

CITY OF DRIPPING SPRINGS

ORDINANCE No. 2020-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DRIPPING SPRINGS, TEXAS AMENDING ARTICLE 28.04 SITE DEVELOPMENT ADDING SECTION 28.04.025 LICENSE TO ENCROACH; AND PROVIDING FOR FINDINGS OF FACT, ADOPTION AND AMENDMENTS, REPEALER, SEVERABILITY, AND ENFORCEMENT; ESTABLISHING AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Dripping Springs (“City Council”) seeks to promote reasonable, sound, and efficient land use and construction within the City of Dripping Springs (“City”); and

WHEREAS, the Dripping Springs City Council (“City Council”), as a duly-elected legislative body, finds that it is facing significant historic and contemporary land use challenges that existing regulations were not designed to address; and

WHEREAS, Texas Local Government Code Section 51.001 provides the City general authority to adopt an Ordinance or police regulations that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, pursuant to Texas Local Government Code Chapters 212, to protect the public health, safety, and welfare, the City Council has determined that protecting rights-of-way and easements is a priority for the City; and

WHEREAS, the City Council has determined that the adoption of a process to allow a license to encroach in certain instances where utility and other functions are not harmed by such encroachment provides appropriate flexibility to property owners; and

WHEREAS, the City Council seeks to apply up-to-date regulatory systems to projects to the extent reasonably possible and within the confines of the law.

WHEREAS, the City Council finds that it is in the best interest of the City and its residents to adopt the amendment to the Site Development Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DRIPPING SPRINGS, TEXAS THAT:

SECTION 1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

SECTION 2. ADOPTION AND AMENDMENTS

The City Council hereby adds Section 28.04.025.

SECTION 3. REPEALER

In the case of any conflict between other provisions of this Ordinance and any existing Ordinance of the City, the provisions of this Ordinance will control.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record the attached rules, regulations, and policies in the City's Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED & APPROVED this, the 10th day of November 2020, by a vote of __ (ayes) to __ (nays) to __ (abstentions) of the City Council of Dripping Springs, Texas.

CITY OF DRIPPING SPRINGS:

Bill Foulds, Jr., Mayor

ATTEST:

Andrea Cunningham, City Secretary

ATTACHMENT “A”

28.04.025 License to Encroach

- (a) Purpose. The purpose of a license to encroach is to determine the potential impacts of proposed improvements, structures, facilities, and encroachments into a public street, roadway, sidewalk, right-of-way, or easement in order to maintain their safety, mobility, and operational functionality.
- (b) Applicability. A license to encroach, in the procedures provided for in this section, is required for the following:
 - (1) Encroachments of new improvements including air conditioning pads, fences, roof overhangs, sheds, and other small improvements that do not include dwellings or other buildings into a public street, roadway, sidewalk, or right-of-way within the city limits and easements located within the City limits or the extra-territorial jurisdiction.
 - (2) If a property owner applies for a change to a property on which an encroachment currently exists where no license has been issued, and the change would increase the encroachment or create a new encroachment, an application for a license to encroach shall be submitted and the change only granted if a license to encroach is granted.
- (c) Those improvements, as defined above, that encroach into a public street, roadway, or sidewalk shall obtain approval from the city council, in addition to this license, other than applications for driveways and utility cut permits which shall continue to be processed as detailed in Chapter 28 of the code of ordinances.
- (d) Review of a license to encroach shall be done by the development review committee. The decision of the development review committee shall be final.
- (e) Criteria for Approval.

No license to encroach will be denied unless it is determined by the development review committee that the proposed location or type of improvement will negatively impact the function of the public street, roadway, sidewalk, right-of-way, or easement or have an adverse effect upon the health, safety, or welfare of the general public or an easement holder denies encroachment. In making this determination, the following will be evaluated:

 - (1) The proposed encroachment into a public street, roadway, sidewalk, right-of-way, or easement by any person shall not interfere with the lawful use thereof.
 - (2) Any proposed construction within a public street, roadway, sidewalk, right-of-way, or easement shall be in accordance with this code, the city's adopted construction standards, and any other applicable ordinances and regulations.
 - (3) At any time during the construction of any structure within a public street, roadway, sidewalk right-of-way, or easement:
 - (A) The applicable public street, roadway, or sidewalk shall be kept open for vehicular and pedestrian traffic in a reasonable manner and sidewalks shall not be obstructed as to prevent the use thereof by pedestrians;
 - (B) Dirt and other material removed from the construction of any structure within a public street, roadway, sidewalk, right-of-way or easement shall not be allowed to remain on the street or sidewalk and shall be removed immediately at the sole cost, risk, liability, and expense of the licensee;

(C) All excavations and obstructions of any kind that take place during the period of the licensee's construction shall be properly barricaded and well-illuminated during the night, subject to the approval of the Building Official.

(f) Submission Requirements.

(i) Any request for a license to encroach shall be accompanied by an application approved by the city, any required signatures, and the fee as set by city council plus reimbursement of consultant fees, if any. The application shall be accompanied with a letter of consent or signature for the water, electric, and wastewater utility (if any) when an encroachment will extend or expand into an area used or which could be used in the future by the utility.

(ii) The development review committee may determine further studies will be required. Such studies may include, but are not limited to, an engineering study, which may be required at the determination of the city engineer. Only the elements of an engineering study that are necessary to answer specific questions that arise during the review process will be required for submittal.

(g) Responsibility for Final Action.

The development review committee is responsible for final action on licenses to encroach into an easement. For those requests that encroach into a public street, roadway, sidewalk, or right-of-way, final approval shall be obtained from the city council, other than applications for driveways and utility cut permits which shall continue to be processed as detailed in Chapter 28 of the code of ordinances.

(h) Expiration.

The City shall provide written notice at least 90 days in advance to the licensee, its representatives, successors, or assigns, to take possession of and use all or any part of the licensed area in the event that such use be reasonably desired or needed by the city for street, sewer, transportation, or any other public or municipal use or purpose. During such time, it is the responsibility of the licensee, its representatives, successors or assigns to remove the encroachment(s). In such an event, the City shall have the right to cancel the revocable license as to that portion of the licensed area so designated and required by the City.