

APPLICATION FOR LICENSE TO ENCUMBER PUBLIC RIGHTS-OF-WAY \_\_\_\_\_ DEPARTMENT

**DO NOT WRITE IN THIS SPACE**

APPLICATION FEE PAID:

DATE \_\_\_\_\_

RECEIPT NO. \_\_\_\_\_

CASE NO. \_\_\_\_\_

DATE \_\_\_\_\_, 20\_\_

**EXPLANATION TO APPLICANT:**

This is the application for consideration of approval to encumber public rights-of-way. This application shall be processed as follows:

1. Completion of application and submission of required application fee of \$100.00 (one hundred dollars.)
2. Submission of metes and bounds legal description of property requested for encumbrance, twelve (12) copies of a site plan detailing the proposed right-of-way encumbrance and twelve (12) copies of a section profile plan depicting the method or details of the encumbrance installation.

This application, legal description, associated plan documents, and application fee must be submitted to the Public Works Department. The applicant must obtain a fair market appraisal of property for encumbrance. The application fee is non-refundable, and will be applied to the cost of the annual license fee. After review by specific City departments and local utility companies, the application will be forwarded to the City Manager for final consideration. If the City Manager approves the request, the applicant is immediately responsible for payment of any additional amount required to cover the cost of the annual license fee.

In signing this application, the applicant acknowledges full understanding of the Texarkana Code of Ordinances and the other expressed above in regards to obstructions of public rights-of-way.

APPLICANT (S): \_\_\_\_\_

ADDRESS: \_\_\_\_\_ CITY/STATE/ZIP: \_\_\_\_\_

PHONE NUMBER: (\_\_\_\_) \_\_\_\_\_

APPLICATION FOR LICENSE TO  
ENCUMBER PUBLIC  
RIGHTS-OF-WAY

The attached form is your application for the City of Texarkana's consideration to allow the encumbrance of public rights-of-way or easements. If this request is approved, a License and Hold Harmless Agreement is prepared which shall comply with Texarkana City Code. This Section controls the consideration of request for encumbrances on, over, under, or through public rights-of-way. The requirements are as follows:

- (A) The right to encumber the Public Right-of-Way may be granted only by license and every Grantee of a license shall agree to indemnify and hold the City of Texarkana harmless from any and all damages to persons or property, or both, arising in any way out of the use of the licensed premises. Each person applying for a license shall deposit a non-refundable application fee of \$100.00 (one hundred dollars) to cover the expenses of the processing costs associated therewith. The total deposit shall be credited toward the license fee for the issuance of the first year if a license should be granted. The applicant is responsible for the establishment of the fair market value in the areas of consideration for license. Fair market value shall be established by a competent appraiser and in accordance of customary practices in real estate appraisal.
- (B) The minimum width request for an encumbrance upon public right-of-way shall be three (3) feet.
- (C) No individual, person, firm, or corporation shall be granted a license for an encumbrance of the public right-of-way that would adversely affect the public health, safety, or welfare of the citizens of the City of Texarkana.
- (D) A licensee shall pay a license fee depending upon the amount of right-of-way encumbered as set out below. In no event shall a license fee be less than \$200.00 (two hundred dollars) for a period of one year.
  - (1) For a private license authorizing a surface encroachment at the sidewalk level, the annual license fee shall be 100% of the fair market value times the square footage of encumbrance.
  - (2) For a private license authorizing an air space encroachment above the sidewalk level, the annual license fee shall be 10% of the fair market value times the square footage.
  - (3) For a private license to encumber subsurface area, the annual license fee shall be as follows:

- (a) For Non-Certificated Telecommunications Providers - \$1.00 per lineal foot.
  - (b) All others – 10% of the fair market value times the square footage of encumbrance.
- (F) Any individual, person, firm, or corporation wishing to encumber the public right-of-way in any manner shall submit a license application to the Public Works Department. Upon receipt (and normal City department and utility company review) of such application, the Director of Public Works shall forward the request to the City Manager for approval.
- (G) Any license granted hereunder shall be drafted by the City Attorney's Office.
- (H) In the event any individual, firm, person, or corporation is denied a license, he shall have the right to appeal such denial to the City Council by filing a written notice of appeal with the City Secretary no later than five (5) days from his receipt of notice of the denial of his request.
- (I) The City Council shall hear the applicant's request and shall determine whether or not to uphold the denial or to grant the request as presented or to modify it.

