

CITY OF SANGER, TEXAS

ORDINANCE 03-04-23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANGER, DENTON COUNTY, TEXAS, REGARDING AMENDING THE CITY OF SANGER CODE OF ORDINANCE, CHAPTER 13 UTILITIES, ARTICLE 13.2800 MUNICIPAL SETTING DESIGNATION, SECTIONS 13.2801 DEFINITIONS, 13.2802 USE OF GROUNDWATER IN MSD AREAS PROHIBITED, 13.2803 APPLICATION FOR CITY COUNCIL APPROVAL OF MSD, 13.2804 STAFF REVIEW, 13.2805 NOTICE OF PUBLIC MEETING, 13.2806 PUBLIC MEETING, 13.2807 CITY COUNCIL PUBLIC HEARING, 13.2808 LIMITATION ON REAPPLICATION, AND 13.2809 ADDITIONAL PROVISIONS, ENFORCEMENT, AND PENALTIES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A CUMULATIVE CLAUSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE IN ACCORDANCE WITH SECTION 1.109 OF THE CODE OF ORDINANCE FOR VIOLATIONS; AND PROVIDING A SAVINGS CLAUSE; AUTHORIZING PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Sanger (the “City”) is a home rule municipality regulated by state law and Charter; and

WHEREAS, the City Council finds it necessary for the public health, safety, and welfare that development occur in a controlled and orderly manner; and

WHEREAS, all request for amendment to the Code of Ordinance were duly filed with the City of Sanger, Texas; and

WHEREAS, the following provision of proper legal notice requirements, were made in the time and manner prescribed by law; and

WHEREAS, the City Council finds that the passage of this Ordinance is in the best interest of the citizens of Sanger.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANGER, TEXAS:

SECTION 1. That an amendment to Chapter 13 Utilities, Article 13.2800 Municipal Setting Designation, Sections 13.2801 Definitions, 13.2802 Use of Groundwater in MSD Areas Prohibited, 13.2803 Application for City Council Approval of MSD, 13.2804 Staff Review, 13.2805 Notice of Public Meeting, 13.2806 Public Meeting, 13.2807 City Council Public Hearing, 13.2808 Limitation on Reapplication, and 13.2809 Additional Provisions, Enforcement, and Penalties as described in Exhibit A is hereby granted.

SECTION 2. That all matters stated in the preamble are found to be true and correct and are incorporated herein as if copied in their entirety.

SECTION 3. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, phrases and words of this Ordinance are severable and, if any word, phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining portions of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional word, phrase, clause, sentence, paragraph, or section.

SECTION 4. Any person, firm or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined in accordance with the general penalty provision found in The Code of Ordinances, Section 1.109 General Penalty for Violations of Code.

SECTION 5. This ordinance will take effect immediately from and after its passage and the publication of the caption, as the law and Charter in such cases provide.

PASSED AND APPROVED by the City Council of the City of Sanger, Texas, on this 6th day of March, 2023.

APPROVED:

Thomas E. Muir, Mayor

ATTEST:

Kelly Edwards, City Secretary

APPROVED TO FORM:

Hugh Coleman, City Attorney

EXHIBIT A

ARTICLE 13.2800 MUNICIPAL SETTING DESIGNATION (MSD)

Sec. 13.2801 Definitions

For the purposes of this article, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words not defined shall be given their common and ordinary meaning.

Affected community. Those persons entitled to notice as defined in section 13-2803(b)(6).

Authorized representative. For purposes of signing an application, if the applicant is a corporation, the president, secretary, treasurer, or 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 or contaminant of concern. Any chemical that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, and mode of toxicity.

City attorney. The City Attorney for the City of Sanger or the City Attorney's authorized representative.

Designated groundwater. Groundwater that will be or is prohibited from use as potable water, or for all uses, by a municipal setting designation ordinance.

Designated property. The property that will be or is subject to a municipal setting designation ordinance. The designated property may cover several platted lots or tracts of land.

Director. The Director of Development Services for the City of Sanger, or the Director's authorized representative.

Environmental risk assessment. The qualitative and quantitative evaluations performed to define the risk posed to human health and/or the environment by the presence or potential presence and/or use of pollutants.

Groundwater. Water below the surface of the earth.

Ingestion protective concentration level. The protective concentration level for human ingestions of contaminants of concern established by the TCEQ under the Texas Risk Reduction Program, determined as if there was no municipal setting designation.

