

ORDINANCE NO. 4238

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 11 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, AS AMENDED, BY MAKING CERTAIN DELETIONS AND ADDITIONS UNDER SECTIONS 11-51, 11-52, 11-53, 11-54, 11-55 AND 11-57 THEREBY UPDATING THE CITY'S GRADING PERMIT ORDINANCE; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000.00 FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

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

SECTION 1. That Chapter 11 of the Code of the City of Mesquite, Texas, as amended, is hereby amended by making certain deletions and additions under Sections 11-51, 11-52, 11-53, 11-54, 11-55 and 11-57 to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

- (a) *Sec. 11-51.* Amend by deleting Section 11-51 in its entirety and adding a new Section 11-51 to read as follows:

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 secured a grading permit from the City 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 City 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 of this Code.

- (b) *Sec. 11-52.* Amend by deleting Section 11-52 in its entirety and adding a new Section 11-52 to read as follows:

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, pollutants or debris to wash, slide, erode or otherwise be moved from said real property onto streets, alleys, utility facilities, drainage 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, pollutants 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.

- (c) *Sec. 11-53.* Amend by deleting Section 11-53 in its entirety and adding a new Section 11-53 to read as follows:

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

The City Engineer shall prepare a list of allowable fill materials and minimum required compaction requirements. 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, six inches minimum depth, that will support vigorous plant growth, immediately following completion of filling operations. Intermediate leveling and cover shall be required at intervals not to exceed 30 days for filling operations that will exceed 30 days in duration. In areas where fill is being placed to control erosion, the City Engineer may substitute an alternate cover that is resistant to erosion for the requirement to cover fill with topsoil.

- (d) *Sec. 11-54.* Amend by deleting the first sentence in Section 11-54(a) in its entirety and adding a new first sentence in Section 11-54(a) to read as follows:

(a) The City Engineer's office shall issue permits for the grading, filling, excavating or otherwise disturbing the surface of real property upon satisfaction of the following criteria:

- (e) *Sec. 11-54.* Amend by deleting Sections 11-54(a)(4) through 11-54(a)(6) in their entirety and adding new Sections 11-54(a)(4) through 11-54(a)(6) to read as follows:

(4) Submission by the applicant of a Storm Water Pollution Prevention Plan (SWP3) for all work disturbing one acre of land or more. This SWP3 must be prepared by a licensed professional engineer in accordance with applicable Environmental Protection Agency (EPA) and Texas Commission on Environmental Quality (TCEQ) regulations and approved by the City Engineer prior to issuing the grading permit.

(5) Submission by the applicant of a copy of Notice of Intent (NOI) and/or a Construction Site Notice (CSN) as required by the TCEQ regulations for all work disturbing one acre of land or more.

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

- (f) *Sec. 11-54.* Amend by deleting the first sentence in Section 11-54(c) in its

entirety and adding a new first sentence in Section 11-54(c) to read as follows:

- (c) Upon written request by the applicant to the City Engineer, the unused portion of the applicant's deposit shall be refunded if the following criteria are met:
- (g) *Sec. 11-54.* Amend by deleting Sections 11-54(c)(1) and 11-54(c)(5) in their entirety and adding new Sections 11-54(c)(1) and 11-54(c)(5) to read as follows:
  - (1) The site for which the deposit exists has been stabilized against erosion and permanent ground cover has been established;
  - (5) The City Engineer or his designee has given written acceptance of public improvements.
- (h) *Sec. 11-54.* Amend by deleting Sections 11-54(d) through 11-54(f) in their entirety and adding new Sections 11-54(d) through 11-54(f) to read as follows:
  - (d) An applicant who has submitted a written request for return of their deposit who meets the requirements of subsection (c) shall be refunded all funds not used to reimburse the City for the removal of soil, rock, mud, debris and pollutants from its streets, alleys, utility facilities, drainage facilities, rights-of-way or easements. Should an applicant fail to meet all requirements for a refund, the applicant's request will be rejected until such time as they are met. When the requirements have been met, the funds subject to refund will be sent via first class mail to the address on the applicant's grading permit application or if such address has been updated pursuant to application instructions to the applicant's updated address. If the refund mailed to the applicant is returned by the United States Postal Service as undeliverable, the funds shall be forfeited to the City and placed in the general fund.
  - (e) If a written request for return of a deposit is not made within two years of the date the project on the property for which the deposit has been made receives written acceptance from the City Engineer or his designee of the public improvements, the unused portion of the applicant's deposit shall be forfeited to the City and placed in the general fund.
  - (f) Grading permits shall be valid for two years after date of issuance by the City. Grading permits may be extended for one additional year (for a total of three years) upon written request by the applicant to the City Engineer. The City Engineer will have the site inspected to verify compliance with the permit conditions and the provisions of the submitted SWP3 before making the permit extension. Failure of the applicant to maintain compliance with the permit conditions and the provisions of the submitted SWP3 shall be adequate cause to deny a request for grading permit extension.

- (i) *Sec. 11-55.* Amend by deleting Section 11-55 in its entirety and adding a new Section 11-55 to read as follows:

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

Construction, grading, filling or excavation undertaken by the City, franchised utility companies and existing individual single-family lots with existing residences under one acre in size shall be exempt from the permit, deposit and permit fee as required by this article.

- (j) *Sec. 11-57.* Amend by deleting Section 11-57 in its entirety and adding a new Section 11-57 to read as follows:

Sec. 11-57. Owner's responsibility.

The property owner shall be responsible for implementation and operation of a SWP3 in accordance with applicable EPA and TCEQ regulations and 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 and sediment control and removal of all trash, debris or other materials not suitable for fill including those deposited on streets, alleys, utility facilities, rights-of-way or easements.

In addition, the property owner shall be responsible for compliance with the approved grading plan.

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 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. If the property owner fails to fulfill the requirement of this article, the City may revoke the grading permit, issue citations or take other legal remedies as may be necessary to enforce compliance with this article.

**SECTION 2.** That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

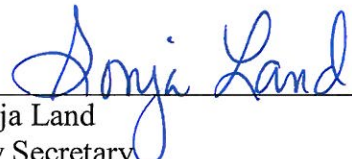
SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed \$2,000.00 for each offense, provided, however, if the maximum penalty provided for by this ordinance for an offense is greater than the maximum penalty provided for the same offense under the laws of the State of Texas, the maximum penalty for violation of this ordinance for such offense shall be the maximum penalty provided by the laws of the State of Texas. Each day or portion of a day any violation of this ordinance continues shall constitute a separate offense.

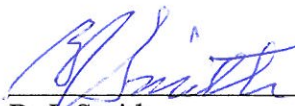
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 1st day of October, 2012.

  
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John Monaco  
Mayor

ATTEST:

  
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Sonja Land  
City Secretary

APPROVED:

  
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B. J. Smith  
City Attorney