

## ARTICLE VI. EXCAVATIONS

### Sec. 14-601. Definitions.

For the purposes of this article, the following words and terms have the following meanings:

*Excavation* means any act by which soil or any other similar matter is dug, cut into, quarried, uncovered, removed, displaced, relocated, or bulldozed.

*Soil* means any earth, sand, clay, loam, caliche, gravel, humus, rock, dirt, or any other matter in or upon the ground, without regard to the presence or absence of minerals or other organic matter.

### Sec. 14-602. Permit required.

It is unlawful and a violation of this article for any person acting on their own behalf or acting as an agent, employee, independent contractor, or servant of any other person to commence an excavation, to excavate, continue to excavate, or to maintain an existing excavation within the City or to work upon or assist in any way in the execution or operation of any excavation, without an excavation permit having been issued by the authority of the City Council under the terms of this article.

### Sec. 14-603. Exemptions from provisions of article.

(a) Nothing in this article may be construed to affect or apply to any person engaged in normal agricultural, horticultural, and residential enjoyment and use of property.

(b) The provisions of this article do not apply to nor affect a person in excavating to install, construct, or complete a structure, building, or facility of any kind if:

(1) The the plans and specifications for such objective have been submitted and approved by the Director of Developmental Services, the Building Official, or Planning Commission of the City.

(2) A permit has been issued by the department of engineering Developmental Services or Building Official.

(3) The progress on the facility or project is not delayed for a period of more than two (2) weeks, excepting delays attributable to acts of nature.

(4) The excavation created is not of a permanent nature, and will not be left open and uncovered on the completion of the project without authorization of an excavation permit.

(c) The provisions of this article do not apply to nor affect the excavation operations of private utility concerns constructing facilities by virtue of a franchise or a special permit issued by the City if:

(1) The progress on the private utility project or facility is not delayed for a period of more than two (2) weeks, excepting delays attributable to acts of nature.

(2) The excavation created is not of a permanent nature and will not be left open and uncovered on the completion of the facility or project.

(d) This article does not apply nor affect the operations of the United States of America, the State of Texas, nor any political subdivision of either government.

**Sec. 14-603. Limitations on locations of excavations.**

(a) No excavation permit may be issued for the commencing of an excavation, which is located nearer than one hundred fifty (150) feet of any residence, building, or structure, without the applicant having first secured written permission of the owner of the residence, building, or structure.

(b) No excavation permit ~~shall~~ may be issued for the commencing of an excavation which is located nearer than three hundred fifty (350) feet to any exterior property line boundary of lands utilized for a public or parochial school, a college, a university, a hospital, a church, a public building, a cemetery, or within an area where there is on public record restrictions or covenants prohibiting excavations.

(c) The City Council, through the Planning Commission, has the power and reserves the authority to refuse any application for an excavation permit at any particular location within the City limits, by reason of such particular location and the character and value of the permanent improvements already erected on or approximately adjacent to the particular location in question, and the use to which the land and surroundings are adopted for school, college, university, hospital, park, civic purposes or for health and safety reasons, or any of them, when in the Planning Commission's opinion the excavating or operation of an excavation at the particular location might constitute a nuisance, be injurious to public health, a public hazard, or a disadvantage to the City in its planned growth, or to its inhabitants as a whole, or to a substantial number of its inhabitants or visitors as a group.

**Sec. 14-604. Duration of permit; application for new permits.**

(a) Each excavation permit issued will be issued for a specific time period, with a maximum period of one year.

(b) After the expiration of the period, the permit is void and the person to whom the permit was issued must make a new application for a new permit for each succeeding year or portion of a year that an excavation is operated or maintained.

**Sec. 14-605. Application for permit -- Generally.**

(a) Permits required by this article will be issued only after an application, in the form of an affidavit, is executed in duplicate and presented to the Department of Development Services.

(b) The application will be referred to the Planning Commission of the City for review, consideration, and recommendation.

(c) The Department of Development Services shall be bound to act in accord with the Planning Commission's recommendation in the issuance of each excavation permit.

**Sec. 14-606. Application for permit -- Information required.**

Each application for an excavation permit must include all of the following information in detail before it can be accepted by the Department of Development Services and before it can be considered by the Planning Commission:

- (1) The identity and residence address of the applicant.
- (2) The identity and residence address of the owner of the land.
- (3) The location and legal description of the land.
- (4) A positive statement as to whether the land has been platted.
- (5) A tax certificate stating that City, county, state and school district ad valorem taxes have been paid and are current concerning the land.
- (6) The purpose or reason for the removing or moving of the soil from or on the land.
- (7) The quantity in cubic yards of soil to be moved or removed from the land.
- (8) In the case of removal, the place to which the soil is to be removed.
- (9) The proposed date of completion of the soil removal or moving.
- (10) A positive statement that no buildings, residences, or structures are within one hundred fifty (150) feet of the proposed excavation.
- (11) A positive statement that the proposed excavation will not block, encumber or close any public street, way, or alley, or disturb the lateral support of any street, way, or alley.
- (12) A positive statement that the proposed excavation will not be located nearer than three hundred fifty (350) feet to any exterior property line boundary of lands utilized for a public or parochial school, a college, a university, a hospital, a church, public building, or a cemetery.
- (13) A positive statement that the proposed excavation is not and will not be located in an area which has on public record restrictions or covenants prohibiting such a use of the property.
- (14) The proposed slopes and lateral supports to be used in the excavation must be set forth.
- (15) The present and proposed arrangements made for surface water drainage.
- (16) The safety precautions to be installed and maintained at the site, such as fences around the excavation, traffic control devices and drainage system to keep the excavation from collecting water within it.
- (17) The intended use or condition of land upon completion of the excavation process.
- (18) Such other pertinent data as the Department of Development Services and Planning Commission may require.

**Sec. 14-607. Application for permit -- Review by Planning Commission.**

- (a) Upon receipt of an application for an excavation permit, the Planning Commission of the City will hold a public hearing.

(b) Written notice of the public hearing before the Planning commission must be sent to the owners of real property located within four hundred fifty (450) feet of the property on which the excavation is proposed.

(c) The notice is to be given at least ten (10) days before the hearing by mailing the notice to the owners who have rendered their property for City taxes, as the ownership appears on the last approved City tax roll.

(d) When a portion of the property located within four hundred fifty (450) feet of the property upon which the excavation is proposed is located outside the City limits or which was annexed to the City after the final date for making the renditions which are included on the last approved City tax roll, then notice to the owners of property located outside the City may be given by publication.

(e) In addition to the notice provided in subsection (b) of this section, notice of the public hearing must be published once in the official publication of the City, at least fifteen (15) days prior to the date of the public hearing.

(f) Upon conclusion of the hearing, the Planning Commission shall submit its recommendation to the Department of Development Services, which shall grant or refuse the permit in accordance with the Planning Commission's recommendation.

**Sec. 14-608. Application for permit -- Factors to be considered.**

(a) In considering and reviewing an application for an excavation permit, the Planning Commission will be guided by the general purpose of orderly municipal planning, the prohibiting of any condition or the doing of any act constituting or creating a nuisance, health hazard, or endangering the lives or property of others.

(b) As aids in accomplishing these purposes, the following points should be considered by the Planning Commission in reviewing applications for excavation permits:

(1) Soil and earth erosion by water and wind.

(2) Surface water drainage and water drainage facilities of the excavation.

(3) Lateral supports of the excavation.

(4) Condition in which excavation is to be maintained and safeguards to be taken to prohibit creating a nuisance, health hazard, attractiveness to children, and features provided to dispense with the endangering of the lives and property of the public.

(5) Land values and uses in the area of the excavation.

(6) Proposed use or condition of land upon completion of excavation process.

(7) Such other factors as may bear or relate to the coordinated, adjusted, and harmonious physical development of the City.

(c) However, the aids in subsection (b) of this section should be considered an exclusive list of the factors the commission should consider in making their recommendation.

