

ARTICLE 22.10 POTABLE USE OF GROUNDWATER

Sec. 22.10.001 Findings

The city council has found and does find that:

- (1) Many commercial and industrial properties in the corporate limits of the City of Lubbock and its extraterritorial jurisdiction are underlain with groundwater that has become contaminated by historical on-site or off-site sources;
- (2) The use of municipal setting designations within the corporate limits of the City of Lubbock and its extraterritorial jurisdiction 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;
- (3) Where public drinking water is available, the potable use of groundwater in designated areas should be prohibited to protect public health, safety and welfare when the quality of the groundwater presents an actual or potential threat to human health; and
- (4) Public input is a valuable resource for every local government and a public hearing should be required when determining which areas should be prohibited from using groundwater for potable use within the corporate limits of the City of Lubbock and its extraterritorial jurisdiction.

(1983 Code, sec. 28-171; Ordinance 2006-00133, sec. 1, adopted 1/12/2007)

Sec. 22.10.002 Definitions

Affected community means those persons entitled to notice in [section 22.10.004\(b\)\(7\)](#) below.

Authorized representative means, 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 means any chemical that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, and mode of toxicity.

Commission means the Texas Commission on Environmental Quality or any successor agency delegated the authority and responsibilities of the Texas Commission on Environmental Quality.

Director means the director of environmental compliance or the director's authorized designee.

Environmental risk assessment means 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 means water below the surface of the earth.

Municipal setting designation (MSD) means a designation as provided by chapter 361, subchapter W, of the Texas Health and Safety Code, which authorizes the executive director of the commission 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 means water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

(1983 Code, sec. 28-172; Ordinance 2006-O0133, sec. 1, adopted 1/12/2007)



Sec. 22.10.003 Prohibited in municipal setting designation

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 or for a purpose prohibited in the ordinance creating that municipal setting designation. (1983 Code, sec. 28-173; Ordinance 2006-O0133, sec. 1, adopted 1/12/2007)



Sec. 22.10.004 Application for approval of municipal setting designation

(a) A person, including the city, seeking city council approval of a municipal setting designation (MSD) for property within the corporate limits of the city, or within its extraterritorial jurisdiction, shall file an original and six (6) copies of the application with the city secretary. The application may be filed in person, by United States mail, or by a document delivery service.

(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 applicant has filed an application with the executive director of the commission for an MSD for the property;
- (4) A statement as to whether a public drinking water supply system exists that satisfies the requirements of Texas Health and Safety Code chapter 341 and that supplies or is capable of supplying drinking water to the property for which the MSD

is sought, and property within one-half (1/2) 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. If applicant has not documented groundwater contamination off site 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 non-MSD residential assessment level 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 (1/2) 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 (5) 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) Each retail public utility that owns or operates a groundwater supply well located not more than five (5) 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, with a boundary located not more than one-half (1/2) mile from the property for which the MSD is sought; or that owns or operates a groundwater supply well located not more than five (5) 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, as amended;

(8) A copy of the application to the executive director of the TCEQ, if filed;

(9) A site map, drawn to scale, including a metes and bounds description of the property, the boundary of the proposed MSD, and a statement by a professional land surveyor registered by the Texas Board of Professional Land Surveying attesting to the accuracy of the metes and bounds property description;

(10) A series of maps, diagrams, and figures sealed by a professional engineer and/or a professional geoscientist registered by the Texas Board of Professional Engineers or Geoscientists, respectively, depicting the following information:

- (A) The location and depth of groundwater and monitor wells on the property;
- (B) The direction of groundwater flow; and
- (C) The vertical and horizontal extent of contaminated groundwater, to the extent it has been defined; and

(11) Any other information that the director deems pertinent.

(c) 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.”

(d) An application shall be accompanied by:

- (1) A set of printed mailing labels with the names and addresses of persons listed in subsection (b)(7) above;
- (2) 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
- (3) An application fee in the amount of \$2,000.00.

(e) An applicant may withdraw his 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 issued, a new application is subject to the limitations of section 22.10.009 below.

(1983 Code, sec. 28-174; Ordinance 2006-00133, sec. 1, adopted 1/12/2007; Ordinance 2014-00151, sec. 15, adopted 11/6/2014)

(a) Upon receiving an application for MSD approval, the city secretary will distribute a copy to the director, the city attorney's office, the city manager's office, the city's water department, the city's planning department and the engineering department for staff review. The purpose of the review is to determine whether the application is complete, 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 assessment of the application.

(b) City staff must send a written report to the director within ten (10) calendar days of receiving the application, noting any discrepancies in the application, and advising of any city interests that may potentially be impacted by the proposed MSD.

(1983 Code, sec. 28-175; Ordinance 2006-00133, sec. 1, adopted 1/12/2007)

 **Sec. 22.10.006 Director's action following application review**

(a) Following staff review, if the director determines that the application is complete, he will schedule a public hearing. A public hearing will be scheduled at a time no later than sixty (60) days following the day the application was received by the city.

(b) The date that an application is deemed to have been received by the city is the date that the application was received by the city secretary, as indicated by the file date stamped on the application package by the city secretary.

(c) If the director determines that the application is incomplete, he will return the application to the 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. If the returned application contains deficiencies, the director shall again return the application to the applicant and note the deficiencies in writing, and the applicant shall again have thirty (30) days to resubmit the application. If an applicant fails to remedy the deficiencies after the director has provided notice in writing on at least two occasions, the director may return the application and require a new application fee prior to further consideration of the application.

(1983 Code, sec. 28-176; Ordinance 2006-00133, sec. 1, adopted 1/12/2007; Ordinance 2014-00151, sec. 16, adopted 11/6/2014)

 **Sec. 22.10.007 Notice of public hearing**

(a) Notice of the public hearing on a MSD application may be combined with notice of additional public meetings on the same subject and must include the date, time and location of the public hearing; the identity of the applicant; the location and legal description of the property for which the MSD is sought; the purpose of the MSD; the type of contamination identified in the groundwater of the property for which the MSD is sought; and a statement that a copy of the application is available for public viewing at the city secretary's office. Notice will be made as follows:

(1) The director will provide published notice of a public hearing for the proposed MDS by means of a legal advertisement appearing in the official newspaper of the city, or a paper of general circulation, not less than fifteen (15) day before the public meeting;

(2) The director will provide posted notice of a public hearing by requesting that the city secretary post the notice at city hall, in a place readily accessible to the general public at all times, not less than fifteen (15) days before the public meeting; and

(3) The director will serve written notice of a public hearing for a proposed MSD not less than fifteen (15) days before the date set for the public meeting. Such notice shall be deemed served when it is deposited, properly addressed and regular postage paid, in the United States mail. Notice will be served to:

(A) The applicant;

(B) The list provided by applicant of owners of real property lying within one-half (1/2) mile of the subject property, as the ownership appears on the last-approved city tax role;

(C) The list provided by applicant of persons who own private registered water wells within five (5) miles of the subject property;

(D) The list provided by applicant of each retail public utility that owns or operates a groundwater supply well located not more than five (5) miles from the property for which the MSD is sought; and

(E) The list provided by applicant of each municipality with a boundary located not more than one-half (1/2) mile from the property for which the MSD is sought or that owns or operates a groundwater supply well located not more than five (5) miles from the property for which the MSD is sought.

(b) The director will direct the erection of at least one (1) sign 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 fifteen (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 hearing or to any official action concerning the MSD application.

(1983 Code, sec. 28-177; Ordinance 2006-O0133, sec. 1, adopted 1/12/2007; Ordinance 2014-O0151, sec. 17, adopted 11/6/2014)

 **Sec. 22.10.008 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 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:
 - (1) Adopt a resolution supporting the application to the Texas Commission on Environmental Quality; and
 - (2) Enact an ordinance prohibiting the potable use of designated groundwater from beneath the property and restricting the nonpotable use of groundwater from beneath the property except for sampling and remediation purposes unless prior consent has been granted by the city for the nonpotable use of the groundwater. 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) In the event the city council desires to repeal any ordinance granted herein, city staff shall provide notice of such repeal to the commission at least sixty (60) days prior to the effective date of such repeal.

(1983 Code, sec. 28-178; Ordinance 2006-00133, sec. 1, adopted 1/12/2007)

 **Sec. 22.10.009 Limitation on reapplication**

If, after the public hearing, the city council disapproves an application, or if the applicant has withdrawn its application after public notice has been 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 twelve (12) months of the date of disapproval or withdrawal. If the water utilities director has not issued public notice, he may, in the interest of the public health and safety, ask the applicant to withdraw the MSD application voluntarily. After addressing the health and safety issues, the applicant may reapply without forfeiting the original two thousand dollar (\$2,000.00) fee. (1983 Code, sec. 28-179; Ordinance 2006-O0133, sec. 1, adopted 1/12/2007; Ordinance 2014-O0151, sec. 18, adopted 11/6/2014)

 **Sec. 22.10.010 Additional requirements**

- (a) A person who has received approval of an MSD from the city shall, upon issuance from the commission, provide the director with a copy of the 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 thirty (30) days of its issuance by the commission.

(1983 Code, sec. 28-180; Ordinance 2006-O0133, sec. 1, adopted 1/12/2007)