

*MUNICIPAL
UTILITY DISTRICT
POLICY*

City of Denton

DRAFT

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I. Introduction

A Municipal Utility District (MUD) is a type of special district that allows a developer to fund development typically outside of a City's corporate boundary (i.e. city limits). While typically residential or mixed-use in nature, a MUD can also be commercial or industrial. Once established a MUD may issue/obtain bonds to fund, water, wastewater, drainage, electrical services, roads or other infrastructure and services within the MUD boundary pursuant to Article III, Section 52, and/or Article XVI, Section 59, of the Texas Constitution. MUDs are established through application to, and approval by the Texas Commission on Environmental Quality (TCEQ), or through the Texas legislature.

This policy applies to MUD applications within the City's extraterritorial jurisdiction (ETJ); the City does not permit MUDs to be created within its corporate boundaries. The City is committed to working with MUDs towards an equitable agreement that allows ~~the~~ both the City and the MUD to achieve their goals. This policy will:

- Guide discussions between the City and the MUD;
- Outline the City's goals, expectations and priorities;
- Act as a resource to evaluate MUD applications for City consent; and
- Provide a basis for a development agreement between the City and the MUD, if deemed necessary/beneficial.

II. Goals

The City is committed to the vision and goals set out within the Denton 2040 Comprehensive Plan. The City would like to see an equivalent or better quality of development and environmental protection undertaken by MUDs within the City's ETJ as is required by developers within City limits. Reaching an agreement between the City and the MUD on how the MUD will be developed, how services will be provided, and how the MUD will be managed over time will provide a level of certainty and clarity for both the MUD and the City. In addition, receiving consent from the City will satisfy one of the MUD's application requirements for TCEQ approval.

The City of Denton will review and evaluate applications for MUDs within the City's ETJ in conjunction with this policy. The City seeks to avoid any unintentional or unforeseen financial, environmental or social burden on the City in the future. As such the goals of the policy are as follows:

1. Establish an equitable arrangement between the MUD and the City in order to influence the development as much as possible.
- ~~2.~~ Establish clear guidelines with respect to MUDs, for the benefit of City Council, City staff and the MUD.
- 2.

- 3. Allow the County to understand the City's expectations regarding MUDs
- 3-4. A MUD should be developed in a manner generally consistent with the Comprehensive Plan.
- 4-5. Encourage alignment with the City of Denton's technical design standards, including but not limited to, road, water, wastewater, and stormwater standards (within the CCN) so that services can be provided to and maintained for the MUD over time.
- 5-6. Ensure the MUD has adequate protective services including fire, police, and ambulance services for the safety of residents and the greater community.
- 6-7. Verify the long-term fiscal sustainability of the MUD, in order to protect the residents' investment, and ensure that a financial burden is not placed on the residents of the MUD or the City of Denton.
- 7-8. Encourage environmental stewardship of MUD lands and the provision of open space for the long-term sustainability of the City's ETJ and the enjoyment of MUD residents.
- 8-9. To prepare for potential future annexation of a MUD in ETJ 1, ensure that the recommendations of this policy are implemented to facilitate the technical and financial integration of the MUD into the City.
- 9-10. For lands within ETJ 2, ensure that the recommendations of this policy are implemented so that any possible negative offsite impacts of the development are minimized, and necessary services can be provided.
- 10-11. Establish a framework for necessary communication regarding a MUD with Denton County to ensure necessary coordination between the City and County takes place.
- 11-12. Establish clear guidelines for a development agreement between a MUD and the City of Denton, should the City decide a development agreement is necessary/beneficial.

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III. How to use this document:

As part of the TCEQ application process, a proposed MUD is required to seek consent from any city in whose ETJ the MUD wishes to locate in. The proposed MUD should provide the TCEQ with evidence that the application (to the TCEQ) conforms substantially to the City's consent and provide evidence that the City's consent does not place any conditions or restrictions on the proposed MUD District unless otherwise negotiated through a development agreement.

This policy will act as a tool for the MUD, City of Denton staff and City Council to evaluate an application for consent. For detailed consent application requirements please refer to the MUD application, available on the City website ([insert link](#)). note that the application requirements for ETJ 1 and ETJ 2 may differ. This policy should be reviewed prior to pre-application meetings with City staff and prior to formal application for City consent.

Commented [KM1]: At this point the application requirements don't differ, so I would suggest deleting this portion of the sentence.

Once a complete consent application is submitted to the City, staff will review the submission and discuss any questions, concerns, or items of clarification with the applicant. Within ~~120~~ 90 days of receiving a complete application, staff will formulate a recommendation and bring the MUD application forward for Council consideration.

Commented [RM2]: Any public input or boards/commissions that should review?

City Council may support applications for consent where:

- The recommendations of this policy are met;
- The proposed MUD is consistent with this policy and the vision and goals of the Denton Comprehensive Plan; and
- The proposed MUD meets or exceeds the City's minimum technical requirements.

Should the City consent to the creation of a MUD, a development agreement may be entered into between the MUD and the City. Any conditions of consent specified by Council, including but not limited to, provision of services, details related to the finances of the MUD, future annexation, and/or the provision of emergency services, should be included in the development agreement. In special circumstances, where alternate and acceptable provisions have been agreed upon by the City and the MUD, Council may vary the recommendations in this policy.

If the proposed MUD is located adjacent to the City's corporate boundary voluntary annexation may be considered in lieu of a MUD. Annexation into the City may provide alternative funding options for the development, such as a Public Improvement District (PID) and would be subject to approval by City Council.

City Council may not support applications for consent where:

- The City has plans to provide municipal services to the area proposed for the MUD within the next 5 years;
- The property is currently included in a Non-Annexation Agreement; ~~and/or~~
- ~~The recommendations of this policy have not been met.~~

City Council shall not consider applications for consent where:

- The proposed MUD is located (in part or in whole) within the current Denton corporate boundaries; ~~;~~
- ~~The proposed MUD is located within the ETJ of more than one City;~~
- ~~The area of the proposed MUD is wholly or partly subject to a non-annexation agreement;~~ ~~;~~
- The City has ~~plans to annex~~ the lands included within the proposed MUD; ~~;~~ ~~or~~
- The proposed MUD application is incomplete.

Should a proposed MUD not be granted consent by City Council and the MUD moves forward with the TCEQ application process, the City ~~reserves the right to may~~ challenge the applicant's request before the TCEQ. ~~If the City is not successful before the TCEQ then the City reserves the right to and may~~ appeal the decision of the TCEQ to the District Court.

Commented [BS3]: Are there no situations where we would still want influence over a MUD even if they refuse to meet all of the terms of this policy?

Commented [RM4]: Not sure why City wouldn't consider this situation?

Commented [RM5]: How is this different from the "may" list above? And why the difference? Clarify.

Commented [RM6]: Needs a timeframe. Could be interpreted as broadly as the city plans to annex all land in the ETJ eventually

IV. Conditions and Considerations for Consent:

The conditions and considerations for consent outlined in this policy stem from the City's vision for smart balanced growth, high-quality development, and a commitment to sustainability. It is

important to the City that MUD's ~~that choose to locate~~ in the City's ETJ, which is the City's future growth area, adopt a similar vision and commitment to quality for their community. This will allow for seamless integration of the development into the City and surrounding region as it grows.

A. General

As MUDs are located within the City's ETJ, and may in the future be annexed into the City, it is of high importance to the City that MUDs are developed in accordance with the City's comprehensive plan. The City's MUD application process provides the opportunity for the MUD and the City to confirm alignment with the City's comprehensive plan and outline an agreement on how development and ongoing maintenance of the MUD will occur.

- The proposed MUD should be generally consistent with the vision, goals and policies of the City of Denton Comprehensive Plan.
- Should City Council grant consent to the MUD, the City and the MUD should enter into a development agreement to outline all associated conditions of consent.
- The MUD should ~~make reasonable steps to~~ obtain all ~~third party~~ rights-of-way and easements necessary for the MUD. If the MUD is not able to obtain necessary third-party rights-of-way and easements then the City may, where allowed by State law, assist through the eminent domain process for services provided by the City and all associated fees should be borne by the MUD.

B. Denton County

While the City has the authority to grant consent to proposed MUDs ~~as they are located within the City's ETJ~~, MUDs are also located within Denton County. The development of a MUD has potential impacts on the infrastructure and services provided by the County. Examples of these impacts include, but are not limited to, road maintenance and policing services. To encourage communication and transparency the County should be kept apprised of any MUD applications within the City's ETJ.

- A proposed MUD should submit a copy of their application for consent to Denton County in tandem with the proposed MUD application submittal to the City.
- The City, County, and if necessary the MUD applicant, should make a concerted effort to discuss any items within the application that require clarification or are of concern to the County.
- Any services assumed by the City that would otherwise be provided by the County should be included within a development agreement.

C. Development

The City recognizes that MUDs present a unique opportunity for residents to live in a more rural setting ~~that cannot be provided within City limits~~. That being said, the ETJ is the City's growth area and requires management and planning so that the City's ~~long-term~~ long-term

vision can be realized. Contiguous, staged growth which is fiscally and environmentally sound, reduces fragmentation and sprawl, discourages premature development, and conserves the City's future expansion area are key considerations for the City in the ETJ. Therefore, it is important that MUDs:

- Employ conservation design principals in subdivision design to maximize retention of existing topography, scenic views, natural drainage flows and wildlife habitat.
- Include diversity of housing types.
- Prioritize low impact design and minimize the use of impermeable surfaces in order to maximize storm water quality and minimize downstream impacts.
- Discourage commercial land uses; however, should commercial land area be included in a MUD then the City and MUD should consider entering into a Strategic Partnership Agreement, or a limited annexation, to allow the City to collect sales taxes from the area.
- Provide public school sites within the MUD boundary if required by the applicable School District.
- Use the City's development standards contained within the Denton Development Code as a basis for development standards in the MUD.
- Develop in accordance with the submitted concept plan, and any changes to the concept plan should be submitted to the City for review and approval.

D. *Transportation*

It is important that the local and regional transportation network be well planned and sustainable. This includes planning for increased capacity and using consistent standards between the City, County and MUD, so that future connections, maintenance and replacement of transportation infrastructure can be streamlined over the long term.

- Transportation networks and construction design should be reflective of applicable City and County mobility plans and design standards.
- Regional transportation improvements may be required as they benefit the proposed MUD and are necessary to facilitate future development in the surrounding area.
- Transportation plans, including a transportation impact analysis (TIA), should be reviewed, and approved by the City in accordance with City standards. Construction of and/or necessary upgrades to roadways shall be at the sole cost of the MUD developer. Associated built infrastructure should be inspected by the City to ensure that appropriate design standards are met. This will help to ensure consistency with City infrastructure and promote the long-term sustainability of the road network.
- The MUD transportation network should be maintained and repaired to the satisfaction of the City in accordance with City maintenance standards.

Commented [RM7]: Does this sync with current County processes and standards?

E. *Utility Services - Water, wastewater and stormwater facilities*

The location of the proposed MUD within the City's ETJ will determine the nature of utility services for the MUD. Proposed MUDs that are within the City's certificate of convenience and necessity (CCN), the boundaries of which generally align with ETJ1 boundaries, are eligible to receive City utility services. Where this is the case, it is important that applicable City infrastructure standards are used so that the MUD utility system is able to integrate into the City's existing utility infrastructure system. When located within the CCN it will be important that future growth in the ETJ is considered so that efficiencies are gained where possible, and this may require the coordination on oversizing of utility infrastructure.

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Areas that are outside the City's CCN will not be eligible for City utility services. Where a proposed MUD is located outside the City's CCN it will be important to ensure that utility systems installed for the MUD are technically sound and minimize the potential risk of harm to residents and the surrounding environment. Furthermore, coordination with the water supplier for the area should be pursued.

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In general, regardless of where located, all MUDs should achieve the following objectives.

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- Utility infrastructure that services the proposed MUD should be consistent with the City's Utilities Master Plan to ensure efficient construction and use of utility infrastructure.
- The proposed MUD should demonstrate, to the satisfaction of the City, how utilities will be managed over time, including:
 - Treatment capacity;
 - Capacity/allocation per dwelling unit/commercial unit; and
 - Fiscal surety including usage rates, maintenance and amortization.
- Costs to relocate any existing utility infrastructure should be borne by the MUD, not by the City.
- To ensure fiscal sustainability for the MUD, taxes for the operation and ongoing maintenance of the MUD utilities should be established (in accordance with 49.107 of the Texas Water Code), and any surplus funds collected through taxes should be deposited in a capital reserves replacement fund.
- Water conservation techniques should be implemented in accordance with City standards, so that water resources are managed in an equitable and sustainable manner over time.

The following MUD objectives are more specific to geographical considerations as it relates to the City's CCN.

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Within the City's CCN:

- To avoid duplication of services and infrastructure, a MUD located within the City's CCN should use the City as the exclusive provider of utility services. In such a case, the City shall set and collect all associated fees with the provision of service.

- Future growth in the CCN should be a consideration when determining the size and capacity of utility infrastructure. Infrastructure should be built to a regional standard/capacity in a manner consistent with the City's comprehensive plan and utility master plans. This will avoid duplication of infrastructure and allow for maintenance and replacement cost efficiencies. Items that may need to be considered in the design of the MUD utility network may include, but not be limited to:
 - wastewater interceptors and lift stations;
 - water lines; and
 - treatment plants.
- The City may enter into discussions on cost-sharing of off-site improvements where system wide improvements are necessary and will benefit multiple properties.
- To ensure utility infrastructure is constructed to an appropriate standard, the following should take place:
 - Plans for all utility infrastructure should be prepared, reviewed and approved in accordance with City design standards.
 - The City should inspect all utility infrastructure, at the MUD developers cost, to ensure compliance with approved infrastructure plans.
 - If utility infrastructure is not built to City standards, an exemption should be granted by the City where appropriate.
- ~~Once utilities have passed inspection by the City, the City and MUD may choose by agreement determine whether the to become the MUD or City is the sole~~ owner of the utilities infrastructure.
- If a MUD within the City's CCN wishes to receive utility services from another source, prior written approval from Denton City Council shall be required ~~and approval by TCEQ unless otherwise allowed by state law.~~

Outside the City's CCN:

- Plans for all utility infrastructure should be prepared, reviewed and approved in accordance with the City, Denton County, and/or the applicable utility district(s) design standards.
- Denton County and the applicable utility district(s) should be responsible for inspections of utility infrastructure to ensure compliance with approved infrastructure plans.
- ~~Where the~~ long-term maintenance of the utility system ~~should is be~~ the responsibility of the MUD, a maintenance plan should be submitted to the City and the County for review.

F. Electric Service

Electric service should be provided to the MUD community in a comprehensive and cost-effective manner to the benefit of MUD residents. Where a proposed MUD is located in the

City's single ~~or multiple~~ certified service area, the City ~~would prefer to be~~ the exclusive provider of electric utilities. ~~Where a proposed MUD is located in the City's multiple certified service area, the City prefers to be the exclusive provider of electric utilities~~ so that network efficiencies can be realized. Therefore, the following is recommended as it relates to electrical service for the MUD development.

- Where a proposed MUD is located within the City's single ~~or multiple~~ certified service areas, the city ~~shall~~ be the exclusive provider electric utilities.
- ~~Where a proposed MUD is located within the City's multiple certified service areas,~~ A MUD may solicit proposals for electric service from other providers in order to evaluate the market and ensure that residents obtain a competitive rate for comprehensive service.
- The City should have the opportunity to review proposals for electric service solicited by the MUD and should have the opportunity to submit a competing offer to provide electric distribution service to the MUD. If the City submits a proposal that is equivalent to the other lowest cost provider, then the MUD should obtain electric service from the City.

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G. *Emergency services*

For the safety of MUD residents and the surrounding area, it is important that a proposed MUD secure comprehensive emergency services, including fire and ambulance services. Considerations for emergency services include response times, and the level/quality of services the provider is able to offer. For this reason, it is the City's preference that the City be the provider of emergency services, particularly within ETJ1, where there is proximity with existing emergency service infrastructure. Once a MUD consent application has been filed with the City, the MUD and the City should discuss the provision of emergency services or alternate emergency service providers if deemed necessary. For the safety of residents, the MUD shall demonstrate that it has appropriate emergency services.

- If the City provides fire protection services within the MUD, a Fire Protection Agreement with the City must be approved by City Council. The agreement should include terms and conditions for the MUD to receive full City of Denton fire protection services and include a Fire Service Improvement Fee (or similar fee) to fund fire station construction and operations.
- The City may require the donation of land to the City (as applicable) for fire stations or other public safety facilities, if determined necessary for the provision of services by the City ~~at the time of the agreement or in the future.~~
- ~~If a MUD wishes to receive emergency services from another source prior written approval from Denton City Council shall be required.~~
- For the protection of residents, roadway design should enhance access and reduce response times (reference section IV.D for transportation requirements).

H. *Solid Waste and Recycling*

Solid waste and recycling services should be provided to the MUD community in a comprehensive and cost-effective manner to the benefit of the MUD residents, and should be managed in an environmentally sustainable manner.

- Where a proposed MUD is located within the City's service area for solid waste and recycling services, the city should be the exclusive provider of these services.
- Solid waste and recycling services should be provided to the MUD at a competitive rate. The MUD may solicit proposals for solid waste and recycling services in order to obtain a competitive rate for comprehensive service.
- The City should have the opportunity to review proposals for solid waste and recycling services and should have the opportunity to submit an offer to provide solid waste and recycling services to the MUD. If the City submits a proposal that is equivalent to the other lowest cost provider, then the MUD should obtain solid waste and recycling services from the City.

I. Open Space/Environment/Gas Wells

The City of Denton places significant importance on environmental stewardship and green infrastructure (including parks, greenways, stream corridors and tree canopies). The City also prioritizes the safety of residents in situations where the gas industry and residents interact, through gas well setbacks. It is important that a proposed MUD integrate these values into the proposed development for the benefit of the regional environment and the enjoyment and safety of residents. In addition, should a MUD be annexed into the City in the future, the incorporation of these ~~aforementioned~~ considerations into the overall MUD development design layout will ensure the MUD will have equivalent design standards to the City.

- Coordination between the MUD and the City should take place to ensure park, trail and open space development is consistent with the City's Parks, Recreation and Trails System Masterplan, and the Preferred Land Preservation Plan within the Denton Comprehensive Plan.
- When located within ETJ 1 and in close proximity to City limits, the City may require that trails and parkland or a public access easement be dedicated to the City.
- The trail network within the MUD should:
 - Connect to points of interest within the MUD including, but not limited to, schools, parks, and residential areas.
 - Facilitate connections between the City and MUD, where possible, to the benefit of MUD residents and the larger region.
 - Be constructed to City standards for consistency and ease of maintenance.
- Parks within the MUD should:
 - Be dedicated in a quantity and manner consistent with the City's parkland dedication ordinance.
 - Protect unique features.
 - Be maintained over the short and long-term, including the update and replacement of park infrastructure as needed.

- Be connected to the MUD trail network, and regional trail network, as applicable.
- The MUD should be compliant with City Environmentally Sensitive Areas (ESA) regulations. ESA areas should not count towards parkland dedication.
- The MUD should be compliant with City tree preservation regulations.
- Gas wells should be developed and operated in accordance with the Denton Development Code. Setbacks from gas wells should be consistent with setbacks outlined in the Denton Development Code.

Commented [RM8]: Difficult standard – and likely the reason developer is not willing to annex. Consider aspirational language that encourages as much setback as possible where can't meet DDC standard.

J. Financing

It is a priority of the City that any MUD located within the City's ETJ be developed in a fiscally sustainable manner. This will allow the MUD to succeed over time and will prevent any undue financial burden from being placed on MUD residents and/or the City. Unfortunately, it is possible that a potential financial burden could be passed on through increased taxes for MUD residents; or through poorly maintained infrastructure and/or assumed debt if the MUD lands are annexed into the City in the future. The recommendations below seek to confirm the fiscal surety of the MUD over time.

Bonds

- Should a development agreement between the MUD and the City be required, the development agreement should outline ~~a series of~~ conditions with regards to bonds, to ensure the fiscal surety of the MUD over the long term. These conditions may include, but not be limited to, the following:
 - Bonds should remain obligations of the MUD, until the MUDs dissolution.
 - Once the MUD has established a maturity date for initial bonds, the maturity date for any additional bonds issued should not extend beyond the maturity date of the initial bonds. If the MUD would like a bonds maturity date to extend beyond the initial maturity date consent from the City should be required.
 - The City and MUD may agree to limit a MUD to only issue bonds for the purposes of providing roads, water, wastewater and drainage improvements as provided in the Texas Water Code, Section 54.016(e).
 - The City may consent to the issuance of MUD bonds, in addition to those listed above, for the provision of park or open space that aid in the preservation of the natural environment and provide a benefit to the region to the extent allowed by law.
 - The City may refuse to give consent to the issuance of bonds or limit the amount of bonds issued by the MUD if the MUD is not in compliance with all agreements between the MUD and the City.
- So that the City is aware of the ongoing financial management of the MUD, any development agreement between the MUD and the City should outline a series

Commented [FT9]: Should roads be reference here as well?

Commented [KM10R9]: check the code

Commented [KM11R9]: In my reading of the code we are fine to add roads

Commented [RM12]: MUD probably can't issue bonds for park in Denton County – See Tx Const. Art 16, Sec. 59(c-1)

of reporting requirements with regards to administering bonds. These reporting requirements may include, but not be limited to, the following:

- The value of the bonds being proposed for issuance;
- The projects to be funded by such bonds;
- The proposed debt service tax rate after issuance of the bonds; and
- Within thirty (30) days after the MUD closes the sale of a series of bonds, the MUD shall deliver to the City Manager a copy of the final official statement for the bonds as well as any additional information requested by the City. Within sixty (60) days after the bonds are delivered the MUD should provide the City with a complete transcript of bond proceedings.

Taxes

- The MUD must be financially self-sustaining with an ad valorem tax rate ~~at or~~ above the City's rates sufficient to support the services provided by the MUD and a contract tax rate sufficient to support services provided to the MUD.
- City property and land shall be exempted from all MUD taxes, assessments, charge fees and fines of any kind.
- To ensure the long-term sustainability of infrastructure built in accordance with this policy the MUD should establish an Operation and Maintenance Tax pursuant to Section 49.107 of the Texas Water Code. The tax should establish a fund that is able to cover the ongoing maintenance and replacement of infrastructure.

K. Annexation

Should the proposed MUD desire future annexation into City limits, the proposed MUD may enter into discussion with the City to set annexation parameters at the time the proposed MUD is seeking consent from the City. Agreed upon terms will be outlined in a development agreement between the City and MUD so that there is clarity for the future annexation process.

- The MUD should be developed in a manner consistent with this policy and other applicable City policies, so that future annexation is not impaired in any way.
- Annexation should not occur until 100% of the original bonds for the creation and operation of the district have been repaid.
- If ~~a MUD elects to be annexed into the City the MUD should enter into~~ there is a limited purpose annexation, the MUD and City should enter into a Strategic Partnership Agreement (or similar) with the City to facilitate annexation.
- Annexation should be based on fiscal impact, taking into consideration all public facilities and services, and whether adequate public facilities exist.
- If public infrastructure is transferred to the City, all associated warranties should be transferred to the City.