



# CITY OF SAN ANTONIO MUNICIPAL SETTING DESIGNATION PROCEDURES

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**Authority.** These procedures are adopted pursuant to the authority provided in:

- (1) Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code;
- (2) Paragraph (6) of Subsection (a) of Section 211.003, "Zoning Regulations Generally," of Chapter 211, "Municipal Zoning Authority," of the Texas Local Government Code;
- (3) Subsection (a) of Section 212.003, "Extension of Rules to Extraterritorial Jurisdiction," of Chapter 212, "Municipal Regulation of Subdivisions and Property Development," of the Texas Local Government Code; and
- (4) Section 551.005, "Restriction on Pumping, Extraction, or Use of Groundwater," of Chapter 551, "Water Control by Municipalities," of the Texas Local Government Code.
- (5) City of San Antonio Ordinance No. 2016-04-07-0247, passed and approved by the San Antonio City Council on April 7, 2016.

## **1. Definitions**

As used herein, the following words and terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

*Application* means the application submitted to the city for a municipal setting designation ordinance.

*Contaminant of concern* means any contaminant that has the potential to adversely affect ecological or human receptors due to its concentration, distribution or mode of toxicity.

*Critical protective concentration level* means the lowest protective concentration level for a contaminant of concern within a source medium determined from all applicable human exposure pathways.

*Designated groundwater* means groundwater that will be or is prohibited from use as potable water by a municipal setting designation ordinance.

*Designated property* means 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 and may include rights-of-way of the city or other governmental entity.

*Director* means the director of the Transportation & Capital Improvements (TCI) Department or the director's designee.

*EPA* means the United States Environmental Protection Agency and any successor agency or department.



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*Groundwater* means water below the surface of the earth.

*Ingestion protective concentration level* means the protective concentration level for human ingestion for contaminants of concern in groundwater established by the TCEQ under the Texas Risk Reduction Program, determined as if there were no municipal setting designation ordinance.

*Ingestion protective concentration level exceedance zone* means the area where concentrations of contaminants of concern from sources on or migrating from or through the designated property are greater than the ingestion protective concentration level in groundwater, determined as if there were no municipal setting designation ordinance.

*Municipal setting designation* means a TCEQ designation authorized by Subchapter W, “Municipal Setting Designations”, of Chapter 361, “Solid Waste Disposal Act”, of the Texas Health and Safety Code, as it may be amended from time to time.

*Municipal setting designation ordinance* means an ordinance adopted pursuant to this article.

*Non-ingestion protective concentration level* means the protective concentration level for dermal contact or inhalation for contaminants of concern in groundwater established by the TCEQ under the Texas Risk Reduction Program.

*Non-ingestion protective concentration level exceedance zone* means the area where concentrations of contaminants of concern from sources on or migrating from or through the designated property are greater than the non-ingestion protective concentration level in groundwater.

*Potable water* means water that is used for irrigation, production of food or drink products intended for human consumption, drinking, showering, bathing or cooking purposes.

*Protective concentration level* means the non-site-specific concentration of a contaminant of concern that the TCEQ has determined can remain within the source medium and not result in a level that exceeds the applicable human health risk-based exposure limit or ecological protective concentration level at the point of exposure for an exposure pathway.

*Response action* means the control, decontamination or removal from the environment of a hazardous substance or contaminant pursuant to Subchapter W, “Municipal Setting Designations”, of Chapter 361, “Solid Waste Disposal Act”, of the Texas Health and Safety Code, as it may be amended from time to time.

*TCEQ* means the Texas Commission on Environmental Quality and any successor agency.

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



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*To the extent known* means 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.

### **2. Application**

An application should not be submitted until an affected property assessment report (APAR) is filed with the TCEQ. Additionally, a MSD will not be granted to properties within one-half (½) mile radius of a SAWS primary pump station. The SAWS primary pump station consists of all equipment located within the property boundary.

**Please verify that your application meets eligibility requirements prior to submittal.**

- (a) A person seeking a municipal setting designation ordinance shall file seven (7) paper copies and one (1) electronic portable digital file (pdf) of an application and any supporting documentation with the director.
- (b) The application must be clear, complete, concise, correct, contain only relevant information and be organized to facilitate analysis. Maps must be accurate, drawn to scale, and include a north arrow. Supporting documentation, if necessary, must be submitted as a separate appendix to the application.
- (c) A professional surveyor registered with the Texas Board of Professional Surveying must certify that all property descriptions or maps with metes and bounds descriptions are accurate.
- (d) The application must be on the form required by the director and contain the following information in the order listed:
  - (1) An executive summary of the application;
  - (2) The name, address, telephone number(s) and email addresses of all applicants, all property owners within the designated property, and any representatives of the applicants or property owners;
  - (3) A legal description of the boundaries of the designated property and the metes and bounds of the adjacent public right(s)-of-way, along with a copy of the deed for the designated property. One legal description which consists of: (1) the designated property and (2) the adjacent public right(s)-of-way in a contiguous form;
  - (4) A site map showing:
    - a. The location of the designated property **and adjacent public right(s)-of-way;**



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- b. The topography of the designated property as indicated on publicly available sources, which must note the watershed including the nearest surface water body and whether the designated property is located in a floodplain or floodway;
  - c. The detected area of groundwater contamination;
  - d. The location of all soil sampling locations and all groundwater monitoring wells;
  - e. Groundwater gradients, to the extent known, and direction of groundwater flow;
  - f. The ingestion protective concentration level exceedance zone for each contaminant of concern, to the extent known; and
  - g. Depth to groundwater for each affected zone;
- (5) A description of the current use, and, to the extent known, the anticipated uses, of the designated property and properties within 500 feet of the boundary of the designated property;
- (6) For each contaminant of concern within the ingestion protective concentration level exceedance zone, to the extent known, provide the following:
- a. A description of the ingestion protective concentration level exceedance zone and the non-ingestion protective concentration level exceedance zone, including a specification of the horizontal area and the minimum and maximum depth below ground surface;
  - b. The level of contamination, the ingestion protective concentration level, and the non-ingestion protective concentration level, all expressed as mg/L units; and
  - c. Its basic geochemical properties (e.g., whether the contaminant of concern migrates with groundwater, floats or is soluble in water);
- (7) For each contaminant of concern within the designated groundwater, to the extent known, provide the following:
- a. A description of the ingestion protective concentration level exceedance zone and the non-ingestion protective concentration level exceedance zone, including a specification of the horizontal area and the minimum and maximum depth below ground surface;
  - b. The level of contamination, the ingestion protective concentration level, and the non-ingestion protective concentration level, all expressed as mg/L units; and
  - c. Its basic geochemical properties (e.g., whether the contaminant of concern migrates with groundwater, floats or is soluble in water);



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- (8) A table displaying the following information for each contaminant of concern, to the extent known:
- The maximum concentration level for soil and groundwater, the ingestion protective concentration level, and the non-ingestion protective concentration level, all expressed as mg/L units; and
  - The critical protective concentration level **without** the municipal setting designation, highlighting any exceedances;
  - The critical protective concentration level **with** the municipal setting designation, highlighting any exceedances.
- (9) If the plume extends beyond the limits of the property owners listed in the application, list the owners of the additional property beneath which the plume(s) extend(s), and a summary of the interactions with those property owners about the plume(s) and this MSD application. Please Note: You are not required under this item to notify affected property owners, only to provide a summary of who affected property owners are, and if there have been any communication. “No Contact” can be an acceptable answer.
- (10) A statement as to whether the source of the plume has been removed, the plume of contamination is stable or contracting, and the plume is **delineated**, with the basis for that statement. Please include historical data information. If this information is not known, a statement of why the information is not known;
- (11) A statement as to whether contamination on and off the designated property **without** a municipal setting designation **will exceed** a residential assessment level as defined in the Texas Risk Reduction Program or analogous residential level set by EPA, if known, and the basis for that statement;
- (12) A statement as to whether contamination on and off the designated property **with** a municipal setting designation **will exceed** a residential assessment level as defined in the Texas Risk Reduction Program or analogous residential level set by EPA, if known, and the basis for that statement;
- (13) Identification of the points of origin of the contamination to the extent known, and the potentially responsible party / parties responsible for the contamination (***applications without the potential responsible parties (PRP) listed will be deemed incomplete***).
- (14) Environmental regulatory actions, litigation, and plume identification, provide the following:
- A description of any environmental regulatory actions that have been taken within the past five years in connection with the designated property, to the extent known.



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- b. A description of any litigation that has taken place within the past five years in connection with the designated property, to the extent known.
  - c. A statement as to whether there are any other remediation activities by the applicant, or any other party or agency, which are not listed in the application.
  - d. A statement as to which contamination plume and groundwater zone the applicant is including in the MSD.
- (15) A listing of all existing state or EPA registrations, permits, and identification numbers that apply to the designated property;
- (16) Provide evidence that the designated property is currently or has previously been under the oversight of the TCEQ or the EPA, and a description of the status of the designated property in the program (the program application number is sufficient evidence). Also, include the state or federal cleanup project manager's name and contact information.
- (17) A summary of any environmental site assessment reports filed with the TCEQ regarding any site investigations or response actions that are planned, ongoing or completed related to the designated property;
- (18) A statement as to whether any public drinking water supply system exists (such as San Antonio Water System (SAWS) or other municipal potable drinking water sources) that satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable of supplying drinking water to the designated property and property within one-half (½) mile of the designated property and the identity of each supply system;
- (19) The name and address of each owner or operator of an active and / or abandoned water well registered or permitted by the state that is located within five (5) miles of the boundary of the designated property, along with:
- a. A map showing the location of each well and, to the extent known, a notation of whether each well is used for potable water; and
  - b. A statement as to whether the applicant has provided notice to each owner in compliance with § 361.805 of the Texas Health and Safety Code;
  - c. Applicant shall cap abandoned water wells within the MSD boundary, and allow City or its representative to verify well conditions before and after capping, if necessary.
- (20) The name and address of each retail public utility, as defined in § 13.002 of the Texas Water Code, that owns or operates a groundwater supply well within five (5) miles of the boundary of the designated property, along with a statement as to whether the applicant has provided notice as required by § 361.805 of the Texas Health and Safety Code;



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- (21) A listing of each municipality, other than the city of San Antonio, with a corporate limit within one-half (1/2) mile of the boundary of the designated property, and a statement as to whether the applicant has provided notice as required by § 361.805 of the Texas Health and Safety Code;
- (22) A listing of each municipality, other than the city of San Antonio, that owns or operates a groundwater supply well within five (5) miles of the boundary of the designated property, and a statement as to whether the applicant has provided notice as required by § 361.805 of the Texas Health and Safety Code;
- (23) A summary indicating that a soil vapor intrusion survey has been conducted for all buildings located within the proposed MSD boundary. A statement indicating that soil vapor intrusion is, or is not, considered to be a public health concern for future building occupancy.
- (24) A listing of owners of real property within 2,500 feet of the boundary of the designated property as indicated by the most recent appraisal district records. Please Note: This requirement may include real property outside the City of San Antonio. Be sure to include **ALL** properties in the 2,500 feet boundary. (An accompanying electronic excel file with mailing information should be included with your application.)
- (25) The following statement signed and sealed by a licensed professional engineer or licensed professional geoscientist authorized to practice in the State of Texas with expertise in environmental remediation:
- "To the best of my knowledge and belief, based upon a review of all public and private records and other information sources available to me in the exercise of due diligence, the opinions stated and conclusions made in this application are supported by such information, and the technical and scientific information submitted with the application is true, accurate and complete. Based on such review, the contaminants of concern from sources on the designated property or migrating from or through the designated property more likely than not {do exceed} or {do not exceed} a non-ingestion protective concentration level on property beyond the boundaries of the designated property";
- (26) If the licensed professional engineer or licensed professional geoscientist determines that contaminants of concern from sources on the designated property or migrating from or through the designated property more likely than not do exceed a non-ingestion protective concentration level on property beyond the boundary of the designated property, then the applicant must:
- a. Specify the name and address of the owner of each property;
  - b. Send a copy of the application to the owner of the property with the notice of the public meeting;



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- c. Provide documentation that the designated property has been included in a state or federal program that requires that the entire non-ingestion protective concentration level exceedance zone be addressed to the satisfaction of the agency administering the program, along with documentation of the estimated time period in which it is to be addressed. An example of such a program is the Texas Voluntary Cleanup Program (Chapter 361, Subchapter S, § 361.601, et seq, of the Texas Health and Safety Code, as may be amended from time to time); and
  - d. Provide documentation upon completion of the state or federal program showing that the non-ingestion protective concentration level exceedances have been addressed to the satisfaction of the agency administering the program;
- (27) The following statement certified by the applicant and any authorized representatives of the applicant(s) listed in the application:
- "I certify under penalty of law that this application and all attachments were prepared under my direction or supervision in a manner designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the persons responsible for gathering and evaluating the information, the information submitted is, 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";
- (28) A copy of the TCEQ application, if it has been filed, excluding attachments.
- (29) The signature of the applicant and written proof that the applicant has the legal authority to restrict the use of the groundwater on the designated property;
- (30) The initial filing fee of \$2,000 payable to "City of San Antonio"; and
- (31) A CD (or other device) containing the pdf file of the application, excel spreadsheet of water well owners and property owners for mailing notices, and the pdf file of the well log report.
- (32) Any other information deemed necessary.
- (e) An application fee of \$2,000.00 shall be required with the application submittal, and a processing fee of \$6,000.00, plus any associated reimbursable costs incurred by the City, shall be required prior to the processing of any application. The fees payable pursuant to this article are set forth in the TCI fee schedule (See Exhibit A). Payment of any applicable fees when due is a condition of the processing of any application under this article, and no refund of the application fee shall be made. The director shall not mail notices or advertise the public meeting required by this article until the processing fee and the estimated cost of mailing notices and advertising the public meeting is paid by the applicant. The director shall not request that a municipal setting designation ordinance be placed on a city council





