

ORDINANCE NO. 360

AN ORDINANCE REGULATING DRILLING AND EXCAVATION ON CITY PROPERTY OR CITY RIGHT OF WAY; ESTABLISHING PROCEDURE FOR PERMIT AND PENALTIES FOR VIOLATION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HAVILAND, KANSAS:

SECTION 1. DEFINITIONS. For the purpose of this ordinance, the following words, terms, phrases and their derivations shall have the meaning ascribed for them in this section:

- a) Contractor – a person or entity who excavates or drills. An owner may be a contractor;
- b) Drill – to bore or drive to make a hole;
- c) Excavate – forming a cavity by cutting, digging or scooping;

SECTION 2. BUILDING PERMIT. It shall be unlawful for any contractor to excavate or drill on city property or city right of way without a permit being first obtained from the City Clerk. Before the issuance of a permit a written application must be completed, approved by signature of a contractor and submitted to the City Clerk. The permit shall include:

- a) a general explanation of the excavation or drilling, to be done;
- b) the location of the excavation or drilling;
- c) the anticipated beginning date and anticipated finish date of excavation or drilling;
- d) address and phone number of the contractor;
- e) plans for flagging, barricade or safety fencing specifically described;
- f) an agreement that the contractor shall restore city roadways or alleys to their pre-permit condition, that back fill shall be done with at least 50% fill sand, and that concrete or asphalt utilized to restore streets to their original pre-permit condition shall be of the same grade or better grade as existed prior to application and shall be of same thickness or greater thickness as existed prior to application; and
- g) require as a condition prior to beginning work: a certificate of liability insurance or bond, providing for compensation in excess of \$500,000.00 per occurrence, which will indemnify the owner, contractor and City, as to all enforceable claims from any individual or other entity (including the City), for direct or indirect damage as a result of negligence or wrongful act, of the contractor, owner or city, related in any manner to the excavation or drilling.

SECTION 3. PERMIT APPLICATION. The City Clerk will deliver a copy of the permit application to the City Maintenance Manager, who will:

- a) determine that the application is complete and that all information is correct;
- b) determine whether the anticipated excavation or drilling may be performed with minimal danger or minimal inconvenience, to the public; and
- c) determine whether or not the city property and/or city right of way will be restored to its pre-permit condition as indicated in the application.

Assuming the City Maintenance Manager makes all three determinations above, the City Clerk will issue a permit: for a period beginning on the date the work is to begin as indicated in the permit application and ending on the date determined by the City Maintenance Manager, but no longer than 6 months from the date of the beginning date.

SECTION 4. CONTENTS OF PERMIT. The permit issued by the City Clerk shall:

- a) describe the excavation or drilling, allowed;
- b) require Kansas One-Call be notified by the contractor before excavation or drilling begins; and
- c) require the excavation or drilling, be conducted as indicated in the application, unless modified in the permit.

SECTION 5. APPROVAL OF WORK BY CITY. The contractor must notify the City Maintenance Manager upon completion of the excavation or drilling. In the event the City Maintenance Manager has probable cause to believe the city property and/or city right of way has not been restored to its pre-permit condition, the city may cause the city property and/or city right of way to be restored to its

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pre-permit condition; at which time the contractor may be billed for such costs. Claim for reimbursement of the restoration costs may be made by the City Maintenance Manager on behalf of the city, against the contractor and/or the contractor's insurance company. In addition to restoration or reimbursement, the contractor may be charged in the Municipal Court for failure to comply with this ordinance.

SECTION 6. NONCOMPLIANCE. In the event the City Maintenance Manager has probable cause to believe any contractor, has failed to comply with this ordinance in any manner, the City Maintenance Manager may file a complaint in the Municipal Court against such contractor, person or entity; and upon conviction of any violation of this ordinance, such contractor, person or entity shall be deemed guilty of a misdemeanor and shall be punished as follows:

- a) imposition of fine not more than \$500.00;
- b) an order requiring restoration or payment of restoration costs;
- c) revocation of a right to apply for a permit; and
- d) revocation or modification of the subject permit.

SECTION 7. CONTRACTOR DISSATISFACTION. In the event any contractor is dissatisfied with the action of the City Maintenance Manager including but not limited to:

- a) the contents of a permit;
- b) failure to issue a permit; or
- c) requiring restoration or reimbursement of restoration costs;

the contractor may have said City Maintenance Manager's action or inaction reviewed by the City Council by requesting such review in writing filed with the City Clerk. The City Council may exercise any and all authority of the City Maintenance Manager, as set out herein.

SECTION 8. NONLIABILITY. City Council by action or inaction, City Clerk by action or inaction, City Maintenance Manager by action or inaction and/or any other city employee by action or inaction, are not assuming any liability by reason of the passage of this ordinance, issuance or denial of a permit, and/or inspection or lack thereof. This ordinance shall not be construed to relieve or lessen the liability of any person or other entity performing or failing to perform construction, remodel, repair, erection and demolition of any building or structure, or any excavation or drilling.

SECTION 9. UNENFORCEABILITY OF PORTIONS OF THIS ORDINANCE. If any section of this ordinance shall be held unconstitutional or otherwise invalid by any Court of competent jurisdiction, then such sections shall be considered separate and apart from the remaining sections and the remaining sections shall continue in full force and effect.

SECTION 10. EFFECTIVE DATE. This ordinance shall take effect and be in full force from and after an Ordinance Summary publication in the official city newspaper.

Passed by the council and approved by the mayor the 3rd day of March 2014.

Robert Ellis, Mayor

ATTEST:

Shari McAfee, City Clerk

[Published Summary in The Kiowa County Signal March 12, 2014](#)