

ORDINANCE NO. 371-95

AN ORDINANCE AMENDING ARTICLE 11.300 ON-SITE SEWAGE DISPOSAL OF THE WILLOW PARK CODE OF ORDINANCES TO ADOPT ALL STATE AND COUNTY RULES AND REGULATIONS CONCERNING PLACEMENT, CONSTRUCTION AND MAINTENANCE; ESTABLISHING RIGHT OF APPEAL; ESTABLISHING A PERMIT; PROVIDING FOR A PENALTY AND AUTHORIZING PUBLICATION.

WHEREAS, the Texas Natural Resource Conservation Commission has established Design Criteria for on-site sewage facilities to provide the citizens of this State with adequate public health protection and a minimum of environmental pollution; and

WHEREAS, the Legislature has enacted legislation, codified as Texas Health and Safety Code, Chapter 366, which authorizes a local government to regulate the use of on-site sewage disposal facilities in its jurisdiction in order to abate or prevent pollution, or injury to public health arising out of the use of on-site sewage facilities; and

WHEREAS, due notice was given of a meeting and public hearing to determine whether the City Council of the City of Willow Park, Texas should enact an ordinance controlling or prohibiting the installation or use of on-site sewage facilities in the City of Willow Park, Texas; and

WHEREAS, said meeting and public hearing were held in accordance with the notice thereof, and the evidence and arguments there presented were considered by the City Council of the City of Willow Park, Texas; and

WHEREAS, the City Council of the City of Willow Park, Texas finds that the use of on-site sewage facilities in the City of Willow Park, Texas is causing or may cause pollution, and is injuring or may injure the public health; and

WHEREAS, the City Council of the City of Willow Park, Texas has considered the matter and deems it appropriate to enact an ordinance adopting Rules regulating on-site sewage facilities to abate or prevent pollution, or injury to public health in the City of Willow Park, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WILLOW PARK, TEXAS:

SECTION 1. THAT the matters and facts recited in the preamble hereof are hereby found and determined to be true and correct,

SECTION 2. THAT the use of on-site sewage facilities in the City of Willow Park, Texas is causing or may cause pollution or is injuring or may injure the public health;

SECTION 3. THAT the Code of Ordinances of the City of Willow Park, Texas be amended by adding thereto a new Article entitled "On-Site Sewage Disposal", which shall read as follows:

AN ARTICLE ENTITLED ON-SITE SEWAGE DISPOSAL

SECTION 4. CONFLICTS.

All Ordinances or parts of Ordinances of the City of Willow Park, Texas not consistent with or in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 5. ADOPTING CHAPTER 366

The City of Willow Park, Texas clearly understands the technical criteria, legal requirements, and administrative procedures and duties associated with regulating on-site sewage facilities, does adopt and will fully enforce Chapter 366 of the Texas Health and Safety Code.

SECTION 6. AREA OF JURISDICTION.

The Rules adopted by this ORDINANCE shall apply to all of the incorporated area of the City of Willow Park, Texas.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any structure discharging sewage into an on-site sewage facility within the jurisdictional area of the City of Willow Park, Texas must comply with the Rules adopted in Section 8 of this Code of Ordinances.

SECTION 8. ON-SITE SEWAGE FACILITY RULES ADOPTED.

The Rules ("Design Criteria for On-Site Sewage Facilities" and Administrative Rules 30 TAC 285.101 - 285.118 if applicable) attached hereto, promulgated by the Texas Natural Resource Conservation Commission for on-site sewage systems are hereby adopted, and all officials and employees of the City of Willow Park, Texas having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

SECTION 9. INCORPORATION BY REFERENCE.

The Design Criteria and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules. A copy of the current Design Criteria is attached to these Rules as Appendix I.

SECTION 10. DEVELOPMENT OR ORGANIZED DISPOSAL SYSTEMS.

In order to implement the stated policy of the legislature and the Texas Natural Resource Conservation Commission to encourage the development and use of organized disposal systems to serve the waste disposal needs of the citizens of the State and to prevent pollution, protect the public health, and maintain and enhance the quality of water in the State, the following requirements are made:

(a) No person may cause or allow the installation of an on-site sewage facility when any part of the facility is to be 300 feet in horizontal distance (measured on the closest practicable access route) of an existing organized system, unless one of the following requirements has been met:

(1) The person has received a written denial of service from the owner or governing body of the organized disposal system; or

(2) The person has received a written determination from the designated representative that it is not feasible for the person to connect to the organized disposal system.

(b) Whenever an organized disposal system is developed within 300 feet in horizontal distance (measured on the closest practicable route) from any of a private sewage facility, that shall be connected to the organized system unless one of the requirements set forth in subsections a(1) or a(2) of this section has been met.

SECTION 11 DUTIES AND POWERS.

The City Administrator of the City of Willow Park, Texas is herewith declared the designated representative for the enforcement of these Rules within its jurisdictional area. The appointed individual must be approved and certified by the Texas Natural Resource Conservation Commission before assuming the duties and responsibilities of the Designated Representative of the City of Willow Park, Texas. The designated representative shall have the following duties and concomitant powers:

(a) To resolve any question regarding any interpretation of these Rules, or the Design Criteria.

(b) To enforce these Rules and to make appropriate recommendations to proper city officials when instances of noncompliance with these Rules have been determined.

(c) To make statutorily mandated inspections of proposed, new and existing on-site sewage facilities.

(d) To collect fees set by the authorized agent as necessary to recover the reasonable costs incurred in meeting the requirements of these Rules.

(e) To make semi-annual reports to the authorized agent on all actions, including

legal actions, taken concerning these Rules.

(f) To investigate nuisance complaints within 21 days of receipt. All validated complaints shall be resolved or substantial progress made toward resolution by the responsible individual within 30 days.

(g) To perform all other duties necessary to meet the requirements of these Rules.

SECTION 12. COLLECTION OF FEES.

All fees collected for permits and/or inspections shall be made payable to the City of Willow Park, Texas.

SECTION 13. LICENSE TO OPERATE.

Each new on-site sewage facility shall be inspected and approved by the designated representative prior to the final covering of the facility.

(a) The applicant or registered installer shall notify the designated representative that an inspection is desired at least 5 working days prior to the need for inspection.

(b) The applicant or registered installer shall provide whatever reasonable assistance the designated representative requests in order to make the inspection.

(c) The applicant or registered installer must be present at the time of the inspection for that facility.

SECTION 14. APPEALS

Persons aggrieved by an action or decision of the designated representative may appeal such action or decision to the Board of Adjustments of the City of Willow Park, Texas within ten (10) days of receipt of notice of the decision.

SECTION 15. ENFORCEMENT.

The designated representative may routinely inspect on-site sewage facilities to assure continued compliance with these Rules.

The designated representative shall inspect any on-site system that is believed to be causing pollution, a threat to the public health, nuisance conditions, or illegally installed or altered. If upon inspection, it is found that any of these conditions exists, the owner of the on-site sewage facility will be notified in writing of the violation, and what must be done to achieve compliance, and set a reasonable amount of time to comply. The on-site sewage facility shall be reinspected at the expiration of the allotted time.

(a) If the facility is found to be compliant, a license therefore may be issued or the

existing license may be modified.

(b) If the facility is found to be noncompliant, appropriate enforcement shall be taken.

SECTION 16. PENALTIES.

The City of Willow Park, Texas adopts the criminal, injunction or civil suit, and civil penalty provisions as set forth in the Sections of 366.091, 366.092, 336.0921 of the Texas Health and Safety Code and/or any other such penalties (Section 341.091 of the Texas Department of Health, Chapter 341) that may be provided by State Law. Each day of a continuing violation is a separate offense and is punishable as such.

CRIMINAL PENALTIES (Section 366.091)

(a) A person commits an offense if a person operates as an installer unless the person is registered by the state.

(b) A person commits an offense if the person violates a rule adopted by the Commission under this chapter or an order or resolution adopted by an authorized agent under Subchapter C in a county that is contiguous to an international border.

(c) A person commits an offense if the person begins to construct, alter, extend or repair an on-site sewage facility owned by another person before the owner of the system obtains a permit to install, construct, alter, extend or repair the on-site system as required.

(d) An emergency repair to an on-site sewage facility without a permit is not an offense under these Rules if:

(1) The repair is made for the purpose of abatement of an immediate health hazard;

(2) That said repair does meet minimum state design criteria or the more stringent design criteria of the authorized agent;

(3) That said repair does not constitute an alteration of the on-site system;

(4) That written notification of such repair, including a detailed description of the method and materials used in said repair, is made to the authorized agent not later than 72 hours after the repair is begun;

(5) That said repair must be inspected for compliance with the state's or authorized agent's design criteria.

(e) An offense under this section is a Class C misdemeanor unless it is shown in the trial of the defendant that the defendant has previously been convicted of an offense

under this chapter, in which event the offense is punishable by:

- (1) a fine of not less than \$125.00 nor more than \$500.00;
 - (2) confinement in jail for not more than one month; or
 - (3) both the fine and confinement.
- (f) Each day that a violation occurs constitutes a separate offense.

INJUNCTION OR CIVIL SUIT (Section 366.092).

(a) If it appears that a person has violated, is violating, or is threatening to violate any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit or other order of the Commission issued pursuant to Chapter 366, Texas Health and Safety Code, the Commission in partnership with the authorized agent or the Commission independently may request the attorney general to bring a civil suit for:

- (1) mandatory or prohibitory injunctive relief, as warranted by the facts;
- (2) a civil penalty as provided by Chapter 366, Texas Health and Safety Code;

or

- (3) both injunctive relief and civil penalty.

(b) Venue for an action under Chapter 366, Texas Health and Safety Code, is in Travis County District Court, the county in which the defendant resides, or in the county in which the violation occurs.

CIVIL PENALTY (Section 366.0921)

(a) The authorized agent may request that the Commission initiate an enforcement action pursuant to these sections through a petition filed with the Commission.

(1) An owner who violates any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit, or order issued pursuant to Chapter 366, Texas Health and Safety Code, is subject to a civil penalty of not less than \$100 nor more than \$500 for each act of violation and for each day of violation.

(2) Any other person who violates any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit, or order issued pursuant to Chapter 366, Texas Health and Safety Code, is subject to civil penalty of not less than \$500 nor more than \$5,000 for each act of violation and for each day of violation.

(b) The civil penalties recovered shall be divided between the authorized agent

and the state based on the proportion of resources expended by each entity in the course of the enforcement action.

CHAPTER 341 (SUBCHAPTER B. NUISANCE AND GENERAL SANITATION).

CRIMINAL PENALTIES (Section 341.091)

(a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$200.

(b) If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the defendant shall be punishable by a fine of not less than \$10 or more than \$1,000, confinement in jail for not more than 30 days, or both.

SECTION 17. EMERGENCY REPAIR,

An emergency repair to an on-site sewage facility without a permit is not an offense under these Rules if the following procedures are carried out:

(a) The repair is made for the purpose of abatement of an immediate, dangerous and serious health hazard;

(b) That said repair does meet minimum state design criteria;

(c) That said repair does not constitute an alteration of the on-site system;

(d) That written notification of such repair, including a detailed description of the method and materials used in said repair, is made to the authorized agent within 72 hours of the date of the repair; and

(e) That said repair must be inspected for compliance with the state's design criteria.

SECTION 18. SEVERABILITY.

It is hereby declared to be the intention of the City Council of the City of Willow Park, Texas that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgement 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, since the same would have been enacted by the City Council without incorporation in this Ordinance of such unconstitutional phrases, clause, sentence, paragraph, or section.

SECTION 19. RELINQUISHMENT OF ORDINANCE.

If the City Council of the City of Willow Park, Texas decides that it no longer wishes to regulate on-site sewage facilities in its area of jurisdiction, the City Council shall follow the procedures outlined below:

(a) The City Council shall inform the Texas Natural Resource Conservation Commission by certified mail at least 30 days before the published date of the public hearing notice that it wishes to relinquish its On-Site Sewage Facility Ordinance.

(b) The City Council shall post the required public notice in a newspaper regularly published or circulated in the area of jurisdiction at least 30 days prior to the anticipated date of action by the authorized agent and must solicit written comments for that 30 day period.

(c) The City Council shall send a copy of the public notice, a publisher's affidavit of public notice, and a certified copy of the court's minutes to the Texas Natural Resource Conservation Commission.

(d) Upon relinquishment of the ordinance, the local governmental entity shall surrender its area of jurisdiction to the Commission.

(e) The local governmental entity shall pay the Texas Natural Resource Conservation Commission the appropriate charge back fees for permitting inspections and complaint investigations of on-site sewage facilities in the surrendered area of jurisdiction.

SECTION 20 PERMIT.

All on-site sewage facilities must be permitted as a part of the building permit for new construction, repair or remodeling. All work to repair or remodel existing on-site sewage facilities must be upon permit and done according to Rules adopted herein. Determination as to availability are governed by the City Administrator. No permit shall be issued for an on-site sewage facility if public sanitary sewer is available.

SECTION 21 PUBLICATION.

The City Secretary is hereby directed to publish the caption in the official newspaper of the City of Willow Park, Texas as provided by law.

SECTION 22. EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after its date of approval as required by law and upon the approval of the Texas Natural Resource Conservation Commission.

AND IT IS SO ORDAINED:

PASSED AND APPROVED THIS 21st day of February, 1995.

APPROVED:

William J. Clemens

WILLIAM J. CLEMENS, MAYOR
CITY OF WILLOW PARK, TEXAS

ATTEST:

Barbara Kilough

BARBARA KILOUGH, CITY SECRETARY
CITY OF WILLOW PARK, TEXAS