

**ORDINANCE NO. 2196**

**AN ORDINANCE AMENDING CHAPTER 5 – BUILDINGS AND BUILDING REGULATIONS, ARTICLE IV – PERMIT REGULATIONS TO INCLUDE ADDITIONAL REQUIREMENTS FOR PERMITTING AND CONTRACTOR REGISTRATION TO FACILITATE UNIFORM ENFORCEMENT OF THE CHAPTER; CREATNG A PENALTY; PROVIDING REPEALER AND SAVINGS CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Alamo Heights (the “City”) is a Texas municipality that is authorized to adopt local ordinances establishing procedures for the administration and enforcement of certain building codes; and

**WHEREAS**, a public hearing before the City Council was held prior to passage of the amendments described herein as required and that public notice of the time, place, and purpose of said hearing was given as required by the Open Meetings Act; and

**WHEREAS**, the City Council has determined that the amendments described herein are necessary and appropriate to enhance enforcement efforts relating to residential construction within the City’s jurisdiction, and will serve the public interest by facilitating uniform administration of existing building codes; and

**WHEREAS**, the City Council finds that residential construction projects that are not completed within the timeframe specified in the applicable permit(s) and/or become abandoned by the owner or general contractor for any reason prior to completion of the project may constitute a public nuisance, the effects of which the amendments described herein are intended to avoid or mitigate; and

**WHEREAS**, the City Council finds that regulations are needed to monitor and restrict the future projects of residential developers and contractors which have a proven history of violations or safety issues in the City to prevent continued and future abandoned, dangerous or nuisance construction projects which put citizens at risk, overburden first responders and City development staff, and diminish nearby property values; the effects of which the amendments described herein are intended to avoid or mitigate.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALAMO HEIGHTS, TEXAS THAT:**

**SECTION 1. Findings.** The recitals are hereby found to be true and correct and are hereby incorporated as part of this Ordinance.

**SECTION 2. Amendments.** Section 5-51. – *Work without permit and expired permit procedures* shall hereinafter be amended at subsection 5-51(e) to add the underlined text and delete the strike through text to read as follows:

**Sec. 5-51. – Work without permit and expired permit procedures.**

(a) If work requiring a permit was started without a valid permit, and all plans and application have been reviewed for compliance with all applicable codes and ordinances, an applicant may obtain a permit by paying double the regular permit fee.

(b) Work shall begin within such period of time following issuance of the permit as may be limited in such permit and shall be completed within such further time as may be therein provided. Unless formal activity, such as specific inspections required within this chapter, are requested, completed and approved by the director's office within the prescribed time, the permit shall become inoperative and void as authority for any further work. Formal activity as described above shall act as an automatic renewal regarding the permit's expiration date. Automatic renewal shall reset the expiration date to six (6) months from date of said formal activity.

(c) In the event that an active permit is due to or already has expired, and work remains to be accomplished under the original scope of the permit, the director may issue an extension of the permit upon written application for such action and payment of all required fee(s). Such application may be in the form of a letter to the director explaining the request and providing the same information, updated, as the original permit application.

(d) In the event that a permit is allowed to expire without an extension requested and granted, and a request for extension is submitted beyond thirty (30) days from the expiration date, the director may issue a new permit and require the applicant to pay any administrative fee and penalty fee(s).

(e) The Building Official may deny any renewal request or suspend (for 30, 60, 90 or 180 days) or revoke any permit with cause, including but not limited to those conditions listed in Sec. 5-59(c) under these codes of ordinances or failing to fully disclose the same. A person may appeal the Building Official's decision to deny a renewal request, or suspend or revoke a permit, by requesting a hearing on the matter before the Board of Adjustment, which shall hear the appeal in the same manner as described in Sec. 211.009(a)(1) of the Texas Local Government Code. A decision by the Board of Adjustment to grant, modify or deny an appeal under this subsection shall be final.

**SECTION 3: Additional Amendments.** Section 5-53. – *Contractor's registration requirements* shall hereinafter be amended at subsection 5-53(c), (h) and (i) to add the underlined text and delete the strike through text read as follows:

**Sec. 5-53. – Contractor's registration requirements.**

(a) It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish any building, sign or structure in the City of Alamo Heights, or cause the same to be done, unless such person, firm or corporation is the holder of a valid registration with said city to perform such work. Such person, firm or corporation shall be herein termed registrant. In extending the rights and privileges of such registration, said city makes no statement of the technical competency of those so registered, and no manner of license is proffered.

