

ORDINANCE NO. 442

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, MAKING IT UNLAWFUL TO MAKE ANY EXCAVATION OR EMBANKMENT IN ANY STREET, AVENUE, ALLEY OR PUBLIC EASEMENT WITHOUT FIRST OBTAINING A WRITTEN PERMIT FROM THE CITY; REQUIRING SUCH STREET, AVENUE, ALLEY OR PUBLIC EASEMENT TO BE RESTORED TO ITS FORMER CONDITION WITHIN TEN DAYS; REQUIRING GUARD RAILS AND WARNING LIGHTS; REQUIRING NOTICE OF NECESSITY TO BLOCK ANY STREET, ROAD, ALLEY OR HIGHWAY; AUTHORIZING PUBLIC UTILITY COMPANIES TO PERFORM EMERGENCY WORK; FIXING A PENALTY NOT TO EXCEED TWO HUNDRED (\$200.00) DOLLARS FOR EACH OFFENSE; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

Section 1. It shall be unlawful for any person, firm or corporation to make any excavation or embankment in any street, avenue, alley or public easement in the City of Mesquite without first obtaining a written permit from the City.

Section 2. Whenever any person, firm or corporation desires to make an excavation or embankment in any street, avenue, alley or public easement in the City of Mesquite, he shall make application to the City for a permit, which said permit shall be issued upon the payment of a fee in the amount of TWO DOLLARS (\$2.00). Legally franchised utilities will not be required to pay such a fee.

Section 3. When any part of any street, avenue, alley or public easement in the City shall be excavated, torn, dug or taken up for any purpose or when an embankment is placed thereon, the person or persons doing the same shall, immediately upon completion of such purpose, and within at least ten days after completion of such purpose, return the earth and ram and puddle the same to a firm and solid bearing and in such manner as will entirely prevent the settling of such earth in accordance with paragraph 101-20 and 101-21 of Water and Sewer Specifications covering same and duly passed by the City Council resolution on January 15, 1962, and shall also relay the paving, macadamizing or gravel in a skillful and permanent manner in accordance with paragraph 101-21 of Water and Sewer Specifications covering same, duly passed by Council resolution on January 15, 1962, and in every case, to the satisfaction of the Director of Public Works of the City of Mesquite, or other persons designated by the City Manager. Failure to comply with the requirements of this section shall constitute an offense, and each and every day such failure continues shall constitute a separate offense.

Section 4. Bond Required. No person, firm or corporation, or any of their agents, servants or employees, except legally franchised utilities, shall make any excavation or embankment in the City of Mesquite without executing and delivering to the City of Mesquite a bond in the sum of TWO THOUSAND (\$2,000.00) DOLLARS payable to the City of Mesquite, Texas, with a good and sufficient corporate surety thereon, authorized to do business in the State of Texas, which bond shall be conditioned as follows:

Said bond shall be conditioned that all work shall be done in a good and workmanlike manner, and that such person, firm or corporation shall faithfully and strictly comply with the specifications and with the terms of such ordinances, resolutions or regulations that may be passed by the governing body, governing and relating to any excavation of whatever kind, and that the City of Mesquite shall be fully indemnified and be held whole and harmless from any and all costs, expense or damage, whether real or asserted, on account of any injury done to any person or property in the prosecution of said work, or that may arise out of or be occasioned by the performance of said work; said bond shall be conditioned further that the same persons, firm or corporation shall, without additional cost to the person for whom the work was done, maintain all such construction for a period of two years from the date of such construction, reconstruction or repair to the satisfaction of the Director of Public Works of the City of Mesquite, and shall reconstruct or repair same to the satisfaction of the Director of Public Works of the City of Mesquite at any time within two years after the construction, reconstruction or repair of such facility, and after ten days' notice from the Director of Public Works to reconstruct or repair the same, and the opinion of the Director of Public Works of the City of Mesquite as to the necessity of such reconstruction or repair shall be binding on the parties thereto; which bond shall for such purpose be in force for two years after the construction, reconstruction or repair of such facility, and one recovery shall not exhaust said bond, but such bond shall be a continuing obligation against the sureties thereon until the entire amount therein provided for shall have been exhausted. That in case the bond herein provided for shall be decreased on account of any recovery which may be obtained, arising out of the violation of any condition of the same, the governing body shall require, upon notice to it of such fact, an additional bond to be given by any person, firm or corporation in accordance with this chapter in an amount sufficient, when added to the unexhausted amount of the original bond to be at all times equal to the sum of two thousand dollars. The City of Mesquite may for itself or for the use and benefit of any person injured or damaged by reason of any defective construction, reconstruction or repair of any sidewalk, curb, gutter, or driveway approach, by any person, firm or corporation, maintain suit on said bond in any court having jurisdiction thereof, or suit may be maintained thereon by any person injured or damaged by reason of the failure of any person, firm or corporation who shall cause

