

ORDINANCE NO. 2024-01-____

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, ("MCKINNEY CODE") THROUGH THE AMENDMENT OF EXISTING ARTICLE III, ENTITLED "EXCAVATIONS AND ALTERATIONS," AND DIVISION 2 THEREOF ENTITLED "PERMIT," BY DELETING SECTIONS 90-159 THROUGH 90-161 IN THEIR ENTIRETY AND REPLACING SAID SECTIONS WITH NEW SECTIONS 90-159 THROUGH 90-161 AND ADOPTING NEW SECTIONS 90-162 AND 90-163, ALL OF WHICH NEW SECTIONS ADDRESS "LANE CLOSURES" AS SET FORTH HEREIN BELOW, AND AMENDING APPENDIX A, "SCHEDULE OF FEES", OF THE MCKINNEY CODE BY TO ADD A NEW SECTION 90-161, "LANE CLOSURES; PERMIT FEE AND EXEMPTIONS" TO ESTABLISH APPLICABLE FEES FOR LANE CLOSURES; 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 (the "City") 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 adopted the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), for the protection of the public health and general welfare of the people of the City; and

WHEREAS, the City Council of the City of McKinney, Texas (the "City Council") enacted Chapter 90 of the McKinney Code to govern, protect and regulate the installation, use, operation, maintenance, and repair of the City's streets and sidewalks and any construction activities in and about the City's streets and sidewalks to protect the health, safety, and welfare of the public; and

WHEREAS, the City Council now recognizes that additional requirements are necessary to improve the availability of the City's streets and sidewalks to the public when construction activities are occurring in, upon, around and about or adjacent to the City's streets and sidewalks; and

WHEREAS, the City Council 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 "Utilities," 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 90-159, "Required," of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 90-159, entitled "Lane Closures; Permit Required," to hereafter read as follows:

[Remainder of page intentionally left blank.]

“Sec. 90-159. – Lane Closures; Permit Required.

It shall be unlawful for any person to close, block or barricade all or any part of any City street, road, alley, sidewalk, easement or right-of-way of the City (collectively a “Lane Closure”) without first obtaining a “Lane Closure Permit” from the City for such purpose.

Section 3. From and after the effective date of this Ordinance, Section 90-160, “Emergencies,” of the McKinney Code, is hereby deleted in its entirety and replaced with a new Section 90-160, entitled “Lane Closures; Permit Application, Submission Requirements and Processing,” to hereafter read as follows:

“Sec. 90-160. – Lane Closures; Permit Application, Submission Requirements and Processing.

- (a) *Permit Application Review.* Any request seeking a Lane Closure Permit associated with paving or utility construction shall be reviewed and approved by the Director of Engineering.
- (b) *Timing to Submit Permit Application and the Permit Application.* The request for a Lane Closure Permit shall be submitted to the Director of Engineering at least one (1) month prior to the scheduled start date of the requested Lane Closure.
- (c) *Lane Closure Permit Application and Submittal Package.* The applicant requesting Lane Closure shall identify the proposed starting and ending dates requested for the Lane Closure. The applicant shall provide City with supporting documentation (a “Submittal Package”) that: (1) identifies the details of the project requiring the Lane Closures (the “Project”); (2) explains the reason a Lane Closure is required for the Project; (3) sets out the proposed schedule for the Project; (4) provides all of the plans, details, and processes proposed to set up, operate, and remove the Lane Closures; (5) explains the safety procedures that will be employed by the applicant; and (6) identifies the alternate routes and other considerations the applicant will provide to reduce the impact of Lane Closures on the public. The Submittal Package shall include engineering plans, traffic control plans, and a detailed schedule of the work.
- (d) *Additional Conditions and Requirements.* The Director of Engineering may specify additional design and/or construction requirements to minimize negative traffic impacts when reviewing a request for a Lane Closure Permit under this Article.
- (e) *Permit Denial.* The Director of Engineering may deny a requested Lane Closure Permit with negative traffic impacts that is not in the public interest.”

