

Austin-area MUDs face new regulations

City now has more authority over utility districts

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The Austin City Council adopted stricter regulations for municipal utility districts, which, among other things, would force developers who want the city's blessing to become customers of Austin Water Utility instead of its competitors.

The measure, unanimously adopted Feb. 17, will also let the city council appoint one of the five board members who oversee such districts, create a system of checks and balances for spending and force districts seeking city consent to adopt tax rates that are equal to or greater than Austin's property tax rate.

A municipal utility district, or MUD, is a political subdivision with taxing power to provide water, sewage, drainage and other services, such as law enforcement, within its boundaries via bonds. MUDs, which can cost \$400 million and span more than 1,000 acres, are sometimes annexed by their home cities. They can be created by cities, the Texas Commission of Environmental Quality or state lawmakers — the latter usually with city consent.

Three proposals to establish local MUDs are in the works, potentially foreshadowing major growth in untouched areas of the region.

The new policy will impact three proposed MUDs: Rio De Vida and Pilot Knob in Southeast Austin and Fossil Creek in Northeast Austin.

A land use lawyer representing two of the three MUDs currently seeking city approval welcomed the city action.

"The city in the past has been completely against MUDs," said **Pam Madere**, a partner at Coats Rose Yale Ryman & Lee PC.

Austin's most recent policy resolution for MUD creation was adopted in 1984, according to city records.

Creating a road map for developers will encourage more of them to engage City Hall instead of circumventing it by asking for permission from the Texas Commission on Environmental Quality, which has independent authority to create MUDs, Madere said.

She added that the business community will have to wait and see how the new policy is executed.

In the past, City Hall has adopted new policies, such as heritage tree ordinances, with language that had multiple interpretations and led to business headaches.

One potentially hazardous part of the new policy, for example, says MUDs must provide “extraordinary public benefits.”

Harry Savio, who leads the Austin Home Builders Association, has mixed feelings about the new policy.

“Anything that provides additional options [for adding infrastructure] is good, but, boy, there are a lot of strings on this thing,” Savio said.

Savio raised flags about a provision that will require all MUD development to comply with the city’s Planned Unit Development, or PUD, green-building codes, regardless of whether the development receives PUD zoning.

“That is a big deal,” Savio said. “The PUD green-building criteria has to exceed city code, which is already the strictest code in the United States.”

In response to a question raised by Mayor Pro Tem **Mike Martinez** at a hearing, Austin Water Utility staffer **Bart Jennings** said developers would be asked to comply with the green building program even if they are outside Austin Energy’s service area.

More than four public hearings were held with council members regarding the new policy, and no one from the business community signed up to speak.

Courtesy of JB Goodwin