

ORDINANCE NO. 7407

AN ORDINANCE AMENDING CHAPTER 4, "SITE DEVELOPMENT" OF THE GARLAND DEVELOPMENT CODE OF THE CITY OF GARLAND, TEXAS, BY ADDING AN ARTICLE 9, "MUNICIPAL SETTING DESIGNATIONS"; PROVIDING A PENALTY UNDER THE PROVISIONS OF SEC. 10.05 OF THE CODE OF ORDINANCES OF THE CITY OF GARLAND, TEXAS; PROVIDING A SAVINGS CLAUSE AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:

Section 1

That Chapter 4, "Site Development," of the Garland Development Code of the City of Garland, Texas, is hereby amended *in part by addition* to add an Article 9, "Municipal Setting Designations," to read as follows:

"ARTICLE 9 - MUNICIPAL SETTING DESIGNATIONS

Division 1 - Purpose

Section 4.110 Statement of purpose.

Purpose. It is the purpose of this article to allow usage of Municipal Setting Designations within the City of Garland, which provides for safe development while protecting people from drinking contaminated groundwater. 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.

Division 2 - Application

Section 4.111 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 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.

Director means any city official designated by the city manager to enforce and administer this article or the director's designated representative.

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 the presence of water below ground surface.

Local community means those persons entitled to notice in subsection 13-478(b)(7) below.

Municipal Setting Designation (MSD) means a designation as provided by Texas Health and Safety Code Chapter 361, Subchapter. W, 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 means water that is used for drinking, showering, bathing, cooking purposes, and irrigating crops intended for human consumption.

Regulatory authority means the city manager or duly authorized representative of the city manager.

Section 4.112 Use of groundwater in municipal setting designation as 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 4.113 Pre-submittal meeting; Application.

(A) A person seeking city council approval of a municipal setting designation ("MSD") for property within the territorial limits of the City of Garland, or within its extraterritorial jurisdiction, shall attend a pre-submittal with the regulatory authority.

(B) Following the pre-submittal meeting, a person seeking City Council approval of a MSD shall schedule an application submittal appointment date with the regulatory authority and may only submit an application on the scheduled date.

(C) 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 (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 § 361.805;
 - c. Of each retail public utility (RPU) 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 § 361.805; and
 - d. Each municipality, other than the City of Garland, 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 (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 § 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; and
- (11) Any other information that the director deems pertinent.

(D) A statement that the property and/or facility is in compliance with all federal, state, and local environmental rules and regulations.

(E) 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.

(F) An application shall be accompanied by:

(1) An electronic file of the names and addresses of persons listed in subsection (C) (7) above, in a format acceptable to the director and compatible with City information systems; and

(2) A non-refundable application fee in the amount designated in the Master Fee and Rate Schedule, Article VII, Section 10.85, of Chapter 10 of the Code of Ordinances.

(G) An applicant may withdraw its application in writing 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 4.114 Staff review.

(A) Upon receiving an application for an MSD, the City shall review the application to determine whether the application is complete, whether all requirements in the Texas Health and Safety Code, Chapter 361, 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.

(B) In the event the City determines that the application is deficient, the City shall send the applicant a written notice describing each deficiency found within the application. The applicant shall have 30 calendar days from the date listed on the deficiency notice to resubmit the application with all deficiencies corrected.

Section 4.115 Public notice.

(A) Upon receipt of an application that the director determines is complete and contains no deficiencies, the director shall schedule a public meeting. The director shall send out written notice of the public meeting to:

(1) all property owners situated within 1,000 feet of a property line of the proposed MSD;

(2) each municipality with a boundary located within one-half mile from a property line of the proposed MSD;

(3) each person or entity that owns or operates a groundwater supply well located within five (5) miles from the proposed MSD property boundary;

(4) each private water well owner registered with the Texas Commission on Environmental Quality; and

(5) each retail public utility that owns or operates a groundwater well supply within 5 miles via Certified Mail (per TCEQ requirements),

(B) The director shall cause notice of the public meeting to be published in a newspaper of general circulation within the City, posted at City Hall, and posted at proposed MSD site.

(C) Applicant shall reimburse the City for all mailing and publication costs prior to the City Council hearing.

Section 4.115 Public meeting.

Once the City has distributed all notices and publications required herein, it shall hold a public meeting at the location, date and time set out in the notice and publication, which shall not be earlier than 10 business days of the time the notice is sent out and published. The purpose of the public meeting is for City staff to explain the nature of the MSD application and answer any questions or concerns from citizens.

Section 4.116 City council public hearing.

(A) Within 20 calendar days following the public meeting, the City Council shall hold a public hearing on the MSD application.

(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 and to restrict other uses of and contact with the designated 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) 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 § 361.805.

Section 4.117 Limitation on reapplication.

If after public hearing the City Council denies an application, or if the applicant has withdrawn its application after public notice was 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 denial or withdrawal.

Section 4.118 Miscellaneous 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, MSD certificate, 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 Texas Commission on Environmental Quality.”

Section 2

That a violation of any provision of this Ordinance shall be a misdemeanor punishable in accordance with Sec. 10.05 of the Code of Ordinances of the City of Garland, Texas.

Section 3

That Chapter 4, “Site Development,” of the Garland Development Code of the City of Garland, Texas, as amended, shall be and remain in full force and effect save and except as amended by this Ordinance.

Section 4

That the terms and provisions of this Ordinance are severable and are governed by Sec. 10.06 of the Code of Ordinances of the City of Garland, Texas.

Section 5

That this Ordinance shall be and become effective immediately upon and after its passage and approval.

PASSED AND APPROVED this the 7th day of March, 2023.

CITY OF GARLAND, TEXAS

Mayor

ATTEST:

City Secretary

PUBLISHED: