

ORDINANCE NO. 2024-18

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS APPROVING A SERVICE AND ASSESSMENT PLAN AND ASSESSMENT ROLL FOR IMPROVEMENT AREA #2 PROJECTS FOR THE WOOD LEAF RESERVE PUBLIC IMPROVEMENT DISTRICT (THE “DISTRICT”); MAKING A FINDING OF SPECIAL BENEFIT TO CERTAIN PROPERTY IN THE DISTRICT; LEVYING ASSESSMENTS AGAINST CERTAIN PROPERTY WITHIN THE DISTRICT AND ESTABLISHING A LIEN ON SUCH PROPERTY; PROVIDING FOR PAYMENT OF THE ASSESSMENT IN ACCORDANCE WITH CHAPTER 372, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED; PROVIDING FOR THE METHOD OF ASSESSMENT AND THE PAYMENT OF THE ASSESSMENTS; PROVIDING PENALTIES AND INTEREST ON DELINQUENT ASSESSMENTS; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the City of Tomball, Texas (the “City”) received a petition meeting the requirements of Sec. 372.005 of the Public Improvement District Assessment Act (the “Act”) requesting the creation of a public improvement district over a portion of the area within the corporate limits of the City to be known as the Wood Leaf Reserve Public Improvement District (the “District”); and

WHEREAS, on November 16, 2020, the City Council accepted the Petition and called a public hearing for December 21, 2020, on the creation of the PID and the advisability of the improvements; and

WHEREAS, notice of the hearing was published in a newspaper of general circulation in the City in which the District is to be located on November 25, 2020; and,

WHEREAS, on November 20, 2020, notice to the owners of property within the proposed District was sent by first-class mail to the owners of 100% of the property subject to assessment under the proposed District containing the information required by the Act such that such owners had actual knowledge of the public hearing to be held on December 21, 2020; and

WHEREAS, the City Council opened and continued such public hearing on the advisability of the improvements and the creation of the District until January 18, 2021; and

WHEREAS, on January 18, 2021 the City Council continued such public hearing on the creation of the District and heard any comments or objection thereto;

WHEREAS, the City Council approved the creation of the District by Resolution approved on January 18, 2021 (the "Creation Resolution") and published the Creation Resolution on January 27, 2021, as authorized by the Act; and

WHEREAS, no written protests of the District from any owners of record of property within the District were filed with the City Secretary within 20 days after such publication; and

WHEREAS, the District is to be developed in phases and assessments are anticipated to be levied in each development phase; and

WHEREAS, pursuant to Sections 372.013, 372.014, and 372.016 of the Act, the City Council has directed the preparation of a Preliminary Service and Assessment Plan for Improvement Area #2 Projects within Improvement Area #2 of the District (the “Service and Assessment Plan”) and an assessment roll for Improvement Area #2 of the District (the “Improvement Area #2 Assessment Roll”) that states the assessment against each assessable property (the “Improvement Area #2 Assessed Property”) within Improvement Area #2 of the District (the “Improvement Area #2 Assessments”); and

WHEREAS, the City called a public hearing regarding the proposed levy of Improvement Area #2 Assessments pursuant to the Service and Assessment Plan and the proposed Improvement Area #2 Assessment Roll on property within Improvement Area #2 of the District, pursuant to Section 372.016 of the Act; and

WHEREAS, the City, pursuant to Section 372.016(b) of the Act, published notice in a newspaper of general circulation within the City to consider the proposed Service and Assessment Plan for the District and the levy of the Improvement Area #2 Assessments, as defined in the Service and Assessment Plan, on property in Improvement Area #2 of the District; and

WHEREAS, the City Council, pursuant to Section 372.016(c) of the Act caused the mailing of notice of the public hearing to consider the proposed Service and Assessment Plan and the Improvement Area #2 Assessment Roll attached to the Service and Assessment Plan and the levy of Improvement Area #2 Assessments on property in the District to the last known address of the owners of the property liable for the Assessments; and

WHEREAS, the City Council convened the public hearing at 6:00 p.m. on the 1st day of July, 2024, at which all persons who appeared, or requested to appear, in person or by their attorney, were given the opportunity to contend for or contest the Service and Assessment Plan, the Improvement Area #2 Assessment Roll, and the proposed Improvement Area #2 Assessments, and to offer testimony pertinent to any issue presented on the amount of the Improvement Area #2 Assessments, the allocation of the costs of the Improvement Area #2 Projects, the purposes of the Improvement Area #2 Assessments, the special benefits of the Improvement Area #2 Assessments, and the penalties and interest on annual installments and on delinquent annual installments of the Improvement Area #2 Assessments; and

WHEREAS, the developer of property within the District as described in the Service and Assessment Plan for the District has substantially completed the Improvement Area #2 Projects within the District; and

WHEREAS, the City wishes to levy Improvement Area #2 Assessments on the property within the District for the Improvement Area #2 Projects as set forth in the Service and Assessment Plan; and

WHEREAS, the City Council finds and determines that the Service and Assessment Plan and Improvement Area #2 Assessment Roll attached thereto should be approved and that the Improvement Area #2 Assessments should be levied on property within the District as provided in this Ordinance and the Service and Assessment Plan and Improvement Area #2 Assessment Roll; and

WHEREAS, the City Council further finds that there were no written objections or evidence submitted to the City Secretary in opposition to the Service and Assessment Plan, the allocation of the costs of the Improvement Area #2 Projects, the Improvement Area #2 Assessment Roll or the levy of Improvement Area #2 Assessments; and

WHEREAS, the City Council closed the hearing, and, after considering all written and documentary evidence presented at the hearing, including all written comments and statements filed with the District, determined to proceed with the adoption of this Ordinance in conformity with the requirements of the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, THAT:

Section 1. Findings. The findings and determinations set forth in the preambles hereto are hereby incorporated by reference for all purposes.

Section 2. Terms. Terms not otherwise defined herein are defined in the Service and Assessment Plan attached hereto as Exhibit A.

Section 3. Findings. The findings and determinations set forth in the preambles are hereby incorporated by reference for all purposes. The City Council hereby finds, determines and orders, as follows:

- a. The apportionment of the costs of the Improvement Area #2 Projects, and the Annual Collection Costs pursuant to the Service and Assessment Plan is fair and reasonable, reflects an accurate presentation of the special benefit each Improvement Area #2 Assessed Property will receive from the Improvement Area #2 Projects identified in the Service and Assessment Plan, and is hereby approved;
- b. The Service and Assessment Plan covers a period of at least five years and defines the annual indebtedness and projected costs for the Improvement Area #2 Projects;
- c. The Service and Assessment Plan apportions the costs of the Improvement Area #2 Projects to be assessed against each Improvement Area #2 Assessed Property in Improvement Area #2 of the District and such apportionment is made on the basis of special benefits accruing to each Improvement Area #2 Assessed Property because of the Improvement Area #2 Projects.

- d. All of the real property in Improvement Area #2 of the District which is being assessed in the amounts shown in the Service and Assessment Plan and Improvement Area #2 Assessment Roll will be benefited by the Improvement Area #2 Projects proposed to be provided through the District in the Service and Assessment Plan, and each parcel of real property in the District will receive special benefits during the term of the Improvement Area #2 Assessments equal to or greater than the total amount assessed;
- e. The method of apportionment of the costs of the Improvement Area #2 Projects and Annual Collection Costs set forth in the Service and Assessment Plan results in imposing equal shares of the costs of the Improvement Area #2 Projects and Annual Collection Costs on property similarly benefited, and results in a reasonable classification and formula for the apportionment of the costs;
- f. The Service and Assessment Plan should be approved as the service plan and assessment plan for the District, as described in Sections 372.013 and 372.014 of the Act;
- g. The Improvement Area #2 Assessment Roll in the form attached to the Service and Assessment Plan should be approved as the assessment roll for Improvement Area #2 of the District;
- h. The provisions of the Service and Assessment Plan relating to due and delinquency dates for the Improvement Area #2 Assessments, interest on Annual Installments, interest and penalties on delinquent Improvement Area #2 Assessments and delinquent Improvement Area #2 Annual Installments, and procedures in connection with the imposition and collection of Improvement Area #2 Assessments should be approved and will expedite collection of the Improvement Area #2 Assessments in a timely manner in order to provide the improvements needed and required for Improvement Area #2 of the District; and
- i. A written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public for the time required by law preceding this meeting, as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered and formally acted upon.

Section 4. Assessment Plan. The Service and Assessment Plan is hereby accepted and approved pursuant to Sections 372.013 and 372.014 of the Act as a service plan and an assessment plan for the Improvement Area #2 Projects within the District.

Section 5. Assessment Roll. The Improvement Area #2 Assessment Roll is hereby accepted and approved pursuant to Section 372.016 of the Act as the assessment roll for the Improvement Area #2 Projects within the District.

Section 6. Levy and Payment of Improvement Area #2 Assessments for Costs of Improvement Area #2 Projects.

- a. The City Council hereby levies the Improvement Area #2 Assessments on each Improvement Area #2 Assessed Property located within Improvement Area #2 of the District, as shown and described in the Service and Assessment Plan and the Improvement Area #2 Assessment Roll, in the respective amounts shown on the Improvement Area #2 Assessment Roll, as special assessments on the properties within Improvement Area #2 of the District as set forth in the Service and Assessment Plan and the Improvement Area #2 Assessment Roll.
- b. The levy of the Improvement Area #2 Assessments shall be effective on the date of execution of this Ordinance levying Assessments and strictly in accordance with the terms of the Service and Assessment Plan.
- c. The collection of the Improvement Area #2 Assessments shall be as described in the Service and Assessment Plan.
- d. Each Improvement Area #2 Assessment may be pre-paid or paid in Improvement Area #2 Annual Installments pursuant to the terms of the Service and Assessment Plan.
- e. Each Improvement Area #2 Assessment shall bear interest at the rate or rates specified in the Service and Assessment Plan.
- f. Each Improvement Area #2 Annual Installment shall be collected each year in the manner set forth in the Service and Assessment Plan.
- g. The Annual Collection Costs for Improvement Area #2 Assessed Properties shall be calculated pursuant to the terms of the Service and Assessment Plan.

Section 7. Method of Assessment. The method of apportioning the costs of the Improvement Area #2 Projects is as set forth in the Service and Assessment Plan.

Section 8. Penalties and Interest on Delinquent Assessments. Delinquent Improvement Area #2 Assessments shall be subject to the penalties, interest, procedures and foreclosure sales set forth in the Service and Assessment Plan. The Assessments shall have lien priority as specified in the Act and the Service and Assessment Plan.

Section 9. Prepayments of Assessments. As provided in Section 372.018(f) of the Act and in the Service and Assessment Plan, the owner (the "Owner") of any Improvement Area #2 Assessed Property may prepay the Improvement Area #2 Assessments levied by this Ordinance as set forth in the Service and Assessment Plan.

Section 10. Lien Priority. As provided in the Act, the City Council and owners of the Improvement Area #2 Assessed Property intend for the obligations, covenants and burdens on the owners of Improvement Area #2 Assessed Property, including without limitation such owner's obligations related to payment of the Improvement Area #2 Assessments and the Improvement

Area #2 Annual Installments, to constitute a covenant running with the land. The Improvement Area #2 Assessments and the Improvement Area #2 Annual Installments levied hereby shall be binding upon the Improvement Area #2 Assessed Property, and the owners of Improvement Area #2 Assessed Properties, and their respective transferees, legal representatives, heirs, devisees, successors and assigns in the same manner and for the same period as such parties would be personally liable for the payment of ad valorem taxes under applicable law. Improvement Area #2 Assessments shall have lien priority as specified in the Act.

Section 11. Administrator and Collector of Assessments.

- a. Administrator. The City shall administer the Service and Assessment Plan and the Improvement Area #2 Assessments levied by this Ordinance. The City has appointed a third-party administrator (the “Administrator”) to administer the Service and Assessment Plan and the Improvement Area #2 Assessments. The Administrator shall perform the duties of the Administrator described in the Service and Assessment Plan and in this Ordinance. The Administrator’s fees, charges and expenses for providing such services shall constitute an Annual Collection Cost.
- b. Collector. The City may collect the assessments or may, by future action, appoint a third-party collector of the Improvement Area #2 Assessments. The City is hereby authorized to enter into an agreement with a third-party for the collection of the Improvement Area #2 Assessments. The City may also contract with any other qualified collection agent selected by the City or may collect the Improvement Area #2 Assessments on its own behalf. The costs of such collection contracts shall constitute an Annual Collection Cost.

Section 12. Applicability of Tax Code. To the extent not inconsistent with this Ordinance and the Act or other laws governing public improvement districts, the provisions of the Texas Tax Code shall be applicable to the imposition and collection of Improvement Area #2 Assessments by the City.

Section 13. Severability. If any provision, section, subsection, sentence, clause or phrase 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, the validity of the remaining portions of this Ordinance or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council that no portion hereof, or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 14. Effective Date. This Ordinance shall take effect, and the levy of the Improvement Area #2 Assessments, and the provisions and terms of the Service and Assessment Plan shall be and become effective upon passage thereof.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 17TH DAY OF JUNE 2024.

COUNCILMAN FORD _____
COUNCILMAN GARCIA _____
COUNCILMAN DUNAGIN _____
COUNCILMAN COVINGTON _____
COUNCILMAN PARR _____

SECOND READING:

READ, PASSED, APPROVED AND ORDAINED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 1ST DAY OF JULY 2024.

COUNCILMAN FORD _____
COUNCILMAN GARCIA _____
COUNCILMAN DUNAGIN _____
COUNCILMAN COVINGTON _____
COUNCILMAN PARR _____

Lori Klein Quinn, Mayor

ATTEST:

Tracylynn Garcia, City Secretary