

## Legislation Text

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**File #:** 24-484, **Version:** 1

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**PRESENTER:**

Matt Greene, Principal Planner

**SUBJECT:**

Approval of a resolution to consent to the creation of the Liberty Trails Municipal Utility District (MUD) within the City's Extraterritorial Jurisdiction (ETJ) in Guadalupe County, consisting of 68.47 acres, and authorizing the City Manager to execute a development agreement between the City of New Braunfels and Century Land Holdings II, LLC.

**DEPARTMENT:** Planning and Development Services

**COUNCIL DISTRICTS IMPACTED:** Outside City Limits

**BACKGROUND INFORMATION:**

Case #: CS24-0132 & CS23-0493

Applicant: HMT Engineering & Surveying  
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Owner: 0 Union Wine Rd, LLC  
Fred Heimer, Manager  
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The Texas Water Code (Chapter 54) and the Texas Local Government Code (Chapter 42, Section 42.042) (see resource links) outline the procedures for the creation of Municipal Utility Districts (MUDs). A MUD is a political subdivision of the State: it is one of several types of special districts that function as independent, limited governments of their own. One purpose of a MUD is to provide a developer an alternate method of financing the design, construction, acquisition, improvement, extension, maintenance, and operation of infrastructure such as water, sewer, drainage, and roads.

Managed by a board of directors elected by the property owners within the MUD, the MUD can levy its own taxes and fees on the property owners/residents within the development to repay the developer for their up-front costs and long-term maintenance. MUDs are generally desired by developers when the subject properties lie beyond utility provider service areas/outside utility company Certificates of Convenience and Necessity (CCNs).

Chapter 42 of the Texas Local Government Code (LGC) establishes and outlines the rules for ETJ or Extraterritorial Jurisdiction. ETJ is that territory that extends into the unincorporated area beyond city limits where certain limited city standards can be applied. The ETJ was intended to be the area a city could annex into, therefore the rules that were allowed to be extended essentially prepared the area so that when/if annexed, development was not haphazard or disjointed. The stated policy in LGC 42.001 is “to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.”

When a proposed MUD lies within the boundaries of a city’s ETJ, state statute indicates that the respective city must give its consent before the MUD may be established. Consent by the municipality allows the developer to initiate proceedings to create the MUD through the Texas Commission on Environmental Quality (TCEQ). State statute also mandates cities follow consideration timeframes for MUD petitions:

*If the city fails or refuses to give its consent for the creation of the MUD on mutually agreeable terms within 90 days after the date the City Council receives a written request for the consent, a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed political subdivision may petition the City Council to make available to the area the water, sanitary sewer services, or both that would be provided by the political subdivision. If, within 120 days after the date the City Council receives the petition, the City Council fails to make a contract with a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed MUD to provide the services, that failure constitutes the governing body’s consent to the creation of the proposed political subdivision.*

The above statute does not contemplate the unique situation in our region where the various applicable utility providers are not governed by the municipality (see the Utilities section below).

The petition to consent to the creation of Liberty Trails MUD was delivered to the City on March 26, 2024. The 90-day period for which the City may consent or object to the creation of the proposed MUD expires June 24, 2024. Should the City Council deny the petitioner’s request to consent to the creation of the MUD, the applicant’s appeal relief is via TCEQ.

#### Location and Features

The subject property is comprised of 68.47 acres of unplatted land located on the southeast side of Union Wine Rd., between FM 725 and Pahlmeyer Rd.

In 2022, the property received approval of two different master plans for development as the Altenhof Subdivision. Union Wine Road is designated as a 200-foot wide Parkway on the City’s Regional Transportation Plan and approximately 73 feet of right-of-way will be dedicated for the Parkway. The property does include a small portion of the 100-year floodplain.

#### Utilities

The subject property is located within Green Valley Special Utility District’s (GVSUD) water CCN and is the intended water provider. The subject property is located within Guadalupe-Blanco River Authority’s (GBRA) wastewater CCN and is the intended wastewater provider.

#### **ISSUE:**

New Braunfels’ development rules do not apply outside the city limits in the ETJ in Guadalupe County. Without a MUD, development can still occur, simply in compliance with Guadalupe County development rules instead of the City of New Braunfels’ rules. Land use and other development standards are not enforceable in

the ETJ unless such regulations are agreed upon through the execution of a development agreement between the developer and the City.

To ensure development within the proposed MUD is of a caliber that is a benefit and an asset, rather than a detriment to the residents and taxpayers of New Braunfels, and to assure water and wastewater infrastructure, service, and long-term maintenance are addressed, standard City Policy has been for MUD developers to enter into a development agreement with the City under the authority of LGC Chapter 212 prior to submitting this petition. The standard MUD development agreements have included enhanced subdivision and neighborhood design, trees, landscaping, safe pedestrian mobility, and environmental standards to be in conformance with Envision New Braunfels and the Strategic Plan; as well as requirements to obtain building permits and pass inspections for the homes or businesses that will ultimately be constructed in the neighborhood to ensure compliance with adopted building and safety codes.

The proposed development agreement (attached) includes minimum development standards regarding housing diversity, landscaping, lighting, historical and archeological protection/remediation, voluntary annexation request upon dissolution of the MUD\*, and the requirement to obtain building permits and inspections from the City.

The proposed MUD with the associated development agreement would be in keeping with adopted guidelines in Envision New Braunfels:

- Action 1.3: Encourage balanced and fiscally responsible land use patterns.
- Action 2.1: Sustain community livability for all ages and economic backgrounds.
- Action 3.30: Encourage and incentivize workforce/affordable housing to attract new workforce entrants and young families.
- Action 6.5: Utilize public/private partnerships to guide growth and investment.
- Action 7.14: Increase tree canopy for increased shade to encourage walking.
- Regional Planning
  - Balance resources in an equitable manner that does not lead to disinvestment in existing New Braunfels.
  - Assure the long-term fiscal health of New Braunfels, and that policy decisions do not create any undue financial burden on the City or others.
  - Ensure that the policy provides guidance for decisions made by utility providers, so they can aide in achieving Envision New Braunfels.

**STRATEGIC PLAN REFERENCE:**

- Economic Mobility Enhanced Connectivity Community Identity  
Organizational Excellence Community Well-Being N/A

**Economic Mobility, Objective 5:** Establish programs and opportunities that leverage private and public sector

dollars for use as gap financing in the production and preservation of affordable workforce housing units.

**Performance Measures, Output:** Increase the number of new affordable housing units produced each fiscal year.

**Community Identity, Objective 2:** Adopt the new Land Development Ordinance that implements goals of our residents identified in Envision New Braunfels, including but not limited to protecting historic structures, preserving and increasing green space and tree canopy, protecting natural resources, and safeguarding the character, integrity, and stability of neighborhoods.

**FISCAL IMPACT:**

If the MUD is approved and the territory remains in the City's ETJ, the City will be required to process the property owners' plats, incurring staff time and costs in exchange for standard application fees. Future residents or business owners in the MUD will not pay city taxes, however they can have a long-term impact on City infrastructure, for example driving into New Braunfels on City roadways to work, shop, or use City parks.

**RECOMMENDATION:**

Approval. As proposed, the development agreement would require development within the MUD to be consistent with Envision New Braunfels and the Strategic Plan.

\*Note: pursuant to state law, a city may not condition its consent to a MUD on a requirement that the developer agree to annexation, as such, this recommendation is not based, in any way, on the developer agreeing or not agreeing to annexation provisions within the proposed development agreement.

Resource Links:

- Chapter 54 of the Texas Water Code: Municipal Utility Districts  
<<https://statutes.capitol.texas.gov/Docs/WA/htm/WA.54.htm>>
- Chapter 42 of the Texas Local Government Code: Extraterritorial Jurisdiction of Municipalities  
<<https://statutes.capitol.texas.gov/docs/lg/htm/lg.42.htm>>
- Section 118-4 Development Agreements, of the City of New Braunfels Code of Ordinances: <[https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances)>