

ORDINANCE NO. 2018-04-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING CHAPTER 90, ENTITLED "STREETS AND SIDEWALKS," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF EXISTING ARTICLE II, ENTITLED "CONSTRUCTION AND REPAIR," BY AMENDING SECTION 90-70 AS SET FORTH HEREIN BELOW; THROUGH THE AMENDMENT OF EXISTING ARTICLE III, ENTITLED "EXCAVATIONS AND ALTERATIONS," BY AMENDING SECTION 90-124 AS SET FORTH HEREIN BELOW; THROUGH THE AMENDMENT OF EXISTING ARTICLE IV, ENTITLED "RIGHTS-OF-WAY USE AND MANAGEMENT," BY AMENDING SECTIONS 90-224, 90-246, AND 90-247 AS SET FORTH HEREIN BELOW; REPEALING ALL CONFLICTING ORDINANCES; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING A PENALTY; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of McKinney, Texas is a Home Rule City possessing the full power of local self-government pursuant to Article 11, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the City of McKinney adopted the Code of Ordinances for the protection of the public health and general welfare of the people of the City of McKinney; and

WHEREAS, the City Council of the City of McKinney, Texas enacted Chapter 90 of the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), adopting the terms for regulating use of streets and other public places in the city limits and has recognized that certain provisions of the McKinney Code should be reviewed and updated from time to time; and

WHEREAS, the City of McKinney, Texas has updated its design criteria and policies through the adoption and implementation of a new Engineering Design Manual for the City of McKinney that will take effect on or about April 4, 2018 ("Engineering Design Manual") and replace existing City of McKinney Street, Stormwater, and Water and Wastewater Design Manuals that were previously adopted; and

WHEREAS, Chapter 90 of the McKinney Code must be consistent with the requirements, terms, and standards of the Engineering Design Manual of the City of McKinney, Texas; and

WHEREAS, the purpose of the Engineering Design Manual is to protect the health, safety, and welfare of the public by establishing standard engineering practices and minimum engineering criteria for application throughout the City of McKinney, Texas, and to the fullest extent allowed by law in its extraterritorial jurisdiction; and

WHEREAS, the City Council of the City of McKinney, Texas, finds and determines that it is in the best interest of the public health, safety and general welfare of the citizens of McKinney, Texas, to amend certain provisions of Chapter 90, entitled "Streets and Sidewalks," of the McKinney Code as provided herein below.

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

Section 1. All of the above premises are found to be true and correct legislative determinations and are incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. From and after the effective date of this Ordinance, Section 90-70, "Plan," of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 90-70 also entitled "Plan" and shall be and read as follows:

"Sec. 90-70. - Plan.

Before a permit can be issued under this division, the applicant shall submit a plan showing the proposed location of construction and the scope of the work. The director of engineering shall determine if the proposed construction is of such a nature that it may adversely affect the public in any manner and if so the director of engineering may require a plan to be submitted that has been prepared by a registered professional engineer licensed to practice engineering in the state. Such plan shall bear the seal and signature of the engineer responsible for the design. The plan shall be approved prior to the issuance of a permit."

Section 3. From and after the effective date of this Ordinance, Section 90-124, "Specifications," of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 90-124 also entitled "Specifications" to hereafter read as follows:

"Sec. 90-124. - Specifications.

All construction under this article shall be done in accordance with the current city standards and specifications for construction and related appurtenance sheets, on file with the director of engineering."

Section 4. From and after the effective date of this Ordinance, Section 90-224 of the McKinney Code, is hereby amended in part by deleting the definition of "Director" and replacing said definition with a new definition for the phrase "Director" to hereafter read as follows:

"*Director* means the director of the city department of public works or the city department of engineering, or his or her respective designated representative."

