



ORDINANCE NO. 2023-05-31.6

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWK COVE, TEXAS,
PROVIDING FOR SETTING THE CITY SEWER AND WASTEWATER TREATMENT UTILITY
SERVICE RATES; PROVIDING FOR CUMULATION AND SEVERABILITY; PROVIDING
FOR PENALTIES FOR VIOLATION; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, The City of Hawk Cove, Texas ("City") is a Type-A General Law Municipality located in Hunt County, Texas, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of The State of Texas; and

WHEREAS, it is a function of the Council to regulate itself (*see*, Local Government Code ("LGC"), Section 22.072(b)) and ensure compliance by all members of the Council with all City obligations, including the obligation to keep the City's business moving ahead smoothly and efficiently (*see*, p. 32, *Handbook for Mayors and Councilmembers*, Texas Municipal League, © 2022); enacted by City's ordinances; and

WHEREAS, it is the duty of the Council to enact and enforce ordinances, resolutions and regulations to protect and preserve the business, property, health, safety, morals and general welfare of City's citizens and City business and operations; to preserve peace and good order in the municipality (*see*, Local Government Code ("LGC"), Sections 22.042, 54.001, 54.002 and 54.003) so as to foster, establish and maintain goodwill and productive working City relationships, both within and outside of The City of Hawk Cove ("City"); and

WHEREAS, City's sewage and wastewater and sewage system (the "Utility System") is critical infrastructure, for which City is mandatorily obligated under Certificates of Obligation and pursuant to City Ordinance No. 05-103 ("City's debt contract") to the United States Department of Agriculture, Rural Utilities Service ("U.S.D.A"), subject to Texas Government Code Title 9, Subtitle J, Chapter 1502, and Subchapter C of Chapter 271, LGC, relating to Public Securities for Municipal Utilities; and

WHEREAS, after due consideration, the Council hereby deems that City's present ordinances, resolutions and regulations of City are inadequate for: protecting and preserving the business, property, health, safety and general welfare of City's citizens and City business and operations; preserving peace and good order in the municipality; fostering, establishing and maintaining goodwill and productive working City relationships both within and outside of City; and in particular as are related, but not limited, to protecting and preserving the Utility System and City's obligations under City's debt contract with the U.S.D.A.; and

WHEREAS, the inadequacy of City's present ordinances, resolutions and regulations creates emergency and/or exigency, and/or unusual and unforeseen, conditions that could not have been expected or considered through the use of reasonably diligent thought and attention, that calls for immediate action and now requires Council to acknowledge, respond to and fulfill its duties to enact and enforce

additional, amended or replacement ordinances, resolutions and regulations to better protect and preserve the business, property, health, safety, morals and general welfare of City's citizens and City business and operations; to preserve peace and good order in the municipality; to foster, establish and maintain goodwill and productive working City relationships both within and outside of City; and in particular as are related, but not limited, to protecting and preserving the Utility System and City's obligations under City's debt contract with the U.S.D.A.; and

WHEREAS, the Council intends specifically by this ordinance to protect, preserve, provide and maintain continuity and transparency in: City's critical infrastructure (Texas Gov't Code, Section 421.001); City's citizens' health and environment; minimizing citizens' health risks by reducing environmental pollution (Texas Gov't Code, Section 421.001); promoting the smooth and efficient flow of City's administration; and, among other obligations, ensuring the mandatory service of City's debt contract with the U.S.D.A., as well as City's business and operations connected to that debt; and

WHEREAS, City acknowledges that this ordinance is the most effective and efficient method of effecting City's goals, duties, responsibilities and intentions as referred to above; and

WHEREAS, in acknowledgment of, response to and fulfillment of Council's duties as recognized herein;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HAWK COVE, TEXAS:

SECTION 1. The above recitals are hereby found to be true and correct and are incorporated herein for all purposes.

SECTION 2. This ordinance shall be enacted by the unanimous vote of all five (5) voting members of the Council. Any change, or endeavor, to rescind, revoke, repeal, cancel, reverse or abrogate this ordinance shall require the unanimous vote of all five (5) voting members of the Council at a properly-noticed official Council meeting.

SECTION 3. Pursuant to Texas Government Code Title 9, Subtitle J, Chapter 1502 Public Securities for Municipal Utilities, City shall, in accordance with Section 1502.057, collect charges for use of the Utility System Services ("Services") from City property owners sufficient to pay all taxes, operating, maintenance, depreciation, replacement, improvement and interest charges, and outstanding debt obligations (the "Rate Requirements") relating to the Utility System.

SECTION 4. Utility System operating costs defined in Section 3 above that are incurred by City's General Fund shall be transferred in reimbursement from City's Utility Fund to City's General Fund, as is authorized by, and pursuant to the laws of, the State of Texas (Texas Gov't Code, Section 1502.059).

SECTION 5. City shall determine the current operating revenues and direct, mixed and indirect costs, as well as all outstanding debt obligations, associated with the Utility System, including, but not limited to:

- (a) Revenues, as are defined as income from all sources specific to operating the Utility System;
- (b) Direct costs, as are defined as all costs specific to operations of the Utility System; and

- (c) Mixed and indirect costs, as are defined and calculated in, and pursuant to, the *Office of Management and Budget Publication OMB A-87a: Cost Principles for State, Local, and Indian Tribal Governments*.

SECTION 6. The Council, in compliance with annual rate analyses, based on the Rate Requirements and performed by a qualified, experienced and competent analyst: shall increase the rate or rates of, but shall not decrease, City's utilities and taxes; and shall enact and maintain, by amendments or re-enactments, an ordinance or ordinances that state City's utility rate increases based on the rate analyses (the "Utility Rate Ordinance"), that adequately provides for the continuing mandatory service of City's debt contract, pursuant to the authority of LGC, Section 51.001 and Texas Gov't Code, Section 1502.056, *et. seq.*

SECTION 7. Each owner of property in City is solely responsible to pay City for Services to such owner's property. City shall discontinue Services to any property in City for any owner's failure to pay when due all amounts due and payable ("non-payment") for Services to that owner's property. City shall not restore use of Services that are discontinued for non-payment, until payment for Services is current. City shall impose a penalty or penalties for any non-payment for Services pursuant to the laws of the State of Texas, which may include, among others: criminal prosecution and/or civil action; property liens; fines; fees; or imprisonment.

SECTION 8. Any use of Services without City's knowledge and consent; any interference with, trespass on, or injury to the Utility System; any interference with, trespass on, or injury to any Utility System appliance; and any interference with, trespass on, or injury to any portion of the premises on which any Utility System or Utility System appliance is located; shall be punishable by criminal prosecution and/or civil action pursuant to the laws of the State of Texas, which may include, among others: property liens; fines; fees; or imprisonment.

SECTION 9. This ordinance shall be and is hereby declared to be cumulative with, and not be limited to, all other federal laws, laws of the State of Texas, ordinances, resolutions, policies, sections, subsections, articles, paragraphs, sentences, clauses, phrases or words and procedures relating or pertaining to the Utility System, Rate Requirements and City's debt contract with the U.S.D.A. This ordinance shall not operate to repeal or affect, whether in whole or in part, any other City ordinances, policies and procedures, except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinances, policies and procedures are hereby repealed, but only to the extent of any such conflict.

SECTION 10. If any provision, section, subsection, article, paragraph, sentence, clause, phrase or word of this ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, or for any reason unenforceable, whether in whole or in part, the validity of the remaining portions of this ordinance or the application to such other persons or sets of circumstances shall not be affected thereby, it being the intent of the Council in adopting this ordinance that no portion thereof or provision contained herein shall become inoperative or fail by any reason of unconstitutionality or invalidity of any other portion or provision.

SECTION 11. Any Council or governing body member violating any provision of this Ordinance shall be prosecuted for such an offense, and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00). Each separate violation hereof shall be deemed a separate offense, and shall

be punished accordingly. In addition to prosecution for any such offense, City also may seek injunctive relief for any such violation in the District Court of Hunt County, Texas. In addition to any criminal prosecution, all available and applicable civil remedies shall be pursued against such person or persons.

SECTION 12. This ordinance shall be effective immediately upon its passage.

CONCLUSION

Passed and approved this ____ day of _____, 2023.

Darren Evans, Mayor

ATTEST: _____
City Secretary

APPROVED AS TO FORM: _____
City Attorney