

RESOLUTION NO. 01-09-14-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, ADOPTING A POLICY ON THE CREATION, OPERATION, AND DISSOLUTION OF MUNICIPAL UTILITY DISTRICTS LOCATED WITHIN THE CITY'S INCORPORATED LIMITS OR ITS EXTRATERRITORIAL JURISDICTION

WHEREAS, the City of College Station, Texas, is empowered under state law to exercise authority over municipal utility districts located within the City's incorporated limits or in its extraterritorial jurisdiction; and

WHEREAS, the City Council of the City of College Station, Texas, desires to adopt a formal policy setting out those requirements necessary for the City's consent to the creation of municipal utility districts located within the City's incorporated limits or in its extraterritorial jurisdiction; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That the City Council hereby adopts a formal policy on the creation, operation, and dissolution of municipal utility districts within the City's incorporated limits or in its extraterritorial jurisdiction as set out in Exhibit "A" attached hereto and incorporated herein for all purposes.


PART 2: That this resolution shall take effect immediately from and after its passage.

PASSED and APPROVED this 9th day of January, 2014.

APPROVED:


Mayor

ATTEST:


City Secretary

APPROVED AS TO FORM:


City Attorney

EXHIBIT "A"

A POLICY RELATED TO THE CREATION, OPERATION, AND DISSOLUTION OF MUNICIPAL UTILITY DISTRICTS LOCATED WITHIN THE CITY OF COLLEGE STATION INCORPORATED LIMITS OR IN ITS EXTRATERRITORIAL JURISDICTION.

PURPOSE

This policy establishes how the City Council will exercise its authority relating to the creation, operation, and dissolution of municipal utility districts located within the City or its extraterritorial jurisdiction.

SCOPE OF POLICY

Municipal utility districts may, at times, play a significant role in financing, constructing and operating water, wastewater, and drainage, facilities for the development of land in the City and the City's extraterritorial jurisdiction. State law gives the City Council authority over the creation, operation, and dissolution of municipal utility districts. This policy sets forth the requirements that the City will exercise over municipal utility districts.

Section I. Definitions. In this Policy:

"ETJ" means the City's extraterritorial jurisdiction.

"MUD" or "District" means a municipal utility district created under section 52, Article III and section 59, article XVI of the Texas Constitution and operating under chapters 49, 51 and 54 of the Texas Water Code.

"TCEQ" means Texas Commission Environmental Quality.

Section II. Creation of ETJ Districts.

A. Background. The provisions of this Section II apply to the City's consent conditions for the creation of Districts over land located in the ETJ in accordance with the general laws applicable to the creation of Districts as well as special legislation resulting in the creation of Districts. The City may oppose all Districts, regardless of how they are created, that do not meet the prerequisite criteria outlined in Section II.C. or if the applicant does not agree to the City's conditions outlined in Section II.D. Additionally, the City will oppose all Districts if the applicant and the City cannot come to a mutual agreement on the terms expressed in Section II.E. The City reserves the right to annex any and all land in the ETJ and dissolve Districts if necessary when such action is determined to be beneficial by the City Council.

B. Application for Creation. A person requesting that the City give its written consent to the creation of a District must file an application with the City on a form provided for that purpose, along with the required petition and any fee required by ordinance. The application must state whether the applicant is requesting an Exemption to the Policy that the City will serve the District with water and wastewater services. The application shall also require additional information related to the District and the benefits of the proposed District, including, but not limited to, the number of current property owners within the proposed District, evidence that the value of property located within the proposed District will be significantly increased by the construction of District infrastructure, details demonstrating the proposed District's consistency with the City's Comprehensive Plan, and details demonstrating the community benefits related to the creation of the proposed District. Upon the City's request, the applicant must promptly provide to the City any other information reasonably necessary for the City Council to determine whether its consent should be given.

C. Prerequisite for Creation. Before the City Council consents to creation of a District, the following issues shall be considered:

1. Whether the City has already made plans to annex, or provide municipal services to the area proposed for inclusion in the District within the next five (5) years,
2. Whether the proposed area for the District lies in the ETJ of two (2) or more cities.

If the determination on both issues 1. and 2. above is negative, then the City Council should give further consideration to offering their consent for the creation of the District while applying the conditions listed in Section II.D. and II.E. and of this policy. If the determination on either of the two issues is affirmative, then the City Council will not consent to creation, and will move to annex the land or the City may attempt to work through any outstanding issue that prevented the City from providing consent.

D. Conditions for City Consent. In order for the City Council to consent to the creation of, or inclusion of land within a District, then it shall impose the following requirements as conditions to the City's consent, and such requirements shall be stipulated in the consent resolution and/or other ancillary agreements including, but not limited to, a development agreement and strategic partnership agreement, unless the City Council determines that requirements are not appropriate with regard to a specific District.

