

ORDINANCE NO. 2014-42

**AN ORDINANCE OF THE CITY OF COPPERAS COVE,
TEXAS, ADOPTING WASTEWATER CAPACITY
RESERVATION REGULATIONS; PROVIDING A
SEVERABILITY CLAUSE; PROVIDING A SAVINGS
CLAUSE; AND DECLARING AN EFFECTIVE DATE.**

WHEREAS, the City of Copperas Cove is a home rule municipality incorporated under the authority of Article XI, Section 5 of the Texas Constitution; and

WHEREAS, the City of Copperas Cove does not currently have a regulation to reserve wastewater capacity; and

WHEREAS, the City Council discussed the need for the stated regulation and the benefits to the development community during workshop meetings held on June 4, 2013 and June 3, 2014; and

WHEREAS, the City of Copperas Cove City Council on June 4, 2013 and June 3, 2014 gave direction to staff to create a City Ordinance effective October 1, 2014; and

WHEREAS, the City Council has determined the need for providing a tool that allows developers to secure utilities for residential and commercial demands exist; and

WHEREAS, the City Council of the City of Copperas Cove has researched the impact of wastewater capacity reservation regulations to developers and the city; and

WHEREAS, the City Council has determined the wastewater capacity reservation may be permitted; and

WHEREAS, the City Council has determined that adopting wastewater capacity reservation regulations in order to ensure the public health and promote growth and development is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COPPERAS COVE, TEXAS:

SECTION 1.

That the City of Copperas Cove Code of Ordinances is hereby by amended to create Sections 11-38 through 11-45 as follows:

Section 11-38. Generally.

- (a) The Director of Public Works is authorized and directed to establish and administer a system for determining whether wastewater facilities are available to serve proposed developments, for communicating the results of such determination to the property owner initiating the reservation request and, where necessary facilities are available, for reserving capacity in wastewater facilities to serve the proposed development.
- (b) Any potential property owner who is contemplating a specific use of his property within the corporate limits of the city or within an area receiving utility services provided by the city which will require a change in the amount or character of utility service received from the city due to development, redevelopment or a change in occupancy may submit a reservation application to the Director of Public Works on the forms prescribed by the Director of Public Works. The application must be accompanied by the fee determined in the City's fee schedule and must contain substantially the following information:
 - (1) An adequate legal description of the proposed property.
 - (2) The number of existing buildings.
 - (3) The number of square feet within each of the existing buildings.
 - (4) The usage of each existing building (i.e., multifamily residence, office building, shop building, retail center, etc.).
 - (5) An explanation of the proposed construction projects and type of occupancies contemplated (i.e., number of square feet and types of lease-occupancies, etc.).
 - (6) A map or sketch detailing the geographical location of the property.
 - (7) Copies of all wastewater capacity reservations associated with the property.
 - (8) Any other information reasonably requested by the Director of Public Works and necessary or useful to the Director of Public Works in performing a utility availability determination.

(c) If the potential property owner waives the right to utilize the wastewater capacity reservation process, any unforeseen improvements to wastewater utilities required to provide sewer service in accordance with federal, state, and local laws and regulations will be paid by the developer.

Section 11-39. Issuance of wastewater capacity reservations.

(a) Upon receipt of a completed application and the fee determined by the City's fee schedule, the Director of Public Works shall determine whether the proposed development meets the requirements for issuance of a wastewater capacity reservation. In order for a proposed development to qualify for issuance of a wastewater capacity reservation the Director of Public Works must determine:

- (1) That there is sufficient unused and unreserved capacity in available wastewater facilities to meet the utility service requirements of the proposed development or that such capacity will be available before the proposed development will require it,
- (2) That the proposed development will comply with applicable state and federal laws and regulations and written city policies which apply to city utility service and city ordinances,
- (3) That utility service at the level required by the proposed development would not be in excess of any existing restrictions imposed, and
- (4) That any proposed private wastewater facilities are capable of providing safe and effective utility service.

If, upon completion of the determination, the Director of Public Works concludes that the proposed development meets all the requirements for issuance of a wastewater capacity reservation, he shall then calculate the wastewater capacity fee and issue a wastewater capacity reservation to the applicant conditioned upon payment of those fees prior to the date of issuance. If, upon completion of the determination, the Director of Public Works concludes that the proposed development does not meet one or more of the requirements for issuance of a wastewater capacity reservation, then the Director of Public Works shall prepare and deliver to the applicant a denial notice which shall describe the results of the determination and specifically detail the reasons for the denial.

(b) Provided, however, at the discretion and approval of the City Council, that the Director of Public Works may issue a wastewater capacity reservation subject to special conditions for an application not otherwise acceptable under subsection (a) as follows:

(1) The reservation is expressly conditioned upon the occurrence of some future event if the Director of Public Works determines that after the occurrence of that event the proposed development would be qualified for issuance of a wastewater capacity reservation. Events upon the occurrence of which a wastewater capacity reservation may be conditioned include, without limitation, the completion and acceptance of an accelerated project in which the property owner is a subscriber, the construction of a sewer main extension, or the construction of private wastewater facilities.

(2) The Director of Public Works determines that the wastewater capacity reservation is necessary for the immediate development or redevelopment of property, but will not overload the city's sanitary sewer system. A wastewater capacity reservation issued under this paragraph shall be subject to express conditions required by the Director of Public Works to assure that the proposed development requiring the wastewater capacity reservation is constructed within the time schedule specified by the Director of Public Works.

(c) Notwithstanding the other provisions of this section, the Director of Public Works shall issue a wastewater capacity reservation whenever the Director of Public Works determines that:

(1) All of the fully reserved wastewater facilities available to serve the proposed development are consistently operating at a level below their design and legally permitted capacities.

(2) The proposed development is to be composed solely of one or more residential structures which would require utility service from the system at a level equal to or below the standard base level.

(3) The property owner has not obtained a wastewater capacity reservation under this subsection (c) previously.

A wastewater capacity reservation issued under authority of this subsection (c) shall not be transferred to another lot, tract or subdivision and cannot be used for any proposed development other than that for which it is issued.

Section 11-40. Service Area Restrictions.

(a) Whenever the Director of Public Works determines that particular existing wastewater facilities are operating at 85 percent of their legally permitted capacity and that to allow additional reservations of capacity in such facilities at a level above the standard base level would result in an overloading of such facilities, then the Director of Public Works shall impose restrictions upon utility connections in that service area. The restrictions imposed under authority of this subsection shall provide that the Director of Public Works will not issue wastewater capacity reservations (other than ones conditioned upon the acquisition or construction of wastewater facilities) within the restricted service area for so long as the restrictions remain in effect, except in response to applications for proposed development which will require service at a level equal to or less than the standard base level. Notwithstanding the imposition of restrictions the Director of Public Works shall, where the provision of utility service is physically possible and where the proposed development otherwise complies with the requirements of this article, issue wastewater capacity reservations for proposed developments which provide for:

- (1) Construction of fire and police facilities, public education facilities, and health-care facilities.
- (2) Redevelopment which will not increase the amount of utility service required within the restricted service area.
- (3) Extension of the system to areas presently served by septic tanks.
- (4) Development which will require additional wastewater utility service at a level equal to or below the level authorized in a valid and unexpired previous commitment by the city.

(b) Whenever the Director of Public Works determines that particular existing wastewater facilities are regularly operating at a level which substantially exceeds their design or legally permitted capacity, the Director of Public Works shall impose restrictions upon utility connections in that service area. The restrictions imposed under authority of this subsection shall provide that the Director of Public Works will not issue wastewater capacity reservations (other than ones conditioned upon the acquisition or construction of wastewater facilities) within the restricted service area for so long as the restrictions remain in effect. Notwithstanding the imposition of restrictions the Director of Public Works shall, where the provision of utility service is physically possible and where the

proposed development otherwise complies with the requirements of this article, issue wastewater capacity reservations for proposed developments which provide for:

(1) Construction of fire and police facilities, public education facilities and health-care facilities, but only where the Director of Public Works finds that the provision of utility service to those facilities will have only a minimal effect on overloaded wastewater facilities.

(2) Redevelopment which will not increase the amount of utility service required within the restricted service area.

(3) Development which will require additional utility service at a level equal to or below the level authorized in a valid and unexpired previous commitment by the city.

(c) The Director of Public Works shall remove or modify service area restrictions whenever he/she determines that a change in state or federal regulatory requirements or a change in the service area or its wastewater facilities has increased or decreased the wastewater capacity available in that service area.

(d) In order to impose, remove or modify restrictions on a service area, the Director of Public Works shall prepare a written notice which briefly describes the service area affected, the wastewater facility which serves the service area, the terms of the restrictions and the date upon which the imposition, removal or modification of restrictions is to take effect. The written notice shall be filed with the city secretary on or before the date the imposition, removal or modification is to take effect. The city secretary shall post a copy of the notice in a public place for a period of ten days, promptly publish a copy in a newspaper of general circulation in the city and shall thereafter maintain the notice in a file which shall be open to inspection by the public. The change in restrictions shall take effect on the date shown in the notice.

Section 11-41 Terms and conditions of reservations.

(a) A wastewater capacity reservation shall represent a commitment of the city subject to the regulatory actions of the state and federal governments, the applicable rules and regulations of the city and the terms and conditions contained in this article and in the wastewater capacity reservation itself, to reserve capacity in wastewater facilities to serve a proposed development so that utility service will be available upon completion of the buildings or other

structures contained in the proposed development. A wastewater capacity reservation is applicable only to the tracts, lots or subdivisions listed therein unless a transfer is approved as provided in section 11-42. A wastewater capacity reservation which is issued on the basis of an application which contains materially false information shall be void.

(b) A restricted wastewater capacity reservation may, upon application in writing to the Director of Public Works of Public Works, be converted to a wastewater capacity reservation by paying the wastewater capacity reservation fee at the time of application.

(c) A wastewater capacity reservation shall remain in effect for a period not to exceed three (3) years in length. At the end of the first year, the wastewater capacity reservation will expire unless a plat has been recorded with the city and appropriate county. Once the plat has been recorded, the wastewater capacity reservation will remain in effect for an additional two (2) years. At the end of the additional two-year period, the capacity reservation will expire unless building permits have been obtained for the buildings and/or property for which the wastewater capacity reservation was made.

Section 11-42. Transfers of reserved wastewater capacity.

(a) A wastewater capacity reservation may be transferred, in whole or in part, to another proposed development in the same service area. Any person desiring to transfer a wastewater capacity reservation must file with the Director of Public Works a written application for transfer and, if the transfer is approved, must pay the prescribed transfer fee. Upon receipt of a transfer application, the Director of Public Works shall determine whether the wastewater facilities in which capacity has been reserved are available to serve the proposed development to which the wastewater capacity reservation is to be transferred. If he determines the wastewater facilities are available, he shall so notify the applicant and, upon receipt of the transfer fee, approve the transfer. If he determines that the wastewater facilities are not available, he shall notify the applicant in writing.

(b) An existing customer of the system may transfer the wastewater capacity which has been allocated to that customer's connection in the same manner as a transfer of a wastewater capacity reservation if the customer:

(1) Removes any physical connection between his building or premises and the system; and

- (2) Pays, in addition to the transfer fee, a sum equal to the wastewater capacity reservation fee for issuance of a wastewater capacity reservation for the amount of wastewater capacity to be transferred.
- (c) Whenever a transfer of wastewater capacity within a restricted service area reduces the amount of wastewater capacity available to the tract, lot or subdivision from which it is transferred to an amount less than the standard base level, the Director of Public Works shall, immediately upon approval of the transfer, file in the real property records of the county in which that tract, lot or subdivision is located a notice that all or a portion of the standard base level of wastewater capacity has been transferred and that service from the system at a level above the non-transferred amount will not be available until such time as existing service area restrictions are removed or modified.
- (d) Wastewater capacity reserved by district reservation may be transferred in whole or in part to other properties of the same owner in the annexed area, provided (i) the conditions in subsection (a) are met, (ii) the transfer is made within three years of abolition of the annexed conservation and reclamation district, (iii) the properties receiving the transfer have district reservations independent of the transfer and (iv) the application for a transfer is submitted with the request for written verification of the validity of the district reservations for both the transferring and receiving properties by the City's Public Works Director or designee. No transfers may be made for wastewater capacity reserved by district reservations subsequent to verification of the validity of the district reservation for the properties by the City's Public Works Director or designee.
- (e) Wastewater capacity reserved by temporary reservations, contractual reservations, restricted wastewater capacity reservations, or reservations specially conditioned pursuant to section 11-39(b)(2) of this Code cannot be transferred to another property. In addition, wastewater capacity reservations for low and moderate cost housing, for which no impact fee has been paid, cannot be transferred to another property.

Section 11-43. Private interim wastewater treatment plants.

- (a) In the event a reservation application is or would be denied because existing wastewater facilities are not adequate to serve the proposed development or because the proposed development requires utility service at a level in excess of the level available under existing service area restrictions, the property owner may, subject to the provisions of this section, construct and operate a private interim wastewater treatment plant to serve the proposed development and receive a wastewater capacity reservation conditioned upon the construction and operation of the private interim treatment plant, participation

in the next accelerated project in the same service area and payment of the applicable wastewater capacity reservation fee at the time of subscribing to the accelerated project or, where there is no accelerated project, at the time adequate system wastewater facilities become available. In order to construct and operate a private interim wastewater treatment plant, the property owner must:

- (1) Make written application to the Director of Public Works.
- (2) Apply for and obtain waste discharge permits required by state and federal law and provide copies of the permit applications to the Director of Public Works of Public Works on the date of filing or, where the date of filing was prior to the effective date, within 30 days after such effective date.
- (3) Provide for a zone between the treatment plant and adjoining land uses or provide for complete enclosure of the treatment plant within a building with odor control facilities for the exhaust air from the building in accordance with the Texas Commission on Environmental Quality (TCEQ) requirements.
- (4) Provide for the discharge from the treatment plant directly into, or conveyed through a private conduit into, an open natural river, bayou or creek or open constructed storm drainage facilities as described in the wastewater discharge permit issued by the TCEQ.
- (5) Secure a franchise from the city permitting the operation of a private utility line within designated public rights-of-way if any such lines are necessary to the operation of the treatment plant.
- (6) If the use of public utility easements is necessary in order to provide service to the proposed development, enter into a waste treatment service contract with the city and with the approval of the City Council in which contract the Director of Public Works, in consultation with the City's Public Works Department, may specify operating criteria.
- (7) Obtain approvals for the treatment plant design from applicable state departments and City officials.
- (8) Agree that, in the event that an accelerated project is proposed for the construction or expansion of the system's wastewater facilities which, when completed or expanded, would be adequate to serve the proposed development, the property owner will subscribe to that accelerated project in an amount adequate to acquire sufficient wastewater capacity in the system to serve the proposed development.

(9) Agree that, within six months of the date upon which adequate system wastewater facilities become available, the property owner, or his successors or assigns, will make proper application to the city for connection to the system and will discontinue operation of the treatment plant.

(10) Agree to provide to the City's Public Works Department a copy of any and all reports on construction or operation of the treatment plant, including specifically all reports submitted to state or federal authorities, to provide any special reports reasonably required in writing by the Director of Public Works of the Public Works department and to maintain the treatment plant open to inspection by City officials at all times.

(11) If the plant is not to be operated pursuant to a waste treatment service contract with the city, post with the Director of Public Works a "private sewage treatment plant operator's bond," in the form prescribed by the Director of Public Works, in a penal sum equal to 150 percent of the estimated annual cost of operating the plant (including rental costs or an amount equivalent to the fair market rental value of the plant site and of any equipment or necessary facilities owned by the property owner) and executed by the property owner and a corporate surety company licensed to do business in the state and shown on the most recent edition of the United States Treasury Circular 570 as having an "underwriting limitation" of at least the penal sum of the bond.

(12) Agree to provide for off-site disposal of all sludge produced by the treatment plant in the manner provided by applicable regulations, statutes and ordinances.

(13) Agree to have the treatment plant checked by a licensed sewage treatment plant operator at least once a day to insure that the plant is operating properly.

Section 11-44. Appeals.

(a) A property owner who has made proper application under the terms of this article and is dissatisfied with a decision of the Director of Public Works on the application concerning:

(1) The issuance or recognition of a reservation of wastewater capacity;

(2) The applicability, amount or time of payment of the wastewater capacity reservation fee as determined by the City's fee schedule;

- (3) The conversion of one type of reservation of wastewater capacity into another type; or
 - (4) The transfer of reserved wastewater capacity from one tract to another; may appeal to the City Council in accordance with the provisions of this section.
- (b) In order to appeal to the City Council a property owner must, within 15 days after receiving written notice of the Director of Public Works's decision, pay the applicable fee and file with the Director of Public Works a notice of appeal containing the following:
- (1) A clear reference to the decision from which the property owner wishes to appeal.
 - (2) A short statement of the grounds for the appeal.
 - (3) A specific description of the action the property owner desires the City Council to take.
 - (4) The signature of the property owner.
- (c) The Director of Public Works shall forward the notice of appeal to the City Council. During the ten days immediately following receipt of the notice of appeal, the Director of Public Works shall be authorized to modify the decision in question. If, pursuant to this authority, the Director of Public Works modifies his initial decision in such a manner as to grant to the property owner the relief requested, then in that event the City Council shall dismiss the appeal without action thereon.
- (d) The City Council shall, upon receipt of a substantially complete notice of appeal, schedule a hearing on the matter and give reasonable notice of the time and location of the hearing. The hearing shall be held no earlier than ten days and no later than 40 days after receipt of the notice of appeal. A decision must be rendered within days after the hearing. The final decision of the City Council shall be in writing and shall either sustain the Director of Public Works's decision or grant all or a portion of the relief requested by the property owner.
- (e) The City Council, in considering an appeal, may ascertain the relevant facts and may interpret the applicable provisions of this article, but may not grant

exceptions to or variances from the provisions of this article except as provided in (f), below.

(f) The City Council may order the Director of Public Works to issue a wastewater capacity reservation or restricted wastewater capacity reservation for a proposed development which would not otherwise qualify under the provision of this article, if the applicant files an application with the City Council prior to October 24, 1985, and can demonstrate that, prior to the effective date:

- (1) City officials represented to the applicant or his agents that wastewater capacity was reserved to serve the applicant's proposed development or that certain expenditures by the applicant would be credited against, or accepted in lieu of, any applicable fees for connecting to the system;
- (2). The applicant, in reasonable reliance upon such representation, incurred substantial expense in going forward with the proposed development and did not apply for issuance or renewal of a utility commitment letter for which the applicant's proposed development would have qualified; and
- (3). In view of the nature and extent of the city officials' representation and the actions taken by the property owner in reliance thereon it would be inequitable to require the property owner to comply with the provisions of this article.

(g) A reservation of wastewater capacity issued under authority of subsection (f) may be conditioned in accordance with the circumstances under which it is issued and may provide for:

- (1) Restrictions against transfer;
- (2) Reduction or elimination of the wastewater capacity reservation fee as determined by the City's fee schedule;
- (3) A change in the time at which the wastewater capacity reservation fee is payable;
- (4) An amount of reserved wastewater capacity less than that applied for; and
- (5) Such other restrictions, conditions or exceptions as may be appropriate.

(h) In no event shall the City Council order the Director of Public Works to issue a wastewater capacity reservation or restricted wastewater capacity reservation in wastewater facilities which are already fully loaded or reserved. In such circumstances the City Council may order the Director of Public Works to grant the appellant priority in the reservation of capacity in any new or expanded wastewater facilities which may be constructed in the future.

(i) The time limits prescribed for actions of the City Council are direct in nature and the City Council's failure to act within such limits shall not affect the validity of its actions. The time limit prescribed for the filing of a notice of appeal and payment of the applicable fee is mandatory and the failure of the property owner to act within such time limits shall extinguish the right of appeal. All notices required or authorized by this article must be in writing and must either be hand delivered or mailed by United States mail. A notice delivered by mail shall be deemed to be received on the earlier of the date it is actually received, or the third day following the date upon which the notice was deposited, properly addressed and with proper postage attached, in custody of the U.S. Postal Service.

Section 11-45. Fees.

The fee for processing a reservation application shall be in accordance with the city's most current adopted fee schedule.

SECTION 2.

That any ordinances or resolutions or part of ordinance or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 3.

That should any section, clause, or provision of the Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this ordinance or any other ordinance of the City as a whole or any part thereof, other than the part so declared to be invalid.

SECTION 4.

That this ordinance shall go into effect immediately upon its adoption and approval by City Council.

October
PASSED, APPROVED, AND ADOPTED on this 7th day of September 2014 at a regular meeting of the City Council of the City of Copperas Cove, Texas which meeting was held in compliance with the Open Meetings Act, Tex. Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

John Hull
John Hull, Mayor

ATTEST:

Mariela Altott
Mariela Altott, City Secretary

APPROVED AS TO FORM:

CZ
Denton, Navarro, Rocha, Bernal, Hyde & Zech, P.C., City Attorney

