

ORDINANCE NO. 2022-07-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 FOR A TEMPORARY CONSTRUCTION EASEMENT TO ASSIST IN THE CONSTRUCTION OF A SANITARY SEWER IN AN EXISTING EASEMENT ACROSS A PORTION OF CITY OF MCKINNEY PARKLAND, WHICH PARKLAND IS GENERALLY LOCATED EAST OF AIRPORT DRIVE AND APPROXIMATELY 1,500 FEET SOUTH OF US 380; APPROVING THE GRANT OF A TEMPORARY CONSTRUCTION EASEMENT ACROSS SUCH PARK LAND TO NORTH TEXAS MUNICIPAL WATER DISTRICT IN EXCHANGE FOR THE PAYMENT OF FAIR MARKET VALUE FOR SAID TEMPORARY CONSTRUCTION EASEMENT; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE TO EXECUTE ON BEHALF OF THE CITY OF MCKINNEY, TEXAS ALL NECESSARY DOCUMENTS FOR THE CONVEYANCE OF SAID EASEMENT 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 a temporary construction easement from the City of McKinney, Texas ("City") across certain land owned by the City that is designated as parkland, which parkland is generally located east of and adjacent to Airport Drive approximately 1,500 feet south of US 380 ("Parkland"), to assist in the construction and installation of a 66" sanitary sewer main to provide sewer capacity to the City and other member cities and customers; and

WHEREAS, in order to construct the sewer main, it is necessary to obtain a temporary construction easement across those portions of the Parkland as depicted generally on Exhibit A ("Easement location") attached hereto and incorporated herein by reference for a period of no more than three years; and

WHEREAS, Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing regarding the use or taking of public parkland, after which public hearing the governing body must determine that no feasible and prudent alternative to the use or taking of public parkland 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 July 19, 2022 regarding NTMWD's proposed temporary construction easement across the Parkland during which all interested persons had the opportunity to testify and present relevant evidence before the 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 temporary construction easement across the Parkland 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 sewer line project across the Parkland, includes all reasonable planning to minimize harm to the use of the Parkland as a park, which harm may result from such use.

Section 4. **APPROVAL TO CONVEY EASEMENT**

The City Council of the City of McKinney hereby agrees to allow the conveyance of a temporary construction easement across the Parkland to NTMWD for the construction of a sewer line in an existing easement in a location generally as shown on Exhibit A and further, as approved by the City's Parks Director, conditioned upon the City's receipt of fair market value payment therefor from NTMWD.

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

The City Council of the City of McKinney authorizes the City Manager and the City Attorney to draft and execute a temporary construction easement across said Parkland 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 therefor, 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 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, 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 and shall become effective upon such publication.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THIS 19th DAY OF JULY 2022.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER
Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
JOSHUA STEVENSON
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

Exhibit A - NTMWD Temporary Construction Easement

