



ARTICLE XVIII. MUNICIPAL SETTING DESIGNATIONS

Section 13-475 Statement of Purpose.

It is the purpose of this ordinance to allow usage of Municipal Setting Designations within Grand Prairie and its extraterritorial jurisdiction which allows for a state-evaluated corrective action process for groundwater that is directed toward protection of human health and the environment balanced with the economic welfare of the citizens of the city. Several commercial and industrial properties in Grand Prairie are underlain with unusable, shallow groundwater that has become contaminated by historical on-site or off-site sources. While the City of Grand Prairie does utilize groundwater as a source for public drinking water, a Wellhead Protection Ordinance is in place to minimize public and private losses due to contamination of the public water supply and to maximize groundwater protection. Furthermore, the City's municipal wells are in a confined aquifer and are not impacted by shallow groundwater contamination. Where public drinking water is available, the potable use of groundwater in designated areas should be prohibited to protect public health and welfare when the quality of the groundwater presents an actual or potential threat to human health.

Section 13-476. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated.

Authorized representative: For purposes of signing an application, if the applicant is a corporation, the president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; if the applicant is a partnership or sole proprietorship, a general partner or proprietor, respectively; and if the applicant is a local government, the chief executive officer or his authorized designee.

Chemical of concern: Any chemical that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, and mode of toxicity.

Director: The director of the department designated by the city manager to enforce and administer this article or the director's designated representative.

Environmental risk assessment: The qualitative and quantitative evaluation performed in an effort to define the risk posed to human health and/or the environment by the presence or potential presence and/or use of pollutants

Groundwater: The presence of water below ground surface.

Local community: Those persons entitled to notice in Section 13-478(b) (7) below.

Municipal Setting Designation (MSD): A designation as provided by Chapter 361, Subchapter W, of the Texas Health and Safety Code, which authorizes the executive director of the Texas Commission on Environmental Quality to certify municipal setting designations in order to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant.

Potable water: Water that is used for drinking, showering, bathing, cooking purposes, and irrigating crops intended for human consumption.

Regulatory Authority: The city manager or duly authorized representative of the city manager.

Section 13-477. Use of groundwater in Municipal Setting Designation as a potable water source prohibited.

(a) A person commits an offense if the person intentionally, knowingly, or with criminal negligence uses groundwater in a Municipal Setting Designation as a potable water source.

(b) A person commits an offense if the person intentionally, knowingly, or with criminal negligence uses groundwater in a Municipal Setting Designation for a purpose prohibited in the ordinance creating that Municipal Setting Designation.

Section 13-478. Application for City Council Approval of Municipal Setting Designation.

(a) A person seeking City Council approval of a Municipal Setting Designation (MSD) for property within the corporate limits of the city of Grand Prairie, or within its extraterritorial jurisdiction, shall file six copies of an application with the Regulatory Authority.

(b) An application shall be on a form provided by the Director, and shall contain:

(1) Applicant's name and address, and the name, address, daytime telephone number, and email address of a contact person;

(2) The location and legal description of the proposed outer boundaries of the MSD;

(3) A statement as to whether the applicant has filed an application with the executive director of the Texas Commission on Environmental Quality for a MSD for the property;

(4) A statement as to whether public drinking water supply system(s) exist that satisfies the requirements of Texas Health and Safety Code Chapter 361 and that supplies or is capable of supplying drinking water to the property for which the MSD is sought, and property within one-half mile of the property for which the MSD is sought;

- (5) A description of the groundwater sought to be restricted, including the identified chemicals of concern therein and the levels of contamination known to applicant, and the identified vertical and horizontal area of the contamination to the limits that it has been identified. If applicant has not documented groundwater contamination offsite that originates from the property for which an MSD is sought, the application shall include a statement as to whether contamination more likely than not exceeds a drinking water standard off-site and the basis for that statement;
- (6) Identification of the person(s) responsible for the contamination of the groundwater, if known;
- (7) A listing of:
- (A) All owners of real property lying within one-half mile of the subject property, as the ownership appears on the last approved city tax roll;
 - (B) All state-registered private water wells within five miles from the boundary of the property for which the designation is sought, including a notation of those wells that are used for potable water purposes (if known), and a statement as to whether applicant has provided the owners with notice as provided in Texas Health and Safety Code Section 361.805;
 - (C) Of each retail public utility (RPU) that owns or operates a groundwater supply well located not more than five miles from the property for which the MSD is sought, and a statement as to whether applicant has provided the utilities with notice as provided in Texas Health and Safety Code Section 361.805; and
 - (D) Each municipality, other than the City of Grand Prairie, in which the property is located and/or with a boundary located not more than one-half mile from the property for which the MSD is sought; or that owns or operates a groundwater supply well located not more than five miles from the property for which the MSD is sought; and a statement as to whether applicant has provided the municipalities with notice as provided in Texas Health and Safety Code Section 361.805;
- (8) A copy of the application to the executive director of the Texas Commission on Environmental Quality, if filed;
- (9) A site map, drawn to scale, including a metes and bounds description of the property, the boundary of the proposed MSD, the location of groundwater on the property, and the extent of groundwater contamination to the limits that it has been defined. The map shall include a statement by a professional land surveyor registered by the Texas Board of Professional Surveying attesting to the accuracy of the metes and bounds property description;

