owner:
  - a. Take action to correct any code violations; and
  - b. Take measures to secure the building by normal or other than normal means within seven days from receipt of the notice given pursuant to this subsection;
- (3) May post notice on the building that it appears that the building is a vacant building and that the following measures need to be taken by the owner:
  - a. Take action to correct any code violations; and
  - b. Take measures to secure the building by normal or other than normal means within seven days from the receipt of the notice given pursuant to section (b)(2) of this section; and
- (4) May issue a citation or file a complaint in municipal court for any violations of this Article or other applicable provisions of this Code.

(c) If the owner disputes the Administrator's determination that the building should be classified as a vacant building under this Article, the owner shall file a written notice of appeal with the administrator within twenty (20) days from receipt of the notice provided in this section. The administrator shall schedule a hearing before the Board of Adjustments to determine whether the building should be classified as a vacant building under this Article.

**Sec. 7-61.18. - Maintenance of vacant building and premises.**

- (a) Compliance with applicable laws. Any repairs, improvements, or alterations to the vacant building or on the property must comply with all applicable laws, codes, and regulations.
- (b) Duty to clean.
- (1) The owner of a vacant building shall remove all solid waste from the interior of the building.
  - (2) The owner of a vacant building shall remove all solid waste, high weeds and brush from the premises on which the vacant building is located.
  - (3) The owner shall keep the premises on which the vacant building is located properly maintained until the building is returned to an authorized occupancy or demolished.
- (c) Duty to secure.
- (1) The owner of a vacant building shall lock or secure all doors, windows, and other openings to the vacant building.
  - (2) The owner shall keep a vacant building secured, safe, and properly maintained.
  - (3) If securing a vacant building by normal measures fails to keep the vacant building secure, the owner must use other than normal measures to secure the building, including boarding the vacant building in accordance with section 7-61.22.
- (d) Duty to remove or repair. The owner of a vacant building shall promptly remove or repair any element of the building that is in a condition of decay or partial ruin by reason of neglect, misuse, or deterioration.

**Sec. 7-61.19. Standards for boarding a vacant building**

- (a) Except as provided in subsection (c) of this section, if the owner is unable to secure a vacant building by normal means, the owner shall board the vacant building in accordance with the following:

- (1) All unsecured doorways, windows, or other exterior openings must be covered by exterior grade wooden structural panels or other means as approved in writing by the administrator in order to ensure that such doorways, windows and other exterior openings are secured on the exterior of the building and not easily penetrated.
- (2) All exterior materials used to board a vacant building must be painted or coated the same color that is the predominant color of the building.
- (3) All broken glass and any other loose material must be removed from the opening before the covering systems are installed.
- (4) Exterior access to floor areas above the first floor, such as fire escapes and ladders, must be secured.
- (5) Fascia signs, overhanging signs, roof signs, and all other appurtenances, such as sun visors or awnings must be removed if they are in a dangerous condition or could create such a condition.
- (6) All loose or defective materials, trim, or structural elements on the exterior of the building must be removed.
- (7) Any condition which may become a hazard or danger to the public must be corrected.
- (8) The administrator maintains the sole discretion to determine if the building was secured in a manner that meets the requirements and Article XIII.

**Sec. 7-61.20. - Notice and order to abate.**

- (a) Upon finding a violation of this Article and following the exhaustion of any right to appeal the administrator's determination, the administrator shall serve, in person or by certified mail, return receipt requested, a final written notice and order to abate upon the owner.
- (b) If the owner fails to abate the violation within the period stated in the notice or within any additional time as the administrator may grant, the administrator may, without further notice, enter upon the property and abate the violation. The owner is liable for the costs incurred by the City to secure the premises and to abate the violation, including any administrative expenses, materials, and labor.

**Sec. 7-61.21. - Notice of costs incurred by City; lien**

- (a) The administrator shall mail a notice to the owner, mortgagee and lienholder of the property upon which the nuisance has been abated of the costs incurred or expended by the City to abate the nuisance.
- (b) The notice must advise the owner and lienholder that the city proposes to assess its costs against the property and place a lien on the property to collect the costs incurred by the city.
- (c) The administrator shall file a lien against the property for the city's costs.
- (d) Any lien filed pursuant to this section shall be security for the expenditures made and interest accruing at the rate of ten percent on the amount due from the date of payment by the City. The lien shall be superior to all other liens except tax liens.

**Sec. 7-61.22. - Entry or interference with notice prohibited.**

- (a) No person may enter or occupy any building that has been posted under section 7-61.17(b) except to repair or demolish the building under proper permit or for a purpose authorized by the owner, or as allowed under section 7-61.18.
- (b) No person may remove or deface any notice that has been posted under section 7-61.17(b).

**Sec. 7-61.23. - Cumulative remedies**

The provisions of this Article are not exclusive. The remedies provided by this Article are in addition to other procedures or remedies provided by law. Nothing in this Article may be deemed to abolish or impair existing authority or remedies of the City.

**Sec. 7-61.24. – Penalties**

Any person violating any provision of this Article or providing false information to the administrator shall upon conviction be punished by a fine in an amount not to exceed two thousand dollars (\$2000.00). A person commits an offense if he or she intentionally, knowingly, or recklessly engages in conduct that violates any provision of this Article.

**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.

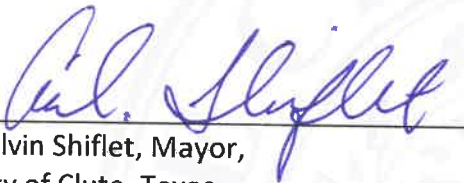
**Section 4. Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid, unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and

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 26<sup>th</sup> day of September 2019

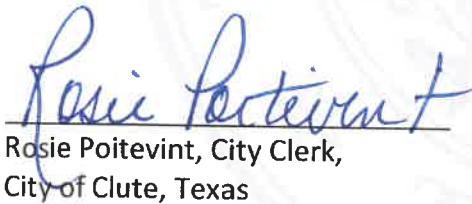


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Calvin Shiflet, Mayor,  
City of Clute, Texas

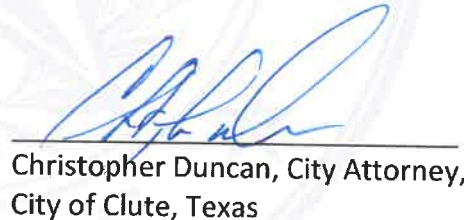
ATTEST:

APPROVED AS TO FORM ONLY:



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Rosie Poitevint, City Clerk,  
City of Clute, Texas



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Christopher Duncan, City Attorney,  
City of Clute, Texas