(b) No person shall render any general construction, repair, alteration, or improvements to any structures or property as described in subsection 5-50(a) or (b) or commence or

continue construction in the public right-of-way within the limits of the City of Alamo Heights unless said person or entity complies with the requirement of this chapter and Chapter 16 Streets and Sidewalks. All contractors requesting to do work that requires the issuance of a permit in subsection 5-50(a) or (b) shall be registered by the City of Alamo Heights and said registration shall be valid for a period of one (1) year. Contractors shall be registered as either a general contractor or a tradesman.

- (c) An applicant for general contractor registration under this article shall provide to the Building Official the following information:
- (1) The complete name, complete mailing address and telephone number of the firm or corporation;
  - (2) The name and private mailing address of a principal of the firm or corporation who is a person authorized to bind the firm or corporation in legal agreements;
  - (3) If the registration is to be as an individual only, the name, mailing address and telephone number of the individual;
  - (4) Where required by state law, the contractor must hold the appropriate amount of insurance as required by the State of Texas and provide proof of insurance to the city. Contractors not required to hold specific insurance by the state are required to obtain at least:
    - a. Commercial/multifamily: \$1,000,000.00 of commercial general liability insurance (combined property damages and bodily injury) with \$500,000 products and completed operations coverage.
    - b. Residential: \$500,000 of residential general liability insurance (combined property damages and bodily injury) with \$500,000 products and completed operations coverage.”
  - (5) Any applicant intending to apply for a permit relating to residential construction must also submit a sworn affidavit on a format provided by Building Official containing the following affirmations:
    - a. Whether the applicant, or any other person or entity with an ownership interest in applicant (if applicant is an entity), has been named in a stop work order or notice of violation relating to any other permit issued by the City for residential construction within the preceding two (2) year period and, if so, the applicant shall disclose the name and mailing address for each such person or entity so named in a notice of violation.
    - b. The applicant for general contractor registration acknowledges that such registration may be revoked or suspended at any time by the Building Official if the applicant is found to have materially participated in a residential construction project that violates any term or condition of any permit issued for that project, or which violates any other provision of state or local law, and that contractor registration revoked or suspended pursuant to this section may be reinstated after final adjudication of any stop work order or notice of violation issued by the City, upon recommendation by the Building Official and approval at the sole discretion of the City Manager.

- (6) Any other information deemed necessary by the Building Official.
- (d) Tradesmen working under the scope of a general contractor are required to register with the city.
- (e) An application for registration as a tradesman shall include the following:
- (i) The name, address, and telephone number(s) of the contractor(s) who will perform actual construction, including the name, address, and telephone number of an individual representative of the contractor who will be available at all times during construction.
  - (ii) Mechanical, electrical and plumbing-related permits shall be issued only to State of Texas licensed and registered tradesman or their specifically designated representative even when working under the scope of a general contractor registration. Said tradesmen shall be master level or higher.
- (f) Fees for contractor's registration shall be listed in the adopted schedule of development fees as maintained in the director's office.
- (g) Every registrant shall contact the office of the director to ensure the accurate revision of registration information, including any change of address or telephone number, within ten (10) days from the date that the previous information supplied in the application becomes invalid for any reason. Failure to revise inaccurate information, or providing false, misleading or inaccurate information when applying for registration, shall constitute an offense.
- (h) The director may, at any time and for any valid reason (including but not limited to those conditions listed in Sec. 5-59(c) under these codes of ordinances or failing to fully disclose the same), suspend (for 30, 60, 90 or 180 days) or revoke a contractor's registration. The contractor shall be notified in writing, by return receipt U.S. Mail, sent to the last known address of the contractor as shown on the registration, of the contractor's right to appeal the director's decision by requesting a hearing on the matter before the Board of Adjustment, which shall hear the appeal in the same manner as described in Sec. 211.009(a)(1) of the Texas Local Government Code.
- (i) A decision by the Board of Adjustment to grant, modify or deny an appeal under this subsection shall be final. The Board of Adjustment's decision for suspension or revocation of the contractor's registration shall include a time frame for the beginning date and duration of the suspension, and the beginning date of the revocation.
- (j) If the registration is suspended or revoked, the contractor shall not perform any work in the City of Alamo Heights during the suspension or after the revocation which requires registration.
- (k) *City registration verification.*
- (i) A registration verification, bearing the Building Official's signature, shall be issued to each person receiving a city registration.
  - (ii) Registrations shall be renewed prior to the expiration date. Each person holding a valid registration shall renew same in sufficient time to have the renewal form returned to the development services department with the appropriate renewal fee prior the expiration date. All city registrations shall expire one (1) year after

