



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
January 5, 2023

AGENDA TOPIC: Consideration and possible action approving a Resolution authorizing the power of eminent domain for the acquisition of pipeline easements and certain property rights necessary for the construction, enlargement and maintenance of pipelines and appurtenances designed to carry water and wastewater within the City's Certificated Area (CCN).

DATE: January 5, 2023

DEPARTMENT: Administration

PRESENTED BY: Tobin E. Maples, AICP, City Manager

INTRODUCTION/BACKGROUND:

The purpose of this agenda item is to initiate actions necessary to acquire water and wastewater easements needed for the extension of public utilities (water and wastewater).

Urbanist, Inc., is the developer of certain real property within the Bexar County portion of the City. The property is located within the city's certificated area for water and wastewater services (CCN), so the city has an obligation to provide service upon request. To date, Urbanist Inc., has not been able to acquire the easements necessary to extend water and wastewater services as required and has sought the city's assistance to acquire the easements through the use of eminent domain.

As shown on "**Exhibit A**" attached hereto, easements needed are generally located at the southern end of Millwood Way and Capstone Walk within the Arbors subdivision. The Arbors subdivision is generally located south of Cibolo Creek at the intersection of Arbors Falls and FM 3351.

The City's Unified Development Code (UDC) requires new development (at the developer's expense) to construct, or cause to be constructed, public utility (water/wastewater) improvements necessary to serve their respected development. Further, the UDC requires that said improvements must be extended to the perimeter of the property being developed. The purpose of the extension requirement is to provide for a logical system of utilities and to create continuity of improvements for the development of adjacent properties.

Prior to the adoption of the UDC, development was not required to extend utilities to the perimeter of the property being developed. As a result, acquisition of offsite easements may be necessary in situations where prior development did not extend water and wastewater lines to the perimeter of the property. In cases of this nature, new development is required to obtain the necessary offsite easements, inclusive of bearing the cost for said easement acquisition (growth pays for growth). Onsite easements are typically dedicated during the platting process.

As summarized below, this is the precise situation we have within the Arbors subdivision.

- The Arbors development was vested prior to adoption of the UDC so internal water and wastewater lines were not extended to the perimeter of the property.
- As a result, existing utility lines (water and wastewater) end a few feet short of the southern property line within the Arbors. This creates a small gap between the end of the pipes and the

property line. According to Bexar County tax records, said gap of land is owned by SF Fair Oaks Development LLC, the developer of the Arbors.

- Existing water and wastewater lines within the Arbors are located within public utility easements established during the platting process.
- The UDC requires new development south of the Arbors to provide water and wastewater services as development occurs.
- To avoid right-of-way conflicts associated with TxDOT's future expansion of FM 3351, new utility lines serving areas south of the Arbors are programmed to connect to the existing public utility lines within the Arbors.
- A new public utility easement is necessary to bridge the previously referenced gap. Once acquired, continuity of services will be achieved as programmed.
- **To date, Urbanist Inc., has not been able to acquire the necessary easements and has sought the city's assistance to acquire the easements through the use of eminent domain.**
- **To date, the developer of the Arbors has been unresponsive to the city's effort to discuss an amicable solution.**
- If this Resolution is approved, the City will attempt to negotiate the purchase of the easement properties. If unsuccessful, the City will institute condemnation proceedings to acquire the easement properties.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

This initiative serves a public purpose and corresponds with Pillar 3 of the Strategic Action Plan to ensure Reliable and Sustainable Infrastructure. The objective includes the following focus areas.

- 3.1– Enhance and Ensure Continuity of Reliable Water Resources in Accordance with CCN Obligations
- 3.2–Enhance and Ensure Continuity of Reliable Wastewater Treatment in Accordance with CCN Obligations.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

The city will be reimbursed for all cost.

LEGAL ANALYSIS:

This agreement was prepared and approved by the City Attorney.

RECOMMENDATION/PROPOSED MOTION:

I move to approve the Resolution authorizing the power of eminent domain for the acquisition of pipeline easements and certain property rights necessary for the construction, enlargement and maintenance of pipelines and appurtenances designed to carry water and wastewater within the City's Certificated Area (CCN).

Chapter 21 of the Texas Property Code requires a Record Vote