

ORDINANCE NO. 2803

AN ORDINANCE OF THE CODE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTERS 10, 11, 14 AND 15 OF THE CODE OF THE CITY OF MESQUITE, TEXAS BY DELETING SECTIONS 10-169.1 TO 10-169.4, SECTION 14-22, ARTICLE III OF CHAPTER 15, SECTIONS 15-191 TO 15-200 AND BY ADOPTING ARTICLES III AND IV OF CHAPTER 11, SECTIONS 11-50 TO 11-57 AND 11-100 TO 11-105 RELATING TO GRADING, EXCAVATION, EARTHWORK AND EROSION CONTROL; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 10 of the Code of the City of Mesquite is hereby amended as follows, in all other respects said Code and Chapter to remain in full force and effect:

A. *The following Sections of Chapter 10 are hereby deleted.*

- 1. Sec. 10-169.1. Duty of property owner to prevent dirt, mud, etc., from washing onto public streets.
- 2. Sec. 10.169.2. Permit required for filling, grading, excavation.
- 3. Sec. 10.169.3. Issuance of permits; criteria.
- 4. Sec. 10.169.4. Permit fee.

SECTION 2. That Chapter 11 of the Code of the City of Mesquite is hereby amended as follows, in all other respects said Code and Chapter to remain in full force and effect:

A. That Article III, entitled "Grading, Excavation, Earthwork, and Erosion Control" of Chapter 11 is hereby adopted.

B. *That Sections 11-50 to 11-57 are hereby adopted to read as follows:*

**ARTICLE III. GRADING, EXCAVATION, EARTHWORK, AND EROSION CONTROL**

Sec. 11-50. Applicability of article.

The provisions of this article shall apply to all property owners, persons or their agents filling, grading, excavating or otherwise disturbing the

surface of real property within the City, whether they be contractors, subcontractors, supervisors, inspectors, managers, agents, employees or otherwise. Failure to comply with the requirements of this article shall constitute an offense, and each day such failure continues shall constitute a separate offense.

**Sec. 11-51. Grading permit required for filling, grading, excavation, etc.**

No person shall fill, grade, excavate or otherwise disturb the surface of real property within the City without first having a secured a grading permit from the public services engineer. No owner of real property shall knowingly permit another person to fill, grade, excavate or otherwise disturb the surface of real property within the City without first having secured a permit from the public services engineer. In addition, if the property to be filled, graded, excavated or otherwise disturbed is within flood hazard area a development permit must be secured from the city engineer as required in Chapter 11, Article II of this code.

**Sec. 11-52. Duty of property owner to prevent dirt, mud, etc., from washing onto public streets, alleys, etc.**

It shall be unlawful and an offense and shall constitute a nuisance for any person owning or having control of real property within the City to suffer or permit soil, mud, rock or debris to wash, slide, erode or otherwise be moved from said real property onto streets, alleys, utility facilities, rights-of-way or easements. It shall be the duty of each property owner or party in control thereof to prevent soil, mud, rock or debris from such real property being deposited or otherwise transported onto the streets, alleys, utility facilities, rights-of-way or easements of the City and to inspect such property and acquaint themselves with the conditions existing and to remedy any conditions likely or calculated to allow soil, mud, rock or debris to wash, slide, erode or otherwise be transported onto the streets, alleys, utility facilities, rights-of-way or easements and failure to do so shall be deemed criminal negligence for the purpose of the offense described herein.

**Sec. 11-53. Requirements for filling, grading, excavation, etc.**

The public services engineer shall prepare a list of allowable fill material. All filling shall use only the materials listed for fill. All fill placed on a site and visible from a public thoroughfare shall be leveled and have a final cover of topsoil that will support vigorous plant growth, six (6) inches minimum depth, immediately following completion of filling operations. Intermediate leveling and cover shall be required at intervals not to exceed

thirty (30) days for filling operations that will exceed thirty (30) days in duration. In areas where fill is being placed to control erosion, the public services engineer may substitute an alternate cover that is resistant to erosion for the requirement to cover fill with topsoil.

