

2022 TCAA SUMMER CONFERENCE

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Galveston, TX

How to Fight a Municipal Utility District and Why You Should (or Shouldn't)

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The Whats, Hows, and Whys

- What is a municipal utility district?
- What is the purpose of a MUD?
- Why does a landowner or developer choose to create a MUD?
- How are MUDs created?
- How can a city stop the creation of a MUD?
- Why might a city oppose or consent to the creation of a MUD in its city limits or ETJ



What is a Municipal Utility District?

- Special purpose district created under Article XVI, Section 59 of the Texas Constitution and under Texas Water Code Chapter 54.
- Political subdivisions with elected boards of directors.
- Governed by Texas Water Code Chapters 49, 50, and 54, and other laws generally applicable to all political subdivisions, like open meetings and open records requirements.



What is the Purpose of a MUD?

Texas Water Code § 54.012. PURPOSES OF A DISTRICT.

A district shall be created for the following purposes:

- (1) the control, storage, preservation, and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes;
- (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation;
- (3) the reclamation and drainage of its overflowed land and other land needing drainage;
- (4) the conservation and development of its forests, water, and hydroelectric power;
- (5) the navigation of its inland and coastal water;
- (6) the control, abatement, and change of any shortage or harmful excess of water;
- (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and
- (8) the preservation of all natural resources of the state.

With the exception of (7), these purposes are from Texas Constitution, Art. XVI, Sec. 59.



What is the Purpose of a MUD?

Tex. Water Code § 54.201

MUDs are authorized to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of the district authorized by the constitution, this code, or other law, including all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary to:

- (1) supply water for municipal uses, domestic uses, power, and commercial purposes and all other beneficial uses or controls;
- (2) collect, transport, process, dispose of, and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state;
- (3) gather, conduct, divert, and control local storm water or other local harmful excesses of water in a district;
- (4) irrigate the land in a district;
- (5) alter land elevation in a district where it is needed;
- (6) navigate coastal and inland waters of the district; and
- (7) provide parks and recreational facilities for the inhabitants in the district, subject to the provisions of Chapter 49 of the Texas Water Code.



What is the Purpose of a MUD?

Additional Powers:

- Eminent domain power (limited to within the district)
- Road powers (upon approval by the TCEQ)
- Contracting authority
- Street or security lighting
- Enforcement of real property restrictions
- Issuance of bonds



Why does a Landowner or Developer choose to create a MUD?

- Financing vehicle.
 - Developer constructs the facilities, and once there is sufficient taxable value to support the issuance of bonds, the board will issue bonds and reimburse the developer.
- Avoids requirements related to investor-owned utilities, such as PUC oversight and rate approval.
- Entity to own, operate, and maintain facilities after the developer completes the development.
- Management income.



Why does a Landowner or Developer choose to create a MUD instead of using some other financing vehicle?

- The developer will be reimbursed for the infrastructure costs.
- The TCEQ creation process is relatively easy and well established.
- Control. Developers will control the board of directors and thus can ensure that the bonds are issued for reimbursement purposes.
- Perceived limitations with other types of funding mechanisms, like PIDs.



How are MUDs created?

MUDs are created either by the TCEQ or the Texas Legislature.

TCEQ Process:

- Statutory and Regulatory Provisions: Texas Water Code §§ 54.014, 54.015, 54.016, 54.0161, 54.020, 54.021; Texas Local Government Code §§ 42.042, 42.0425, 42.043; 30 Tex. Admin. Code Chp. 293
- Steps to Create a MUD in the ETJ of a City without City Consent:
 1. Landowner must seek the city's consent to the creation, and for proposed district's in the ETJ, the landowner must allow the county to provide comments on the creation. (TLGC § 42.042; TWC § 54.0161)
 2. If the city does not consent to the creation of the district within 90 days after the date the city receives the written request for consent, owners of at least 50 percent of the land may petition the city to make available water service, sewer service, or both.
 3. Before submitting the petition to the city, notice of the petition must be given by posting the petition for 10 days in three public places in the area of the proposed district, and publishing it in the newspaper. (TLGC § 42.043(c))



How are MUDs created?

- Steps continued:
 4. The petition must be presented to the city secretary or clerk.
 5. If, within 120 days after the date the governing body receives the petition, the city fails to make a contract providing for the water and sewer service within the statutorily prescribed time periods, the landowners may petition the TCEQ for creation.
 - Commitment must provide that construction of the facilities begin within two years and will be substantially completed within 4.5 years after the date of the petition.
 - If no agreement is reached, that failure constitutes the city's consent to the creation.
 6. A petition for the creation of the MUD is then filed by the owners of 50 percent of the land with the TCEQ.



