

ORDINANCE NO. 82-2007

AN ORDINANCE OF THE CITY OF ORCHARD, TEXAS, ESTABLISHING PROCEDURES FOR THE REVIEW AND APPROVAL OF PETITIONS TO CREATE CONSERVATION/RECLAMATION DISTRICTS AND CERTAIN OTHER POLITICAL SUBDIVISIONS WITHIN THE CITY OR THE CITY'S AREA OF EXTRATERRITORIAL JURISDICTION; REQUIRING DEPOSITS FOR COSTS INCURRED BY THE CITY IN REVIEWING APPLICATIONS; REQUIRING PREREQUISITE DOCUMENTATION FOR CONSENT; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT.

* * * * *

WHEREAS, The City Commission hereby finds, determines, and declares that it is in the best interests of the City of Orchard to promote the creation of conservation/reclamation districts or other political subdivisions whose primary purposes include the supplying of fresh water for domestic or commercial uses, the furnishing of sanitary sewer services, or the furnishing of drainage and/or flood control services; and

WHEREAS, The City Commission hereby further finds, determines, and declares that the establishment of reasonable procedures relating to the review, approval and creation of such entities will encourage and promote orderly growth and development within the City and its area of extraterritorial jurisdiction; now therefore

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ORCHARD, TEXAS:

Section 1. Definitions.

The following words and terms shall have the meanings ascribed thereto, unless the context clearly indicates otherwise:

District shall mean a conservation/reclamation district created pursuant to Article XVI, Section 59 or Article III Section 52, of the Texas Constitution.

Political Subdivision shall mean any other governmental entity, created or to be created in a manner authorized by law, and that has, as one of its primary purposes, the supplying of fresh water for domestic or commercial uses, the furnishing of sanitary sewer services, or the providing of drainage or flood control facilities.

Section 2. Compliance with regulations required.

Upon the application and/or petition by the proponents of a proposed District or Political Subdivision to the City Commission for its written consent for the creation of such District or Political Subdivision within the corporate limits or extraterritorial jurisdiction of the City, the City Commission shall consider all factors relevant to the creation of same, and if, upon the basis of its consideration and deliberations, it determines that such consent shall be granted, the written consent, by resolution or ordinance, shall provide that the proponents of such District or Political Subdivision shall adhere to all rules, regulations and standards contained in this Ordinance, the ordinance or resolution granting such consent, and all other applicable rules, regulations, standards and laws of the State of Texas.

Section 3. Deposit against expenditures.

(a) Initial and additional deposits. Prior to the filing of any petition for the City's consent to the creation or extension by enlargement of any proposed District or Political Subdivision, the petitioner shall deposit with the City the sum of twenty thousand dollars (\$20,000.00) to reimburse the City for expenses incurred by it including, but not limited to, fees for legal, engineering, financial advisory services, and other consultants' services (professional fees) engaged to determine the necessity and feasibility of the creation of the proposed District or Political Subdivision, the review of the application for consent to create, any agreements associated with the creation (e.g. utility agreements, development agreements, related agreements, and ordinance preparation etc.) and any other professional fees incurred by the City in relation to the creation, as well as reasonably anticipated continuation matters such as bond sales and approval, annexations, ordinances, strategic partnership agreements, etc. In addition, when expenses incurred leaves a balance of \$5,000.00 or less in petitioner's deposit account, the petitioner shall deposit additional sums with the City for reimbursement of services of the nature heretofore described, in an amount not to exceed an additional ten thousand dollars (\$10,000.00) (additional deposit), as determined by the City based on additional anticipated expenses. No interest shall be required to be paid on any deposit provided for herein.

(b) Refund. If any portion of an additional deposit is not needed for the reimbursement of expenses, such unused portion(s) shall be returned forthwith to the petitioner within 30 days following final disposition of all matters for which the deposit is collected. The City shall provide an accounting of all reimbursed expenditures to the petitioner at the time

unexpended funds are reimbursed. A petitioner requesting the City's consent hereunder shall be obligated to guarantee payment to the City of the sums set forth herein.

Section 4. Prerequisite to filing a petition for consent.

Prior to the filing of any petition with the City for consent to create or extend by enlargement any proposed District or Political Subdivision, the petitioner shall file and receive approval by the City Commission of a preliminary land plan of the proposed development, which shall include all of the territory to be included within the proposed District or Political Subdivision.

Section 5. Petition for consent.

Upon obtaining approval by the City Commission for such preliminary land plan, and in conjunction with filing of the petition for consent for a proposed District or Political Subdivision, there shall be filed with the City a preliminary engineering report, prepared by a registered professional engineer, showing:

1. The location and description of the District or Political Subdivision, including a title report, documentation of all landowners located within the boundaries of the proposed District or Political Subdivision, and documentation that a majority of the landowners within the boundaries agree with such petition for creation or enlargement of the District or Political Subdivision;
2. Existing state of urban development within the District or Political Subdivision;
3. Proposed District or Political Subdivision facilities;
4. Estimated costs; and
5. A feasibility study and analysis showing:
 - a. project value estimate for bonds,
 - b. estimated Assessed Valuation,
 - c. proof of economic feasibility of proposed development,
 - d. proof of developers financial solvency, and
 - e. proof that the petitioner is authorized to file the petition for consent.
6. In connection with proposed District or Political Subdivision facilities, drawings shall be submitted showing the proposed water system, sanitary sewer system and drainage system.

Section 6. Rules, regulations and standards applicable to all petitions.

In addition to such other terms and provisions as may be imposed by the City as conditions to the consent to create a District or other Political Subdivision within the City or the City's extraterritorial jurisdiction, the following rules, regulations and standards shall apply to all Districts and Political Subdivisions approved for creation:

1. Bonds. Bonds may be issued by a District or other Political Subdivision only for the purpose of purchasing and constructing, or purchasing or constructing, or under contract with the City, or otherwise acquiring waterworks systems, sanitary sewer systems, sewage treatment facilities, storm sewer systems and drainage facilities, levee facilities, fire protection facilities and park and recreational facilities or parts of such systems or facilities, and to make any and all necessary purchases, construction, improvements, extensions, additions and repairs thereto, and to purchase or acquire all necessary lands, rights-of-way, easements, sites, equipment, buildings, plants, structures, and facilities therefore, and maintain same and to sell water, sanitary sewer, and other services within or without the boundaries of the District or other Political Subdivision. Such bonds of the District or other Political Subdivision shall only be sold after taking public bids therefore. All such bonds shall expressly provide that the District or other Political Subdivision shall reserve the right to redeem said bonds on any interest payment date subsequent to the fifteenth (15) anniversary of the date of issuance without premium. No bonds, other than refunding bonds, shall be sold at less than ninety-five (95) percent of par, provided that 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 bond, will not exceed two (2) 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 that bids for the bonds will be received not more than forty-five (45) days after the notice of sale of the bonds is given.

The maximum term of any debt issuance shall be no greater than twenty-five (25) years. The minimum par amount of any bonds issued, except a final issue, shall be one million dollars (\$1,000,000.00). Each issue of bonds shall be structured to achieve either level principal payments or level debt service payments, excluding the first two (2) years and the last two (2) years of debt service. The District or other Political Subdivision shall submit to the City pro forma cash flows evidencing a tax rate (both maintenance and operations rate and interest and sinking rate combined) not to exceed one dollar and fifty cents (\$1.50) per one hundred dollars

(\$100.00) assessed valuation.(or not exceeding the TCEQ rule, whichever is greater). No bond issue shall include more than two (2) years of capitalized interest. The resolution authorizing the issuance of the bonds shall contain a provision that any pledge of the revenues from the operation of the District's or other Political Subdivision's water and sewer and/or drainage system to the payment of the bonds shall terminate when and if the City of Orchard annexes the District or other Political Subdivision and takes over the assets and assumes all of the obligations of the District or other Political Subdivision. No land shall be added or annexed to the District or other Political Subdivision until the City has given its written consent by resolution or ordinance of the City Commission to such addition or annexation.

(2) The City Commission may recommend the appointment of a person for the initial board of directors.

(3) Before the commencement of any construction within the District or other Political Subdivision, the District or other Political Subdivision, its directors, officers, or developers and landowners shall submit to the City or its designated representative all plans and specifications for the construction of water, sanitary sewer, and drainage facilities to serve such District or other Political Subdivision and obtain the approval of such plans and specifications from the City. All water wells, water meters, flush valves, valves, pipes, drainage pipes, drainage ditches, drainage basins, all water service lines and sewer service lines, lift stations, sewage treatment facilities and appurtenances thereto, installed or used within the District or other Political Subdivision shall comply with the City's standard plans and specifications. Prior to the construction of such facilities the District or other Political Subdivision, or its engineer, shall give written notice to the City stating the date that such construction will be commenced. The construction of all water, sanitary sewer and drainage facilities shall be in accordance with the approved plans and specifications of the City, and during the progress of the construction and installation of such facilities the City or a designated representative of the City may make periodic on-the-ground inspections to determine that the construction and installation complies with the approved plans and specifications.

(4) No such construction of water, sanitary sewer, or drainage facilities shall be started or undertaken by the District or other Political Subdivision unless it has in its possession a certificate of the District's or other Political Subdivision's engineer, who shall be a registered professional engineer under the laws of the State of Texas, that, in his opinion, such construction

conforms to the City's established standards and specifications; and a letter or certificate from the engineer of the City of Orchard that, in his opinion, such construction conforms to the City's established standards and specifications.

(5) The owners and developers of the land within the District or other Political Subdivision shall comply with all rules and regulations of the City governing plats and the subdivision of land before the sale of any lot in the District or other Political Subdivision.

(6) The District or other Political Subdivision shall not provide water or sewer service to a residential lot unless the plat covering such a lot has been approved by the City Commission and all other applicable authorities of the City of Orchard or the Fire District.

(7) Full-time resident inspection shall be provided during the construction period by the District or other Political Subdivision inspectors approved by the engineer of the City, which inspectors shall be removed upon the request of said City engineer if the inspectors are found not to be competent. In addition, an additional inspector or inspectors shall be furnished, if deemed necessary by the City engineer. Inspection reports shall be furnished at the request of the City engineer who shall be responsible for providing inspection information to the City Commission. All construction contracts shall be let on a competitive bidding basis with the contract to be awarded pursuant to the procedures provided in the Texas Water Code, Chapter 49. Bid bonds, payment bonds, performance bonds and affidavits of payment shall be in all cases required. Upon completion of construction, submission of a complete set of "as built" plans to the City by the engineer for the District or other Political Subdivision shall be required.

(8) Any District or other Political Subdivision providing sewage treatment services agrees to employ a sewage treatment plant operator holding a valid certificate of competency issued by the Texas Commission on Environmental Quality ("TCEQ"). The District or other Political Subdivision shall provide copies to the City of reports, data and filings required to be made to TCEQ or any other regulatory authority having jurisdiction over the district's facilities or operations at the City's request on a periodic or on-going basis and at no charge to the City.

(9) The District or other Political Subdivision, its governing body, officers, developers, and/or landowners shall not permit the construction, or commit to any development within the District or other Political Subdivision that will result in wastewater flow to the sewage treatment facility that exceeds that facility's legally permitted average daily flow limitations or the District's or other Political Subdivision's allocated capacity therein.

(10) No bonds or notes of the District or other Political Subdivision shall be issued or sold unless (i) the District or other Political Subdivision is in compliance with subsection (1) above, (ii) not less than twenty (20) days following the filing of an application with the TCEQ for the approval of projects and bonds, the District or other Political Subdivision provides the City with a copy of such application, and (iii) not less than twenty (20) days prior to the publication of notice of sales, the District or other Political Subdivision provides the City with a copy of the staff memorandum of the TCEQ approving the projects and bonds, together with a copy of its proposed bond order, preliminary official statement, bid form, and notice of sale.

(11) The District or other Political Subdivision shall provide a certification from the District's or other Political Subdivision's financial advisor that all of the conditions of subsection (1) above have been satisfied.

(12) The petitioner shall pay all costs as provided for in this Ordinance.

(13) In addition to any other notice requirements applicable to the District or other Political Subdivision, the District or other Political Subdivision shall post notice of the meetings of its governing body at its designated posting place and at the location designated for notices at the City of Orchard City Hall, both of which shall be posted in accordance with applicable open meetings laws.. Notice shall also be provided to the City Secretary prior to any meeting of the governing body. Once there are one-hundred (100) residents in the District or other Political Subdivision, the governing body shall hold its meetings at a location accessible to its residents and at a place within the boundaries of the District or other Political Subdivision or the boundaries of the City.

(14) The official office for recordkeeping of the District or other Political Subdivision shall be accessible to District or other Political Subdivision residents and shall not require a long distance phone call for a resident to contact the official office for recordkeeping.

(15) The District or other Political Subdivision shall comply with all applicable requirements of the TCEQ regarding the display of signage at entrances into the District or other Political Subdivision.

(16) The District or other Political Subdivision shall provide a fire plan to the City describing how fire service is to be provided to the residents of the District or other Political Subdivision.

(17) The District or other Political Subdivision shall operate and maintain all parks and recreational facilities provided under the developers approved general plan or a home owners association created by the developer shall be responsible for the operation and maintenance of all parks and recreational facilities.

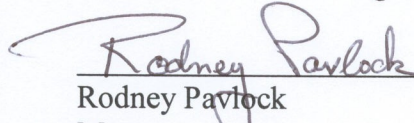
Section 7. Repeal.

All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

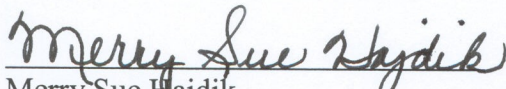
Section 8. Severability.

In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Commission of the City of Orchard, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED and ADOPTED this 9th day of May, 2007.


Rodney Pavlock
Mayor

ATTEST:


Merry Sue Hajdik
City Secretary