

**ORDINANCE NO. 13-2021**

**AN ORDINANCE OF THE VILLAGE OF BONNEY, TEXAS, PROHIBITING FILL, EXCAVATION, OR OTHER CHANGES IN DRAINAGE WITHOUT A PERMIT; REGULATING FILL AND CHANGES IN DRAINAGE; PROVIDING FOR EXCEPTIONS, PERMITS, APPEALS, OFFENSES AND PENALTIES, AND NONLIABILITY OF THE VILLAGE AND ITS PERSONNEL; PROVIDING A FINE OF UP TO \$500 PER DAY AND OTHER REMEDIES FOR EACH VIOLATION; AND CONTAINING RELATED PROVISIONS.**

**BE IT ORDAINED BY THE BOARD OF ALDERPERSONS OF THE VILLAGE OF BONNEY, TEXAS, DULY ASSEMBLED:**

**Section 1. Definitions.**

“Load” in this ordinance shall mean: one truckload of soil, or 14 cubic yards.

“Soil” in this ordinance shall mean dirt, sand, gravel, rock, crushed concrete, rip rap, or any similar material.

“Fill” in this ordinance shall mean: transporting more than five loads of soil per year to a Tract from a source external to the Tract. Any Fill that would be likely to adversely affect adjacent property is not permissible.

“Change in Drainage” in this ordinance shall mean any of the following actions: excavating, ditching, filling, or otherwise appreciably changing the elevation or the existing drainage of any real property, regardless whether done by moving dirt or otherwise. Any Change in Drainage that would be likely to adversely affect adjacent property is not permissible.

“Tract” in this ordinance shall mean a contiguous area of land with whole or partial common ownership of each lot, parcel, or part, regardless of the number of lots, parcels, or parts.

“Incidental Dirt Work” in this ordinance shall mean: the transport of five or less loads (70 cubic yards) of soil to a Tract, or the movement of five or less loads of soil within the Tract, per year. Any Incidental Dirt Work that would be likely to adversely affect adjacent property is not permissible.

## **Section 2. Prohibitions and Requirements.**

a. No person shall participate in any Incidental Dirt Work that would be likely to adversely affect other property, any Fill, or any Change in Drainage, except as provided in sections 3 or 4 of this ordinance.

b. No person who owns or leases any interest in land shall allow Fill or a Change in Drainage to be performed on that land, except as provided in sections 3 or 4 of this ordinance.

c. Fill material shall not be placed closer than ten (10) feet from any property line.

d. If the Fill or Change in Drainage is likely to alter any natural drainage flow, then the applicant for a permit, the landowner, and the lessee must mitigate for the altered flow. Natural flow could be by sheet flow, swale, ditch, slough, or other natural or man-made means of conveyance of water. Mitigation could include ditches, swales, detention/retention ponds or other reasonable means of conveyance/detention/retention, acceptable to the Village Floodplain Administrator.

e. All fill material must be spread evenly within 6 months of the permit issuance date. If the fill material is not spread within this time period, the permit applicant, property owner and lessee may be required to remove the material.

## **Section 3. Permits.**

a. This ordinance shall not prohibit Fill or a Change in Drainage performed in compliance with a permit granted under this section.

b. Before any Fill or Change in Drainage is begun, a written plan of the proposed action and an application for a permit for the Fill or Change in Drainage on a form prepared by the Village Floodplain Administrator must be submitted to the Village Floodplain Administrator, including:

1. All elevations on the subject property and adjacent properties before and after the proposed change;
2. The drainage effect of the proposed change;
3. Overall layout of lots or parcels;
4. 0.5' Contours;
5. Any defined water ways on or adjacent to the site;

6. Drainage area map showing on-site and off-site areas draining across or adjacent to the site with preliminary calculations of flows;
7. Flood zones and flood ways as determined by the applicable FEMA maps. The Base Flood Elevation (BFE) shall be indicated on the preliminary plat as shall the flood zone;
8. Proposed drainage improvements including detention areas and depths with preliminary calculations;
9. Proposed easements which shall include all drainage and maintenance easements; and
10. If more than 20 loads (280 cubic yards) of fill material are to be placed, the applicant must provide a hydraulic analysis (drainage plan) certified by a licensed professional engineer and approved by the appropriate drainage district.
11. The location from which the fill material came, whether or not it was from a governmental project, and who hauled/delivered the fill material.
12. Any other information concerning such action reasonably requested by the Village Floodplain Administrator.

c. The Village Floodplain Administrator shall have discretion to waive the requirements of scale drawings and measured elevations for minor projects in which the Village Floodplain Administrator believes those items are unnecessary to assess the drainage effect of the project.

d. A nonrefundable fee shall be paid to the Village at the time the permit application is filed. The permit fee will vary depending on whether or not the Tract is in the Floodplain, and whether or not the Fill amount is greater than 20 loads (280 cubic yards). The fee may be set by the Village's fee ordinance or otherwise by the Village Board of Alderpersons.

e. After receiving all required documents and the fee, the Village Floodplain Administrator shall approve the plan and issue a permit for the Fill or Change in Drainage, unless either:

1. The proposed Fill or Change in Drainage is likely to have a detrimental effect on the drainage or flooding of any property; or
2. The proposed Fill or Change in Drainage would violate any provision of the Brazoria County Drainage Criteria Manual.

