



## CITY OF FAIR OAKS RANCH CITY COUNCIL REGULAR MEETING

Thursday, May 18, 2023 at 6:30 PM

Public Safety Training Room, Police Station, 7286 Dietz Elkhorn, Fair Oaks Ranch

Live Stream: <https://www.youtube.com/channel/UCDqRvLvReqxrh1lbajwshKA/live>

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### AGENDA

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#### OPEN MEETING

1. Roll Call - Declaration of a Quorum
2. Pledge of Allegiance

#### CITIZENS and GUEST FORUM

*To address the Council, please sign the Attendance Roster located on the table at the entrance in the foyer of the Public Safety Training Room. In accordance with the Open Meetings Act, Council may not discuss or take action on any item which has not been posted on the agenda. Speakers shall limit their comments to five (5) minutes each.*

3. Citizens to be heard.

#### PRESENTATIONS

4. Swearing in of elected officials: Keith Rhoden, Council Member Place 2; Chesley Muenchow, Council Member Place 6.

Gregory C. Maxton, Mayor

5. Recognition of the Government Finance Officers Association (GFOA) Distinguished Budget Presentation Award for the FY 2022 budget.

Gregory C. Maxton, Mayor

6. Police Week and Peace Officers Memorial Day Proclamation.

Gregory C. Maxton, Mayor

7. Public Works Week Proclamation.

Gregory C. Maxton, Mayor

#### CONSENT AGENDA

*All of the following items are considered to be routine by the City Council, there will be no separate discussion on these items and will be enacted with one motion. Items may be removed by any Council Member by making such request prior to a motion and vote.*

8. Approval of the May 4, 2023 Regular City Council meeting minutes.

Christina Picioccio, TRMC, City Secretary

- [9.](#) Approval of the second reading of an ordinance amending the City of Fair Oaks Ranch Code of Ordinances, Chapter 13 "Utilities", Article 13.03 "Water and Sewer System", Division 3, Part II "Drought Contingency Plan" to include updated definitions, initiation and termination criteria and creating an appeal process; and amending Appendix A Fee Schedule Article A9 (v) "Water Charges – Drought Surcharge Rates".

Kelsey Delgado, Environmental Program Manager

- [10.](#) Approval of the second reading of an ordinance establishing stop signs on streets within the Setterfeld Estates Subdivision.

Tim Moring, Chief of Police

- [11.](#) Approval of Mayor Maxton's absence from the May 4, 2023, Regular City Council meeting.

Gregory C. Maxton, Mayor

- [12.](#) Approval of Council Member Elizondo's absence from the May 4, 2023, Regular City Council meeting.

Gregory C. Maxton, Mayor

- [13.](#) Approval of Council Member Stroup's absence from the May 18, 2023, Regular City Council meeting.

Gregory C. Maxton, Mayor

- [14.](#) Approval of Council Member Rhoden's absence from the June 1, 2023 and June 15, 2023, Regular City Council meetings.

Keith Rhoden, City Council Member, Place 2

## CONSIDERATION/DISCUSSION ITEMS

- [15.](#) Consideration and possible action electing a Council Member to serve as Mayor Pro Tem at the first regular City Council meeting following each regular city election.

Gregory C. Maxton, Mayor

- [16.](#) Consideration and possible action authorizing the City Manager to execute a construction agreement for Enchanted Park cul-de-sac reconstruction.

Clayton Hoelscher, Procurement Manager

Julio Colunga, Assistant Director of Public Works

- [17.](#) Consideration and possible action establishing the City's co-sponsorship of a 4th of July Parade with the Fair Oaks Ranch Homeowners' Association; and approving a resolution declaring the parade a public purpose, authorizing street closures for the event, and authorizing the City Manager to execute a Memorandum of Understanding with FORHA.

Carole Vanzant, CPM, Assistant City Manager, Community Services

- [18.](#) Consideration and possible action regarding requirements or expenditures associated with the Local Disaster.

Gregory C. Maxton, Mayor

**WORKSHOP**

- [19.](#) Wastewater and Emergency Response/Disaster Recovery Town Hall Recap.

Gregory C. Maxton, Mayor

**REPORTS FROM STAFF AND COMMITTEES**

- [20.](#) 2023 Boards and Commissions.

Christina Picioccio, TRMC, City Secretary

21. Planning and Zoning Commission Report.

Bobbe Barnes, Chairperson, Planning & Zoning Commission

**REQUESTS AND ANNOUNCEMENTS**

22. Announcements and reports by Mayor and Council Members.

23. Announcements by the City Manager.

24. Requests by Mayor and Council Members that items be placed on a future City Council agenda.

**CONVENE INTO EXECUTIVE SESSION**

*Pursuant to Section 551.101 of the Open Meetings Act, Texas Gov't Code, a quorum of the governing body hereby convenes into closed session:*

**Sec. 551.071 (Consultation with Attorney)** the City Council will meet in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:

25. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.

26. Case No. 22-090-451; Vincent A. Caldarola, MD vs. City of Fair Oaks Ranch, Texas.

**Sec. 551.072 (Deliberation regarding real property)**

27. The City Council will meet in closed session to deliberate the purchase, exchange, lease, or value of real property that may be considered for future location of water and wastewater system improvements.

**RECONVENE INTO OPEN SESSION**

*Discussion and possible action on items discussed in Executive Session.*

**ADJOURNMENT**

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**Signature of Agenda Approval:** s/Gregory C. Maxton

Gregory C. Maxton, Mayor

I, Christina Picioccio, TRMC, City Secretary, certify that the above Notice of Meeting was posted on the outside bulletin board at the Fair Oaks Ranch City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas, and on the City's website [www.fairoaksranchtx.org](http://www.fairoaksranchtx.org), both places being convenient and readily accessible to the general public at all times.

As per Texas Government Code 551.045, said Notice was posted by 6:30 PM, May 15, 2023 and remained so posted continuously for at least 72 hours before said meeting was convened.

The Fair Oaks Ranch Police Station is wheelchair accessible at the front main entrance of the building from the parking lot. Requests for special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary's office at (210) 698-0900. Braille is not available. The City Council reserves the right to convene into Executive Session at any time regarding an issue on the agenda for which it is legally permissible; pursuant to Texas Government Code Chapter 551. Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).



GOVERNMENT FINANCE OFFICERS ASSOCIATION

*Distinguished  
Budget Presentation  
Award*

PRESENTED TO

**City of Fair Oaks Ranch  
Texas**

For the Fiscal Year Beginning

**October 01, 2022**

*Christopher P. Morill*

**Executive Director**



**The Government Finance Officers Association  
of the United States and Canada**

*presents this*

**CERTIFICATE OF RECOGNITION FOR BUDGET PREPARATION**

*to*

**Finance Department  
City of Fair Oaks Ranch, Texas**



*The Certificate of Recognition for Budget Preparation is presented by the Government Finance Officers Association to those individuals who have been instrumental in their government unit achieving a Distinguished Budget Presentation Award. The Distinguished Budget Presentation Award, which is the highest award in governmental budgeting, is presented to those government units whose budgets are judged to adhere to program standards*

Executive Director

*Christopher P. Morill*

Date: **April 19, 2023**

***PROCLAMATION***  
***The City of Fair Oaks Ranch***  
***Office of the Mayor***

**WHEREAS**, the Congress and President of the United States have designated May 15, 2023 as Peace Officers Memorial Day, and the week in which it falls as Police Week; and,

**WHEREAS**, the members of the Fair Oaks Ranch Police Department play an essential role in safeguarding the rights and freedoms of the citizens of the City of Fair Oaks Ranch; and,


**WHEREAS**, it is important that all citizens know and understand the problems, duties and responsibilities of their police department, and that members of our police department recognize their duty to serve the people by safeguarding life and property, by protecting them against violence or disorder, and by protecting the innocent against deception and the weak against oppression or intimidation; and,

**WHEREAS**, the police department of the City of Fair Oaks Ranch has grown to be a modern and scientific law enforcement agency which unceasingly provides a vital public service.

**NOW, THEREFORE**, I, Mayor Gregory C. Maxton, call upon all citizens of the City of Fair Oaks Ranch and upon all patriotic, civil and educational organizations to observe the week of May 14<sup>th</sup> – May 20<sup>th</sup>, 2023 as Police Week with appropriate ceremonies in which all of our people may join in commemorating police officers, past and present, who by their faithful and loyal devotion to their responsibilities have rendered a dedicated service to their communities and, in doing so, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

**I FURTHER** call upon all citizens of Fair Oaks Ranch to observe May 15th, as Peace Officers Memorial Day to honor those peace officers who, through their courageous deeds, have lost their lives or have become disabled in the performance of duty.

