

AN ORDINANCE      **2016-04-07-0247**

**APPROVING AND ADOPTING A MUNICIPAL SETTING  
DESIGNATION POLICY AND GUIDELINES FOR THE CITY OF SAN  
ANTONIO TO PROVIDE FOR THE CONSIDERATION OF  
APPLICATIONS FROM PROPERTY OWNERS FOR REQUESTS FOR A  
MUNICIPAL SETTING DESIGNATION, AS AUTHORIZED BY  
CHAPTER 361 OF THE TEXAS HEALTH AND SAFETY CODE**

\* \* \* \* \*

**WHEREAS**, a Municipal Setting Designation (MSD) is an official state designation given to property within a municipality or its extraterritorial jurisdiction that certifies that designated groundwater at the property is not used as potable water, and is prohibited from future use as potable water, as authorized under the Texas Health and Safety Code, Chapter 361, Subchapter W (sections 361.801-808); and

**WHEREAS**, the MSD essentially recognizes that not all groundwater is created equal; that is, not all groundwater will be used by for potable purposes, so the use of contaminated groundwater can be restricted under appropriate circumstances; the MSD only addresses the risk of ingestion exposure based on human consumption of groundwater; the MSD does not reduce the requirement to address other risks that need to be addressed such as ecological risks or risks to surface water; and

**WHEREAS**, the use of municipal setting designation ordinances within the city of San Antonio and its extraterritorial jurisdiction will encourage the economic development of properties that have contaminated groundwater; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.**      The City Council finds that:

(1)    due to limited quantity and low quality, there are areas within the city and its extraterritorial jurisdiction where the groundwater is not valuable as a source for potable water;

(2)    the city of San Antonio does utilize groundwater as a source for public potable water;

(3)    many properties in the city and its extraterritorial jurisdiction are underlain with unused or unusable groundwater that has become contaminated by historical on-site or off-site sources;

(4)    municipal setting designation ordinances enable a state corrective process for groundwater that protects human health and the environment while also promoting the economic welfare of citizens;

(5) where the quality of the groundwater presents an actual or potential threat to human health, and another source of potable water is available, the use of designated groundwater beneath a designated property should be prohibited to protect the public health, safety, and welfare;

(6) municipal setting designation ordinances should be considered only after a process that allows for public notice and input; and

(7) the use of municipal setting designation ordinances within the city of San Antonio and its extraterritorial jurisdiction will encourage the economic development of properties that have contaminated shallow groundwater.

**SECTION 2.** The City Council approves the Municipal Setting Designation (MSD) Policy and MSD Guidelines as presented by the City Manager and the Director, Transportation and Capital Improvements Department (TCI), for the City's MSD Program. A copy of the approved MSD Policy and Guidelines is attached as Exhibit "A" and made a part hereof and incorporated herein for all purposes.

**SECTION 3.** The City Manager, or her designee, or the Director, Transportation and Capital Improvements (TCI) Department, or his designee, is authorized to develop all necessary procedures to implement the MSD Program in accordance with the MSD Policy and MSD Guidelines approved by the City Council and to modify the procedures if required. The Director, TCI shall administer the MSD Program for the City and is authorized to develop all necessary forms, applications and other required documents, and to require the submission of any information necessary to review and develop a recommendation for a MSD Application. There is hereby authorized and established a MSD application fee and a MSD processing fee, to be charged by the City to accept, process and review a MSD Application. The fees shall be in the amount of a non-refundable \$2,000.00 application fee and a \$6,000.00 processing fee, plus allowable expenses. The fees shall be included in the TCI Fee Schedule, Chapter 37 of the City Code, and subject to annual adjustment as a part of the City budget process. The Director, TCI is authorized to collect the fees and is authorized to reimburse agencies that assist in a review of an MSD Application, up to the purchasing authority limit as granted by Ordinance 93760 and Administrative Directive 1.6, if required.

**SECTION 4.** Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this Ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

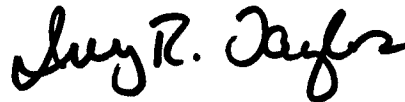
**SECTION 5.** Funds generated by this ordinance will be deposited into Fund 29028000, Internal Order 223000000251 and General Ledger 4407725.

**SECTION 6.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund

Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 7.** This ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

**PASSED and APPROVED** this 7th day of April, 2016.




M A Y O R  
Ivy R. Taylor

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vadek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Martha G. Sepeda, Acting City Attorney

for

<b>Agenda Item:</b>	<b>19 ( in consent vote: 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 19, 20 )</b>						
<b>Date:</b>	04/07/2016						
<b>Time:</b>	11:21:42 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance adopting Policy Guidelines for the Municipal Setting Designation Program which certifies designated groundwater at the designated property will not be used as potable water and will be prohibited from future use as potable water through deed restriction. [Peter Zanoni, Deputy City Manager; Mike Frisbie, Director, Transportation & Capital Improvements]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1	x					
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5		x				x
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

# CITY OF SAN ANTONIO

## MUNICIPAL SETTING DESIGNATION POLICY AND GUIDELINES

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### 1. POLICY STATEMENT

Municipal Setting Designation (MSD) is a program created by the State of Texas in September 2003 which allows municipalities to have jurisdiction of a property that has known historical shallow groundwater contamination. The MSD designation certifies that designated groundwater at the property will not be used as potable water, and is prohibited from future use as potable water because the shallow groundwater is contaminated in excess of the applicable potable-water protective concentration level. This prohibition must be in the form of a city ordinance.