Section 4. From and after the effective date of this Ordinance, Section 90-161, “Emergencies,” of the McKinney Code, is hereby deleted in its entirety and

replaced with a new Section 90-161, entitled "Lane Closures; Permit Fee and Exemptions," to hereafter read as follows:

"Sec. 90-161. – Lane Closures; Permit Fee and Exemptions.

- (a) Any person approved for a Lane Closure Permit shall pay a Lane Closure Permit fee in the amount as specified by Appendix A – Schedule of Fees multiplied by the anticipated number of days of Lane Closures which amount shall be subject to mutual agreement of the applicant and the Director of Engineering or the final determination of the Director of Engineering (the "Lane Closure Fee") in accordance with Sec. 90-162. The applicant shall also pay to the City as a condition of closing out the Lane Closure Permit all "Inconvenience Fees," as defined in Sec. 90-162, for each additional day the Lane Closures continue beyond the "Lane Closure Permit Duration," defined below.
- (b) The following shall be required to obtain a Permit but may be exempt from paying the Lane Closure Fee:
 - (1) Any Lane Closure that occurs only between the hours of 9:00 a.m. to 4:00 p.m. (including the time needed to set up and remove the Lane Closure); or
 - (2) Any Lane Closure where a temporary pavement is constructed to provide an equal route with the same level of service around what would otherwise be a Lane Closure."

Section 5. From and after the effective date of this Ordinance, a new Section 90-162 titled "Lane Closures: Adjustments to Lane Closure Fee, Reimbursements, Untimely Completion Payments, and Early Completion Incentive," is hereby adopted as a part of the McKinney Code to hereafter read as follows:

"Sec. 90-162. – Lane Closures; Adjustments to Lane Closure Fee, Reimbursements, Untimely Completion Payments, and Early Completion Incentive.

- (a) *Adjustment to Anticipated Lane Closure Days.* The Director of Engineering shall review the Submittal Package to verify the City's agreement with the applicant that the time period required for the Lane Closure is reasonably accurate. If the Director of Engineering believes the Lane Closure will be required for a period different than the anticipated time calculated by the applicant, the Director of Engineering will communicate with the applicant in an effort to mutually agree upon the beginning date and ending date of the Lane Closure Permit. The beginning date and ending date of the Lane Closure Permit shall be established by either:
 - (1) The mutual agreement of the applicant and the Director of Engineering; or
 - (2) The determination of the Director of Engineering if a mutual agreement is not reached.

The Lane Closure Permit shall be issued for the total number of days determined by the Director of Engineering unless a mutual agreement is reached between the applicant and the Director of Engineering regarding the number of days required (the "Lane Closure Permit Duration").

- (b) *Early Completion; Partial Refund of Unused Daily Fees.* If the work requiring Lane Closure is completed and the area of the Lane Closure is cleared of all impediments to its use and passage and permanently reopened to the public and accepted by the City as being properly repaired and safe for the public (the "City's Close Out"), prior to the expiration of the Lane Closure Permit the City will refund to the applicant the daily fee for the days of Lane Closures that applicant did not use calculated from the date of the City's Close Out through the ending date of the Lane Closure Permit (the "Partial Refund"). Further, the payment of any Partial Refund shall be subject to the availability of funding for such purpose.
- (c) *Early Completion; Bonus Incentive.* To encourage the prompt and timely completion of work that results in the City's Close Out of the Lane Closure within the Lane Closure Permit Duration, the Director of Engineering may authorize the refund, credit, or reimbursement to the applicant of an amount equal to seventy percent (70%) of the amount of the Lane Closure Permit Fee paid by the applicant (the "Bonus Incentive") if (1) the City's Close Out occurs prior to the expiration of the Lane Closure Permit, and (2) the Director of Engineering determines the applicant complied with all requirements of this Article and the other provisions of the McKinney Code applicable to the area of the Lane Closure. Notwithstanding the foregoing the Bonus Incentive shall not include any amounts included in a Partial Refund to the applicant. Further, the payment of any Bonus Incentive shall be subject to the availability of funding for such purpose.
- (d) *Untimely Completion; Additional Payments.* If the applicant continues to engage in Lane Closures following the expiration of the Lane Closure Permit, the applicant shall be required to pay additional fees for each and every day during the stated period:
 - (1) For each day within the first thirty (30) days following the expiration of a Lane Closure Permit (an "Extension Period") the applicant shall pay to City an amount equal to one hundred twenty-five percent (125%) of the Daily Fee identified in Sec. 90-161(a) hereof to address the additional inconvenience to track and close the Lane Closure Permit beyond the termination date (each payment being an "Inconvenience Fee"); and

