

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



IN THE MATTER OF THE APPLICATION § BEFORE THE EXECUTIVE
OF THE CITY OF BURLESON § DIRECTOR OF THE TEXAS
FOR A TEXAS HEALTH AND SAFETY § NATURAL RESOURCE
CODE §366.031 ORDER § CONSERVATION COMMISSION

On MAR 20 2000 the Executive Director of the Texas Natural Resource Conservation Commission ("Commission" or "TNRCC"), considered the application of the City of Burleson, ("Applicant" or "Burleson"), for an Order pursuant to §366.031, Texas Health and Safety Code ("Code"), and 30 Texas Administrative Code (TAC) §285.10 of the rules of the Commission.

No person has requested a public hearing on the application, therefore the Executive Director, on behalf of the Commission, is satisfied that the Applicant has satisfied the requirements of §366.031 of the Code and, therefore, the Commission finds that the Burleson Ordinance No. B-637 should be approved.

FINDINGS OF FACT

1. Burleson drafted a proposed ordinance to regulate on-site sewage facilities.
2. On January 6, 1999, Burleson caused notice to be published, in a newspaper regularly published and of general circulation, in Burleson's area of jurisdiction, of a public meeting to be held on Thursday, January 14, 1999.
3. The City of Burleson held a public meeting to discuss the proposed ordinance on January 14, 1999.
4. The City of Burleson Ordinance No. B-637 regulating on-site sewage facilities was adopted on November 11, 1999.
5. A certified copy of the minutes was submitted to the Texas Natural Resource Conservation Commission.
6. A certified copy of Burleson Ordinance No. B-637 was submitted to the Texas

Natural Resource Conservation Commission.

7. The Ordinance is at least equivalent to the standards of the Texas Natural Resource Conservation Commission.

CONCLUSIONS OF LAW

1. The above facts are conditions sufficient to issue this order pursuant to §366.031 of the Code.
2. Section 5.102 of the Texas Water Code authorizes the Commission to issue orders and make determinations necessary to effectuate the purposes of Chapter 366 of the Health and Safety Code.
3. Issuance of this order will effectuate the purposes of Chapter 366 of the Code.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION THAT:

1. The City of Burleson is hereby authorized to implement Burleson Ordinance No. B-637 which regulates on-site sewage facilities.
2. Any amendments to Burleson Ordinance No. B-637 must be approved by the Texas Natural Resource Conservation Commission.
3. The Chief Clerk of the Commission is directed to forward a copy of this Order to the Applicant and all other parties and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date: MAR 20 2000

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



For The Commission

ORDINANCE NO. B-637

AN ORDINANCE AMENDING CHAPTER 7 OF THE BURLESON CODE OF ORDINANCES BY AMENDING ARTICLE IV THEREOF; ADOPTING RULES OF THE CITY OF BURLESON, TEXAS FOR THE DESIGN, INSTALLATION AND MAINTENANCE OF ON-SITE SEWAGE FACILITIES; PROVIDING A PENALTY FOR VIOLATIONS THEREOF; PROVIDING A SEVERABILITY CLAUSE; PROVIDING THAT THIS ORDINANCE IS CUMULATIVE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Texas Natural Resources 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 and prevent pollution or injury to public health arising out of the use of on-site sewage disposal facilities; and

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

WHEREAS, the 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; and

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

WHEREAS, the City Council has considered the matter and deems it appropriate to enact an ordinance adopting rules regulating on-site sewage facilities to abate and prevent pollution and injury to public health in the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLESON:

SECTION 1.

That the findings and facts recited in the preamble of this ordinance are found and determined to be true and correct and are incorporated as part of this ordinance for all purposes.

SECTION 2.

That Article 4 of Chapter 7 of the Code of Ordinances of the City of Burleson, Texas, is amended to read as follows:

ARTICLE IV. ON-SITE SEWAGE DISPOSAL

Sec 7-60. Adoption of Health and Safety Code provisions.

The City Council adopts the provisions of Chapter 366 of the Texas Health and Safety Code, except for the provisions superseded by amendments set forth in Section 7-65. Chapter 366 is attached as Appendix "1" and is incorporated into this article for all purposes.

Sec. 7-61. Applicability.

The provisions of this article apply to all of the incorporated area of the City.

Sec. 7-62. Operation of on-site sewage facility.

A person commits an offense if the person operates an on-site sewage facility within the city unless the operation is in accordance with the requirements of this article. Any structure discharging sewage into an on-site sewage facility within the city must comply with the provisions of this article.

Sec. 7-63. Rules adopted.

The Rules consisting of Administrative Rules 30 TAC 285.1 - 285.91, promulgated by the Commission for on-site sewage facilities, are hereby adopted. A copy of these Rules is attached hereto as Appendix "2" and are incorporated by reference and made part of this article for all purposes. All officials and employees of the city who have duties

under the Rules are authorized to perform such duties as are required of them under the Rules.

Sec. 7-64. Amendments.

The city, wishing to adopt more stringent rules for on-site sewage facility, understands that the more stringent conflicting local Rule shall take precedence over the corresponding TNRCC requirement. The more stringent rules adopted by the city are as follows:

- (a) Regardless of the acreage, each on-site sewage facility within the city must have a permit issued by the city.
- (b) A lot or building site on which an on-site sewage facility is to be located must have a surface area of one acre or greater.
- (c) An on-site sewage facility must be installed by a state registered installer one or two. A homeowner may not install his own system.

Sec. 7-65. Enforcement

The Environmental Service Manager of the city, after approval and certification by the Commission, shall serve as the designated representative for the enforcement of the Rules within the City. The appointed individual must be approved and certified by TNRCC before assuming the duties and responsibilities of the designated representative.

Sec. 7-66. Collection of fees.

All fees collected for permits and inspections shall be made payable to the city. The fees for permits and inspections shall be established by the city council and may be amended from time to time.

Sec. 7-67. Permit required.

A person may not construct, alter, extend, repair, or operate an on-site sewage facility without having obtained a permit from the city.

Sec. 7-68. Permit application.

A person shall apply for a permit in writing to the designated representative upon forms prescribed by the city. The person shall submit a set of construction plans, specifications, and accompanying soil tests for the system to be constructed, for review for compliance with the Rules.

Sec. 7-69. Permit issuance.

The designated representative shall issue a permit upon determination that:

- (a) The plans and specifications are in compliance with the applicable laws and this article;
- (b) The permit fee has been paid; and
- (c) The on-site sewage facility has been inspected and determined to be in compliance with all applicable laws and rules.

Sec. 7-70. Appeals.

Persons aggrieved by an action or decision of the designated representative may appeal such action or decision to the executive director of operations of the city, by filing a written notice of appeal within 10 calendar days of the decision. The notice shall be submitted to the executive director of operations. The person filing the appeal shall state the reasons for the appeal in the notice of appeal. The executive director shall set a time and place for a hearing on the appeal and shall give notice to the appellant. The executive director shall conduct the hearing, giving consideration to testimony and evidence presented. The executive director shall render a decision based upon the evidence presented, and shall notify the appellant of the decision to sustain, modify, or rescind the action of the designated representative. All decisions will be based upon equivalent environmental protection.

Sec. 7-71. Penalties.

The city adopts and incorporates all applicable penalty provisions related to on-site sewage facilities, including, but not limited to, those set forth in Chapters 341 and 366, the Texas Health and Safety Code, Chapter 26 of the Texas Water Code and 30 TAC Chapter 285.

Sec. 7-72. Service of notices.

A notice provided for in this article is properly served when it is given or personally served upon the owner, operator, occupant, or other person responsible for the condition or violation or a copy is placed in the U.S. Mail addressed to the person to his last known address.

SECTION 3. Relinquishment of Ordinance.

If the City decides that it no longer wishes to regulate on-site sewage facilities, 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 this Ordinance.

(b) The City Council shall post the required public notice in a newspaper regularly published or circulated in the City at least 30 days prior to the anticipated date of action by the City and must solicit written comments for the 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 Council's minutes to the commission.

(d) Upon relinquishment of the Ordinance, the City shall surrender its area of jurisdiction to the commission.

(e) The City shall pay the commission the appropriate charge back fees for permitting, inspections and complaint investigations of on-site sewage facilities in the City.

SECTION 4. Severability.

It is hereby declared to be the intention of the City Council of the City of Burleson, 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 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 and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5. Publication Clause.

The City Secretary of the City of Burleson is hereby directed to publish in the official newspaper of the City of Burleson, the caption, penalty clause, publication clause and effective date clause of this ordinance at least two (2) times within fourteen (14) days after

the passage of this ordinance as required by Section 36 of the Charter of the City of Burleson.

SECTION 6. Cumulative Clause.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Burleson, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed. Specifically, Ordinance No. B626 is hereby repealed.

SECTION 7. Savings.

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of the provisions of Article IV of Chapter 7 of the Burleson Code of Ordinances, as amended, or any other ordinances affecting on-site sewage systems, 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 8. Effective Date.

This ordinance shall be in full force and effect from and after its approval as required by law and upon issuance of written approval by the Commission, and it is so ordained.

PASSED AND APPROVED ON FIRST READING THIS 14th DAY OF November, 1999.

Byron J Black
MAYOR

ATTEST:

Mary Kause
CITY SECRETARY

PASSED AND APPROVED ON SECOND READING THIS 9th DAY OF December, 1999.

Byron J Black
MAYOR

ATTEST:

Mary Kause
CITY SECRETARY

EFFECTIVE: _____

APPROVED AS TO FORM AND LEGALITY:

Lena Drayovitch
City Attorney