

**ORDINANCE NO. O-2019-63**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 19, "UTILITIES", ARTICLE I, "IN GENERAL," AND ARTICLE II., "WATER AND SEWER SYSTEM EXTENSION", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to protect the public health, safety, and welfare; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and welfare of citizens; and

**WHEREAS**, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to self-government; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

**WHEREAS**, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

**WHEREAS**, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all of powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, City desires to eliminate the requirement for three-way contracts and to streamline processes regulating developments which include the design and installation of water and sewer facilities and as related to extensions of water and sewer service in developments having private streets; and

**WHEREAS**, Related City Code updates will make bond requirements and choices consistent across projects including street, utility, and drainage improvements.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS;**

**PART 1:** That Tyler City Code, Chapter 19, "Utilities", Article I, "In General", Section 19-1 is hereby amended, and shall read as follows:

**Sec. 19-1. Definitions**

As used in this chapter, the following words and terms shall have meanings as follows:

*Business Office Manager* means the Water Utilities Business Office Manager of the Division. (0-2004-93, 11/24/04)

*City* means the City of Tyler. When used as the subject of action, refers to action taken by authority of the City Manager.

*Developer* means one who subdivides or provides to tracts of land the infrastructure necessary or convenient for urban usage. As used in Chapter 19, this term includes the owner of property being developed.

*Developmental improvements* mean street, drainage, and water and sewer extension improvements.

*Director* means the Director of Utilities.

*Division* means Tyler Water Utilities Division which is charged with operation and control of all facilities used by City in furnishing a supply of water to its customers.

*Engineer* means a person duly authorized under State law, as heretofore or hereafter amended, to practice the profession of engineering in the State of Texas.

*Inspector* means the City representative who is specifically assigned to inspect any or all parts of the water and sanitary sewer system, particularly new subdivision extensions.

*Manager* means the Water Production and Water Quality Manager for the Division.

*Off-site main* means water or sewer mains built to connect a development with the City water or sewer system and located outside the boundaries of the development.

*Oversized lines* mean water or sewer mains which are both: (a) larger than eight (8) inches in diameter; and (b) larger than needed to serve the development.

*Standard specifications* means the current standard specifications for waterworks and sewerage improvements in the City.

*Design guidelines for water and sewer lines* mean the current guidelines for design of water and sanitary sewer system improvements within subdivision developments in the City.

*Sewer* means sanitary sewer and does not refer to a stormwater sewer.

*Utility* means the water or sewer system owned by the City of Tyler and the service provided in connection with this system. (Ord. No. O-96-54, 6-26-96) (Ord. No. O-99-80, 10/20/99) (Ord. No. 2009-7, 2/11/09) (Ord. No. O-2019-63, 08/14/2019).

**PART 2:** That Tyler City Chapter 19, "Utilities", Article II., "Water and Sewer System Extension", Section 19-13 is hereby amended, and shall read as follows:

**Sec. 19-13. Extensions in development having private streets.**

The extension of water or sewer system lines for domestic service or fire protection within residential developments having private street(s) shall be in accordance with the following:

a. Off-site mains required to serve developments under this section may be constructed under either section 19-10 or section 19-14.

b. Developer will prepare a contract having the following stipulations:

1. Developer shall award the contracts for construction of water or sewer facilities, including off-site mains and service connections.

2. Developer shall pay all of the cost of all water or sewer facilities, including off-site mains and service connections without participation or refund by City.

3. Design, development of construction plans, specifications and contract documents, and construction staking for the water or sewer facilities to be constructed shall be performed by a professional engineer registered in Texas and shall conform to the same design guidelines and other criteria which govern contracts let by City, including providing as-built plans following completion of construction. The developer shall provide to the Director six (6) sets of construction plans, specifications and contract documents prior to issuance of project work order. The developer shall follow and adhere to all applicable provisions and specifications of the Tyler Unified Development Code in Chapter 10 of the City of Tyler Code of Ordinances.

4. Before a developer may award a contract to any prospective contractor for construction of water or sewer facilities, it must be established that the contractor has been approved by the Director.

5. The issuance of an order to commence work shall be approved by the Director and all water and sewer construction shall be subject to inspection and control at any and all times by the City utility inspector. In no case shall any water or sewer facility be installed unless the responsible City inspector is present and gives consent to proceed. Laboratory tests of materials being used shall be made, at Developer's expense, if required by the Director.

6. No final payments to contractors shall be made until after approval and preliminary acceptance by the Director. This approval pertains to the satisfactory completion of the work for which payment is made and shall not constitute approval of the quantities on which the payment is based.

7. Connections of buildings to service connections are prohibited until the water or sewer facilities to which they connect have been declared available for service and had preliminary acceptance by the Director.

8. Title and ownership of all sanitary sewers and water mains constructed under the terms of this option, exclusive of service connections, shall be vested in the City upon final acceptance.

9. Prior to the award of any construction contract, the developer shall convey easements

acceptable to the Director covering all land which will be occupied by the proposed lines and water or sewer facilities. The easements shall contain sufficient space to ensure that maintenance or repair of the facility can be accomplished with usual excavation practices.

10. Choices for Developers to Provide Assurance. Prior to commencing work, the developer shall have plans approved by the City. In addition, prior to final acceptance of the work by the City, the developer shall meet the requirements set forth in either subsection a. OR subsection b below.

a. Choice 1.-If developer chooses to furnish bonds, the following requirement shall be met:

(i.) Submission of a one hundred percent (100%) payment bond in the name of the City, covering construction of the facility to be built; and

(ii.) Submission of a guarantee or maintenance bond for one hundred percent (100%) of the cost of improvements in the name of the City covering the facility against defects in materials and/or workmanship for a period of one year after completion and acceptance of the facility by the Director.

(iii) All required improvements shall be completed to the City of Tyler standards and specifications; and

(iv) A final inspection of completed improvements shall be performed by the City Engineer or authorized representative, and work must be approved and/or accepted by the City of Tyler. The developer shall maintain all improvements until improvements have been accepted by the City of Tyler; and

(v.) Complete record drawings of required improvements have been submitted to and approved by the City Engineer.

b. Choice 2.- If developer does not choose to furnish bonds per subsection a., then before a plat is filed with the county clerk, the following requirements shall be met:

(i.) All required improvements shall be completed to the City of Tyler standards and specifications; and

(ii.) A final inspection of completed improvements shall be performed by the City Engineer or authorized representative, and work must be approved and/or accepted by the City of Tyler. The developer shall maintain all improvements until improvements have been accepted by the City of Tyler; and

(iii.) The general contractor shall submit an *Affidavit of All Bills Paid* to the City Engineer certifying that all construction bills have been paid, and materials and workmanship are guaranteed for one year; and

(iv.) Complete record drawings of required improvements have been submitted to and approved by the City Engineer.

(v.) Submission of a guarantee or maintenance bond for one hundred percent (100%) of the cost of improvements in the name of the City covering the facility against defects in materials and/or workmanship for a period of one year after completion and acceptance of the facility by the Director.

11. Water or sewer facilities constructed under this option will not receive final acceptance by City until all developmental improvements are completed and accepted by the Engineer and

Director. Maintenance and reconstruction of the facilities during the period between preliminary and final acceptance will be the responsibility of the developer.

c. All costs of extensions or improvements to the water and sewer systems under this section shall be borne by the developer with no portion of said costs eligible for refund by City. (Ord. No. O-96-54, 6-26-96) (Ord. No. 0-99-80, 10/20/99) (Ord. No. 2009-7, 2/11/09) (Ord. No. O-2019-63, 08/14/2019)

**PART 3:** That Tyler City Chapter 19, "Utilities", Article II., "Water and Sewer System Extension", Section 19-14 is hereby amended, and shall read as follows:

**Sec. 19-14. Contracts negotiated between developer and contractor without formal bids.**

1. The developer shall award the contracts for construction of water or sewer facilities, including off-site mains and service connections.

2. The developer shall pay all of the cost of all water or sewer facilities, including off-site mains and service connections without participation or refund by the City.

3. Design, development of construction plans, specifications and contract documents, and construction staking for the water or sewer facilities to be constructed shall be performed by a registered professional engineer in Texas and shall conform to the same design guidelines and criteria which governs utilities construction contracts let by the City, including providing to the City as-built plans following completion of construction. The developer shall provide to the Director six (6) sets of construction plans, specifications and contract documents prior to issuance of project work order. The developer shall follow and adhere to all applicable provisions and specifications of the Tyler Unified Development Code in Chapter 10 of the City of Tyler Code of Ordinances.

4. Before a developer may award a contract to any prospective contractor for construction of water or sewer facilities, it must be established that the contractor has been approved by the Director for work on City water and sewer systems.

5. The issuance of order to commence work shall be approved by the Director and all water and sewer construction shall be subject to inspection and control at any and all times by the department's inspection personnel. In no case may any water or sewer facility be installed unless the responsible City inspector is present and gives consent to proceed. Laboratory tests of materials being used shall be made as may be required by the City as necessary to assure compliance with governmental specifications.

6. Choices for Developers to Provide Assurance. Prior to commencing work, the developer shall have plans approved by the City. In addition, prior to final acceptance of the work by the City, the developer shall meet the requirements set forth in either subsection a. OR subsection b below.

a. Choice 1.-If developer chooses to furnish bonds, the following requirement shall be met:

(i.) Submission of a one hundred percent (100%) payment bond in the name of the City, covering construction of the facility to be built; and

(ii.) Submission of a guarantee or maintenance bond for one hundred percent (100%) of the cost of improvements in the name of the City covering the facility against defects in materials and/or workmanship for a period of one year after completion and acceptance of the facility by the Director.

(iii). All required improvements shall be completed to the City of Tyler standards and specifications; and

(iv). A final inspection of completed improvements shall be performed by the City Engineer or authorized representative, and work must be approved and/or accepted by the City of Tyler. The developer shall maintain all improvements until improvements have been accepted by the City of Tyler; and

(v.) Complete record drawings of required improvements have been submitted to and approved by the City Engineer: and

b. Choice 2.- If developer does not choose to furnish a payment bond per subsection a., then before a plat is filed with the county clerk, the following requirements shall be met:

(i.) All required improvements shall be completed to the City of Tyler standards and specifications; and

(ii.) A final inspection of completed improvements shall be performed by the City Engineer or authorized representative, and work must be approved and/or accepted by the City of Tyler. The developer shall maintain all improvements until improvements have been accepted by the City of Tyler; and

(iii.) The general contractor shall submit an *Affidavit of All Bills Paid* to the City Engineer certifying that all construction bills have been paid, and materials and workmanship are guaranteed for one year; and

(iv.) Complete record drawings of required improvements have been submitted to and approved by the City Engineer.

(v.) Submission of a guarantee or maintenance bond for one hundred percent (100%) of the cost of improvements in the name of the City covering the facility against defects in materials and/or workmanship for a period of one year after completion and acceptance of the facility by the Director.

7. Final payments to contractors shall be approved by the Director prior to payment and only after the improvements have had at least preliminary acceptance by City. This approval pertains to the satisfactory completion of the work for which payment is made and does not constitute approval of the quantities on which the payment is based.

8. Prior to the award of any construction contract, the developer shall convey easements acceptable to the Director covering all land which will be occupied by the proposed lines and water or sewer facilities.

9. Connections of buildings to service connections are prohibited until the water or sewer facilities to which they connect have been declared available for service and had preliminary acceptance by the Director.

10. Title and ownership of all sanitary sewers or water mains constructed under the terms of this option, exclusive of service connections, shall be vested in the City upon final acceptance by City.

11. Water or sewer facilities constructed under this option will not receive final acceptance by the City until all developmental improvements are completed and accepted by City. Maintenance and reconstruction of the facilities during the period between preliminary and final acceptance will be the responsibility of the developer.

(a) No construction shall begin under the terms of this section until the developer agrees to all requirements of this section.



(b) Water or sewer extension projects in which the City pays a portion of the cost may not be constructed pursuant to the rules provided by this Section. (Ord. 0-97-27, 5/28/97) (Ord. No. 0-99-80, 10/20/99) (Ord. No. 2009-7, 2/11/09) (Ord. No. O-2019-63, 08/14/2019)

**PART 4:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 5:** That this ordinance shall take effect immediately upon its adoption.

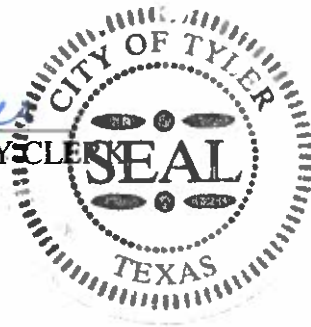
**PASSED AND APPROVED** this 14<sup>th</sup> day of August A. D., 2019.

  
MARTIN HEINES, MAYOR  
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

  
CASSANDRA BRAGER, CITY CLERK



  
DEBORAH G. PULLUM,  
CITY ATTORNEY