

City of Houston, Texas, Ordinance No. 2010-556

AN ORDINANCE AMENDING ARTICLE XIII OF CHAPTER 47 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO MUNICIPAL SETTING DESIGNATION ORDINANCES TO PROHIBIT CERTAIN CONTAMINATED GROUNDWATER FROM POTABLE USE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

\* \* \* \* \*

**WHEREAS**, the City of Houston is a municipal corporation organized under the Constitution and the general and special laws of the State of Texas and exercises powers granted by the City's Charter and the provisions of Article XI, Section 5 of the Texas Constitution; and

**WHEREAS**, in the exercise of its lawful authority, the City may enact police power ordinances to promote and protect the health, safety, and welfare of the public; and

**WHEREAS**, the City uses groundwater from deep aquifers in very distinct, limited areas in the City as a source for public potable water; and

**WHEREAS**, the City Council finds that there are areas within the City and its extraterritorial jurisdiction where the groundwater may not be valuable as a source for potable water due to its limited quantity and low quality; and

**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 of the Code of Ordinances, Houston, Texas, to provide a process for establishing municipal setting designation ordinances; and

**WHEREAS**, the City Council finds that minor revisions are necessary to the process to further enhance the benefits derived to the public health, safety, and welfare of the public; **NOW, THEREFORE;**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

**Section 2.** That Item (9) of Subsection 47-762(d) of the Code of Ordinances, Houston, Texas, is hereby amended by deleting the word “expanding” and its preceding and succeeding commas.

**Section 3.** That Item (13) of Subsection 47-762(d) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(13) A description of any environmental regulatory or litigation actions that have been taken within the past five years in connection with the designated property, to the extent known;”

**Section 4.** That Subsection 47-764(d) of the Code of Ordinances, Houston, Texas, is hereby amended by deleting the words “city council.”

**Section 5.** That Section 47-765 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**“Sec. 47-765. Public hearing; consideration of application.**

(a) *Public hearing.* The mayor shall designate a committee of city council that shall conduct a public hearing to consider a municipal setting designation ordinance. Upon a request from the director, the mayor may direct that city council will conduct the public hearing on the ordinance for a particular application.

- (1) Prior to the public hearing, the director shall prepare a recommendation 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 exceedence zone or the non ingestion protective concentration level exceedence 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.
- (2) 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.

(b) *Council committee consideration.* Following the close of the public hearing, the city council committee shall consider whether it supports the director's recommendation. No further action shall be taken on the application if the city council committee finds that:

- (1) It does not meet the eligibility criteria of section 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 mile of the boundary of the designated property.

(c) *City council consideration.* Upon receipt of the director's recommendation, or following the close of the public hearing if city council conducts the hearing, the city council shall approve or deny the application. 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; however, the maximum depth shall not exceed 200 feet below ground surface unless the applicant specifically so requests and the ordinance specifically provides a greater depth;
- (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.

(d) 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.

(e) 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.”

**Section 6.** That Section 47-766 of the Code of Ordinances, Houston, Texas, is hereby amended as follows:

**“Sec. 47-766. Limitation on reapplication.**

If the applicant withdraws the application after the public hearing, or if the city council committee or 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.”

**Section 7.** That Subsections (b), (c) and (d) of Section 47-768 of the Code of Ordinances, Houston, Texas, are hereby amended to read as follows:

“(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.

(c) The applicant shall provide the director 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.

(d) Within 30 days after receipt of the copy of the municipal setting designation certificate issued by the TCEQ pursuant to Section 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

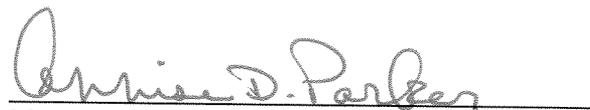
designation ordinance in the deed records of the county where the designated property is located.”

**Section 8.** That the City Council hereby approves the schedule of fees that is attached to and made a part of this Ordinance as Exhibit A, and which may be modified from time to time by motion of City Council pursuant to Section 47-762(e).

**Section 9.** 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 10.** That 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 be passed finally on that date and shall take effect upon passage and approval by the Mayor at 12:01 a.m. on August 1, 2010.

PASSED AND APPROVED this 14<sup>th</sup> day of July, 2010.

  
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Mayor of the City of Houston

Prepared by the Legal Dept.  
7 July, 2010

By Ceil Price  
Ceil Price, Senior Assistant City Attorney  
Requested by Michael Marcotte, P.E., DEE, Director,  
Public Works and Engineering Department

L.D. File No.0631000115001

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AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
	ABSENT	JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
	ABSENT	RODRIGUEZ
✓		COSTELLO
	ABSENT	LOVELL
✓		NORIEGA
✓		BRADFORD
✓		JONES
CAPTION	ADOPTED	

## EXHIBIT A

Application Fee <sup>1</sup>	\$3,000
Application Amendment Fee <sup>2</sup>	\$1,000
Advertising Cost <sup>3</sup>	\$375
Filing Fee <sup>4</sup>	\$25
Notification Cost <sup>5</sup>	Site Dependent
Venue Cost <sup>5</sup>	Site Dependent

<sup>1</sup> The Director may waive the application fee, but not other costs if the Director finds that payment of the application fee would result in a substantial financial hardship to the applicant.

<sup>2</sup> Once an application has been submitted and received by the City, any change to the application will require an application amendment fee.

<sup>3</sup> Advertising cost will cover the legal notice cost to publish notice of the public meeting in a newspaper of general circulation (Sec. 47-764 (b) (2)).

<sup>4</sup> A filing fee will be collected to file and record the deed restriction once the MSD application has been approved by the State.

<sup>5</sup> Estimated costs of these items will be provided to the applicant and must be paid by the applicant prior to the City incurring these expenses.

*Note:* Fees will be administered through a special revenue account under Fund 8300 – Water and Sewer Operating Fund.