**Section 4. Exceptions.**

a. This ordinance shall not apply to Fill or Changes in Drainage conducted by the United States of America, the State of Texas, the County of Brazoria, or any other governmental entity, in their respective rights of way.

b. Incidental Dirt Work performed outside of the floodplain that would not be likely to harm other property shall not require a permit.

**Section 5. Appeals.**

a. Any person aggrieved by a decision of the Village Floodplain Administrator under this ordinance shall have the right to appeal to the Village Board of Alderpersons by delivering to the Village Clerk notice of such appeal. The notice must be actually received by the Village Clerk at Village Hall or at the Village's post office box within ten days after the decision being appealed.

b. The appellant and the applicant for the Fill or Change in Drainage permit shall be entitled to notice and the opportunity to be heard by the Village Board of Alderpersons. The Village Board of Alderpersons shall decide the appeal anew, as if the Village Floodplain Administrator had not decided either way (de novo review).

c. The Fill or Change in Drainage shall not be performed while the appeal is pending.

**Section 6. Conflicts In Terms**

In the event of conflict between the provisions within this ordinance, or between this ordinance and any other ordinance or other law, the stricter provision shall govern and control.

**Section 7. Penalty and Continuing Offenses**

Any person violating any provision of this ordinance shall be guilty of a misdemeanor punishable upon conviction by a fine of not more than Five Hundred (\$500.00) Dollars. Each calendar day or portion of a calendar day a violation continues or recurs shall constitute a separate offense. No culpable mental state shall be required for a violation of this ordinance.

**Section 8. Other Remedies**

Any and/or all of the following civil remedies may be imposed for violation of any provision of this ordinance: injunctive relief, declaratory relief, monetary damages, attorney's fees and all other expenses incurred in enforcing the Village's rights or the

violator's obligations or liabilities, costs of court, interest as provided by law, and all other remedies at law or in equity.

**Section 9. Cumulative Obligations and Remedies; No Election of Obligations or Remedies**

a. All obligations, prohibitions, and offenses under this ordinance or under any other applicable laws are cumulative. No such obligations, prohibitions, or offenses shall be construed to limit any other such obligations, prohibitions, or offenses.

b. All remedies and penalties in favor of the Village or against any person other than the Village under this ordinance, or under any other applicable laws are cumulative. The pursuit or receipt by the Village of any one or more penalties or remedies shall not constitute an election of remedies, and shall not prevent the Village from pursuing and receiving any and all other remedies and penalties of any nature whatsoever.

c. Without the limiting the generality of the foregoing, the Village may pursue a criminal prosecution hereunder without pursuing civil remedies for a violation hereof; the Village may pursue civil remedies without pursuing a criminal prosecution; or the Village may do both.

**Section 10. Nonwaiver By Nonenforcement**

The failure or omission by the Village upon one or more occasions, to enforce any right, obligation, or remedy hereunder, under any permit issued hereunder, or under any other applicable laws shall never be construed as a waiver of the Village's right to strictly enforce such right, obligation, or remedy, and the Village may resume such strict enforcement without advance notice.

**Section 11. Nonwaiver Of Immunity**

Nothing herein, in any document issued pursuant hereto, or in any action pursuant hereto shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the Village.

**Section 12. Non-Liability Of Village**

Neither the Village nor any of its agents, officers, attorneys, or employees shall have any liability of any nature to any person other than the Village for any act, omission, or condition in any way directly or indirectly related to the subject matter of this ordinance.

**Section 13. Savings Clause**

All other ordinances and portions of ordinances of the Village shall remain in full force and effect.

**Section 14. Severance Clause**

If any part of this ordinance, of whatever size, is ever declared invalid or unenforceable for any reason, the remainder of this ordinance shall remain in full force and effect.

**Section. 15. Effective Date**

This ordinance shall be effective immediately upon its passage and approval.

PASSED AND APPROVED THIS 21<sup>st</sup> DAY OF December, 2021.

VILLAGE OF BONNEY, TEXAS

By: Raymond Cantu  
RAYMOND CANTU, MAYOR

ATTEST:

Kaylee Winans  
KAYLEE WINANS,  
VILLAGE CLERK