- (10) A map, drawn to scale, showing all monitoring wells on the proposed MSD property, as well as, all information in Section 13-478 (b) (7) A-D;
 - (11) Any other information that the Director deems pertinent.
- (c) A statement that the property and/or facility is in compliance with all federal, state, and local environmental rules and regulations.
 - (d) A notarized statement from the property owner, if the applicant is not the property owner, stating that he or she is aware of the MSD application and supports such application.
 - (e) The application shall be signed by an authorized representative of the applicant and shall contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in a manner designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
 - (f) An application shall be accompanied by:
 - (1) An electronic file of the names and addresses of persons listed in subsection (b) (7) above, in a format acceptable to the Director and compatible with City information systems; and
 - (2) An application fee.
 - (g) An applicant may withdraw its application in writing by letter sent certified mail, return receipt requested, to the Director, and shall forfeit the application fee. If the Director has not issued public notice prior to the receipt of the withdrawal letter, the applicant may reapply at any time. If public notice has been issued, a new application is subject to the limitations of Section 13-485.

Section 13-479. Application Filing Fee

Every application for a MSD shall be accompanied by an application fee of five thousand dollars (\$5,000.00). This application filing fee is non-refundable.

Section 13-480. Staff review.

- (a) Upon receiving an application for an MSD approval, the Director will distribute a copy to his designee within the Environmental Services Department, and to the City's Development Review Committee for staff review. The purpose of the review is to determine whether the application is complete, whether all requirements in Texas Health and Safety Code, Subchapter W for pre-certification have been met, and whether any current or future City property or other interests have the potential to be impacted by the

proposed MSD. City staff shall not be tasked with conducting an environmental risk assessment of the application.

(b) Upon review of the application, an inspection of the property and/or facility to determine compliance with all federal, state, and local rules and regulations shall be made.

(c) City staff must send a written report to the Director noting any discrepancies in the application, and advising of any City interests that may potentially be impacted by the proposed MSD.

(d) If the City feels that a third party consultant is needed for review of the application, any fees charged by a third party consultant shall be established by private agreement between the applicant and the city's designated third party consultant.

Section 13-481. Director Action Following Application Review.

(a) Following staff review, if the Director determines that the application is complete, he will schedule a public meeting and a public hearing. The public meeting must be held prior to the public hearing.

(1) A public meeting will be scheduled when the application is determined to be complete; and

(2) A public hearing will be scheduled after the public meeting.

(b) If the Director determines that the application is incomplete, he will return the application to applicant, noting the deficiencies in writing. The applicant shall have thirty (30) days from the date of the deficiency letter to correct the deficiencies and resubmit the application. This time may be extended with permission from the Director. If the applicant fails to submit a corrected application within the allotted time, the application shall be deemed to be withdrawn and the application fee forfeited.

Section 13-482. Notices of Public Meeting and Public Hearing.

(a) Prior to or with the Notice of Public Meeting, the applicant must notify all parties identified in Section 13-478 (b) (7) A-D of the MSD application in accordance with Texas Health and Safety Code Section 361.805. If the Notice of the MSD application has not been made, then it may be combined with the Notice of Public Meeting.

(b) The Notices of Public Meeting and Public Hearing excluding published and posted notices, must include, at a minimum:

(1) The purpose of the municipal setting designation;

(2) The eligibility criteria for a municipal setting designation;

(3) The location and description of the property for which the designation is sought;

(4) A statement that a municipality described 13-478 (b) (7) D or retail public utility described in 13-478 (b) (7) C may provide written comments on any information relevant to the executive director's consideration of the municipal setting designation;

(5) A statement that the executive director will certify or deny the application or request additional information from the applicant not later than 90 days after receiving the application;

(6) The type of contamination on the property for which the designation is sought; and

(7) Identification of the party responsible for the contamination of the property, if known.

(c) The applicant must submit a list of addresses of the Notice of the MSD application letters. Notice of the MSD application to those parties listed in 13-478 (b) (7) A, Notice of Public Meeting and Notice of Public Hearing will be deemed served to all property owners within one-half mile when the notice is deposited, properly addressed, and regular postage paid, in the United States mail. For adjacent property owners and property owners under which the plume extends, the applicant must submit certified mail receipts.

For parties listed in 13-478 (b) (7) (B) – (D), a minimum of three attempts to the valid address and/or contact shall be made. If any parties can not be contacted, then the applicant must attempt to serve notice to the municipality, RPU, and owner of the property at least three times. Proof of the above is two attempts to get signed delivery receipts from a valid address and contact person and if unable to deliver, proof that a third attempt was made via a delivery confirmation carrier or equivalent. Hand delivery with a signed receipt will also be acceptable. The third attempt may be performed in conjunction with the second attempt.

(d) The mailed Notice of Public Meeting and the Notice of Public Hearing must include the date, time and location of each event, all information as listed in 13-482 (b) 1-7, and a statement that a copy of the application is available for public viewing at a specified Grand Prairie Public Library facility. Notices will be made not less than 15 days before the date set for the public meeting and the public hearing. All notices must receive pre-approval from the Director prior to mailing.

(e) The Director will provide the notices of a public meeting and a public hearing for a proposed MSD by means of a legal advertisement appearing in a paper of general circulation, not less than 15 days before the public meeting and the public hearing.

(f) The Director will provide posted notices of a public meeting and a public hearing by requesting that the City Secretary post each notice at City Hall, in a place readily accessible to the general public at all times, not less than 15 days before the public meeting.

(g) The Director will direct the erection of at least one sign, to be furnished and posted by the applicant, upon the property for which an MSD has been requested. Where possible such sign or signs must be located in a conspicuous place or places upon such property at a point or points nearest any right-of-way, street, roadway or public thoroughfare adjacent to such property. Such sign(s) must be so erected not less than 15 days before the date set for the public meeting. Any such sign(s) will be removed subsequent to final action by the City Council on the MSD application. The sign(s) must state that an MSD has been requested for the site and that additional information can be acquired by telephoning the number listed thereon or visiting the web site address listed thereon. The erection and/or the continued maintenance of any such sign shall not be deemed a condition precedent to the holding of any public meeting or public hearing or to any official action concerning the MSD application.

(h) The Director will send a copy of the application to the Grand Prairie Public Library facility located nearest to the property that is the subject of the application, and request that it be displayed for public review. The librarian for the facility will display the application in a publicly accessible area of the library until at least the completion of City Council action on the application, or the withdrawal of the application by applicant.

Section 13-483. Conduct of Public Meeting.

(a) The purpose of a public meeting is for the applicant to provide information to the local community about MSDs and the application and to obtain input on the application prior to a formal hearing before the City Council.

(b) The public meeting will be held in the evening at a location convenient to the local community.

(c) The applicant or applicant's representative must appear at the public meeting. If the applicant fails to appear at the public meeting either in person or by representative, the application shall be deemed withdrawn and the application fee forfeited.

(d) The Director will be responsible for the conduct of the meeting. He will give the applicant or the applicant's representative the opportunity to present its reasons for requesting an MSD, and will give members of the local community the opportunity to ask the applicant questions or make oral comments on the application.

Section 13-484. Conduct of Public Hearing.

(a) Prior to the hearing, the Director will provide the City Council with a written report summarizing the request for the MSD approval, including any concerns raised by the reviewing departments, and will attach a copy of the application to the report.

(b) The applicant or applicant's representative must appear at the hearing and present the request for an MSD approval. If the applicant fails to appear at the hearing either in person or by representative, the application shall be deemed withdrawn and the application fee forfeited.

(c) Persons wishing to speak either in favor of or against the application will be provided the opportunity in accordance with City Council rules or guidelines for public hearings.

(d) Following the conclusion of the public hearing, the City Council may deliberate the matter of the application, and then may either

(1) Vote to approve or disapprove the application; or

(2) Postpone action on the application to a future date.

(e) In order to approve an application, the City Council must enact an ordinance prohibiting the potable use of designated groundwater from beneath the property. The ordinance must include a metes and bounds description of the property to which the ordinance applies; a listing of the contaminants; and a statement that the ordinance is necessary because the contaminant concentrations exceed potable water standards.

