

ORDINANCE NO. 98-10

AN ORDINANCE AMENDING CHAPTER 22, SECTIONS 22-19 THROUGH 22-29 OF THE CITY OF LEAGUE CITY CODE OF ORDINANCES, REGARDING EXCAVATIONS FOR QUARRIES, MINES, ETC

WHEREAS, the City of League City, Texas (the "City"), deems it necessary and in the best interests of the citizens of the City to amend Chapter 22, Sections 22-19 through 22-29 of the City of League City Code of Ordinances, regarding excavations for quarries, mines, etc.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEAGUE CITY, TEXAS, as follows:

Section 1. The facts and opinions in the preamble of this Ordinance are true and correct.

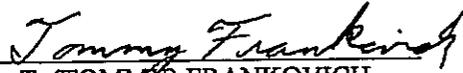
Section 2. That Chapter 22, Sections 22-19 through 22-29 of the City of League City Code of Ordinances, entitled Excavations for Quarries, Mines, Etc., is hereby amended as shown in substantially the same form as Exhibit "A", attached hereto.

Section 3. All ordinances and agreements and parts of ordinances and agreements in conflict herewith are hereby repealed to the extent of the conflict only.

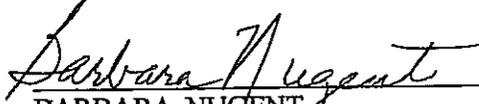
APPROVED first reading the 12th day of March, 1998.

APPROVED second reading the 24th day of March, 1998.

PASSED AND ADOPTED the 24th day of March, 1998.


A. T. (TOMMY) FRANKOVICH,
Mayor

ATTEST:


BARBARA NUGENT
City Secretary

DECLARATION

I, the undersigned, do hereby declare that the above is a true and correct copy of the original as submitted to me by the applicant.

I further declare that I am not aware of any other person who has been or is likely to be in possession of the original or any other copy of the same.

Signature of the undersigned: _____ Date: _____

Name of the undersigned: _____

Address of the undersigned: _____

Signature of the undersigned: _____

Name of the undersigned: _____
Address of the undersigned: _____

Signature of the undersigned: _____

Signature of the undersigned: _____

Name of the undersigned: _____

CHAPTER 22

ARTICLE II. Excavations for Quarries, Mines, Etc.

Section 22-19. Definitions

For the purpose of this Article, the following words and terms shall have the meanings ascribed to them respectively:

- (1) **Excavation** means any act by which soil, earth, clay, sand, gravel, rock, loam, caliche, dirt, humus or any other similar matter is dug, cut into, quarried, uncovered, removed, displaced, relocated or bulldozed over one (1) foot in depth to the ground.
- (2) **Soil** means any earth, sand, clay, loam, cliche, gravel, humus, rock, dirt or any other matter in or upon the ground, without regard to the presence or absence therein of minerals or other organic matter.

Section 22-20. Permit, Application and Fee Required

It shall be unlawful for any person, firm, or corporation to construct and maintain any quarry, mine, sand or gravel pit, or excavation for the purpose of removing, screening, crushing, washing or storing of dirt, sand, ore, clay, stone, gravel or similar materials within the City without having first obtained a permit therefor. Any person, firm, or corporation desiring a permit required by the provisions of this section shall make application to the City Secretary for a permit required by the provisions hereof. The applicant shall deposit with the City Secretary the sum of two thousand five hundred dollars (\$2,500.00) for the adequate administration, inspection, regulation and enforcement of the provisions of this Article. In the event of a refusal of issuance of the permit, five hundred dollars (\$500.00) shall be retained by the City as a non-refundable permit application fee and the remainder of the \$2,500.00 shall be refunded to the applicant.

Section 22-21. Content of Application

- (1) A complete application shall include the identity and residence address of the applicant, the identity and residence address of the owner of the land, the location and legal description of land, the purpose or reason for the removing or moving of the soil from or on the land, the quantity in cubic yards of soil to be moved or removed from the land, the place to which the soil is to be removed, and the proposed date of completion of the soil removal or moving. If the applicant and/or the owner of the land is a corporation, the applicant shall include the principal place of business in the State of Texas of such corporation(s).
- (2) A complete application shall also include any supporting information deemed necessary by the City Engineer in order to evidence the applicant's ability and intent

to comply with the standards under section 22-22 of this Article; and in order to evaluate the review criteria under section 22-23 of this Article.