1. The authorizing order or resolution regarding the issuance of any series of bonds, which bonds shall be and remain obligations of the District until its dissolution, must be approved by the City Council. The City Council may refuse to give its approval to the issuance of bonds or limit the amount of bonds issued by the District if the District is not in compliance with the

City's requirements contained in the consent resolution or ancillary documents. The City will request compliance with the following terms and reporting requirements:

- a. The District's initial bond debt maturity date will not exceed thirty (30) years. Once the District has established a maturity date for its initial bonds, the maturity date for any additional bonds will not extend beyond the maturity date for the initial bonds, without the approval of the City.
- b. The amount of each annual principal payment on bond debt should be substantially the same or only moderately increased throughout the repayment term. In any case, at least 40% of the principal must be repaid in the first half of the repayment schedule, unless a portion of the bonds are structured as capital appreciation bonds.
- c. The District may not fund capitalized interest in an amount in excess of the lesser of twenty-four (24) months or the amount approved by the TCEQ.
- d. The City may limit a MUD to only issue bonds for the purposes of providing water, wastewater and drainage improvements as provided in Texas Water Code, Section 54.016(e).
- e. The City may approve the issuance of District bonds for park or road improvements if the park or road improvements for which the bonds are issued are included in the City's master plans.
- f. At least thirty (30) days before the issuance of bonds, except refunding bonds, the District's financial advisor shall certify in writing that bonds are being issued within the existing economic feasibility guidelines established by the TCEQ, whether or not the District has been approved by the TCEQ. The report, provided to the City Manager, should also state the following:
 - i. The amount of bonds being proposed for issuance,
 - ii. The projects to be funded by such bonds,
 - iii. The proposed debt service tax rate after issuance of the bonds.
- g. Within thirty (30) days after the District closes the sale of a series of bonds, the District shall deliver to the City Manager a copy of the final official statement for such series of bonds as well as any additional information requested by the City and provide the City with a complete transcript of bond proceedings within sixty (60) days after the date the bonds are delivered.

h. Terms of any refunding proposed by the District must be approved by the City Council.

2. All water, wastewater, drainage and road infrastructure constructed by the District will become City owned and operated infrastructure unless the Council grants an exemption. Therefore, plans for District infrastructure shall be prepared, reviewed and approved in accordance with City ordinances. District infrastructure shall be constructed in accordance with City design standards. The City reserves the right to inspect all facilities being constructed by or on behalf of the District and to charge inspection fees required by ordinance.
3. All District utility infrastructure must be designed and constructed as part of a City approved regional utility system and in compliance with the City's Water Master Plan and Wastewater Master Plan. The District must pay all applicable connection fees prior to connecting to the City's water and wastewater system.

If land included in the District is developed in phases, each phase of the development included in a bond issue must meet the applicable economic feasibility rules of the TCEQ which require that each phase proposed to be financed includes in the bond application the water, sewer, drainage and other facilities to serve the development and has the requisite governmental approvals.

4. The District will require that District board meetings be recorded and that such recordings be available on-line. The District will require that minutes of District board meetings will be available on-line. A District may not extend the boundaries of the District unless the City Council first adopts a resolution giving its consent to the extension. The conditions contained in the resolution consenting to the creation of the District also apply to any boundary extension, unless the resolution approving the District's proposed boundary extension states otherwise. Conversely, the District may not enter into an agreement to be annexed, in whole or in part with another District or municipality without written authorization from the City.
5. The District shall file a notice in the real property records of Brazos County stating that the City may annex the District as provided by state law. The parties may attach a form of such notice to the consent agreement or development agreement.
6. The District shall send a copy of the order or other action setting an ad valorem tax rate to the City Secretary and the City Manager within thirty (30) days after District's adoption of the rate.
7. The District shall send a copy of its annual audit to the City Manager. The District will meet accounting standards set by the Governmental Accounting

Standards Board (GASB), and fulfill all arbitrage compliance reports to the satisfaction of the City Manager.

8. The District shall provide copies of any material event notices filed under Rule 15c2-12 of the Securities and Exchange Commission and other applicable federal securities laws or regulations to the City Manager within thirty (30) days after filing such notices with the applicable federal agency.