(d) In arriving at its ultimate recommendation, the Planning Commission may attach any special conditions that are reasonably necessary to attain the overall purpose of this article.

**Sec. 14-609. Permit fee.**

(a) On submission of an application for an excavation permit to the Department of Development Services, an application fee must also be submitted for the adequate administration of this article.

(b) In the event that an excavation permit is recommended for issuance, an additional fee per month for the duration of the permit must be paid in advance prior to issuance of the permit for the purpose of inspecting the site during the excavation process.

**Sec. 14-610. Appeals from permit denial or granting to City council.**

(a) In the event an applicant is refused an excavation permit, the applicant may, not later than ten (10) days from the date of receiving notice of the refusal, appeal to the City Council for a public hearing on the refusal by:

(1) Directing a letter to the City Secretary setting forth the date of denial of the excavation permit and the reasons the applicant feels the applicant has been wronged in being refused the permit.

(2) Paying an appeal for processing the appeal.

(b) In the event the Planning Commission recommends to the Department of Development Services that the permit be granted, any person may, within ten (10) days of the recommendation to grant the permission by the Planning Commission, appeal to the City council for a public hearing on the question of the granting or refusal, as the case may be, of the permit by:

(1) Directing a letter to the City council addressed to the office of the City secretary, at the City hall, setting forth the date of the recommendation of the Planning Commission and the reasons the person so appealing feels that the person has been or will be injured by the action from which the person is taking ~~such~~ the appeal.

(2) Paying an appeal fee for processing the appeal.

(c) Upon the filing of the appeal, the right to operate under any-excavation permit is suspended until final determination by the City Council and then in accordance with the final decision of the City Council.

(d) The City council will, on receiving such notice of appeal, direct the City Secretary to place ~~it~~ the appeal on the City Council's work agenda to be considered in the due order of City business.

(e) The City Secretary will then notify the appellant as to the date and place where the City council will consider the appeal and publish a notice one time in the official.

(f) The City council on conducting the public hearing regarding the appeal may, by majority vote of all of the council, either grant or refuse to grant the permit.

(g) In the event the permit is granted, the permit will be issued by the Director of Development Services in accordance with the direction of the City council.

**Sec. 14-611. Issuance of permit.**

All excavation permits will be issued by the Director of the Department of Development Services.

**Sec. 14-612. Form of permit.**

The excavation permit will be in such form and numbered as may be prescribed by the Director of Development Services, and may contain any and all special conditions set forth in the Planning Commission's recommendation or the direction of the City council.

**Sec. 14-613. Transferring, selling, assigning, etc., of permit.**

No excavation permit issued under the terms of this article to any person may ever be transferred, sold, assigned, or otherwise disposed of in any manner to any other person without the written consent of the City council.

**Sec. 14-614. Revocation of permit.**

(a) Any excavation permit issued under this article, where a notice to cease operations is issued by an inspection official, may be revoked by the Planning Commission after notice and hearing for:

- (1) Violation of any condition of the excavation permit;
- (2) Violation of any provision of this article or any other applicable ordinance or law relating to excavations;
- (3) The existence of any condition or the doing of any act constituting or creating a nuisance or endangering the lives or property of others.

(b) Written notice of the time and place of the Planning Commission's hearing must be served upon the person to whom the permit was granted at least four (4) days prior to the date set for the hearing.

(c) The notice must contain a brief statement of the grounds to be relied upon for revoking such excavation permit.

(d) Notice of the hearing may be given by personal delivery to the person to be notified or by deposit in the United States mail in a sealed envelope with postage prepaid, addressed to the person to be notified at the address appearing the application.

**Sec. 14-615. Appeals from permit revocation.**

(a) Any person who has been issued an excavation permit, who is aggrieved by its revocation by the Planning Commission of the City, may appeal to the City Council by filing with the City Secretary a written notice of appeal within five (5) days from the date of the revocation of the excavation permit.

(b) An appeal fee must be paid for processing the appeal.

(c) The aggrieved person will be given a hearing before the City Council, in due order of business.

(d) After the hearing, the City Council may modify or overrule the Planning Commission's decision.

(e) Written notice of the time and place of the City Council's hearing must be served upon the person to whom the permit was granted at least four (4) days prior to the date set for such hearing.

(f) The notice must contain a brief statement of the grounds relied upon by the Planning Commission when revoking such excavation permit.

(g) Notice of the hearing may be given by personal delivery to the person to be notified or by deposit in the United States mail in a sealed envelope with postage prepaid, addressed to such person to be notified at the address appearing in the application.

(h) In the event any appeal is taken from the decision of the Planning Commission, all work must be stopped at the excavation while the appeal is pending.

**Sec. 14-616. Inspection--Right of entry of Department of Development Services.**

For the purpose of administering and enforcing this article, employees of the Department of Development Services have the right to enter into and upon any lands within the City limits, in or upon which an excavation exists or on any lands on which operations are being conducted in creating an excavation, to examine and inspect such lands and excavations, to determine whether the excavation itself or the operations in creating an excavation are in violation of this article and to further determine whether an excavation permit has been secured as is required in this article.

**Sec. 14-617. Inspection -- Notice of violations.**

If the personal inspection provided for in Section 14-6 reveals that the excavation is being operated or maintained in violation of the excavation permit issued, the inspecting official may immediately give notice in writing to the person in charge at the site of the excavation to cease operations, setting further the exact reason for the issuance of the notice.

**Sec. 14-618. Inspection -- Cessation of operations; time limitation for correction of violations; additional inspection.**

(a) After issuance of the notice as provided in Section 14-617, no further operation of the excavation may take place until the violations complained of by the inspecting official have been remedied.

(b) The operator shall have three (3) days from the date of receipt of the complaint notice from the inspecting official to remedy the violations complained of by the inspector and to notify the Director of Development Services of the City that the violations complained of have been remedied and that the excavation is ready for additional inspection.

**Sec. 14-619. Inspection -- Procedure upon failure to remedy violations.**

(a) In the event an operator of an excavation fails to remedy the violations complained of as provided in Section 14-618, the inspecting official will notify the Planning Commission of the violations discovered and request that a hearing be set for a revocation of the operator's excavation permit.

(b) A continuation of work or operation of the excavation, other than to remedy the violation complained of, after written notice has been received by the operator to cease the excavation operations constitutes a separate violation of this article.

**Sec. 14-620. Certain excavations declared nuisances.**

(a) Any excavation located within the City limits, or hereafter created within the City limits, or within five thousand (5,000) feet of the City limits shall and does constitute a nuisance when:

- (1) Maintained or permitted to exist by any person in an unwholesome or nauseous condition.
- (2) Maintained or permitted to exist in a manner by which stagnant water accumulates.
- (3) Maintained or permitted to exist in a manner in which water collects where it is possible and probable mosquitoes will breed.
- (4) Maintained or permitted to exist in a condition where rats could harbor.
- (5) Maintained or permitted to exist in a manner and condition constituting a breeding place for flies.
- (6) Maintained or permitted to exist in a manner and condition where filth, garbage, trash, debris and other discarded material accumulates and is deposited.
- (7) Maintained or permitted to exist in an unfenced, open condition, accessible to children and other members of the public.
- (8) Maintained and worked in a manner the disturbs, effects, or destroys the lateral support of or block and impede traffic on any public street, alley, road, or way.
- (9) Maintained or permitted to exist in any condition that constitutes a possible and probable medium of transmission of disease to or between human beings.
- (10) Maintained or permit to exist any one or more of the above-enumerated conditions.

(b) It is further declared that any person in locating or maintaining any excavation in violation of the provisions of this section is subject to the penalty for the violation of this Code and is deemed to be maintaining a nuisance.

(c) Nothing in this article in any way reduces the remedies, which the City may otherwise have, to regulate, correct, abate, or abolish any nuisance within the City limits or within five thousand (5,000) feet of the City limits.