

ORDINANCE NUMBER: 108

AN ORDINANCE, granting the franchise, right, permission and authority to East Cedar Creek Fresh Water Supply District, a political subdivision of the State of Texas, its system for the collection, transmission, distribution and sale of potable water for all purposes for which water may be used, and (2) a system for the collection transmission, and disposal of sanitary sewage; enacting other provisions incident and related thereto.

WHEREAS, by ordinances duly passed and adopted by the City Council of the City of Payne Springs a franchise has been granted to East Cedar Creek Fresh Water Supply District in connection with the operation of a waterworks and sanitary sewer system.

WHEREAS, the City Council deems it to be in the best interest of the City and its inhabitants to be given such consent and grant a franchise to the District and the District and the City have agreed upon the provisions hereinafter set forth; now therefore.

BE IT ORINDAINED BY THE CITY COUNCIL OF THE CITY OF PAYNE SPRINGS, TEXAS:

Section 1: In consideration of the benefits to be received by the City and its inhabitants by the operation of a water and sewer by a political subdivision of the State of Texas and in further consideration of the payments hereinafter provided to be paid and the benefits to the City to be derived from the operation and maintenance of a waterworks and sanitary disposal works within the City and its extra-territorial boundaries, all hereinafter referred to as franchise area, the franchise, right permission and authority be, and the same are hereby, granted to said grantee, to construct, extend, maintain, repair, replace, operate and improve facilities within the limitations of the City's zoning ordinances and building codes for the supply, treatment and transportation of water and facilities for the collection, transmission, and disposal of sanitary sewerage from domestic, commercial, industrial uses and for such other purposes for which said facilities may be used. The grantee may construct, maintain, repair, replace and operate all necessary plants, works, mains, services, conduits, pipes, tanks and apparatus necessary or convenient for such facilities in upon, over, across, along and under each and all of the streets, roads, alleys, avenues, bridges, parkways and other public places, in the franchise area of said municipality as they may at any time exist, subject to the conditions and regulations hereinafter set forth.

SECTION 2: That all plants, works, mains, conduits, pipes, tanks, and apparatus erected, installed or placed under this grant by the grantee shall be located in parkways alleys whenever practicable so to do, and shall be located, whether in roads, streets, and alleys, avenues, bridges, parkways or other public places, all hereinafter referred to as public grounds, so as not to interfere unnecessarily with the use of such public grounds; and all the aforesaid work done by the grantee shall be done in accordance with the provisions of any and all general ordinances of the City which govern the excavation in and repair of, said public street of such municipality.

All water and sewer mains installed under this ordinance shall be located so as not to injure or damage unnecessarily any public grounds, drains, storm sewers, catch basins, or other like improvements, but should any of the public grounds, drains, storm sewers, catch basins, or other like improvements be injured by such location, the District shall repair the damage caused and restore said public grounds, drains, storm sewers, catch basins, or other like improvements to as good condition as existed prior to undertaking such work.

When the district is making street excavations for the aforesaid purposes or for any other proper purpose, the District shall erect barricades at the end of all excavations and at all crossings.

SECTION 3: When any streets, roads, alleys, avenues, bridges, parkways or other public places upon, under or in which any plants, works, mains, services, conduits, tanks or apparatus of the District have been placed, shall be graded, paved, resurfaced, widened, or otherwise changed by the City or one acting on its behalf so as to make the resetting or reconstruction of such utility components as plants, works, mains, services, conduits, tanks, or apparatus necessary, the District, its successors or assigns shall make such necessary changes required by said construction in a reasonable time after receiving written notice from the authorized representative of the City.

The City shall include in the cost of such improvements and will pay all necessary costs to raising or lowering water and sewer mains, services, manhole covers, and other changes required and necessary to the operation and maintenance of said utility components of the waterworks and sanitary disposal works and to have the work done under the terms of the general contract for the street improvements. If the District shall be ordered or requested to make any such change, the cost of such work shall be billed to the City, and the City shall pay the District for the same.

If such improvements are constructed by any contractor engaged by the City for the purpose of making such street improvements, then the required changes in the said utility components of the waterworks and sewerage disposal works shall be done under the supervision of a duly authorized officer or agent of said District.

SECTION 4: The sewerage collection and disposal system to be constructed, shall be operated and maintained by the District for sanitary purposes only and it is not intended or contemplated that the sewer mains, pipes, or outlets will be used for discharge of storm water, surface water, ground water, roof run-off, subsurface drainage, industrial waste or other matter not commonly discharged in sewers used for sanitary purposes.

SECTION 5: That the rates to be charged by said grantee and the rules and regulations governing the furnishing of services to inhabitants of said City under this ordinance shall be in accordance with the following principal: the rates and charges for the use or availability of the water and sewer system shall be the same established by the District for services rendered in other areas served by the District except that an additional amount may be added to cover the actual additional cost to the District for supplying such service to the inhabitants of the City.

SECTION 6: That during the term of the franchise granted by this ordinance, no charge, tax or assessment shall be made by the City to the District for any permit or privilege to excavate in or to use public grounds of the municipality for the purpose of erection, installation, placement, operation and maintenance of all plants, works, mains, services, conduits, pipes, tanks or other apparatus for otherwise carrying out the provisions of this ordinance.

SECTION 7: That the franchise and all rights and privileges granted by this ordinance are granted for a term of twenty five years from and after the date of passages and approval of this ordinance by the City.

SECTION 8: This is a nonexclusive franchise. The City does not restrict the number of franchises to be issued in all or any part of the City to any person, firm or corporation in the same business, a competing business or any related business.

SECTION 9: Nothing contained in the ordinance shall be construed as preventing, diminishing or restricting District from using for public utility purposes any easement shown on any plat or plats of any portion of the City heretofore be created, granted or dedicated for public utility purposes by any person, firm or corporation whatsoever.

SECTION 10: That title to all water utility components and sanitary sewer and sewerage utility components wherever situated within the franchise area, including on public grounds or on easements for public utility purposes, shall be and remain in the District, its successors or assigns.

SECTION 11: If any section, subsection, phrase, sentence or portion of the ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed as a district and independent provision and such holdings shall not affect the validity of the remaining portions thereof.

SECTION 12 : That after the passage and adoption of this ordinance and either prior to or within sixty days after such effective date, this ordinance shall be accepted by said District by its filing with the City Secretary and unconditional written acceptance thereof executed by the President of the Board of Directors of the District. Failure of as grantee to so accept this ordinance within said period of time shall be deemed a rejection thereof by the District, and the rights and privileges herein granted shall, after the expiration of said period of sixty days, if not so accepted, absolutely cease and determine, unless said period of time shall be extended by ordinance duly passed for that purpose.

SECTION 13: That to the extent now or hereafter permitted by the statutes or law of the State of Texas, this ordinance shall inure^{JDM} to the benefit of and be binding upon any city, village or other municipal corporation to which the franchised area of the City may hereafter be attached or annexed, or into which it may be incorporated, also any agency, instrumentality or political subdivision of the State of Texas which may be authorized or empowered to furnish water and/or sanitary sewer disposal service within the present of future franchise area within the corporate limits of the City.

SECTION 14: That all provisions of this ordinance which are obligatory upon or which inure to the benefit of the District shall also be obligatory upon and shall inure to the benefit of all successors and assigns of said District and the word "District" wherever used in this ordinance (except in Section 12 when the acceptance is confined to the District) shall include and be taken to mean not only District, but all successors and assigns of said District.

SECTION 15: As franchise^{JDM} ~~tax~~^{fee} the District agrees to pay an amount to the City which is equal to 4 % of the gross revenues collected by the District for water and sewer services provided within the corporate limits of the City of Payne Springs. The amount due to the City for the preceding calendar year shall be due and payable on or before the 15th day of February in the year following collection. If not timely paid, interest on the unpaid amount shall accrue at the rate of prime plus 3%.

SECTION 16: The District agrees to provide to the City of Payne Springs, the District's annual financial statement at the time of payment of the franchise fee.

SECTION 17: The provisions of this ordinance shall be in force and effect from and after its passage.

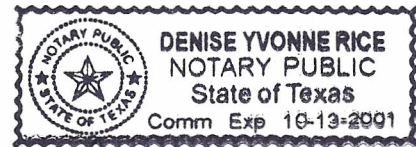
PASSED AND APPROVED, THIS 16 DAY JUNE 1998.

L.D. Meredith
MAYOR
CITY OF PAYNE SPRINGS

ATTEST:

SEAL

Sue Barnett
CITY SECRETARY
CITY OF PAYNE SPRINGS



Denise Yvonne Rice

The East Cedar Creek Fresh Water Supply District hereby files its unconditional written acceptance of the franchise granted by the foregoing ordinance, date this 18 day of SEPTEMBER 1998.

[Signature]
President, Board of Directors
East Cedar Creek Fresh Water Supply
District