

ORDINANCE NO. 2009-10-15

AN ORDINANCE OF THE CITY OF HILLSBORO, TEXAS, AMENDING ARTICLE 13.500 OF THE CITY OF HILLSBORO CODE OF ORDINANCES CONCERNING THE EXTENSION OF WATER OR SEWER UTILITIES AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; JURISDICTION; PURPOSE AND SCOPE; DEFINITIONS; RETAIL WATER OR SEWER SERVICE APPLICATION REQUIREMENTS; UTILITY SERVICE FEES AND DEPOSITS; DISCONNECTION AND PAYMENT PROVISIONS; EXTENSION OF WATER OR SEWER SERVICE; PRO RATA CHARGES; NO VESTED INTEREST; ENFORCEMENT AND PENALTIES FOR NON-COMPLIANCE; SEVERABILITY; PROPER NOTICE AND MEETING; AND EFFECTIVE DATE.

WHEREAS, the city council of the City of Hillsboro seeks to promote the health, safety and general welfare of the citizens of the city, and the best interests of the city; and

WHEREAS, the city council seeks to promote fair, just and reasonable water, and sewer utility fees; and

WHEREAS, the city council seeks to ensure that water, and sewer utility service is adequate and efficient for the citizens of the city; and

WHEREAS, pursuant to Texas Local Government Code section 51.001, the city council is authorized to adopt an ordinance that is for the good government, peace or order of the city and is necessary or proper for carrying out a power granted by law to the city; and

WHEREAS, pursuant to Texas Local Government Code section 51.012, the city council is authorized to adopt an ordinance, not inconsistent with state law, that the council considers proper for the government, interest, welfare or good order of the city; and

WHEREAS, pursuant to Chapter 402 of the Texas Local Government Code and other laws, the city is authorized to operate its water and sewer utility systems inside or outside its municipal boundaries, to regulate the system in a manner that protects the interests of the municipality, and to extend the lines of its utility systems inside and outside the municipal boundaries.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hillsboro, that:

1. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

II. REGULATIONS

Article 13.500 of the City of Hillsboro Code of Ordinances is hereby deleted in its entirety and replaced with the following:

* * *

FINDINGS, AUTHORIZATION, PURPOSE AND METHODS

Section 13.501 Findings of Fact

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Hillsboro and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Section 13.502 Jurisdiction

The provisions of this Ordinance shall apply to the city's water and sewer systems.

Section 13.503 Purpose and Scope

(1) This Ordinance establishes certain general policies and specific requirements to be used in provision and extension of retail water, and sewer utility service. Additional substantive or procedural policies and requirements may be developed or applied, or both, on a case-by-case basis as the need arises.

(2) The City may make exceptions to this Ordinance for good cause. The following criteria shall be used in determining whether a good cause exception is to be granted:

- (a) whether the good cause exception would undermine the purpose of the Ordinance;
- (b) whether the good cause exception would further the purpose of the Ordinance;
- (c) whether the good cause exception is warranted due to difficult or impossible circumstances;
- (d) whether the need for a good cause exception could have been avoided with reasonable foresight;
- (e) whether the good cause exception, if not granted, would produce an illogical result;
- (f) whether the good cause exception would be a material variance from the Ordinance; and
- (g) whether the good cause exception would unduly prejudice or burden the city or affected persons.

(3) Adopting this Ordinance in no way precludes the city from altering or amending any portion of this Ordinance in whole or in part, or precludes the city from adopting additional rules pertaining to the provision of water and sewer retail utility service. This Ordinance is not an exhaustive list of policies, requirements or procedures implementing, interpreting or prescribing law or policy applicable to regulating retail water or sewer service. This Ordinance shall not be construed to enlarge, diminish, restrict or alter the city's jurisdiction, authority or powers or the rights of any person.

Section 13.504 Definitions

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases that are not defined in this Ordinance but are defined in this Code or other ordinances of the City of Hillsboro shall be given the meaning set forth in those Code provisions or ordinances. Other words and phrases shall be given their common, ordinary meanings unless the context requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Chapter.

"City" means the City of Hillsboro

"City Council" means the City Council of the City of Hillsboro

"City's Water or Sewer System" means the water or sewer facilities and mains used in the provision of retail water or sewer service.

"Customer" means any person provided water or sewer services by the City.

"Developer" means a person who intends to construct on or otherwise develop more than one lot within the City as a project, whether residential, commercial, or other.

"Director" means the Director of Public Works of the City or his/her designee.

"Person" means individual, corporation, organization, government or political subdivision or agency, business trust, partnership, association, or any other legal entity.

"Qualified Service Applicant" means a person that has met all the applicable requirements as outlined herein in order to obtain water or sewer service within the city's service area.

