

Chapter 10 - Buildings and Neighborhoods

ARTICLE XV. DEED RESTRICTION COMPLIANCE

SEC. 10-551. 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 indicates 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.

Restricted subdivision means a subdivision of land or that portion of a subdivision within the city limits that is subject to recorded restrictions.

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; 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.

(Ord. No. 94-1154, § 2, 10-26-94; Ord. No. 02-399, § 42, 5-15-02; Ord. No. 07-228, § 1, 2-14-07; Ord. No. 08-250, § 1, 3-26-08)

SEC. 10-552. 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 this 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.

(Ord. No. 94-1154, § 2, 10-26-94)

SEC. 10-553. ACTION BY CITY ATTORNEY.

(a) The city attorney 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 10-552 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.

(Ord. No. 94-1154, § 2, 10-26-94)

SEC. 10-554. 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.

(Ord. No. 94-1154, § 2, 10-26-94)

SEC. 10-555. 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.

(Ord. No. 94-1154, § 2, 10-26-94)

SECS. 10-556 -10-600. RESERVED.