

**RESOLUTION NO. R-2021-126**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS  
APPROVING A POLICY FOR THE GRANTING OF THE CITY'S CONSENT TO  
THE CREATION OF MUNICIPAL UTILITY DISTRICTS WITHIN THE CITY OF  
BASTROP'S CITY LIMITS AND EXTRATERRITORIAL JURISDICTION.**

**WHEREAS**, the City of Bastrop City Council (City Council) seeks to provide clear and concise policy direction to City staff, property owners and developers regarding the creation of Municipal Utility Districts in the City Limits and / or the Extraterritorial Jurisdiction (ETJ); and

**WHEREAS**, the City Council prefers that the creation of Municipal Utility Districts be consistent and uniform in a manner that is compatible with the City's regulations, capital improvement plans, and comprehensive plans; and

**WHEREAS**, the City Council understands that infrastructure improvements such as water, wastewater, drainage, and transportation are fundamental to superior land development, and that Municipal Utility Districts can be an instrument to facilitate reasonable and responsible land development; and

**WHEREAS**, the City Council finds that the attached Policy & Procedures for Consenting to the Creation of Municipal Utility Districts is reasonable, prudent, and necessary for the preservation of the public health, safety, and welfare, and is in furtherance of quality infrastructure improvements that accompany responsible land development.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:**

**Section 1.** The findings set forth in the recitals of this Resolution are hereby found to be true and correct.

**Section 2.** The attached Policy & Procedures for Consenting to the Creation of Municipal Utility Districts is hereby approved.

**Section 3.** This resolution shall take effect immediately from and after its passage, and it is duly resolved.

**DULY RESOLVED AND ADOPTED** by the City Council of the City of Bastrop this, the 14<sup>th</sup> day of December, 2021.

**APPROVED:**

  
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Connie B. Schroeder, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Ann Franklin, City Secretary

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Alan Bojorquez, City Attorney

# **City of Bastrop, Texas Policy & Procedures for Municipal Utility Districts**

## **A. PURPOSE**

A Municipal Utility District (“MUD”) is a type of special 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.

A MUD can be created by either (a) adoption of a district creation bill by the Texas Legislature or (b) by the Texas Commission on Environmental Quality (“TCEQ”) following a petition and consent process described in the Texas Water Code. For property located in the City Limits and Extraterritorial Jurisdiction (“ETJ”) to be included in a MUD, City consent is required prior to creation as part of the TCEQ process. There are limitations on what the City may require as condition for consent, particularly for MUDs that do not propose to connect to the City’s water or sewer systems. If the City fails or refuses to grant consent within ninety (90) days after receipt of a petition, the state statute provides for a one hundred and twenty (120) day period for negotiation of a contract for City water and sewer service to the proposed development. If a contract for service is not executed, the applicant is authorized to initiate proceedings with TCEQ to create a MUD. The City reserves the right to annex any and all land in the ETJ and dissolve MUDs if necessary when such action is determined to be beneficial by the City Council.

Texas law requires that MUDs be annexed in their entirety. If the City annexes a MUD before its bonds are paid in full, it is standard that the City must assume the balance of the MUD debt and reimburse the developer for any unbonded facilities. If full purpose annexation is deferred until the MUD bonds are paid in full, this development would be excluded from the City’s tax base for that period of time, reasonably decades.

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

## **B. CONDITIONS FOR CITY CONSENT OF ETJ AND IN-CITY MUDS**

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

1. The developer must enter into a development fee agreement to reimburse the City of the costs of legal, engineering, administrative, and other consultant review of the petition to create a MUD.
2. The property shall not be in an area the City has made plans to annex or provide municipal services to within the next five (5) years.
3. A statement regarding potential options for Annexation of commercial areas, allowing the City to impose and collect sales and use tax generated within the MUD.
4. The Project must utilize City water and sewer if located within the applicable City Certificate of Convenience and Necessity ("CCN") area. If the proposed development is located within the City CCN but tying into existing infrastructure is deemed unreasonable by the City Engineer, the City Engineer may recommend to the City Council that the requirement to utilize City water and/or sewer not be required.
5. Upon annexation (if ever), all water, wastewater, drainage, and road infrastructure constructed by the MUD will become City owned and operated infrastructure unless the City Council grants an exemption. Therefore, infrastructure plans shall be prepared and reviewed by the City in compliance with the City's development regulations as it relates to land use, infrastructure design, permitting, and inspections. Applicants shall seek City development approval prior to the commencement of any construction within the MUD.
6. Construction or acquisition of any MUD facilities within or for the MUD consisting of infrastructure facilities shall not commence unless the design conforms to the City's standards and the plans and specifications have been approved by all government entities with jurisdiction, including the City. In cases where Bastrop County and City standards conflict, City standards shall apply unless provided for in the 1445 Agreement between the City and County.
7. The request to create a MUD shall provide examples of "unique factors justifying [MUD] creation or amendments" to guide determinations made in the Code of Ordinances; address provision of public services, and address public safety matters when the Consent Agreement and development within the MUD exceeds Code of Ordinances parkland requirements (not just meets Code of Ordinances standards or less than Code of Ordinances standards), and address parkland provisions in the Consent Agreement
8. The MUD shall not provide services for, or acquire property to provide services for, any property outside its boundaries without the consent of the City.
9. A MUD may not extend the boundaries of the MUD unless the City 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.