Ingestion protective concentration level zone. The area where concentrations of contaminants of concern from sources on or migrating through the designated property are greater than the

ingestion protection concentration level, determined as if there was no municipal setting designation.

Municipal setting designation (MSD). A designation as provided by V.T.C.A. Health and Safety Code Ch. 361, Subch. W, which authorizes the Executive Director of the Texas Commission on Environmental Quality to certify municipal setting designations to limit the scope of, or eliminate the need for, investigations or response actions addressing contaminant impacts to groundwater that has been restricted from use by ordinance or restrictive covenant.

Municipal setting designation ordinance. An ordinance adopted pursuant to this article.

Noningestion protective concentration level. The protective concentration level for dermal contact or inhalation of contaminants of concern established by the TCEQ under the Texas Risk Reduction Program.

Noningestion protective concentration level exceedance zone. The area where concentrations of contaminants of concern from sources on or migrating from or through the designated property are greater than noningestion protection concentration levels for contaminants of concern established by the TCEQ under the Texas Risk Reduction Program.

Potable water. Water used for irrigating crops intended for human consumption, as well as water used for drinking, showering, bathing, or cooking purposes.

Protective concentration level. The lowest concentration level for a contaminant of concern within a source medium is determined from all applicable exposure pathways and as defined in the Texas Risk Reduction Program.

Response action. The control, decontamination, or removal from the environment of a contaminant or hazardous substance pursuant to V.T.C.A. Health and Safety Code Ch. 361, Subch. W, "Municipal Setting Designation," of "Solid Waste Disposal Act".

TCEQ. The Texas Commission on Environmental Quality.

TCEQ application. The application submitted to the TCEQ for certification of a municipal setting designation.

To the extent known. Information known by an applicant or applicant's agent after review of all public and private records and other information sources available in the exercise of due diligence.

Sec. 13.2802 Use of Groundwater in MSD Areas Prohibited

- (a) A person commits an offense if the person intentionally, knowingly, or with criminal negligence uses groundwater in the designated property as a potable or non-potable water source.
- (b) A person commits an offense if the person intentionally, knowingly, or with criminal negligence uses groundwater in designated property for any purpose prohibited as a condition of council approval, as specified in section 13.2807(d).

Sec. 13.2803 Application for City Council Approval of MSD

- (a) A person seeking city council approval of an MSD for an area within the corporate limits of the City of Sanger shall apply in writing to the Development Services Department of the City of Sanger, with the number and format of copies, as determined by the director.
- (b) An application shall contain:
 - (1) The applicant's name and address, and the name, address, daytime telephone number, and email address of both the applicant's contact person and the licensed professional who prepared the application;
 - (2) The location and legal description of the proposed outer boundaries of the MSD area for which designation is sought;
 - (3) A statement as to whether a public drinking water supply system exists that satisfies the requirements of V.T.C.A. Health and Safety Code Ch. 341 and that supplies or is capable of supplying drinking water to the area for which the MSD is sought, and property within one-half mile of the area for which the MSD is sought;
 - (4) A description of the groundwater sought to be restricted, including the identified chemicals of concern therein and the levels of contamination known to the applicant, and the identified vertical and horizontal extent of the contamination. If the applicant has not documented groundwater contamination offsite that originates from the area for which an MSD is sought, the application shall include a statement as to whether contamination more likely than not exceeds residential assessment levels offsite and the basis for that statement;
 - (5) Identification of the points of origin of the contamination, and identification of the person(s) responsible for the contamination, to the extent known;
 - (6) A listing of:
 - a. All state-registered private water wells within five (5) miles from the boundary of the area for which the designation is sought, including a notation of those wells that are used for potable water purposes (if known);
 - b. Each retail public utility, as that term is defined in the Texas Water Code, that owns or operates a groundwater supply well located not more than five (5) miles from the area for which the MSD is sought;
 - c. Each municipality, other than the City of Sanger, with a boundary located not more than one-half (½) mile from the area for which the MSD is sought; or that owns or operates a groundwater supply well located not more than five (5) miles from the area for which the MSD is sought; and
 - d. All owners of real property lying within two hundred (200) feet of the subject property, as the ownership appears on the last approved city tax roll.
 - (7) A site map, drawn to scale, including a metes and bounds description of the proposed designated property, the boundary of the proposed MSD area, the location of groundwater on the proposed MSD area, 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 description;
- (8) The location of all soil sampling points and groundwater monitoring wells;
 - (9) For each contaminant of concern found at the site, to the extent known, provide a table displaying the following information:
 - a. The level of contamination, the ingestion protective concentration level, and noningestion protective concentration levels, all expressed as mg/L or mg/kg, depending on the sampling medium; and
 - b. The critical protective concentration level as defined without the municipal setting designation, highlighting any exceedances; and
 - c. The critical protective concentration level as defined with the municipal setting designation, highlighting any exceedances; and
 - d. A digital file, in a format acceptable to the Director, that summarizes this information.
 - (10) A statement as to whether contamination on and off the designated property will exceed a residential assessment level as defined in the Texas Risk Reduction Program if known, and the basis for that statement;
 - (11) A description of any environmental regulatory actions that have been taken within the last five (5) years in conjunction with the designated property, to the extent known;
 - (12) A listing of all existing TCEQ, U.S. Environmental Protection Agency registrations, permits, and identification numbers that apply to the designated property;
 - (13) A summary of any environmental site assessment reports filed with the TCEQ regarding any site investigation or response actions that are planned, ongoing, or completed related to this designated property;
 - (14) A statement as to whether the designated property has been submitted to the Texas Voluntary Cleanup Program (V.T.C.A. Health and Safety Code § 361.601) or similar state or federal program, and a description of the designated property's status in the program;
 - (15) Any other information that the director deems pertinent.
- (c) The application shall be signed by an authorized representative of the applicant and shall contain the following certification statement:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in a manner designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
- (d) An application shall be accompanied by:

- (1) An electronic file of the names and addresses of persons listed in subsection (b)(6) above, in a format acceptable to the director and compatible with city information systems; and
 - (2) A set of printed mailing labels with the names and addresses of persons listed in subsection (b)(6) above; and
 - (3) A nonrefundable application fee in an amount set by the city council; and
 - (4) It is the sole responsibility of the applicant to ensure that the language of the public notice, as well as the notification process itself, meets the state requirements.
- (e) An applicant may withdraw their application only in writing by letter sent by certified mail, return receipt requested, 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 13-2808 below.

Sec. 13.2804 Staff Review

- (a) For purposes of the times stated in this article, an application is deemed to have been received on the date that the application was actually received by the Director, as indicated by the filing date on the application by the Development Services department.
- (b) The application for an MSD shall be forwarded to the development review committee (DRC) for staff review. The purpose of the review is to determine whether the application is complete and whether any current or future city property or other interests have the potential to be impacted by the proposed MSD. City staff shall not conduct an environmental risk assessment of the application.
- (c) If the Director, in his or her sole discretion, determines that it is likely that a source of a contaminant of concern originated on the designated property, and that the ingestion or noningestion protective concentration level exceedance zone for that contaminant of concern extends to the public right-of-way adjacent to the designated property, the Director may recommend that the municipal setting designation include a condition that the public right-of-way adjacent to the property be included, at no additional cost to the city, in the TCEQ application for the MSD.
- (d) If the Director determines that the application is incomplete or insufficient, the application will be returned to the applicant, noting the deficiencies in writing. The applicant shall have thirty (30) days from the date of the deficiency letter to correct the deficiencies and resubmit the application. If the applicant fails to submit a corrected application within the allotted time, the application shall be deemed to be withdrawn and the application fee forfeited.
- (e) If the Director determines that the application is complete, a public meeting and a public hearing will be scheduled. The public meeting must be held prior to the public hearing.
 - (1) A public meeting will be scheduled approximately forty-five (45) days following the day the application was received; and
 - (2) A public hearing of the city council will be scheduled approximately thirty (30) days following the public meeting.

Sec. 13.2805 Notice of Public Meeting

- (a) Notice of the public meeting for an MSD application must include the date, time, and location of the public meeting, the identity of the applicant, the location and legal description of the designated property, the purpose of the MSD, the type of contamination identified in the groundwater of the area for which the MSD is sought, and a statement that a copy of the application is available for public viewing at the city secretary's office notice will be made as follows:
 - (1) The Director will publish notice of a public meeting for a proposed MSD in the official newspaper of the city, or in a newspaper of general circulation, not less than fifteen (15) days before the public meeting;
 - (2) The Director will provide written notice of a public meeting for a proposed MSD, not less than fifteen (15) days before the date of the public meeting by properly addressed and regular postage paid, in the United States mail. Notice will be mailed to:
 - a. The applicant;
 - b. Those on the list provided by the applicant pursuant to section 13-2803(b)(6);
- (b) The applicant is required to post at least one (1) sign-up on the area for which an MSD has been requested. The sign(s) must state that an MSD has been requested for the area and that additional information can be acquired by telephoning the number listed thereon or visiting the website address listed thereon. The erection and/or the continued maintenance of any such sign shall not be deemed a condition precedent to the holding of any public meeting or public hearing or any official action concerning the MSD application.

