
Coates' Canons Blog: 2016 Changes to Municipal Service District (MSD) Authority

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In 2015, the legislature made a few significant changes to municipal service district (MSD) authority. (Those changes are summarized [here](#).) The legislature made additional amendments to the MSD statutes this year. See **S.L. 2016-8**.

To summarize, the amendments first require that all new MSDs be created, modified, and/or abolished by ordinance. They mandate a procedure for adopting an MSD-related ordinance that is similar to that for awarding a franchise. Second, the amendments establish a formal process for property owners to request a new MSD, or to request that a property tract or parcel be excluded from a proposed MSD or removed from an existing MSD. A property owner may not compel a city's governing board to take any of these actions. The new provisions simply allow a property owner, or group of property owners, to seek governing board consideration. Finally, the amendments require a private entity that has contracted to do work in an MSD to report on all subcontracts related to that work.

The remainder of this post briefly explains the purpose of an MSD and then fleshes out the contours of these changes.

What is an MSD?

An MSD is a defined area within a city, town, or village (hereinafter city) in which the unit's governing board levies an additional property tax in order to provide projects or extra services that benefit the properties in the district. See **G.S. Ch. 160A, Art. 23**. (Counties have similar authority, referred to as county service districts. See **G.S. Ch. 153A, Art. 16**.) A service district is not a separate government. It is a tool a local government may use to raise money from the property owners who most directly benefit from certain services or projects. (Click [here](#) for more information on MSDs.)

Under general law, a city may define one or more service districts for any of the following functions:

- Beach erosion control and flood and hurricane protection works
- Downtown revitalization projects
- Urban revitalization projects
- Transit-oriented development projects
- Drainage projects
- Sewage collection and disposal systems
- Off-street parking facilities
- Watershed improvement, drainage, and water resources development projects

G.S. 160A-536. (There are a few additional authorized purposes for certain cities.)

2016 Changes to MSD Statutes

As summarized above, the legislature made three significant changes to the MSD statutes in **S.L. 2016-8**.

1. *Must Adopt a New MSD, Make Changes to an Existing MSD, or Abolish an MSD by Ordinance*

A city's governing board must establish (and amend) any MSD created on or after June 1, 2016, by ordinance (instead of by resolution). See **Sect. 2 of S.L. 2016-8**. And the law imposes special procedural requirements to adopt the ordinance. To establish a new MSD, the ordinance must receive majority support of the voting members present at two consecutive meetings of the council. Any subsequent amendments to the ordinance—to extend a district, reduce a district, or

consolidate districts—must also be approved by majority vote at two consecutive board meetings. This process is not required to abolish an MSD, though. A governing board may adopt an ordinance abolishing an MSD according to its normal rules of procedure.

Does the new law require a board to re-establish any existing MSDs by ordinance? The answer to this question is no. If a governing board previously established an existing MSD by resolution, that district will continue to exist. No board action is required to maintain the district. However, if a board makes any changes to the district, it must do so by ordinance, following the procedures outlined above.

What if a governing board adopted a resolution establishing a new MSD before the amendments were enacted (on June 1, 2016) but the new MSD will not become effective until July 1, 2016? (Generally a new MSD becomes effective only at the beginning of a fiscal year.) For example, assume a city council adopted a resolution on March 22, 2016, that established a new MSD for downtown revitalization, with an effective date of July 1, 2016. Does the board now need to adopt an ordinance authorizing the district according to the procedures outlined above? I think the answer to this question is no. Because the governing board followed the statutory provisions in effect at the time it adopted the resolution, the resolution is still valid. The new district will go into effect on July 1, 2016, without any further board action. Of course if the board wishes to make subsequent changes to the new district, it will need to do so by a properly adopted ordinance.

2. Property Owner(s) May Petition Governing Board to Establish, Exclude, or Remove Property from MSD

The new amendments also provide an opportunity for direct property owner input in the MSD creation and modification process. Specifically, they establish petition processes to request the creation of an MSD, request that a property parcel not be included in an MSD, and request that a property parcel be removed from an MSD.

Creating a New District

New subsection (a1) of G.S. 160A-537 allows, but does not require, a city's governing board to establish an MSD if a majority of the owners of real property in a defined area of the city submit a petition to the board requesting its creation. To be considered by the governing board, a petition must:

- Contain the names, address, and signatures of at least a majority of the real property owners in the proposed district
- Describe the proposed district boundaries
- State in detail the particular service(s), facility(ies), or function(s) for which the district should be established, from the following list:
 - Beach erosion control and flood and hurricane protection works
 - Downtown revitalization projects
 - Urban revitalization projects
 - Transit-oriented development projects
 - Drainage projects
 - Sewage collection and disposal systems
 - Off-street parking facilities
 - Watershed improvement, drainage, and water resources development projects
- Provide sufficient information to demonstrate that the area "is in need of one or more of the services, facilities, or functions [listed above] to a demonstrably greater extent than the remainder of the city."

The statute directs a city's governing board to adopt a process for considering all properly submitted petitions at regular intervals. A board must entertain petitions at least once per year. If a board chooses to act on a petition, it must then follow the procedures outlined in G.S. 160A-537(b) – (f) to establish the district. The property owner-initiated process does not exempt a city council from any of the other procedural requirements. These include making findings as to the need for the proposed district and establishing a plan for providing the services, projects, or other functions; publishing notice and mailing individual notice to each affected property owner at least four weeks before a public hearing; holding a public hearing on the proposed district; and abiding by effective date requirements. (The procedural requirements are described in more detail [here](#).) Note also that the petition process does not supplant a governing board's authority to establish an MSD in its own discretion. It simply provides a mechanism for property owners to initiate a discussion about a new MSD.