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agenda until the applicant has paid all costs associated with advertising and mailing notices for the public meeting.

- (f) Within 45 days after submission of an application, the director shall notify the applicant that the application is administratively complete or notify the applicant in writing of any deficiencies in the application and of any additional documentation required. The applicant shall have 60 days from the date of the deficiency letter to correct the deficiencies or submit additional documentation. The director may, for good cause, extend the deadline to correct or supplement the application. If the applicant fails to correct or supplement the application within 60 days or the extended period, the application shall be deemed withdrawn and the initial filing fee forfeited. No application shall be deemed complete until all supporting documentation is supplied.

### **3. Staff Review**

- (a) The director shall distribute a copy of the complete application to the city attorney, the development team, technical team, and any other city department whose property or operations may be affected by the application, for review and comment. The director shall also send a copy of the application to the San Antonio Water System (SAWS), the Edwards Aquifer Authority (EAA) and the TCEQ for their information and input, as necessary.
- (b) The city is not responsible for conducting an environmental risk assessment with respect to the application or the designated property.

### **4. Public Meeting**

- (a) The director may conduct a public meeting within 60 days after the application processing and staff review is complete. The public meeting must be held at a public facility near the designated property or City facility.
- (b) Upon receipt of the estimated cost of mailing notices and advertising the public meeting notice, the director shall provide notification of the public meeting as follows:
  - (1) The notice of the public meeting must include:
    - a. The date, time and location of the public meeting;
    - b. The identity of the applicant;
    - c. The location and legal description of the designated property;
    - d. The purpose of a municipal setting designation; and
    - e. The type of contamination identified in the designated groundwater;



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- (2) The director shall publish notice of the public meeting in a newspaper of general circulation at least 15 days before the public meeting;
- (3) The director shall mail notices of the public meeting at least 15 days before the date of the public meeting by depositing the notice properly addressed and postage paid in the United States mail. The notice must be written in at least English and Spanish. The applicant may not alter, change, amend, or enlarge the application after notices for the public meeting have been mailed. The director shall mail notice of the public meeting to:
  - a. The applicant;
  - b. Owners of real property within 2,500 feet of the boundary of the designated property as indicated by the most recent appraisal district records;
  - c. Owners and operators of water wells registered or permitted by the state that are located within five (5) miles of the boundary of the designated property, as indicated on the application, by certified mail;
  - d. Any municipality with a corporate limit within one-half (1/2) mile of the boundary of the designated property, as indicated on the application, by certified mail;
  - e. Any municipality that owns or operates a groundwater supply well within five (5) miles of the boundary of the designated property, as indicated on the application, by certified mail;
  - f. any retail public utility that owns or operates a groundwater supply well within five (5) miles of the designated property, as indicated on the application, and the San Antonio Water System, by certified mail;
  - g. The TCEQ.
- (4) The director shall provide a copy of the application to be placed on display at the public library closest to the designated property at least 15 days prior to the public meeting.
- (c) The applicant, the licensed professional engineer or licensed professional geoscientist who signed and sealed the application, or a licensed professional engineer or licensed professional geoscientist who is familiar with the application must be present at the public meeting. If the required person is not present at the public meeting, the director may either deem the application withdrawn and any fees forfeited or reschedule the public meeting at the applicant's expense.
- (d) The purpose of the public meeting is to provide information to the community about municipal setting designations in general and the application in specific, allow the applicant to explain the application, allow proponents and opponents to comment, and notify the community of the date of the public hearing.



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**5. Public Hearing**

- (a) *Public hearing.* The TCI director shall conduct a public hearing to consider a municipal setting designation ordinance.
- (1) Prior to the public hearing, the director shall prepare a recommendation to City Council as to whether the municipal setting designation ordinance should be granted or denied, setting forth any conditions that should be imposed.
- a. The director may recommend that the municipal setting designation ordinance prohibit the use of the designated groundwater from beneath public rights-of-way immediately adjacent to the designated property as potable water.
- b. If, in the sole discretion of the director, the director determines it is more likely than not that a source of a contaminant of concern originated on the designated property, and the ingestion protective concentration level exceedance zone or the non ingestion protective concentration level exceedance zone for that contaminant of concern extends to public rights-of-way immediately adjacent to the designated property, the director may recommend that the municipal setting designation ordinance include a condition that the public right-of-way immediately adjacent to the designated property be included, at no additional cost to the city, in the TCEQ application.
- c. The director may recommend that the municipal setting designation ordinance specify a time period for a state or federal program to address the entire non-ingestion protective concentration level exceedance zone originating from sources on the designated property or migrating from or through the designated property.
- (2) Upon payment of the additional processing fee, the director shall provide notification of the public hearing in the following manner:
- a. The notice of the public hearing must include:
- (i) the date, time, and location of the public hearing;
  - (ii) the identity of the applicant;
  - (iii) the location and legal description of the designated property;
  - (iv) the purpose of a municipal setting designation; and
  - (v) the type of contamination identified in the designated groundwater.
- b. If the application is recommended to be approved, the director shall publish notice of the public hearing on the City's MSD website at least 15 days before the public hearing and posted on City Council Agenda website before the public hearing date.
- (3) The applicant, the licensed professional engineer or licensed professional geoscientist who signed and sealed the application or a licensed professional engineer or licensed professional geoscientist who is familiar with the application must be present at the public hearing. If the required person is not present at the public hearing, the body conducting the hearing may either deny the application or continue the public hearing.



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- (b) *City council consideration.* Following the public hearing, the director shall schedule the MSD ordinance briefing with the full City Council for their consideration of the municipal setting designation ordinance. The City Council shall take appropriate action on the MSD application.

Denial of the application shall be taken if City Council finds that:

- (1) It does not meet the eligibility criteria of § 361.803 of the Texas Health and Safety Code;
- (2) The municipal setting designation will have an adverse effect on the current or future water resource needs or obligations of the city; or
- (3) There is not a public drinking water supply system that satisfies the requirements of Chapter 361 of the Texas Health and Safety Code and that supplies or is capable of supplying drinking water to the designated property and property within one –half (1/2) mile of the boundary of the designated property.

Approval of the application shall be demonstrated by adopting a municipal setting designation ordinance that:

- (1) States that the ordinance is necessary because the concentrations of contaminants of concern exceed human ingestion protective concentration levels;
  - (2) Provides a legal description of the designated property;
  - (3) Describes the designated groundwater, including the maximum depth below ground surface of the designated groundwater (the maximum depth shall not exceed 150 feet below ground surface);
  - (4) Prohibits the use as potable water of groundwater from beneath the designated property;
  - (5) Appropriately restricts other uses of or contact with the designated groundwater, including, but not limited to, properly plugging any existing water production well on the designated property;
  - (6) Lists any reasonable and necessary conditions; and
  - (7) Indicates support of the applicant's TCEQ application, with any comments.
- (c) The municipal setting designation ordinance may prohibit the use as potable water of the designated groundwater from beneath public rights-of-way immediately adjacent to the designated property as potable water.



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- (d) The municipal setting designation ordinance may include a condition that the public rights-of-way immediately adjacent to the designated property be included, at no additional cost to the city, in the TCEQ application.

### **6. Limitation on Reapplication**

If the applicant withdraws the application after the public hearing, or if the city council denies the application, no further applications may be accepted for that property for one year after the date of the withdrawal or denial.

### **7. Effect of Municipal Setting Designation Ordinance**

- (a) The effect of a municipal setting designation ordinance is to prohibit use of designated groundwater as potable water and thereby enable the TCEQ to certify a municipal setting designation for the designated property. If certified by the TCEQ, the municipal setting designation may limit the scope of or eliminate the need for risk-based site investigations and response actions pursuant to Section 361.808 of the Texas Health and Safety Code based on the non-existence, elimination, or control of pathways for human ingestion of contaminated groundwater.
- (b) Any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal and state laws and regulations and all ordinances, rules, and regulations of the city, and all environmental regulations. The city council's approval of a municipal setting designation ordinance in itself does not change any environmental assessment or cleanup requirements applicable to the designated property.
- (c) Approval of a municipal setting designation ordinance shall not be construed to subject the city to any responsibility or liability for any injury to persons or damage to property caused by any contaminant of concern.

### **8. Additional Requirements Following Adoption of an Ordinance**

- (a) Within 30 days after adoption of a municipal setting designation ordinance, the applicant shall provide:
- (1) The director with an electronic file showing the location of the designated property and the designated groundwater in a format compatible with the city's geographic information system (GIS) geodatabase file.
  - (2) SAWS with an electronic file showing the location of the designated property and the designated groundwater in a format compatible with its GIS system.
- (b) Within 30 days after adoption, the director shall send a certified copy of the municipal setting designation ordinance to the applicant and the TCEQ or EPA, as applicable.



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- (c) The applicant shall provide the director with a copy of the municipal setting designation certificate issued by the TCEQ pursuant to § 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate.
- (d) Within 30 days after receipt of the copy of the municipal setting designation certificate issued by the TCEQ pursuant to § 361.807 of the Texas Health and Safety Code and the necessary filing fee from the applicant, the director shall file a certified copy of the municipal setting designation ordinance in the deed records of the county where the designated property is located.
- (e) The applicant shall provide the director with a copy of the certificate of completion or other analogous documentation issued by the TCEQ or EPA showing that any site investigations and response actions required pursuant to § 361.808 of the Texas Health and Safety Code have been completed to the satisfaction of the TCEQ or EPA within the time period required. The director may, for good cause, extend the time for submitting the documentation.
- (f) Within the time period required in the municipal setting designation ordinance for the state or federal program to address the entire non-ingestion protective concentration level exceedance zone originating from sources on the designated property or migrating from or through the designated property, the applicant shall provide the director documentation that it has been addressed to the satisfaction of the agency administering the program. If it has not been addressed, the director may, for good cause, take any of the following actions:
  - (1) allow additional time to address the non-ingestion protective concentration level exceedance zone;
  - (2) request a review by the TCEQ or the agency administering the program;
  - (3) recommend to the city council that the municipal setting designation ordinance be repealed;
  - (4) request additional information or documentation from the applicant; or
  - (5) pursue other actions that the director believes may be warranted.
- (f) The director may, for good cause, recommend to the city council that the municipal setting designation ordinance be repealed, after giving 30 days written notice in advance to the applicant and the TCEQ or EPA, as applicable, of such a recommendation.
- (g) The applicant shall notify the director in writing if the applicant determines that notice is required to be sent to an owner of other property beyond the boundaries of the designated property under Title 30 Texas Administrative Code, § 350.55(b), providing the name of the property owner, the property address, and a copy of the notice sent to the property owner.



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### 9. Authority of the Director

The director is authorized to:

- (a) Enter public or private property to determine whether designated groundwater is being used in violation of this section.
- (b) Administer and enforce the provisions of these procedures.

### 10. Offense; Penalty

- (a) A person commits an offense if the person:
  - (1) Uses designated groundwater as a potable water source or for a purpose prohibited in the municipal setting designation ordinance;
  - (2) Fails to provide the director with a copy of the municipal setting designation certificate issued by the TCEQ pursuant to § 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate;
  - (3) Fails to provide the director with a copy of the certificate of completion or analogous documentation issued by the TCEQ or EPA showing that any site investigations and response actions required pursuant to § 361.808 of the Texas Health and Safety Code have been completed to the satisfaction of the TCEQ or EPA within the time period required; or
  - (4) Fails to notify and provide documentation to the director within the time period, if any, required in the municipal setting designation ordinance that the entire non-ingestion protective concentration level exceedance zone originating from sources on the designated property or migrating from or through the designated property has been addressed to the satisfaction of the state or federal agency administering the program.
- (b) Except as may otherwise be provided, whenever in the enabling ordinance or these procedures act is prohibited or is made or declared unlawful or an offense or misdemeanor, or whenever the doing of anything or act is required or the failure to do anything or act is prohibited, the violation of the provision shall be and constitute a misdemeanor punishable, upon conviction, by a fine of not less than \$500.00 nor more than \$2,000.00 each day that any violation continues, and each day of a continuing violation shall constitute and be punishable as a separate offense. Any offense under the enabling ordinance or these procedures that also constitutes a violation of any state penal law shall be punishable as provided in the applicable state law.



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### **11. Application Delays and Extensions**

If an application is being withdrawn due to delays, the applicant can request that an extension be granted. The director will consider the extension on a case by case basis. If the delay is found to be acceptable, an extension period will be granted to the applicant.