

ORDINANCE NO. 2024-06-046

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ENACTING A TEMPORARY CESSATION ON ANY NEW WATER OR WASTEWATER UTILITY LINE CONNECTIONS, THE APPROVAL OR ISSUANCE OF ANY NEW WATER METERS, OR THE CREATION OF ANY NEW RETAIL UTILITY SERVICE ACCOUNTS FOR PROPERTIES LOCATED OUTSIDE THE CITY'S INCORPORATED LIMITS BUT WITHIN THE CITY'S EXTRATERRITORIAL JURISDICTION OR OUTSIDE OF THE CITY'S INCORPORATED LIMITS BUT WITHIN THE CITY'S WATER CERTIFICATE OF CONVENIENCE AND NECESSITY OR WASTEWATER CERTIFICATE OF CONVENIENCE AND NECESSITY AREAS; PROVIDING FOR FINDINGS OF FACT, APPLICABILITY, PURPOSE, ENACTMENT, DURATION, EXTENSION, EXCEPTIONS, DETERMINATIONS AND APPEALS; AND PROVIDING FOR ENFORCEMENT, SEVERABILITY, REPEALER, PUBLICATION, AND AN EFFECTIVE DATE

WHEREAS, the City Council of the City of McKinney, Texas, (the "City Council") as a duly elected legislative body, finds that it is facing significant water and wastewater service challenges in its extraterritorial jurisdiction ("ETJ") and areas removed from its ETJ; and

WHEREAS, the City has adopted a Comprehensive Plan which guides development within its city limits as well as its ETJ; and

WHEREAS, the City's Water Distribution System Master Plan ("Water Master Plan") and Wastewater Collection System Master Plan ("Wastewater Master Plan") were developed based on the land use assumptions and anticipated densities prescribed by the Comprehensive Plan; and

WHEREAS, the City holds water and wastewater Certificates of Convenience and Necessity ("CCN") which generally align with the limits of its ETJ; and

WHEREAS, recent state legislation has created development conditions in McKinney's ETJ which make providing water and wastewater service unpredictable from a planning and management standpoint; and

WHEREAS, as a result of these laws, involuntary annexation of properties in its ETJ by the City is no longer available, and property owners are now able to remove their property from a City's ETJ without concurrence or approval of a City; and

WHEREAS, as a result of the foregoing, the City of McKinney, Texas, (the "City") has petitioned the Public Utility Commission of the State of Texas (the "PUC") to decertify portions of its current water and wastewater Certificates of Convenience and Necessity ("CCN") in Docket No. 56698; and

WHEREAS, Texas Local Government Code Section 51.001 provides the City the general authority to adopt an ordinance or police regulations that are for the good government, peace, or order of the City and is necessary for carrying out a power granted by law to the City; and

WHEREAS, through the Texas Water Code Chapter 522, Subchapter A, the Texas Legislature granted municipalities the authority to own, operate, and regulate "utility systems," both inside and outside of its municipal boundaries, which include water and sewer systems, the latter of which are also known as wastewater systems, designed to provide domestic consumption of water and the collection of sanitary sewage; and

WHEREAS, the City has determined that it is necessary to the health, safety, and welfare of the public, to encourage and promote the development and use

of the City's utility systems to serve the needs of its current service customers and to prevent the failure of said systems; and

WHEREAS, the City seeks to ensure that impending and future development can be adequately served by the City's water and wastewater utility systems in a fiscally sustainable and environmentally responsible manner; and

WHEREAS, the City cannot regulate land uses or the density of development in its ETJ or outside of its ETJ; and

WHEREAS, the City Council finds that without the ability to plan for and regulate densities and land uses and without the ability to efficiently involuntarily annex properties in the ETJ into its corporate limits, the ability to ensure the adequate provision of water and wastewater utility services in the ETJ is no longer sustainable and doing so poses potential harm to the public peace, health, or safety of the citizens of McKinney; and

WHEREAS, the City Council finds that no further connections to the City's water or wastewater utility system should be permitted in the ETJ or in those areas removed from the ETJ until the PUC has ruled on the City's petition to decertify portions of its water and wastewater CCN and the City has had sufficient time to update its Water and Wastewater Master Plans and associated ordinances as a result of such PUC ruling; and

WHEREAS, the City Council finds that the enactment of this Ordinance is directly related to the immediate preservation of the public peace, health, safety, and welfare.

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

Section 1. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. APPLICABILITY

The City of McKinney hereby enacts this Ordinance in order to implement a temporary cessation on all water or wastewater utility line connections, the approval or issuance of any water meters, or the creation of any new retail utility service accounts for properties located i) outside the City's incorporated limits but within the City's ETJ and ii) outside of the City's incorporated limits but within the City's water CCN or wastewater CCN. This temporary cessation shall apply to all of the above-described properties, unless an exception to this cessation is granted by the City Council as provided by this Ordinance. Unless otherwise specifically stated, references to CCN shall include the City's water CCN and wastewater CCN.

