

ORDINANCE NO. 144

**AN ORDINANCE OF THE TOWN OF CLINT, TEXAS ESTABLISHING REQUIREMENTS AND PROCEDURES FOR OBTAINING PERMITS FOR THE PERFORMANCE OF WORK, CONSTRUCTION, CUTS AND EXCAVATIONS IN THE CITY STREETS AND RIGHTS-OF-WAY; TO REQUIRE A WARRANTY, MAINTENANCE OR INDEMNIFICATION FOR SUCH WORK; AND TO ESTABLISH ACTIONS CONSTITUTING NUISANCES; PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, PENALTIES, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE & MEETING; THE PENALTY BEING AS PROVIDED IN ARTICLE I, SECTION 9 OF THIS ORDINANCE, CREATING A MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED \$500.00.**

**WHEREAS,** the City Council of the Town of Clint ("City Council") is authorized by the Texas Government Code, Section 51.001, to adopt an ordinance that is for the good government, peace, or order of the City and is necessary or proper for implementing a power granted by law to the City; and

**WHEREAS,** Section 49.220 of the Texas Water Code allows a governmental entity to require a water district using its rights-of-way to require indemnification from the district; and

**WHEREAS,** the City Council finds and determines that it is necessary and appropriate for the City's protection and maintenance of its streets and rights-of-way to require permits for those who wish to perform work or construction in the streets and rights-of-way or to make cuts and excavations into the streets and rights-of-way, so that this work is properly done and maintained and that the city is adequately protected; and

**WHEREAS,** the City Council finds that failure to properly perform or maintain the Work constitutes a nuisance or the maintenance of a nuisance within the city.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF CLINT, TEXAS:**

**ARTICLE I. ADOPTION OF THE ORDINANCE**

Pursuant to Sections 51.001 and 51.012 of the Texas Local Government Code, the City Council of the Town of Clint hereby enacts and adopts this ordinance relating to the use of city streets and rights-of-way and the undertaking of any work, cut, excavation or construction in the right-of-way.

### **Section 1. Definitions.**

- A. "Normal city work hours" means city workdays from 8:00 a.m. to 5:00 p.m. Saturday, Sunday and official city holidays are not included in city workdays.
- B. "Permittee" means the governmental entity, person or business entity that has received a permit pursuant to this ordinance.
- C. "Property" means a parcel of land having a property or parcel identification number issued by the Central Appraisal District.
- D. "Temporary traffic control plan" means a plan developed in compliance with the most recent version of the Texas Uniform Manual on Traffic Control Devices describing temporary traffic control measures to be used for facilitating users through a work zone in a right-of-way.
- E. "Work" means any cut, excavation or construction in the right-of-way and/or any construction activities within the public right-of-way, including but not limited to public works projects by governmental entities, but shall not include Town of Clint repair and maintenance.

### **Section 2. Permit required.**

- A. No person or entity shall perform any Work, make or cause to be made any Work in or under any street, alley, sidewalk, parkway or driveway within the city right-of-way without having first obtained a permit as required herein. Permits are not required for the following activities in the unpaved portions of city rights-of-way: (1) utility service installations and repairs that require excavation depth of two feet or less and (2) utility pole installation or removal.
- B. When an emergency occurs that requires Work to be performed, no permit shall be required prior to beginning the work needed to respond to the emergency. All other work shall not proceed until a permit has been issued. The town clerk shall be notified of the emergency as soon as possible. Limitations on hours of work in this ordinance shall not apply to work required in response to an emergency. Emergencies exist only when there is a present danger to life, health or property, including but not limited to utility service outage. A permit shall be submitted as soon as possible but no later than noon of the city business day following the day the emergency occurred.

