

AN ORDINANCE # 1997-06
ADOPTING RULES OF CITY OF INGLESIDE ON THE BAY, TEXAS
FOR ON-SITE SEWAGE FACILITIES AND PROVIDING FOR PENALTIES
PREAMBLE

WHEREAS, the Texas Natural Resource Conservation Commission has established Design Criteria for On-site Sewage Facilities to provide the citizens of this State with adequate public health protection and a minimum of environmental pollution; and

WHEREAS, the Legislature has enacted legislation, codified as Texas Health and Safety Code, Chapter 366, which authorizes a local government to regulate the use of on-site sewage disposal facilities in its jurisdiction in order to abate or prevent pollution or injury to public health arising out of the use of On-site Sewage Facilities; and

WHEREAS, due notice was given of a meeting and public hearing to determine whether the City of Ingleside on the Bay, Texas, should enact an order controlling or prohibiting the installation or use of On-site Sewage Facilities in the City of Ingleside on the Bay, Texas; and

WHEREAS, said meeting and public hearing were held in accordance with the notice thereof and the evidence and arguments there presented were considered by the City of Ingleside on the Bay, Texas; and

WHEREAS, the City of Ingleside on the Bay, Texas, finds that the use of On-site Sewage Facilities in City of Ingleside on the Bay, Texas, is causing or may cause pollution and is injuring or may injure the public health; and

WHEREAS, the City of Ingleside on the Bay, Texas, has considered the matter and deems it appropriate to enact an Order adopting Rules regulating On-site Sewage Facilities to abate or prevent pollution or injury to public health in City of Ingleside on the Bay, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF INGLESIDE ON THE BAY, TEXAS:

SECTION 1.

THAT the matters and facts recited in the preamble hereof are hereby adopted and found and determined to be true and correct.

SECTION 2.

THAT the use of On-site Sewage Facilities in City of Ingleside on the Bay, Texas, is causing or may cause pollution or is injuring or may injure the public health.

SECTION 3.

THAT this Ordinance for City of Ingleside on the Bay, Texas, be adopted and entitled "On-site Sewage Disposal." which shall read as follows:

AN ORDINANCE ENTITLED ON-SITE SEWAGE DISPOSAL

SECTION 4. CONFLICTS.

All ordinances or parts of the Ordinances of City of Ingleside on the Bay, Texas, not consistent with or in conflict with the provisions of this Ordinance are hereby repealed. In the event of conflict between this Ordinance and State Law, Rule or Regulation, the State Law, Rule or Regulation shall prevail.

SECTION 5. ADOPTING CHAPTER 366.

The City of Ingleside on the Bay, Texas, clearly understands the technical criteria, legal requirements, and administrative procedures and duties associated with regulating On-site Sewage Facilities and does adopt and will fully enforce Chapter 366 of the Texas Health and Safety Code.

SECTION 6. AREA OF JURISDICTION.

The Rules adopted by this Ordinance shall apply to all the incorporated area lying in city of Ingleside on the Bay, Texas.

SECTION 7. ON-SITE SEWAGE FACILITY RULES.

Any structure discharging sewage into an On-site Sewage Facility within the jurisdictional area of City of Ingleside on the Bay, Texas, must comply with the Rules adopted in Section 8 of this ordinance.

SECTION 8. ON-SITE SEWAGE FACILITY RULES ADOPTED.

The Rules ("Design criteria for On-site Sewage Facilities" and Administrative Rules 30 TAC Chapter 285 including Section 285.1 – 285.91 attached hereto, promulgated by the Texas Natural Resource conservation Commission for on-site sewage systems are here by adopted and all officials and employees of City of Ingleside on the Bay, Texas, having duties under said Rules are authorized to perform such duties as are required of them under said Rules.

SECTION 9. INCORPORATED BY REFERENCE.

The Design Criteria and all future amendments and revisions thereto are incorporated by reference and are thus made a part of these Rules. A copy of the current Design criteria is attached to these Rules as Appendix I.

SECTION 10. DUTIES AND POWERS.

