

Ordinance No. - 54-06

AN ORDINANCE OF THE VILLAGE OF PLEAK AUTHORIZING MUNICIPAL UTILITY DISTRICTS OR ANY OTHER POLITICAL SUBDIVISION WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE VILLAGE OF PLEAK FOR FURNISHING WATER AND SANITARY SEWER SERVICE; REQUIRING A DEPOSIT; REQUIRING PREREQUISITE DOCUMENTATION FOR CONSENT.

WHEREAS, The Village council hereby finds, determines, and declares that it is to the best interests of the Village of Pleak and of the territory within its extraterritorial jurisdiction, to promote the health, safety and welfare of persons and property to authorize municipal utility districts or any other political subdivisions having as one of its purposes the supplying of fresh water for domestic or commercial uses, the furnishing of sanitary sewer service, or the furnishing of drainage and/or flood control services; WHEREAS, The Village council hereby finds, that when such district is sought to be created within the area of the extraterritorial jurisdiction of the Village of Pleak, it is to the best interest of the citizens of the Village of Pleak and the residents within its extraterritorial jurisdiction to require documentation of for the feasibility of said municipal utility district.

NOW, THEREFORE BE IT ORDAINED BY the Village Council for the Village of Pleak, that the following ordinance is hereby adopted.

Section 1. Definitions.

The following words and terms whenever used or appearing in this article, in the singular or plural form, shall have the scope and meaning here indicated, unless the context clearly indicates otherwise:

- (1) *District*: A municipal utility district or political subdivision operating under the laws of the State of Texas.
- (2) *Municipal utility district*: A district created under and subject to the authority, conditions and restrictions of Article XVI, Section 59, of the Texas Constitution, and in accordance with and having all the powers provided by Chapter 54, Title 4, of the Texas Water Code (V.T.C.A., Water Code § 54.001 et seq.)
- (3) *Political subdivision*: The term "political subdivision" or "other political subdivision" as used in this article shall mean any political subdivision having as one of its purposes the supplying of fresh water for domestic or commercial uses or the furnishing of sanitary sewer services.

Section 2. Compliance with regulations required.

Upon the applications and/or petitions by the proponents of any proposed political subdivision or municipal utility district to the Village council for its written consent for the creation of a district within the corporate limits or extraterritorial jurisdiction of the Village, the Village council shall consider all factors relevant to the creation of such district, 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 political subdivision or municipal utility district shall adhere to all of the rules, regulations and standards contained in this ordinance; all

applicable rules, regulations, standards and laws of the State of Texas; and any other covenants, agreements and conditions that may be agreeable to the parties and contained in the written consent.

Section 3. Deposit against expenditures.

(a) Prior to the filing of any petition for the Village's consent to the creation or extension by enlargement of any proposed political subdivision or municipal utility district, the owner or the developer of the land within such proposed district shall deposit with the Village the sum of twenty thousand dollars (\$20,000.00) to reimburse the Village for all fiscal, legal, and engineering fees and expenses incurred by it relating to:

- (1) All related professional fees, including but not limited to legal, engineering, and consultants services (professional fees) to determine the necessity and feasibility of the creation of the district;
- (2) The financial advisory services to the Village described herein;
- (3) All professional fees regarding the application for consent to create and the creation of such district;
- (4) All professional fees pertaining to the review and submittal for approval of any agreements associated with the creation of the district e.g. utility agreement, development agreement, related agreements, and ordinance preparation etc.;
- (5) Any other professional fees incurred by the Village in relation to district creation and continuation thereafter, such as bond sales and approval, annexations related to district, ordinances, fire service agreement, etc.
- (6) If the owner or the developer's petition for consent to the creation or extension by enlargement of any proposed political subdivision or municipal utility district does not get approved, the Village will reimburse the owner or the developer the unused portion of the deposit left after reimbursement of expenses.

