

**TOWN OF PONDER**

**RESOLUTION 22-06**

**A RESOLUTION OF THE TOWN OF PONDER, TEXAS, ADOPTING A MUNICIPAL UTILITY DISTRICT POLICY; MAKING FINDINGS OF FACT; AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, Chapters 49 and 54 of the Texas Water Code and Article XVI, Section 59 of the Texas Constitution provides for the creation of Municipal Utility Districts; and

**WHEREAS**, state law requires Town consent for the creation of a Municipal Utility District in the Town limits or extraterritorial jurisdiction; and

**WHEREAS**, state law authorizes the Town to require certain provisions of a Municipal Utility District during the creation, construction, and

**WHEREAS**, the Town of Ponder desires to establish a policy for the consideration of proposed Municipal Utility Districts.

**NOW, THEREFORE, BE IT RESOLVED by the Town of Ponder Town Council:**


- 1. Findings of Fact:** The above and foregoing recitals are hereby found to be true and correct and are incorporated as finding of fact.
- 2. MUD Policy:** The Municipal Utility District Policy, as presented herein as Attachment "A", is hereby adopted and approved.
- 3. Effective Date:** This resolution shall be effective from and after its approval and passage.
- 4. Meeting:** The meeting at which this Resolution was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

**PASSED & APPROVED** this, the 9 day of May 2022.

**TOWN OF PONDER:**

  
Matthew Poole, Mayor

**ATTEST:**

  
Sheri Clearman, Town Secretary

# **Town of Ponder, Texas**

## **Policy and Procedures for Municipal Utility Districts**

### **PURPOSE**

A Municipal Utility District (“MUD”) is a type of District that functions as an independent, limited government. The purpose of a MUD is to provide a developer an alternate way to finance infrastructure, such as water, sewer, drainage, and road facilities. Managed by a board elected by property owners within the MUD, a MUD may issue bonds to reimburse a developer for authorized improvements and the MUD will utilize property tax revenues and user fees received from water and sewer services operated by the MUD to repay the debt. As the MUD pays off its debt, more of its tax revenue can be directed to other services.

The following outlines the Policy for creation of MUDs within Ponder Town limits and ETJ. The Town may support or oppose any MUDs regardless of how they are created, whether they meet this Policy or if the Town finds the proposed project can be served by Town utilities. Notwithstanding any provision herein to the contrary, consent to a municipal utility district is within and will remain within the ultimate discretion of the Town Council and no provision herein shall be construed to obligate the Town Council to grant or deny its consent to any specific petition.

### **CONDITIONS FOR TOWN CONSENT OF MUDS**

To be considered by the Town Council, the real estate development project supported by the MUD must meet the following minimum requirements:

1. The MUD must be designed to achieve at least three of the priorities for Community Benefits:
  - a. Improvements or services that advance or exceed the Town's code of ordinances, take into consideration environmentally sensitive areas, lighting, or natural features within the area for development.
  - b. Projects that create or enhance parks, trails, recreational facilities, open space benefits that exceed what is required by applicable development and parkland dedication regulations.
  - c. Projects that improve environmental protection, storm water quality, drainage, and flood control benefits that meet or exceed what is required by applicable development regulations.

- d. Projects that provide enhanced benefits to improve the public roadway and sidewalk network in the Town or the Town's ETJ.
  - e. Projects that provide enhanced water and wastewater infrastructure in the Town or the Town's ETJ.
2. Include a Limited Purpose Annexation for commercial areas, allowing the Town to impose and collect sales and use tax generated within the MUD.
  3. Upon annexation, all water, wastewater, drainage, sidewalks, and road infrastructure constructed by the MUD will become Town owned and operated infrastructure unless the Town Council grants an exemption. Therefore, public infrastructure plans shall be prepared and reviewed by the Town in compliance with the Town's development regulations as relates to land use, infrastructure design, permitting, and inspections and applicants shall seek Town development approvals prior to the commencement of any construction of public water, wastewater, drainage and road infrastructure that will be owned and operated by the Town within the MUD.
  4. Construction or acquisition of any MUD facilities within or for the MUD consisting of water, wastewater, and drainage infrastructure facilities that will be owned and operated by the Town shall not commence unless the design conforms to the Town's standards and the plans and specifications have been approved by all government entities with jurisdiction, including the Town. In cases where County and Town standards conflict, Town standards shall apply unless provided for in the 1445 Agreement between the Town and Williamson County.
  5. The MUD shall not provide services for, or acquire property to provide services for, any property outside its boundaries without the consent of the Town.
  6. A MUD may not extend the boundaries of the MUD unless the Town Council first adopts a resolution giving its consent to the extension. The conditions contained in the resolution consenting to the creation of the MUD also apply to any boundary extension, unless the resolution approving the District's proposed boundary extension states otherwise.
  7. The MUD shall not allow use of easements or stormwater drainage facilities owned or controlled by the MUD for any property or development outside its boundaries without the consent of the Town.
  8. It is the policy of the Town that a MUD created within the Town or its ETJ should not be abolished until such time as it has retired all of its outstanding bonded indebtedness, so that the Town taxpayers outside the MUD shall not have to pay off all or any part of the bonded indebtedness incurred by the MUD. The Town does reserve the right to abolish any MUD as allowed by state law, regardless of whether it has any outstanding debt, if it is deemed to be in the best interest of the Town.

9. Community Benefit Fee shall be provided per lot in the amount of \$3,400 per lot.

When considering a request for a MUD, the Town Council can consider the public benefit of the development by weighing the value of the benefits to the community, and to property in the MUD, against the costs to the Town, including delayed annexation.

### **ADDITIONAL CONDITIONS FOR TOWN CONSENT OF MUDS**

1. An in-Town Public Improvement District (PID) as alternative funding sources for the construction of public infrastructure is preferred; and
2. The development proposal will contain provisions limiting eminent domain powers of the MUD and further provide provisions governing annexation of additional property into the MUD, which shall be subject to Town consent, in its sole discretion.

### **REQUIREMENTS OF PETITION**

1. Attend a pre-application meeting to discuss intent to file a petition at least 30 days before filing the petition with the Town.
2. With the petition, submit a completed application and associated Development Fee Agreement to reimburse costs by the Town for legal, engineering, administrative financial advisory services, and costs incurred by the Town in connection with vetting the petition and negotiating any associated agreements for the MUD. The Town Secretary is authorized to execute the Development Fee Agreement.
3. Submit the Developer's Engineering Analysis
4. The petition must include the following:
  - a. Describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;
  - b. State the general nature of the work proposed to be done, the necessity for the work, and the cost of the project as then estimated by those filing the petition; and
  - c. Include a name of the district which shall be generally descriptive of the locale of the district followed by the words Municipal Utility District, Williamson County Municipal Utility District No. \_\_\_\_\_." (Insert the name of the county and proper consecutive number.) The proposed district shall not have the same name as any other district in the county.

### **NOTICE OF PETITION AND PUBLIC HEARING**

1. Town staff and consultants will assess the adequacy of the petition and its compliance with this Policy and state law and recommend to the Town Council whether to proceed with consideration of the petition. The Town may conduct a public hearing to consider the petition.

2. If the Town Council approves setting a public hearing on the MUD petition, the Town will publish the newspaper notice and the applicant shall reimburse the Town for the cost of publication.
3. The Town Council may hold a public hearing prior to the creation of a MUD at a regularly scheduled Town Council meeting on the petition before the expiration of the period established by state law. Upon the presentation of a petition for consent for the creation of a MUD within the corporate limits of the Town or ETJ, the majority in value of landowners within the proposed municipal utility district shall:
  - a. Present evidence of the number of acres that the proposed MUD contains; present evidence that the petition is filed on behalf of the majority in value of landowners within the proposed MUD;
  - b. Present a preliminary report describing the MUD and proposed use of the land within the MUD showing that the proposed MUD and land use are feasible;
  - c. Present an estimate of assessed valuation of the MUD 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 MUD, exclusive of wastewater, water, sewer drainage, roads and/or park improvements, have been completed; and showing the projected value of the improvements upon completion of the development within the MUD;
  - d. Agree that the majority in value of landowners within the proposed MUD 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 Town, and that prior to commencement of any improvements, will comply with all provisions of the subdivision ordinances, zoning ordinances, and other land use ordinances of the Town; and
  - e. The Town reserves the right to impose other specific requirements relative to a given MUD, including, but not limited to parkland and open space requirements, construction material for houses and other buildings, amenities, and minimum lot sizes, which shall be agreed to and set forth in a consent or development agreement.
4. No resolution shall be adopted consenting to the creation of a MUD until the Town Council finds that the proposed MUD:
  - a. Will not adversely affect the existing Town water, sewer, water quality, and storm facilities or other Town utilities or Town functions, and
  - b. Will not increase the Town's taxes or utility rates or adversely impact the Town's financing or bond rating, and that

- c. All of the conditions imposed by this Policy have been agreed to by the majority in value of landowners within the proposed MUD; and
  - d. The applicant has paid the Town for the Town's expended costs for review.
5. No MUDs shall be established or expanded within the Town limits or the ETJ without written consent by resolution or ordinance, of the Town Council in compliance with Section 54.016 and Section 54.0165 of the Municipal Utility Districts Act. The petition to the Town shall be signed by a majority in value of the holders of title of the land within the proposed district as indicated by the county tax rolls.

## **FINANCIAL LIMITATIONS & PERFORMANCE STANDARDS**

A MUD may issue bonds for any purpose authorized by the Municipal Utility Districts Act. An annual audit of the MUD is required to be done by an independent CPA. A copy is required to be provided to the Town Secretary and financial records shall be available for Town inspection during normal business hours. Bonds shall only be issued by the MUD for the purposes and in the manner provided by TCEQ, if appropriate. A copy of the bond application, including engineering report shall be submitted to the Town for review at the same time the MUD submits to TCEQ. For road bonds, a copy of the notice of sale and preliminary official statement shall be provided to the Town.

The following provisions must be included in a MUD consent agreement.

1. Prior to the sale or offer to sell any bonds of the MUD, the MUD must certify compliance with the applicable ordinance or resolution consenting to the creation of the MUD agreements. If requested by the Town any costs incurred by the Town in connection with review of the issuance of bonds shall be paid by the municipal utility district to the Town.
  - a. If development occurs in phases, development must be sustainable by the proposed bonding capacity, bond phasing, and development approvals. 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.
2. To ensure compliance by a MUD with each applicable condition or restriction imposed in connection with the consent of the Town to the creation of the MUD, the Council may approve the issuance or sale of a MUD bond before the MUD issues a bid invitation for the bond. If the MUD is not in compliance with each applicable condition:
  - a. the Council may not approve the issuance or sale of the bond; and
  - b. the MUD may not issue or sell the bond until the MUD is in compliance.

3. The Town, to ensure the economic vitality of a MUD and to the extent authorized by the laws of this state, may limit the amount of bonds the MUD may issue.
4. In consenting to the creation of a MUD, the Town may impose an additional condition or restriction on the terms, provisions, or sale of a bond or note of the MUD. A condition or restriction imposed under this subsection may not cause the bond or note to be unmarketable.
5. The authorizing order or resolution regarding the issuance of any series of bonds, which bonds shall be and remain obligations of the MUD until its dissolution, must be approved by the Town Council. The Town Council may refuse to give its approval to the issuance of bonds or limit the amount of bonds issued by the MUD if the MUD is not in compliance with the Town's requirements contained in the consent resolution or ancillary documents.
6. The Town will request compliance with the following terms and reporting requirements:
  - a. The Town 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).
  - b. The Town may approve the issuance of MUD bonds for park or road improvements if the park or road improvements for which the bonds are issued are included in the Town's master plans.
  - c. A MUD may not spend the proceeds of a bond or incur any indebtedness for the purpose of providing service to territory outside the boundary of the MUD without the approval of the Town Council.
  - d. At least thirty (30) days before the issuance of bonds, except refunding bonds, the MUD'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 MUD has been approved by the TCEQ. The report should also state the following:
    - 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.
  - e. Within thirty (30) days after the MUD closes the sale of a series of bonds, if requested by Town, the MUD shall deliver to the Town Secretary an electronic copy of the final official statement for such series of bonds as well as any additional information requested by the Town and provide the Town with a complete transcript of bond proceedings within sixty (60) days after the date the bonds are delivered.
  - f. Terms of any refunding proposed by the District must be approved by the Town Council or meet standard minimum NPV savings of 3%.