any excavation of any kind in the City of Mesquite, to observe the conditions of said bond; provided, however, that nothing in this chapter shall affect the bond of any person, firm or corporation now engaged in any excavation of any kind which have already been executed in accordance with the terms of the existing city ordinance, nor shall this be construed to in any manner diminish the liability of any surety or principal on said bond. No person, firm or corporation having a bond to make any excavation or embankment of any kind on public property within the City of Mesquite shall be permitted to take out a permit for such excavation or embankment on any public property within the City of Mesquite and allow any person other than the bona fide holder of such bond to do any of the work. No permit for such excavation or embankment on any public property within the City of Mesquite shall be granted unless the two-year maintenance bond provided for herein shall be in full force and effect at the time of request for such permit and the doing of the work.

Section 5. It is hereby made unlawful for any person, firm or corporation to make any excavation of whatsoever kind in the City of Mesquite, whether the same be in, along or near any street or sidewalk, alley or highway, of any kind without placing proper guard rails and signal lights or other warnings, at, in or around the same, sufficient to warn the public of such excavation and to protect all persons using reasonable care from accidents on account of the same. Such guard rail, signal lights or warnings shall be as recommended by the Director of Public Works or his duly authorized representative.

Section 6. Whenever it becomes necessary to block any street, road, alley, or highway in the city by reason of any such excavation or embankment the Fire Department and the City Hall shall be notified in advance as to the date, time and place of the necessity to block said street, road, alley or highway. The Fire Department and the City Hall shall be notified as to the date and time of the removal of such blockade. In no event, however, shall any such street, road, alley or highway be blocked or closed overnight.

Section 7. Public Utility Companies may perform emergency work during the nighttime but it will be necessary for any such public utility company to obtain the permit therefor as required by this ordinance the next day following such work.

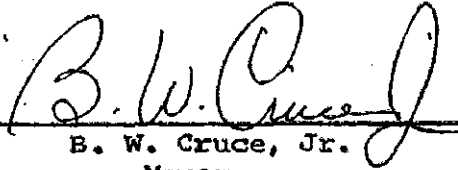
Section 8. That the provisions of this ordinance shall apply to all persons making such excavations whether they be contractors, supervisors, managers, agents, employees or otherwise.

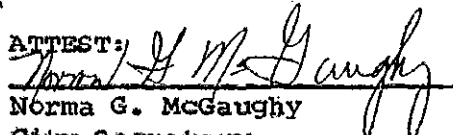
Section 9. That any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not to exceed the sum of TWO HUNDRED (\$200.00) DOLLARS, for each offense, and each and every day such excavation or embankment shall be permitted to remain after notification from the City of Mesquite to remove the same shall constitute a separate offense.

Section 10. If any article, paragraph, subdivision, clause, phrase, or provision of this ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof other than the part so decided to be invalid or unconstitutional.

Section 11. The fact that the City of Mesquite does not have an ordinance regulating the excavation of public streets, alleys or other public thoroughfares creates an urgency and an emergency and requires that this ordinance shall take effect immediately from and after its passage and the publication of the caption of said ordinance as the law in such cases provides.

DULY PASSED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, on this the 6th day of August, 1962.


B. W. Cruce, Jr.
Mayor

ATTEST: 
Norma G. McGaughy
City Secretary