

AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS

ORDINANCE NO. 115

AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS, ESTABLISHING A BUILDING AND STANDARDS COMMISSION AND IMPLEMENTING SUBCHAPTER C, CHAPTER 54, LOCAL GOVERNMENT CODE TO PROVIDE QUASI-JUDICIAL ENFORCEMENT OF HEALTH AND SAFETY ORDINANCES DEALING WITH MATTERS OF PUBLIC SAFETY, RELATING TO THE MATERIALS OR METHODS USED TO CONSTRUCT A BUILDINGS OR IMPROVEMENTS, RELATING TO FIRE SAFETY, RELATING TO DANGEROUS OR DETERIORATED BUILDINGS OR IMPROVEMENTS, OR RELATING TO CONDITIONS CAUSED BY ACCUMULATION OF REFUSE AND OTHER MATTERS THAT CREATE BREEDING AND LIVING PLACES FOR INSECTS AND RODENTS; PROVIDING A THE COMMISSION WITH THE AUTHORITY TO DETERMINE A CIVIL PENALTY NOT TO EXCEED \$1,000.00 DOLLARS A DAY FOR THE VIOLATION OF AN ORDINANCE, EXCEPT NOT TO EXCEED \$5,000.00 PER DAY FOR A VIOLATION OF AN ORDINANCE RELATING TO POINT SOURCE EFFLUENT LIMITATIONS OR THE DISCHARGE OF A POLLUTANT, OTHER THAN FROM A NON-POINT SOURCE, INTO A SEWER SYSTEM, INCLUDING A SANITARY OR STORM WATER SEWER SYSTEM, OWNED OR CONTROLLED BY THE CITY; PROVIDING A SAVINGS CLAUSE; AND DECLARING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOWRY CROSSING, TEXAS:

SECTION 1. IMPLEMENTATION OF STATE STATUTE

The City Council of the City of Lowry Crossing, Texas, by this adoptive ordinance, hereby implements Subchapter C of Chapter 54, Local Government Code of the State of Texas.

SECTION 2. CREATION OF A BUILDING AND STANDARDS COMMISSION

- A. The City of Lowry Crossing Building and Standards Commission is hereby established in accordance with the provisions of Subchapter C, Chapter 54 of the Local Government Code of the State of Texas. The Commission is established to hear and determine cases concerning alleged violations of the ordinances of the City relating to:
1. The preservation of public safety, relating to the materials or methods used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances or exits;

2. The fire safety of 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 fires, 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 accumulation of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents.
- B. **Appointment:** Members of the Commission shall be appointed by the City Council. The Commission shall be composed of five (5) members and four (4) alternate members may be appointed. Appointments shall be for terms of two years, except that some of the first members appointed may be for a one year term in order to provide staggered terms.
- C. **Meetings:** The Commission shall hold its meetings on the call of the Chairman, or upon written request of at least one (1) member of the Commission or at the request of the City Council. All meetings shall be open to the public.
- D. **Quorum:** All cases to be heard by the Commission must be heard by at least four (4) members.
- E. **Chairman and Vice Chairman:** A Chairman and a Vice Chairman shall be selected by the members of the Commission. After the initial selection of Chairman and Vice Chairman, such selection shall be conducted following the annual appointment of new members.
- F. **Secretary:** The City Council shall appoint a secretary to the commission who but shall not be a member thereof. The Secretary shall keep a record of the cases, activities, and actions of the Commission and its determinations, give notice of the date and time of hearings, and perform such other duties as are consistent with or may be necessary for the enforcement of this ordinance, as required by the Commission.
- G. **Vote:** The concurring vote of four (4) members of the Commission shall be necessary for the adoption of any motion, the issuance of any order or the determination of the amount and duration of any civil penalty.

- H. **Rules and Regulations:** The Commission may adopt other rules in accordance with this ordinance and pursuant to Subchapter C, Chapter 54, Local Government Code necessary to establish procedures for use in hearings, providing ample opportunity for presentation of evidence and testimony by respondents or persons opposing charges brought by the municipality or its Building Officials relating to alleged violations of ordinances.

SECTION 3. JURISDICTION AND AUTHORITY

- A. **Jurisdiction:** The Building and Standards Commission shall have the quasi judicial authority authorized by said Subchapter C to enforce the health and safety ordinances of the City.
- B. **Authority and Functions:** The Building and Standards Commission may:
1. Order the repair, within a fixed period, of a building found to be in violation of a City Ordinance;
 2. The Building and Standards Commission shall have the quasi judicial authority authorized by said Subchapter C to enforce the health and safety ordinances of the City;
 3. Order, in an appropriate case, the immediate removal of persons or property found on private property, enter on private property to secure the removal if it is determined that conditions exist on the property that constitute a violation of a City ordinance, 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 a sheriff or constable or the chief of police of the City, to enforce and carry out the lawful orders or directives of the Commission;
 5. Determine the amount and duration of the civil penalty the City may recover against the owner or owner's representative with control over the premises on proof that such party was actually notified of the provisions of the ordinance, and after receiving notice of the ordinance provisions, said party committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance, such civil penalty not to exceed \$1,000.00 dollars a day for the violation of an

ordinance, except not to exceed \$5,000.00 per day for a violation of an ordinance relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the city, all as provided by Section 54.017, Chapter 54, Local Government Code.

SECTION 4. PRESENTATION OF CASES

The Chief Building Official of the City shall present all cases before the Commission.

SECTION 5. NOTICE

Notice of all proceedings before the Commission must be given by certified mail, return receipt requested, to the record owner of the affected property, and each holder of a recorded lien against the affected property, as shown by the records of the office of the county clerk of the county in which the affected property is located if the address of the lienholder can be ascertained from the deed of trust establishing the lien or other applicable instruments on file in the office of the county clerk; and to all unknown owners, by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practical. The notice shall be mailed and posted before the tenth (10th) day before the date of the hearing before the Commission and must state the date, time, and place of the hearing. In addition, the notice must be published in the official newspaper of the City on one (1) occasion before the tenth (10th) day before the date fixed for the hearing.

SECTION 6. THE HEARING

The Commission shall keep minutes of its proceedings showing the vote of each member on each question or the fact that a member is absent or fails to vote. The Commission shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the office of the Commission as public records.

SECTION 7. RECORDING OF CIVIL PENALTY

A determination by the Commission which involves the establishment of an amount and duration of a civil penalty shall be final and binding and constitute prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the City for final judgment in accordance with the established penalty.

SECTION 8. DUTY OF THE CITY SECRETARY

The City Secretary shall file with the district clerk of the county in which the municipality and property is located, a certified copy of the order of the Commission establishing the amount and duration of any civil penalty. Thereafter, pursuant to Subchapter C, Chapter 54, Local Government Code, no other proof shall be required for a district court to enter final judgment on the penalty. Also, pursuant to 54.040 an abstract of judgment lien may be issued.

SECTION 9. JUDICIAL REVIEW

Any persons jointly or severally aggrieved by any decision of the Commission may present a petition to a district court, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the legality. The petition must be presented to the court within thirty (30) calendar days after the date a copy of the final decision of the Commission is mailed by first class mail, certified, return receipt requested, to all persons to whom notice is required to be sent. The Commission shall mail such copy promptly after the decision becomes final. In addition, a copy shall be published one (1) time in the official newspaper of the City within ten (10) calendar days after the date of the mailing of the copy as herein provided, and a copy shall be filed in the office of the City Secretary. On presentation of the petition, the court may allow a Writ of Certiorari pursuant to said Subsection C, Chapter 54, Local Government Code. If no appeals are taken from the decision of the Commission within the required period, the decision of the Commission shall, in all things, be final and binding.

SECTION 10. MUNICIPAL COURT PROCEEDINGS NOT AFFECTED

Action taken by the City under this article shall not affect the ability of the City to proceed under the jurisdiction of the City's Municipal Court.

SECTION 11. REPEALING CLAUSE

All parts of ordinances, inconsistent or in conflict with the provisions of this ordinance are hereby repealed.

SECTION 12. SEVERABILITY CLAUSE

If any article, paragraph or subdivision, clause or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

SECTION 13. SAVINGS CLAUSE

An offense committed before the effective date of this ordinance is governed by the prior law and ordinances, as amended, in effect when the offense was committed and the former law is continued for this purpose.

SECTION 14. EFFECTIVE DATE

This ordinance shall take effect immediately after its passage and publication of the caption, as the law in such cases provides.

DULY ADOPTED by the City Council of the City of Lowry Crossing, Texas, on the 6 day of June, 2000.

APPROVED:

L.T. Dillard III
MAYOR

ATTEST:

Patricia Trancien
CITY SECRETARY

APPROVED AS TO FORM:

Lawrence D. Jackson
CITY ATTORNEY