7. The MUD shall send a copy of the order or other action setting an ad valorem tax rate to the Town Secretary and the Town Secretary within thirty (30) days after District's adoption of the rate.
8. The MUD shall send a copy of its annual audit to the Town Secretary. The MUD will meet accounting standards set by the Governmental Accounting Standards Board (GASB) and fulfill all arbitrage compliance reports to the satisfaction of the Town Secretary.
9. The MUD shall provide copies of any material event notices filed under applicable federal securities laws or regulations to the Town Secretary within thirty (30) days after filing such notices with the applicable federal agency.
10. The Town acknowledges that a MUD 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 Town Council explaining the need for the increase, at which time residents of the MUD shall be given an opportunity to be heard. The MUD shall provide notice of such presentation on the MUD's website, if applicable, and the notice shall be sent by regular mail or email to each owner of taxable property within the MUD 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 MUD.

#### **UTILITY RATES IN A MUD**

The consent of the Town to the creation of a MUD shall be conditioned on a contract or Strategic Partnership Agreement between the Town and the MUD. The contract must provide that at the time the Town annexes the territory of the MUD, water and wastewater rates established for property in the MUD shall be sufficient to fully compensate the Town for assuming the indebtedness of the MUD after the MUD is dissolved.

A water or wastewater rate established may exceed the water or wastewater rate established for other customers in the boundary of the Town and shall include a component based on the monthly debt retirement payment assumed by the Town. A water or wastewater rate may be recalculated as provided in the contract or as allowed by state law.

The established rate must remain in effect until the bonded indebtedness of the District is fully retired and the Town is fully compensated. The written consent of the Town to the creation of the MUD shall specify the estimated date such annexation shall occur no earlier than when the following conditions have been met:

- a. 90 percent of the water, wastewater, drainage, and road improvements and park facilities for which bonds of the MUD are authorized have been to be installed or completed and
- b. the developer, or developer's successors or assigns, have been reimbursed by the MUD as allowed by law or the Town assumes any obligation of the MUD as allowed by law.



- c. The Town does reserve the right to abolish any MUD as allowed by state law, regardless of whether it has any outstanding debt, if it is deemed to be in the best interest of the Town.

## **MUD BOARDS**

All MUDs shall require that board meetings be recorded, and all recordings and minutes of the meeting be available on a website and at a meeting location within the MUD.

## **APPLICATION FOR DISSOLUTION OF MUDs**

The Town Council may dissolve a MUD at any time, with MUD approval by entering into a Strategic Partnership Agreement in accordance with state law. However, a MUD may provide a written request that the Town consider dissolution if certain guidelines, addressed below, are met. The request should be sent to the Town Secretary with the proposed date of dissolution, and supporting documentation showing that the MUD will meet the guidelines for dissolution by that date. If the Town Council decides that dissolution will be beneficial to the Town, the Town will prepare a written implementation plan for the District's dissolution within six (6) months of the date the Town Council considers the request. The Town may, at its option, as a step toward dissolution, refinance the District's bond debt.

## **MUDS SEEKING DISSOLUTION SHOULD MEET ALL OF THE FOLLOWING CONDITIONS:**

1. Preferably, all MUD bond debt should be fully paid. At a minimum, the Town's annual costs of paying the MUD's bond debt and reoccurring operation and maintenance expenses after dissolution will be no greater than the amount of revenues the Town gains through the total ad valorem value of property within the MUD;
2. The MUD has fully reimbursed the developer for the developer's cost of installing MUD infrastructure in compliance with the MUD 's contract with the developer as permitted by Texas law and regulations;
3. The MUD 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 Town;
4. The MUD did not finance and does not own or operate any utility or drainage facilities that the Town did not specifically approve that would become part of the Town's public infrastructure system upon the MUD 's dissolution.
5. Enter into a Strategic Partnership Agreement with the Town to provide for the dissolution of the MUD.