How are MUDs created?

- Steps continued:
 7. After the petition is reviewed by the TCEQ, notice of the petition and how to request a hearing will be provided by mail to “interested persons” and the county court, and the landowner must publish notice once a week for two consecutive weeks in a regularly published or circulated in the county. (TWC § 54.018, 30 Tex. Admin. Code § 293.12)
 8. If there are hearing requests, the TCEQ Commissioners will determine if the requesting parties are affected parties. (TWC § 54.020)
 9. If the Commissioners determine that one or more of the hearing requestors is affected, the matter will be referred to the State Office of Administrative Hearing for a contested case hearing.



How are MUDs created?

- Steps continued:
 10. After the hearing is concluded, the administrative law judge will prepare a proposal for decision, which is a recommendation to the TCEQ Commissioners regarding whether the application should be granted or denied.
 11. After the Commissioners determine to grant the petition, the district will be created.
 12. The aggrieved party may appeal the decision, which is to be completed in an expedited manner. “The court shall hear the appeal within 120 days after the date the appeal is filed.” Bonds or other security are required of the any party appealing a decision of the district court. (TWC § 42.042(g))



How can a City stop the Creation of a MUD?

- Enter into an agreement to provide the services after the city receives the petition.
 - Why a landowner might not be agreeable to obtaining city services:
 - No reimbursement if the city is unable to utilize a PID/TIRZ to finance the infrastructure.
 - If annexation is required, the overall tax rate for the district exceeds other competitive developments.
 - If annexation is required, the developer does not want to comply with city development standards.
 - It is less expensive to drill wells and install package plants as the development grows, than to extend facilities sized for ultimate buildout to the city's facilities.
- File a hearing request with the TCEQ protesting the creation of the district.



How can a City stop the Creation of a MUD?

- Issues the TCEQ will consider in a hearing:
 - Compliance with the process.
 - Negotiation of agreement to serve
 - TIP: If the city is able to serve, provide a will serve letter.
 - Proper notice
 - Proper petitioner (does the landowner that petitioned the TCEQ still own the land)



How can a City stop the Creation of a MUD?

- Issues the TCEQ will consider in a hearing:
 - Texas Water Code § 54.021(b): In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:
 - (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;
 - (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and
 - (3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:
 - (A) land elevation;
 - (B) subsidence;
 - (C) groundwater level within the region;
 - (D) recharge capability of a groundwater source;
 - (E) natural run-off rates and drainage;
 - (F) water quality; and
 - (G) total tax assessments on all land located within a district.



How can a City stop the Creation of a MUD?

- Issues the TCEQ will consider in a hearing continued:
 - (1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities
 - Does the city have facilities within three miles of the development and capacity to serve?
 - (2) the reasonableness of projected construction costs, tax rates, and water and sewer rates

30 Tex. Admin. Code § 239.59(k)(3) limits the combined projected tax rate as follows:

- \$1.50 in Harris, Galveston, Montgomery, Fort Bend, Waller, and Brazoria Counties;
- \$1.20 in Dallas, Denton, Collin, Tarrant, Travis, Hays, Williamson, Comal, and Guadalupe Counties; or
- \$1.00 in all other counties.



How can a City stop the Creation of a MUD?

- Issues the TCEQ will consider in a hearing continued:
 - (3) The unreasonable effect on the following:
 - groundwater level within the region
 - natural run-off rates and drainage
 - water quality

Why might a City oppose or consent to the Creation of a MUD in its City limits or ETJ?

- Reasons to Consent to the Creation of a MUD:
 - City doesn't have the facilities or the ability to provide the services.
 - Whether the city is the retail or wholesale water or sewer provider or not, the city will not be responsible for operating and maintaining parks, stormwater facilities, etc., and the MUD, with its taxing authority, rather than an HOA, will have those responsibilities.
 - The likelihood of success and the cost associated with protesting the application.



Why might a City oppose or consent to the Creation of a MUD in its City limits or ETJ?

- Reasons to Oppose the Creation of a MUD:
 - Regionalization and the proliferation of wells and package plants.
 - Duplicative governmental entities, which can cause voter and customer confusion.
 - Lack of experience by a MUD board to operate and maintain facilities.
 - The development proposed.
 - The developer has failed to adequately demonstrate the feasibility of the project and the viability of the MUD.
 - For MUDs in the ETJ, assuming there is an agreement to annex the MUD, if the debt is not paid before annexation, the city will assume the debt when the development is annexed.
 - For MUDs in the ETJ, assuming there is an agreement to annex the MUD, if the debt is paid before annexation, the city will be assuming 30-year old facilities.
 - Impediment to annexation.
 - Politics.



Questions?



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