Section 5. From and after the effective date of this Ordinance, Section 90-246(a) of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 90-246(a) to hereafter read as follows:

"(a) *In general.* All construction must be done in a good and workmanlike manner and in faithful and strict compliance with the permit, this article, other city ordinances, and current city standards and specifications (including the North Central Texas Council of Governments specifications, where applicable) relating to construction within the public right-of-way. The public service provider shall maintain the construction area in a manner that avoids health hazards, and hazards to vehicular and pedestrian traffic until the public right-of-way are permanently restored. Specific construction requirements are contained in the right-of-way construction and permitting procedures manual, as amended."

Section 6. From and after the effective date of this Ordinance, Section 90-246(q)(2) of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 90-246(q)(2) to hereafter read as follows:

"(2) *Exemptions for emergency operations.* Emergency maintenance operations shall be limited to circumstances involving the

preservation of life, property, or the restoration of customer service. Public service provider with prior authorization from the director to perform emergency maintenance operations within the public rights-of-way shall be exempted from this section. Any public service provider commencing operations under this section shall submit detailed engineering plans, construction methods, and remediation plans no later than the next business day after initiating the emergency maintenance operation.”

Section 7. From and after the effective date of this Ordinance, Section 90-247, “Traffic Control,” of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 90-247 also entitled “Traffic Control” to hereafter read as follows:

“Sec. 90-247. - Traffic control.

- (a) No public service provider may close a public street without first obtaining a permit from the director. An application for a permit and a traffic control plan shall be submitted to the public works department no less than seven working days prior to the date of the proposed closure unless an emergency exists, in which case immediate notice must be given to the director. If a proposed construction project is to be made in the public right-of-way dedicated to the state, a city permit shall be required in addition to any and all permits required by the state.
- (b) When it is necessary to obstruct traffic, an application for a permit and a traffic control plan shall be submitted to the public works department prior to starting construction. No permit will be issued until the traffic control plan is approved by the director. No public service provider shall block access to and from private property, block emergency vehicles, block access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital equipment unless the public service provider provides the city with written verification of written notice delivered to the owner or occupant of the facility, equipment, or property at least 48 hours in advance.
- (c) When necessary for public safety, the public service provider shall employ flag persons whose duties shall be to control traffic around or through the construction site. The use of flag persons may be required by the director.
- (d) Unless approved by the director, the public service provider shall not impede rush hour traffic on major thoroughfares during the morning or evening rush hours. No construction shall be performed nor shall any traffic lane be closed to traffic during the hours of 6:00 a.m. to 9:00 a.m. or 4:00 p.m. to 6:00 p.m., Monday through Friday, without the written approval of the director.
- (e) Lane closures on major thoroughfares will be limited to no more than two hours at any time outside of the morning and evening rush hours unless approved by the director.
- (f) Traffic control devices and barricades, as defined in *The Texas Manual on Uniform Traffic Control Devices*, must be used whenever it is necessary to close a traffic lane or sidewalk. Traffic control devices and barricades are to be supplied by the public service provider. If used at night, they must be reflectorized and must be illuminated or have barricade warning lights.

- (g) *The Texas Manual on Uniform Traffic Control Devices*, or any successor publication thereto, shall be used as a guide for all maintenance and construction signing. The public service provider shall illustrate on the permit the warning and control devices proposed for use. At the direction of the director, such warning and control devices shall be modified.
- (h) The director may refuse to issue a permit if proposed construction activity will substantially interfere with vehicular traffic flow on major thoroughfares or is inconsistent with procedures of this article.”

Section 8. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 9. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 10. All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 11. All of the regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this Ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 12. Any violation of this Ordinance can be enjoined by a suit filed in the name of the City of McKinney in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this Ordinance or in the Code of the City of McKinney.

Section 13. Any person, firm or corporation violating any of the provisions of this Ordinance shall be subject to the penalty provisions set forth in Section 1-18 of the McKinney Code; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

Section 14. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council's adoption hereof as provided by law.

Section 15. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS 3RD DAY OF APRIL, 2018.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney