

CITY OF SEALY, TEXAS

IN-CITY MUNICIPAL UTILITY DISTRICTS POLICY

There is hereby adopted a policy and plan establishing the conditions under which a municipal utility district may be formed within the corporate limits of the city, which shall read as follows:

The following terms, conditions and standards establish the basis under which the city council may consent to the formation of a municipal utility district within the corporate limits of the city in writing.

Resolution to create a municipal utility district.

- (a) The city's consent to the creation of a municipal utility district proposed to be formed within the corporate limits of the city under the Texas Water Code and the Texas Constitution Section 59, Article XVI, shall be evidenced by the adoption of a resolution.
- (b) No resolution shall be adopted consenting to the creation of a municipal utility district until the city council finds that the proposed municipal utility district (1) will be an economically feasible and sound development benefiting the city, (2) will not adversely affect the existing city water, sewer and storm facilities or other city utilities or city functions, and (3) will not increase the city's taxes or utility rates or adversely impact the city's financing or bond rating, and that (4) all of the conditions imposed by this article have been agreed to by the majority in value of landowners within the proposed municipal utility district.

Conditions to creation.

The following conditions shall apply to every municipal utility district within the city:

- (1) The municipal utility district may acquire property outside its boundaries with prior written consent of the city only for purposes of providing storm water drainage and detention, potable water distribution, wastewater collection, and for other purposes permitted by law; provided that no land shall be annexed or added to the municipal utility district unless the city has given its written consent by resolution of the city council to such addition or annexation;
- (2) The municipal utility district shall not provide services for, or acquire property to provide services for, any property outside its boundaries without the prior written consent of the city;
- (3) The municipal utility district shall not allow use of easements or storm water drainage facilities owned or controlled by the municipal utility district for any property or development outside its boundaries without the prior written consent of the city;
- (4) The municipal utility district shall pay the actual costs incurred by the city for legal, engineering and financial advisory services in connection with the allocation agreement (hereinafter defined) and the adoption of a resolution consenting to creation of the municipal utility district;
- (5) The facilities to be constructed by the municipal utility district shall be designed and constructed in compliance with all applicable requirements and criteria of the applicable regulatory agencies and subject to the applicable provisions of the city's resolution granting a petition for inclusion of certain territory in the municipal utility district (the "consent resolution");
- (6) Prior to the sale or offer to sell any bonds of the municipal utility district, the terms and conditions in this ordinance and the consent resolution must be approved and ratified in an

instrument executed by the governing body and officers of the municipal utility and such instrument must be delivered to the city attorney;

(7) The city shall not allow any connection to be made to the municipal utility district's wastewater system until, with respect to such connection:

a. The municipal utility district has issued an assignment of capacity specifying the number of gallons per day of water supply and wastewater treatment allocated for such connection, and has provided a copy thereof to the city manager;

b. The city has inspected the connection and premises and has issued a building permit for that connection; and

c. All buildings or structures served by connections shall be located entirely within the boundaries of a lot or parcel shown in a plan, plat or replat filed with and finally approved by the city and duly recorded in the official records of the county where the property is located (provided this limitation shall not apply if no plan, plat or replat is required by applicable state statutes or city ordinances);

(8) Unless and until the city shall dissolve the municipal utility district and assume the properties, assets, obligations and liabilities of the municipal utility district, the bonds of the municipal utility district, as to both principal and interest, shall be and remain obligations solely of the municipal utility district and shall never be deemed or construed to be obligations or indebtedness of the city;

(9) All contracts with third parties for construction of water, wastewater and storm water facilities to serve the proposed municipal utility district will contain the following provisions:

a. A requirement that all plans and specifications for construction of improvements or modification of improvements which are to be built to serve the municipal utility district and/or require approval of the Texas Commission on Environmental Quality be prepared in accordance with the then adopted city specifications and requirements for such facilities and delivered to the city for approval prior to submission to the Texas Commission on Environmental Quality. All plans and specifications presented to the bidders shall be approved by the city in writing prior to advertising for bids;

b. A requirement that prior to the construction of such facilities within the municipal utility district's territory, written notice by registered or certified mail be given to the city, stating the date that such construction will commence;

c. An agreement that all construction or modification of improvements to serve the municipal utility district will be subject to periodic inspections by the city or its duly authorized agent and that no underground improvements will be backfilled prior to inspection and written approval by the city;

d. All contracts for construction of improvements will be awarded in compliance with the terms contained within public bidding statutes in Chapter 49 of the Texas Water Code;

If the municipal utility district is performing the services, the same terms and conditions as set forth herein shall be applicable to the municipal utility district.

