

ORDINANCE NO. 120307

**AN ORDINANCE REGULATING AND PROVIDING FOR A PERMIT  
PROCESS FOR THE TEMPORARY USE OF PUBLIC RIGHTS-OF-WAY;  
PROVIDING FOR A REPEALER AND SEVERABILITY CLAUSE; AND  
PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Niederwald, Texas, is a Type A general-law municipality; and

**WHEREAS**, Section 51.001 of the Texas Local Government Code authorizes the City of Niederwald to adopt ordinances that the City Council deems is for the good government, peace, or order of the City; and

**WHEREAS**, Chapter 311 of the Texas Transportation Code gives the City exclusive control of the city's public streets and sidewalks; and

**WHEREAS**, the City Council desires to protect the health, safety, and general welfare of the citizens of the City of Niederwald; and

**WHEREAS**, the City Council of the City of Niederwald has determined that the regulations in this Ordinance regarding the regulation of the temporary use of public rights-of-way is necessary to protect the health, safety, and general welfare of the citizens of the City of Niederwald;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS, THAT:**

**Section 1. Purpose.**

This Ordinance is intended to ensure that persons or entities seeking to temporarily use public streets and other public rights-of-way for activities other than normal vehicular traffic and pedestrian uses obtain permission from the City through a permit process that sufficiently informs the City of the time, place, and manner of the activity affecting the normal vehicular traffic and pedestrian uses, so as to ensure that related regulations are followed, that traffic is safely diverted, that City residents are informed, and that the health and safety of the residents of the City is promoted.

**Section 2. Exemptions.**

The terms of this Ordinance are not intended to illegally violate or prohibit any individual's exercise of a right guaranteed by the United States Constitution or Texas Constitution, nor shall any provision be interpreted in such a manner as to constitute such an illegal violation or prohibition.

Additionally, this Ordinance shall not apply to the following:

- (a) Funeral processions;
- (b) Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities;
- (c) A governmental agency acting within the scope of its functions;
- (d) Sidewalk processions which observe and comply with traffic regulations and traffic control devices, utilizing that portion of a sidewalk or pedestrian area nearest the street, but at no time more than one-half of the sidewalk or pedestrian area;
- (e) Any activity otherwise regulated by the provisions of the Uniform Right-of-Way Management Ordinance, Ordinance No. 111703-B, as may be amended from time to time.

### **Section 3. Definitions.**

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

***Arterial Street:*** Streets designed to carry high volumes of through traffic. Arterial streets serve as a link between major activity centers.

***City:*** The City of Niederwald, Texas.

***Commercial Film-Making Activity:*** Use of a public street, sidewalk or other public right-of-way for film-making activity other than student film-making or student photography.

***Event:*** Activity that involves non-traffic related use of a public street, sidewalk, or other public right-of-way for purposes of allowing general pedestrian access to the public right-of-way (including but not limited to street festivals, block parties, and other activities) for a defined period of time.

***Mobile Film-Making Activity:*** Use of a public street, sidewalk or other public right-of-way to film, photograph, or prepare to film or photograph using a hand-held camera, camera supported by a tripod, camera truck, or other similar device.

***Person:*** Includes any individual, corporation, partnership, sole proprietorship, organization, association or any other legal entity.

***Public Right-of-Way:*** Includes city public streets, sidewalks and other public rights-of-way.

***Student Film-Making Activity:*** Use of a public street, sidewalk or other public right-of-way by a person enrolled in a class at an educational institution, and approved by the City Administrator, to film, photograph, or prepare to film or photograph.

***Temporary Closure or Use:*** Occupation of a public right-of-way, including a street or sidewalk, in a manner that interferes with or prohibits the public's ability to access or use the area.

## **Section 4. Temporary ROW Use Permit; Insurance and Inspection Required.**

### **4.1 Fee Required for Temporary Street Closure Temporary Right-of-Way (ROW) Use Permit.**

An applicant for a Temporary ROW Use Permit shall pay to the City of Niederwald a non-refundable application fee in the amount of fifty dollars (\$50.00). The City Administrator may not issue a permit under this Ordinance unless the applicant has paid the application fee established herein.

### **4.2 Temporary Closure for Events.**

- (A) The temporary closure of a public right-of-way for an event, not otherwise regulated by any other City ordinance, must comply with this section.
- (B) An applicant for a Temporary ROW Use Permit under this section must:
  - (1) file an application with the City Administrator on a form approved by the City Administrator, not later than thirty (30) days before the date of the temporary closure; and
  - (2) pay the applicable fees established in this Ordinance.
- (C) The City Administrator may approve an application for a permit under this section for an applicant engaged in an event who:
  - (1) provides a certificate of liability insurance naming the City as an additional insured in the amount and type of coverage as follows: General Liability Policy with Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage. The insurance must be written by a company licensed and admitted to do business in the State of Texas, and otherwise approved by the City Administrator;
  - (2) provides a site plan of the proposed right-of-way to be used for the event, including the area used to stage the activity;
  - (3) agrees to comply with the terms of the permit and this Ordinance; and
  - (4) agrees to pay the City for the costs the City incurs related to the event, as determined by the City Administrator.