Section 22-22. Standards

(1) **Setback**

No permit shall be issued for the digging or construction of any excavation, pit or quarry when any portion of the same shall be located within two hundred (200) feet of any public street or road, or nearer than three hundred fifty (350) feet to any property line, or within an area where there is on public record any restriction or covenant prohibiting excavation.

(2) **Safety**

The applicant shall install and maintain a drainage system to keep the excavation from collecting water within it, and such quarry, excavation or pit shall be enclosed by a 5-strand barbed wire fence.

(3) **Geology Report**

Any excavation within two thousand five hundred (2,500) feet of an existing water well will require a written geology report from a certified geologist supplied by the applicant.

(4) **Slope**

The bank of slope of such excavation, quarry or pit shall be five (5) feet of slope for each one (1) foot of depth for the first fifteen (15) feet from the bank.

(5) **Reclamation**

The applicant must supply an acceptable reclamation plan which specifies the intended use of the land following excavation.

(6) **Bond and Insurance**

Any permit issued under this Article shall require that the applicant give his bond with a good and sufficient corporate surety in favor of the City of League City, Texas, in a sum to be set by the City Council at the time of such permit, but not to be less than one hundred thousand dollars (\$100,000.00), which bond shall be conditioned that the applicant or permittee shall comply with all the terms of such permit and all laws and ordinances relating to the issuance of same. Liability insurance must be carried by the applicant in an amount set by City Council, but not be less than one million dollars (\$1,000,000.00).

Section 22-23. Review by City Engineer

Upon receipt of a completed application for an excavation permit, the City Engineer shall review the application for the purpose of making a recommendation to the City Council regarding action on the permit application. In reviewing said application, the City Engineer shall 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 or health hazard or endangering the lives or property of others. As aids in accomplishing these purposes, the following points shall be considered by the City Engineer in reviewing applications for excavation permits; however, such aids shall not be exclusive in the City Engineer's consideration and ultimate recommendation:

- (1) Soil and earth erosion by water and wind;
- (2) Surface water drainage and water drainage facilities of the excavation;
- (3) Lateral support of the excavation;
- (4) Condition in which any excavation is to be maintained and safeguards to be taken to prohibit creating a nuisance, such as noise, dust or traffic, health hazard, attractiveness to children, and features provided to dispense with the endangering of the lives and the property of the public;
- (5) Land values and uses in the area of the excavation;
- (6) Such other factors as may bear or relate to the coordinated, adjusted and harmonious physical development of the City; and
- (7) Ground water use in the general areas of excavation.

In arriving at an ultimate recommendation, the City Engineer may attach such special conditions thereto as may be reasonably necessary to attain the overall purpose of this section.

Section 22-24. Notice and Public Hearing

- (1) After reasonable time to review the application, the City Engineer shall set the same for public hearing of all parties interested in the subject matter of the application. Written notice of such public hearing before the City Council shall be sent to the owners of real property located within five hundred (500) feet of the property on which the excavation is proposed. Such notice is to be given at least five (5) working days before the date set for the hearing by mailing such notice to the owners who have rendered their property for City taxes, as the ownership appears on the last approved City tax roll. When a portion of the property located within five hundred (500) feet of the property upon which the excavation is proposed is located outside the City limits or when such property 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 such owners shall be given by publication as set forth below. In addition to the notice herein provided, notice of such public hearing shall be published once in the official publication of the City, at least five (5) working days prior to the date of such hearing. The publication and notice shall include such application information as under Section 22-21(1) of this Article and setting a time and place for such public hearing before the City Council. In addition, the applicant shall publish at his expense a display ad at least two (2) by three (3) column inches, ten-point minimum type size in the official newspaper of the City giving notice of the application and public hearing.

- (2) The City Council shall hold the public hearing at a special or regular meeting of the Council and shall give a hearing to all interested parties who wish to express themselves for or against the opening of such excavation.

Section 22-25. City Council Action Required

Upon the conclusion of the public hearing thereon, the City Council shall at its earliest convenience by majority vote either grant or refuse the permit applied for under the provisions of this Article. The City Council shall have 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 in 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 City Council's opinion the excavating or operation of an excavation on such 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.

Section 22-26. Duration of Permit; Application for New Permits

Each excavation permit issued shall be issued for a maximum period of one (1) year, after which 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 one-year period or portion thereof that an excavation is operated or maintained.

Section 22-27. Transferring, Selling, Assigning, Etc of Permit

No excavation permit issued under the terms of this Article to any person shall ever be transferred, sold, assigned or otherwise disposed of in any manner to any other person without the express consent of the City Council in a regular or special City Council meeting.

