



**ORDINANCE NO. 2023-05-31.7
(REPEALING AND REPLACING ORDINANCE 06-102)**

**AN ORDINANCE OF THE CITY OF HAWK COVE, TEXAS, PROVIDING FOR A
PLAN OF OPERATION AND MANAGEMENT PLAN FOR THE CITY OF HAWK COVE
SEWER SYSTEM; PROVIDING FOR CUMULATION AND SEVERABILITY;
PROVIDING 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 laws of the State of Texas and City ordinances, resolutions, regulations, procedures and 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); and

WHEREAS, after due consideration, the Council hereby deems that City's present ordinances, resolutions and regulations are inadequate for: protecting and preserving the business, property, health, safety, morals 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 all of City's obligations and conditions under City's debt contract with the United States Department of Agriculture, Rural Development ("U.S.D.A."); and

WHEREAS, the inadequacy of City's present ordinances, resolutions and regulations creates an emergency and/or an exigency, and/or unusual and unforeseen, conditions that could not have been expected or considered through the use of reasonably diligent thought and attention (*see, e.g.*, LGC 102.009 and 12.0015), 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 effect the protections and preservations stated hereinabove, and in particular as are related, but not limited, to protecting and preserving all of City's obligations and conditions under City's debt contract with the U.S.D.A.; and

WHEREAS, the laws of the State of Texas, including but not limited to Texas Government Code Chapter 1502, as well as City's debt contract with the U.S.D.A., are additional conditions that impose on City mandatory legal, as well as other sewer and wastewater system ("System") operations and financial requirements, duties, obligations and responsibilities concerning, and relating to, the System; and

WHEREAS, based on the laws of the State of Texas, as well as City's debt contract with the U.S.D.A. affecting City's System, City specifically deems it necessary that Ordinance 06-102, establishing a plan of operation, and a management plan (together, "Plans") shall be repealed and replaced with this ordinance, to ascertain and provide for City's uniform and continuing compliance with the legal and other mandatory authorities, duties and responsibilities in the operations and management of the System; and

WHEREAS, the Council intends specifically by this ordinance to protect, preserve, provide and maintain continuity and transparency in: City's critical infrastructure (Tex. Gov't Code, Section 421.001); City's citizens' health and environment; minimizing citizens' health risks by reducing environmental pollution (Tex. Gov't Code, Section 421.001); promoting the smooth and efficient flow of City's administration; continuing the stable and productive work environment for City's few Administrative Personnel; avoiding conflicts and confusion from breaches of City's administrative hierarchy; and, among other obligations, servicing 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 providing this ordinance for a plan of operation and a management plan for The City of Hawk Cove sewer system is the most effective and efficient method of effecting City's goals, duties and responsibilities 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. The existence of the conditions requiring this ordinance, and the importance of this ordinance to protecting, safeguarding and preserving the business, property, health, safety, peace and general welfare of the citizens of City and City's business and operations, particularly related to City's debt obligations under contract with the U.S.D.A., as well as other obligations, require that 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. As a result of the existence, and City's acknowledgement, of the conditions requiring this ordinance, Council shall enact no ordinance, resolution, regulation, policy, section, subsection, article, paragraph, sentence, clause, phrase, words or procedure in any way violating the mandatory laws of the State of Texas, or City's debt contract with the U.S.D.A., of, for, concerning or relating to, but not limited to: the mandatory operations, management and financial (e.g., debt, debt repayment or debt structure) requirements, duties, obligations and responsibilities of City for the System.

SECTION 4. City shall, by contract, and pursuant to an ordinance for the position of City Administrator of the City of Hawk Cove, Texas, ("Administrator"), employ an administrator. City shall honor, uphold, fulfill and strictly adhere to all terms and conditions of such contract and ordinance. Such ordinance relating to the position, authorities and duties of Administrator shall include provisions that Administrator shall have exclusive duties and authorities for, and in administering, supervising and overseeing, all day-to-day business, operations and maintenance of City.

SECTION 5. Whether specified in Administrator's contract or any City ordinance relating to Administrator, or not, Administrator shall have the authority to administer and the duties of administering, the day-to-day business, operations and maintenance of City, which are hereby deemed to include exclusive authority to administer all business, operations and maintenance of, for, or relating to, and in connection with, the System.

SECTION 6. Administrator's specific areas of authority and duties in connection with and/or relating to, the System shall include, but shall not be limited to, City: employment and personnel; departmental creations and assignments; facilities and housing; records creation, collection, maintenance and retention as established by the Mayor; accounts receivable, accounts payable, accounting, bookkeeping, banking and all periodic or other audits, except that Administrator shall not be a signer on any related banking account; purchasing; reports and exclusive communications to, or from, any governmental or contractual entity or person, whether to or from the Council and/or to or from the U.S.D.A.; materials, equipment, parts and supplies; contracts and finances; physical System structure; System infrastructure; and System routine, unusual or extraordinary maintenance, repair and/or replacement. In Administrator's sole discretion, Administrator may delegate any, or any portions of, Administrator's System authority and duties to such other administrative or department personnel as Administrator determines is reasonable and necessary.

SECTION 7. To avoid improper, conflicting or confusing communications concerning System, all contacts with non-Council entities, personnel or persons concerning the business, operations and/or maintenance of System shall exclusively be by or through Administrator, City's Mayor, City's Secretary and City's Attorney, and/or such other/s as any of these appoint or designate from time to time according to specific needs or requirements. No member of the Council may, nor shall any member of the Council, contact any governmental entity, private or public contractor, or any person in connection with or relating to System, whether by or through any other person, any form or medium of communication or in any manner whatsoever, or in connection with or related to the business, operations and/or maintenance of System.

SECTION 8. All Council members shall exercise strict adherence to and compliance with this ordinance pursuant to LGC Section 22.072(b).

SECTION 9. In administering the System, Administrator shall have exclusive discretion to take any and all necessary and reasonable actions for that purpose relating to or in connection with the System, including but not limited to: determining and presenting to Council, enforcing and supporting, related and/or connected mandatory laws of the State of Texas; requirements of City's debt contract with the U.S.D.A.; City ordinances, resolutions, regulations, rules, policies and practices; and costs and expenses.

SECTION 10. Administrator shall be responsible for Administrator's duties relating to or in connection with the System to the Mayor and Council. Council shall not unreasonably withhold approval for, or interfere in any way with: funding or payment for any costs, expenses or payable amounts connected to or related in any way with the System, City's obligations and conditions under City's debt contract with the U.S.D.A.; or Administrator's supervision, maintenance, repair or replacement of the System, including for extraordinary or unusual costs, expenses or payments, as may occur as circumstances, conditions or situations may require.

SECTION 11. This ordinance repealing and replacing Ordinance No. 06-102 shall be and is hereby declared to be cumulative with, and not be limited to, all other ordinances, resolutions, policies, sections, subsections, articles, paragraphs, sentences, clauses, phrases or words and procedures relating or pertaining to the System. This ordinance shall not operate to repeal or affect, whether in whole or in part, any other such 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 12. If any provision, section, subsection, article, paragraph, sentence, clause, phrase or word of this ordinance, or the application of same to any entity, 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 City Council of City 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 13. 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, provided, however, compliance may be further sought through injunctive relief 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 14. 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