### **4.3 Temporary Closure for Film-Making**

- (A) A person must apply to the City Administrator for a Temporary ROW Use Permit to temporarily close or use a public street, sidewalk or other public right-of-way for a commercial, mobile, or student film-making activity.
- (B) An applicant must submit an application, on a form approved by the City Administrator, not later than thirty (30) business days before the date of the requested temporary closure or use for a commercial, mobile, or student film-making activity.
- (C) Except as provided in Subsection (D), at the City Administrator's discretion, the City Administrator may accept a late-filed application on or before ten (10) business days before the requested closure for a commercial, mobile, or student film-making activity.
- (D) The City Administrator may not accept an application for the closure of an arterial street later than thirty (30) business days before the date of the proposed closure.
- (E) The City Administrator may approve an application for a permit under this section 4.3 for an applicant engaged in a commercial, mobile, or student film-making activity who:

- (1) employs one or more peace officers, as determined by the City Administrator, to control traffic during the temporary use of a public street or sidewalk during a film-making activity;
  - (2) obtains any other permits required to perform the film-making activity;
  - (3) contacts each property owner, resident, and, if applicable, property manager of property fronting on the portion of the street or sidewalk to be temporarily closed or used before the date an application is filed and submits the following:
    - (a) a signature from each affected property owner, resident, and property manager indicating whether the person agrees to or opposes the temporary closure or use; or
    - (b) a statement that an in-person contact attempt with the non-signing person has been made;
  - (4) provides a certificate of liability insurance naming the City as an additional insured in the amount and type of coverage as follows: General Liability Policy with Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage. The insurance must be written by a company licensed and admitted to do business in the State of Texas, and otherwise approved by the City Administrator;
  - (5) provides a site plan of the proposed right-of-way to be used in the commercial, mobile, or student film-making activity, including the area used to stage the activity;
  - (6) agrees to comply with the terms of the permit and this Ordinance; and
  - (7) agrees to pay the City for the costs the City related to the film-making activity, as determined by the City Administrator.
- (F) The City Administrator may authorize an applicant's written request to delay a temporary street closure or use under a permit issued under this section, if the applicant agrees to:
- (1) contact each individual listed under Subsection (E)(3) in person or by telephone; and
  - (2) advise each individual of the change in schedule at least three (3) days before the date of the delayed closure.

## **Section 5. Enforcement.**

- (A) A person commits an offense if the person violates the terms of a permit issued under this Ordinance, closes or interferes with the normal use of a street or sidewalk without a permit, or violates any provision of this Ordinance. An offense under this section is punishable by a fine of up to \$2,000.00. A culpable mental state is not necessary to commit an offense under this Ordinance.
- (B) The City Administrator may suspend or revoke a permit issued under this Ordinance if a permittee violates the terms of the permit or the provisions of this Ordinance. The City Administrator may not reinstate the permit until the permittee has provided written notice of the methods to be used to correct the violation(s), and said methods of correction are deemed sufficient by the City Administrator. The remedies authorized by this Ordinance are cumulative.

- (C) The City of Niederwald shall have the power to administer and enforce provisions of this Ordinance as may be authorized by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for ordinance violations.
- (D) Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense.
- (E) Nothing in this Ordinance shall be construed as a waiver of the City's right to file a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law or equity, including but not limited to the following:
  - (1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance;
  - (2) a civil penalty up to one thousand dollars (\$1,000.00) per day when it is shown that the defendant was actually notified of the provisions of this Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
  - (3) other available relief.

#### **Section 6. Appeal**

An applicant or permittee may appeal to the City Council the denial, suspension, or revocation of an application filed or permit issued under this Ordinance.

#### **Section 7. Repealer.**

All provisions of the ordinances of the City of Niederwald in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the City of Niederwald not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

#### **Section 8. Severability.**

It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity of any section, clause or provision or part or portion of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

#### **Section 9. Effective Date.**

This Ordinance shall become effective immediately upon its passage and publication as required by law.

PASSED AND APPROVED THIS THE 3<sup>rd</sup> DAY OF December, 2007.

Michelle Mendoza  
HON. MICHELLE MENDOZA, MAYOR PRO TEM

ATTEST:

Angie Schulze  
ANGIE SCHULZE, CITY SECRETARY

