

APPENDIX G: POLICY CONCERNING CREATION OF CONSERVATION AND RECLAMATION DISTRICTS

POLICY CONCERNING CREATION OF CONSERVATION AND RECLAMATION DISTRICTS

Adopted by the City Council on May 3, 2005

I. PURPOSE AND INTENT

The City of Fort Worth (the “City”) wishes to allow the prudent use of political subdivisions that are created pursuant to Article III, Section 52, and/or Article XVI, Section 59, of the Texas Constitution and that are authorized by law to provide water, wastewater, drainage and other services (“districts”), in order to facilitate development within the City’s corporate boundaries and extraterritorial jurisdiction that is generally consistent with the City’s Comprehensive Plan.

This policy is intended to be equitably applied to the creation of, inclusion of land within, and operation of all proposed districts, while allowing flexibility necessary to address unique factors that may arise with respect to each proposed district.

Prior to considering whether to consent to or support the creation of a district, the City will consider whether the City is able to provide water and wastewater service to the area proposed to be included in the district and whether the City wishes to annex such area in the foreseeable future.

The purpose of this policy is to carry out the following purposes to the extent allowed by law:

- Encourage quality development;
- Allow the City to enforce reasonable land use and development regulations;
- Provide for construction of infrastructure consistent with City standards and City inspection of such infrastructure;
- Provide notice to residents of the district that the City may annex the district at some future time;
- Facilitate cost-effective construction of infrastructure to serve the area within the district, including police and fire stations, that is consistent with City standards and plans, so that the potential financial burden on

- the citizens of Fort Worth will be reduced, in the event of annexation of such land by the City;
- Provide for extension of water and wastewater lines that will serve future growth in the City and its extraterritorial jurisdiction consistent with the City’s regional utility planning;
- Establish guidelines for reasonable conditions to be placed on:
 - ◇ Issuance of bonds by the district; and
 - ◇ The City’s consent to creation of the district, including conditions consistent with the City’s water and sewer bond ordinances regarding creation of districts that might otherwise detrimentally compete with the City’s utility systems;
- Establish guidelines for other mutually beneficial agreements by the City and the district;
- Provide a procedural framework for responding to a petition seeking the City’s consent to the creation of the district; and
- Encourage communication with county officials and staff members of the county or counties in which a proposed district is to be located.

II. DEFINITIONS

Bond – Instrument, including a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments due to be paid by an issuer, or other type of obligation that: (1) is issued or incurred by an issuer under the issuer’s borrowing power, without regard to whether it is subject to annual appropriation; and (2) is represented by an instrument issued in bearer or registered form or is not represented by an instrument but the transfer of which is registered on books maintained for that purpose by or on behalf of the issuer.

Certificate of convenience and necessity (CCN) – A permit issued by the Texas Commission on Environmental Quality (“TCEQ”) authorizing a specified utility to be the retail water or sewer service provider in a specified area.

City Council – City Council of the City of Fort Worth.

Consent agreement – An agreement between the City and owners and developers

of land in a proposed district, which, if agreed to, shall be attached to the consent resolution adopted by the City Council.

Consent resolution – A resolution approved by the City Council setting forth terms of its consent to creation of a district.

Consent to creation of a district – Authorization for the owners of land in a proposed district to initiate proceedings to create a district as provided by law.

District - A municipal utility district (“MUD”), water control and improvement district (“WCID”), fresh water supply district (“FWSD”) or similar political subdivision created to provide water, sewer or drainage utility services, roads or other services allowed by law to a specified area, pursuant to Article III, Section 52, and/or Article XVI, Section 59, of the Texas Constitution.

Extraterritorial jurisdiction (ETJ) – Unincorporated area generally extending five miles from the City limit, excluding other incorporated municipalities and their ETJ, in which the City has the authority to annex property, as determined in accordance with Chapter 42 of the Local Government Code.

Strategic partnership agreement – An agreement between the City and a district addressing the relationship between the City and the district, including limited purpose annexation of commercial areas and other matters pursuant to Section 43.0751 of the Local Government Code.

TCEQ – The Texas Commission on Environmental Quality or its successor.