issuance. Registrations shall be renewed prior to expiration date. Each person holding a valid registration shall renew same in sufficient time to have the renewal form and insurance information returned to the department with the appropriate renewal fee prior to registration expiration date.

- (iii) Each registration verification, when issued to a contractor, shall be issued to a person and registered in the name of the firm by which the person is employed. The firm shall be known as the holder of such registration and shall notify the code official if the registration holder is no longer in its employment. No further permits will be issued to the firm based upon the previous registration holder's name who is no longer employed by the firm.
- (iv) It shall be a violation of this Code for any person to alter or amend in any manner, lend, rent, or transfer a registration verification, and for any person to make use of any such rights for which the person is not registered.
- (v) Each holder of a city issued verification shall carry registration verification in a format to be designated by the Building Official on his person at all times while performing construction work covered by this Code and shall present it to the Building Official upon demand.
- (vi) The Building Official is hereby authorized to preserve, alter or amend any documents necessary to effectuate the intent and purpose of this subsection.

(l) *Registrations not transferable.* No registration shall be transferred and no holder of any registration shall allow his name or registration to be used by any other person, either for the purpose of performing construction work or obtaining a permit under the penalty of forfeiture of registration and payment of fines.

(m) *Violations under this section.* The following list shall constitute a non-exclusive list of violations under this section. It is unlawful for any registered contractor to:

- (i) Display or cause a permit to be displayed or to have in one's possession a registration for doing any construction work, knowing it to be fictitious or to have been canceled, suspended or altered;
- (ii) Lend or permit the use of any registration for doing any construction work to any person not entitled to it;
- (iii) Allow any person to display or to represent as one's own city registration for any construction work when the registration has not been lawfully issued to the person displaying it;
- (iv) Use a false or fictitious name or address in any application for any registration or permit provided for in this chapter or any renewal or make a false statement or conceal a material fact or otherwise commit fraud in making any application;
- (v) Perform any contractor work for which a registration is required without having the registration or while the registration is suspended, expired or canceled;
- (vi) Perform any work for which a permit is required without having the permit or after the permit has been canceled;
- (vii) Fail or refuse to make the necessary repair or changes for code violations as provided in a written notice issued by the Building Official. A reasonable amount of time shall be granted in the written notice taking into consideration the work to be completed and the circumstances. A separate violation is deemed

to be committed each day after the expiration of the time for correction provided in the notice until the work is corrected;

- (viii) Permit any construction work covered by this section to be performed by any person not properly registered, while in control of premises covered by this section;
- (ix) Remove, break, change, destroy, tear, mutilate, cover or otherwise deface or injure any official notice or seal posted by the Building Official;
- (x) Place or leave the property in such condition that it injures or endangers persons or property authorized to be on the construction site; or
- (xi) Install work grossly outside of original permit parameters to a degree that may threaten the health, safety, and general welfare of the public, to include, but not limited to, additional structures, square footage, lot coverage and setback/looming limits.

**SECTION 4. Additional Amendments.** Section 5-59. – *Additional Residential Building and Home Improvement Permit and Registration Requirements* shall hereinafter be created and shall read as follows:

**Sec. 5-59. – Additional Residential Building and Home Improvement Permit and Registration Requirements.**

(a) The purpose and intent of this section is to discourage persons involved in a residential construction project, including a property owner or general contractor, from beginning other major residential construction projects if a previous project is found to be in violation of this chapter or other law, including abandoned or unfinished projects that cause a public nuisance condition and/or substandard or dangerous structure to exist within the City's jurisdiction. This section is not intended, however, to impede issuance of permits for minor construction activities, routine maintenance, to prevent the ability to make a project or residence safe or secure, or abate a nuisance, and the Building Official shall have discretion to grant any permit or general contractor registration, this section notwithstanding, except for a permit for new residential construction or major renovation, work which changes the footprint of a primary or secondary structure, work which alters the exterior facing facades of primary or secondary structure, pools, or demolition of a primary or secondary residential structure, if prohibited by this section.

(b) If residential construction authorized by a permit issued by the City on or after the effective date of this Ordinance is not completed within the timeframe specified in the permit (subject to any extensions as may be lawfully granted by city officials) or which is otherwise abandoned by the owner or other person named in a permit related to the project prior to securing final inspection and issuance of a certificate of occupancy for same, such abandonment and/or failure to complete the proposed residential construction shall be considered prima facie evidence of a public nuisance condition and substandard structure on the lot described in the permit(s), which shall promptly be investigated under the direction of the Building Official and subject to applicable enforcement action(s), if any.

(c) A person or entity (including a person or entity with an ownership interest in an entity applying for a permit) found to have satisfied one or more of the following conditions shall be deemed ineligible to receive any new permit relating to construction or home improvement on any other residential lot, until such time as all the following conditions have been satisfactorily remedied, including full payment of any penalties associated therewith:

- (i) an unresolved stop work order or notice of violation relating to a residential permit pending within the City; or
- (ii) two (2) or more stop work orders or notice of violations within the immediately preceding twenty-four (24) months relating to residential projects or lots within the City (for the purpose of this section, mere failed inspections shall not constitute a notice of violation); or
- (iii) three (3) or more open or unresolved general contractor permits relating to other residential projects within the City which have remained open or unresolved for more than two times (2x) the permit's original stated duration; or
- (iv) six (6) or more open or unresolved tradesman permits relating to other residential projects within the City which have remained open or unresolved for more than two times (2x) the permit's original stated duration; or
- (v) currently indebted to the City; or
- (vi) entered a plea of guilty or nolo contendere (no contest) or been convicted of a felony or misdemeanor arising out of a violation of the building code or local amendments thereto in the State of Texas whether or not said violation involves moral turpitude; or
- (vii) has been convicted of any penal offense arising out of or related to the performance of a residential building contract or the registered contractor suffers a judgment against them in a civil action predicated upon fraud in connection with the performance of a residential contract; or
- (viii) one (1) or more violations of City Code of Ordinances *Sec. 5-53. – Contractor's registration requirements* within the immediately preceding twenty-four (24) months; or
- (ix) created a public nuisance and/or substandard or dangerous structure within the City as a result of residential construction activities, including failure to timely complete proposed residential construction and/or abandonment of residential construction prior to securing final inspection and a certificate of occupancy for same.

(d) It shall be a defense to any condition satisfied in subsection 5-59(c)iii., iv & ix., with the exception of a dangerous or unsecured structure condition, that:

- (i) The person or entity seeking a permit was providing construction services on the prior permit, and the condition occurred solely due to lack of payment by owner which was rightfully due; or
- (ii) The person or entity seeking a permit was the developer or owner on the prior permit, and the condition occurred solely due to the abandonment of the project by contractor, and less than one-hundred and eighty (180) days has passed since said abandonment.

**SECTION 5. Conflicting Ordinances or Resolutions.** All resolutions or ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted and amended herein, are hereby REPEALED to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other resolution, code or ordinance of the City, or parts thereof, the terms and provisions of this ordinance shall govern.

**SECTION 6. Severability.** If any section, subsection, clause, phrase, or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

**SECTION 7. Open Meetings.** 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 public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

**SECTION 8. Effective Date.** This ordinance shall be effective from and after its approval and passage in accordance with the Texas Local Government Code and the city charter.

**PRESENTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALAMO HEIGHTS, TEXAS THIS 23<sup>rd</sup> DAY OF JANUARY, 2023.**

  
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**BOBBY ROSENTHAL, MAYOR**

**ATTEST:**

  
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**ELSA T. ROBLES, CITY SECRETARY**



**APPROVED AS TO FORM:**

  
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**FRANK J. GARZA, CITY ATTORNEY**  
*RICHARD LONAVIER, CITY ATTORNEY*