

**CITY OF LOWRY CROSSING, TEXAS**

**ORDINANCE NO. 262**

**AN ORDINANCE OF THE CITY OF LOWRY CROSSING, TEXAS AMENDING THE CITY'S ZONING ORDINANCE, THE SAME BEING ORDINANCE NO. 110, BY AMENDING SECTION 22 THEREOF (SPECIAL AND ADDITIONAL REGULATIONS), BY ADDING A NEW SECTION 22-8 INCLUDING PROVISIONS REGARDING CERTAIN TEMPORARY USES ON PROPERTY WITHIN THE CITY THAT IS ZONED "C" COMMERCIAL OR "HC" HIGHWAY COMMERCIAL; PROVIDING FOR A PROCESS FOR ISSUANCE OF A PERMIT TO ALLOW A TEMPORARY USE, INCLUDING AN APPLICATION AND PAYMENT OF A PERMIT FEE; PROVIDING FOR SUSPENSION AND REVOCTION OF A TEMPORARY USE PERMIT AND APPEAL THEREFROM; PROVIDING FOR OTHER MATTERS REGARDING A TEMPORARY PERMIT; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Lowry Crossing, Texas ("City") heretofore adopted Ordinance No. 110, as amended, the same being the Zoning Ordinance of the City ("Zoning Ordinance"); and

**WHEREAS**, in addition to its authority to adopt zoning regulations pursuant to Chapter 211, Tex. Loc. Gov. Code ("Code"), the City is authorized by:

- Section 51.001 of the Code to adopt an ordinance, rule or police regulation that is for the good government, peace, or order of the City or for the trade and commerce of the City, and is necessary or proper for carrying out a power granted by law to the City or to an office or department of the City,
- Section 51.012 of the Code to adopt an ordinance, act, law or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare or good order of the City as a body politic.
- Section 215.028 of the Code to designate and regulate market places and privileges, and to inspect and determine the manner of inspecting any article bought for sale at a market,
- Section 215.031 of the Code to license, tax, suppress, or otherwise regulate hawkers, peddlers, and pawnbrokers,

- Section 215.033 of the Code to authorize a municipal officer to grant and issue licenses, direct the manner of issuing and registering licenses, and set the fees to be paid for licenses, and
- Section 122.005(a), Tex. Health & Saf. Code, to take any action necessary or expedient to promote health or suppress disease; and

**WHEREAS**, the City has received inquiries regarding allowing certain temporary uses in areas that are zoned “C” Commercial or “HC” Highway Commercial, and the City desires by this amendment to the Zoning Ordinance to establish a process regarding such temporary uses; and

**WHEREAS**, the City Council is authorized, pursuant to Chapter 211 of the Code and Section 28 of the Zoning Ordinance to amend the Zoning Ordinance; and

**WHEREAS**, public notice of the amendments to the Zoning Ordinance herein made was given and public hearings were held before the Commission and the City Council in accordance with law; and

**WHEREAS**, after public notice was given and a public hearing was conducted, and after considering the information submitted at the said public hearing and all other relevant information and materials, the Planning and Zoning Commission of the City has submitted its recommendation to the City Council regarding the amendments made herein; and

**WHEREAS**, after public notice was given and a public hearing was conducted, and after due deliberations and consideration of the recommendation of the Planning and Zoning Commission and any other information and materials received at the public hearing, the City Council has determined that the Zoning Ordinance should be amended as set forth herein.

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

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated into and made a part of this Ordinance.

Section 2. Amendment. Ordinance No. 110 of the City of Lowry Crossing, Texas, the same being the Zoning Ordinance of the City, is hereby amended in the following particulars, and all other sections, words, phrases, sentence, and provisions of Ordinance No. 110 are not amended hereby but are in all things ratified and affirmed:

A. Section 22 of Ordinance No. 110 is amended by adding a new Section 22-8 to read as follows:

22-8 Temporary Uses

- (1) *Uses in the “C” Commercial and “HC” Highway Commercial Zoning Districts.* The following may be permitted by the City Council as temporary uses, but only in the “C” Commercial or the “HC” Highway Commercial zoning district and subject to the provisions of this section:

- (a) mobile food vendors, whose food is prepared and sold from a vehicle that is properly registered by the Texas Department of Transportation, with a current health inspection certificate from Collin County;
- (b) firework vendors that are selling fireworks from a building;
- (c) an outdoor art or craft show or exhibit;
- (d) Christmas tree sales;
- (e) seasonal retail sale of agricultural or horticultural products, if the use is located at least 200 feet from a dwelling;
- (f) religious, patriotic or historical assemblies, displays or exhibits;
- (g) other temporary uses that are similar to those described in this section; and
- (h) on-site temporary signs relating to temporary uses.

This section regarding temporary uses is intended to permit occasional, temporary uses and activities when consistent with the purposes of the zoning regulations and when compatible with other nearby uses.

- (2) *Prohibitions.* The following may not be conducted or used in connection with a permitted temporary use:
  - (a) the sale or consumption of alcoholic beverages;
  - (b) a portable toilet serving the temporary use; and
  - (c) use or storage of hazardous materials or substances (excludes fireworks during authorized sales season only).
- (3) *Permit Duration.* A permit for a temporary use under this subsection may be issued for up to 60 days and renewed twice, for a total operating period not to exceed 180 days during the one year period following the issuance of the permit. A temporary use permit, if approved by the City Council, will specify the allowed temporary use, the period of time for which it is approved, the location where it is approved, and any special conditions attached to the approval.
- (4) *Application; Submission; Decision.*
  - (a) Application Required. A person desiring to conduct a temporary use shall file an application for the same, on a form provided by the City, with the City Secretary. Upon receiving a fully completed application and all information required in connection with the application and the application fee, the City Secretary will present the application to the City

Council. A fully completed application must be filed with the City Secretary at least ten days before a Council meeting. An application fee of \$50.00 must be submitted at the time of the filing of the application; the fee is to cover a portion of the costs of the City's review and processing of the application and is non-refundable.

(b) Application Contents. An application must include:

(i) a statement that the applicant is the owner of the property (and the application must be signed by the owner), or if not the owner, a signed, original statement from the owner of the property stating that the applicant is authorized to submit the application and to conduct the requested temporary use thereon and to bind the property owner to all conditions of the permit and this section;

(ii) a diagram (to scale) of the property where the use is proposed to be located (including all property boundary lines), the location on the property of all facilities to be used in connection with the temporary use (including the distance of such facilities from the property lines and a description of the facilities), the location on the property of any signage to be used in connection with the temporary use, methods of ingress and egress to and from the property, location of off-street parking, the proposed time period for the temporary use and the hours of use, the names and addresses (physical address, not a post-office box) of all persons that will use the property for the purposes identified in the application, and any additional information required by the City Secretary or City building official in connection with the proposed temporary use; and

(ii) a statement by which the applicant agrees that City inspectors may enter and inspect the land or premises that is the subject of the application and the permit for purposes of determining compliance with the permit (if issued) and all applicable ordinances, laws, rules, codes, standards, and regulations.

(c) City Council Determination. The City Council will review a fully completed application, and may grant a temporary use after determining that the temporary use:

(i) will not impair the normal, safe, and effective operation of a permanent use on the same site;

(ii) will be compatible with nearby uses;

(iii) will not adversely affect public health, safety, or convenience;

(iv) will not create a traffic hazard or congestion; and

- (v) will not interrupt or interfere with the normal conduct of uses and activities in the vicinity.

Additionally, in determining whether or not to grant a temporary use, the City Council may consider such other matters or items as the Council deems necessary or appropriate, including but not limited to the factors identified in Section 18-7 of this Ordinance.

In reaching a determination regarding an application, the City Council may require and condition the approval of a temporary use on compliance with additional requirements that the Council determines are necessary to ensure land use compatibility and minimize adverse effects on nearby uses, including requirements for hours of operation, frequency of use, parking, traffic circulation, screening, enclosure, site restoration, and cleanup. A grant of a temporary use shall, among other things, specify the duration of the use (which may be up to a maximum of 60 days, with an opportunity for two renewals, for a total operating period not to exceed 180 days; the Council may authorize the City Secretary to grant a renewal).

After making a determination regarding an application, the City Council shall approve (which approval may include conditions regarding a temporary use) or deny an application for a temporary use.

If the City Council approves a temporary use, the City Secretary shall issue a written temporary use permit that shall specify the terms and conditions of the temporary use as approved by the City Council.

A temporary use authorized pursuant to this section, and the property that is the subject of the temporary use, shall not be exempted or relieved from compliance with all other ordinances, laws or licenses applicable to such use or the property.

(d) Inspection; Suspension; Revocation; Appeal.

- (i) *Inspection.* A permit holder must, as a condition of the temporary permit, allow City inspectors to enter and inspect the land or a premise that is the subject of the permit.

If the property is occupied at the time of an inspection, the City inspector shall present the inspector's credentials and request entry. If the premises are unoccupied, the inspector shall attempt to contact a responsible person and request entry.

- (ii) *Suspension.* The City's building official or the City Secretary may suspend a permit issued pursuant to this section if the building official or the City Secretary determines that:

- (a) the permit was issued in error; or
- (b) the application for a permit included a false statement or material misrepresentation;
- (c) the permit or license holder has not complied with the requirements of the permit, section, or this or any other applicable ordinance, law, rule, code, standard, or regulation.

A suspension is effective until the building official or City Secretary determines that the permit holder has complied with the requirements of the permit. The activity and use conducted under the permit shall be discontinued during the period of suspension.

- (iii) *Revocation.* The City building official or the City Secretary may immediately revoke a person's permit that has been suspended if the building official or City Secretary determines that the person:
  - (a) did not comply in a reasonable time with the requirements of the permit and/or this section for which the suspension was ordered; or
  - (b) during the suspension, did not comply with other requirements of the permit and/or this section.

The activity and use conducted under the permit shall be discontinued during the period of suspension.

- (iv) *Notice of Intent to Suspend or Revoke.* The City building official or City Secretary shall give notice to the person affected of the building official's or City Secretary's intent to suspend or revoke the permit. The notice shall include the reason for the intent to suspend or revoke the permit, and shall be sent to any of the persons identified in the permit application or the permit as being a user of the permit. The notice shall specify a reasonable time for compliance with the permit and this section. Notice may be (a) given by personal delivery, (b) sent by United States certified mail, postage prepaid, return receipt requested, or (c) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given: (x) when received if delivered personally, (y) 48 hours after deposit if sent by mail, and (z) 24 hours after deposit if sent by Federal Express or other nationally recognized carrier.
- (v) *Appeal of Suspension or Revocation.* The holder of a permit issued pursuant to this section may appeal a suspension or revocation of the permit to the City Council by filing a written notice of appeal

of the same with the City Secretary not later than five (5) days following the date of the suspension or revocation. The notice of appeal must be actually received in the office of the City Secretary within that five (5) day period and during the regular business hours of the City Secretary's office. If an appeal is filed, the City Secretary shall schedule the appeal for Council consideration at the next regular meeting of the Council for which there is time, in accordance with law, to place an item concerning the same on the Council agenda.

Section 3. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Two Thousand and No/100 Dollars (\$2,000.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 4. Savings. This Ordinance shall be cumulative of all other ordinances of the City of Lowry Crossing and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance.

Section 5. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid, void, unlawful or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, voidness, unlawfulness or unconstitutionality, which remaining portions shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval, and after publication as may be required by law.

**PASSED AND APPROVED** by the City Council of the City of Lowry Crossing, Texas this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Derek Stephens, Mayor

ATTEST:

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Janis Cable, City Secretary