### **Section 3. Permit—application and requirements.**

- A. Application. The application for the permit required by this ordinance shall be made in writing on a form supplied by the town clerk and shall be signed by the applicant or an individual who is authorized in writing to act as the agent of the applicant. The application and accompanying documentation shall be submitted to the town clerk and shall include the following:
  - 1. The name, address, telephone numbers and e-mail address of the applicant and the person or people in charge of the work related to the permit, and
  - 2. Location where the Work will be performed including the street address of the property or adjacent property, and
  - 3. The duration and schedule of the Work, and
  - 4. The description of the Work, including but not limited to drawings showing the dimensions and characteristics of the proposed cut/excavation and restoration, a plan

view of the work area and cross-sections of the backfill requirements. If the work area exceeds 120 square feet, the backfill requirements shall be established by a registered engineer, and

5. A traffic control plan, and
  6. The "one call" system verification number for the Work, and
  7. The name of the barricade company responsible for traffic set up, if applicable.
- B. An applicant requesting a permit under this ordinance shall be responsible for contacting a "one call" notification system servicing the area and will be required to furnish a verification number confirming that such a "one call" has been made as part of the application for permit. A permit issued under this ordinance shall be denied for the failure of the applicant to contact a "one call" notification system servicing the area, and to provide a verification number confirming that such a "one call" notification system has been contacted by the applicant. This requirement, however, shall create no duty, express or implied, on the part of the city to verify that the applicant notified the one call system and received a verification number.
- C. Upon receipt of the completed application and verification that all required information has been submitted and is in order, the town clerk shall cause the permit to be issued.
- D. Public utility companies having permanent installations in or under streets, alleys or any other city right-of-way or city owned property by franchise from the city and water districts using existing rights-of-way pursuant to Section 49.220, Texas Water Code, shall obtain permits as required in this ordinance.

#### **Section 4. Fees.**

The permit fee in the amount of \$50.00 shall be charged for each permit issued. The permit fee shall be paid when the permit is issued, and shall not be refunded. No permit fee will be charged to public utility companies operating under a franchise from the city or state or to a water district utilizing existing rights-of-way pursuant to Section 49.220, Texas Water Code. Contractors applying for a permit to perform work on behalf of a public utility that is operating under a franchise with the city or the state or a water district shall not have to pay the permit fee when the public utility has provided verification to the city that such contractor is working on behalf of the public utility or water district for the work authorized under the permit.

#### **Section 5. One-year warranty and maintenance or indemnification requirements.**

Any person or entity issued a permit, whether pursuant to this ordinance, or who on the effective date of this ordinance is conducting Work pursuant to any other type of permit issued by the city, shall warrant to maintain the excavated or constructed area for a period of one year after the completion of the restoration of the right-of-way, or in the case of a water district, the district shall indemnify the city as provided in Section 49.220, Texas Water Code from any and all damages caused by, from or due to the failure of the repair or construction. Maintenance of the excavated or constructed area shall include the repair of any type of failure, including, but not limited to, the area permittee was required to repave. Repairs during the warranty period shall meet the standards of this ordinance. The city may conduct inspections of the restored area throughout the one-year warranty period and require maintenance and correction of the work by the permittee. Failure of the permittee to correct the work shall constitute a nuisance.

#### **Section 6. Permit—Requirements and limitations.**

- A. Each permit shall specify the location of each cut or excavation allowed in the permit and the dates during which the city right-of-way or any portion thereof may be cut, excavated or constructed as to each such location. The time for each cut, excavation or construction allowed in the permit shall not exceed thirty consecutive calendar days, provided that if the work for a cut, excavation or construction is not completed within the time allowed in the permit, the permittee shall obtain a permit extension. A work schedule for each such location not completed as required in the original permit shall be submitted with the application for the permit extension. Each permit extension shall not be issued for more than thirty consecutive calendar days.
- B. Permits shall not be assignable. No person shall use the name of another in obtaining a permit, and no person shall allow his name to be used by another in obtaining a permit, except in the case of an authorized agent acting for his principal.