III. PREREQUISITES TO CONSENT TO CREATION OF A DISTRICT

Before the City Council consents to creation of a district, the following issues shall be considered:

1. If applicable, whether the area proposed for inclusion in the district meets criteria for annexation set out in the City’s annexation policy and is likely to be annexed by the City within the foreseeable future; and
2. Whether the City will provide water and wastewater services to the land within the proposed district at a reasonable cost and will commence construction of facilities necessary to serve the land within 2 years and substantially complete such construction within 4½ years after submittal of the petition.

If the determination on both issues 1 and 2 above is negative, then before consenting to the creation of a district, the City Council should consider further whether the creation of the district is feasible, practicable, necessary for the provision of the proposed services and would be a benefit to the land, and therefore warrants the

City’s consent, consistent with the other considerations in this policy.

If the determination on either of the two issues is affirmative, then the City Council should not consent to creation of the district unless the petitioner demonstrates that unique factors justify its creation. If appropriate under the circumstances, the City shall:

- Commence negotiations with the owners of at least 50 percent of the land in the proposed district and a majority of the qualified voters concerning the City’s provision of water and wastewater services, upon receipt of a petition submitted by such persons in accordance with Local Government Code, Section 42.042; or
- Commence proceedings to annex the land in the proposed district.

IV. COMMUNICATION WITH COUNTY OFFICIALS

The City will initiate communication with county officials for the county or counties in which a district is proposed to be located in order to promote interlocal cooperation on shared local goals and to support regional planning.

V. STAFF ANALYSIS

Upon receipt of a petition seeking the City’s consent to creation of a district and after a preliminary determination of the Article III prerequisites, City staff shall analyze the proposed development and its potential impact on facilities and services. The petitioner is encouraged to provide the following preliminary information relative to the land proposed to be included in the district, if available:

1. Engineering report showing:
 - a. Preliminary water availability study, including copies of any proposed contracts;
 - b. Preliminary wastewater treatment availability, including copies of any proposed contracts;
 - c. Preliminary drainage study; and
 - d. Preliminary road study for any roads proposed to be reimbursed by bonds.
2. Preliminary cost estimates for water, wastewater, drainage or road facilities or projects, and any other proposed district facilities to be reimbursed or paid for by the issuance of district bonds;
3. Master development plan showing general layout of proposed land uses; major streets and roads; water, wastewater and drainage facilities; and any other district facilities;

4. Information concerning provision of firefighting and law enforcement services;
5. Estimated buildout schedule by year with estimated assessed valuations in the district;
6. Estimated ultimate amount of bonds to be issued by the district, ultimate debt service requirements and and projected district tax rate;
7. District boundary and vicinity map;
8. Traffic study identifying potential impacts on:
 - a. The City’s road system serving the land proposed to be included in the district, if all or any portion of the land is located within the City or within 2 miles of the City’s boundaries; and
 - b. The county’s road system.

This traffic study is in addition to any traffic studies required by the City’s subdivision regulations in connection with submittal of subdivision plats;

9. If all or any portion of the proposed district is located outside the City’s boundaries, proof that the petitioner has provided the following information by certified mail to the County Judge and each member of the Commissioners Court of the county or counties in which the land proposed to be included in the district is included: the name, acreage and location of the proposed district, buildout schedule, estimated population on total buildout and map of the area;
10. Such other information as City staff may reasonably require to analyze the need for the proposed facilities and the development’s potential impact; and
11. Any proposed City consent agreements.

VI. CONDITIONS TO CITY’S CONSENT TO CREATION OF DISTRICT

If the City Council elects 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 agreement, unless the City Council determines that requirements are not appropriate with regard to a specific district.

1. All water, wastewater, drainage and road infrastructure and facilities, as well as any other infrastructure or facilities to be reimbursed or paid for by the issuance of district bonds, shall be designed and constructed to City standards, including without limitation fire flow standards and utility and road design, construction and installation standards, in accordance with plans and specifications that have been approved by the City. In the event of a conflict between City water and wastewater standards and standards imposed by the CCN holder for the proposed district, City standards will prevail, unless otherwise agreed by the City.
2. The City shall have the right to inspect all facilities being constructed by or on behalf of the district and to charge inspection fees consistent with the City’s Policy for Installation of Community Facilities, as amended from time to time.
3. Bonds, including refunding bonds issued by the district, shall, unless otherwise agreed to by the City, comply with the following requirements, provided such requirements do not generally render the bonds unmarketable:
 - a. Maximum maturity of 25 years for any one series of bonds;
 - b. Interest rate that does not exceed 2% 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;
 - c. The bonds shall expressly provide that the district shall reserve the right to redeem bonds at any time subsequent to the tenth (10th) anniversary of the date of issuance, without premium. No variable rate bonds shall be issued by a district without City Council approval; and
 - d. Any refunding bonds of the district must provide for a minimum of 3% present value savings and that the latest maturity of the refunding bonds may not extend beyond the latest maturity of the refunded bonds unless approved by the City Council.
4. The City shall require the following information with respect to bond issuance:
 - a. At least 30 days before issuance of bonds, except refunding bonds, the district’s financial advisor shall certify in writing that the bonds are being issued within the existing economic feasibility guidelines established by the TCEQ for districts issuing bonds for water, sewer or drainage facilities in the county in which the district is located and shall deliver the certification to the City

Secretary, the City Manager and the Director of the Development Department.

- b. At least 30 days before the issuance of bonds, the district shall deliver to the City Secretary, the City Manager and the Director of the Development Department notice as to:
 - i. The amount of bonds being proposed for issuance;
 - ii. The projects to be funded by such bonds; and
 - iii. The proposed debt service tax rate after issuance of the bonds.

If the district is not required to obtain TCEQ approval of the issuance of the bonds (other than refunding bonds), the district shall deliver such notice to the City Secretary, the City Manager and the Director of the Development Department at least 60 days prior to issuing such bonds. Within 30 days after the district closes the sale of a series of bonds, the district shall deliver to the City Secretary, the City Manager and the Director of the Development Department a copy of the final official statement for such series of bonds. If the City requests additional information regarding such issuance of bonds, the district shall promptly provide such information at no cost to City.

5. The purposes for which a district may issue bonds shall be restricted to the purchase, construction, acquisition, repair, extension and improvement of land, easements, works, improvements, facilities, plants, equipment and appliances necessary to:
 - a. Provide a water supply for the district for municipal uses, domestic uses and commercial purposes;
 - b. Collect, transport, process, dispose of and control all domestic, industrial or communal wastes from the district whether in fluid, solid or composite state;
 - c. Gather, conduct, divert and control local storm water or other local harmful excesses of water in the district; and
 - d. Pay organization and administrative expenses, operation expenses during construction, cost of issuance, interest during construction and capitalized interest.

If appropriate in a particular district, the City may consent to issuance of bonds for purchase, construction, acquisition, repair, extension or improvement of fire stations, roads and/or other capital improvements that are mutually agreed upon by the City Council and the petitioner.

VII. ADDITIONAL REQUIREMENTS

The City may address issues relating to the district in a consent agreement, strategic partnership agreement, development agreement, community facilities agreement or other documents acceptable to the parties. The City shall consider proposing additional terms, subject to the mutual agreement of the parties and as allowed by law, including without limitation the following:

1. The district shall contain sufficient acreage to assure the economic viability of the district but no more acreage than can feasibly be annexed at one time. In general, a district is not expected to include less than 200 acres or more than 500 acres.
2. Development within the district shall be generally consistent with the City's Comprehensive Plan.
3. No district shall include land in more than one city's extraterritorial jurisdiction.
4. The City and the owners of all land in the proposed district may reach agreement on the terms of a development agreement pursuant to Local Government Code, Section 212.171, *et seq.*, to extend the City's planning authority over land included in the district by providing for approval of a development plan, authorizing enforcement by the City of land use and development regulations, and including other lawful terms and considerations the parties consider appropriate. The development agreement may include provisions that are mutually acceptable to the parties relating 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.

The above list is not intended to be exhaustive. It is expected that the parties will cooperate to identify those matters unique to that district that may be addressed in a development agreement.

5. At least 30 days before issuance of bonds, the district shall certify in writing that the district is in full compliance with the consent resolution approved by the City Council and, to the extent such agreements impose re-

quirements on the district, with the consent agreement, strategic partnership agreement and all other agreements executed by the City and the district, and shall deliver the certification to the City Secretary, the City Manager and the Director of the Development Department.