**APPLICATION INFORMATION**

APPLICANT NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

FIRM, CORPORATION OR BUSINESS NAME: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

TYPE OF OBSTRUCTION REQUESTED:

Surface \_\_\_\_ Subsurface \_\_\_\_ Air Space \_\_\_\_

LEGAL DESCRIPTION OF OBSTRUCTION PROVIDED: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NATURE OF OBSTRUCTION: \_\_\_\_\_

\_\_\_\_\_

PURPOSE OR REASON FOR OBSTRUCTION: \_\_\_\_\_

\_\_\_\_\_

PURPOSED DURATION OF OBSTRUCTION: \_\_\_\_\_

ADDITIONAL INFORMATION TO SUPPORT APPLICATION: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DATE: \_\_\_\_\_

## CODE OF ORDINANCES

### **Sec. 24-5. - Encumbrances and obstructions on streets, sidewalks and other public rights-of-way.**

- (a) *Definitions:*
- (1) *Alley:* A minor way that is used primarily for installation of public utilities and for vehicular service access to the backside or the side of the property otherwise abutting the street.
  - (2) *City:* City of Texarkana, Texas.
  - (3) *Easement:* A right held by the city to be used for access, drainage, or the placement of utilities such as, but not limited to, water, sewer, gas, telephone, cable television, and electrical lines.
  - (4) *Franchise:* A grant of authority by the City of Texarkana, Texas to utilize the public right-of-way under certain specific terms and conditions given by ordinance.
  - (5) *Non-certificated telecommunications provider:* An entity who has not been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority to offer local exchange telephone service.
  - (6) *Right-of-way:* Any strip or area of land including, surface, overhead or air space, or underground or subsurface space that is used or intended to be used or dedicated to be used wholly or in part as a public street, alley, or as the location of public walkways and utility or drainage facilities or installations.
  - (7) *Sidewalk:* The concrete or asphalt surfaced portion of a street between either the curb line or roadway and the adjacent property line intended for pedestrian use.
  - (8) *Street:* The entire width between the boundary lines of every right-of-way, other than an alley, publicly maintained when any part of it is opened to the public for vehicular use.
  - (9) *Other definitions:* Definitions not expressly described herein are to be determined in accordance with customary usage in municipal planning and engineering practices.
- (b) *Unlawful activities.* The following activities, uses, conditions, or occurrences on the public right-of-way shall be deemed unlawful:
- (1) Operating any machinery having tracks, feet, or pulling lugs over or along any paved streets or alleys.
  - (2) Hauling of gravel, brick, sand, concrete, ready mix concrete or mortar in such a manner to scatter or waste these substances onto any streets, alleys, or sidewalks.
  - (3) Dropping, spilling or leaking out of any tank or vessel, whether connected with a motor vehicle or otherwise, any gasoline or other oil or petroleum base substance on to any street, alley, or sidewalk.
  - (4) Discharging any odorous water, sewage, wastewater, waste oils, kitchen grease, kitchen slop water, mop water, or other offensive or hazardous substance onto any public right-of-way.

- (5) Placing, storing, constructing, installing, or maintaining any structure, building, object, vehicle, device, fence, wall or other material on or within any public right-of-way. Trees and other living, domesticated vegetation located within the parkway area of a paved street and mailboxes are exempt from this prohibition. Provided however, city, or its authorized agents, shall not be required to replace any obstruction on or within any public way that must be removed during the course of maintenance, construction and/or reconstruction on or within the public way.
- (6) Casting, placing, or storing any animal, offal, garbage, trash, refuse or debris into or upon any street, alley, sidewalk, street gutter or other public right-of-way.
- (7) Constructing or placing any temporary or permanent structure within, on, or over any public utility or drainage easement except for franchised utilities, other public facilities associated with drainage, or as provided herein. The property owner may place removable section type fencing, asphalt or concrete paving, or landscaping within any dedicated public utility easement. Provided however that the city or any franchised utility of the city shall not be required to replace anything that must be removed during the course of maintenance, construction or reconstruction within any public utility or drainage easement.