The OSSF Inspector is herewith declared the Designated Representative for the enforcement of these Rules within its jurisdictional area. The City Council shall delegate its enforcement who shall serve as the On-site Sewage Facility Inspector and act as Designated Representative. The appointed individual(s) must be approved and certified by the Texas Natural Resource Conservation Commission before assuming the duties and responsibilities of the Designated Representative of the City. The Designated Representative shall have the following duties and concomitant powers:

- a) To resolve any question regarding any interpretation of these Rules or the Design Criteria.
- b) To enforce these Rules and to make appropriate recommendations to proper city official

- when instances of noncompliance with these Rules have been determined.
- c) To make statutorily mandated inspections of proposed, new, and existing On-site Sewage Facilities.
 - d) To collect fees set by the authorized agent as necessary to recover the reasonable costs incurred in meeting the requirements of these Rules.
 - e) To make semi-annual reports to the authorized agent on all actions, including legal actions, taken concerning these Rules.
 - f) To investigate nuisance complaints within 21 days of receipt. All validated complaints shall be resolved or substantial progress made toward resolution by the responsible individual within 30 days.
 - g) To perform all other duties necessary to meet the requirements of these Rules.

SECTION 11. COLLECTION OF FEES.

All fees collected for permits and/or inspections shall be made payable to City of Ingleside on the Bay, Texas.

SECTION 12. APPEALS.

Persons aggrieved by an action or decision of the Designated Representative may appeal such action or decision to the City Council of the City of Ingleside on the Bay.

SECTION 13. ENFORCEMENT.

The Designated Representative may routinely inspect On-site Sewage Facilities to assure continued compliance with these Rules.

The Designated Representative shall inspect any on-site system that is believed to be causing pollution, a threat to the public health, nuisance conditions, or is illegally installed or altered. If, upon inspection, it is found that any of these conditions exist, the owner of the On-site Sewage Facility will be notified in writing of the violation and advised of what must be done to achieve compliance. A reasonable amount of time will be set in which to comply. The On-site Sewage Facility shall be reinspected at the expiration of the allotted time.

- a) If the Facility is found to be compliant, a license may be issued or the existing license may be modified.
- b) If the Facility is found to be noncompliant, appropriate enforcement shall be taken.

SECTION 14. PENALTIES.

The City of Ingleside on the Bay, Texas, adopts and incorporates all applicable penalty provisions and enforcement actions related to on site sewage facilities which include, but are not limited to, those found in Chapters 341, 342 and 366, Texas Health and Safety Code; Chapter 26, Texas Water Code; and 30 TAC Chapter 285 and/or any other such penalties that may be provided by State Law. Each day of a continuing violation is a separate offense.

SECTION 15. CRIMINAL PENALTIES. (Section 366.091, Texas Health and Safety Code)

- a) A person commits an offense if a person operates as an installer unless the person is registered by the State.

- b) A person commits an offense if the person violates a rule adopted by this Ordinance, the Commission under this Ordinance or Section 366.091, Health & Safety Code, or an order or resolution adopted by an authorized agent under Subchapter C in a city that is contiguous to an international border.
- c) A person commits an offense if the person begins to construct, alter, extend, or repair an On-site Sewage Facility owned by another person before the owner of the system obtains a permit to install, construct, alter, extend, or repair the on-site system as required.
- d) An emergency repair to an On-site Sewage Facility without a permit is not an offense under these Rules if:
 - 1) The repair is made for the purpose of abatement of an immediate health hazard;
 - 2) That said repair does meet minimum State Design Criteria or the more stringent Design Criteria of the authorized agent;
 - 3) That said repair does not constitute an alteration of the on-site system;
 - 4) That written notification of such repair, including a detailed description of the method and materials used in said repair is made to the authorized agent no later than 72 hours after the repair has begun;
 - 5) That said repair must be inspected for compliance with the State's, or authorized agent's, Design Criteria.
- e) An offense under this section is a Class C misdemeanor unless it is shown in the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is punishable by:
 - 1) A fine of not less than \$125 nor more than \$500.00;
 - 2) Confinement in jail for not more than one month; or
 - 3) Both the fine and confinement.
- f) Each day that a violation occurs constitutes a separate offense.

SECTION 16. INJUNCTION OR CIVIL SUIT (Section 366.092, Texas Health and Safety Code)

- a) If it appears that a person has violated, is violating, or is threatening to violate any provision of this Ordinance, Texas Health and Safety Code, or any rule, permit, or other order of this City or the Commission issued pursuant to Chapter 366, Texas Health and Safety Code, the Commission, in partnership with the authorized agent, or the Commission independently, may request the Attorney General to bring a civil suit for:
 - 1) Mandatory or prohibitory injunctive relief, as warranted by the facts;
 - 2) A civil penalty as provided by Chapter 366, Texas Health and Safety Code; or
 - 3) Both injunctive relief and civil penalty.
- b) Venue for an action under Chapter 366, Texas Health and Safety Code, is in Travis County District Court, the city in which the defendant resides, or in the city in which the violation occurred.

