

**ORDINANCE NO. 2017-05-XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, MAKING FINDINGS REQUIRED BY CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE REGARDING NORTH TEXAS MUNICIPAL WATER DISTRICT'S REQUEST TO EXTEND WATER TRANSMISSION LINES UNDER AND ACROSS A PORTION OF CITY OF MCKINNEY PARK LAND GENERALLY LOCATED SOUTH OF US 380 AND EAST OF AIRPORT BOULEVARD TO NEW HOPE ROAD; APPROVING THE GRANT OF PERMANENT WATER LINE EASEMENTS UNDER AND ACROSS SUCH PARK LAND TO NORTH TEXAS MUNICIPAL WATER DISTRICT IN EXCHANGE FOR THE PAYMENT OF FAIR MARKET VALUE FOR SAID WATER LINE EASEMENTS; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE TO EXECUTE ON BEHALF OF THE CITY OF MCKINNEY, TEXAS ALL NECESSARY DOCUMENTS FOR THE CONVEYANCE OF EASEMENTS FROM THE CITY OF MCKINNEY TO THE NORTH TEXAS MUNICIPAL WATER DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR NO VESTED INTEREST; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.**

**WHEREAS**, the North Texas Municipal Water District ("NTMWD"), a governmental entity with eminent domain authority, has requested water line easements from the City of McKinney under and across certain land owned by the City of McKinney that is designated as parkland, which parkland is generally located south of US 380 between Airport Boulevard and New Hope Road ("Park Land"), for the construction and installation of water transmission lines to provide treated water capacity to member cities and customers along the US HWY 380 corridor; and

**WHEREAS**, in order to construct the water transmission lines it is necessary to obtain water line and temporary construction easements under and across those portions of the Park Land as depicted generally on Exhibit A ("Easements") attached hereto and incorporated herein by reference; and

**WHEREAS**, Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing regarding the use or taking of public park land, after which public hearing the governing body must determine that no feasible and prudent alternative to the use or taking of public park land exists, and that the proposed use or taking includes all reasonable planning to minimize the harm to the land as a park resulting from the use or taking proposed; and

**WHEREAS**, Notice of the Public Hearing was duly served and published in conformity to Chapter 26 of the Texas Parks and Wildlife Code; and

**WHEREAS**, the City Council held a public hearing on May 2, 2017, regarding NTMWD's proposed water transmission line project extending under and across the Park Land during which all interested persons had the opportunity to testify and present relevant evidence before City Council.

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

**Section 1. FINDINGS**

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

Section 2. **DETERMINED: THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO PROJECT**

The City Council of the City of McKinney, Texas, after public notice and public hearing as required by law, and upon due deliberation and consideration of all testimony and information submitted during said public hearing, has determined that there is no feasible and prudent alternative to the location of the proposed water transmission lines and accompanying easements under and across the Park Land in a manner consistent with Exhibit A, attached hereto.

Section 3. **DETERMINED: PROJECT INCLUDES ALL REASONABLE PLANNING TO MINIMIZE HARM**

The City Council of the City of McKinney, Texas has further determined that the proposed water transmission line project extending under and across the Park Land includes all reasonable planning to minimize harm to the use of the Park Land as a park, which harm may result from such use.

Section 4. **APPROVAL TO CONVEY EASEMENTS**

The City Council of the City of McKinney hereby agrees to allow the conveyance of water line and temporary construction easements extending under and across the Park Land to NTMWD for the construction of water transmission lines on said Park Land in a location consistent with Exhibit A conditioned upon City's receipt of fair market value payment therefor from NTMWD.

Section 5. **DIRECTION TO PREPARE AND EXECUTE EASEMENTS**

The City Council of the City of McKinney authorizes the City Manager and the City Attorney to draft and execute water line and temporary construction easements under and across said Park Land consistent with the locations indicated on Exhibit A, attached hereto.

Section 6. **SEVERABILITY CLAUSE**

If any section, subsection, paragraph, sentence, phrase or clause of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are declared to be severable.

Section 7. **PENALTY CLAUSE**

It shall be unlawful for any person, firm or corporation to develop this property, or any portion thereof, in any manner other than is authorized by this Ordinance, and upon conviction therefore, shall be fined any sum not exceeding \$2,000.00, and each day that such violation shall continue shall be considered a separate offense. These penal provisions shall not prevent an action on behalf of the City of McKinney to enjoin any violation or threatened violation of the terms of this Ordinance, or an action for mandatory injunction to remove any previous violation hereof.

Section 8. **NO VESTED INTERESTS**

That no developer or property owner shall acquire any vested interest in this Ordinance or specific regulations contained herein. The ordinance, and the subsequent site plans (if any) and regulations may be amended or repealed by the City Council of the City of McKinney, Texas, in the manner provided by law.

Section 9.     **PUBLICATION AND EFFECTIVE DATE**

The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and shall become effective upon such publication.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS 2<sup>nd</sup> DAY OF MAY, 2017.**

CITY OF MCKINNEY, TEXAS

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BRIAN LOUGHMILLER  
Mayor

CORRECTLY ENROLLED:

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SANDY HART, TRMC, MMC  
City Secretary

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

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney