

**FILED**

MAY 10 2022

**LESLI PENNY**

COUNTY & PROBATE COURT CLERK

ORDINANCE NO. 2022- 14

**AN ORDINANCE TO SET FORTH A POLICY ON  
ACCEPTANCE OF ANY NONMUNICIPAL DOMESTIC  
SEWAGE TREATMENT SYSTEM WITHIN THE  
COUNTY OF CRAIGHEAD, STATE OF ARKANSAS,  
AND DECLARING AN EMERGENCY, FOR OTHER  
PURPOSES**

**WHEREAS**, Craighead County continues to incur various needs for a growing economy and robust developing county, and

**WHEREAS**, as described in Ark. Code Section 14-236-105, the Quorum Court has authority to establish sewage disposal standards that provide greater protection to the public health or safety than standards promulgated by state agencies, and

**WHEREAS**, the regulations set forth for a Nonmunicipal Domestic Sewage Treatment Works are inadequate for necessary long-term assurances for the maintenance and repair of said works, and

**WHEREAS**, the Quorum Court finds that it is just and appropriate to establish procedures and policies that will protect the residents of Craighead County from the effects of improperly maintained Nonmunicipal Domestic Sewage Treatment Works by ensuring that such works are properly installed and funds are available for the adequate maintenance and repair for such works, and

*H/070*

**WHEREAS**, a temporary moratorium was set forth to allow input from various parties, including landowners, utility providers, and developers to determine the proper course of action to protect the citizens, and

**WHEREAS**, Nonmunicipal Domestic Sewage Treatment Works that fail to offer adequate financial protections lead to contamination and when such systems fail, cities and counties are often requested to intervene and assist, and

**WHEREAS**, the Quorum Court is authorized to informally cooperate with the City Water and Light Plant of the City of Jonesboro ("CWL") in the regulation of Nonmunicipal Domestic Sewage Treatment Works as provided In Ark. Code Section 25-20-104(h), and

**WHEREAS**, in accordance with Ark. Code Annotated Section 14-236-105, the Quorum Court of Craighead County seeks to establish requirements to afford greater protection to the public health or safety within the jurisdiction of the law.

**THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF CRAIGHEAD COUNTY, ARKANSAS, AS FOLLOWS:**

**SECTION 1: *Purpose.*** The purpose of this ordinance is intended to ensure adequate and reasonable establishment, installation, operation, maintenance, and management of Nonmunicipal Domestic Sewage Treatment Works in Craighead County.

**SECTION 2: *Applicability.*** This ordinance shall apply to any Person who seeks to establish, install, or Materially Alter Nonmunicipal Domestic Sewage Treatment Works after the effective date of this ordinance.

**SECTION 3: *Definitions.*** When used in this ordinance, the following words will have the meanings assigned below:

a) Fidelity Bond means a commercially reasonable financial instrument or insurance product that protects against financial loss attributed to the acts or omissions of Persons entrusted with the oversight of the System or safekeeping of System funds in an amount that is not less than the reasonable potential loss that could be caused by such Person.

b) Materially Alter means to: (i) expand the size or capacity of a System by more than twenty percent (20%), and/or (ii) increase the bonds or other indebtedness to be paid from System revenues by more than twenty percent (20%) of gross System revenues in the previous year.

c) Nonmunicipal Domestic Sewage Treatment Works means a device or system operated by an entity other than a city, town, county, public facilities board, public water authority, or consolidated utility district operating under Ark. Code Ann. § 14-217-101, et seq., that: (1) treats and/or discharges sewer; and (2) is subject to NPDES permitting requirements.

d) NPDES means the National Pollutant Discharge Elimination System.

e) Person means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization that can sue or be sued.

f) Rate Schedule means the amounts that will be charged to customers, if any, on a monthly or recurring basis for use of the System.

g) Responsible Person means the person who is responsible for the proper establishment, installation, operation, maintenance, management, and financial solvency of a System and to otherwise ensure compliance with this ordinance.

h) System means Nonmunicipal Domestic Sewage Treatment Works.

**SECTION 4: *Permit Required.***

a) No Person shall establish or install a System in an unincorporated area of Craighead County without properly requesting and receiving a permit as provided in this ordinance.

b) No Person shall Materially Alter a System in an unincorporated area of Craighead County without properly requesting and receiving a permit as provided in this ordinance.

c) No Person who has been issued a permit under this ordinance shall operate, maintain, or manage a System except in accordance with this ordinance.

**SECTION 5: *Application.*** Each Person who applies to establish or install a System or to Materially Alter a System shall file an application containing the following with the Office of the County Judge:

a) A copy of the System design stamped by a licensed professional engineer who certifies that the System design meets or exceeds the requirements of entities named in subsection (b).

- b) Statements or construction permits issued by the following entities certifying that the System is not prohibited by standards of:
  - (i) Arkansas Department of Health;
  - (ii) Arkansas Division of Environmental Quality; and
  - (iii) Local review designated in Section 13 of this ordinance.
  
- c) Identification of the licensed professional engineer who will oversee installation of the System in accordance with designs approved by entities shown in subsection (b) above that:
  - (i) Is familiar with the requirements of this ordinance;
  - (ii) Is familiar with design standards of wastewater systems in Arkansas;
  - and
  - (iii) Has at least five (5) years of experience designing wastewater systems.
  
- d) A copy of the Rate Schedule that will be used to charge for services, covers a period that is not less than five (5) years, and was created by a firm that:
  - (i) Is familiar with the requirements of this ordinance;
  - (ii) Is familiar with the regulatory environment for wastewater systems in Arkansas;
  - (iii) Has at least five (5) years of experience performing rate studies for water or wastewater utilities.

- e) A Fidelity Bond covering any Person or entity that oversees the operation and management of the System or handles System money.
- f) Evidence demonstrating the financial ability to properly operate the System for one year without revenue.
- g) Identification of the Responsible Person who will be responsible for the proper establishment, installation, operation, maintenance, management, and financial solvency of a System and to otherwise ensure compliance with this ordinance.

**SECTION 6:** *Approval.*

- a) The County Judge shall issue a permit authorizing the establishment, installation, or material alteration of a System to a Person who submits an application containing all information and approvals identified in Section 5, unless such application contains erroneous, false, or misleading information or otherwise clearly threatens the health, safety, or welfare of any area in the County.
- b) The County Judge may by written order waive one or more of the application requirements listed in Section 6 when the imposition of such requirement or requirements to the particular application is clearly unjust.

**SECTION 7:** *Continuing responsibility of Permit Holders.* Responsible Persons shall continually ensure that the following requirements are met, and minimum standards of financial viability are maintained:

- a) Fidelity Bond. The Responsible Person will notify the County Judge in writing at any time that the Fidelity Bond required in Section 5 is terminated and obtain a replacement Fidelity Bond within five business days.
- b) Operating Reserves. The financial ability to properly operate the System without revenue for 120 days. The Responsible Person will notify the County Judge in writing at any time that insufficient revenues are available to operate the System for 120 days and provide a plan for financial recovery.
- c) Capital Reserves. Segregated capital reserve funds in an amount that is consistent with the five-year capital plan of the System and is no less than the greater of: (i) the accumulated depreciation of capital assets within the System calculated according to generally accepted standards for governmental accounting; and (ii) the amount that is required for capital repairs and replacements that would occur during the next fiscal year under prudent management. The Responsible Person will notify the County Judge in writing at any time that insufficient capital reserve funds are on hand and provide a plan for rebuilding the capital reserve fund.
- d) Rate Studies. No later than five years after the date of application and at intervals of no more than five years thereafter, the Responsible Person will ensure that a rate study is performed to calculate the amounts to be

charged for services, if any amount is to be charged. A copy of rate studies performed and the resulting Rate Schedules will be filed at the office of the County Judge. Persons performing rate studies will meet the qualifications of Section 5(d)(i)-(iii).

- e) Change in Responsible Person. The County Judge will be notified in writing within five (5) days when there is any change of the Responsible Person. Such notice will include the effective date of the change and the identity of the successor Responsible Person.

**SECTION 8:** *Records.* The Responsible Person shall retain the following records that shall be available for public examination for the period indicated through the procedures found in the Arkansas Freedom of Information Act codified In Chapter 19 of Title 25 of the Arkansas Code:

- a) Financial records - five (5) years,
- b) Bank statements - five (5) years,
- c) Contracts and documents relating to bonds or indebtedness - five (5) years after the bond or debt is retired,
- d) Annual audits prepared by a Certified Public Accountant - five (5) years,
- e) Rate studies - five (5) years,
- f) Meeting minutes - no expiration, and
- g) Current contact information of the Responsible Person - five (5) years.

**SECTION 9:** *Annual Report.* The Responsible Person shall annually file by May 31st a report that describes the operating and financial condition of the



System, the financial activity of the preceding year, and such information as may be reasonably necessary or advisable to demonstrate compliance with this ordinance.

- a) Forms. The County Judge may administratively establish forms for submission of the annual report and refine the same from time to time. The Responsible Person will submit annual reports on forms established for that purpose, if any.
- b) Copies. A copy of the annual report shall be sent to the Office of the County Judge and a copy shall also be sent to the respective owners and participants of the System.

**SECTION 10:** *Annual Meeting.* The Responsible Person shall at a minimum, hold an annual meeting of all customers, participants, and owners in the System. The time and place of the meeting shall be published in a local newspaper with general circulation in the county and provide a minimum of 30 days' notice to the public. A copy of the proof of publication will be provided to the Office of the County Judge within five (5) days after publication. The time and place of the meeting will be furnished to anyone who requests the information.

**SECTION 11:** *Transfer of Responsibility.* No Person who owns, operates, or manages a System permitted under this ordinance may sell, transfer, merge, terminate, or abandon such System without first petitioning the County Court to transfer responsibility for such System and obtaining approval therefor from the County Court prior to closing of the transaction.

**SECTION 12: *Offense declared.***

- a) A Person who fails to perform a task required under this ordinance shall be guilty of an unclassified misdemeanor and may be fined in an amount that is not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00). Where an offense is continual in nature, the punishment shall not be less than twenty-five dollars (\$25.00) per day nor more than two hundred fifty dollars (\$250.00) per day.
- b) In addition to the remedy described above, if a Responsible Person fails three (3) or more times during a three-year period to perform any of the tasks contained herein or fails to perform a task that results in financial harm to others in a collective amount greater than \$10,000, the County Judge may order the removal of the Responsible Person and designate another Person to operate and manage the System until a Person may be properly appointed.

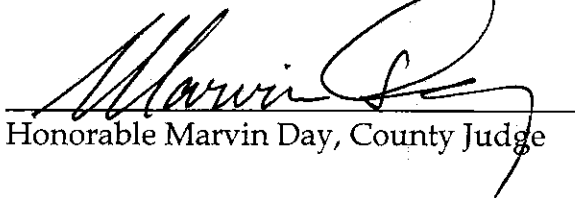
**SECTION 13: *Local Requirements.***

- a) Finding. City Water and Light Plant of the City of Jonesboro ("CWL") is the largest municipal wastewater service provider in Craighead County. CWL is physically located in proximity to County offices at 400 East Monroe in the City of Jonesboro and has established requirements for the proper installation and maintenance of wastewater facilities.
- b) Plan review. Persons who apply for permits under Section 5 shall submit plans to CWL for review, provided that: (1) the review will be completed within 90 days, and (2) the cost of review does not exceed Five Hundred Dollars (\$ 500.00).

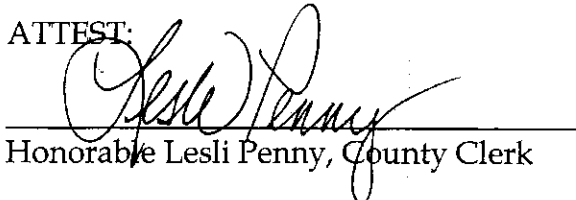
**SECTION 14:** *Severability.* If any provision of this ordinance is held invalid, such invalidity shall not affect the remaining provisions of the ordinance which remains effective absent the invalid provision, and to this end, the provisions of this ordinance are declared to be severable.

Emergency Clause - The Quorum Court hereby finds that the improper installation, operation, and/or management of Nonmunicipal Domestic Sewage Treatment Works present serious risk to the environment, the financial wellbeing and health of citizens, and the growth and development of Craighead County. Thus, in order to protect Craighead County citizens and to provide for necessary provisions to prevent any contamination and protection of health and safety of all citizens, an emergency exists, and this Ordinance, being for the immediate preservation of the public peace, health, safety shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED on this 9<sup>th</sup> day of May 2022.

  
Honorable Marvin Day, County Judge

ATTEST:

  
Honorable Lesli Penny, County Clerk

"This publication was paid for by the Craighead County Clerk, cost of publication \_\_\_\_\_."