

Legislation Text

File #: 22-953, **Version:** 1

PRESENTER:

Christopher J. Looney, AICP, Planning & Development Services Director

SUBJECT:

Approval of the second and final reading of an ordinance to adopt a Municipal Utility District petition filing fee.

DEPARTMENT: Planning & Development Services

COUNCIL DISTRICTS IMPACTED: Outside the City Limits

BACKGROUND INFORMATION:

At their regular meeting on July 25, 2022 City Council approved the first reading of this ordinance with a condition for re-evaluation in one year to ensure the fee is appropriately set to cover incurred costs and/or to adjust for inflation (7-0-0)

State statute (see resource links) outlines the procedures for the creation of Municipal Utility Districts (MUDs). A MUD is a political subdivision of the State: they are one of several types of special districts that function as independent, limited governments of their own. The purpose of a MUD is to provide a developer an alternate method of financing 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 future property owners within the development to repay the developer for their up-front costs. MUDs are generally desired by developers when the subject properties lie beyond the physical reach of utility providers and/or outside utility company Certificates of Convenience and Necessity (CCNs).

When a proposed MUD lies within the boundaries of the City's Extraterritorial Jurisdiction (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 further states:

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.

ISSUE:

The staff time necessary to process a MUD or other special district petition is significant. Various staff from different departments, plus the services of third-party legal counsel, participate. During the initial application review, if staff discovers missing or incomplete items, time is spent gathering those documents from the petitioner or their representatives. Staff must discuss the petition with pertinent utility providers and other outside agencies, prepare maps, examine the proposal against the Thoroughfare Plan, Hike & Bike Trails Plan, Comprehensive Plan, etc., answer questions from the public, and draft a development agreement and concurrent consent resolution. Throughout the process, staff remains in contact with the petitioner, and engages in negotiation if necessary. Finally, staff prepares the agenda item for City Council consideration. Presently, the City of New Braunfels does not charge an application fee to cover costs associated with these required processes and development services.

FISCAL IMPACT:

The Development Fees, such as permit, plan review, rezoning, zoning verification letter, and plat application fees, just to name a few, are intended to cover the cost of the staff and third-party time spent so that taxpayers are not paying the cost to process these developer applications, some of which are for development outside the city limits.

Based on the amount of time spent by various staff, third-party legal services, the recordation fee charged by the respective County, plus overhead, staff estimates the current average cost to process a MUD petition = \$18,205.12.

Staff has also researched and examined other Texas cities' application/filing fees for comparison*:

- College Station.....\$30,260.00
- Corpus Christi.....\$15,000.00 (PID filing fee)
- Denton.....\$19,210.00
 - \$14,210.00 initial application fee
 - 5,000.00 initial legal deposit
- Georgetown.....\$35,650.00
 - \$20,650.00 initial application fee
 - 10,000.00 initial legal deposit
 - 5,000.00 financial analysis
- Leander.....\$ 7,500.00
 - \$2,500.00 filing fee
 - 5,000.00 legal fee deposit

- San Antonio.....\$ 7,500.00+
 - Plus adoption of a reimbursement agreement for anything over and above
 - Plus \$175.00 per lot assessment deposited into the City's roadway maintenance fund
- San Marcos.....\$15,844.00

*Several cities contacted either do not have any MUDs yet or have not yet returned our inquiry.

RECOMMENDATION:

Staff recommends approval of a MUD petition application/filing fee of \$18,055.12, plus the County recordation fee (currently \$150.00). The application/filing fee would be subject to the 3% technology fee charged on all development applications.

Staff also recommends approval of requiring a reimbursement agreement to be included in the MUD development agreement. This reimbursement agreement would require the petitioner to pay any City costs that exceed the filing fee. Staff would track all costs through the process so that this amount would be known at the time of City Council consideration of the consent resolution and development agreement.

Resource Links:

- Chapter 54 of the Texas Water Code: [WATER CODE CHAPTER 54. MUNICIPAL UTILITY DISTRICTS \(texas.gov\)](https://statutes.capitol.texas.gov/Docs/WA/htm/WA.54.htm) <<https://statutes.capitol.texas.gov/Docs/WA/htm/WA.54.htm>>
- Chapter 42 of the Texas Local Government Code: [LOCAL GOVERNMENT CODE CHAPTER 42. EXTRATERRITORIAL JURISDICTION OF MUNICIPALITIES \(texas.gov\)](https://statutes.capitol.texas.gov/Docs/LG/htm/LG.42.htm) <<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?