Sec. 13.2806 Public Meeting

- (a) The purpose of a public meeting is for the applicant to present information to the affected community about the MSD process in general, the application specific to the property for which the MSD is being sought, and to obtain input from the affected community prior to formal action by the city council.
- (b) The applicant or its representative must appear at the public meeting. If the applicant fails to appear at the public meeting either in person or by a representative, the application shall be deemed withdrawn and the application fee forfeited.
- (c) The Director will facilitate the meeting, allowing the applicant or its representative the opportunity to present its reasons for requesting an MSD, and allowing members of the affected community the opportunity to ask the applicant questions or make oral comments on the application.

Sec. 13.2807 City Council Public Hearing

- (a) Prior to the public hearing, the Director will provide the city council a copy of the application, and a written report summarizing the request for the MSD approval, any staff comments or concerns, and minutes of the public meeting.

- (b) The applicant or its representative must appear at the public hearing and present the request for MSD approval. If the applicant fails to appear at the public hearing, 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 by city council guidelines for public hearings.
- (d) Following the conclusion of the public hearing, the city council may approve, conditionally approve, disapprove, or postpone action on the application to a future date. If approving an application, the city council shall:
 - (1) Approve a municipal setting designation ordinance supporting the application to be presented to the TCEQ, and prohibiting the use of designated groundwater from beneath the designated property; and
 - (2) Include in the ordinance other reasonable restrictions, including, but not limited to specification of underground construction materials to be used in the designated property.
- (e) 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 TCEQ.

Sec. 13.2808 Limitation on Reapplication

If after a public hearing the city council disapproves an application, or if the applicant has withdrawn its application after public notice has been issued, no new MSD applications for the proposed designated property shall be accepted by the city or scheduled for a public hearing by the city council within a period of twelve (12) months of the date of disapproval or withdrawal.

Sec. 13.2809 Additional Provisions, Enforcement, and Penalties

- (a) A person who has received approval of an MSD from the city, shall, upon issuance from the TCEQ, provide the Director with a copy of the certificate of completion or other documentation issued for the MSD area, showing that response actions, if required, have been completed.
- (b) The applicant shall execute, deliver and file, no later than thirty (30) days from the date of the TCEQ's certification, in the official real property records of Denton County, Texas, a deed restriction approved as to form by the City Attorney prohibiting the drilling of wells and the use of designated groundwater for any purpose, including but not limited to any potable purpose, and excepting only: (i) wells used as monitoring wells for the collection of groundwater samples for chemical or biological laboratory analyses; and (ii) wells used for remediation of soil or groundwater contamination.
- (c) A file-stamped and recorded copy of said deed restriction shall be delivered to the city attorney's office and the Director's office within three (3) business days after the date of filing. The deed restriction shall be enforceable by the City of Sanger and may be amended or terminated only with the prior written consent of the City of Sanger after at least thirty (30) days prior written notice to the TCEQ of any pending amendment or termination.

- (d) A person commits an offense if they fail to provide the City Attorney and the Director with the documentation required in this section within the specified time frames.
- (e) A person commits an offense if the person intentionally, knowingly, or with criminal negligence uses groundwater in a designated property for a purpose prohibited in the municipal setting designation ordinance.
- (f) Any person who violates any provision of this article shall, upon conviction, be punished by a fine not to exceed two thousand dollars (\$2,000.00). Each day that one or more provisions in this article are violated shall be considered a separate offense.
- (g) The City Attorney is authorized to commence an action for appropriate legal or equitable relief in a court of competent jurisdiction in addition to the penalty mentioned in the above subsection (f). Such additional relief may include a civil fine of up to one thousand dollars (\$1,000.00) per day for violations of sections 13-2808, and all other damages, costs, remedies, and legal processes to which the city may be entitled.
- (h) This article shall be and is hereby declared to be cumulative of all other ordinances of the City of Sanger, and this article shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this article, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.
- (i) All of the regulations provided in this article are hereby declared to be governmental and for the health, safety, and welfare of the general public. Any member of the city council or any city official or employee charged with the enforcement of this article, acting for the City of Sanger in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.