(10) As the municipal utility district's facilities are acquired and constructed, the municipal utility district shall convey the same to the city, including all warranties relating to the facilities; provided, however, that the municipal utility district shall not convey, and the city shall not accept, stormwater detention systems;

(11) As acquisition and/or construction of each phase of the facilities is completed, representatives of the city shall inspect the same and, if the city finds that the same has been completed in accordance with the final plans and specifications, the city will accept the same, whereupon such portion of the facilities shall be operated and maintained by the city at its sole expense; provided, however, that the city shall not accept, or operate and maintain, stormwater

detention systems; and further provided, however, that in the event that the facilities have not been completed in accordance with the final plans and specifications, the city will immediately advise the municipal utility district in what manner said facilities do not comply, and the municipal utility district shall immediately correct the same, whereupon the city shall again inspect the facilities and accept the same if the defects have been corrected;

(12) The city shall bill and collect from customers of the facilities and shall from time to time fix such rates and charges for such customers of the facilities as the city, in its sole discretion, determines are necessary; provided that the rates and charges for services afforded by the facilities will be equal and uniform to those charged other similar classifications of users in non-municipal utility district areas of the city; and all revenues from the facilities shall belong exclusively to the city without rebate of such revenues to the municipal utility district;

(13) The city may impose a charge for connection to the facilities at a rate to be determined from time to time by the city, provided the charge is equal to the sums charged other city users for comparable connections; and the connection charge shall belong exclusively to the city;

(14) The municipal utility district is authorized to assess, levy and collect ad valorem taxes upon all taxable properties within the municipal utility district to provide for (a) the payment in full of the municipal utility district's obligations, including principal, redemption premium, if any, and interest on the bonds to be issued by the municipal utility district and to establish and maintain any interest and sinking fund, debt service fund or reserve fund, (b) for administration, operation and maintenance purposes, all in accordance with applicable law and (c) to pay expenses of assessing and collecting the taxes. The city will levy and collect ad valorem taxes upon all taxable properties in the city, including the municipal utility district;

(15) Unless the municipal utility district is in default under the terms of its allocation agreement after reasonable opportunity to cure, the city shall not dissolve the municipal utility district until the water, wastewater and drainage utilities required to serve the municipal utility district have been completed and bonds issued by the municipal utility district to finance same; and the city shall afford the municipal utility district the opportunity to discharge any obligations of the municipal utility district pursuant to any existing agreements of the municipal utility district with third parties for construction of facilities, by either (a) authorizing the municipal utility district to sell its bonds before or during a transition period prior to the effective date of dissolution, as established by the city, (b) issuing bonds and selling bonds of the city pursuant to Vernon's Texas Codes Annotated, Local Government Code Section 43.080, as amended, in at least the amount necessary to discharge the municipality district's obligations, including those under any such agreements, or (c) providing written notice to the municipal utility district that the city has sufficient funds available from other sources to discharge the municipal utility district's obligations, including those under any such existing agreements with third parties. The city shall have the right to dissolve the municipal utility district if construction of water, wastewater or drainage utilities required to serve the municipal utility district does not begin within 36 months of execution of the allocation agreement;

(16) All city ordinances and codes, including applicable permits, fees and inspections, shall be of full force and effect within the boundaries of the municipal utility district in the same manner as with respect to other areas within the city's corporate limits, except as specifically herein provided otherwise;

(17) No bonds, other than refunding bonds, or notes of the municipal utility district shall be issued or sold unless not less than 20 days following the filing of an application with the Texas Commission on Environmental Quality for the approval of projects and bonds, the municipal utility district provides the city with a copy of such application and not less than 30 days prior to publication of notice of sale, the municipal utility district provides the city with a copy of the

staff memorandum of Texas Commission on Environmental Quality approving the projects and bonds, a copy of its proposed bond order, preliminary official statement, bid form and notice of sale and the following criteria are met.

The municipal utility district shall not issue bonds unless the following conditions have been satisfied:

a. The municipal utility district shall not issue any bonds, other than refunding bonds, unless the purpose for which the proceeds of such bonds may be used is limited to one or more of the following and no others:

1. Designing, purchasing and/or constructing or otherwise acquiring

(i) Waterworks facilities to provide water supply for municipal, domestic, and commercial uses, excluding industrial uses,

(ii) Wastewater facilities to collect, transport, process, dispose of and control all domestic or communal wastes, excluding industrial waste, whether in fluid, solid or composite state, or

(iii) Storm water drainage and detention facilities to gather, conduct, divert and control local storm water or other local harmful excesses of water in the municipal utility district,

2. Purchasing, constructing, owning, operating, repairing, improving, extending or otherwise acquiring interests in real property, improvements, facilities, appliances, equipment, buildings, plants or structures necessary or incidental to the operation of waterworks facilities, wastewater facilities, or storm water drainage facilities. Proceeds of the bonds for costs of operations of the municipal utility district shall not exceed ten percent of the issuance amount; and

3. All costs of issuance of the bonds (including but not limited to legal fees, financial advisory fees, administrative and organizational fees and expenses and costs of operations during construction, bond discount, capitalized interest, developer interest, creation costs, printing expenses, publication expenses and contingencies relative to facilities not yet under contract). Proceeds of the bonds for costs of operations of the municipal utility district shall not exceed ten percent of the issuance amount.

b. The municipal utility district shall not sell or issue any bonds unless:

1. The terms of such bonds expressly provide that the municipal utility district reserves and shall have the right to redeem the bonds not later than the 15th anniversary of the date of issuance, without premium;

2. The bonds, except refunding bonds, are sold after the taking of public bids therefore;

3. None of such bonds and bonds sold to a federal or state agency, other than refunding bonds, is sold for less than 95 percent of par;

4. The net effective interest rate on bonds so sold, taking into account any discount or premium as well as the interest rate borne by such bonds, does not exceed two percent above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period next preceding the date notice of the sale of such bonds is given and bids for the bonds will be received not more than 45 days after notice of sale of the bonds is given;

5. The maximum term of any debt issuance shall be no greater than 25 years;

6. The minimum par amount of any bonds issued, except a final issue, shall be \$1,000,000.00;

7. Each issue of bonds shall be structured to achieve either level principal payments or level debt service payments, excluding the first two years of debt service;

8. The municipal utility district shall submit to the city pro forma cash flows prepared in a manner consistent with the financial feasibility rules of the Texas Commission on Environmental Quality evidencing a municipal utility district tax rate (both maintenance and operations rate and interest and sinking rate combined) not to exceed \$1.50 per \$100.00 assessed valuation; and

9. Each bond issue shall not include more than two years of capitalized interest.

The city staff shall review the documents required to be provided hereunder and the evidence of compliance with the foregoing criteria within 15 days following receipt of same. If the city staff gives a favorable approval of the bonds, an item will be placed on the next available regular or special council meeting agenda for consideration by the city council. The issuance of bonds by the municipal utility district must be approved by the city council of the city, or its designee. Any costs incurred by the city in connection with review of the issuance of bonds shall be paid by the municipal utility district, in an amount not to exceed \$2,500.00;

c. The municipal utility district's resolution authorizing the issuance of the municipal utility district's bonds must contain a provision that the pledge of the revenues from the operation of the municipal utility district's water and sewer and/or drainage system to the payment of the municipal utility district's bonds will terminate when and if the city takes over the assets of the municipal utility district and assumes all of the obligations of the municipal utility district.

