

ORDINANCE NO. 192-09

AN ORDINANCE OF THE CITY OF HACKBERRY, TEXAS, ESTABLISHING ELEVATION, CLEARING AND GRADING OPERATIONS WITHIN THE CITY OF HACKBERRY, TEXAS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY, AND SAVING CLAUSES; PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is hereby declared to be the policy of the City of Hackberry, Texas ("City") to protect and preserve the environment; to protect the integrity of the City's drainage; to protect adjoining and adjacent properties from excessive rainfall/stormwater runoff; to protect the natural drainage of properties and downstream properties; and to protect, promote and preserve the public health, comfort, convenience, safety and welfare; and

WHEREAS, the Council finds that proper elevation which effects drainage is a serious concern to all inhabitants of the community, and that it is in the best interest of the citizens of Hackberry to adopt this Ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HACKBERRY, TEXAS;

ARTICLE 1.0 - Definitions

For the purpose of this article, the following words and phrases shall have the meanings ascribed to them:

Clearing: The clearing of trees, brush, rocks and other materials from a tract of land.

Grading: The leveling, grading, re-grading, or alteration of the topography of a tract of land.

Filling: The addition of soil, dirt, earth or similar material to a tract of land, other than topsoil in an average depth of less than two (2) inches.

Excavation: Any act by which soil, earth, clay, sand, gravel, rock, loam, caliches, dirt, humus or any other similar matter is dug, cut into, quarried, uncovered, removed, displaced, or relocated to a depth of greater than one (1) foot.

ARTICLE 2.0 - Excavations prohibited; nuisance declared

- (a) It shall be unlawful for any person, firm, or corporation within the corporate limits of the City to construct and maintain or otherwise operate any quarry, mine, sand or gravel pit, or any other type of excavation for any purpose whatsoever, including but not limited to removing, screening, crushing, washing or storing of soil, dirt, sand, ore, clay, stone, gravel or similar materials.
- (b) Any and all excavations as described herein located within the City or hereafter created within the City are declared a nuisance and as such may be abated in any lawful manner and further that the City may cause such excavations to be filled and charge the person making and/or maintaining such excavation with the cost of filling the same and restoring it to the level of land immediately before the commencement of the excavation, digging, or mining operations.

ARTICLE 3.0 - Clearing, grading, and filling

(a) Permit required.

- (1) Prior to commencement of any clearing, grading or filling operation within the City, the owner, developer or contractor shall first apply for and be issued a permit by the City. Clearing, grading or filling operations shall be undertaken only after a proper permit has been obtained from the City.
- (2) A clearing, grading and filling permit may be issued only after the requirements of this article and of this code have been met. A permit will be valid for a period of 180 days from the date of issuance. On request of the applicant, the permit may be extended by the City for up to two (2) additional 180-day periods.

(b) Permit application. An applicant for a clearing, grading and filling permit shall furnish a completed and signed application on a form furnished by the City and shall, contemporaneously with the application, submit the following:

- (1) A grading, clearing and fill plan which depicts and describes the following:
 - (A) The nature, extent and location of the proposed work;
 - (B) The lot or site layout and topography, with finished contours and/or grades, prior to and following completion of the intended work;
 - (C) Means of ingress and egress to the site;
 - (D) Erosion control measures, together with a detailed erosion control plan applicable during the progress of the operations as well as after completion of the operations, depicting erosion control devices and techniques, in compliance with the Texas Pollution

(E) Flood and stormwater drainage measures;

(F) Hauling routes with traffic control measures; and

(G) Any other information deemed necessary by the City to insure and protect public health and safety.

(1) The appropriate permit application fee.

- (c) **Denial, revocation or suspension of permit.** No clearing, grading and filling permit may be issued unless and until a site plan or preliminary plat has first been approved by the City. A permit may not be issued if the work will adversely affect drainage on adjacent or downstream properties, create traffic hazards, or constitute an excavation. A permit may be suspended or revoked by the mayor or his designee if it is determined that the statements in the application are materially false or misleading; the actual work and/or operations are not in strict conformance with the application, permit, and plans submitted in conjunction with the application; any of the provisions of this article have been violated or are not met; or, the work and/or operations may cause or create a public nuisance or an imminent threat of destruction of property or injury to persons, and the revocation or suspension is determined to be in the interests of public health and safety.

ARTICLE 4.0 - Clearing, grading, and filling operational requirements

- (a) Bar ditches and other stormwater and rainfall runoff drainage channels, facilities and appurtenances in public rights-of-way shall not be removed, altered, or otherwise disturbed unless a drainage plan is submitted to and approved by the City that insures proper and adequate drainage of rainfall runoff and stormwater. Any alteration of drainage facilities and appurtenances shall be reviewed, inspected and approved by the City. Additional facilities or appurtenances constructed or installed in the public right-of-way shall be dedicated to and accepted by the City and shall become the property of the City upon acceptance.
- (b) A clearing, grading and filling permit shall not be deemed or construed to authorize paving on any part of a tract of land or the installation of utility infrastructure, equipment or facilities.

ARTICLE 5.0 - Penalty

An offense under this Ordinance is punishable by a fine not to exceed five hundred dollars (\$500.00). The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

ARTICLE 6.0 – Severability and Savings Clauses

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clause and phrase be declared unconstitutional or invalid.

ARTICLE 7.0 – Savings

This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of, and only to the extent, those ordinances are in direct conflict with the provisions of this Ordinance.

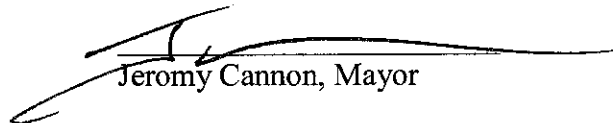
ARTICLE 8.0 – Publication of Caption and Effective Date

This ordinance shall become effective from and after its adoption and publication as required by law.


NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HACKBERRY, TEXAS;

ADOPTED by the City Council of the City of Hackberry, Texas, on this the ___ day of _____, 2009.

APPROVED:


Jeromy Cannon, Mayor

Attest:


City Secretary