

ORDINANCE NO. 2014 - 2

AN ORDINANCE OF THE CITY OF JAMAICA BEACH, TEXAS, TO PROVIDE FOR ISSUANCE OF VARIOUS LICENSES TO USE PUBLIC RIGHT OF WAY IN THE CITY OF JAMAICA BEACH; MAKING VARIOUS FINDINGS AND PROVISIONS RELATED TO THE SUBJECT.

WHEREAS, the City Council of the City of Jamaica Beach, Texas deems it in the best interest of the City's Administrative processes and the citizens to adopt this Ordinance for the establishment of a procedure for the application for, and issuance of, various Licenses to Use Public Rights-of-Way; and,

WHEREAS, this Ordinance covers topics that include finding and intent, definitions, penalty, and exceptions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JAMAICA BEACH, TEXAS:

SECTION 1. The findings and recitations set out in the preamble to this Ordinance are found to be true and correct and they are hereby adopted by the City Council and made a part hereof for all purposes.

ARTICLE I. IN GENERAL

Finding and intent.

The City Council finds that no current procedure exists whereby an immediately adjacent property owner may apply for or receive a License to Use Public Right-of-Way within the City Limits and the City Council wishes to provide a method for application and issuance of such Licenses.

ARTICLE II. PLACEMENT OF ITEMS WITHIN THE CITY RIGHT-OF-WAY

(a) It shall be unlawful for any person to encumber any portion of the street Right-of-Way in any manner without first obtaining a License to Use the City Right-of-Way.

(b) Permanent License to Use:

(1) All requests for License to Use prior to a decision being made shall first be reviewed by the following:

- a. City Departments
 - 1. City Administrator
 - 2. Building Department

- b. Private Utility Companies
 - 1. Texas Gas Service
 - 2. CenterPoint Energy
 - 3. Comcast Corporation
 - 4. AT & T, Inc.
- c. Any other agencies that may need to review the proposed application in order to make the appropriate determination.
- d. The Planning Commission shall hold a public hearing and forward the request to City Council with their recommendation.
- e. City Council may approve, approve with conditions or with modifications, or deny the requested License to Use.

(2) All requests for a License to Use shall be subject to the following:

- a. The applicant shall obtain an application and required attachments list from the City Administrator. A completed application with attachments and a fee of \$125.00 shall be submitted to the City Administrator for review.
- b. An applicant who is not the legal owner of the immediately adjacent property or properties shall supply the City Administrator with a notarized authorization from the immediately adjacent legal owner or owners designating the applicant as authorized agent.
- c. The applicant shall provide a site plan and/or building elevation or any other documents necessary to adequately describe the location of the requested City right-of-way to be used and its appearance when the contemplated work is finished.

(3) If the License to Use is approved, the City Administrator shall issue to the applicant, a letter stating the License to Use has been approved with a copy of the ordinance containing all conditions placed upon that approval.

(4) Conditions of Approval:

- a. The License and all of Licensee's rights granted are conditioned that owners of utility facilities, whether publicly or privately owned, have at all times access to the property made the subject of the License together with the right to enter the property and excavate for the purpose of repairing, replacing, locating and maintaining such utility facilities, if any.

b. The License shall be granted upon the express condition that the Licensee undertakes and promises in writing to hold the City of Jamaica Beach harmless and to indemnify it against all suits, judgments, costs, expenses and damages that may arise or grow out of the use of said street right-of-way and/or the City's granting of the License.

c. The City does retain the right and option to cancel the License and terminate all rights of Licensee upon ninety (90) days' written notice of such cancellation and termination, sent to the Licensee at the last known mailing address; and the Licensee agrees and shall be obligated to vacate the property made the subject of the license and to remove all improvements and/or obstructions located thereon at the Licensee's own expense prior to the expiration of said 90-day notification period.

d. The Licensee shall also apply for and receive the appropriate permit from the Building Department, if required.

e. The Licensee shall pay to the City a one-time fee for the License to Use City right-of-way. The fee shall be fifty dollars (\$50.00) for the first one thousand dollars (\$1,000.00) of work valuation and twenty-five dollars (\$25.00) for each additional one thousand dollars (\$1,000.00) of work valuation or fraction thereof.

f. The Licensee shall pay an annual renewal fee of fifty dollars (\$50.00) on or before the anniversary of the issuance of the License to Use for each year for which the Licensee intends to use any portion of the City Street right-of way.

