

MUD Briefing
Community Development Commission

April 10, 2012

MUD Basics

MUD

- Governmental entity
- Governing board consists of MUD property owner-elected representatives
- MUDs have statutory powers
 - water and wastewater, solid waste, drainage, irrigation, recreational facilities
 - other powers if authorized by specific MUD creation legislation
- Developer uses construction loan and is reimbursed by MUD
 - MUD issues bonds
 - Bonds paid by ad valorem tax

MUD Basics (cont'd)

MUD

- **MUD can be created without Council consent, via legislature or TCEQ**
 - City has less oversight if MUD created without Council consent
 - Developer submits request for creation
 - 90 days for Council to approve or to be petitioned for W/WW service
 - 120 days from petition to enter into W/WW contract
 - If no contract, developer petitions TCEQ for creation; TCEQ required to approve if certain findings (i.e., if no contract for service with construction complete in 4 years)
- City can negotiate with MUD for extra benefits to City in exchange for Council support for MUD (basis for Council's MUD Policy)

MUD Policy

MUD Policy Requirements

- ✓ Ad valorem tax rate will approximate City's rate
- ✓ Located in DDZ
- ✓ No legal impairment to future annexation of MUD or adjacent property
- ✓ Participates in Green Building Program
- ✓ City is water and wastewater service provider

MUD Policy (cont'd)

MUD Policy Requirements

- ✓ City's design criteria
- ✓ Development standards are met or exceeded
- ✓ MUD Policy Basic Requirements also include the provision for "extraordinary public benefits" or furthers the City's interests. Such as:
 - infrastructure extension,
 - affordable housing,
 - environmental improvement,
 - public transportation facilities, and
 - open space

MUD Creation Process and Current MUD Recommendation Process

Creation and Recommendation Process

- ✓ MUD application filed with PDRD; City team formed
- ✓ Developer provides additional information about proposed development
- ✓ Developer submits waiver of 90-day review period by City; City Council acts on requested waiver
- ✓ City Council approves resolution supporting legislative creation of MUDs
- ✓ Developer initiates legislative creation of MUD with City-required provisions
- ✓ Developer responds to proposed City remedies re: historical concerns with MUDs, individual department interests, and PUD Tier II provisions

MUD Creation Process and Current MUD Recommendation Process (cont'd)

Creation and Recommendation Process

- ✓ City team makes departmental recommendations to management
- ✓ Five City Code-required boards and commissions review City staff's recommendation
- ✓ Council reviews City staff's recommendation
- ✓ Council holds one public hearing regarding MUD creation
- ✓ Council acts on Consent Agreement
- ✓ MUD board's temporary directors hold a public meeting and elect MUD board's permanent directors.
- ✓ MUD board holds public hearing and acts on Consent Agreement

MUD Creation Process and Current MUD Recommendation Process (cont'd)

Creation and Recommendation Process

- ✓ Council holds two public hearings on Strategic Partnership Agreement
- ✓ MUD board holds two public hearings and acts on Strategic Partnership Agreement
- ✓ Council acts on Strategic Partnership Agreement
- ✓ Council appoints permanent MUD board director

Historic MUD Problems and MUD Policy/Staff Remedies

| Historic | Remedies |
|--|---|
| <p>MUDs created without City approval</p> | <ul style="list-style-type: none"> • Work with legislature and negotiate creation of MUDs • Enabling legislation <ul style="list-style-type: none"> – requires City consent – requires unapproved MUDs to dissolve prior to next legislative session |
| <p>MUDs operated without full City knowledge of MUD activities</p> | <ul style="list-style-type: none"> • Enabling legislation and contract allow Council to appoint MUD board member |
| <p>MUD claimed sovereign immunity for contractual disputes</p> | <ul style="list-style-type: none"> • Enabling legislation and contract: <ul style="list-style-type: none"> – require waiver of sovereign immunity – deem all provisions of consent agreement to be valid and enforceable |

Historic MUD Problems and MUD Policy/Staff Remedies (cont'd)

| Historic | Remedies |
|---|---|
| <p>MUD long-term board members sought extension of MUD's life</p> | <ul style="list-style-type: none"> • Enabling legislation and contract imposes term limits • Contract imposes maximum fees of office |
| <p>MUD's tax rate fell below City's over time and annexed district residents experienced "rate shock"</p> | <ul style="list-style-type: none"> • Enabling legislation and contract allows ad valorem tax be required to be to equal or be greater than City's |
| <p>MUD residents concerned about park and recreation facilities</p> | <ul style="list-style-type: none"> • Contract <ul style="list-style-type: none"> – Limited District will own, operate, and manage park and open space – HOA will own, operate, and maintain swimming pools and recreation centers |

Historic MUD Problems and MUD Policy/Staff Remedies (cont'd)

| Historic | Remedies |
|--|--|
| <p>MUD attempted to sell assets prior to annexation</p> | <ul style="list-style-type: none"> • Contract <ul style="list-style-type: none"> – prohibits sale of any assets without City consent – City is retail W/WW provider and City owns, operates, and maintains infrastructure |
| <p>MUD entered into contract with third-party, impairing City assumption of water and wastewater facilities and services</p> | <ul style="list-style-type: none"> • Contract <ul style="list-style-type: none"> – prohibits third-party service contracts without City consent – requires service contracts to be terminable with 60 days notice and without termination fees – states City is retail W/WW provider and owns, operates, and maintains infrastructure |

Historic MUD Problems and MUD Policy/Staff Remedies (cont'd)

| Historic | Remedies |
|---|--|
| <p>Unbonded developer reimbursements required to be paid in one lump sum</p> | <p>Contract - unbonded developer reimbursements required to be reimbursed over three years instead of prior to annexation</p> |
| <p>MUD did not allow City to use MUD water and wastewater infrastructure for pass-through service</p> | <p>Contract - City is retail W/WW provider and owns, operates, and maintains infrastructure</p> |
| <p>MUD did not build to City standards for water and wastewater</p> | <ul style="list-style-type: none"> • Contract <ul style="list-style-type: none"> – all facilities will be designed and constructed to City standards – all facilities will be inspected by City – City is retail W/WW provider and owns, operates, and maintains infrastructure |

REMAINING CITY TIMELINE

- Conduct public hearings on limited purpose annexation and the Strategic Partnership Agreement--April 12th and 26th, 2012
- Act on limited purpose annexation and the Strategic Partnership Agreement--May 24th, 2012
- Council appoints MUD directors--June 2012
- Consider PUD zoning--late Fall 2012