Properties that have been impacted by the known historical shallow groundwater contamination could be many of the same properties the City has identified as Brownfield sites. These sites are usually abandoned, vacant, or underutilized properties. Examples can include abandoned gas stations, dry cleaning facilities, junkyards, old car dealerships, abandoned factories, undocumented landfills, and other potentially contaminated properties.

The sites can remain abandoned and unmarketable, increase inner city blight, and perpetuate the perception that redevelopment is risky and expensive. These sites decrease property values, affect local economies, and could threaten human health and the environment.

The implementation of the Municipal Setting Designation Program is a means of addressing shallow groundwater contamination under redeveloping properties, while protecting human health, the environment, and San Antonio's drinking water supply.

### 2. PUBLIC BENEFITS

The cleanup and subsequent reuse of groundwater contaminated sites produces several community benefits including:

**Community Revitalization:** Properties that have historical groundwater issues discourage future development due to the fear of the unknown environmental remediation costs and timeframe. These properties could potentially sit vacant and neglected without the MSD. However, providing a means to identify and address the shallow groundwater opens the possibility of a new development that could enhance the community. These vacant properties degrade the sense of community, project a perception of neglect, and can contribute to civic disengagement. Apart from the economic disinvestment generated from such decline, blighted areas undermine the level of comfort and safety of the surrounding neighborhood. Transforming such sites; however, demonstrates a commitment of genuine attention that inspires renewed community interest and vitality.

**Improved Human and Environmental Health:** MSD improves potential public health and safety hazards by allowing developers to obtain site closure through a regulatory program more quickly than without the designation. The designation prevents exposure to affected ground water by preventing water well installation and ground water use in a specific area through deed recordation. Additionally the MSD Program will be used to identify

unregistered wells, map the wells and groundwater plumes and ensure the integrity of San Antonio's drinking water source.

**Infill Development:** The City's Transportation & Capital Improvements (TCI) Department conducted a study to determine if MSD is a viable option for the City of San Antonio. The study included research and a summary of a potential MSD boundary based on existing geology and San Antonio's sensitive environment. Upon further discussions with both the San Antonio Water System (SAWS) and the Edwards Aquifer Authority (EAA), the possible MSD implementation area would be generally within Loop 410 to the North and West, and Loop 1604 to the South and East (see Figure 1). Given these general boundaries, the program would largely benefit many properties in San Antonio that have been abandoned and neglected due to urban sprawl. The MSD Program provides the City with another means of enticing redevelopment within the inner City for these challenging properties.

Every reused site absorbs a project that might otherwise contribute to urban sprawl.

### 3. POLICY GOALS

The Municipal Setting Designation Program aims to accomplish the following goals:

- Review applications for MSD Program to identify the potential MSD sites in and around the City within the MSD boundaries.
- Ensure compliance with each of the City's MSD requirements.
- Ensure public involvement through MSD process.
- Facilitate City Council approval for potential MSD sites that have satisfied all City requirements.

### 4. PROGRAM IMPLEMENTATION

- 1) All MSD applicants will comply with City MSD Procedures. The City will provide procedures for MSD compliance.
- 2) An application is submitted to the City for review in accordance with City MSD Procedures
- 3) Applicant submits a \$2,000 application fee
- 4) City review teams reviews application
  - a. Administrative Review
  - b. Development Team
    - i. Determines if the proposed development suits the needs of the area
      1. Center City & Downtown Operations
      2. Economic Development Department
      3. Planning & Community Development
      4. Development Services Department
- 5) Applicant submits a \$6,000 processing fee after administrative review is complete
- 6) City conducts technical review
  - a. Technical Team
    - i. Determines if environmental results meet health and safety requirements as well as program requirements
      1. Metro Health
      2. Parks & Recreation
      3. Transportation & Capital Improvements
      4. City Attorney's Office
  - b. Partnering Agencies

- i. Ensure agency requirements have been met
    - 1. San Antonio Water System
    - 2. Edwards Aquifer Authority
- 7) Public involvement process
  - a. Notify property owners within 2,500 feet of the MSD property
  - b. Notify registered well owners within a 5 mile radius
  - c. Conduct property owner engagement within 500 feet of MSD property to verify if unregistered wells exist
  - d. Conduct Public Meeting and Public Hearing for the proposed MSD Application
    - i. Coordinate with Edwards Aquifer Authority to assess all identified wells and verify properly plug abandoned wells within MSD property
    - ii. Collect reimbursable fees for public notification and mail outs
- 8) Present application to City Council for approval of a MSD ordinance

## **5. MUNICIPAL SETTING DESIGNATION PROGRAM GUIDELINES**

Applicant must provide the following:

- 1) Provide documentation that property is within the MSD boundary and is not within a one half mile radius of SAWS primary pump station
- 2) A licensed professional shall provide documentation that the source of contamination has been removed and that the property is enrolled in a TCEQ regulatory cleanup program
- 3) Provide preliminary development plan and environmental studies as per MSD procedures
- 4) Provide geological survey that shows a minimum of 150 feet impermeable barrier to Edwards Aquifer within the MSD boundary
- 5) Assess and delineate extent of groundwater contamination to City's satisfaction
- 6) Make a good faith effort to identify and register all active and inactive wells within 500 feet of MSD property
- 7) Plug abandoned well to protect the aquifer and future water resources within MSD property
- 8) Assist City with public involvement upon City deeming application complete

## **6. PROGRAM PERFORMANCE MEASURES**

The MSD Program will be evaluated each fiscal year on the following metrics:

- 1) Number of sites assessed
- 2) Number of sites certified for development and regulatory compliance
- 3) Number of vacant sites redeveloped
- 4) Increase in taxable value

Figure 1. Proposed MSD Implementation Area