Section 22-28. Revocation of Permit

Any excavation permit issued under this Article when a notice to cease operations thereunder is issued by a City inspection official, may be revoked by the City Engineer after notice and hearing for the following:

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

Section 22-29. Appeals from Permit Revocation

Any person who has been issued an excavation permit who is aggrieved by its revocation by the City Engineer may appeal to the City Council by filing with the City Secretary a written notice thereof within five (5) working days from the date of the revocation of the excavation permit. The aggrieved person shall be given a hearing before the City Council, in due order of business, after which the City Council may modify or overrule the City Engineer's decision.

Written notice of the time and place of such hearing shall be served upon the person to whom the permit was granted at least three (3) working days prior to the date set for such hearing. Such notice shall also contain a brief statement of the grounds to be relief upon for revoking such excavation permit. Notice of the hearing may be given by personal delivery thereof 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 his application. In the event any appeal is taken from the decision of the City Engineer, in the manner prescribed above, all work shall be stopped at the excavation while the appeal is pending.

Section 22-30. Inspection; Right-of-Entry of City Inspection Official

For the purpose of administering and enforcing this Article, an inspection official of the City shall 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.

Section 22-31. Notice of Violations

If it is determined that the excavation is being operated or maintained in violation of the excavation permit issued, the inspection official shall immediately give notice in writing to the

person in charge at the site of the excavation to cease operations, setting forth therein the exact reason for the issuance of the notice.

Section 22-32. Cessation of Operations; Time Limitation for Correction of Violations; Additional Inspection

After issuance of the notice as provided for above, there shall be no further operation of the excavation until the violations complained of by the inspecting official have been remedied. The operator shall have three (3) working 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 City Engineer that the violations complained of have been remedied and that the excavation is ready for additional inspection.

Section 22-33. Procedure Upon Failure to Remedy Violations

In the event an operator of an excavation fails to remedy the violations complained of as provided, the inspecting official shall notify the City Engineer of the violations discovered and request that a hearing be set for a revocation of the operator's excavation permit. 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, shall constitute a violation of this section.

Section 22-34. Certain Excavations Declared Nuisances

Any excavation located within the City limits, or hereafter created within the City limits, or within the extraterritorial jurisdiction of the City of League City, shall be deemed to constitute a nuisance when maintained or permitted to exist by any person in an unwholesome or noxious condition, or in a manner by which stagnant water accumulates, or in a manner in which water collects where it is possible and probable mosquitoes will breed, or in a condition where rats could harbor, or in a manner and condition constituting a breeding place for flies, or in a manner and condition where filth, garbage, trash, debris or other discarded material accumulates and is deposited, or is maintained or permitted to exist in an unfenced, open condition, accessible to children and other members of the public, or is maintained and worked in such a manner as to disturb, effect or destroy the lateral support of or block and impede traffic on any public street, alley, road or right-of-way, or that is worked in such a manner as to drop or deposit material on public streets and highways, or that is maintained or permitted to exist in any condition which constitutes a possible or probable medium of transmission of disease to or between human beings, or to maintain or permit to exist any one or more of the above enumerated conditions. It is further declared that any person in locating or maintaining any excavation in violation of the provisions of this section shall be subject to the penalty for the violation of this code and is hereby deemed to be maintaining a nuisance. Nothing herein shall in any way reduce the remedies which the City may otherwise have to regulate, correct, abate or abolish any nuisance within the City limits or within the extraterritorial jurisdiction of the City of League City.

Section 22-35. Exemptions from Provisions of Section

Nothing in this Article shall be construed to affect or apply to any person engaged in normal agricultural, industrial, horticultural or residential enjoyment and use of property. The provisions of this Article shall not apply to nor affect a person in excavating to install, construct or complete a structure, building or facility of any kind when the plans and specifications for such objective have been submitted and approved by the inspection department of the City of League City provided that 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; provided that any soil or material excavated shall not be removed from the premises; and further provided, that such 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 such permit. The provisions of this Article shall 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; provided, that 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, and further providing, that such excavation created is not of a permanent nature and will not be left open and uncovered on the completion of the facility of the project. This section shall not apply or affect the operations of the United States of America, the State of Texas or any political subdivision of either thereof.

Section 22.36. Penalty

Any person, firm, or corporation violating the provisions of this Article shall be subject to the general penalty prescribed in Section 1-5 of the City Code of Ordinances.

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CHICAGO, ILL., 1964

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