

ORDINANCE NO. 625

AN ORDINANCE AMENDING CHAPTER 17 OF THE CODE OF ORDINANCES OF THE CITY OF WEST COLUMBIA, TEXAS, BY ADDING ARTICLE II, DIVISION 3., SECTIONS 17-62 through 17-66; ENFORCING DEED RESTRICTIONS; CONTAINING A SEVERABILITY CLAUSE; PROVIDING FOR THE REPEAL OF ANY AND ALL KINDS OF ORDINANCES, REGULATIONS, RULES OR POLICIES WHICH ARE IN ANY MANNER INCONSISTENT OR IN CONFLICT WITH THIS ORDINANCE; PROVIDING THAT THE VIOLATION OF THIS ORDINANCE SHALL CONSTITUTE AN OFFENSE PUNISHABLE BY A FINE OF NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of West Columbia, Texas, is a Type A general law municipality as defined in Chapter 6 of the Texas Local Government Code; and

WHEREAS, the City Council of West Columbia, Texas, under the authority which it has by virtue of sections 217.002, 217.022, 217.042 and Subchapter F of Chapter 212 of the Texas Local Government Code; section 342.004 of the Texas Health & Safety Code; and Section 311.003 of the Texas Transportation Code, has determined and does hereby now declare that the adoption of this ordinance is necessary to the health, safety and general welfare of the inhabitants of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST COLUMBIA, TEXAS:

Section One

Chapter 17 Article II of the Code of Ordinances of the City of West Columbia shall be and is hereby amended by the addition to Article II of a new Division 3 entitled Enforcing Deed Restrictions, as follows:

DIVISION 3. ENFORCING DEED RESTRICTIONS

Section 17-62. Definitions.

As used in this article the following words or phrases shall have the meanings ascribed to them in this section, except where the context clearly indicated a different meaning:

Building permit means a permit issued by the city under the provisions of the Construction Code.

City attorney means the city attorney or any assistant city attorney.

Commercial building means any building other than a single family residence.

Construction of a fence means, without limitation, the materials, location, and height of a fence.

Fence means any fence or wall that requires a building permit for construction.

Recorded restrictions means a restriction that is contained or incorporated by reference in any properly recorded plan, plat, replat or other instrument affecting a subdivision or that portion of a subdivision located inside the boundaries of the city.

Restriction means a limitation that:

- (1) Affects the character of the use to which real property including residential and rental property, may be put;
- (2) Fixes the distance that a structure must be set back from property lines, street lines, or lot lines;
- (3) Affects the size of a lot or the size, type, and number of structures that may be built on the lot;
- (4) Regulates orientation or fronting of a structure;
- (5) regulates or restricts the type of activities that may take place on the property, including commercial activities, sweepstakes activities, keeping of animals, use of fire, nuisance activities, vehicle storage, and parking;
- (6) specifies the type of maintenance that must be performed on a lot or structure, including maintenance of a yard or fence;
or
- (5) Regulates construction of a fence.

however, restrictions do not include provisions that restrict the sale,

rental, or use of property on the basis of race, color, religion, sex or national origin and do not include any restrictions that by their express provision have terminated.

Restriction suit means a lawsuit filed in a court of competent jurisdiction to enjoin or abate the violation of a recorded restriction.

Section 17.63 Compliance; enforcement; penalties.

- (A) An owner or owner's representative with control over the property that is subject to a recorded restriction who, after notice of the provisions of this article, fails to comply with any recorded restriction shall be deemed to civilly violate this article and shall be subject to civil penalties of not more than \$1,000.00 per day for violation of this article. Each day of noncompliance shall constitute a separate violation.
- (B) It shall be unlawful to use any property or construct or continue to construct any building or structure on any property, that is the subject matter of an affidavit required by the Code as a condition for the issuance of any city permit if (1) the activity that is the subject of the affidavit is a violation of one or more recorded restrictions and (2) the person who signed the affidavit swore that the activity did not violate any recorded restriction.

Section 17.64 Action by city attorney.

- (A) The city attorney, upon express authorization by the Council, and is authorized to file or become a party to a restriction suit; provided, however, that after a careful investigation of the facts and of the law, or of either, if in the opinion of the city attorney no legal cause of action could be alleged and proved, then in such event, the city shall not file or become a party to a suit. The city attorney is further authorized, as part of a restriction suit, to seek to compel the repair or demolition of any structure or portion thereof that is in violation of this article to the extent of noncompliance.
- (B) The city attorney is authorized to file suit in a court of competent jurisdiction to seek civil penalties for the violation of subsection (A) of Section 17.63 of the Code as authorized by subchapter B of chapter 54 of the Texas Local Government Code, as amended.
- (C) The city attorney is authorized to establish guidelines for any

activity or category of activity that the city attorney, in his best legal judgment, believes is the appropriate subject for an action to abate or enjoin pursuant to this article.

- (D) All authority granted to the city attorney under this section shall be exercised uniformly on behalf of and against all citizens and property in the city.

Section 17.65 Limitations.

- (A) The city attorney shall have no authority to file a restriction suit or intervene in a pending restriction suit on behalf of the city upon the complaint or request of a person who:

- (1) Is a defendant in a currently pending restriction suit filed by the city attorney;
- (2) Is a defendant in a restriction suit in which the city attorney has intervened on behalf of the city to enforce the recorded restrictions;
- (3) Has applied for a building permit for a commercial building in a restricted subdivision located in the city that has recorded restrictions the terms of which prohibit or exclude the construction or repair of commercial buildings in such subdivision; or
- (4) Has filed suit to invalidate or otherwise void any portion of the recorded restrictions of a subdivision that requires the property owned by the complainant to be used for residential purposes only.

- (B) The building official shall have no authority to refuse or revoke a building permit for a commercial building located in a restricted subdivision located in the city on the grounds that the construction or repair of such commercial building is prohibited or excluded by the recorded restrictions upon the complaint or request of a person who:

- (1) Is a defendant in a currently pending restriction suit filed by the city attorney;
- (2) Is a defendant in a restriction suit in which the city attorney

has intervened on behalf of the city to enforce the recorded restrictions;

- (3) Has applied for a building permit for a commercial building in a restricted subdivision that has recorded restrictions that prohibit or exclude the construction or repair of commercial buildings in the subdivision; or
- (4) Has filed suit to invalidate or otherwise void any portion of the recorded restrictions of the subdivision that requires the property owned by the person to be used for residential purposes only.

Section 17.66 Building permits.

The city attorney shall advise the building official whenever, in the city attorney's opinion, building work is being done under a building permit that is void. Upon that advice, the building official shall order the building work stopped. The city attorney and the building official, acting in good faith and for the city in the discharge of their duties under this section, shall not thereby render themselves liable personally and they are hereby relieved of all personal liability for any damage that may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of their duties.

Section 17.67 Notice to Purchasers

It shall be unlawful for any person to sell or convey restricted property located within the boundaries of the City without first having given the purchaser written notice of the restrictions and notice of the City's right to enforce compliance in accordance with the following terms and provisions:

- (A) The notice to the Purchaser shall contain the following information:
 - (1) the name of each purchaser;
 - (2) The name of each seller;
 - (3) a legal description of the property;
 - (4) The Street address of the property;

- (5) A statement that the property is subject to the deed restrictions and the city is authorized to enforce the restrictions;
 - (6) a reference to the bottom and page, clerks file number, or film code where the restrictions are recorded; and
 - (7) a statement that the provisions that restrict the sale, rental or use of the real property on the basis of race, color, religion, sex, or national origin are unenforceable.
- (B) The following procedure shall be followed to ensure the delivery and recordation of the notice:
- (1) The notice shall be given to the purchaser at or before the final closing of the sale and purchase;
 - (2) the seller and purchaser shall sign and acknowledge the notice; and
 - (3) following the execution, acknowledgment and closing of the sale and purchase, the notice shall be recorded in the real property records of Brazoria County, Texas.
- (C) The City shall file in the real property records of the County Clerk's office of Brazoria County a copy of the form of notice, with its effective date, that is prescribed for use by any person who sells or conveys restricted property located inside the boundaries of the City.
- (D) All sellers and all persons completing be prescribed notice on the seller's behalf or entitled to rely on the current effective for filed by the City.
- (E) Failure by the City to file for record the form of notice with the County Clerk of Brazoria County shall be a defense against any action to collect from a seller the penalty for failure to obtain the execution and recordation of the notice.
- (F) The failure of the seller to comply with the requirements of this article and the implementing City regulations does not affect the validity or enforceability of the sale or conveyance of restricted property or the validity or enforceability of restrictions covering the

property.

- (G) For the purposes of this article, and executory contract of purchase and sale having a performance. On more than six months is considered a sale.
- (H) For the purposes of the disclosure required by this article, restrictions may not include provisions that restrict the sale, rental or use of property on the basis of race, color, religion, sex, or natural origin, and may not include any restrictions that by their express provisions have terminated.

Section Two

Any rules, ordinances, police regulations, resolutions, and/or policies of the City of West Columbia, whether written, or otherwise, which are in any manner in conflict with or inconsistent with this ordinance, shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

Section Three

It is hereby declared to be the intention of the City Council that the several provisions of this ordinance are severable, and if any court of competent jurisdiction enters a final order which holds that any section, sub-section, sentence, clause, phrase, or other portion of this ordinance is invalid, illegal, or otherwise unenforceable, then any such portion shall be deemed a separate, distinct and independent provision, and any such ruling shall not affect any other provision of this ordinance which are not specifically designated as being illegal, invalid or unenforceable.

Section Four

Any person who violates any provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not to exceed Five Hundred Dollars (\$500.00).

Section Five

This ordinance shall be effective and applicable from and after the date of its passage and approval by the City Council of the City of West Columbia, and the publication of its caption as provided by law.

PASSED AND APPROVED this the 9th day of June, 2014.


LAURIE B. KINCANNON, Mayor

ATTEST:

Kelli R. Kuban
KELLI R. KUBAN, CITY SECRETARY