

ORDINANCE NO. 2009-O-6D

AN ORDINANCE OF THE CITY OF ANGLETON, TEXAS AMENDING CHAPTER 26 OF THE CODE OF ORDINANCES OF THE CITY OF ANGLETON TO PROHIBIT THE FILLING OR BLOCKING OF A DRAINAGE EASEMENT OR DITCH OR FAILING TO MAINTAIN SAME FREE FROM DEBRIS IN CERTAIN CIRCUMSTANCES AND DECLARING SAME A PUBLIC NUISANCE; PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000 FOR EACH VIOLATION AND MAKING EACH DAY OR PORTION OF A DAY THAT A VIOLATION CONTINUES A SEPARATE VIOLATION; PROVIDING AN OPEN MEETINGS CLAUSE; PROVIDING FOR EXCEPTIONS AND AFFIRMATIVE DEFENSES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER AND A SAVINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, the filling or blocking of a drainage easement or drainage ditch with debris affecting and diverting the flow of storm water and failing to maintain same free of debris when the property owner has installed barriers limiting access to such drainage easement or ditches can create serious public health and safety problems, cause damage to property and violations of environmental regulations; and

WHEREAS, the City Council finds it in the public interest to amend the Angleton Code of Ordinances to prohibit the filling of drainage easements or ditches;

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

SECTION 1. FINDINGS. The forgoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part of this Ordinance for all purposes as findings of fact.

SECTION 2. That Article II “Sanitary Sewer Systems”, “Division 1. Generally” of Chapter 26 “Utilities” of the Code of Ordinances of the City of Angleton, Texas is hereby amended by adding new section 26-25 “Filling of drainage ditches and failure to maintain same free of debris prohibited”, section 26-26 “Exceptions and Affirmative Defenses”, and section 26-27 “Filling of drainage ditches and failure to maintain same free of debris declared a public nuisance” which shall read as follows:

Section 26-25. Filling of drainage ditches and failure to maintain same free of debris prohibited.

“The filling or blocking of a drainage easement or drainage ditch with debris, fill dirt or any other solid waste that affects or diverts the flow of storm water from neighboring properties, or failing to maintain the drainage easement or ditch free from debris, sediment or any vegetation, when the drainage easement or ditch is enclosed by fences or other barriers installed by the property owner which limits

or interferes with the access to same by City maintenance crews, is prohibited and unlawful.”

Section 26-26. Exceptions and Affirmative Defenses. That it shall be an exception to the prohibition against the filling and blocking of drainage easements or ditches set forth in Section 26-25 above and an affirmative defense to any prosecution under that section that the debris, fill dirt or any other solid waste is in the drainage ditch or easement because it has been placed there temporarily by a person or trash or solid waste hauler for trash or garbage pickup.

Section 26-27. Filling of drainage ditches and failure to maintain same free of debris declared a public nuisance.

- “(a) The filling or blocking of a drainage easement or drainage ditch with debris, fill dirt or any other solid waste that affects or diverts the flow of storm water from neighboring properties or the failure to maintain the drainage easement or ditch free from debris, sediment or any vegetation which affects or diverts the flow of storm water from neighboring properties where the drainage easement or ditch is enclosed by fences or other barriers installed by the property owner, which limits or interferes with the access to same by City maintenance crews, within the corporate limits of the City and within 5,000 feet from the corporate limits, except in the circumstances set forth in Section 26-26 above, is a threat to public health and safety and property, is detrimental to the health, safety and welfare of the public and is a public nuisance.
- (b) The City shall have the right to summarily abate the public nuisance without notice and hearing due to the immediate threat such blockage of drainage easements and ditches and the diversion of storm water is to the public health and safety and the damage it can cause to property. The City Manager or his designee shall send written notice setting forth all the City’s costs of abating the nuisance to the offending property owner as shown on the tax records of the City of Angleton and Brazoria County, Texas. If the property owner does not pay the costs of abatement within thirty (30) days of the receipt of the notice, the City may assess all costs of abating the nuisance against the property owner and record a lien on the property in the real property records of Brazoria County, Texas and enforce the lien in accordance with applicable law.

SECTION 3. PENALTY. Any person, firm, corporation or other legal entity violating any provisions of this Ordinance shall, upon conviction, be fined not more than \$2,000. Each day or portion of a day during which any violation continues shall be a separate offense.

SECTION 4. SEVERABILITY. If any provision of this Ordinance is found to be invalid for any reason by a court of competent jurisdiction, the validity of the remaining

provisions shall not be affected, the remaining provisions shall remain in full force and effect and the provisions of this Ordinance are declared to be severable.

SECTION 5. SAVINGS AND REPEALER. All provisions of the Code of Ordinances of the City of Angleton, Texas that are in conflict with the provisions of this Ordinance are repealed to the extent of that conflict only. All remaining provisions of the Code of Ordinances that are not in conflict with the Ordinance shall remain in full force and effect.

SECTION 6. OPEN MEETINGS. The City Council has found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of this meeting was given as required by the Texas Open Meetings Act, Chapt. 551, Tex. Gov't. Code, as amended, and that a quorum was present.

SECTION 7. EFFECTIVE DATE. This Ordinance shall be effective not less than ten days from the date of its passage in accordance with the City Charter and the City Secretary is hereby directed to cause the caption of this Ordinance to be published in the official newspaper of the City at least once within ten days after the passage of the Ordinance.

PASSED AND APPROVED on the _____ day of _____, 2009.

CITY OF ANGLETON, TEXAS

By: _____
J. Patrick Henry, Mayor

ATTEST:

By: _____
Shelly Deisher, City Secretary

APPROVED AS TO FORM:

By: _____
Herbert L. Prouty, Interim City Attorney