Questions likely will arise as to how to count property owners in a defined area to determine if the majority threshold is met. The statute does not provide any specific guidance on this issue. One possibility is for the city to count each individual or entity with an ownership interest in a property parcel as an owner. For example, a husband and wife who own a property parcel as tenants by the entirety would count as two separate property owners. This method weighs each individual or entity with an interest in a property parcel equally. It means, however, that a property parcel with multiple owners could have more influence than the same sized property parcel with a single owner.

A letter opinion issued by the state attorney general in 1981, interpreting a similar provision in a different context, seems to support this interpretation. In response to the question “[d]oes the phrase ‘majority of owners’ mean a majority of the total number of persons or entities owning an interest in any property within the area?” the opinion stated that the phrase “majority of the owners” means a “majority of persons and entities owning the territory (land)” There also is some case law precedent for this interpretation. In *City of Winston-Salem v. Coble*, 192 N.C. 776 (1926), the North Carolina Supreme Court held that the phrase “majority in number of the property owners,” as applied to what was then a petition requirement for levying special assessments, means that each individual with an ownership interest in a property parcel counts as a separate property owner.

Another method that could be used to count property owners is to give each property parcel a single vote. In other words, if a property parcel has multiple owners with undivided interests, together they constitute a single owner of the property. Under this method, each property parcel is treated equally. It likely would mean that all property owners of a particular property parcel would have to sign the petition for that property parcel to county towards the total. There is also case law precedent for this interpretation. In *Rice v. Coholan*, the North Carolina Court of Appeals held that for the purposes of meeting the voting requirement in a restrictive covenant, the phrases “majority of owners of said lots” or “majority of the then owners of this and other lots” allocate only one vote per lot owned, regardless of the number of individuals with ownership interests in each lot.

In the absence of additional legislative or judicial guidance, at a minimum a city should adopt a consistent approach to how it interprets the petition requirements. And no matter how a city interprets the term “owner” it is clear that it encompasses residents and nonresidents alike.

Excluding Property from Proposed District

The new law, specifically subsection (c1) of G.S. 160A-537, also establishes a process to request exclusion of a property parcel from a proposed district. At, or within five days after, the public hearing on a proposed district, a property owner may request, in writing, that his/her property be excluded. The property owner may include any relevant information in the written request. At a minimum, it must:

- Specify the tract or parcel; and
- State “with particularity” the reasonable why the tract or parcel does not need of the services, facilities, or functions for which the district will be created.

The city council may exclude the parcel or tract only if it finds that it does not need the “services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the city”

If a property parcel has more than one owner, the law is not clear whether one of the owners may request exclusion or whether all of the owners must make the request. A city should adopt a policy indicating whether or not it will consider a request from a single owner of a multi-owner parcel or tract.

Removing Property from Existing District

A city council has the ability to reduce the boundaries of an existing MSD. The new law allows a property owner to prompt a city’s governing board to consider an MSD reduction by submitting a written request to remove a property tract or parcel from the MSD. See G.S. 160A-538.1(a1). (Note that the legislation references the “proposed district.” This appears to be a typographical error. It is clear from the context, that the provision refers to removing property from an existing district.) The request, at a minimum, must:

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- Specify the tract or parcel; and
 - State “with particularity” the reasons why the tract or parcel is not in need of the services, facilities, or functions of the district.

Once a city’s governing board receives a proper request for removal of property from a district, it must hold a public hearing on this issue. Notice of the hearing (stating its date, hour, place, and purpose) must be published at least one week before the public hearing.

The city council may remove a tract or parcel from an existing district only if it determines that it “is not in need of the services, facilities, or functions of the district to a demonstrably greater extent than the remainder of the city” To do so, it must adopt an ordinance, following the procedures outlined above. And the effective date of the removal must be the end of the current fiscal year (June 30).

3. *Subcontractor Reporting Requirement*

Finally, **S.L. 2016-8** adds a new reporting requirement for contractors providing services or undertaking projects in an MSD. A city has broad authority to “provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof.” **G.S. 160A-536(d)**.

Most units contract with outside entities to provide services or projects in an MSD. For example, a municipality may engage a contractor to install, repair, or extend infrastructure in an MSD. It may hire a marketing firm to promote businesses or activities, or a vendor to organize/cater events, in a downtown or urban area MSD. Larger municipalities, in particular, often utilize private organizations to manage their downtown or urban area revitalization districts (management companies). The management company serves as a liaison between the downtown property owners and the municipality. It works with the property owners in the district to identify needs, prioritize projects, and manage initiatives. It also may engage in branding and marketing efforts on the part of the downtown. And, in some instances, the management company raises private monies to fund downtown initiatives.

Any time a city enters into a contract to provide services, facilities, functions, or promotional and developmental activities in an MSD, whether it be with a management company or any other governmental or private entity, the contract must:

- Specify the purposes for which city funds will be used; and
- Require an appropriate accounting of the moneys paid out under the contract at the end of the fiscal year (or other appropriate period of time).

G.S. 160A-536(d). These requirements facilitate a city council’s ability to engage in proper management and oversight over the expenditure of public funds by the contracting party.

The new law requires that a private entity that has contracted with the city to provide services or projects in the MSD must include information about any subcontractors it used to perform the work in its periodic accounting to the city. Specifically, a private contracting party must include “the name, location, purpose, and amount paid to any person or persons with whom the private agency contracted to perform or complete any purpose for which city moneys were used for that service district.” Note that this reporting requirement applies to any private party contracting to do work in the MSD. It is not limited to management companies.



Links

- canons.sog.unc.edu/changes-to-municipal-service-district-msd-authority/
- www.ncleg.net/Sessions/2015/Bills/House/PDF/H1023v3.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_160A/Article_23.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_153A/Article_16.pdf
- canons.sog.unc.edu/?p=4591
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-536.html
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