**WITNESS MY HAND AND SEAL THIS 12th DAY OF MAY, 2023**

  
Christina Picioccio, TRMC  
City Secretary



  
Gregory C. Maxton, Mayor



# *Proclamation*

## *The City of Fair Oaks Ranch*

### *Office of the Mayor*

**WHEREAS**, public works professionals focus on infrastructure, facilities and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life and well-being of the people of the City of Fair Oaks Ranch; and,

**WHEREAS**, these infrastructure, facilities and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers and employees at all levels of government and the private sector, who are responsible for rebuilding, improving and protecting our nation's transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential for our citizens; and,

**WHEREAS**, it is in the public interest for the citizens, civic leaders and children in the City of Fair Oaks Ranch to gain knowledge of and to maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and,

**WHEREAS**, the efficiency of the qualified and dedicated personnel who staff public works departments is materially influenced by the people's attitude and understanding the importance of the work they perform; and

**WHEREAS**, the year 2023 marks the 63<sup>rd</sup> annual National Public Works Week sponsored by the American Public Works Association/Canadian Public Works Association.

**NOW, THEREFORE**, I, Gregory C. Maxton, Mayor of the City of Fair Oaks Ranch, do hereby designate the week May 21 – 27, 2023 as National Public Works Week; I urge all citizens to join with representatives of the American Public Works Association/Canadian Public Works Association and government agencies in activities, events and ceremonies designed to pay tribute to our public works professionals, engineers, managers and employees and to recognize the substantial contributions they make to protecting our national health, safety, and quality of life.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the seal of the City of Fair Oaks Ranch to be affixed this 12<sup>th</sup> day of May, 2023.

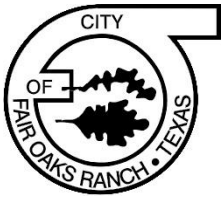


Christina Picioccio, TRMC  
City Secretary




Gregory C. Maxton, Mayor





**CITY OF FAIR OAKS RANCH**  
**CITY COUNCIL REGULAR MEETING**

Thursday, May 04, 2023 at 6:30 PM

Public Safety Training Room, Police Station, 7286 Dietz Elkhorn, Fair Oaks Ranch

Live Stream: <https://www.youtube.com/channel/UCDqRvLvReqxrh1lbajwshKA/live>

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## MINUTES

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### OPEN MEETING

#### 1. Roll Call - Declaration of a Quorum

Council Present: Mayor Pro Tem Koerner and Council Members: Stroup, Parker, and Muenchow

Council Absent: Mayor Maxton and Council Members: Elizondo and Bliss

With a quorum present, the meeting was called to order at 6:30 PM.

#### 2. Pledge of Allegiance – The Pledge of Allegiance was led by Council Member Stroup.

### CITIZENS and GUEST FORUM

#### 3. Citizens to be heard.

Resident, Joe duMenil, signed up to speak but chose to make his comments during the consideration of Item 8, Drought Contingency Ordinance.

### PRESENTATIONS

4. Joanna Merrill, IPMS-SCP, Director of Human Resources and Communications, introduced new employee, James K. Reeves, Building Official.

### CONSENT AGENDA

5. Approval of the April 18, 2023, Special City Council Townhall meeting minutes.
6. Approval of the April 20, 2023, Regular City Council meeting minutes.
7. Approval of Council Member Parker's absence from the April 20, 2023, Regular City Council meeting.

The Consent Agenda was approved by unanimous consent.

**CONSIDERATION/DISCUSSION ITEMS**

8. **Consideration and possible action approving the first reading of an ordinance amending the City of Fair Oaks Ranch Code of Ordinances, Chapter 13 "Utilities", Article 13.03 "Water and Sewer System", Division 3, Part II "Drought Contingency Plan" to include updated definitions, initiation and termination criteria and creating an appeal process; and amending Appendix A Fee Schedule Article A9 (v) "Water Charges - Drought Surcharge Rates".**

Resident and Trinity Glen Rose Groundwater Conservation District President and Precinct 2 Representative, Joe duMenil, spoke in support of the Council approving the Ordinance.

MOTION: Made by Council Member Muenchow, seconded by Council Member Stroup, to approve the first reading of an ordinance amending the City of Fair Oaks Ranch Code of Ordinances, Chapter 13 "Utilities", Article 13.03 "Water and Sewer System", Division 3, Part II "Drought Contingency Plan" to include updated definitions, initiation and termination criteria and creating an appeal process; and amending Appendix A Fee Schedule Article A9 (v) "Water Charges - Drought Surcharge Rates".

VOTE: 4-0; Motion Passed.

9. **Consideration and possible action on a Concept Plan request from the applicant Urbanist Inc. on behalf of the property owners Brenda Minahan and Mark Minahan for a proposed multi-unit residential community on approximately 19.8 acres zoned Mixed Use Village District (MU) generally located north-east of the intersection of Dietz Elkhorn Road Ralph Fair Road.**

MOTION: Made by Council Member Parker, seconded by Council Member Stroup, to approve the Concept Plan request from the applicant Urbanist Inc. on behalf of the property owners Brenda Minahan and Mark Minahan for a proposed multi-unit residential community on approximately 19.8 acres zoned Mixed Use Village District (MU), with the following conditions.

- a. Submit a complete updated application packet with all missing and incomplete information that matches the Concept Plan.
- b. Provide a revised Concept Plan showing a site layout of the commercial and residential component in compliance with the UDC including but not limited to building frontage, pedestrian connectivity to sidewalk, parking location and parking calculations. Add a note on the Concept Plan that all requirements of the UDC, City codes and City standards shall be met.
- c. Update Landscaping Plan to match the Concept Plan.

VOTE: 4-0; Motion Passed.

10. **Consideration and possible action regarding requirements or expenditures associated with the Local Disaster.**

Interim City Manager, Scott M. Huizenga, provided an update to Council regarding the status of the project. Mr. Huizenga expects the collection of brush to be completed within the next week as 96% of the piles have been removed from the City.

**WORKSHOP****11. FY 2024-28 Five-Year Financial Plan.**

Interim City Manager, Scott M. Huizenga, led a workshop regarding the City's FY 2024-28 Five-Year Financial Plan.

**REPORTS FROM STAFF AND COMMITTEES**

12. Scott M. Huizenga, Interim City Manager, provided to Council the Quarterly Financial Update for Quarter 2 of Fiscal Year 2023.
13. Grant Watanabe, P.E., Director of Public Works & Engineering Services, reported to Council that the Heritage Tree Plan and Preliminary Plat for Botanica Fair Oaks have been withdrawn by the applicant.

**REQUESTS AND ANNOUNCEMENTS****14. Announcements and reports by Mayor and Council Members.**

Council Member Stroup reminded everyone to vote in the City Election on Saturday, May 6, 2023, in the Police Station's training room.

Council Member Parker thanked everyone for their well wishes during his recovery.

**15. Announcements by the City Manager.**

Interim City Manager, Scott M. Huizenga, asked Council to answer the poll regarding their availability for Special Budget Workshops.

**16. Requests by Mayor and Council Members that items be placed on a future City Council agenda.**

None.

**CONVENE INTO EXECUTIVE SESSION**

*City Council did not convene into Executive Session regarding:*

**Sec. 551.071 (Consultation with Attorney)** the City Council will meet in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:

17. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.
18. Case No. 22-090-451; Vincent A. Caldarola, MD vs. City of Fair Oaks Ranch, Texas.

**Sec. 551.072 (Deliberation regarding real property)**

19. The City Council will meet in closed session to deliberate the purchase, exchange, lease, or value of real property that may be considered for future location of water and wastewater system improvements.

**RECONVENE INTO OPEN SESSION**

N/A

**ADJOURNMENT**

Mayor Pro Tem Koerner adjourned the meeting at 8:16 PM.

ATTEST:

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Gregory C. Maxton, Mayor

\_\_\_\_\_  
Christina Picioccio, TRMC, City Secretary



**CITY COUNCIL CONSENT ITEM**  
**CITY OF FAIR OAKS RANCH, TEXAS**  
**May 18, 2023**

**AGENDA TOPIC:** Approval of the second reading of an ordinance amending the City of Fair Oaks Ranch Code of Ordinances, Chapter 13 "Utilities", Article 13.03 "Water and Sewer System", Division 3, Part II "Drought Contingency Plan" to include updated definitions, initiation and termination criteria and creating an appeal process; and amending Appendix A Fee Schedule Article A9 (v) "Water Charges – Drought Surcharge Rates"

**DATE:** May 18, 2023

**DEPARTMENT:** Public Works

**PRESENTED BY:** Consent Item - Kelsey Delgado, Environmental Program Manager

**INTRODUCTION/BACKGROUND:**

The first reading of an ordinance amending the Drought Contingency Plan was passed and approved by City Council on May 4<sup>th</sup>, 2023.

The most impactful updates to the Drought Contingency Plan include:

- Including Trinity Glen Rose Groundwater Conservation District (TGRGCD) as a trigger for drought stage initiation.
- Raising the triggering height of Fair Oaks Ranch Utilities (FORU) observation well by 5 feet for Stages 2 & 3.
- Limiting Golf Course watering at Stage 2 to effluent and non-potable irrigation well water only.
- Lowering Residential Drought Surcharge thresholds and implementing Commercial Drought Surcharge thresholds.
- Including and defining a Drought Surcharge Appeal process.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

- Furthers the Strategic Action Plan Priority 3.1 to Enhance and Ensure Continuity of Reliable Water Resources in Accordance with CCN Obligations.
- Better protects and preserves the City's water resources and infrastructure.
- Conserves water during times of extreme drought to ensure customers have potable water for essential uses.
- Provides surcharge relief to Fair Oaks Ranch Utility customers who experience extreme water leaks during a drought stage.



**LONG-TERM FINANCIAL & BUDGETARY IMPACT:**

N/A

**LEGAL ANALYSIS:**

The City Attorney has reviewed and approved the ordinance as to form.

**RECOMMENDATION/PROPOSED MOTION:**

Consent Item - I move to approve the second reading of an ordinance amending the City of Fair Oaks Ranch Code of Ordinances, Chapter 13 "Utilities", Article 13.03 "Water and Sewer System", Division 3, Part II "Drought Contingency Plan" to include updated definitions, initiation and termination criteria and creating an appeal process; and amending Appendix A Fee Schedule Article A9 (v) "Water Charges – Drought Surcharge Rates.

## AN ORDINANCE

**AN ORDINANCE AMENDING THE CITY OF FAIR OAKS RANCH CODE OF ORDINANCES, CHAPTER 13 "UTILITIES", ARTICLE 13.03 "WATER AND SEWER SYSTEM", DIVISION 3, PART II "DROUGHT CONTINGENCY PLAN" TO INCLUDE UPDATED DEFINITIONS, INITIATION AND TERMINATION CRITERIA AND CREATING AN APPEAL PROCESS; AND AMENDING APPENDIX A FEE SCHEDULE ARTICLE A9 (V) "WATER CHARGES – DROUGHT SURCHARGE RATES".**

**WHEREAS,** the City of Fair Oaks Ranch, Texas, recognizes that the amount of water available to the City and its water utility customers is limited and subject to depletion during periods of extended drought or upon failure of major system components; and

**WHEREAS,** the City recognizes that natural limitations due to drought conditions and other acts of force majeure cannot guarantee an uninterrupted water supply for all purposes; and

**WHEREAS,** Section 11.1272 of the Texas Water Code and applicable rules of the Texas Commission on Environmental Quality ("TCEQ"), including Title 30, Chapter 288, Subchapters A and B of the Texas Administrative Code require all public water supply systems in Texas to prepare, update and adopt a water conservation and drought contingency plan at a minimum at least every five years; and

**WHEREAS,** the City previously updated and adopted the City's current water conservation and drought contingency plan under Chapter 13, of the City's Code of Ordinances; and

**WHEREAS,** in accordance with the regulations established by the TCEQ, it is necessary to review, update and adopt an amended water conservation and drought contingency plan; and

**WHEREAS,** as authorized under law, and in the best interests of the citizens of Fair Oaks Ranch, Texas, and its customers, the City Council deems it necessary to amend certain rules and policies for the orderly and efficient management of limited water supplies during drought and other water supply emergencies; and

**WHEREAS,** City Council deems it necessary to amend residential drought surcharge rates and create commercial drought surcharge rates to effectively manage water usage during times of drought.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:**

**PART 1.** Chapter 13 "Utilities", Article 13.03 "Water and Sewer System", Division 3 "Drought Surcharge Rates and Drought Contingency Plan", Part II "Drought Contingency Plan" and Appendix A Fee Schedule Article A9 (V) "Water Charges – Drought Surcharge Rates" is hereby amended as forth in the attached **Exhibit A**.

**PART 2.** That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

- PART 3.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.
- PART 4.** That it is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.
- PART 5.** This ordinance shall take effect the 1st day of August 2023, after its second reading, passage and publication as may be required by governing law.
- PART 6.** The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this ordinance.
- PART 7.** The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.

**PASSED and APPROVED on first reading by the City Council of the City of Fair Oaks Ranch, Texas, on this 4th day of May 2023.**

**PASSED, APPROVED and ADOPTED on second and final reading by the City Council of the City of Fair Oaks Ranch, Texas, on this 18th day of May 2023.**

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Gregory C. Maxton, Mayor

ATTEST:

APPROVED AS TO FORM:

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Christina Picioccio, TRMC, City Secretary

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

## EXHIBIT A

Chapter 13 "Utilities", Article 13.03 "Water and Sewer System", Division 3 "Drought Surcharge Rates and Drought Contingency Plan", Part II "Drought Contingency Plan" is hereby amended as follows:

[Deletions shown as strikethrough and additions shown as underscore]

### Part II. Drought Contingency Plan

#### Sec. 13.03.116 Definitions

For the purposes of this plan, the following definitions shall apply:

*Aesthetic water use.* Water use for ornamental or decorative purposes such as fountains, ponds, reflecting pools, and water gardens.

*Billing period.* That calendar period during which usage is measured.

*Bulk water use.* Water used by fire departments, contractors, road builders, lawn services, exterminators and others that do not have a metered connection. Their usage is measured by self-reporting the number of times they fill a container of a specified size from a fire hydrant.

*Commercial and institutional water use.* Water use which is integral to the operations of commercial and nonprofit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, country clubs, associations, and office buildings.

*Conservation.* Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

*Customer.* Any person, individual, partnership, company, corporation, association, organization, or other legal entity using water supplied by FORU.

*Daily production.* The total treated source water provided to the FORU distribution system in a 24-hour period.

*Distribution system.* Those facilities (tanks, pumps, pipes, valves, and meters) that deliver treated, potable water to FORU water customers.

*Domestic water use.* Water used for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, or sanitation, or for cleaning a residence, business, or institution.

*Extreme leak.* A leak during any stage of the Drought Contingency Plan in which a utility customer's monthly consumption exceeds their two-year average for that same month by double. If two years of water consumption is unavailable, water consumption must be more than three times the amount used from the previous month.

*Landscape areas.* Changing the natural features of a plot of ground so as to make it more attractive, as by adding lawns, trees, bushes, etc.

*Landscape irrigation use.* Water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, rights-of-way and medians.

*Landscape watering permit.* A permit issued pursuant to section 13.06.006(d) of the City's Code of Ordinances.

*Nonessential water use.* Water uses that are not essential or required for the protection of public health, safety, and welfare, including:

- (1) Irrigation of landscape areas, including parks, athletic fields, and golf courses, except as otherwise provided under this plan;
- (2) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (3) Use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (4) Use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (5) Flushing gutters or permitting water to run or accumulate in any gutter or street;
- (6) Use of water to fill, refill, or add to any indoor or outdoor swimming pools or Jacuzzi-type pools;
- (7) Use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;
- (8) Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s); and
- (9) Use of water from fire hydrants for construction purposes or any purpose other than firefighting.

*New Lawn Purchase.* Purchases of sod equal or greater to one pallet (500 square feet).

*Observation well.* The FORU well located at 29435 Ralph Fair Road, Bexar County, and identified on facility records as Well 20.

### **Sec. 13.03.117 Criteria for Initiation and Termination of Drought Stages and Responses**

- (a) Monitoring. FORU shall monitor water supply and/or demand conditions on a monthly basis until such time that conditions warrant initiation of stage 1, after which daily conditions shall be monitored to determine initiation and termination of each stage of the plan, that is, when the specified "triggers" are reached. The triggering criteria described below are based on analysis of the vulnerability of the water source under drought of record conditions, current water demands and current National Weather Service Bureau extended weather predictions.
- (b) Stage 1, moderate water shortage conditions.



## (1) Triggers.

- (A) Requirements for initiation. Customers shall reduce nonessential water uses when two (2) of three (3) conditions have been met:
  - (i) The static water level in the FORU observation well averages less than or equal to 1,045 feet above mean sea level for 15 consecutive days;
  - (ii) The water system's average daily consumption of Trinity Aquifer groundwater for the same consecutive 15 days exceeds 1.2 million gallons per day; or
  - (iii) Either Guadalupe-Blanco River Authority (GBRA) or Trinity Glen Rose Groundwater Conservation District (TGRGCD) implements stage 1 water reduction requirements of their drought contingency plan.
- (B) Requirements for termination. Stage 1 of the plan may be rescinded when the static water level in the observation well averages greater than 1,045 feet above mean sea level for 60 consecutive days and GBRA or TGRGCD is no longer in stage 1 (or worse) conditions from their drought contingency plan.

## (2) Response.

- (A) Goal. Achieve both a reduction in total water use and reduce monthly average Trinity Aquifer groundwater use for 30 consecutive days to less than 1.2 million gallons per day.
- (B) Supply management measures.
  - (i) Implementation of a surcharge on all water used over 20,000 ~~25,000~~ gallons per residential account per billing period and 50,000 gallons per commercial account per billing period.
  - (ii) Commercial car washing (using nonrecycled technology) banned.
  - (iii) Reduce water main flushing to that required to maintain quality standards.
  - (iv) All landscape watering permits issued prior to implementation of Stage 1 restrictions are rescinded. No additional permits shall be issued, with the exception of newly built homes or with proof of new lawn purchase, as defined in Sec. 13.03.116, within the last seven (7) days prior to Stage 1 implementation.

## (c) Stage 2, severe water shortage conditions.

## (1) Triggers.

- (A) Requirements for initiation. Customers shall ~~be requested to~~ further reduce nonessential water uses when two (2) of three (3) conditions have been met:
  - (i) The static water level in the FORU observation well averages less than or equal to 1,035 ~~1,030~~ feet above mean sea level for eight (8) consecutive days;
  - (ii) The water system's average daily consumption of Trinity Aquifer groundwater for the same consecutive eight (8) days exceeds 700,000 gallons per day; or

(iii) Guadalupe-Blanco River Authority (GBRA) or Trinity Glen Rose Groundwater Conservation District (TGRGCD) implements stage 2 water reduction requirements of their drought contingency plan.

(B) Requirements for termination. Stage 2 of the plan may be rescinded when the static water level in the observation well averages greater than 1,035 ~~1,030~~ feet above mean sea level for 60 consecutive days and GBRA or TGRGCD is no longer in stage 2 (or worse) conditions from their drought contingency plan. Upon termination of stage 2, stage 1 becomes operative.

(2) Response.

(A) Goal. Achieve both a reduction in total water use and reduce the average Trinity Aquifer groundwater use for 30 consecutive days to less than 0.7 million gallons per day.

(B) Supply management measures.

(i) Implementation of a surcharge on all water used over 15,000 ~~18,000~~ gallons per residential account per billing period and 40,000 gallons per commercial account per billing period.

(ii) Use of water from fire hydrants shall be limited to firefighting, related activities, or other activities necessary to maintain public health, safety, and welfare.

(iii) Ornamental water fountain water usage banned.

(iv) No sale of bulk water.

(v) Landscape watering permits for new lawn purchases are rescinded and no new permits will be issued.

(vi) Golf Course watering is limited to the use of effluent and non-potable irrigation well water provided by the FORU wastewater treatment plant and wells, unless approved by the City Manager or designee.

(d) Stage 3, critical water shortage conditions.

(1) Triggers.

(A) Requirements for initiation. Customers shall be required to comply with the requirements and restrictions on certain nonessential water uses provided in this plan when one (1) of three (3) conditions have been met:

(i) The static water level in the FORU observation well is equal to or less than 1,020 ~~1,015~~ feet above mean sea level;

(ii) At any time that the water system's production wells are failing so that normal production of 1.2 million gallons per day of Trinity Aquifer groundwater cannot be maintained for seven (7) consecutive days; or

(iii) Guadalupe-Blanco River Authority (GBRA) or Trinity Glen Rose Groundwater Conservation District (TGRGCD) implements stage 3 water reduction requirements of their drought contingency plan.

(B) Requirements for termination. Stage 3 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for 60 consecutive days.

(2) Response.

(A) Goal. Limit consumption to domestic water use as defined in Sec. 13.03.116 definitions.

(B) Supply management measures.

(i) Implementation of a surcharge on all water used over 10,000 gallons per residential account per billing period and 30,000 gallons per commercial account per billing period.

(ii) All nonessential water uses, as defined in Sec. 13.03.116 definitions, are prohibited except for watering of household shrubbery by handheld hose.

(iii)(ii) Golf course watering is limited to the use of effluent water provided by the FORU wastewater treatment plant or a water source other than that provided by FORU.

(iv)(i) A moratorium is imposed on the issuance of irrigation (with the exception of newly built homes) and swimming pool permits. Swimming pools under construction during the implementation of this drought response shall be filled only with water purchased from a source other than FORU, unless approved by the City Manager or designee new landscaping and construction of new swimming pools.

(v)(iv) Hosston/Sligo aquifer water may be diverted to drinking water distribution, if authorized by TCEQ.

(vi)(v) No application for new, additional, expanded, or increased-in-size water service connections, meters, service lines, pipeline extensions, mains, or water service facilities of any kind shall be approved, and time limits for approval of such applications are hereby suspended for such time as this drought response stage is in effect.

(vii)(vi) Water-flow restrictors may be installed on customer meters.

(vii) The surcharge imposed in stage 2 remains in effect.

### **Sec. 13.03.118 Enforcement; Penalty**

(a) No person shall allow the use of water from FORU for residential, commercial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this plan. A culpable mental state is not required for a violation of this article, and need not be proved.

(b) Any person who violates the critical stage provisions of this plan is guilty of a misdemeanor and, upon conviction, shall be punished by a fine per violation as provided in section 1.01.009 of this Code. Each day that one (1) or more of the provisions in this plan is violated shall constitute a separate offense.

### Sec. 13.03.119 Variances

- (a) The City Council may, in writing, grant a temporary variance for existing water uses otherwise prohibited under this plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting health, sanitation, or fire protection for the public or the person requesting such variance and if one (1) or more of the following conditions are met:
  - (1) Compliance with this plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the plan is in effect.
  - (2) Alternative methods can be implemented which will achieve the same level of reduction in water use.
- (b) Persons requesting an exemption from the provisions of this article shall file a petition for variance and a non-refundable variance fee, as set forth in **Appendix A** to this Code, with FORU within five (5) days after the plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City Manager or his designated representative and shall include the following:
  - (1) Name and address of the petitioner(s).
  - (2) Purpose of water use
  - (3) Specific provision(s) of the plan from which the petitioner is requesting relief.
  - (4) Detailed statement as to how the specific provision of the plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if the petitioner complies with this article.
  - (5) Description of the relief requested.
  - (6) Period of time for which the variance is sought.
  - (7) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this plan and the compliance date.
  - (8) Other pertinent information.
- (c) The City Manager or his designated representative shall forward his recommendation for granting or denying the variance to the City Council for final action. Recommendation for variances shall be subject to the following conditions, unless waived or modified by the City Council:
  - (1) Variances granted shall include a timetable for compliance.
  - (2) Variances granted shall expire when the plan is no longer in effect, unless the petitioner has failed to meet specified requirements.
- (d) No variance shall be retroactive or otherwise justify any violation of this plan occurring prior to the issuance of the variance.

### **Sec. 13.03.120 Drought Surcharge Appeal**

- (a) A petition to remove Drought Surcharges from one monthly statement may be considered by the City Manager or designee for customers that experience an extreme leak, as defined in 13.03.116.
- (b) Upon discovery of an extreme leak by the customer, the cause of excess consumption due to the water leak shall be repaired within 30 days of discovery to be eligible for consideration of a Drought Surcharge Appeal.
- (c) Upon notice of excess consumption by the City, the customer shall be notified of a suspected water leak or excessive water consumption by phone, email, door hanger, personal contact, or water cutoff. To be eligible for consideration of a Drought Surcharge Appeal, the cause of excess consumption shall be repaired within 30 days of the notification.
- (d) All petitions for this appeal shall include the following in writing:
  - (1) Name and address of petitioner
  - (2) Explanation of excessive water leak
  - (3) Proof the leak was repaired within 30 days of discovery or notification
  - (4) Other pertinent information
- (e) Until the findings of the Drought Surcharge Appeal are determined (in no event more than six (6) weeks), the customer shall be required to pay, on a timely basis, the total amount due for all utility services.



Appendix A Fee Schedule Article A9 (V) "Water Charges – Drought Surcharge Rates" is hereby amended as follows:

[Deletions shown as strikethrough and additions shown as underscore]

(v) Drought surcharge rates - Residential:

(1) Stage 1, moderate water shortage conditions - residential cost per 1,000 gallons:

- (A) 0 – 20,000 ~~25,000~~ gallons.....\$0.00.
- (B) 20,001 ~~25,001~~ - 40,000 gallons.....\$5.00.
- (C) 40,001 - 60,000 gallons.....\$6.00.
- (D) 60,001 - 75,000 gallons.....\$7.00.
- (E) 75,001 - 100,000 gallons.....\$10.00.
- (F) Over 100,000 gallons.....\$12.50.

(2) Stage 2, severe water shortage conditions - residential cost per 1,000 gallons:

- (A) 0 – 15,000 ~~18,000~~ gallons.....\$0.00.
- (B) 15,001 – 20,000 ~~18,001 – 25,000~~ gallons.....\$5.00.
- (C) 20,001 ~~25,001~~ - 40,000 gallons.....\$7.50.
- (D) 40,001 - 60,000 gallons.....\$10.00.
- (E) 60,001 - 75,000 gallons.....\$15.00.
- (F) 75,001 - 100,000 gallons.....\$20.00.
- (G) Over 100,000 gallons.....\$30.00.

(3) Stage 3, critical water shortage conditions - residential cost per 1,000 gallons:

- (A) 0 – 10,000 ~~18,000~~ gallons.....\$0.00.
- (B) 10,001 – 20,000 ~~18,001 – 25,000~~ gallons.....\$7.50 ~~\$5.00~~.
- (C) 20,001 ~~25,001~~ - 40,000 gallons.....\$10.00 ~~\$7.50~~.
- (D) 40,001 - 60,000 gallons.....\$15.00 ~~\$10.00~~.
- (E) 60,001 - 75,000 gallons.....\$20.00 ~~\$15.00~~.
- (F) 75,001 - 100,000 gallons.....\$30.00 ~~\$20.00~~.
- (G) Over 100,000 gallons.....\$35.00 ~~\$30.00~~.

(w) Drought surcharge rates - Commercial:

(1) Stage 1, moderate water shortage conditions - commercial cost per 1,000 gallons:

- (A) 0 - 50,000 gallons.....\$0.00.
- (B) 50,001 - 60,000 gallons.....\$6.00.
- (C) 60,001 - 75,000 gallons.....\$7.00.
- (D) 75,001 - 100,000 gallons...\$10.00.
- (E) Over 100,000 gallons.....\$12.50.

(2) Stage 2, severe water shortage conditions - commercial cost per 1,000 gallons:

- (A) 0 - 40,000 gallons.....\$0.00.
- (B) 40,001 - 60,000 gallons.....\$10.00.
- (E) 60,001 - 75,000 gallons.....\$15.00.
- (F) 75,001 - 100,000 gallons.....\$20.00.
- (G) Over 100,000 gallons.....\$30.00.

(3) Stage 3, critical water shortage conditions - commercial cost per 1,000 gallons:

- (A) 0 - 30,000 gallons.....\$0.00.
- (B) 30,001 - 40,000 gallons.....\$10.00.
- (D) 40,001 - 60,000 gallons.....\$15.00.
- (E) 60,001 - 75,000 gallons.....\$20.00.
- (F) 75,001 - 100,000 gallons.....\$30.00.
- (G) Over 100,000 gallons.....\$35.00.



**CITY COUNCIL CONSENT ITEM**  
**CITY OF FAIR OAKS RANCH, TEXAS**  
**May 18, 2023**

AGENDA TOPIC: Approval of the second reading of an ordinance establishing stop signs on streets within the Setterfeld Estates Subdivision

DATE: May 18, 2023

DEPARTMENT: Police Department

PRESENTED BY: Consent Item - Tim Moring, Chief of Police

**INTRODUCTION/BACKGROUND:**

Our city is a bedroom community which desires to retain that flavor. As a council and staff, we are committed to fulfilling our residents expressed desires to protect our quality of life, provide for public health and safety, and protect existing investment and valued community assets. In April 2021, the city found it to be in the best interest of the citizens who reside within gated (private) communities to enter into an agreement with the city to provide legal means of proactive police patrols and other police services within their respective communities.

Article III, Section 52 and Article XI, Section 3 of Texas Constitution prevent any city from lending credit, granting public money, or making any appropriation or donation to any private entity. In other words, cities may not spend public money for a private purpose and would therefore be prohibited from performing public services in the gated community, such as road maintenance, trash collection, and traffic enforcement. This does not prevent police from answering a community generated call in those gated communities but does prevent police from conducting proactive/preventative patrols to deter crime and enforce traffic laws. Exceptions are placed within the law that allow municipalities to enter into agreements with private communities to allow proactive patrols and traffic enforcement. This agreement may be done with 25% of the property owners in agreement or with the consent the developer and/or managing party in control of the current homeowner's association.

In Mid-2022, the director of community management for Setterfeld Estates Homeowners Association reached out to city staff in reference to complaints from residents regarding safety within the gated neighborhood. The director was provided a copy of the law enforcement agreement drafted by the City Attorney's office and advised on the process of approval by City Council. In October 2022, Mr. Kyle Coldeway, board member for Setterfeld Estates Homeowners Association, submitted a signed law enforcement agreement (attached) to the city with the request that it be presented to City Council for approval.

In January 2023, the City Council approved the City Manager in signing the law enforcement agreement with Setterfeld Estates HOA to provide police services, including traffic enforcement, within the gated community. The updated ordinances attached herein contain the updated information necessary for the proper and legal enforcement of all stop signs within the Setterfeld Estates subdivision.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

Priority 4.1 of the Strategic Action Plan is to Enhance and Ensure Continuity of Police Services. This ordinance preserves quality-of-life characteristics through compliance with state law by ensuring the same services are available to all residents of Fair Oaks Ranch and by ensuring legal means of enforcement are adopted by governing body to preserve those quality-of-life characteristics.

**LONG-TERM FINANCIAL & BUDGETARY IMPACT:**

None at this time.

**LEGAL ANALYSIS:**

Reviewed and approved by City Attorney's office.

**RECOMMENDATION/PROPOSED MOTION:**

Consent Item - I move to approve the second reading of an Ordinance establishing stop signs within the Setterfeld Estates Subdivision.

## AN ORDINANCE

**AN ORDINANCE OF THE CITY OF FAIR OAKS RANCH, TEXAS ESTABLISHING STOP SIGNS WITHIN THE SETTERFELD ESTATES SUBDIVISION, FAIR OAKS RANCH, COMAL COUNTY, TEXAS; PRESCRIBING FOR A PENALTY OF NOT LESS THAN \$25 NOR MORE THAN \$500; PROVIDING FOR REPEALING AND A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF**

**WHEREAS**, on November 17, 2022, the City Council for the City of Fair Oaks Ranch approved a Law Enforcement Agreement with the Setterfeld Estates Homeowner's Association for the enforcement of traffic rules and laws related to operation of motor vehicles on public thoroughfares of the City to apply to the Private Streets in Setterfeld Estates; and

**WHEREAS**, the City of Fair Oaks Ranch is authorized by Title 7, Subchapter C of the Texas Transportation Code to establish and regulate compliance with rules governing the use of public thoroughfares; and

**WHEREAS**, the City Council finds it is in the best interest of the health, safety, and welfare of the City to provide for additional stop signs as authorized by and consistent with Texas law and pursuant to the Law Enforcement Agreement.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:**

Section 1: For the safety and well-being of the citizens of Fair Oaks Ranch, the following full stop – stop sign street locations are designated in addition to those previously approved:

<b><u>THROUGH STREET</u></b>	<b><u>STOP SIGN STREET/LOCATION</u></b>
Setterfeld Circle	Honeycomb Rock
Setterfeld Circle	Wild Coyote Lane
Setterfeld Circle	Saur Legacy Drive
Setterfeld Circle	Agarita Mist

SECTION 2: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 3: Violation. It shall be unlawful to operate a vehicle without bringing the vehicle to a full and complete stop before proceeding. All vehicles shall remain stopped until the intersection is free and clear of all oncoming vehicles which might constitute a hazard to life or property under the condition then and there existing.

SECTION 4: Severability. Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Fair Oaks Ranch hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.



SECTION 5: Repealer. This ordinance shall be cumulative of all other ordinances of the City of Fair Oaks Ranch, and this ordinance shall not operate to repeal or affect any other ordinances of the City of Fair Oaks Ranch except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, are hereby repealed.

SECTION 6: Penalty Provision. Any violation of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum of not less than \$25 nor more than \$500. The sign designated in this Ordinance shall become property of the City and penalty for removing or having in possession any signs designated as property of the City shall be punishable by a fine not less than \$25 nor more than \$500. The City of Fair Oaks Ranch retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 7: Effective Date. This Ordinance shall be effective upon its passage, approval, and publication as required by law.

**PASSED AND APPROVED** on the first reading this 20<sup>th</sup> day of April, 2023.

**PASSED, APPROVED, AND ADOPTED** on the second reading this 18<sup>th</sup> day of May, 2023.

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Gregory C. Maxton, Mayor

ATTEST:

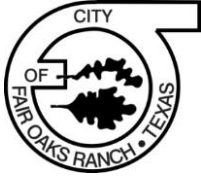
APPROVED AS TO FORM:

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Christina Picioccio, TRMC, City Secretary

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



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**CITY COUNCIL CONSENT ITEM**  
**CITY OF FAIR OAKS RANCH, TEXAS**  
**May 18, 2023**

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AGENDA TOPIC: Approval of Mayor Maxton's absence from the May 4, 2023, Regular City Council meeting

DATE: May 18, 2023

DEPARTMENT: City Council

PRESENTED BY: Consent Item – Gregory C. Maxton, Mayor

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**INTRODUCTION/BACKGROUND:**

Mayor Maxton requests approval from missing the May 4, 2023, Regular Council meeting due to medical reasons.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

Complies with Section 3.09 of the Home Rule Charter.