Section 3. PURPOSE

This temporary cessation is being enacted to maintain the *status quo*, and to:

- A. Await a ruling by the PUC regarding the City's petition to decertify portions of its water CCN and wastewater CCN (Docket No. 56698); and
- B. Assess the need for amendments, and potentially amend the City's Comprehensive Plan to address changes in state law and the ruling

of the PUC regarding the City's petition to decertify portions of its water CCN and wastewater CCN (Docket No. 56698); and

- C. Assess the need for amendments, and potentially amend, the City's Water Master Plan and Wastewater Master Plan to address changes in state law and the ruling of the PUC regarding the City's petition to decertify portions of its water CCN and wastewater CCN (Docket No. 56698); and
- D. Assess the need for amendments, and potentially amend the City's Code of Ordinances to address changes in state law and the ruling of the PUC regarding the City's petition to decertify portions of its water CCN and wastewater CCN (Docket No. 56698); and
- E. Obtain and review expert guidance and public input.

Section 4. **ENACTMENT**

The City of McKinney hereby enacts this Ordinance implementing a temporary cessation on all water or wastewater utility line connections, the approval or issuance of any water meters, or the creation of any new retail utility service accounts for properties located i) outside the City's incorporated limits but within the City's ETJ and ii) outside of the City's incorporated limits but within the City's water CCN or wastewater CCN.

Section 5. **DURATION**

The initial duration of this temporary cessation shall be valid through July 1, 2025.

Section 6. **EXTENSION**

If the City determines that the initial duration is insufficient for the satisfaction of the cessation's stated purpose, the City Council may, by ordinance, renew or otherwise extend this cessation for an additional period of time as provided by law; however, not to exceed one (1) year.

Section 7. **EXCEPTIONS**

- A. Any owner of property(ies) located i) outside the City's incorporated limits but within the City's ETJ, or ii) outside of the City's incorporated limits but within the City's water CCN or wastewater CCN who believes that such property(ies) fall within at least one (1) of the exceptions provided below shall provide the City with notice of the exception on a City-promulgated form prior to:
 - i. Any connection being made to the City's water or wastewater utility system; or
 - ii. Any request for the City's approval or issuance of a water meter(s); or
 - iii. Any application to establish a new retail utility service account.
- 1. **Ongoing Projects.** The temporary cessation enacted by this ordinance does not apply to any project or property which has received any plan or permit approval from the City prior to the effective date of this Ordinance. Projects which have failed to make continuous progress towards completion for a period longer than twenty-four (24) months shall not be deemed to be an ongoing project.

2. **Grandfathered Projects.** The temporary cessation enacted by this Ordinance shall not apply to projects or properties that are grandfathered, as of the effective date, under applicable state law. Property owners asserting grandfathered rights under Texas Local Government Code Chapter 245 shall submit an application claiming an exception to this temporary cessation to the City's Engineering Department for review in accordance with City policies. Grandfathered status can be approved through an approved Grandfathered Development Status Determination Request. New utility connections, approval or issuance of new water meters, and the creation of new retail utility service accounts may commence once an exception request is approved by the Director of Public Works, or his designee.
3. **Annexation.** The temporary cessation implemented by this Ordinance shall not apply to properties that have submitted an application seeking voluntary annexation into the City's corporate limits. New utility connections, approval or issuance of new water meters, and the creation of new retail utility service accounts may commence once the City Council has approved the voluntary annexation and the property has been zoned.
4. **Development Agreement.** The temporary cessation enacted by this Ordinance shall not apply to properties who have requested the City's approval of a development agreement pursuant to Texas Local Government Code Section 212.172. New utility connections, approval or issuance of new water meters, and the creation of new retail utility service accounts may commence once the City Council has approved the development agreement, but not otherwise.

Section 8. **DETERMINATIONS AND APPEALS**

- A. **Exceptions.** The Director of Public Works, or his designee, shall make all initial determinations regarding the status of all connections being made to the City's water or wastewater utility system, requests for the City's approval or issuance of a water meter(s); or any application to establish a new retail utility service account. Exception applications shall be evaluated and acted upon by the Director of Public Works within thirty (30) days of receipt. When acting on exception requests, the Director of Public Works may take the following actions: denial, approval, or approval with conditions.
- B. **Appeals.** A property owner who disagrees with the action taken by the Director of Public Works may appeal to the City Council within 10 calendar days of the Director's action.
- C. **Final Decision.** The ruling of the City Council shall be final. Any denial by the Director of Public Works, unless appealed to the City Council, and the City Council shall stand until the cessation expires.

Section 9. **ENFORCEMENT**

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 temporary cessation is subject to suit for injunctive relief as well as prosecution for criminal violations, and such violation is hereby declared to be a nuisance.

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 and/or equity.

Section 10. REPEALER CLAUSE

All ordinances, orders, or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders, or resolutions, or parts thereof, conflict with this Ordinance.

Section 11. SAVINGS CLAUSE

All rights and remedies of the City of McKinney, Texas are expressly saved as to any and all violations of the provisions of any ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 12. PUBLICATION OF CAPTION

The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney.

Section 13. SEVERABILITY CLAUSE


The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and this Ordinance shall become effective from and after the date of its final passage and provided by law.

Section 14. EFFECTIVE DATE

This Ordinance shall become effective immediately upon passage by the City Council.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 25TH DAY OF JUNE 2024.

CITY OF MCKINNEY, TEXAS



GEORGE C. FULLER, Mayor
GERE FELTUS, Mayor Pro Tem

CORRECTLY ENROLLED:



EMPRESS DRANE, City Secretary
TENITRUS BETHEL, Deputy City Secretary

DATE: June 25, 2024

APPROVED AS TO FORM:



MARK S. HOUSER, City Attorney
ALAN LATHROM, Assistant City Attorney