**Sec. 11-54. Issuance of permits; criteria.**

(a) The public services engineer shall issue permits for the grading, filling, excavating or otherwise disturbing the surface of real property upon satisfaction of the following criteria:

(1) Applicant provides adequate assurance that City will be reimbursed for any expense of cleaning or removal of dirt, rock, debris or other pollutants from City streets, alleys, utility facilities, rights-of-way and easements or the barricading thereof by the posting of a deposit of cash with the City to guarantee same.

(2) The amount of such deposit shall be established by the City council from time to time and is hereby established as follows:

<i>Area</i>	<i>Amount</i>
One (1) acre or less	\$500.00 minimum
From one acre up	\$100.00 for each additional acre

(3) The applicant provides a notarized statement from the property owner giving permission for the applicant to fill, grade, excavate or otherwise disturb the property and acknowledgment by property owner of the responsibilities of the property owner as described in section 11-57 of this code.

(4) Submission by the applicant of an erosion control plan for all work disturbing five (5) acres of land or more. This erosion control plan must be approved by the public services engineer prior to issuing the grading permit.

(5) Submission by the applicant of a copy of an approved Environmental Protection Agency Storm Water permit for all work disturbing five (5) acres of land or more.

(6) The public services engineer may exclude that portion of tracts in excess of ten (10) acres that he determines to be so situated as to not contribute to erosion due to location and topography.

- (b) Upon determination by the public services engineer that no further hazard of erosion, silting, or debris being deposited on streets, alleys, utility facilities, rights-of-way or easements exists by reason of the condition of land for which a deposit is made, so much of such deposit that is not required to reimburse City for the expense of removal of soil, mud, rock and debris from its streets, alleys, utility facilities, rights-of-way or easements by reason of work performed on such land shall be refunded. The reasonable charge of such removal by City shall be billed to permittee from time to time and subtracted from the balance of such deposit.

**Sec. 11-55. Exceptions to the permit, permit fee and deposit.**

Construction, grading, filling or excavation undertaken by the City of Mesquite, Mesquite Independent School District, and churches shall be exempt from the deposit and permit fee as required by this article. Construction, grading, filling or excavation undertaken by franchised utility companies and individual single family residences shall be exempt from the permit, deposit and permit fee as required by this article.

**Sec. 11-56. Permit fee.**

A non-refundable fee of ten (\$10.00) dollars shall be charged for each permit issued to cover administrative expenses.

**Sec. 11-57. Owner's responsibility.**

The property owner shall be responsible for all cleanup operations incidental to the grading, filling, excavation, construction or other disturbance of the surface of real property including leveling, establishment of ground cover, erosion control and removal of all trash or other materials not suitable for fill including those deposited on streets, alleys, utility facilities, rights-of-way or easements.

If the property owner fails in any respect to fulfill the requirement of this article, the City may go upon the owner's property and perform such work as may be necessary to fulfill such requirements and may level, establish ground cover, construct erosion control, remove all soil, rock, debris and other materials not suitable for fill including those deposited on streets, alleys, utility facilities, rights-of-way or easements, at the property owner's expense and charge same against the deposit of the applicant. If a deposit has not been made with the City, or if the cost incurred by the City exceeds the amount of the deposit, the City shall bill the property owner for the

unpaid expenses and if the owner fails to pay the City for such expenses within thirty (30) days of being billed for same, the City shall have the right to place a lien on the owner's property which shall be filed with the county clerk as in the case of paving assessment liens for all amounts expended by the City in excess of the deposit plus interest at the current lawful rate.

C. That Article IV, entitled "EXCAVATIONS BY FRANCHISED UTILITY COMPANIES" of Chapter 11 is hereby adopted.

D. That Sections 11-100 to 11-105 of Chapter 11 are hereby adopted to read as follows:

#### IV. EXCAVATIONS BY FRANCHISED UTILITY COMPANIES

##### Sec. 11-100. Applicability of article.

The provisions of this article shall apply to all franchised utility companies or their agents involved in excavating, filling, grading or otherwise disturbing City rights-of-way or easements hereunder, whether they be contractors, subcontractors, supervisors, inspectors, managers, agents, employees or otherwise. Failure to comply with the requirements of this article shall constitute an offense, and each day such failure continues shall constitute a separate offense.

##### Sec. 11-101. Permit-Required.

It shall be unlawful for any franchised utility company to make any excavation, embankment, or place any pole, guy, cable, or conduit in any public street, alley, public easement or right-of-way in the City without first applying for and obtaining a written permit from the public works construction division of the public services department and complying with all provisions of this article.

