

City of Houston, Texas, Ordinance No. 2007- 959

AN ORDINANCE AMENDING CHAPTER 47 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, BY ADDING ARTICLE XIII RELATING TO GROUNDWATER; PROVIDING A PROCESS FOR ESTABLISHING MUNICIPAL SETTING DESIGNATION ORDINANCES TO PROHIBIT CERTAIN CONTAMINATED GROUNDWATER FROM POTABLE USE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; 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, properties in the City and its extraterritorial jurisdiction are underlain with unused or unusable groundwater that has become contaminated by historical on-site or off-site sources; and

WHEREAS, the Texas legislature has established a process in which a particular type of municipal ordinance will serve in lieu of regulations from the Texas Commission on Environmental Quality (TCEQ) to prohibit contaminated groundwater from potable use; and

WHEREAS, the process of having TCEQ approve these municipal ordinances, called municipal setting designations, is authorized by Subchapter W of Chapter 361 of the Texas Health and Safety Code (the Solid Waste Disposal Act), which balances protection of human health and the environment with the economic welfare of the citizens and the City; and

WHEREAS, municipal setting designation ordinances enable a state corrective process for groundwater that protects human health and the environment while also promoting the economic welfare of citizens of the city; and

WHEREAS, if the use of the groundwater in a particular area presents an actual or potential threat to human health, and another source of potable water is available, the use of designated groundwater beneath a designated property should be prohibited to protect the public health, safety, and welfare; and

WHEREAS, municipal setting designation ordinances should be considered only after a process that allows for public notice and input; and

WHEREAS, the use of municipal setting designation ordinances within the City and its extraterritorial jurisdiction will encourage the economic development of these properties; and

WHEREAS, the City Council finds that it is appropriate to recover the City's costs of administering the municipal setting designation ordinance program established by the

Ordinance through the assessment of fees; and

WHEREAS, the City Council finds that the Department of Public Works and Engineering has analyzed the costs of administering the municipal setting designation ordinance program, and related those costs to the individual municipal setting designation ordinances that will be submitted for City Council action; and

WHEREAS, the City Council finds that the fees are reasonably related to the cost of administering the program;

WHEREAS, the City Council further finds that it is appropriate for the applicant for a municipal setting designation to pay all expenses associated with notices and hearings;

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 Chapter 47 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article XIII, which shall read as follows:

"ARTICLE XIII. MUNICIPAL SETTING DESIGNATIONS

Sec. 47-761. Definitions.

As used in this article, 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.

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

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 exceedence 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 of Chapter 361 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 exceedence 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 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 of Chapter 361 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.

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.

Sec. 47-762. Application.

(a) A person seeking a municipal setting designation ordinance shall file an electronic portable digital file and at least one paper copy 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 and drawn to scale. 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 a copy of the deed for the designated property;
- (4) A site map showing:
 - a. The location of the designated property;
 - b. The topography of the designated property as indicated on publicly available sources, which must note the watershed and whether the designated property is located in a floodplain or floodway, as those terms are defined in chapter 19 of this Code;
 - 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; and
 - f. The ingestion protective concentration level exceedence zone for each contaminant of concern, to the extent known;
- (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 exceedence zone, to the extent

known:

- a. A description of the ingestion protective concentration level exceedence zone and the non-ingestion protective concentration level exceedence 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:
- a. A description of the ingestion protective concentration level exceedence zone and the non-ingestion protective concentration level exceedence 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);
- (8) A table displaying the following information for each contaminant of concern, to the extent known:
- a. The 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
 - b. The critical protective concentration level without the municipal setting designation, highlighting any

exceedences;

- (9) A statement as to whether the plume of contamination is stable, expanding, or contracting, with the basis for that statement. If this information is not known, a statement of why the information is not known;
- (10) A statement as to whether contamination on and off the designated property without a municipal setting designation exceeds 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;
- (11) 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;
- (12) Identification of the points of origin of the contamination and the persons responsible for the contamination, to the extent known;
- (13) 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;
- (14) A listing of all existing state or EPA registrations, permits, and identification numbers that apply to the designated property;
- (15) A statement as to whether the designated property has been admitted to the Texas Voluntary Cleanup Program (section 361.601 of the Texas Health & Safety Code, as may be amended from time to time) or similar state or federal program, and a description of the status of the designated property in the program;
- (16) 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;
- (17) A statement as to whether any public drinking water supply

system exists 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 the identity of each supply system;

- (18) The name and address of each owner or operator of a water well registered or permitted by the state or the Houston-Galveston Subsidence District that is located within five 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 section 361.805 of the Texas Health and Safety Code;
- (19) The name and address of each retail public utility, as defined in section 13.002 of the Texas Water Code, that owns or operates a groundwater supply well within five miles of the boundary of the designated property, along with a statement as to whether the applicant has provided notice as required by section 361.805 of the Texas Health and Safety Code;
- (20) A listing of each municipality, other than the city, with a corporate limit within one-half mile of the boundary of the designated property, and a statement as to whether the applicant has provided notice as required by section 361.805 of the Texas Health and Safety Code;
- (21) A listing of each municipality, other than the city, that owns or operates a groundwater supply well within five miles of the boundary of the designated property, and a statement as to whether the applicant has provided notice as required by section 361.805 of the Texas Health and Safety Code;
- (22) 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';

- (23) 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;
 - 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 (section 361.501 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;

- (24) 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';

- (25) The signature of the applicant and proof that the applicant has the legal authority to restrict the use of the groundwater on the designated property; and

- (26) Any other information that the director deems necessary.