"Pro Rata Charges" shall mean fees charged to new intervening water or sewer service customers who connect to a City water or sewer main or facility, the cost of construction of which that was paid by a developer or individual, that are used to reimburse that developer or individual for a portion of such costs. Such charges shall be calculated on a case by case basis prior to the initial construction of the water or sewer main or facility paid for by the developer or individual to be reimbursed, and the portion of the main or facility for which pro rata charges are collected shall be measured from the then existing water or sewer line and the first point of connection of the developer or individual. The goal of such calculation shall be to fully reimburse the developer or individual if all intervening service connections become connected, but no developer or individual shall have a right to full reimbursement. In no event may a developer or individual recover more than his or her original costs. The City may provide that the period for collection of such pro rata charges shall be limited in time.

"Retail Water or Sewer Service" means water or sewer service provided by the city directly to the ultimate retail consumer as that term is defined by Chapter 13, Texas Water Code, and other applicable law.

"Service area" means the corporate limits of the City or the area served by or certificated to the City of Hillsboro for provision of retail water or sewer service.

WATER AND SEWER SERVICE APPLICATION, CONNECTION REQUIREMENTS,
DISCONNECTION AND METERS AND HYDRANTS

Section 13.505 Application

(1) All persons desiring from the City retail water or sewer service or desiring to transfer service from a service location to another service location shall file an application with the City at the City Office (City Hall Building), 214 East Elm Street, P.O. Box 568, Hillsboro, Texas 76645. No connection to the sewer system shall be made before the person has met the application, fee, and extension requirements set forth herein.

(2) The City shall provide water and sewer service to only qualified service applicants and no water or sewer service application shall be accepted by the Director unless the application is submitted by a qualified service applicant.

(2) A person is a qualified service applicant if the person has met the following conditions:

(a) The person has submitted a completed and signed water or sewer service application to the Director.

(b) For developers desiring retail water or sewer service from the City, the developer has complied with the City's subdivision ordinances to obtain retail water or sewer service from the City for the subdivision and all meters are installed.

(c) For persons required to obtain a building permit from the City, the person has paid all the required building permitting fees.

(d) For persons desiring water or sewer service for property or service connections located outside the city limits of the city, the person has complied with the requirements of this Ordinance.

(e) The person has paid all applicable charges and fees prescribed by the city's fee schedules, including all tapping and metering charges, all security deposits, and plumbing code inspection fees.

(f) For rental properties, the person has submitted the rental contract or agreement, if requested by the City.

(g) The person has complied with the City's extension of water and sewer facilities requirements, if necessary.

(h) The person has paid all the pro rata charges as required herein or by the City's ordinances.

(4) The City may refuse service to a person if, at the time of the application, the person is indebted to another utility for the same kind of service for which the person has applied from the City. However, if the person is disputing the indebtedness and is otherwise in compliance with the depository requirements, service shall not be refused.

(5) No application shall be approved unless the Director determines that the requested service is for reasonable consumer uses and will not threaten or endanger the city's water or sewer system so as to threaten the city's ability to provide continuous and adequate service.

(6) Any person denied service under this article may request review of the Director's decision. The request shall be made to the City Manager, who shall place the request before the City Council. The City Manager may request additional information of the person denied service. The City Council may grant or deny service, after review of the request, in accordance with the provisions of this article.

(7) All of the provisions of this Ordinance shall be deemed to be incorporated in every contract between the City and its Customers, and each Customer shall be charged with knowledge of the provisions of this Ordinance and, by applying and accepting water from the City, to have assented to the provisions hereof.

13.506 Extension of Water and Sewer Services to Developers

(1) Developers desiring retail water or sewer service from the City shall comply with the City's subdivision ordinances to obtain retail water or sewer service from the City for the development and to extend the City's water and sewer system to the development and shall enter into a development agreement with the City that contains the details, including costs, of such provision of services. In no event shall developers be allowed to pay a lower cost for extending water or sewer facilities or mains than individuals and non-developers are required to pay.

(2) The development agreement may provide that the developer shall be reimbursed partially or totally for his or her costs of extending the water or sewer facilities or mains by intervening customers who connect to the main(s) after their construction and make such reimbursement payments on a pro rata basis. Water

and sewer main extension reimbursements shall be made in accordance with the city's subdivision ordinance.

(3) Developers desiring retail water or sewer service from the City and whose property is located outside the City limits of the City shall request annexation into the City in order to obtain water and sewer service. If, at the time the request is made the City is unable to annex the property, the Developer and the City may enter into a written development agreement that addresses whether and under what terms, if any, the City will provide service.

Section 13.507 Extension of Service to Individual or Non-Developer

(1) This section applies to a request for water or sewer service in the City's water service area from individuals or non-developers.

(2) Upon the approval of an application from an individual or non-developer, and upon payment of all applicable fees and charges due under this section and at the expense of the applicant, the City may extend all necessary water and sewer facilities and mains to the property plus the distance across the entire frontage necessary to provide the service upon the premises for which the application has been made.