E. Additional Conditions. The City may agree to include other conditions or other requirements in the City's consent resolution, upon mutual agreement with the District, including:

1. That the developer(s) of the land will enter into a development agreement with the City, pursuant to Local Government Code, Section 212.172, to extend the City's planning authority over land included in the District by providing for City Council approval of a development plan, authorizing enforcement by the City for land use and development regulations, and include other lawful terms and considerations the parties consider appropriate. The development agreement may include provisions that are mutually acceptable to the parties related to the following matters:
 - a. Land use plan reflecting all approved land uses and residential densities;
 - b. Compliance with City construction codes, including permit requirements;
 - c. Compliance with City and other applicable stormwater and water quality regulations;
 - d. Development standards comparable to City zoning regulations; and
 - e. Dedication and development of park areas.
2. The City's policy is for water and wastewater services in the District to be provided by the City, with the City owning and operating the infrastructure. If feasible, the District will enter into a strategic partnership agreement which will outline terms for the annexation of the District in to the City limits, as well as address whether the District will be immediately dissolved or continue to operate for limited purposes after annexation.
3. That the City may annex any or all commercial development within the District for limited purpose pursuant to a Strategic Partnership Agreement under Local Government Code, Section 43.0751, and may impose a sales and use tax within the area annexed for limited purposes.
4. That a District may not provide water or wastewater service outside the boundaries of the District without prior written approval by the City Council and will not enter into an agreement with another District or municipality to

receive water and wastewater services without the prior written approval by the City Council.

5. The District may enter into a Fire Protection Agreement with the City. The agreement will include terms and conditions for the District to receive full City of College Station Fire Protection services, as well as outline plans for the cost allocation of future capital improvements projects, such as the construction of fire stations.
6. That if the City determines that development in a District will place a burden on City roads as a result of a traffic impact analysis, and the District has been provided road bond authority from the City, the District will construct, widen, or improve such roads within the District in accordance with the standards set forth in Section 212.904 of the Texas Local Government Code.

Section III. Creation of In-City Districts.

- A. Background. The provisions of this Section III. apply to the City's consent conditions for the creation of Districts over land located in the City's corporate limits in accordance with the general laws applicable to the creation of Districts, as well as special legislation resulting in the creation of Districts. All City ordinances and codes, including applicable permits, fees and inspections, shall be of full force and effect within the District in the same manner as with respect to other areas within the City's corporate limits except as specifically stated herein.
- B. Application for Creation. A person requesting that the City give its written consent to the creation of a District must file an application with the City on a form provided for that purpose, along with the required petition and any fee required by ordinance. The application must provide justification if the applicant is requesting that the City not serve the District with water and wastewater services. The application shall also require additional information related to the benefits of the proposed District, including, but not limited to, evidence that the value of property located within the proposed District will be significantly increased by the construction of District infrastructure, details demonstrating the proposed District's consistency with the City's Comprehensive Plan, and details demonstrating the community benefits related to the creation of the proposed District. Upon the City's request, the applicant must provide any other information reasonably necessary for the City Council to determine whether its consent should be given.
- C. Prerequisite for Creation. Before the City Council consents to creation of a District, the following issues shall be considered:
 1. Whether the area has already been developed with sufficient infrastructure to accommodate future or existing water, wastewater, drainage and transportation needs.

2. Whether the proposed District includes land located outside the City's corporate limits.

If the determination on issues 1. and 2. are negative, then the City Council should give further consideration to offering their consent for the creation of the District while applying the conditions listed in Section III.D. and III.E. of this policy. If the determination on any of the two issues is affirmative, then the City Council should not consent to creation.

- D. Conditions for City Consent. In order for the City Council to consent to the creation of, or inclusion of land within a District, then it shall impose the following requirements as conditions of the City's consent, and such requirements shall be stipulated in the consent resolution and/or other ancillary agreements such as a development agreement, unless the City Council determines that requirements are not appropriate with regard to a specific District.

1. The authorizing order or resolution regarding the issuance of any series of bonds, which bonds shall be and remain obligations of the District until its dissolution, must be approved by the City Council. The City Council may refuse to give its approval the issuance to of bonds or limit the amount of bonds issued by the District if the District is not in compliance with the City's requirements contained in the consent resolution or ancillary documents. The City will request compliance with the following terms and reporting requirements:

- a. The District's initial bond debt maturity date will not exceed thirty (30) years. Once the District has established a maturity date for its initial bonds, the maturity date for any additional bonds will not extend beyond the maturity date for the initial bonds, without the approval of the City.
- b. The amount of each annual principal payment on bond debt should be substantially the same or only moderately increased throughout the repayment term. In any case, at least 40% of the principal must be repaid in the first half of the repayment schedule, unless a portion of the bonds are structured as capital appreciation bonds.
- c. The District may not fund capitalized interest in an amount in excess of the lesser of twenty-four (24) months or the amount approved by the TCEQ.

The City may limit a MUD to only issue bonds for the purposes of providing water, wastewater and drainage improvements as provided in Texas Water Code, Section 54.016(e).

- d. The City may approve the issuance of District bonds for park or road improvements if the park or road improvements for which the bonds are issued are included in the City's master plans.
 - e. At least thirty (30) days before the issuance of bonds, except refunding bonds, the District's financial advisor shall certify in writing that bonds are being issued within the existing economic feasibility guidelines established by the TCEQ whether or not the District has been approved by the TCEQ. The report, provided to the City Manager, should also state the following:
 - i. The amount of bonds being proposed for issuance,
 - ii. The projects to be funded by such bonds,
 - iii. The proposed debt service tax rate after issuance of the bonds.
 - f. Within thirty (30) days after the District closes the sale of a series of bonds, the District shall deliver to the City Manager a copy of the final official statement for such series of bonds as well as any additional information requested by the City and provide the City with a complete transcript of bond proceedings within sixty (60) days after the date the bonds are delivered.
 - g. Terms of any refunding proposed by the District must be approved by the City Council.
3. The City shall require that the owner of the real property over which the District will be created enter into a written City contract for the City to provide water and wastewater services to the District and that the District accept, after its creation, the water and wastewater service contract agreed upon between the City and the owner. The District must pay all applicable connection fees. All District utility infrastructure must be designed and constructed as a part of the City's regional utility system and in compliance with the City's Water Master Plan and Wastewater Master Plan.
4. Plans for District infrastructure shall be prepared, reviewed, and approved in accordance with City ordinances. District infrastructure shall be constructed in accordance with City design standards. The City reserves the right to inspect all facilities being constructed by or on behalf of the District and to charge inspection fees required by ordinance.
5. If land included in the District is developed in phases, each phase of the development included in a bond issue must meet the applicable economic feasibility rules of the TCEQ which require that each phase proposed to be financed includes in the bond application the water, sewer, drainage and other

facilities to serve the development and has the requisite governmental approvals.

6. The District shall provide for the City to appoint one (1) member to the District's initial board, and to all subsequent boards, unless otherwise prohibited by law.
7. The District will require that District board meetings be recorded and that such recordings be available on-line. The District will require that minutes of District board meetings will be available on-line.
8. A District may not annex additional land into the District unless the City Council first adopts a resolution giving its consent to the annexation. The conditions contained in the resolution consenting to the creation of the District also apply to the land annexed, unless the resolution approving the District's annexation of additional land states otherwise. Conversely, the District may not enter into an agreement to be annexed, in whole or in part, with another District or municipality, without written authorization from the City of College Station.
9. A District may not provide water or wastewater service outside the boundaries of the District. Conversely, the District may not enter into an agreement with another District or municipality to receive water and wastewater services without written consent from the City.
10. The District shall send a copy of the order or other action setting an ad valorem tax rate to the City Secretary and the City Manager within thirty (30) days after District adoption of the rate.
11. The District shall send a copy of its annual audit to the City City Manager. The District will also ensure that they are meeting accounting standards set by the Governmental Accounting Standards Board (GASB), and they are fulfilling all arbitrage compliance reports to the satisfaction of the City Manager.
12. The District shall provide copies of any material event notices filed under applicable federal securities laws or regulations to the City Manager within thirty (30) days after filing such notices with the applicable federal agency.
13. The District will not own any facilities without the City's written approval. The District will finance water, wastewater, and drainage facilities and convey those facilities within the City's service areas to the City, upon completion of construction, for operation and maintenance.

Section IV. Dissolution of Districts.

- A. Application. The City Council may dissolve a District at any time, with or without District approval pursuant to state statute. However, a District may provide a written request that the City consider dissolution if certain guidelines, addressed below, are met. The request should be sent to the City Secretary with the proposed date of dissolution, and supporting documentation showing that the District will meet the guidelines for dissolution by that date. If the City Council decides that dissolution will be beneficial to the City, the City will prepare a written implementation plan for the District's dissolution within six (6) months of the date the City Council considers the request. The City may, at its option, as a step toward dissolution, refinance the District's bond debt.
- B. Dissolution Guidelines. Districts seeking dissolution should meet all of the following conditions:
- a. Preferably, all District bond debt should be fully paid. At a minimum, the City's annual costs of paying the District's bond debt and reoccurring operation and maintenance expenses after dissolution will be no greater than the amount of revenues the City gains through the total ad valorem value of property within the District;
 - b. The District has fully reimbursed the developer for the developer's cost of installing District infrastructure in compliance with the District's contract with the developer as permitted by Texas law and regulations;
 - c. The District is not delinquent in the payment of any other financial obligation that is due prior to the date of dissolution, other than the bond debt to be assumed by the City;
 - d. The District did not finance and does not own or operate any drainage detention facilities that the City did not specifically approve as a public drainage facility that would become part of the City's public drainage system upon the District's dissolution.