10. 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 City.
11. A MUD created within the City Limits or ETJ should not be abolished until such time as it has retired all of its outstanding bonded indebtedness, so that the City taxpayers outside the MUD shall not have to pay off all or any part of the bonded indebtedness incurred by the MUD. The City 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 City.

When considering a request for a MUD, the City 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 City, including delayed annexation.

#### **C. ADDITIONAL CONDITIONS FOR CITY CONSENT OF ETJ MUDS**

1. The Applicant must demonstrate that a Public Improvement District (PID) and Tax Increment Reinvestment Zone (TIRZ), as alternative funding sources for the construction of public infrastructure will not be economically feasible for the subject property; 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 City Council consent, in its sole discretion.

#### **D. ADDITIONAL CONDITIONS FOR CITY CONSENT OF IN-CITY MUDS**

1. The Applicant must demonstrate that a Public Improvement District (PID) and Tax Increment Reinvestment Zone (TIRZ), as alternative funding sources for the construction of public infrastructure will not be economically feasible for the subject property; and
2. The development proposal will contain provisions limiting eminent domain powers of the in-City MUD and further provide provisions governing annexation of additional property into the in-City MUD, which shall be subject to City consent, in its sole discretion.

#### **E. REQUIREMENTS OF PETITION**

1. Attend a pre-application meeting to discuss intent to file a petition at least thirty (30) days before filing the petition with the City.
2. With the petition, submit a completed application and associated fee to reimburse costs incurred by the City for legal, engineering, administrative and financial advisory services and fees in connection with vetting the petition and negotiating any associated agreements for the MUD.

3. The petition to create the MUD must include the following:
  - a. Description of 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. Statement of 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. A name of the district that is generally descriptive of the locale of the district followed by the words Municipal Utility District, or if a district is located within one county, it may be designated "Bastrop 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 same county.

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

1. City staff and consultants will assess the adequacy of the petition and its compliance with this Policy and the Municipal Utility Districts Act and recommend to the City Council whether to proceed with a public hearing on the petition.
2. If the City Council approves setting a public hearing on the MUD petition, the applicant shall publish the newspaper notice and mail the notice to property owners. The applicant must provide affidavits or other proof of publication and mailing of notices to the City for the public hearing to be added to the agenda, at least two weeks prior to the desired City Council meeting date.
3. The City Council shall hold a public hearing prior to the creation of a MUD at a regularly scheduled City 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 City Limits or ETJ, the majority in value of landowners within the proposed MUD shall:
  - a. Present evidence that the proposed MUD contains one hundred (100) or more acres and 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 the date of the petition; a build-out schedule showing the projected value of the property when fifty percent (50%) of the projected vertical improvements for the MUD (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 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 City, and that prior to commencement of any improvements, will comply with all provisions of the subdivision ordinances and zoning ordinances of the City; and
  - e. Acknowledge that the City reserves the right to impose other specific requirements relative to a given MUD, 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.
4. The hearing on the petition may be continued from time to time. After the final adjournment of the public hearing, the City Council has three months (90) days to adopt a resolution making the findings required in this Policy to approve the petition.
  5. No resolution shall be adopted consenting to the creation of a MUD until the City Council finds that the proposed MUD:
    - a. Meets the conditions for community benefits as outlined in Section B of this policy; and
    - b. Will not adversely affect the existing City water, sewer and storm facilities or other City utilities or City functions; and
    - c. Will not increase the City's taxes or utility rates or adversely impact the City's financing or bond rating; and
    - d. All of the conditions imposed by this Policy have been agreed to by the majority in value of landowners within the proposed MUD.
  6. No MUDs shall be established or expanded within the City Limits or the ETJ without written consent by resolution or ordinance, of the City Council in compliance with Section 54.016 and Section 54.0165 of the Municipal Utility Districts Act. The petition to the City 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.

## **G. 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 Certified Public Accountant. A copy is required to be provided to the City Manager's Office and financial records shall be available for City 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 City 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 City.

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, a consent resolution must be approved by the City Council, verifying the MUD is in compliance with the applicable Development and MUD agreements. Any costs incurred by the City in connection with review of the issuance of bonds shall be paid by the MUD per the City fee schedule.
  - (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 City to the creation of the MUD, the Council is entitled to 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.
3. The City, 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 City 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 City Council. The City 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 City's requirements contained in the consent resolution or ancillary documents. The City will request compliance with the following terms and reporting requirements:
  - (a) The MUD's initial bond debt maturity date will not exceed twenty-five (25) years. Once the District has established a maturity date for its initial bonds, the maturity date for any additional bonds will not extend beyond the maturity date for the initial bonds, without the approval of the City Council.
  - (b) The amount of each annual principal payment on bond debt should be substantially the same, or only moderately increased throughout the repayment term. In any case, at least forty percent (40%) of the principal must be repaid in the first half of the repayment schedule, unless a portion of the bonds are structured as capital appreciation bonds.



- (c) Each bond issue shall not include more than two (2) years of capitalized interest.
- (d) The net effective interest rate of a bond issued by a MUD may not exceed two percent (2%) above the highest average interest rate reported by the Daily Bond Buyer in its weekly "20 Bond Index" during the one-month period preceding the date that notice of sale is given.
- (e) Each bond issued by a MUD must include a call provision that permits the MUD to redeem the bond at par.
- (f) A MUD must pledge the revenue and ad valorem taxes of the MUD to the payment of the principal of and interest on all bonds issued by the MUD.
- (g) The City 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).
- (h) The City 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 City's master plans.
- (i) 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 City Council.
- (j) 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:
  - 1. The amount of bonds being proposed for issuance,
  - 2. The projects to be funded by such bonds,
  - 3. The proposed debt service tax rate after issuance of the bonds.
- (k) Within thirty (30) days after the MUD closes the sale of a series of bonds, the MUD shall deliver to the City Manager's Office a copy of the final official statement for such series of bonds as well as any additional information requested by the City and provide the City with a complete transcript of bond proceedings within sixty (60) days after the date the bonds are delivered.
- (l) Terms of any refunding proposed by the District must be approved by the City Council.

6. The MUD shall send a copy of the order or other action setting an ad valorem tax rate to the City Secretary and the City Manager within thirty (30) days after MUD's adoption of the rate.
7. The MUD shall send a copy of its annual audit to the City Manager's Office no later than February 15<sup>th</sup> of each year. 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 City Manager.
8. The MUD shall provide copies of any material event notices filed under applicable federal securities laws or regulations to the City Manager's Office within thirty (30) days after filing such notices with the applicable federal agency.
9. The City 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 MUD shall make a formal presentation to City Council explaining the need for the increase, at which time residents of the MUD shall be given an opportunity to be heard. Notice of such presentation shall be sent 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.

#### **H. UTILITY RATES IN A MUD**

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

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

The established rate must remain in effect until the bonded indebtedness of the MUD is fully retired and the City is fully compensated, regardless of whether a bond of the MUD is called. The written consent of the City to the creation of a MUD shall specify the estimated date by which at least ninety percent (90%) of the water, wastewater, drainage, and road improvements for which bonds of the MUD are issued must be installed or completed.

#### **I. MUD BOARDS**

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

## **J. APPLICATION FOR DISSOLUTION OF MUDs**

The City Council may dissolve a MUD at any time, with or without MUD approval in accordance with state law. However, a MUD may provide a written request that the City consider dissolution if certain guidelines, addressed below, are met. The request should be sent to the City 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 City Council decides that dissolution will be beneficial to the City, the City will prepare a written implementation plan for the MUD's dissolution within six (6) months of the date the City Council considers the request. The City may, at its option, as a step toward dissolution, refinance the MUD'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 City'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 City 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 City; and
4. The MUD did not finance and does not own or operate any utility or drainage facilities that the City did not specifically approve that would become part of the City's public infrastructure system upon the MUD 's dissolution.