(f) In the ordinance enacted pursuant to subsection (e)(2) above, City Council may place other reasonable restrictions on the use of designated groundwater from beneath the property.

(g) City Council approval of an application shall not be deemed to waive the City's right to comment on an MSD application that has been filed with the Executive Director of the Texas Commission on Environmental Quality as provided by Texas Health and Safety Code Section 361.805.

(h) If the ordinance restricting the use of groundwater is rescinded, the City of Grand Prairie will give the State environmental regulatory agency at least sixty (60) days written notice of such action.

Section 13-485. Limitation on reapplication.

If after public hearing the City Council disapproves an application, or if the applicant has withdrawn its application after public notice has issued, no new MSD applications for the property shall be accepted by the city or scheduled for a hearing by the City Council within a period of 12 months of the date of disapproval or withdrawal.

Section 13-486. Additional requirements.

(a) A person who has received approval of an MSD from the City, shall, upon issuance from the Texas Commission on Environmental Quality, provide the Director with a copy of the pre-certification letter, Certificate of Completion, or other documentation issued for the property, showing that response actions have been completed.

(b) A person commits an offense if they fail to provide the Director with the documentation required in subsection (a) above, within 30 days of its issuance by the Texas Commission on Environmental Quality.

Section 13-487. Right of Entry.

The city's representative(s) shall have the right to enter the premises of any person to determine whether that person is compliance with all requirements of this article. Persons shall allow inspecting or monitoring personnel ready access to all parts of the premises for the purposes of inspection, monitoring, records examination and copying, and the performance of any additional duties. Any information concerning a requirement under this article shall be made readily available upon request.

(a) Where security measures are in force which requires proper identification and clearance before entry into the premises, that person shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the city's representative will be permitted to enter without delay for the purposes of performing specific responsibilities.

(b) The city's representatives shall have the right to set up on any person's property such devices as are necessary to conduct monitoring of any person's operations.

(c) Unreasonable delays in allowing inspecting or monitoring personnel access to any person's premises shall be a violation of this article.

Section 13-488. Abatement by City.

(a) In the event that an owner shall fail to comply with this article, the Director or designee may notify such owner by letter addressed to such owner at such owner's post office address, or by publication as many as two (2) times within ten (10) consecutive days in a local newspaper, if personal service may not be had on the owner, or the owner's address is not known. The notification shall contain in brief terms the condition or conditions which exist on such owner's premises which fail to comply with this article. At the expiration of ten (10) days after issuance and receipt of the notification, or at the end of ten (10) days after the final date of publication, the city may enter upon such premises and may do such work as necessary, or cause the same to be done, to abate the unlawful condition of the premises in order that the premises may comply with the requirements of this article. A statement of the cost incurred by the city to abate such condition shall be mailed to the owner of the premises and such statement shall be paid within thirty (30) days of the date of the mailing of the statement of costs.

(b) In the event that an owner shall have an emergency condition, the fire chief, the environmental services director, or their designees, may enter upon such premises and may do such work as necessary, or cause the same to be done, to abate the condition in order that the premises may comply with the requirements of this article. For the purposes of this section, "emergency condition" shall be defined as any condition or conditions which are or reasonably could be an immediate threat to the health, safety or welfare of the citizens of the city or to the environment. A statement of the cost incurred by the city to abate such condition shall be mailed to the owner of the premises and such statement shall be paid within thirty (30) days of the date of the mailing of the statement of costs.

Section 13-489. Penalty—For violations; other remedies.

(a) Any person, firm, or corporation who violates any provision of this article or violates any requirement established for an area under a MSD is guilty of a misdemeanor and upon conviction is punishable by a fine as provided in section 1-8 of the Code of Ordinances of the City of Grand Prairie, or any amendment thereto or renumbering thereof, for violations of public health for each act of violation and for each day of violation.

(b) Any person, firm, or corporation who obstructs, impedes, or interferes with a representative of the City or with a representative of a City department, is guilty of a misdemeanor and upon conviction is punishable by a fine as provided in section 1-8 of the Code of Ordinances of the City of Grand Prairie, or any amendment thereto or renumbering thereof, for violations of public health for each act of violation and for each day of violation.

(c) In addition to proceeding under authority of subsections (a) and (b) of this section, the City is entitled to pursue all criminal and civil remedies to which it is entitled under authority of statutes or other ordinances against a person, firm, or corporation that remains in violation of this article.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF GRAND PRAIRIE, TEXAS, THIS THE 19TH DAY OF JANUARY, 2010.