(b) The owner or the developer of the land within such proposed district shall also be obligated to pay additional expenses incurred *by* the Village for 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 Village. Such sums shall be used by the Village for the purpose of paying the costs incurred for such purposes. No interest will be allowed on any deposit provided for herein.

(c) If any portion of the additional deposit is not needed for the purpose of paying such fees and expenses, such unused *portion shall be* returned forthwith to the owner, developer or district. It is understood and agreed that the fees and expenses paid in relation to the additional deposit will be those actually incurred for such purposes by the Village and that the Village will make an accounting of such expenditures to the owner, developer or district. Those persons requesting the Village's consent to the creation of the district shall be obligated to guarantee payment to the Village of the sums set forth *herein*.

Section 4. Prerequisite to filing a petition for consent.

(1) Prior to the filing of any petition for the Village's consent to the creation or extension by enlargement of any proposed political subdivision or municipal utility district, approval by the Village planning commission shall be obtained of a preliminary land plan of the

proposed subdivision, covering all of the territory proposed to be included within such district. (2) After such approval by the planning commission for such preliminary land plan, and before filing of the petition for consent for proposed district, there shall be filed with the planning commission and the Village council a preliminary engineering report, prepared by a registered professional engineer, showing:

- a. The location and description of the district;
 1. Including a title report;
 2. Documentation of all landowners located within the district;
 3. Documentation that a majority of the landowners within the district agree with the petition for the creation or enlargement of the district.
- b. Existing state of urban development within the district;
- c. Proposed district facilities;
- d. Estimated costs; and
- e. A feasibility study and analysis:
 1. Project Value Estimate for Bonds
 2. Estimated Assessed Valuation
 3. Proof of Economic Feasibility of Proposed Development
 4. Proof of developers financial solvency
- f. Proof that the developer is authorized to file a petition for consent.

In connection with proposed district facilities, drawings shall be submitted showing the proposed water system, sanitary sewer system and drainage system.

Section 5. Rules, regulations and standards.

The Village council hereby finds, determines, and declares that it is to the best interests of the Village of Pleak and of the territory within its extraterritorial jurisdiction, that the proponents of any municipal utility district or any other political subdivision having as one of its purposes the supplying of fresh water for domestic or commercial uses, the furnishing of sanitary sewer service, or the furnishing of drainage and/or flood control services and park and recreational facilities, when such district is sought to be created within the corporate limits and for the area of the extraterritorial jurisdiction of the Village of Pleak, shall as a prerequisite to the written consent of the Village of Pleak, agree and covenant in writing, to adhere to the following rules, regulations and standards:

(1) Bonds may be issued by the district only for the purpose of purchasing and constructing, or purchasing or constructing, or under contract with the Village, 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. Such bonds of the district shall only be sold after taking public bids therefore. All district bonds shall expressly provide that the district 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 shall submit to the Village pro forma cash flows evidencing a district 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. Each bond issue shall not include more than two (2) years of capitalized interest. The resolution authorizing the issuance of the district's bonds will contain a provision that any pledge of the revenues from the operation of the district's water and sewer and or drainage system to the payment of the district's bonds will terminate when and if the Village of Pleak annexes the district, takes over the assets of the district and assumes all of the obligations of the district. No land will be *added* or annexed to the district until the Village of Pleak has given its written consent by resolution or ordinance of the Village council to such addition or annexation.

(2) The Village council may recommend the appointment of a person or the initial board of directors.

(3) Before the commencement of any construction within the *district, the district*, its directors, officers, or developers and landowners will submit to the Village or its designated representative all plans and specifications for the construction of water, sanitary sewer, and drainage facilities to serve such district and obtain the approval of such plans and specifications from the Village. 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 shall comply with the Village's standard plans and specifications. Prior to the construction of such facilities within the district, the district, or its engineer shall give written notice to the Village stating the date that such construction will be commenced. The construction of the district's water, sanitary sewer and drainage facilities shall be in accordance with the approved plans *and specifications of the Village*, and *during the progress of the construction* and installation of such facilities, the Village or a designated representative of the Village 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, and drainage facilities shall be started *or* undertaken by the district unless it has in its possession a certificate *of* the district'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 Village's established standards and specifications and a Letter or certificate from the engineer of the Village of Pleak that, in his opinion, such construction conforms to the Village's established standards and specifications.

(5) The owner and developer of the land within the district shall comply with the Village's subdivision ordinance before the sale of any lot in the district; which includes a properly recorded plat of the land being sold.

(6) The district will not provide water or sewer service to a residential lot unless the plat covering such a lot has been approved by the planning commission and Village council and all other applicable authorities of the Village of Pleak.

(7) Full-time resident inspection shall be provided during the construction period by the district inspectors approved by the engineer of the Village, which inspectors shall be removed upon the request of said Village 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 Village engineer.

Inspection reports shall be furnished at the request of the Village engineer who will be responsible for providing inspection information to the Village council. 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 a)) cases required. Upon completion of construction, submission of a complete set of ðas builtö plans to the Village by the district engineer shall be required.

(8) Any district 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 agrees to send copies to the Village of all reports, data and filings required to be made to TCEQ or any other regulatory authority having jurisdiction over the district's facilities or operations.

(9) The district, its board of directors, officers, developers, and/or landowners will not permit the construction, or commit to any development, within the district that will result in wastewater flow to the serving treatment facility which exceeds that facility's legally permitted average daily flow limitations or the district's allocated capacity therein.

(10) No bonds or notes of the district shall be issued or sold unless the district is in compliance with paragraph (1) above and not less than twenty (20) days following the filing of an application with the TCEQ for the approval of projects and bonds, the district provides the Village with a copy of such application and not less than twenty (20) days prior to the publication of notice of sales, the district provides the Village with a copy of the staff memorandum of the TCEQ approving the projects and bonds and a copy of its proposed bond order, preliminary official statement, bid form and notice of sale and the criteria set forth in subsection (1) above are met. The *Village* shall review the documents submitted and the evidence of compliance with the criteria within fifteen (15) days following receipt of same.

(11) The district shall provide a certification from the district's financial advisor that all of the conditions of subsection (1) 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, the district must post notice of the meetings of its board of directors at its designated posting place and at the location designated for notices at the Village hall not less than seventy-two

(72) hours prior to any meeting. Notice shall also be provided to the Village secretary prior to any meeting of the board of directors. Once there are one-hundred (100) residents in the district, the board of directors shall hold its meetings at a location accessible to its residents and in no event shall such location of the meetings be more than ten (10) miles from the district.

(14) The official office for recordkeeping of the district must be accessible to the district residents and shall not require a long distance phone call for a district resident to contact the official office for recordkeeping.

(15) The district shall comply with all applicable requirements of the TCEQ regarding the display of signage at entrances into the district.

(16) The district shall provide a fire plan to the Village describing how fire service is to be provided to the residents of the district. The fire plan shall be approved by TCEQ and the voters of the district. The district shall consider a fire plan submitted by the Village of Pleak and/or the Pleak Volunteer Fire Department for the district to contract with the Village of Pleak and/or the Pleak Volunteer Fire Department to provide fire protection within the district.

(17) The district 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 6. Repeal.

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

Section 7. Severability.

In the event any section, clause, sentence, paragraph, or portion of this Ordinance shall be, for any reason, adjudged by any Court of competent jurisdiction to be invalid, such invalidity shall not effect, invalidate or impair the remainder of this Ordinance.

Section 8. Adoption of ordinance.

This ordinance shall become effective upon its approval and passage.

PASSED by an affirmative vote of all members of the Village Council this 18 day of October, 2006.

APPROVED:

Mayor Margie Krenek

ATTEST:

City Secretary, Ruth Elster