(2) For each additional 30-day period following the Extension Period (each additional period also being an "Extension Period") the applicant shall pay to City Daily Fee plus the cumulative amount of an additional twenty-five percent (25%) Inconvenience Fee per day for each day beyond the Lane Closure Permit Expiration date multiplied by the number of Extension Periods then in effect as a condition to closing out the Lane Closure Permit to among other things cover the additional costs associated with the unplanned extension of the Lane Closure Permit and tracking and monitoring the applicant's continued use of the Lane Closure Permit.

(e) *Director of Engineering Discretion.* The Director of Engineering may adjust duration of the Lane Closure Permit closure or issue a partial refund of the Lane Closure Permit Fee paid by the applicant based on unforeseen circumstances and conditions."

Section 6. From and after the effective date of this Ordinance, a new Section 90-163 titled "Lane Closures: Adjustments to Lane Closure Fee, Reimbursements, Untimely Completion Payments, and Early Completion Incentive," is hereby adopted as a part of the McKinney Code to hereafter read as follows:

"Sec. 90-163. – Lane Closures; Timely Progress Toward Completion Required, Stop Work Orders and Lane Closure Permit Suspension and Revocation, Keep Area Clear, and Recovery of Costs.

(a) *Timely Progress Toward Completion Required.* Any person or party that requests and is issued a Lane Closure Permit shall proceed continuously and expeditiously towards completion of the work that generated the need for a Lane Closure Permit. Failure to do so may result in the revocation of the Lane Closure Permit and any other permits issued or under review by the City that are reasonably related to performing the work that generated the need for a Lane Closure Permit.

(b) *Stop Work Orders and Lane Closure Permit Suspension and Revocation.* The City specifically reserves the right to (1) issue a stop work order, or (2) suspend the Lane Closure Permit and (3) cause any remaining work to be temporarily or permanently repaired when necessary to allow the City to protect the public health and safety arising out of or related thereto and (4) cause the area subject to the Lane Closure to be reopened to the public use.

(c) *Keep Area Clear.* No equipment or materials shall be left in the area that is the subject of the Lane Closure Permit; and the City shall at all times have the absolute right to remove and impound any equipment or materials left in that area.

- (d) *Recovery of Costs.* The City may assess an additional fee in an amount of up to 125% of the actual costs for equipment, labor, and material costs to address any failure under this Section 90-163.”

Section 7. From and after the effective date of this Ordinance, Appendix A, entitled “Schedule of Fees”, of the Code of Ordinances, City of McKinney, Texas, is hereby amended by amending Chapter 90, “Streets and Sidewalks” to add a new Section 90-161, “Lane Closures; Permit Fee and Exemptions,” to read as follows:

“Sec 90-161, “Lane Closures; Permit Fee and Exemptions

- (a) Arterial Roadways: \$500 per lane per day.
- (b) Non-Arterial Roadways: \$250 per lane per day.
- (c) Detour Routes: \$100 per mile per direction of detour per day shall be paid in addition to the fees for a Lane Closure Permit for the Lane Closure of arterial roadways and non-arterial roadways around which the Detour Route redirects the public.
- (d) Fees under this section shall increase in accordance with the provisions of McKinney Code Sec. 90-162 for any Lane Closure exceeding the Lane Closure Permit Duration.”

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 THE ____ DAY OF JANUARY 2024.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
TENITRUS BETHEL, TRMC
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney