

CITY OF DENTON

Municipal Utility District (MUD) Interim Policy

PURPOSE & INTENT

The City of Denton wishes to allow the prudent use of political subdivisions that are created pursuant to Article III, Section 52, and/or Article XVI, Section 59, of the Texas Constitution and Chapter 54, Municipal Utility Districts (MUDs) of the Texas Water, to facilitate development within the City's extraterritorial jurisdiction that is generally consistent with the City's Comprehensive Plan.

The purpose of this policy is to carry out the following purposes to the extent allowed by law:

- Encourage superior development that exceeds the City's minimum standards;
- Allow the City to enforce reasonable land use and development regulations;
- Provide for construction of infrastructure consistent with City standards and City inspection of such infrastructure;
- Facilitate cost-effective construction of infrastructure to serve the area within the MUD, including police and fire stations, that is consistent with City standards and plans, so that the potential financial burden on the citizens of Denton will be reduced, in the event of annexation of such land by the City;
- Provide for extension of water and wastewater lines that will serve future growth in the City and its extraterritorial jurisdiction consistent with the City's master utility plan;
- Establish guidelines for reasonable conditions to be placed on:
 - Issuance of bonds by the MUD; and
 - The City's consent to creation of the MUD, to ensure that the creation of a MUD would not detrimentally compete with the City's utility systems;
- Establish guidelines for other mutually beneficial agreements by the City and the MUD;
- Provide a procedural framework for responding to a petition seeking the City's consent to the creation of the MUD; and
- Encourage communication with Denton County officials and staff in which a proposed MUD is to be located.

APPLICABILITY

Before the City Council consents to creation of a MUD, the following issues shall be considered:

1. Whether the City has already made plans to annex, or provide municipal services to the area proposed for inclusion in the MUD within the next five (5) years, or the property is currently included in an Non-Annexation Agreement (NAA); and
2. Whether the proposed area lies in the City's ETJ of two (2) or more cities or is within Division 2 of the City's ETJ.

If the determination on both issues 1. and 2. above is negative, then City Council should consider offering their consent for the creation of the MUD while applying conditions and restrictions to consent pursuant to these policies.

If the determination on either of the two issues is affirmative, then the City Council may not consent to creation, and may move to annex the land (if NAA), defer to Denton County, or the City may attempt to work through any outstanding issue that prevents the City from providing consent.

If voluntary annexation is considered for properties contiguous to the municipal boundary, alternative financing options for public infrastructure may be considered in lieu of a MUD, including, but not limited to a Public Improvement District (PID), and will be included as part of a development agreement or other agreement as necessary, if the City Council wishes to entertain said request.

The City of Denton will not support the creation or expansion of a MUD within its municipal boundaries.

POLICIES

In order for the City Council to consent to the creation of, or inclusion of land within a MUD, then it shall implement the following as conditions to the City's consent, and such requirements shall be stipulated in the consent resolution and/or other ancillary agreements including, but not limited to, a development agreement and strategic partnership agreement, unless the City Council determines that requirements are not appropriate with regard to a specific MUD.

These policies are intended to implement and further reinforce adopted policies in the City's Comprehensive Plan, including, but not limited to Future Land Use Policy 2.16.3 which states: *Discourage the establishment of Municipal Utility Districts (MUDs) in Denton's ETJ without appropriate development review.*

POLICY I: BASIC REQUIREMENTS FOR CREATION OF MUDS.

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Before consenting to the creation of a MUD, the City Council should consider whether the creation of the MUD is feasible, practicable, and necessary for the provision of the proposed services and would be a benefit to the land, and therefore warrants the City's consent, consistent with the other considerations in this policy. The City's basic requirements for creation of a MUD shall be that:

- a. Superior Development. The zoning and development standards generally exceeds the minimum standards of the Denton Development Code;
- b. Extraordinary Benefits. The development provides extraordinary public benefits that advance the vision and goals of the Comprehensive Plan, such as, but not limited to, extension, financial contribution, and/or enhancement of master planned infrastructure, diversity of housing, and enhanced parks, trails, open space, and recreational amenities that are available to the public;
- c. Enhance Public Service and Safety. The development enhances public services and optimizes service delivery through its design, dedication of sites, connectivity, and other features.
- d. City Exclusive Provider. The development further promotes the City as the exclusive provider of water, sewer, solid waste, and electric utilities where it is located within the city's single or multiple certified service areas;
- e. Fiscally Responsible. The development is financially feasible, doesn't impair the City's ability to provide municipal services, and would not impose a financial burden on the citizens of Denton in the event of annexation;
- f. Finance Plan. The developer(s) contributes financially to cover a portion of infrastructure expenses without reimbursement by the MUD or the City and as reflected in conditions placed on the issuance of bonds by the MUD;
- g. Annexation. The development will not impair the City's future annexation of the MUD or adjacent property or impose costs not mutually agreed upon.

POLICY 2: ADDRESS PROVISION OF PUBLIC SERVICES, AND ADDRESS PUBLIC SAFETY MATTERS IN THE CONSENT AGREEMENT

If City Council elects to consent, the Consent Agreement shall include the following conditions and restrictions:

- a. Require MUD to provide facilities to enhance public services and optimize locations for service delivery.
- b. Require donation of land to City (as applicable) for fire stations or other public safety facilities as determined by the City.
- c. 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 will 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.
- d. Require roadway design to enhance access and reduce response times to properties located outside of the MUD.
- e. The MUD consent agreement may, at the City's discretion, include an Interlocal Consent Agreement ("ICA") to contract with the City of Denton for fire, police, and solid waste services on terms acceptable to the City.
- f. A MUD shall provide a streets maintenance program approved by the City Engineer that

is consistent with City standards and should include appropriate consultation with the County Engineer.

POLICY 3: ADDRESS UTILITY SERVICE ISSUES AND INCLUDE THOSE UTILITY SERVICE PROVISIONS IN THE CONSENT AGREEMENT OR DEVELOPMENT AGREEMENT.

If City Council elects to consent, the Consent Agreement shall include the following conditions and restrictions:

- a. Require all utility facilities that service the MUD to be consistent with the Utilities Master Plan.
- b. Require the construction of specific regional infrastructure improvements consistent with the City's comprehensive plan and utility master plans and that are beneficial to the City. Examples include:
 1. Master planned public infrastructure improvements, including but not limited to, wastewater interceptors and lift stations, water lines, treatment plants, and major transportation improvements, that not only provide a benefit to the developed property, but also to other surrounding properties.
- c. Require of the MUD that the City be the water, sewer and electric service provider where it is located within the city's single or multiple certified service areas.
- d. All fees, rates, and charges for water and wastewater service will be billed and collected by the City.
- e. That a MUD will not enter into an agreement with another Public Water System, MUD, or municipality to receive water and wastewater services without the prior written approval from the Denton City Council.
- f. All water, wastewater, drainage and road infrastructure constructed by the MUD will become City owned and operated infrastructure unless City Council grants an exemption. Therefore, plans for MUD infrastructure shall be prepared, reviewed and approved in accordance with City ordinances. MUD infrastructure shall be constructed in accordance with City design standards. The City reserves the right to inspect all facilities being constructed by or on behalf of the MUD and to charge inspection fees required by ordinance.
 1. If granted an exemption by city council, any future ownership and operations requested will not be considered by City Council unless the infrastructure improvement has been replaced once it reaches 75% of its life expectancy, or sufficient (as determined by the City) capital reserves have been established to cover these replacements costs.
- g. Require that the MUD establish an Operation and Maintenance (O&M) Tax pursuant to Section 49.107 of the Water Code with the following limitations:
 1. Any surplus O&M tax funds that are not needed for the purposes for which they were collected shall be deposited in capital reserves replacement account.
- h. Require the cost to relocate any existing utility infrastructure to be borne by the developer and/or MUD, not the City.
- i. Limit City cost-sharing on MUD off-site improvements to only those circumstances

where the necessity for the improvement is so great that limited CIP funds are appropriate for overall system wide improvements that benefit multiple properties (i.e., pro-rata agreements, utility oversizing and/or regional improvements that the City can afford to participate in).

- j. Address water and wastewater rates. Generally, the rates for ETJ MUDs customers should be the same as for other out of City customers.
- k. Require all MUDs and their residents comply with City of Denton water conservation and drought contingency plan-related ordinances.
- l. Address rates, treatment capacity, utility and other easements necessary for City services, capacity for dwelling units, gallons per day usage for water and wastewater, water, wastewater and electric infrastructure, permitting and design, and fiscal surety.

POLICY 4: SPECIFY THE AMOUNT OF DEBT INTENDED TO BE ISSUED, THE PURPOSE OF THE DEBT, AND THE DEBT SERVICE SCHEDULE, AND INCLUDE THOSE FINANCIAL PROVISIONS IN THE CONSENT AGREEMENT

If City Council elects to consent, the Consent Agreement shall include the following conditions and restrictions:

- a. The MUDs 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 provided within forty-five (45) days of approval by the MUD. The City Council may refuse to give its consent 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 agreement or ancillary documents.
- b. The City will request compliance with the following terms and reporting requirements:
 - 1. Once the MUD 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 consent of the City.
 - 2. 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).
 - 3. 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.
 - 4. At least forty-five (45) 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, provided to the City Manager, should also state the following:
 - i. The amount of bonds being proposed for issuance,
 - ii. The projects to be funded by such bonds,
 - iii. The proposed debt service tax rate after issuance of the bonds.
 - iv. 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 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.

- c. All City property and land shall be exempted from all MUD taxes, assessments, charge, fees and fines of any kind.
- d. 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.
- e. The MUD shall send a copy of its annual audit to the City Manager and Finance Director within thirty (30) days after approval by the MUD Board of Directors.
- f. The MUD shall provide copies of any material event notices filed under Rule 15c2-12 of the Securities and Exchange Commission and other applicable federal securities laws or regulations to the City Manager within thirty (30) days after filing such notices.

POLICY 5: ADDRESS FUTURE MUNICIPAL ANNEXATION OF A MUD, WHEN LOCATED IN DIVISION I OF THE ETJ AND FUTURE EXPANSIONS OR ANNEXATIONS OF A MUD.

If City Council elects to consent, the Consent Agreement shall include the following conditions and restrictions:

- a. The City will not approve full-purpose annexation for a MUD until all debt is paid and any water, wastewater, drainage and roadway infrastructure that the city will assume ownership of has been replaced once it reaches 75% of its life expectancy, or sufficient (as determined by the City) capital reserves have been established to cover these replacements costs.
- b. The City may annex any or all commercial development within the MUD as a limited purpose annexation pursuant to a Strategic Partnership Agreement under Local Government Code, Section 43.0751, and may impose a sales and use tax within the area annexed for limited purposes.
- c. At the City's option, a "limited district" may be continued in existence after annexation to maintain amenities or services beyond what the City typically provides.
 - 1. In such cases, the MUD shall enter into a Strategic Partnership Agreement stating conditions on which the MUD will be converted to a limited district that will continue to exist following full purpose annexation.
- d. 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 MUD's proposed boundary extension states otherwise. Conversely, the MUD may not enter into an agreement to be annexed, in whole or in part with another MUD without written authorization from the City.

POLICY 6: REQUIRE DEVELOPMENT IN A MUD TO EXCEED MINIMUM DDC LAND USE AND DEVELOPMENT STANDARDS AND ADDRESS THE LAND USE PROVISIONS IN THE CONSENT AGREEMENT OR RELATED AGREEMENT.

If located within Division 1 of the City's ETJ, a development agreement, pursuant to Local Government Code, Section 212.172 to extend the City's planning authority over land included in the MUD by providing for City Council approval of a development plan, authorizing enforcement by the City for land use and development regulations, and include other lawful

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terms and considerations the parties consider appropriate must be submitted concurrent with the request for a consent agreement.

- a. The development agreement may include provisions that are mutually acceptable to the parties related to the following matters:
 1. Land use plan reflecting all approved land uses and residential densities consistent with the Comprehensive Plan, however City Council may prohibit certain uses deemed incompatible with residential uses;
 2. Compliance with City construction codes, including permit requirements;
 3. Compliance with City and other applicable ESA, Tree Preservation, Gas Well Setbacks, and storm water and water quality regulations;
 4. Higher development and design standards for residential and nonresidential land uses to promote a superior development; and
 5. Dedication and development of park areas in accordance with Policy 7 herein.
- b. All efforts should be made to exclude commercial/retail land area from a MUD in favor of full-purpose annexation, or a Strategic Partnership Agreement should be required allowing the City to collect sales taxes from the area.
 1. The Strategic Partnership Agreement should provide that the City is entitled to receive up to 100% of the sales taxes collected, and that none of those taxes should be shared with the MUD unless special circumstances exist.
 2. City shall conduct site plan review to current City standards for uses other than one- and two-family residential uses.
- c. Require a diversity of housing offered within the MUD that is consistent with the Comprehensive Plan.
- d. Conservation subdivision design that clusters development in low impact areas and maintains existing topography, scenic views, natural drainage flows, and wildlife habitat.
- e. Require public school location(s) to be provided, if desired by the applicable School District.
 1. Location(s) of school sites should be in a central, walkable location within a residential neighborhood away from an arterial or major collector roadway identified in the Mobility Plan or on the MUD land use plan.
- f. Require a land use plan to be attached to the Consent Agreement and require major amendments to a MUD land use plan to be reviewed by the Planning & Zoning Commission and approved by the City Council.

POLICY 7: REQUIRE DEVELOPMENT IN A MUD TO EXCEED THE CITY'S PARKLAND DEDICATION REQUIREMENTS, AND ADDRESS PARKLAND PROVISIONS IN THE CONSENT AGREEMENT

If City Council elects to consent, the Consent Agreement shall include the following conditions and restrictions:

- a. Require installation and maintenance of park facilities.
- b. Require connections to regional trail network and adjacent uses such as schools across the development, as well as off-site, to fill in gaps in the City's planned trail system.
- c. Prohibit roads through parkland in a manner that subtracts from net usable park land.
- d. Require provision of security and maintenance program.
- e. Require protection and perpetuation of unique features on a site that should be maintained as open space whether for environmental, conservation or scenic views.
- f. Environmental Sensitive Areas (ESA) shall not count toward parkland dedication.

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POLICY 8: ADDRESS TRANSPORTATION ISSUES AND INCLUDE TRANSPORTATION PROVISIONS IN THE CONSENT AGREEMENT

If City Council elects to consent, the Consent Agreement shall include the following conditions and restrictions:

- a. Require an initial traffic study identifying potential impacts on the City's road system serving the land proposed to be included in the MUD.
- b. Require completion of a Traffic Impact Analysis (TIA) and construction and/or funding of both on- and off-site improvements identified in the TIA, including roadways identified in the City's Mobility Plan as part of the subdivision review.
- c. That if the City determines that development in a MUD will place a burden on City roads as a result of a traffic impact analysis, and the MUD has been provided road bond authority from the City, the MUD will construct, widen, or improve such roads within the MUD in accordance with the standards set forth in Section 212.904 of the Texas Local Government Code.
- d. Require dedication of right-of-way, inclusion of bike lanes, sidewalks, and aesthetically-pleasing streetscapes consistent with the Mobility Plan and City street design standards.
- e. Require residential subdivisions to be designed with increased connectivity, reduced cul-de-sacs, short block lengths, and additional stub outs to adjacent properties, except where developed as a cluster subdivision.
- f. Require creative storm water management and water quality solutions to be provided such as Low Impact Development ("LID") to minimize any downstream impacts.

APPLICATION REQUIREMENTS

At the time the petition for consent to creation of a MUD and other required agreements are submitted, the petitioner shall submit an application fee of \$14,210 for MUDs up to 25 acres and an additional \$38 for each acre over 25 acres. The petitioner shall also pay \$5,000 as an initial escrow deposit to cover costs the City may incur through the use of outside legal and professional consultants.

Upon receipt of the application, the City shall analyze the proposed development and its potential impact on facilities and services consistent with these adopted policies. It is encouraged that the petitioner schedule a pre-application meeting with staff prior to submittal.

As part of the written statements on how the proposed MUD meets or exceeds the policies established by this policy, the petitioner must also provide the following associated studies:

1. Market study

- a. Not more than six (6) months old as of date petition is filed
- b. Indicates projections (i.e. units per year and specific years) for proposed development including single family, commercial, retail etc.

2. Financial Analysis

- a. Developer's financial statement and experience with districts. If the developer and the petitioner are different, documentation explaining the relationship between the developer and the petitioner;
- b. Development proforma;
- c. Estimated buildout schedule by year with estimated assessed valuations in the MUD;
- d. Cost estimates for proposed improvements and cost summary for anticipated bond issue requirement and any other proposed MUD facilities to be reimbursed or paid for by the issuance of MUD bonds;
- e. Estimated ultimate amount of bonds to be issued by the MUD, ultimate debt service requirements and projected MUD tax rate;
- f. Projected tax rate and water and wastewater rates; and
- g. For creations which include anticipated recreational facilities:
 - detailed summary of the proposed recreational facility projects
 - estimated costs
 - proposed financing methods

3. Engineering/Planning Analysis

- a. MUD boundary and vicinity map;
- b. Description of existing area, conditions, topography, and proposed improvements, including an evaluation of the effect the district will have on:
 - land elevation
 - subsidence
 - groundwater level within the region
 - recharge capability of a groundwater source
 - natural run-off rates and drainage

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- water quality
 - 100-year flood computations or source of information
 - Any area of the proposed District contained in the 100-year flood plain (if the district contains land within the 100-year floodplain, provide a narrative statement indicating how this land will be developed or removed from the flood-plain)
 - c. Master development plan showing general layout of proposed land uses; major streets and roads; water, wastewater and drainage facilities; and any other MUD facilities;
 - d. Existing and projected populations; and
 - e. Traffic study identifying potential impacts on:
 - The City's road system serving the land proposed to be included in the MUD and the county's road system.
 - This traffic study is in addition to any traffic studies required by the City's subdivision regulations in connection with submittal of subdivision plats.
- 4. Public Safety Analysis**
- a. Information concerning provision of firefighting and law enforcement services.
- 5. Intergovernmental Coordination Analysis**
- a. Proof that the petitioner has provided the County Judge and each member of the Commissioners Court of Denton County: the name, acreage and location of the proposed MUD, buildout schedule, estimated population at total buildout, impacts to county roads, and a map of the area; and
 - b. Statement from the applicable School District that there is current or planned capacity in existing schools to serve the MUD or that a new school(s) will be required as a result of the impacts created by the MUD.
- 6. Other**
- a. Information on other MUDs or special districts that the developer has used to develop within Texas. Provide location, current status, density/intensity of development, related agreements, etc.
 - b. Any other information as City staff may reasonably require to analyze the need for the proposed facilities and the development's potential impact; and
 - c. Any proposed City agreements.