

CITY OF HIGHLAND HAVEN

ORDINANCE #043 (Revision 5)

October 18, 2016

AN ORDINANCE OF THE CITY OF HIGHLAND HAVEN, TEXAS PROVIDING FOR ISSUANCE OF CITATION 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 citation 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 of the first two steps may be omitted. This section 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.

Violation Warning Packet

The first step in ordinance enforcement will be the providing of a Violation Warning Packet to the violator for correction of the violation. The Packet will contain an

information letter detailing the violation process, the expected time to bring the violation into compliance and a copy of the ordinance involved. The city website www.HighlandHavenTX.com listing all the ordinances will be referenced. This Packet delivery will be done in person, if possible. If in person delivery cannot occur, a phone contact will be attempted explaining the violation along with a mailing of the packet. If there is no personal or phone contact made the Violation Warning Packet will be mailed to the address of record. The violation will be required to be corrected within a 14 day time period or less. Violations that can be corrected at once are expected to be corrected immediately. An example of this would be a dog leash or outdoor burning ordinance violation. A process of appeal for non-compliance can be submitted by the violator. This appeal needs to be in written form and received by the city. The appeal will be reviewed by the BOA at their next scheduled meeting. After review the City will inform the violator of the BOA's decision and list any action if any is required.

Warning Letter

If the violation has not been corrected within the reasonable period stated in the Violation Warning Packet, the city will issue a letter directing that the violation be corrected by a certain date. The letter will inform the violator of the penalties for non-compliance.

Issuance of Citation

If the violation is still not corrected as directed by the Warning Letter, a Citation will be issued to the violator with a copy to the Municipal Court Clerk. The municipal judicial process will then be followed.

As stated above, a citation may be issued immediately omitting a Violation Warning Packet and/or a Warning Letter if a situation exists which immediately affects or threatens the health, safety and well-being of the general public or other situation exists warranting an immediate citation as determined by the ordinance enforcement officer or Alderman or Mayor as defined above. An example of the latter would be a violator's explicit refusal to obey the ordinance at any time during the enforcement process.

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 or owners, renter or lease, occupant and/or other responsible person, architect, builder, contractor, agent, person or corporation who shall violate any of the provisions of any ordinance, or shall fail to comply therewith, or with any of the requirements thereof, within the City Limits shall be deemed guilty of an offense

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, including dumping of refuse, shall be punished by a fine not to exceed two thousand dollars (\$2000.00).

- (B) However, no penalty shall be greater or less than the penalty provided for the same or similar offense 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 *18th* day of *October 2016* during a scheduled meeting of the Board of Aldermen of The City of Highland Haven, Texas.

Olan Kelley, Mayor

ATTEST:

Seal

Dana Turner, City Secretary