(c) Non-Permanent (Temporary) License to Use:

(1) When a proposed application for License to Use does not or will not adversely affect the City or block or obstruct the street, alley, sidewalk or other City right-of-way for a period of more than 30 days, the City Administrator, or his designee, may either approve, approve with conditions or with modifications, the License to Use.

(2) All requests for a License to Use, prior to a decision being made, shall first be reviewed by the following:

a. City Departments

1. City Administrator
2. Building Department

b. Any other agencies that may need to review the proposed application in order to make an appropriate determination.

(3) All requests for a License to Use shall be subject to the following:

a. The applicant shall obtain application and required attachment list from City Administrator. Completed application with attachments and a fee of **\$100.00** shall be submitted to City Administrator for review.

b. An applicant, who is not the legal owner of the immediately adjacent property or properties, shall supply the City Administrator with notarized authorization from the legal owner or owners designating the applicant as authorized agent.

c. The applicant shall provide a site plan and/or building elevation, or any other documents necessary/ to adequately describe the location and the use of the City right-of-way and its final appearance when complete.

(4) City Administrator Approval

When the application for License to Use does not or will not adversely block, obstruct or affect the street, alley, sidewalk or the City right-of-way for more than 30 days and after receiving no objection or no objection with conditions, the City Administrator may approve, approve with conditions or with modifications, the License to Use.

(5) If the License to Use is approved, the City Administrator shall issue to the Applicant a letter of approval stating the License to Use has been approved listing any and all conditions placed upon the approval.

(6) Conditions of Approval:

a. The License and all of Licensee's rights granted are conditioned that owners of utility facilities, whether publicly or privately owned, have at all times access to the property made subject of the License, together with the right to enter the property and excavate for the purpose of repairing replacing, locating and maintaining such utility facilities, if any.

b. The License is granted upon the express condition that Licensee undertakes and promises in writing to hold the City of Jamaica Beach harmless and to indemnify it against all suits, judgments, costs, expenses and damages that may arise or grow out of the use of said street right-of-way and/or the City's granting of the License.

c. The City does retain the right and option to cancel the License and terminate all rights of License upon notice of such cancellation and termination, and, Licensee agrees and shall be obligated to vacate the property made subject of the license and to remove all improvements and/or obstructions located thereon at Licensee's own expense.

(7) Denial/Approval:

If the License to Use is denied, the City Administrator shall issue a letter to the applicant stating the reason the request for a License to Use was denied, and also stating that the applicant has the right to appeal the decision of the City Administrator within ten (10) days. The appeal shall be a public hearing before City Council. The Council's decision shall be final."

If a third party, other than the Applicant, believes he or she is aggrieved by the granting of an application for a Temporary License to Use, then that party may appeal to City Council within ten (10) days of the granting of the Temporary License to Use by the City Administrator. The appeal shall be a public hearing before Council and the Council's decision shall be final.

ARTICLE III: VIOLATON

SECTION 1. The violation of any provision of this Section shall be unlawful and a misdemeanor offense punishable by a fine not exceeding Five Hundred (\$500.00) Dollars. Each day a violation of this Section continues shall constitute a separate offense.

SECTION 2. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 3. All Ordinances or parts thereof in conflict herewith are repealed to the extent of such conflict only.

SECTION 4. This Ordinance shall be and become effective from and after its adoption.

APPROVED AND ADOPTED this the 18th day of August, 2014.



STEVE SPICER, MAYOR

ATTEST:



LUPE RUSHING, CITY SECRETARY