**Section 7. Work and Facilities—Requirements and limitations.**

- A. All facilities placed within the right-of-way by a water district as defined in Section 49.001, Texas Water Code or a utility franchisee and all excavations or other construction in the streets or other rights-of-way or public places shall be done as to interfere as little as possible with the use of the streets, rights-of-way and public places in accordance with any direction given by or under the authority of the Mayor or his or her designee. Future installations of water and sewer lines, cables and utility franchisee pipes, lines, cables and conduits shall not conflict with other then existing pipes, lines, cables and conduits except with the consent of the Mayor or his or her designee and underground facilities shall be placed at an appropriate depth so as to not interfere with or be affected by city streets and traffic.
- B. While the cut or any part thereof is open, and while any part of the street, sidewalk or public place is obstructed by rubbish or material, the permittee shall erect and maintain traffic control devices as required by the traffic control permit and shall maintain safe passage for pedestrian and vehicular traffic.
- C. If substantially the full width of any street, alley, sidewalk or public place is excavated, the permittee shall maintain a driveway or walkway across the excavation until it is refilled. The driveway or walkway, as applicable, shall be specified in the plans submitted with the application for the permit.
- D. If the permittee fails to take any protective measures herein required, the mayor or his or her designee may, in his discretion, authorize the work to be done by city forces or by contract. Permittee shall pay the city for its costs of protective measures within ten city working days of receiving an itemized statement for such costs.
- E. In the refilling of all openings in any street, alley, sidewalk or other installed surface in a public right-of-way, the permittee shall restore the city's facilities, surfaces or public rights-of-way to a condition equal to or better than the original condition, and when a permittee shall open any ground in the city rights-of-way, the permittee shall open no more space nor keep the space open any longer than is reasonably necessary to properly execute the work for which such space shall have been opened.
- F. Upon request from the city, for all Work in which the backfill requirements must be developed by a registered engineer, the permittee shall provide documentation to the city of such standards and testing results showing that the compaction standards have been met.

**Section 8. Responsibility of permittee.**

- A. The permittee shall be responsible for, and shall hold the city harmless against, all damages to persons or property resulting from the making or repair of the cut or excavation, whether done by himself or by the city; and the taking out of the permit shall be deemed a contractual acceptance of this obligation by the permittee in a condition of the issuance of the permit. The person making the cut or excavation shall continue to protect it and be responsible for its condition until the work allowed in the permit is completed as required in the permit.
- B. If the permittee fails to complete any requirements or work required of him hereunder as promptly as reasonably possible consistent with good construction practice, or if the permittee fails to take any protective measure required of him by this ordinance, the work or verification thereof may, in the discretion of the mayor or his or her designee, be done by city forces or by contract whether requested or not; and the proper charge shall be made against the permittee so as to allow the city to recover all of its costs. The permittee shall pay any invoice from the city within thirty (30) days of receipt.

**Section 9. Penalty**

A person who violates any provision of this Ordinance, or who fails to perform an act required by this Ordinance commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted or continued. An offense under this Ordinance is punishable by a fine not to exceed 500.00.

**ARTICLE II. FINDINGS OF FACT**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if set forth herein at length.

**ARTICLE III. REPEALER**

If any provision of this Ordinance conflicts with any provision in another Ordinance, resolution or order of the Council, then the stricter provision shall apply.

**ARTICLE IV. SEVERABILITY**

If any word, article, phrase, paragraph, sentence, clause or provision of this Ordinance be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or application of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

**ARTICLE V. EFFECTIVE DATE**


This Ordinance shall take effect immediately from and after its passage.

**ARTICLE VI. PROPER NOTICE AND OPEN MEETING**


It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of the meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

PASSED AND APPROVED this the 15<sup>th</sup> day of March 2016, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the Town of Clint, Texas.

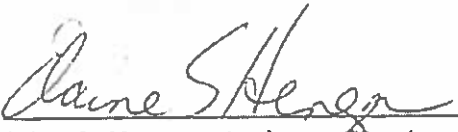
**Town of Clint**

By:   
Charles Gonzalez, Mayor

**ATTEST:**

By:   
Susana Rodriguez, Town Clerk

**APPROVED AS TO FORM:**

  
Elaine S. Hengen, Assistant City Attorney

First Reading: 2/16/2016  
Second Reading: 3/15/2016