(18) The city acknowledges that a municipal utility district has authority to assess an unlimited tax for payment of debt service. However, prior to implementation of any increase in tax rate above its initial rate, the municipal utility district shall make a formal presentation to city council explaining the need for the increase, at which time residents of the municipal utility district shall be given an opportunity to be heard. Notice of such presentation shall be sent to each owner of taxable property within the municipal utility district as reflected on its most recent certified tax roll. This provision shall be in addition to any requirements of notice and hearing which may be contained in the Texas Water Code and in the Texas Tax Code which apply to the municipal utility district;

(19) In addition to the information the municipal utility district is required to file of record as required by the Texas Water Code, the municipal utility district shall annually deliver to each property owner within the municipal utility district, as reflected on its most recent certified tax roll, written notice of the existence of the municipal utility district and its right to assess taxes in addition to those assessed by the city. Such notice shall also contain a reference to the allocation agreement, the consent resolution and this paragraph. Such notice shall advise the property owner that such documents are available for inspection during regular business hours in the municipal utility district's office;

(20) The majority in value of landowners within the proposed municipal utility district shall enter into a utility functions and services allocation agreement ("allocation agreement") with the city, which shall contain the terms and conditions set forth in this section, as well as other terms and conditions which may be agreed to by the city or imposed herein. The allocation agreement shall be assigned by the proponent to the municipal utility district upon its creation;

(21) The allocation agreement shall be entered into simultaneously with the adoption of the consent resolution;

(22) The municipal utility district shall establish an official meeting location within the corporate limits of the city and at all times after the municipal utility district has 100 residential connections shall hold the meetings of its board of directors at such location;

(23) In addition to any other notice requirements applicable to the municipal utility district, the municipal utility district must post an agenda of the meetings of its board of directors at all primary entrances to the municipal utility district and at the location designated for notices at city hall not less than 72 hours prior to any meeting. An agenda shall also be provided to the city manager of the city prior to any meeting of the board of directors.

(24) The official office for recordkeeping of the municipal utility district must be accessible to the district's residents and shall not require a long distance phone call for a district resident to contact the official office for recordkeeping;

(25) The municipal utility district shall comply with all applicable requirements of the Texas Commission on Environmental Quality regarding the display of signage at entrances into the municipal utility district.

The city may specify other conditions with which the municipal utility district must comply in this code, the resolution consenting to the creation of the municipal utility district, and/or the allocation agreement.

Petition for creation of municipal utility district.

Upon the presentation of a petition for consent for the creation of a municipal utility district within the corporate limits of the city, the majority in value of landowners within the proposed municipal utility district shall:

- (1) Present evidence that the proposed municipal utility district contains 100 or more acres; present evidence that the petition is filed on behalf of the majority in value of landowners within the proposed municipal utility district; and show that the proposed municipal utility district is wholly within the corporate limits of the city;
- (2) Present a preliminary report describing the municipal utility district and proposed use of the land within the municipal utility district showing that the proposed municipal utility district and land use are feasible;
- (3) Present an estimate of assessed valuation of the municipal utility district showing the value of property as it exists on date of the petition; a build-out schedule showing the projected value of the property when 50 percent of the projected vertical improvements for the municipal utility district, exclusive of wastewater, water, sewer and drainage improvements, have been completed; and showing the projected value of the improvements upon completion of the development within the municipal utility district; and
- (4) Agree that the majority in value of landowners within the proposed municipal utility district shall develop the property for the purposes substantially as described in the preliminary report, except as may otherwise be agreed by the proponent and the city, and that prior to commencement of any improvements, will comply with all provisions of the subdivision ordinances and zoning ordinances of the city.

Other requirements.

- (a) The city reserves the right to impose other specific requirements relative to a given municipal utility district, including, but not limited to park requirements, construction material for houses and other buildings, amenities, and minimum lot sizes, which shall be agreed to and set forth in the allocation agreement.
- (b) The land within the district will be developed in accordance with the general plan to be approved by the city.

Abolition.

It is the policy of the city that a municipal utility district created within the city should not be abolished until such time as it has retired all of its outstanding bonded indebtedness, so that the city's taxpayers outside the municipal utility district shall not have to pay off all or any part of the bonded indebtedness incurred by the municipal utility district. The city does reserve the right to abolish any municipal utility district, regardless of whether it has any outstanding debt, if it is deemed to be in the best interest of the city.

City services.

The city shall provide fire, police and other general city services to the areas within the municipal utility district similar to those provided in similarly situated non-municipal utility district areas of the city. Different levels of service may be provided if different characteristics of topography, land uses and population density constitute a sufficient basis for providing different levels of service as determined by the city.