

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH A 1.85 ACRE SITE LOCATED IN THE JOHN AUSTIN SURVEY, ABSTRACT NO. 1, HARRIS COUNTY, TEXAS, COMMONLY KNOWN AS 1200 GIVENS, HOUSTON, TEXAS, 77007 AND A PORTION OF THE GIVENS STREET RIGHT OF WAY, 1200 GIVENS, CITY OF HOUSTON, HARRIS COUNTY, TEXAS; AND SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code authorizes the Texas Commission on Environmental Quality ("TCEQ") to create municipal setting designations; and

WHEREAS, on August 22, 2007, by Ordinance No. 2007-959, the City Council adopted Article XIII, of Chapter 47, Code of Ordinances, Houston, Texas, to provide a process for establishing municipal setting designation ordinances; and

WHEREAS, Sections 47-765(f) and 47-767(a) of the Code of Ordinances, Houston, Texas, authorize municipal setting designation ordinances that prohibit the use of designated groundwater as potable water and thereby enable the TCEQ to certify a municipal setting designation for designated property; and

WHEREAS, on November 29, 2007, LUI Houston Studemont, L. P., ("applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for its property that is generally located at 1200 Givens Street, Houston, Texas 77007; and

WHEREAS, on May 20, 2008, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764, and notified the community when the City Council public hearing would occur; and

WHEREAS, City Council conducted a public hearing on August 13, 2008; and

WHEREAS, the City Council finds that:

(1) the application meets the eligibility criteria of Section 361.803 of the Texas Health and Safety Code;

(2) the municipal setting designation will not have an adverse effect on the current or future water resource needs or obligations of the City of Houston;

(3) there is a public drinking water supply system 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 mile of the designated property; and

(4) this Municipal Setting Designation Ordinance is necessary because the concentration of contaminants of concern exceeds human ingestion protective concentration levels, and the establishment of a municipal setting designation will allow the property to be brought back into productive use; and

WHEREAS, City Council finds that the Director of the Public Works and Engineering Department on behalf of City Council, in accordance with the Charter of the City of Houston, state law, and the ordinances of the City of Houston, has given the required notices, City Council has held the required public hearing regarding this Municipal Setting Designation Ordinance and all procedural

requirements have been satisfied; **NOW THEREFORE;**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

Section 1. That for purposes of this Municipal Setting Designation Ordinance, the “designated property” means the property described in Exhibit A, attached to this Ordinance and incorporated by reference herein.

Section 2. That for purposes of this Municipal Setting Designation Ordinance, "designated groundwater" means groundwater beneath the designated property to a depth not to exceed 200 feet that is prohibited from use as potable water by this Ordinance.

Section 3. That use of the designated groundwater from beneath the designated property as potable water, as that term is defined in section 47-761 of the Code of Ordinances, Houston, Texas, is prohibited.

Section 4. That the use of the designated groundwater from beneath public rights-of-way immediately adjacent to the designated property as potable water, as that term is defined in section 47-761 of the Code of Ordinances, Houston, Texas, is prohibited,

Section 5. That the designated property must receive a certificate of completion or other analogous documentation issued by the TCEQ or the United States Environmental Protection Agency (“EPA”) showing that any site investigations and response actions required pursuant to Section 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 by them.

Section 6. That the City Council supports the application to the TCEQ for a

municipal setting designation on the designated property, with the following comment:

(1) The TCEQ and the EPA, as agencies charged to protect human health and the environment, are requested to thoroughly review the conditions on the designated property and issue a certificate of completion only when all contaminants of concern, through the applicable routes of exposure, have been addressed.

Section 7. That 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 of Houston. 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.

Section 8. That approval of this Municipal Setting Designation Ordinance shall not be construed to subject the City of Houston to any responsibility or liability for any injury to persons or damages to property caused by any contaminant of concern.

Section 9. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the applicant shall provide the Director of the Public Works and Engineering Department 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 and its integrated land management system, and shall provide an electronic file showing the location of the designated

property and the designated groundwater to the Harris County Appraisal District in a format compatible with its system.

Section 10. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Director of the Public Works and Engineering Department shall send a certified copy of this ordinance to the applicant, TCEQ and EPA.

Section 11. That the applicant shall provide the Director of the Public Works and Engineering Department with a copy of the municipal setting designation certificate issued by the TCEQ pursuant to section 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate.

Section 12. That within 30 days after receipt of the municipal setting designation certificate from the TCEQ, the Director of the Public Works and Engineering Department shall file a certified copy of this Municipal Setting Designation Ordinance in the deed records of Harris County.

Section 13. That if any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their applicability to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 14. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 20th day of August, 2008.

Bill White
Mayor of the City of Houston

Prepared by the Legal Department

Carl Price DEE
August 11, 2008, Ceil Price, Senior Assistant City Attorney

Requested by Michael Marcotte, P.E., DEE, Director, Public Works and Engineering Department
L.D. File No. 0760700009001

AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
	ABSENT	CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		RODRIGUEZ
	ABSENT-OUT OF CITY BUSINESS	BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
✓		JONES
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG 26 2008

EXHIBIT A

DESCRIPTION OF A 1.355 ACRE TRACT OF LAND SITUATED IN THE JOHN AUSTIN SURVEY, ABSTRACT No. 1 CITY OF HOUSTON, HARRIS COUNTY, TEXAS

BEING a 1.355 acre of land situated in the John Austin Survey, Abstract No. 1 in the City of Houston, Harris County, Texas and being all of a called 1.355 acre tract as recorded in Harris County Clerk's File No. Z534947, said 1.355 acres described as follows:

BEGINNING at a 5/8-inch iron rod found for the northwest corner of a tract of land as recorded in Harris County Clerk's File No. V637901, lying in the east right-of-way line of Givens Street (50' wide) and being the common southwest corner of said 1.355 acre tract and the herein described tract;

THENCE N 02°51'42" W, 178.85 feet with the east right-of-way line of said Givens Street and the west line of said 1.355 acre tract to a 5/8-inch iron rod with cap stamped Brown & Gay set for an angle point in the west line of the herein described tract;

THENCE N 02°26'19" W, 42.89 feet to a 5/8-inch iron rod with cap stamped Brown & Gay set for a southerly corner of a called 4.5777 acre tract as recorded in Harris County Clerk's File No. Y433209 and being the northwest corner herein described tract;

THENCE N 87°23'35" E, with the south line of said 4.5777 acre tract a distance of 269.73 feet to a 5/8-inch iron rod with cap stamped Brown & Gay set for the southeast corner of said 4.5777 acre tract also being the northeast corner of the herein described tract from which a "V" in concrete bears S 15°07' E, 7.57 feet;

THENCE S 02°32'42" E, 216.48 feet with the west right-of-way line of Diesel Street (60-feet wide) as recorded in Harris County Clerk's File No. V637902 to a 5/8-inch iron rod round for the southeast corner of the herein described tract from which a railroad spike bears N 02°33' W, 0.77 feet;

THENCE S 86°16'18" W, 268.88 feet along the south line of said 1.355 acre tract to the POINT OF BEGINNING and containing 1.355 acres of land.

**DESCRIPTION OF 0.2063 ACRE TRACT OF LAND SITUATED
IN THE JOHN AUSTIN SURVEY, ABSTRACT No. 1
CITY OF HOUSTON, HARRIS COUNTY, TEXAS**

BEING a 0.2063 acre of land situated in the John Austin Survey, Abstract No. 1 in the City of Houston, Harris County, Texas and being a portion of a tract of land conveyed to the City of Houston in a deed recorded in Volume 3357, Page 426 of Harris County Deed Records said 0.2063 acres described as follows:

BEGINNING at a 5/8-inch iron rod found for the northwest corner of a tract of land as recorded in Harris County Clerk's File NO. V637901, lying in the east right-of-way line of Givens Street (50' wide) and being the southwest corner of a called 1.355 acre tract of land recorded under Harris County Clerk's File Number Z534947;

THENCE S 86°16'18" W over and across said Givens Street a distance of 50.01 feet to a 5/8-inch iron rod with cap stamped Brown & Gay set for the southwest corner of the herein described tract of land in the west line of said Givens Street;

THENCE N 02°51'42" W, 180.44 feet with the west right-of-way line of said Givens Street over and across Hicks Street (60' wide) to a 5/8-inch iron rod with cap stamped Brown & Gay set for the northwest corner of the herein described tract of land in the south line of a called 1.4376 acre tract of land recorded under Harris County Clerk's File Number Y706041;

THENCE N 87°33'41" E, 12.41 feet to a 5/8-inch iron rod found marking the southeast corner of said 1.4376 acre tract of land same being the southwest corner of a 21,562 square feet Access Easement recorded under Harris County Clerk's File Number K638858;

THENCE N 88°16'07" E, 37.59 feet to a 5/8-inch iron rod with cap stamped Brown & Gay set for the northeast corner of the herein described tract of land in the east right-of-way line of said Givens Street same being the west line of said called 1.355 acre tract of land;

THENCE N 02°51'42" E, 178.85 feet along the west line of said 1.355 acre tract of land and east of right-of-way line of said Givens Street to the POINT OF BEGINNING and containing 0.2063 acres of land.