

ORDINANCE NO. 190218.001

AN ORDINANCE OF THE CITY OF THE VILLAGE OF BEAR CREEK, TEXAS, AMENDING ORDINANCE NO. 060821.002 IN ITS ENTIRETY; REQUIRING A PERMIT FOR THE CONSTRUCTION OF A DRIVEWAY, INCLUDING A TEMPORARY DRIVEWAY; PROHIBITING DRIVEWAYS OR CULVERTS BEING CONSTRUCTED OR MAINTAINED IN A MANNER TO INTERFERE WITH OR OBSTRUCT DRAINAGE; PROHIBITING THE DEPOSIT OR DUMPING OF GRASS, LEAVES AND DEBRIS IN "BAR DITCHES" AND DRAINAGEWAYS; REQUIRING PERSONS MAINTAINING CULVERTS TO KEEP SUCH CULVERTS FREE OF DEBRIS AND OBSTRUCTIONS; PROVIDING A PENALTY; PROVIDING AN EFFECTIVE DATE AND FOR RELATED MATTERS.

Whereas, the Village of Bear Creek (the "Village") is responsible for maintaining the public roads within the city; and

Whereas, the public roads are damaged more rapidly if storm drainage is inadequate or not present; and

Whereas, additional regulation and requirements for driveways, culverts, bar ditches and drainage paths are appropriate and necessary to protect the public health, safety and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE OF BEAR CREEK, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Amendment of Ordinance No. 060821.002 and Amendment of Conflicting Ordinances. Ordinance No. 060821.002 is hereby amended in its entirety as provided herein and all parts of ordinances in conflict herewith are hereby amended to the extent of such conflict only.

Section 3. Driveway Construction Permit--Required; Application Contents.

(1) Any entity intending to rebuild or construct a driveway which will connect with a street maintained by the Village of Bear Creek must secure a permit before beginning construction. The applicant must be the owner of the property upon which the driveway will be constructed. The application must, as a minimum, contain the following:

- a. Name of the applicant;
- b. Address and phone number of the applicant;
- c. Where the driveway is to be located;
- d. The earliest date on which driveway construction may commence;
- e. The estimated date of completion;

- f. A plan (with specifications) which describes the driveway and, if needed, the culvert; and
- g. Payment of the permit fee in a form acceptable to the Village. Cash payments will not be accepted.

(2) Failure to provide one or more of these items is not a punishable violation of this Ordinance and does not invoke any of the penalties described in Section 13, but such failure is grounds for denying the application.

(3) The application must be mailed, e-mailed, or delivered to the City Secretary, who will distribute the application to the driveway permit authority.

(4) A separate application must be made for each driveway; however, construction or rebuilding of more than one driveway may be approved with only one permit fee if all applications have the same applicant; the lot or lots involved are contiguous; and the driveway applications are submitted together.

(5) A driveway is considered to be rebuilt if its surface is covered with a different material than the existing one; if a culvert is being added or removed; or if a culvert is being repaired in such a way as to change the designed diameter of the pipe. Restoring a crushed end of a culvert does not require a permit unless the restoring alters the designed diameter of the pipe.

Section 4. Temporary Driveway Construction. A permit is required for a temporary driveway. A refundable fee of \$250.00 shall accompany the request for temporary driveway to the City Secretary. The fee shall be refunded by City Council within sixty (60) days of successful removal and cleanup of the temporary driveway as determined by Council.

Temporary driveways must be made of readily removable material such as riprap, and may be in place no longer than nine (9) months. Temporary driveways must conform to the spirit of permanent driveway requirements, i.e., they may not form a dam or impediment to the movement of water within and along the right of way, or they may be removed at the discretion of City Council. Driveways left longer than nine (9) months may likewise be removed at the discretion of City Council. Removal of a temporary driveway by City Council will result in forfeiture of the temporary driveway fee.

A temporary driveway is necessary for traffic related to an improvement, site improvement, or construction being conducted on the property.

Section 5. Driveway Permit Authority. The city council's designee or designees act as the designated driveway permit authority. The driveway permit authority shall:

- a. approve driveway permits pursuant to this Ordinance;
- b. perform inspections as deemed necessary or as directed;
- c. perform any other duties delegated to the driveway permit authority under this Ordinance or as directed by city council; and
- d. enforce the provisions of this Ordinance.

City council may restrict one or more members ("restricted members") of the driveway permit authority such that said members are not permitted to fulfill certain of the driveway permit authority roles a) to d), or other roles at city discretion; provided that at least one member of the driveway permit authority is authorized to fulfill each of the driveway permit authority roles a) to d). City council must approve or amend an addendum of this ordinance in order to enact such a restriction, and the addendum must name each restricted member and the restrictions placed on that member.

Each unrestricted member of the driveway permit authority has the full authority of the entire driveway permit authority and may act alone to fulfill the requirements of this ordinance. Restricted members have authority to act alone to fulfill the requirements of this ordinance but only for allowed roles.

Section 6. Driveway Permit Application Review; Issuance or Denial; Appeal. The driveway permit authority will review the application pursuant to this division and notify the applicant of its decision in writing within twenty-five (25) days of receipt of the application. The driveway permit authority may send notice electronically. If no notice is received within thirty (30) days, then the applicant may assume the permit has been approved. If the application is denied because of failure to provide the information required by Section 3, or because the information provided is insufficient, the applicant may correct the deficiencies and submit the application again without paying another application fee. If the applicant receives a denial and the denial is not due to insufficient information then the applicant may submit a new application that addresses the reason for rejection, or appeal to city council by contacting the City Secretary or Mayor. No applicant may submit an application identical to a previously-denied application. The appeal shall be placed on the agenda of the next scheduled City Council meeting for which there is sufficient time to place the appeal on the agenda, in compliance with Village policy and Chapter 551 of Texas Local Government Code. Any decision reached by city council is final.