(a) The City will not pay the cost of extending water and sewer facilities and mains to the property. The applicant shall be responsible for paying all costs to extend the water and sewer facilities and main. The applicant shall pay the estimate of such cost prior to construction. If the actual cost to extend the water or sewer mains and facilities is greater than the estimated costs, the applicant shall pay the City the difference between the actual and estimated costs upon completion of the extension project. If the estimated cost to extend the water or sewer mains or facilities is greater than the actual cost, the City shall reimburse the applicant the difference between the actual and estimated costs upon completion of the extension project.

(b) The owners of all intervening property served by such extension shall be required to pay the pro rata charges at such time as their property is connected to the City's water and sewer system.

(c) Upon approval of the City, the property owner or person requesting extension of water or sewer facilities or mains to his or her property may extend the mains or facilities by a competent and reputable contractor. All plans and construction shall comply with City standards and specifications. Detailed construction plans for the improvements complying with the City's construction standards and specifications for public works construction shall be drawn by a registered professional engineer and approved by the Director prior to any construction. The construction shall be inspected and approved prior to final acceptance by the City and all expenses associated with such inspection and approval shall be borne by the person requesting service.

(d) The sizes of the mains proposed to be extended shall be determined by the City and shall be in conformance with the water and sewer utility infrastructure master plans. The total costs of extending the mains to and across the applicant's property shall be borne solely by the applicants, with the following exceptions:

(1) Upon approval and acceptance of the system by the City, on any mains larger than eight inches (8"), the City may elect to participate in the cost by refunding the owner the difference between the cost of the oversized main and the eight inch (8") main.

(2) The City also will pay to the original applicant pro rata charges as received from applicants who desire to connect to the mains, with the total payment not to exceed the amount of the original applicant's cost of off-site improvements.

(3) The maximum period of time for the pro rata reimbursement to the original developer for the off-site mains shall not exceed ten (10) years. The developer shall have no claim against the City for any expenses not reimbursed and any pro rata charges not received within ten (10) years, nor any fees received after ten (10) years.

(e) Pro rata charges, if any, shall be collected at the time of application for water or sewer service.

(3) In no event will the City be required to make extensions or participate in the cost of improvements under the provisions of this section if there are no funds available or if, at the discretion of the City, the extension or improvement may not be practical, or otherwise warranted, or is for an unreasonable consumer use.

(4) All water and sewer utilities are owned and operated by the City. Any extensions of the City's water and sewer facilities made by a qualified service applicant or developer, after inspection and acceptance by the City, shall be owned by the City.

(5) Where recorded public utility easements do not exist on the property of an individual, non-developer, or developer who is requesting water or sewer service from the City, the individual, non-developer, or developer shall grant a permanent recorded public utility easement for poles, wires, conduits, drainage channels, storm sewers, sanitary sewers, water lines, gas lines, or other utilities to the City. These easements shall be at least 20 feet wide; however, if the Director determines a greater width is necessary, the director may require a minimum width of up to 30 feet. For developers, the easements required by this section shall comply with the City's subdivision ordinance. For individuals and non-developers, the easements required by this section shall extend along all roadway frontages of the property and shall parallel as closely as possible the street line frontage. Failure to grant the required easements shall result in the denial of service.

(6) All sewer and water service lines on private property from the City's main lines to the premises, including all connections, shall be installed, maintained, and repaired at the expense of the property owner(s). All leaks and other defects in the same shall be promptly repaired by the property owner(s). If required repairs are not completed within ten (10) days after written notice is mailed or hand delivered to the premises, water service to the premises shall be terminated and shall not be restored until the repairs are made and all applicable fees and expenses paid. Any expenditures incurred by the City because of said leaks or defects shall be charged against the property owner(s), and must be paid before water service is restored.

Section 13.508 Penalties and Enforcement

Any person violating this Ordinance, upon conviction, is punishable by a fine in accordance with the following:

(a) Civil and Criminal Penalties. The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations.

(b) Criminal Prosecution: Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding five hundred dollars (\$500.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

(c) Civil Remedies: Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance, and to seek remedies as allowed by law, 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; and

(2) Other available relief.

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III. CONFLICTS AND REPEAL

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This Ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

IV. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

V. NO VESTED INTEREST

No person shall acquire any vested interest in this Ordinance or any specific regulations contained herein. This Ordinance and any regulation enacted hereby may be amended or repealed by the city council in the manner provided by law.

VI. SEVERABILITY

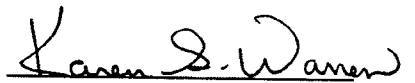
It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

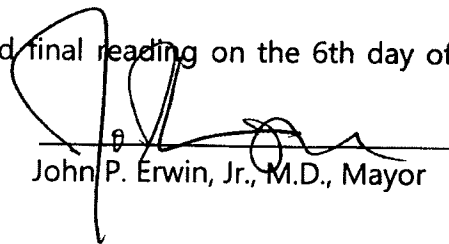
VII. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED on second and final reading on the 6th day of October, 2009.

Attest:


Karen S. Warren, City Secretary


John P. Erwin, Jr., M.D., Mayor