

ORDINANCE NO. 3-2015

AN ORDINANCE OF THE CITY OF BONNEY,
TEXAS, ALLOWING FOR THE
ENFORCEMENT OF LAND USE
RESTRICTIONS CONTAINED IN PLATS AND
OTHER INSTRUMENTS AS PROVIDED BY
THE TEXAS LOCAL GOVERNMENT CODE,
CHAPTER 212, SUBCHAPTER

WHEREAS, the City of Bonney does not have a zoning ordinance it is authorized to adopt this Ordinance requiring uniform application and enforcement of the above designated Subchapter F with regard to all property and residents as allowed pursuant to Texas Local Government Code §212.151, and

WHEREAS, the City of Bonney has an interest in the orderly and consistent development and maintenance of property within its jurisdiction, and

WHEREAS, the City of Bonney finds that this interest can be accomplished in full or in part through the enforcement of land restrictions which restrict the use of real property within the jurisdiction of the City.

THE COUNCIL OF THE CITY OF BONNEY THEREFORE ORDAINS:

1. As used in this ordinance the following words or phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
 - a. Building permit means a permit issued by the City of Bonney.
 - b. City attorney means the city attorney or any attorney otherwise retained by the City.
 - c. Commercial building means any building other than a single family residence.
 - d. Construction of a fence means, without limitation, the materials, location, and height of a fence.
 - e. Fence means any fence or wall constructed on property subject to this ordinance.
 - f. Restricted subdivision means a subdivision of land or that portion of a subdivision within the jurisdiction of the City that is subject to recorded restrictions.
 - g. Restriction shall have the meaning ascribed to the word "restriction" in Section 212.152 of the Local Government Code, as amended, including but not limited to a restriction 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 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;
 - (5) regulates architectural features of a structure, construction of fences, landscaping, garbage disposal, or noise levels; or
 - (6) specifies the type of maintenance that must be performed on a lot or structure, including maintenance of a yard or fence.
- h. Restriction suit means a lawsuit filed in a court of competent jurisdiction to enjoin or abate the violation of a recorded restriction.
- i. Unenforceable Restriction any restrictions that by their express provisions have terminated or any provisions contained within any restrictions to the extent and only to the extent that the provisions restrict the sale, rental, or use of property on the basis of race, color, religion, sex or national origin.

2. Compliance, Enforcement and 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 ordinance, fails to comply with any recorded restriction shall be deemed to civilly violate this ordinance and shall be subject to civil penalties of not more than \$500.00 per day for violation of this ordinance. 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 a written notice delivered to the property owner or posted on the property notifying the property owner that the activity that is the subject of the notice is a violation of one or more recorded restrictions.
 - (1) The notice will be issued by the City and may be in any form deemed sufficient by the City.
 - (2) Delivery of the notice will be sufficient if delivered by any one or more of the

methods noted below:

- (a) Placing of the notice in the control of the U.S. Postal Service via Certified Mail with Return Receipt addressed to the address noted on the deed or other instrument by which the property owner takes ownership of the subject property or such other address as the City may have available as the address of the property owner; or
- (b) The physical attachment of the notice to the property in any manner deemed sufficient by the City; or
- (c) Hand delivery of the notice to the property owner or his or her family member; in the instance of a corporate owner or other business entity, delivery to a shareholder, member, partner or officer; or delivery to any resident of the property.

3. Actions By The 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 ordinance to the extent of noncompliance.
- b. The city attorney or the mayor may, but is not required to, notify the property owner of the violation prior to the filing of suit to enforce a restriction.
- c. The city attorney is authorized to file suit in a court of competent jurisdiction to seek civil penalties for the violation authorized by subchapter B of chapter 54 of the Texas Local Government Code, as amended and to enjoin any continued violation of the restriction.
- d. 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 ordinance.

4. Building permits.

The city attorney shall advise the City or their designated building official whenever, in the city attorney's opinion, building work is being done under a building permit that is void or which is being violated. Upon that advice the City or their designated building official shall order the building work stopped. The city attorney and the City or their designated 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.

5. Notice of restrictions upon conveyance of property.

a. In this section the following words and terms shall have the meanings herein ascribed:

(1) Sale or conveyance means any transfer of any lot, tract or parcel of real property subject to restrictions that is situated in whole or in part within the corporate limits of the city, except:

(a) A conveyance by trustee's or substitute trustee's deed to the lienholder pursuant to a foreclosure sale;

(b) A conveyance by deed to the lienholder in full or partial satisfaction of a debt secured by the property conveyed;

(c) A deed of trust conveyed to secure a lien;

(d) An auction sale conducted by a public official pursuant to an order of a court of competent jurisdiction; or

(e) A conveyance in which the purchaser is a governmental entity.

(f) Without limitation, the term shall include an executory contract of purchase and sale having a performance period of more than six months.

(2) Purchaser shall mean each person who constitutes a grantee, purchaser, buyer, or transferee in a sale or conveyance, regardless of the amount or nature of the consideration received.

(3) Seller shall mean each person who constitutes a seller, grantor or transferor in a sale or conveyance, regardless of the amount or nature of the consideration received.

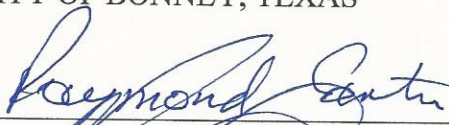
b. It shall be the duty of each purchaser to inform themselves of the existence of any restrictions that may affect property they have purchased. A failure to so inform themselves will not be a defense to enforcement of this ordinance.

c. A purchaser will be deemed to have knowledge of any restrictions which are duly filed in the public records of the appropriate county.

d. A Seller will not be subject to any action or sanction under this ordinance.
AND IT IS SO ORDERED

Passed by the City Council of the City of Bonney, Texas on this the 20th day of July, 2015.

CITY OF BONNEY, TEXAS


By: Raymond Cantu, Mayor


Attest: Luann "Jae" Barkalow, City Secretary