6. No land within the district shall be allowed, at any time in the future, to incorporate, join in an incorporation, or be annexed into any incorporated city other than the City of Fort Worth.
7. No land shall be annexed by the district without prior City Council approval.
8. The district shall not construct or install infrastructure or facilities to serve areas outside the district or sell or deliver services to areas outside the district without prior City Council approval; provided, however, the district may serve a maximum of 10 retail residential connections outside the district without City Council approval.
9. After creation of the district, and unless otherwise expressly authorized by the consent agreement or development agreement, no district shall be converted into another type of district, consolidated with another district, divided into two or more new districts, or seek additional governmental powers that were beyond its statutory authority at the time the district was created, without prior City Council approval.
10. The City may annex any commercial development within the district for limited purposes pursuant to Local Government Code, Section 43.0751, and may impose a sales and use tax within the area annexed for limited purposes. The City may consider sharing tax receipts with the district, provided the district's share is used to finance infrastructure, retire bond debt or for other purposes acceptable to the City.
11. The district shall not issue any bonds other than those authorized by the consent agreement without City Council approval.
12. The district shall file a notice in the real property records of all counties in which the district is located stating that the City has authority to annex the district. The parties may attach a form of such notice to the consent agreement or development agreement.
13. The district shall send a copy of the order or other action setting an ad valorem tax rate to the City Secretary, the City Manager and the Director of the Development Department within 30 days after district adoption of the rate.

14. The district shall send a copy of its annual audit to the City Secretary, the City Manager and the Director of the Development Department within 30 days after approval.
15. The City will encourage the district to maintain a debt service structure that will ensure that the district's taxes are maintained at a rate at least equal to the City's tax rate, to the extent feasible.
16. The district shall provide copies of any material event notices filed under applicable federal securities laws or regulations to the City Secretary, the City Manager and the Director of the Development Department within thirty (30) days after filing such notices with the applicable federal agency.
17. Construction of capital improvements such as fire stations and recreational amenities will be encouraged.
18. Sharing of fire stations, recreational amenities and other capital improvements by the City and the district will be encouraged.
19. If construction or expansion of a wastewater treatment facility is proposed to serve the district, the plant design shall conform to all applicable state and federal permitting and design standards. In addition, any wastewater discharge shall be permitted to meet effluent limitations no less stringent than (a) current permit requirements for Village Creek Wastewater Treatment Plant; (b) current permit requirements for Denton Creek Wastewater Treatment Plant; or (c) 5-5-2-1 (5 parts per million {"ppm"} biochemical oxygen demand; 5 ppm total suspended solids; 2 ppm nitrogen; and 1 ppm phosphorus), whichever is strictest. The City reserves the right to protest any wastewater treatment facility permit application or amendment.
20. The board of directors of the district and landowners within the district will assist the City in annexing one or more areas, each of which may not exceed 525 feet in width at its widest point or such other width limitation subsequently imposed by law, as reasonably necessary for the City to connect areas to the City that are outside the district and that the City intends to annex in the foreseeable future.
21. If it is determined that the development will place a burden on City roads that will provide access to the development, the City may require the district to construct, widen or improve such roads (or contribute funds for such purpose) in proportion to the traffic generated by the development.
22. The City may agree not to annex and dissolve the district any earlier than the first to occur of (i) extension of water, sanitary sewer and drainage facilities to serve 90% of the land within the district; or (ii) 15 years after

creation of the district. The contract between the City and the district may provide that the City may set rates for water and/or sewer services for property that was within the district that vary from those for other properties within the City in order to compensate the City for assumption of district obligations upon annexation, in compliance with any statutory requirements applicable to such an agreement.

23. The consent agreement and ancillary documents should include terms providing for the district to be fully developed and ready for full purpose annexation by the City within a reasonable time period.
24. The petitioner shall reimburse the City for expenses incurred by the City in connection with the City's consent to formation of the district, including but not limited to professional fees incurred in connection with negotiation and preparation of the consent resolution, consent agreement, development agreement, strategic partnership agreement and related documents.

Potential Special Districts

