



MUNICIPAL SETTING DESIGNATIONS (MSDs)

Application Process and Frequently Asked Questions for MSD's

What is a Municipal Setting Designation?

A Municipal Setting Designation (MSD) is type of deed restriction. It is an official designation given by the state to prevent people from drinking contaminated groundwater. The prohibition is in the form of an ordinance that is enforceable by the city and is filed in the county property records. A MSD cannot be issued by the state until an ordinance is adopted by the City, and is supported by any other cities within five miles of the site. A restrictive covenant on the property does not preclude getting a Municipal Setting Designation on the same property.

What is the purpose?

By permanently prohibiting the use of contaminated groundwater for potable purposes, the MSD limits the scope of groundwater investigations and may eliminate the need for groundwater response actions. This does not limit any liability from the responsible party or property owner nor alter any clean up requirements related to soil contamination, vapor intrusion or other means of contact with the contaminants.

Is a MSD in Houston different from a MSD in other Texas cities?

Yes, in Houston, property owners own the water rights beneath their property. Restricting a property owner's ability to use their water rights can be considered an uncompensated taking by the city so the MSD only applies to those properties who voluntarily give up their water rights by participating in the application.

Also the Houston MSD process is a very political process that involves more public participation. There is a public meeting in the vicinity of the site which is advertised in the newspaper as well as having individual notices mailed to each property within one half mile of the site and each registered water well owner or operator within five miles of the site. Based on input from the meeting the Director of Public Works and Engineering then requests a public hearing at the City Council. Following the public hearing; the Director request City Council approval to pass an ordinance prohibiting the use of the groundwater beneath the site for potable purposes. The effect of the ordinance is to support the application to the Texas Commission on Environmental Quality (the state's environmental agency).

What must I do before I can apply?

The following are the expectations of a site that is applying for a MSD.

1. The site must already participate in a State or Federal clean up program.
2. The site must have been thoroughly investigated. The extent and composition of the groundwater plume should be known and delineated to the standards established by the clean-up program in which the site is participating.
3. All reasonably expected contaminants should have been investigated.
4. There must be enough monitoring data to demonstrate that the groundwater plume is stable or diminishing.
5. A licensed engineer or geologist must be willing to seal a certification that the plume is stable or contracting. It is helpful to be able to confirm that the source is no longer present.

An applicant who meets all of these conditions can apply for a MSD.

How do I apply?

An application must be completed by an electronic portable digital file. Two paper copies of the application, and any supporting documentation, must be submitted to the Director of Public Works & Engineering along with a fee of \$2,000.

Are there other costs associated with the MSD process?

The applicant is also responsible for the following costs:

- the certified mail out
- the regular mail out
- the newspaper ad for the public meeting
- public meeting location uses fee
- the newspaper ad for the public hearing

What do I need to supply with the application?

Two complete copies of the application, the certified mailing list and regular mailing list on an excel file (mailing labels not requires), and the metes and bounds of proposed MSD boundary as a text file. Also, one notarized copy of Form 0455-1 "Affidavit of Ownership or Control" must be submitted under separate cover.

What steps are taken after I submit an application?

The Director will distribute a copy of the complete application to various city departments for review and comment, as well as to the TCEQ. After the staff review process is complete, the Director will determine whether the application is complete. Within 30 days after submission of an application, the Director will notify the applicant whether the application is complete. In consultation with the applicant city staff will schedule both a public meeting and a public hearing. Incomplete applications have 60 days to correct the deficiencies or submit additional documentation. Failure to correct or supplement the application will result

in the application being withdrawn and the filing fee being forfeited. No application is complete until all supporting documentation is supplied.

Who schedules the public meeting and public hearing?

Public Works and Engineering staff will coordinate with the applicant to set a meeting date in a community center close to the applicant's site and will also set a date for the public hearing with the City Council.

Who sends notice of the meeting and hearing?

The City transmits the meeting and hearing notices at the expense of the applicant. Once receipt of the estimated cost of mailing notices and advertising is received, the City of Houston will send notice of the meeting and hearing by regular mail to all persons identified in the application at least 30 days prior to the meeting. Notice of the public meeting will also be published in a newspaper of general circulation at least 30 days before the public meeting. The notice will be written in at least English and Spanish. A copy of the application will be placed at the public library closest to the property at least 30 days prior to the public meeting.

Who must attend the public meeting?

The applicant and its licensed environmental professional must be present. Because a MSD is a voluntary restriction on an applicant's property, the city takes very seriously any failure of the applicant to appear. Such an absence may result in the application being withdrawn, fees being forfeited or a rescheduling of the public meeting at the applicant's expense. The public meeting is intended to provide general information to the community about the MSD process (presented by City staff). The applicant will explain the specific conditions as its site. The community will also be notified of the date of the City Council public hearing.

What happens at the public hearing?

Prior to the hearing, the Director will prepare a recommendation as to whether the municipal setting designation ordinance should be granted or denied for the site, and listing any conditions that should be imposed. At a regularly scheduled session of City Council the City Secretary will formally call a public hearing. The Director will present information for Council's consideration, and is available to answer questions from members of Council or the Mayor. Proponents and opponents may participate, but need not do so. Usually, Council will vote on the municipal setting designation ordinance at the City Council session during the week following the public hearing.

Are there additional requirements after the approval of an application?

Yes. Within thirty (30) days after the MSD certificate is issued by the TCEQ, the applicant must provide:

1. An electronic file showing the location of the designated property and the designated groundwater in a format compatible with the city's geographic information system and its integrated land management system to the Director,
2. An electronic file showing the location of the designated property and the designated groundwater in a format compatible with their system to HCAD,

3. The applicant shall provide the Director with a copy of the MSD certificate issued by the TCEQ pursuant to Section 361.807 of the Texas Health and Safety Code within thirty (30) days after issuance of the certificate, and
4. The applicant must provide the Director with a copy of the certificate of completion or other analogous documentation issued by the TCEQ or EPA.

Who do I contact if I have questions?

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