##### Sec. 11-102. Emergency work by franchised utilities.

Franchised utility companies may perform emergency work, but it will be necessary for any such franchised utility company to obtain the permit as required by this article no later than the next working day following such work.

**Sec. 11-103. Construction standards and restoration of street, etc., to former condition.**

When any part of any public street, alley, easement or right-of-way 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 five (5) working days after completion of such purpose return the construction site to a condition as good or better than what existed prior to construction. All construction including location of utilities, backfilling of trenches, replacement of paving and site cleanup and restoration shall be done in accordance with current City requirements, and shall also be done in a skillful and permanent manner to the satisfaction of the public services engineer or other person designated by the City Manager.

No pole, guy or other facility shall be placed in or near a sidewalk, street or other paved area if it shall obstruct vehicular or pedestrian traffic or pose a danger to the traveling public.

**Sec. 11-104. Construction traffic control, protection of pedestrians, trench safety and other safety concerns.**

The franchised utility company shall design and implement a plan for construction traffic control, barricading and signage that shall, as a minimum, meet the requirements of the most current "Texas Manual of Uniform Traffic Control Devices" with all its amendments. Additional barricading and signage shall be designed and constructed by the franchised utility company to warn and protect pedestrians from the hazards of the construction site. Further, the franchised utility shall provide and maintain such other barricades, signs, warning devices or other safety measures as deemed necessary by the public services engineer.

In addition, the franchised utility company shall comply with all applicable city, state and federal safety laws and regulations regarding trench safety, confined spaces or other safety issues.

**Sec. 11-105. Notice required prior to blocking street, etc.**

Whenever it becomes necessary to close or substantially restrict any street or alley in the City by reason of such franchised utility work as described in this article, the city fire department, police department, traffic division and public works construction division shall be notified three (3) working days in advance as to the date, time and place of restriction or blockage to such street or alley. The fire department, police department,

traffic division and public works construction division shall be notified as to the date and time of the removal of such restrictions or blockages.

**SECTION 3.** That Chapter 14 of the Code of the City of Mesquite is hereby amended as follows, in all other respects said Code and Chapter to remain in full force and effect.

A. *The following Section of Chapter 14 is hereby deleted:*

- 1. **Sec. 14.22. Fill substance; dumping.**

**SECTION 4.** That Chapter 15 of the Code of the City of Mesquite is hereby amended as follows, in all other respects said Code and Chapter to remain in full force and effect.

A. That Article III, entitled "EXCAVATIONS" of Chapter 15 is hereby deleted in its entirety.

B. *The following Sections of Chapter 15 are hereby deleted:*

- 1. **Sec. 15-191. Applicability of article.**
- 2. **Sec. 15-192. Permit-Required.**
- 3. **Sec. 15-193. Same-Application fee.**
- 4. **Sec. 15-194. Emergency work by utilities.**
- 5. **Sec. 15-195. Bond-Required.**
- 6. **Sec. 15-196. Same-Conditions for issuance.**
- 7. **Sec. 15-197. Same-Work to be performed by bonded person.**
- 8. **Sec. 15-198. Restoration of street, etc., to former condition.**
- 9. **Sec. 15-199. Guard rails, signal lights, etc., required around excavation.**
- 10. **Sec. 15-200. Notice required prior to blocking street, etc.**

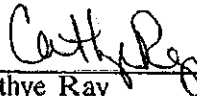
**SECTION 5.** That should any word, sentence, clause, paragraph, or provision of this ordinance be held to be invalid or unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other

than the part or provision so decided to be unconstitutional, illegal, or invalid and shall not affect the validity of the remainder of Chapters 10, 11, 14 and 15 or any other provision of the Code of the City of Mesquite.


SECTION 6. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars for each offense.

SECTION 7. That the present ordinances of the City of Mesquite are not adequate to regulate grading, excavation, earthwork, erosion control and protect the public interest, safety and general welfare of the City of Mesquite, creates an urgency and emergency for the preservation of the public health, safety, and welfare and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.


DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 6th day of April, 1992.

  
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Cathye Ray  
Mayor

ATTEST:

  
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Lynn Prugel  
City Secretary

APPROVED:

  
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B.J. Smith  
City Attorney