(c) *License to encumber right-of-way or easements.* The following shall control the consideration of requests for encumbrances on, over, under, or through public rights-of-way or easements.

- (1) The right to encumber the public right-of-way may be granted only by license and every grantee of a license shall agree to indemnify and hold the City of Texarkana harmless from any and all damages to persons or property or both, arising in any manner out of the use of licensed premises. Each applicant for a license shall submit a non-refundable deposit of one hundred dollars (\$100.00) to cover the expenses of the processing costs associated therewith. The total deposit shall be credited toward the issuance of the first year license fee, should the applicant be approved for a license. The application must be accompanied by plans or drawings showing the area to be used and a statement of the purpose for which the right-of-way is to be used. The applicant is responsible for the establishment of the fair market value in the areas of consideration for license. Fair market value may be established by use of Bowie County Appraisal District records for adjacent properties.
- (2) No individual, person, firm, or corporation shall be granted a license for an encumbrance of the public right-of-way that would adversely affect the public health, safety, or welfare of the citizens of the City of Texarkana.
- (3) Subject to the exemptions set forth in [section 24-5\(d\)](#) of this article, no license shall be issued or granted for an encumbrance of the public right-of-way for less than a three (3) foot width.
- (4) Subject to the exemptions set forth in [section 24-5\(d\)](#) of this article, a licensee shall pay a license fee depending upon the amount of right-of-way encumbered as set out below. In no event shall a license fee be less than two hundred dollars (\$200.00) for a period of one (1) year.
  - a. For a private license authorizing a surface encroachment at the ground level, the annual license fee shall be one hundred (100) per

cent of the fair market value times the square footage of encumbrance.

- b. For a private license authorizing an air space encroachment above the ground level, the annual license fee shall be ten (10) per cent of the fair market value times the square footage of encumbrance.
- c. For a private license to encumber subsurface area, the annual license fee shall be ten (10) per cent of the fair market value times the square footage of encumbrance.

- (5) Said license fee for each licensee may be subject to annual review by the city council and is subject to change.
- (6) The total deposit shall be credited toward the license fee for the issuance of the first year if a license should be granted. Any individual, person, firm or corporation wishing to encumber the public right-of-way in any manner shall submit a license application and required deposit to the director of public works. Upon receipt and normal review by various city departments and public utility companies of such application the director of public works shall forward the request to the city manager for approval.
- (7) Any license granted hereunder shall be drafted by the city attorney's office.
- (8) In the event any individual, firm, person, or corporation is denied a license, he shall have the right to appeal such denial to the city council by filing a written notice of appeal with the city secretary no later than five (5) days from his/her receipt of notice of the denial of the request.
- (9) The city council shall hear the applicant's request within thirty (30) days of notice of appeal and shall determine whether or not to uphold the denial, to grant the request as presented or to modify it.

(d) *Exemptions.*

- (1) Any applicant, who wishes to encumber public rights-of-way, for installation of: a private water line, with a diameter of one (1) inch or less, and for a distance of not more than three hundred (300) feet; a private sewer line with a diameter of four (4) inches or less, and for a distance of not more than three hundred (300) feet; and an overhead line for a distance of not more than three hundred (300) feet; or for an encroachment by a building, is hereby exempt from the annual license fee and shall be subject to a one-time license fee of two hundred dollars (\$200.00). An applicant who wishes to encumber the public right-of-way adjacent to the applicants' private property for the purpose of installation of a private lawn sprinkler or irrigation system is hereby exempt from the license fee requirements of this ordinance. However, neither the city nor any franchised utility shall be responsible or liable for damages or expenses resulting from the maintenance or operations of utilities in said right-of-way.
- (2) Non-certificated telecommunications providers shall be subject to an annual fee of one dollar (\$1.00) per lineal foot.

- (3) Any applicant who is approved for a license to encumber public right-of-way, for the placement of an ornamental device, is hereby exempt from the annual license fee and subject to a one-time license fee of two hundred dollars (\$200.00).
- (e) *No obstruction of public property.* Applicant shall not, unnecessarily or for an unreasonable period of time, obstruct or interfere with the public use of any streets, roads, highways, alleys or public ways owned or controlled by the city.
- (f) *Repair of damages.* Applicant shall repair any and all damages caused by applicant to any real property owned or controlled by the city and shall restore, such real property to substantially its condition immediately before the incident causing such damage. Applicant shall commence such repairs immediately upon completion of the work or activity in which applicant was involved at the time the damage occurred and shall complete such repairs to the satisfaction of the city for one-year from the date of surface of said street, road, highway, alley or public way is broken for such construction or maintenance work, after which time, responsibility for the maintenance shall become the duty of the city. The city may, from time to time, adopt reasonable ordinances regulating such work.
- (g) *Conduct of work and activities.* Applicant shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property.
- (h) *Use of alleys.* Applicant shall attempt to utilize the alleys of the city insofar as is reasonably practical in conducting its work and activities hereunder. Notwithstanding the foregoing, however, applicant may, when approved by city, utilize the streets and any other public ways owned or controlled by the city to perform such work and activities.
- (i) *Changes in encroachments.* Applicant shall (at applicant's expense), upon written request from the city, change the location, position, route, depth or height of any encroachment or other components of the encroachment if and when such change becomes reasonably necessary because of a change in the grade of any street, road, highway, alley, public way, or other real property owned or controlled by the city or because of any change in the location of, or in the manner of maintaining, constructing, laying, repairing, removing, replacing, installing, or operating, any pavement, curbs, gutters, or underground or aboveground wires, cables or water or sewer pipes owned or controlled by the city. The city's written request for such change must set forth, in detail, all of the essential elements and specifications of the requested change.
- (j) *Maps of encumbrances.* Applicant shall, at all times, keep on file with the city engineer a map or maps showing the current location of all encumbrances and other components of applicant's facilities located in the city.
- (k) *Jurisdiction.* Any agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties hereunder are performable in Bowie County, Texas.
- (l) *Conflicts.* In the event of any conflict between the provisions of this section and any other provision of the Texarkana City Code or other ordinances, this section shall control. Provided however, that nothing in this section shall effect the right of a holder of a lawfully granted franchise.



- (m) *Penalty.* That any person found guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be subject to the fine as prescribed by law for Class C misdemeanors and that each day of any such violation shall be a separate offense.

*(Ord. of 11-8-20, § 1; Ord. No. 359-91, § 1, 12-9-91; Ord. No. 254-2000, § 1, 8-28-00; Ord. No. 293-06, § 1, 10-9-06)*

*Cross reference— Use of noise to attract attention to shows, sales, etc. in such manner as to block streets and sidewalks, § 14-16; location in or obstruction of streets by oil and gas wells, § 16-2; blocking of streets by trains, § 22-5.*

### **Sec. 24-5.1. - Same—Special exceptions.**

A special exception to the application of [section 24-5](#) is hereby granted for the construction and maintenance of four (4) lighted brick corner posts on each side of the circular drive located at #3 Treasure Hill, Texarkana, Texas, more particularly described as follows:

Lot 14, Block 5, Revised Forest Lake Estates, a recorded subdivision in Texarkana, Bowie County, Texas.

This special exception shall be effective upon the signing of agreement of indemnity signed by Bob and Sandra Womack binding present and future owners of the property to indemnify and hold harmless the city, its officers, agents and employers from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the construction, placement or maintenance of said brick corner posts on the right-of-way and any and all expenses related to the removal, repair, or replacement of said brick corner posts occasioned by work performed in the street right-of-way, whether such injuries, death or damages, removal, repair or relocation are caused by the city's sole negligence or the joint negligence of the city and any other person or entity. Such agreement shall be in form and content as required by the city attorney.

Bob and Sandra Womack and their successors in title shall be primarily liable in damages for any loss or damages sustained as a result of the construction, erection, location, placement or maintenance of the brick corner posts within the street right-of-way, for such a period of time as the brick corner posts remain within the street right-of-way.

*(Ord. No. 305-90, § 1, 11-26-90)*

### **Sec. 24-6. - Same—Removal.**

Any obstruction or encroachment upon any sidewalk, street, alley or other public thoroughfare of the city as specified in [section 24-5](#) shall be removed by the owner or person in charge thereof, and upon failure to do so, the city, through its agents, shall remove said obstruction or encroachment and dispose of the same.

*(Ord. of 11-8-20, § 2; Ord. No. 39-70, § 2, 3-9-70)*