(e) The director shall, from time to time, prepare and submit for approval by motion of the city council a schedule of fees that shall be paid by an applicant for a municipal setting designation. 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 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 agenda until the applicant has paid all costs associated with advertising and mailing notices for the public meeting. 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.

(f) Within 30 days after submission of an application, the director shall notify the applicant that the application is 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.

Sec. 47-763. Staff review.

(a) The director shall distribute a copy of the complete application to the city attorney, the mayor's office, the department of health and human services 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 TCEQ.

(b) The city is not responsible for conducting an environmental risk assessment with respect to the application or the designated property.

Sec. 47-764. Public meeting.

(a) The director shall conduct a public meeting within 60 days after the application is deemed complete. The public meeting must be held at a facility open to the public near the designated property.

(b) Upon receipt of the estimated cost of mailing notices and advertising the public meeting, the director shall cause to be provided 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;
- (2) The director shall publish notice of the public meeting in a newspaper of general circulation at least 30 days before the

public meeting;

- (3) The director shall mail notice of the public meeting at least 30 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 or the Harris-Galveston Subsidence District that are located within five 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 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 miles of the boundary of the designated property, as indicated on the application, by certified mail;
 - f. The Harris-Galveston Subsidence District;
 - g. Any civic organization, property owners' association, or any other interested group with identifiable boundaries, provided that the organization, association or group is registered with the planning and development department in a manner prescribed by the director of that department, the boundary of which organization, association or group is within one-half mile of the boundary of the designated property, as indicated on the application, by certified mail; and

h. The TCEQ; and

- (4) The director shall cause a copy of the application to be placed on display at the public library closest to the designated property at least 30 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 city council public hearing.

Sec. 47-765. City council public hearing.

(a) City council shall conduct a public hearing to consider a municipal setting designation ordinance.

(b) Prior to the city council public hearing, the director shall prepare a recommendation as to whether the municipal setting designation ordinance should be granted or denied, and listing any conditions that should be imposed.

- (1) 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.
- (2) 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) Upon payment of the costs associated with providing notice of the public hearing, the director shall provide notification of the public hearing as follows:

- (1) The notice of the public hearing must include:
 - a. The date, time and location of the public hearing;
 - 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; and
- (2) The director shall publish notice of the public hearing in a newspaper of general circulation at least 30 days before the public hearing.

(d) 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 city council may either deny the application or continue the public hearing.

- (e) The city council shall deny the application if it 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 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 boundary of the designated property.

(f) If the city council does not deny an application pursuant to subsection (d), it shall adopt 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.

(g) 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.

(h) 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.

Sec. 47-766. 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.

Sec. 47-767. 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. 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.

Sec. 47-768. 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 and its integrated land management system; and
- (2) The Harris County Appraisal District with an electronic file showing the location of the designated property and the designated groundwater in a format compatible with its system.

(b) Within 30 days after adoption and upon receipt of 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.

(c) 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.

(d) 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.

(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 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. The director may, for good cause, extend the time for submitting the documentation.

(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, Section 350.55(b), providing the name of the property owner, the property address, and a copy of the notice sent to the property owner.

Sec. 47-769. Authority of the director.

The director is authorized to:

- (1) Enter public or private property to determine whether designated groundwater is being used in violation of this section.

- (2) Administer and enforce the provisions of this section.

Sec. 47-770. Offenses; 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 Section 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 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; and
- (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 exceedence 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 this article an act is prohibited or is made or declared unlawful or an offense or misdemeanor, or whenever in this article the doing of any thing or act is required or the failure to do any thing 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 shall constitute and be punishable as a separate offense. Any offense under this article that also constitutes a violation of any state penal law shall be punishable as provided in the applicable state law.”

SECTION 3. That the City Council hereby approves the initial schedule of application fees for municipal setting designations that is attached to and made a part of this Ordinance as Exhibit A.

SECTION 4. 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 5. 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 at 12:01 a.m. on November 1, 2007.

PASSED AND APPROVED this 22nd day of August, 2007.



Mayor of the City of Houston

DEE


Prepared by the Legal Dept.
CP/ej 07/31/2007

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

L.D. File No. 0760700004001

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AYE	NO	
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		EDWARDS
✓		WISEMAN
✓		KHAN
	ABSENT	HOLM
✓		GARCIA
✓		ALVARADO
ABSENT-OUT OF THE CITY		BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
✓		BERRY
CAPTION	ADOPTED	

EXHIBIT A

Application Fee ¹	\$2,000
Notification Costs ²	Site Dependent
Advertising Costs ²	Site Dependent
Venue Costs ²	Site Dependent
Filing Fee ²	Site Dependent

¹ 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.

² Estimated cost of these items will be provided to the applicant and must be paid by the applicant prior to City incurring these expenses.

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