SECTION 17. CIVIL PENALTY (Section 366.0921)

- a) The authorized agent may request that the Commission initiate an enforcement action pursuant to these sections through a petition filed with the Commission.
 - 1) An owner who violates any provision of this Ordinance or Chapter 366, Texas and Health Safety Code, or any rule, permit, or order issued pursuant to Chapter 366,

Texas Health and Safety Code, is subject to a civil penalty of not less than \$100 nor more than \$500 for each act of violation and for each day of violation.

- 2) Any other person who violates any provision of Chapter 366, Texas Health and Safety Code, or any rule, permit, or order issued pursuant to Chapter 366, Texas Health and Safety Code, is subject to a civil penalty of not less than \$500 nor more than \$5,000 for each act of violation and for each day of violation.
- b) The civil penalties recovered shall be divided between the authorized agent and the State, based on the proportion of resources expended by each entity in the court of the enforcement action.

SECTION 18. CHAPTER 341 (SUBCHAPTER B. NUISANCE AND GENERAL SANITATION)

CRIMINAL PENALTIES (Section 341.091, Texas Health and Safety Code)

- a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$200.
- b) If it is shown in the trial of the defendant that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the defendant shall be punishable by a fine of not less than \$10 or more than \$1,000, confinement in jail for not more than 30 days, or both.

SECTION 19. In addition to the other remedies provided herein and in State Law, the City Attorney is authorized to bring any enforcement action including prosecution for violating this Ordinance, State Law or Rule, seeking civil penalties, injunctive relief or other appropriate remedy.

SECTION 20. EMERGENCY REPAIR.

An emergency repair to an On-site Sewage Facility without a permit is not an offense under these Rules if the following procedures are carried out:

- a) The repair is made for the purpose of abatement of an immediate, dangerous, and serious health hazard.
- b) That said repair does meet minimum State Design Criteria.
- c) That said repair does not constitute an alteration of the on-site system.
- d) That written notification of such repair, including a detailed description of the method and materials used in said repair, is made to the authorized agent within 72 hours of the date of the repair.
- e) That said repair must be inspected for compliance with the State's Design Criteria.

SECTION 21. SEVERABILITY.

It is hereby declared to be the intention of the City of Ingleside on the Bay, Texas, that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable and if any phrase, clause, sentence, paragraph, or section of this Ordinance be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall

not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance since the same would have been enacted by the City of Ingleside on the Bay, Texas, without incorporation in this Ordinance of such unconstitutional phrases, clauses, sentences, paragraphs, or sections.

SECTION 22. RELINQUISHMENT OF ORDER.

If the City of Ingleside on the Bay, Texas, decides that it no longer wishes to regulate On-site Sewage Facilities in its area of jurisdiction, the City of Ingleside on the Bay, Texas, shall follow the procedures outlined below:

- a) The City of Ingleside on the Bay, Texas, shall inform the Texas Natural Resource Conservation Commission by certified mail, at least 30 days before the published date of the public hearing notice, that it wishes to relinquish its On-site Sewage Facility Ordinance.
- b) The City of Ingleside on the Bay, Texas, shall post the required public notice in a newspaper regularly published or circulated in the area of jurisdiction at least 30 days prior to the anticipated date of action by the authorized agent and must solicit written comments for that 30-day period.
- c) The City of Ingleside on the Bay, Texas, shall send a copy of the public notice, a publisher's affidavit or public notice, and a certified copy of the Court's minutes to the Texas Natural Resource Conservation Commission.
- d) Upon relinquishment of the Ordinance, the local governmental entity shall surrender its area of jurisdiction to the Commission.
- e) The City of Ingleside on the Bay shall pay the Texas Natural Resource Conservation Commission the appropriate charge-back fees for permitting, inspections, and complaint investigations of On-site Sewage Facilities in the surrendered area of jurisdiction.

SECTION 23. EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after its date of approval as required by law and upon the approval of the Texas Natural Resource Conservation Commission.

SECTION 24. PUBLICATION.

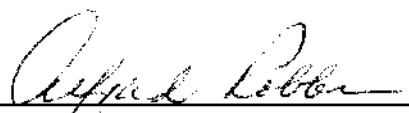
Publication of this Ordinance shall be by publishing the caption thereof in the official newspaper of the Town.

PASSED AND APPROVED THIS 18th DAY OF November, 1997.

(SEAL)



APPROVED:



Mayor