Section 7. Driveway Permit Fee; Time Limit. The city will charge a driveway permit fee of \$20.00 per permit. If construction is not commenced within six (6) months of the application approval date, or if construction is not completed within twelve (12) months of the application approval date, then the permit is void.

Section 8. Minimum Standards Posted; Special Requirements. The driveway permit authority will prepare and post a list of minimum standards for driveway construction. The minimum standards will be effective when presented to and adopted by the city. The driveway permit authority may at any time prescribe special requirements for the construction and/or location of a driveway if such requirements exceed the minimum standards. A member of the driveway permit authority or representative of the city will provide the applicant with a copy of the minimum standards for driveway construction upon request.

Section 9. Failure to Comply. Driveways must comply with the design presented in the approved permit application and the terms stated on the driveway permit. Any driveway which in the opinion of city council fails to comply is in violation.

Any existing driveway which in the opinion of the city council constitutes a threat to the safety and welfare of the citizens of the city shall be corrected at the property owner's expense within six months after receiving notice.

Section 10. Driveways and Culverts. It shall be the responsibility and duty of the owner and the occupant of property within the City to construct, reconstruct, install, repair and maintain, from time to time as required, any driveway and/or culvert necessary to connect such property with a public street. The driveway and any culvert, whether existing or to be installed, to serve any property shall be constructed, reconstructed, installed, repaired and maintained by the owner and the occupant of such property in a manner to prevent such driveway and/or culvert from interfering with, diverting or obstructing the flow of stormwater and drainage. An exception to the preceding is that a minor diversion of stormwater and drainage is allowed if:

- a. the driveway is a dip-style driveway;
- b. the driveway has been approved by the driveway permit authority pursuant to this Ordinance or the driveway existed prior to the effective date of this ordinance;
- c. the minor diversion is required so that water flow will go through the low part of the dip; and
- d. the minor diversion is at no point more than ten (10) feet from the city ditch.

Section 11. Culvert Maintenance. It shall be the responsibility and duty of the owner and the occupant of any property for which a culvert exists or is maintained under or through a driveway connecting such property to a public street to keep such culvert open and free of obstruction or debris, and to repair, reconstruct, raise or lower the grade, and maintain such culvert from time to time to assure the culvert does not interfere with or obstruct the flow or drainage of stormwater, or divert stormwater from the bar ditch or drainage channel.

Section 12. Deposit of Debris On Public Property. It shall be unlawful for any person, firm or corporation, who is not a public employee or entity contracting with the City and in the course and scope of their public employment or public works contract, to dump, throw, deposit or leave any refuse, garbage, rubbish, trash, leaves, grass, lawn clippings, limbs, dead trees, tree trunks, junk, rock, mulch, rubble or soil on any street, right-of-way, easement, or public property within the City. It shall further be unlawful for any person to dump, throw, deposit or leave any refuse, garbage, rubbish, trash, leaves, grass, lawn clippings, mulch, limbs, dead trees or tree trunks or junk on any property, whether publicly or privately owned, that by design, elevation, slope, terrain or nature serves as a part of the man made or natural drainage system of the City or any part of the City; provided that this section shall not prevent any land owner from obtaining any permit authorized by City ordinance, to fill any land area in compliance with such permit and the ordinances and codes of the City; further provided that this section shall not apply to or prohibit the dumping or deposit of any such materials or debris on public property designated for such purpose by the public entity owning such property, as authorized by an ordinance of the City; and further provided that this section shall not apply to items which the city's designated trash collection service is required to collect, if such items are placed properly for collection and have been in place no more than seven (7) days.

Section 13. Penalty. Any person violating any provision of the Ordinance, excepting provisions that are explicitly excluded from being punishable, within the corporate limits of the City shall be guilty of a misdemeanor, and upon conviction shall be fined an amount not exceeding One Hundred Dollars (\$100.00). Each day that such violation continues shall be a separate offense. Prosecution or conviction under this provision shall never be a bar to any other remedy or relief for violations of this Ordinance. This Ordinance may be enforced by a code enforcement officer or police officer of the Village or an authorized member of the driveway permit authority. Unless otherwise specifically set forth in the ordinances of the Village, or in state law as adopted, allegations and evidence of culpable mental state are not required for proof of an offense.

Section 14. Effective Date. This Ordinance shall be in full force and effect from and after publication of the caption in the manner and for the time provided by the Texas Local Government Code.

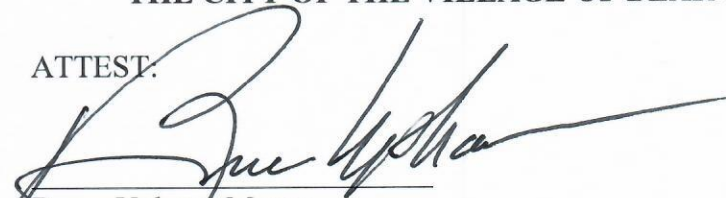
Section 15. Savings Clause. All rights and remedies of the Village of Bear Creek are expressly saved as to any and all violations of the provisions of any ordinances affecting driveways or culverts within the City which have accrued at the time of the effective date of this Ordinance; and, as to such 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 16. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, as required by the Open Meetings Act, Chapter 551, Texas Government Code.

PASSED AND APPROVED on this 18th day of February, 2019.

THE CITY OF THE VILLAGE OF BEAR CREEK, TEXAS

ATTEST:


Bruce Upham, Mayor

ATTEST:


Kathryn Rosenbluth, City Secretary