**LONG-TERM FINANCIAL & BUDGETARY IMPACT:**

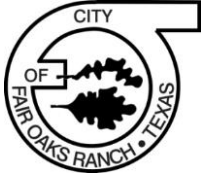
N/A

**LEGAL ANALYSIS:**

N/A

**RECOMMENDATION/PROPOSED MOTION:**

Consent Item – I move to approve Mayor Maxton's absence from the May 4, 2023, Regular City Council meeting.



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**CITY COUNCIL CONSENT ITEM**  
**CITY OF FAIR OAKS RANCH, TEXAS**  
**May 18, 2023**

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AGENDA TOPIC: Approval of Council Member Elizondo's absence from the May 4, 2023, Regular City Council meeting

DATE: May 18, 2023

DEPARTMENT: City Council

PRESENTED BY: Consent Item – Gregory C. Maxton, Mayor

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**INTRODUCTION/BACKGROUND:**

Council Member Elizondo requests approval from missing the May 4, 2023, Regular Council meeting due to a scheduling conflict.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

Complies with Section 3.09 of the Home Rule Charter.

**LONG-TERM FINANCIAL & BUDGETARY IMPACT:**

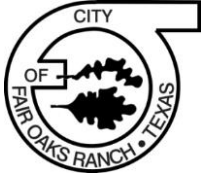
N/A

**LEGAL ANALYSIS:**

N/A

**RECOMMENDATION/PROPOSED MOTION:**

Consent Item – I move to approve Council Member Elizondo's absence from the May 4, 2023, Regular City Council meeting.



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**CITY COUNCIL CONSENT ITEM**  
**CITY OF FAIR OAKS RANCH, TEXAS**  
**May 18, 2023**

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AGENDA TOPIC: Approval of Council Member Stroup's absence from the May 18, 2023, Regular City Council meeting

DATE: May 18, 2023

DEPARTMENT: City Council

PRESENTED BY: Consent Item – Gregory C. Maxton, Mayor

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**INTRODUCTION/BACKGROUND:**

Council Member Stroup requests approval from missing the May 18, 2023, Regular Council meeting due to family obligations.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

Complies with Section 3.09 of the Home Rule Charter.

**LONG-TERM FINANCIAL & BUDGETARY IMPACT:**

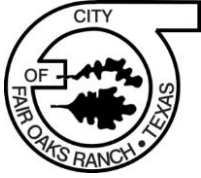
N/A

**LEGAL ANALYSIS:**

N/A

**RECOMMENDATION/PROPOSED MOTION:**

Consent Item – I move to approve Council Member Stroup's absence from the May 18, 2023, Regular City Council meeting.



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**CITY COUNCIL CONSENT ITEM**  
**CITY OF FAIR OAKS RANCH, TEXAS**  
**May 18, 2023**

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AGENDA TOPIC: Approval of Council Member Rhoden's absence from the June 1, 2023 and June 15, 2023, Regular City Council meetings

DATE: May 18, 2023

DEPARTMENT: City Council

PRESENTED BY: Consent Item – Keith Rhoden, City Council Member, Place 2

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**INTRODUCTION/BACKGROUND:**

Council Member Rhoden requests approval from missing the June 1, 2023 and June 15, 2023 Regular Council meetings due to personal reasons.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

Complies with Section 3.09 of the Home Rule Charter.

**LONG-TERM FINANCIAL & BUDGETARY IMPACT:**

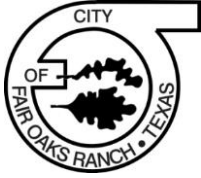
N/A

**LEGAL ANALYSIS:**

N/A

**RECOMMENDATION/PROPOSED MOTION:**

Consent Item – I move to approve Council Member Rhoden's absence from the June 1, 2023 and June 15, 2023 Regular City Council meetings.



**CITY COUNCIL CONSIDERATION ITEM**  
**CITY OF FAIR OAKS RANCH, TEXAS**  
**May 18, 2023**

AGENDA TOPIC: Consideration and possible action electing a Council Member to serve as Mayor Pro Tem at the first regular City Council meeting following each regular City election

DATE: May 18, 2023

DEPARTMENT: City Council

PRESENTED BY: Gregory C. Maxton, Mayor

**INTRODUCTION/BACKGROUND:**

Section 3.05 – Mayor Pro Tem., of the Home Rule Charter states the following:

- A. The Mayor Pro Tem shall be a Council Member elected by the City Council at the first regular City Council meeting following each regular City election.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

The Mayor Pro Tem shall act as Mayor during the absence or disability of the Mayor.

**LONGTERM FINANCIAL & BUDGETARY IMPACT:**

N/A

**LEGAL ANALYSIS:**

N/A

**RECOMMENDATION/PROPOSED MOTION:**

I move to elect (insert council member name here) as Mayor Pro Tem.



**CITY COUNCIL CONSIDERATION ITEM**  
**CITY OF FAIR OAKS RANCH, TEXAS**  
**May 18, 2023**

AGENDA TOPIC: Consideration and possible action authorizing the City Manager to execute a construction agreement for Enchanted Park cul-de-sac reconstruction

DATE: May 18, 2023

DEPARTMENT: Finance

PRESENTED BY: Clayton Hoelscher, Procurement Manager  
 Julio Colunga, Assistant Director of Public Works

**INTRODUCTION/BACKGROUND:**

The City initially budgeted \$1,000,000 for various street maintenance projects this fiscal year. After sending approximately \$77,000 to TxDOT for the City's cost-share of the FM3351 Cibolo Creek Bridge project, approximately \$923,000 remained. Two components comprised this fiscal year's projects:

- Micro-surfacing, fog seal and asphalt rejuvenation
- Reconstruction of the Enchanted Park cul-de-sac

At the City Council Meeting on April 20, 2023, three agreements were approved totaling \$817,047.03 for the micro-surfacing, fog seal and asphalt rejuvenator component.

This agenda item is for the Enchanted Park cul-de-sac reconstruction component (approx. 483 square yards). To support this effort, the City advertised an Invitation for Bids on April 17, 2023. Bids were received on May 8, 2023. Bueno Pro Services, LLC was the lowest responsible bidder for this project. The following bids were received:

<b>Bidder</b>	<b>Amount</b>
Bueno Pro Services, LLC.	\$51,017.57
Four B Paving, Inc.	\$62,444.00
Pavecon Ltd.	\$77,849.94
Aetos Construction, LLC	\$103,585.00

After reviewing the bids and contacting references, Bueno Pro Services, LLC. was determined to be the lowest responsible bidder for this project.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

- Supports Priority 3.4 of the Strategic Action Plan to Enhance and Ensure Continuity of Reliable Roadway Improvement Indicatives.
- Complies with Competitive Procurement Requirements.

**LONGTERM FINANCIAL & BUDGETARY IMPACT:**

The City budgeted \$1,000,000 under Street Maintenance (01-642-254) for this year's Street Maintenance and Repair Program of which approximately \$923,000 remained as of April 2023. At the City Council Meeting on April 20, 2023, three agreements were approved totaling \$817,047.03 for the micro-surfacing, fog seal and asphalt rejuvenator components of the program. This agreement for \$51,017.57 with a 5% contingency in the amount of \$2,550.88 covers the reconstruction component of the program.

The remaining amount of \$52,384.52 will cover stripings/markings, raised pavement markers (RPMs), and signage replacement.

**LEGAL ANALYSIS:**

The Contractor will be required to sign and adhere to the City's Standard Construction Agreement prior to the commencement of work.

**RECOMMENDATION/PROPOSED MOTION:**

I move to authorize the City Manager to sign a Construction Agreement with Bueno Pro Services, LLC. for \$51,017.57 with a 5% contingency in the amount of \$2,550.88, for a total value not to exceed \$53,568.45.



**CITY OF FAIR OAKS RANCH**  
**CONSTRUCTION AGREEMENT**

THE STATE OF TEXAS   §  
                                      §  
 KENDALL COUNTY       §

This Construction Agreement ("Agreement") is made and entered by and between the City of Fair Oaks Ranch, Texas, (the "City") a Texas municipality, and Bueno Pro Services, LLC. ("Contractor").

**Section 1. Duration.** This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

**Section 2. Scope of Work.**

(A) Contractor shall perform the Work as more particularly described in the Scope of Work attached hereto as Exhibit "A". The work as described in the Scope of Work constitutes the "Project".

(B) The Quality of Work provided under this Agreement shall be of the level of quality performed by Contractors regularly rendering this type of service.

(C) The Contractor shall perform its Work for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent Contractor or when it has actual notice of any defects in the reports and surveys.

**Section 3. Compensation.**

(A) The Contractor shall be paid in the manner set forth in Exhibit "A" and as provided herein.

(B) *Billing Period:* The Contractor may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the "Prompt Payment Act"), payment is due within thirty (30) days of the City's receipt of the Contractor's invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be included in the scope of Work (Exhibit A) and accounted for in the total contract amount.

#### **Section 4. Time of Completion.**

The prompt completion of the Work under the Scope of Work relates is critical to the City. Unnecessary delays in providing Work under a Scope of Work shall be grounds for dismissal of the Contractor and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Contractor prior to the time of termination. The Project shall be completed for inspection and acceptance by the City on or before September 30<sup>th</sup>, 2023.

#### **Section 5. Insurance.**

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for below throughout the term of the Project plus an additional two years. Contractor shall provide evidence of such insurance to the City. Such documentation shall meet the requirements noted in Exhibit B.

Contractor shall maintain the following limits and types of insurance:

**Workers Compensation Insurance:** Contractor shall carry and maintain during the term of this Agreement, workers compensation and employers' liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

**General Liability Insurance:** Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

**Automobile Liability Insurance:** Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

**Subcontractor:** In the case of any work sublet, the Contractor shall require subcontractor and independent contractors working under the direction of either the Contractor or a

subcontractor to carry and maintain the same workers compensation and liability insurance required of the Contractor.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Evidence of such insurance shall be attached as Exhibit "C".

## **Section 6. Miscellaneous Provisions.**

(A) *Subletting.* The Contractor shall not sublet or transfer any portion of the work under this Agreement, or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Contractor of any responsibility for work done by such subcontractor.

(B) *Compliance with Laws.* The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish the City with satisfactory proof of compliance.

(C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.

(D) *Non-Collusion.* Contractor represents and warrants that Contractor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.

(E) *Force Majeure*. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(F) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Work, this Agreement shall govern. The Scope of Work is intended to detail the technical scope of Work, fee schedule, and contract time only and shall not dictate Agreement terms.

## **Section 7. Termination.**

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Contractor and City;
- (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
- (3) By the City, immediately upon notice in writing to the Contractor, as consequence of the failure of Contractor to perform the Work contemplated by this Agreement in a timely or satisfactory manner;
- (4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Contractor.

(B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Contractor to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed

at time of termination. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

**Section 8. Indemnification.** Contractor agrees to indemnify and hold the City of Fair Oaks Ranch, Texas and all of its present, future and former agents, employees, officials and representatives harmless in their official, individual and representative capacities from any and all claims, demands, causes of action, judgments, liens and expenses (including attorney's fees, whether contractual or statutory), costs and damages (whether common law or statutory), costs and damages (whether common law or statutory, and whether actual, punitive, consequential or incidental), of any conceivable character, for injuries to persons (including death) or to property (both real and personal) created by, arising from or in any manner relating to the Work or goods performed or provided by Contractor – expressly including those arising through strict liability or under the constitutions of the United States.

**Section 9. Notices.** Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

**Section 10. No Assignment.** Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

**Section 11. Severability.** If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

**Section 12. Waiver.** Either City or the Contractor shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

**Section 13. Governing Law; Venue.** This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Kendall County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Kendall County, Texas.

**Section 14. Paragraph Headings; Construction.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

**Section 15. Binding Effect.** Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

**Section 16. Gender.** Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

**Section 17. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**Section 18. Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

**Section 19. Entire Agreement.** It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

**Section 20. Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

**Section 21. Right To Audit.** City shall have the right to examine and audit the books and records of Contractor with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained

in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

**22. Dispute Resolution.** In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

**23. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire.** Contractor represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

**24. Boycott Israel.** The City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas government code chapter 2270) by entering this agreement, Professional verifies that it does not Boycott Israel, and agrees that during the term of the agreement will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

**25. Energy Company Boycotts.** Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify City.

**26. Firearm Entities and Trade Association Discrimination.** Contractor verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify City.

**27. Sales Tax.** The City qualifies as an exempt agency under the Texas Limited Sales, Excise and Use Tax Act (the "Tax Act") and is not subject to any State or City sales taxes on materials incorporated into the project. Labor used in the performance of this contract is also not subject to State or City sales taxes. The City will provide an exemption certificate to the Contractor. The Contractor must have a sales tax permit issued by the Comptroller of Public Accounts and shall issue a resale certificate complying with the Tax Act, as amended, when purchasing said materials. The Contractor is responsible for any sales taxes applicable to equipment purchases, rentals, leases, consumable supplies which are not incorporated into the services to be provided under this Contract, tangible personal property purchased for use in the performance of this Contract and not completely consumed, or other taxable services used to perform this Contract, or other taxes required by law in connection with this Contract.

**28. Compliance with Laws, Charter, Ordinances.** Contractor, its agents, employees and subcontractors must comply with all applicable federal and state laws, the ordinances of the City of Fair Oaks Ranch, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Contractor must obtain all necessary permits, bonds and licenses that are required in completing the work contracted for in this agreement.



**EXECUTED** on \_\_\_\_\_.

**CITY:**

**CONTRACTOR:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Scott Huizenga

Name: \_\_\_\_\_

Title: Interim City Manager

Title: \_\_\_\_\_

**ADDRESS FOR NOTICE:**

**CITY**

**CONTRACTOR**

City of Fair Oaks Ranch  
Attn: Scott Huizenga  
7286 Dietz Elkhorn  
Fair Oaks Ranch, TX 78015

Bueno Pro Services, LLC  
Attn: M. Dylan Bueno  
521 Pecan Farms  
New Braunfels, TX 78130

**Exhibit “A”**  
**SCOPE OF SERVICES**

## Exhibit "B"

### REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Fair Oaks Ranch accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

### INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

1. The City of Fair Oaks Ranch shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Fair Oaks Ranch shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
3. All insurance policies shall be endorsed to the effect that The City of Fair Oaks Ranch will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Fair Oaks Ranch as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Fair Oaks Ranch of any material change in the insurance coverage.
7. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Fair Oaks Ranch.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions

- representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Contractor shall furnish The City of Fair Oaks Ranch with certified copies of all insurance policies.
  14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Fair Oaks Ranch within ten (10) business days after contract award and prior to starting any work by the successful Contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Fair Oaks Ranch, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Fair Oaks Ranch. The certificate of insurance and endorsements shall be sent to:

**City of Fair Oaks Ranch**  
**Attn: Clayton Hoelscher, Procurement Manager**  
**Email: choelscher@fairoaksranchtx.org**  
**7286 Dietz Elkhorn**  
**Fair Oaks Ranch, Texas 78015**

**Exhibit “C”**  
**EVIDENCE OF INSURANCE**

**\*WILL BE OBTAINED PRIOR TO CONTRACT EXECUTION**



## CITY COUNCIL CONSIDERATION ITEM

### CITY OF FAIR OAKS RANCH, TEXAS

May 18, 2023

**AGENDA TOPIC:** Consideration and possible action establishing the City's co-sponsorship of a 4<sup>th</sup> of July Parade with the Fair Oaks Ranch Homeowners' Association; and approving a resolution declaring the parade a public purpose, authorizing street closures for the event, and authorizing the City Manager to execute a Memorandum of Understanding with FORHA

**MEETING DATE:** May 18, 2023

**DEPARTMENT:** Administration

**PRESENTED BY:** Carole Vanzant, Asst City Manager, Public Works and Community Services

### **PURPOSE**

The purpose of this agenda item is to seek the City Council's authorization to co-sponsor a Golf Cart/ATV Parade on July 4, 2023, with the Fair Oaks Ranch Homeowners' Association. The purpose of the proposed parade is to provide an additional community event honoring our Nation's Birthday.

### **INTRODUCTION/BACKGROUND**

In 2008 and 2018, as part of city celebrations, the City, in collaboration with FORHA, held well-attended, successful parades. FORHA has proposed a patriotic golf cart/ATV parade as part of this year's 4<sup>th</sup> of July celebration. A parade provides our citizens an additional opportunity to participate in a community event during the daytime prior to the evening's fireworks and laser show. Additionally, the event provides an opportunity to further a cooperative relationship between the City and FORHA.

The Texas Transportation Code grants the City authority to control and regulate our streets. If the City Council co-sponsors the proposed FORHA parade, a city resolution declaring the parade serves a public purpose is needed to authorize the following:

1. Closure of city streets during the appropriate times (map of proposed parade route will be shown the night of the City Council meeting).
2. Assignment of appropriate staffing to ensure adequate public safety services.
3. Execution of a Memorandum of Understanding (MOU) between the City and FORHA designating responsibilities of each relative to:
  - Establishment of Parade Time and Route
  - Participant Registration
  - Event Communications
  - Requirement of personnel, various signage, safety equipment, etc.

**LONGTERM FINANCIAL & BUDGETARY IMPACT:**

Budgetary impact for the parade includes the cost of personnel and safety equipment:

- Fifteen positions in the Police Department and four positions in the Public Works Department for approximately five hours during the event.
- Rental of street barricades for the event at an estimated cost of \$2,500.

These costs will not require a budget amendment.

**LEGAL ANALYSIS:**

The City Attorney approved the resolution as to form. The Attorney will review the MOU prior to execution.

**PROPOSED MOTION:**

I move to authorize the City's co-sponsorship of a July 4<sup>th</sup>, 2023, Parade with the Fair Oaks Ranch Homeowners' Association, and to approve a resolution declaring the parade a public purpose, authorizing street closures for the event, and authorizing the City Manager to execute a Memorandum of Understanding with FORHA.

## A RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH DECLARING THE JULY 4, 2023, PARADE A PUBLIC PURPOSE; AUTHORIZING CITY STREET CLOSURES FOR THE EVENT; AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE FAIR OAKS RANCH HOMEOWNERS' ASSOCIATION; PROVIDING REPEAL AND SEVERABILITY CLAUSES; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, the City of Fair Oaks Ranch, Texas is a Municipality created in accordance with the provisions of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas and its Home Rule Authority; and

**WHEREAS**, the Texas Transportation Code grants the City authority to control and regulate the streets within the City; and,

**WHEREAS**, the Fair Oaks Ranch Homeowners' Association asks the City's consideration to be a co-sponsor for a 4<sup>th</sup> of July Golf Cart/ATV Parade; and,

**WHEREAS**, it is the desire of the City Council of the City of Fair Oaks Ranch, in the interest of the public, to co-sponsor a 4<sup>th</sup> of July Parade as a community event.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS THAT:**

- Section 1.** The foregoing recitals are adopted and incorporated herein for all purposes.
- Section 2.** The City of Fair Oaks Ranch agrees to co-sponsor a July 4, 2023 Golf Cart/ATV Parade with the Fair Oaks Ranch Homeowners' Association.
- Section 3.** The Parade is declared a public purpose.
- Section 4.** The Fair Oaks Ranch Police Department is authorized to close required city streets during appropriate times.
- Section 5.** The City Manager is authorized to assign appropriate staffing to ensure adequate public safety services.
- Section 6.** The City Manager is authorized to execute a Memorandum of Understanding with the Fair Oaks Ranch Homeowners' Association designating responsibilities of each party and other pertinent information.
- Section 7.** All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.
- Section 8.** If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless



be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

**Section 9.** It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

**Section 10.** This Resolution is effective upon its passage and approval.

**PASSED, APPROVED, and ADOPTED on the 18th day of May, 2023.**

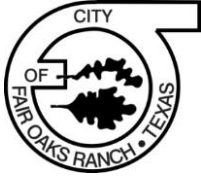
\_\_\_\_\_  
Gregory C. Maxton, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Christina Picioccio, TRMC, City Secretary

\_\_\_\_\_  
Denton Navarro Rocha Bernal & Zech, P.C.,  
City Attorney



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**CITY COUNCIL CONSIDERATION ITEM**  
**CITY OF FAIR OAKS RANCH, TEXAS**  
**May 18, 2023**

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AGENDA TOPIC:      Consideration and possible action regarding requirements or expenditures associated with the Local Disaster

DATE:                      May 18, 2023

DEPARTMENT:        Administration

PRESENTED BY:        Gregory C. Maxton, Mayor

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**INTRODUCTION/BACKGROUND:**

This is a standing agenda item to discuss or consider items related to the current Local Disaster.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

Routinely presenting this agenda item will allow for timely decisions by City Council. This benefits residents by expediting the removal of the debris, potentially lowering overall costs, minimizing health and safety issues, and reviewing the approved local disaster declaration as needed.

**LONG-TERM FINANCIAL & BUDGETARY IMPACT:**

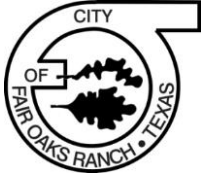
TBD

**LEGAL ANALYSIS:**

N/A

**RECOMMENDATION/PROPOSED MOTION:**

As determined:



**CITY COUNCIL WORKSHOP**  
**CITY OF FAIR OAKS RANCH, TEXAS**  
**May 18, 2023**

AGENDA TOPIC: Wastewater and Emergency Response/Disaster Recovery Town Hall Recap  
 DATE: May 18, 2023  
 DEPARTMENT: City Council  
 PRESENTED BY: Gregory C. Maxton, Mayor

**INTRODUCTION/BACKGROUND:**

City Council will lead a workshop to discuss findings from the April 18, 2023, Town Hall meeting.

**POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:**

- Provides an opportunity to hear and articulate the diverse perspectives that represent our community.
- Provides an opportunity to consult with the citizenry to establish citizen driven initiatives.
- Provides an opportunity to articulate City Council expectations, maximize opportunities for success, and engagement through a value-add stakeholder process.

**LONG-TERM FINANCIAL & BUDGETARY IMPACT:**

TBD

**LEGAL ANALYSIS:**

NA

**RECOMMENDATION/PROPOSED MOTION:**

Provide insight and direction to staff.

## Wastewater Treatment Plant Expansion and Disaster Response Town Hall Feedback Summary

### Townhall Format

- Overall, feedback on the format of the town hall was positive.
- Residents particularly enjoyed the opportunity to learn more about the expansion of the wastewater treatment plant.
- Residents felt the information presented was of value and want more Town Halls in the future.
- Residents thought the breakout stations were the most informative part of the town hall.
- Some feedback indicated that having to signup beforehand made residents hesitant to speak.

### Recommendations from Attendees

- Feedback showed there was interest in learning how the expansion of the treatment plant would be funded.
- Other attendees showed interest in the environmental impact of the treatment plant, particularly if the waste from the plant would be recycled.
- There was great interest in continuing the Town Halls. Attendees offered the suggestion of street maintenance as the next topic.

### Communication Channels

- The most common way many heard of the Town Hall was through the City website and social media.
- Second most common were the electronic signs.

### Wastewater Treatment Plant Expansion

The meeting discussed the expansion of the wastewater treatment plant (WWTP). Residents in attendance had various concerns, including odors from the bar screen, where the growth in wastewater was coming from, and how the expansion would be paid for. The primary source of growth was identified as the undeveloped east and northeast parts of the city. The preliminary estimates for the bill impact of the expansion were presented, and residents seemed supportive. The reduction in truck traffic was also discussed with the implementation of the sludge press as part of an ongoing project. The expansion will occur in two phases, with Phase 1 addressing immediate needs and Phase 2 addressing future needs depending on the growth of the City's system. Residents in attendance supported improving the existing facility over constructing a greenfield facility, citing the high cost and reduced control over wastewater treatment. The treated water storage at the Golf Course was also discussed, with the understanding that discussions would occur between the city and the Golf Course regarding improvements.

## **Wastewater Treatment Plant Operation**

A resident asked the same question about odors from the bar screen as in a previous meeting. It was confirmed that all stations would continue to operate normally during the planned upgrade construction, and bypassing stations was possible, if necessary. The partnership between the WWTP and the Golf Course, where the effluent is used for irrigation, was discussed. It was noted that the Golf Course currently pays nothing, but both parties benefit from the arrangement. The destination of the sludge was also discussed, with wet sludge being hauled by Southwaste to a treatment plant in San Antonio. There were general questions about the wastewater treatment process and interest in learning more about the water utility.

## **Disaster Response**

One resident expressed disagreement with the City picking up brush, but it was clarified that all residents were offered the same opportunity. Another resident asked if the City had plans to mitigate downed trees and if a list of more resistant trees could be provided. It was explained that residents are responsible for removing downed trees on their private property, and the City has a tree list in the UDC for reference.

A few residents asked for further explanation of the water system issues and the conservation notice issued. It was explained that the power outage resulted in the GBRA plant and all city's water wells shutting down, leading to low water levels and the need for a conservation notice. The City is exploring ways to make the system more resilient, such as installing generators or an elevated storage tank. Finally, residents expressed appreciation for the field staff's work during the winter storms.

## **Overall**

Overall, the second Town Hall appeared to be very well received with an average overall rating of 4.57/5. Survey responses were limited but most attendees indicated the town hall was informative and the topic was important. Based on limited survey feedback, future town halls may benefit from a mention that signup to speak may not be necessary for those with comments or by moving the resident comment portion to later in the town hall.

# BOARDS & COMMISSION SCHEDULE

E-mail Incumbents	June 2, 2023
Post Open Positions on Website	June 2, 2023
Start Social Media Push	June 2, 2023
Status Update to Council	July 20, 2023
Application Deadline	Aug 9, 2023
Agenda Item for Council (Council to determine how to fill positions)	Aug 17, 2023
Interviews (if necessary)*	Aug 21 – Sept 13, 2023
Appointment Selection	Sept 21, 2023
Orientation – Training Session	Sept 26 – Sept 29, 2023
Term Starts	Oct 1, 2023