

ORDINANCE NO. 79

AN ORDINANCE REPEALING ORDINANCE NUMBER 38 AND ORDINANCE NUMBER 61, AN ENACTING A NEW ORDINANCE PROHIBITING THE USE, CONSTRUCTION, DREDGING AND/OR OPERATION OF AN EXCAVATION SITE; DEFINING AN EXCAVATION SITE; AND, PROVIDING FOR A PENALTY BY FINE OF NOT MORE THAN \$500.00 FOR EACH VIOLATION.

WHEREAS, the City Council of Rose City, Texas, finds that there is a need for the protection of property, general welfare, health and life of the citizens of Rose City, Texas;

WHEREAS, the city Council of Rose City, Texas, finds that such protection should be in the form of an ordinance defining and prohibiting the use, construction, dredging and/or operation of an excavation site for the purpose of removing dirt, clay, sand, rock, or other material within the city limits of Rose City, Texas;

BE IT ORDAINED BY THE CITY COUNCIL OF THE ICTY OF ROSE CITY, TEXAS:

ARTICLE I-DEFINITIONS

- (a) "Person" shall include natural persons, firms, partnerships, associations, corporations, and governmental entities.
- (b) "Excavation site" shall include, but not be limited to, the use, construction, dredging or operation of a site which results in the digging, dredging, excavation, pumping or other form of removal of dirt, clay, sand, rock or other material.
- (c) "Below the Surface of the Ground" shall include, but not be limited to, open or closed pits, holes, depressions, caves, caverns, tunnels, and mines.
- (d) "Waterway" shall include, but not be limited to, bayous, creeks, lakes, rivers, and streams, whether navigable or non-navigable.

ARTICLE II-PROHIBITED CONDUCT

Section 1. All persons are prohibited from using, constructing, dredging, or operating an excavation site which results in the digging, dredging, excavation, pumping or other form of removal of dirt, clay, sand, rock or other material from a waterway or from below the surface of the ground, within the city limits of Rose City, Texas.

Section 2. The renting, leasing, or otherwise permitting the use of a persons land for an excavation site is prohibited. The landowner or leaseholder who rents, leases, or otherwise permits the use of such land for an excavation site commits a separate violation of this ordinance.

ARTICLE III-EXCEPTIONS

Section 1. Article II of this Ordinance shall be applicable for structural foundation purposes where a building permit has been properly applied for and granted in accordance with the building code, if any.

Section 2. Article II of this Ordinance shall not be applicable to excavations for reasonable and necessary drainage ditches, canals, or similar facilities.

Section 3. Article II of this Ordinance shall not be application to excavations of contaminated earthen materials for environmental health and safety purposes in accordance with federal or state environmental laws.

Section 4. Excavation sites permitted under the exceptions of this ordinance shall not be made within twenty-five (25) feet of any property line, without the expressed written consent of the adjacent property owner. Such excavations sites shall be sloped not steeper than two(2) horizontal fee for each one (1) vertical foot measurement. So as not to interfere with or cause damage to a public facility, excavation sites adjacent to roadways, streets, easements, drainage systems, utility lines or

other public structures shall be conducted at an adequate distance from such facilities as determined by the City Council, but in no event shall such an excavation site be within twenty-five (25) feet of such public facility.

Section 5. Trucks hauling excavation materials within the city limits of Rose City, Texas, shall use existing truck routes as set out by city ordinance. The landowner, leaseholder, and operator of any excavation site excepted from this ordinance shall be responsible to the City of Rose City, Texas, for any and all damages to the City streets and roadways caused by the transportation of such excavation materials. The City Council may, at its discretion, require the furnishing of a cash security or bond in an amount deemed by the City Council to be sufficient to compensate the City for the repair of such street or roadway. Upon completion of any excavation site excepted from this ordinance, the City Council or its delegate, shall inspect the City streets and roadways, and if there be no damage, refund any cash security to the person making such deposit. The landowner, leaseholder, and operator of an excavation site excepted from this ordinance shall take all steps necessary to insure that excavation materials shall not drop or accumulate on city streets and roadways. It shall be the sole and express responsibility of the landowner, leaseholder, and operator of such excavation site to provide, at its sole cost and expense, for the removal of excavation materials from City streets and roadways to prevent accumulation of such excavation materials to the point that such accumulation might become a safety hazard to persons using such streets or roadways.

Section 6. No excavation shall be made upon any dedicated street, roadway, or highway, right-of-way, or any planned or proposed street, roadway, or highway as shown in the map or plat of Rose City, Texas, recorded in the Map Records of Orange County, Texas, except for the purpose of constructing, installing, removing or repairing public streets or utilities.

Section 7. No excavation shall occur within two-hundred (200) feet in any direction from the North or South right-of-way line of Interstate Highway 10 or Old Highway 90 within the city limits of Rose City, Texas, except for the purpose of constructing, installing, removing or repairing said highways or public utilities. Specifically, said two-hundred (200) feet in any direction from the North and South rights-of-way lines of Interstate Highway 10 and Old Highway 90 located within the city limits of Rose City, Texas, is deemed by the City Council to be best utilized for residential and commercial use not involving the use of excavation sites prohibited by this ordinance.

Section 8. An excavation site excepted from this ordinance may, at the City Council's discretion, be required to install and maintain a fence around the excavation site adequate enough to prevent small children from gaining access to such excavation site.

ARTICLE IV-PENALTY

Section 1. A violation of this ordinance is deemed a Class "C" misdemeanor offense. Any person who violates any provision of this ordinance shall, upon final conviction, be fined in the sum of not more than \$500.00.

Section 2. A separate offense shall be deemed committed on each day on which a violation occurs or continues.

ARTICLE V-MISCELLANEOUS PROVISIONS

Section 1. If any part of this ordinance is for any reason held to be invalid, that part shall be deemed a separate and distinct provision, and such invalidity shall not affect the validity of the remaining portions of this ordinance.

Section 2. Ordinance Number 38 and Ordinance Number 61 are hereby repealed by this ordinance and shall be of no further force and effect.

Section 3. In all other respects, this ordinance defining and prohibiting excavation sites, exceptions thereto, and penalties is hereby ratified and confirmed.

PASSED AND APPROVED by the City Council of Rose City, Texas, on this 17th day of February, 1998.

Ruth Dubuisson
Mayor

ATTEST:

Dianne Theriot
City Secretary