

ORDINANCE NO. 2023-09-053

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY AMENDING THE CODE OF ORDINANCES OF THE CITY THROUGH THE AMENDMENT OF ARTICLE IV, "RIGHTS-OF-WAY USE AND MANAGEMENT," OF CHAPTER 90, "STREETS AND SIDEWALKS," BY AMENDING SECTION 90-242, "CONSTRUCTION PERMIT PROCEDURES," BY ADDING A NEW SUBSECTION (G) RELATIVE TO THE REIMBURSEMENT OF COSTS ASSOCIATED WITH THE PERMITTING PROCESS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING 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 XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code, and its Home Rule Charter; and

WHEREAS, the City Council of the City of McKinney finds that there is a public purpose in regulating the use of and construction within the public right-of-way to protect the health, safety, and welfare of residents, businesses, and visitors to the City of McKinney; and

WHEREAS, the City Council finds that the reimbursement and recovery of the City's actual direct and indirect costs associated with a permit for construction in the right-of-way, where not otherwise restricted by state law, this Code of Ordinances, a franchise ordinance, or agreement with the City, furthers that public purpose and facilitates the provision and delivery of important City services for the benefit of residents, businesses, and visitors to the City of McKinney; and

WHEREAS, this Ordinance is proposed consistent with various provisions of the Code of Ordinances, City of McKinney, Texas, that provide for the reimbursement of the City's costs in certain circumstances, including the Right-of-Way Management Chapter, the Special Events Chapter, and the Stormwater Pollution Control Chapter; and

WHEREAS, the City Council has determined that it is in the best interest of the health, safety, and welfare of the citizens of the City of McKinney to require reimbursement of the City's costs and expenses.

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 copied in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 90, "Streets and Sidewalks," is hereby amended by amending Article IV, "Rights-of-Way Use and Management," by amending Section 90-242, "Construction Permit Procedures," by adding a new subsection (g) relative to the reimbursement of costs associated with the permitting process, to hereafter read as follows:

“(g) *Reimbursement of Costs.*

(1) Except as provided by Subsection (g)(2) and (g)(3), the permittee shall, as an express condition of the permit, reimburse the City for the actual direct and indirect costs associated with the permit. Reimbursement to the City shall be

made within thirty (30) calendar days of the receipt of an invoice from the City.

- (2) Subsection (g)(1) does not apply to a permittee when state law, this Code of Ordinances, a franchise ordinance, or agreement with the City provides that a fee may not be charged for construction within the public right-of-way, establishes the amount of the fee that may be charged, or provides that the City's actual direct and indirect costs may not otherwise be reimbursed, including a permittee that is a certificated telecommunications provider operating under Texas Local Government Code Chapter 283, a network provider operating under Texas Local Government Code Chapter 284, a cable or video service provider operating under Texas Utilities Code Chapter 66, a gas utility company or electric utility company operating pursuant to a franchise ordinance under the Utilities Chapter of this Code of Ordinances.
- (3) Subsection (g)(1) also does not apply to a permittee that obtains a permit pursuant to another section of this Chapter 90 that identifies a specific permit fee amount for the type of work being permitted and such other permit fee is paid by the permittee.

Section 3. All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.

Section 4. If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

Section 5. 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 6. Any person, firm, partnership, corporation or association violating any provision of this Ordinance or of any code adopted herein shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in the sum of not more than \$2,000.00, and each day such violation continues shall constitute a separate and distinct violation.

Section 7. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and this Ordinance shall become effective from and after the date of its final passage and publication as provided by law.

Section 8. This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the City of McKinney, Texas.

DULY PASSED APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 5TH DAY OF SEPTEMBER, 2022.

CITY OF MCKINNEY, TEXAS

CORRECTLY ENROLLED:

GEORGE C. FULLER
Mayor
CHARLIE PHILIPS
Mayor Pro Tem

EMPRESS DRANE
City Secretary

TENITRUS BETHEL
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney