

CITY OF HIGHLAND HAVEN

ORDINANCE #043 (Rev #5)

June 15, 2021

AN ORDINANCE OF THE CITY OF HIGHLAND HAVEN, TEXAS PROVIDING FOR ISSUANCE OF NOTICE OF VIOLATION OF THE CITY OF HIGHLAND HAVEN ORDINANCES AND ISSUANCE OF NOTICES AND WARNINGS, OR WITHOUT WARNING OR OTHER NECESSARY ACTION WHEN IMMEDIATE ACTION IS REQUIRED; PROVIDING GENERAL ENFORCEMENT AND PENALTY CLAUSES; ESTABLISHING A PRESUMPTION FOR NUISANCE, ZONING, AND OTHER BUILDING VIOLATIONS UPON A PROPERTY; PROVIDING OPEN MEETINGS AND SEVERABILITY CLAUSES; PROVIDING AN EFFECTIVE DATE AND OTHER RELATED MATTERS.

Whereas, the Board of Aldermen of the City of Highland Haven, Texas (herein “City”) has determined that the definitions portion of this ordinance should be transferred to a stand alone ordinance; and

Whereas, the Board of Aldermen finds it reasonable and necessary in the case of an immediate threat to the public health, safety, and welfare that an officer should have the discretion to issue a Notice of Violation or take other reasonable action necessary to address the threat; and

Whereas, the Board of Aldermen wish to establish a graded procedure to the enforcement of city ordinances.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF HIGHLAND HAVEN, TEXAS THAT:

Section 1. FINDINGS - The foregoing recitals are hereby found to be true and correct and are hereby adopted by the Board of Aldermen and made a part hereof for all purposes as findings of fact.

Section 2. ENFORCEMENT PROCEDURE

A three-step process will normally be followed to obtain ordinance compliance but if circumstances dictate, either or both of the first two steps may be omitted. This process is usually performed by the assigned ordinance enforcement officer or the building permit official but may also be performed by any Alderman or the Mayor.

Step 1. A Letter of Notice of Violation will be mailed to the property owner at the address of record of the property owner explaining the violation and expressing the need to have the violation corrected as soon as possible, but not later than 7 days following receipt of the Letter of Notice of Violation. A copy of the Ordinance violated will be included with the mailing, and a copy of Texas Local Government Code Chapter 54.001 explaining enforcement actions that will be taken if the violation is not corrected. If the violation is not corrected within 7 days, Step 2 will be carried out.

Step 2. A Letter of Warning will be mailed to the property owner at the address of record of the property owner by Certified Mail notifying the property owner that the violation still exists and stating that the violation must be corrected within 7 days of the receipt of the Letter of Warning; and, stating that if the violation is not corrected within that time frame, the violation will be referred to the Highland Haven Municipal Court whereupon a Court citation or summons may be issued resulting in a fine of up to \$500.00 (five hundred dollars); up to \$2000.00 (two thousand dollars) if it is determined the violation poses a threat to health or safety; and up to \$4000.00 (four thousand dollars) if the violation is dumping of refuse. Fines may include court costs or legal expenses incurred by the City if allowed or authorized by the Judge. A copy of the Ordinance violated will be included with the mailing, and a copy of Texas Local Government Code Chapter 54.001 explaining enforcement actions that will be taken if the violation is not corrected.

Step 3. If the violation is not corrected within the time frame indicated in Step 2, the matter will be referred to the Highland Haven Municipal Court.

Regarding Repeat Offenders:

Repeat Offender is an offender who repeats the same violation within 180 days after having been the recipient of a Letter of Notice of Violation, Letter of Warning, or Referral of a Violation to the Highland Haven Municipal Court.

In the event of a Repeat Offender who temporarily comes into compliance with the Ordinance, but repeats the violation within 180 days, no Letter of Notice of Violation will be sent. A Letter of Warning will be sent stating that violation has been repeated and must be corrected within 72 hours of receipt of the Letter of Warning. If the violation is not corrected, the violation will be referred to the Highland Haven Municipal Court. Subsequent violations will be referred directly to the Highland Haven Municipal Court with no Letter of Warning sent.

Section 3. CULPABLE MENTAL STATE NOT REQUIRED - Unless otherwise specifically set forth in an ordinance of the City, or in state law as adopted, allegations and evidence of culpable mental state are not required for proof of an offense.

Section 4. GENERAL PENALTIES

- (A) Any person, owner, occupant and/or other responsible person who shall violate any of the provisions of a nuisance ordinance, or shall fail to comply therewith, or with any of the requirements thereof, within the City Limits shall be deemed guilty of an offence and

shall be liable for a fine not to exceed the sum of five hundred dollars (\$500.00). However, a fine for the violation of a provision of zoning ordinances, subdivision ordinances, technical codes adopted by the council, or ordinances that govern fire safety, or public health and sanitation, shall be punished by a fine not to exceed two thousand dollars (\$2000.00). The dumping of refuse may be punished by a fine not to exceed four thousand dollars (\$4000.00).

- (B) However, no penalty shall be greater or less than the penalty provided for the same or similar offence under the laws of the state. Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided by the City's Ordinances.
- (C) Any person who shall remove a notice of violation or a placard posted pursuant to an ordinance of the City from a property prior to correction of the deficiencies indicated thereon shall be deemed guilty of a misdemeanor offense.
- (D) Any person who shall knowingly or intentionally provide false information on any application required pursuant to an ordinance of the City shall be deemed guilty of a misdemeanor offense.
- (E) Any person who shall occupy a building, or any part thereof, without having received a Certificate of Occupancy in compliance with any ordinance of the City requiring the issuance of a Certificate of Occupancy, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of two thousand dollars (\$2000.00).
- (F) Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies provided by the City's ordinance.

Section 5. PRESUMPTION - In any prosecution charging a violation regarding nuisances, zoning or other building violations upon a property, the failure to comply with any notice or order regarding a violation on a property or building in violation of an ordinance of the City, including but not limited to failure to apply for a building permit or other permit or license required, proof that the particular property, described in the complaint was in violation of an Ordinance regulating the property, together with proof that the defendant named in the complaint was, at the time of such notice, violation or order or at the time when work was performed without a permit, the registered owner of such property or the occupant of the property, shall constitute in evidence a prima facie presumption that the registered owner or occupant of such property was the person who failed to comply with the notice or order or failed to apply for a permit for the time during which such violation occurred in violation of the charged Ordinance of the City. This presumption does not prohibit the charging or prosecution of another responsible party for the nuisance, zoning or other building violations upon a property.

Section 6. AMENDING ORDINANCES - The zoning, subdivision, property, building, and nuisance regulating ordinances of the City are hereby amended to include the provisions of this ordinance. The ordinances shall be interpreted in harmony to include the terms and provisions of

this ordinance. If a specific ordinance conflicts with all or part of this ordinance, it is the intent of the Board of Aldermen that this ordinance shall control unless the result is a violation of state or federal law or from the context is clearly inapplicable. All parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions this ordinance shall govern.

Section 7. SEVERABILITY - Should any section or part of this ordinance be held unconstitutional, illegal or invalid or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair, or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 8. EFFECTIVE DATE - This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Texas Local Government Code.

Section 9. OPEN MEETING - It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that the public notice of the time, place and purpose of said meeting was given as required by the Open Meeting Act, Chapter 551, Texas Local Government Code.

PASSED AND APPROVED on the 15th day of June 2021 during a scheduled meeting by the Board of Aldermen of The City of Highland Haven, Texas.

Olan Kelley

Olan Kelley, Mayor

ATTEST:

(Seal)

Lezley Baum

Lezley Baum, Administrative Assistant