

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH A 15.6635-ACRE (682,302 SQUARE FOOT) TRACT OF LAND OUT OF THE DAIRY SUBDIVISION, A SUBDIVISION RECORDED IN VOLUME 1, PAGE 23 AND BLOCK I, RESERVE "A" OF CORPORATE CENTRE WESTCHASE, A SUBDIVISION RECORDED AT FILM CODE NUMBER 528260, BOTH OF THE HARRIS COUNTY MAP RECORDS, AND SAME BEING OUT OF THE RESIDUE OF A 99.416-ACRE TRACT CONVEYED TO TEXAS AND NEW ORLEANS RAILROAD COMPANY AS RECORDED IN VOLUME 3091, PAGE 298 AND VOLUME 3091, PAGE 305 OF THE HARRIS COUNTY DEED RECORDS (H.C.D.R.), WEST PARK DRIVE, A 100-FOOT RIGHT-OF-WAY (R.O.W.) AS RECORDED IN THE HARRIS COUNTY CLERK'S FILE NUMBER (H.C.C.F. NO.) F324484, THE RESIDUE OF A 6.7912-ACRE TRACT CONVEYED TO CRYSTAL CHEMICAL COMPANY AS RECORDED IN H.C.C.F. NO. G154538, THE HARRIS COUNTY FLOOD CONTROL DISTRICT EASEMENTS AS RECORDED IN VOLUME 6872, PAGE 340 AND VOLUME 7185, PAGE 146 H.C.D.R., AND A CALLED 3.8001-ACRE TRACT CONVEYED TO UNION PACIFIC RAILROAD COMPANY AS RECORDED IN H.C.C.F. NO. X654066, LOCATED IN THE HENRY WOODRUFF SURVEY, ABSTRACT 844, CITY OF HOUSTON, HARRIS COUNTY, TEXAS, GENERALLY LOCATED NEAR THE INTERSECTION OF BELTWAY 8 AND WESTPARK DRIVE; AND SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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**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 1, 2007, Union Pacific Railroad Company ("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 part of the Crystal Chemical Superfund Site; and

**WHEREAS**, on January 29, 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 March 12, 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.

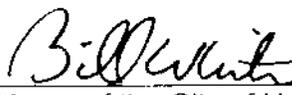
**Section 12.** That within 30 days after receipt of the municipal setting designation certificate from the TCEQ, the Director of the Public Works and Engineering Department shall file a certified copy of this Municipal Setting

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 26th day of March, 2008.

  
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Mayor of the City of Houston

Prepared by the Legal Department

  
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March 5, 2008, Ceil Price, Senior Assistant City Attorney *DFM*

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

CAUTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: APR 01 2008

AYE	NO	
✓		<b>MAYOR WHITE</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		LAWRENCE
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
	✓	SULLIVAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		RODRIGUEZ
✓		BROWN
✓		LOVELL
✓		NORIEGA
✓		GREEN
✓		JONES
CAPTION	ADOPTED	

## Exhibit A

A 15.6635-ACRE (682,302 SQUARE FOOT) TRACT OF LAND OUT OF THE DAIRY SUBDIVISION, A SUBDIVISION RECORDED IN VOLUME 1, PAGE 23 AND BLOCK 1, RESERVE "A" OF CORPORATE CENTRE WESTCHASE, A SUBDIVISION RECORDED AT FILM CODE NUMBER 528260, BOTH OF THE HARRIS COUNTY MAP RECORDS, AND SAME BEING OUT OF THE RESIDUE OF A 99.416-ACRE TRACT CONVEYED TO TEXAS AND NEW ORLEANS RAILROAD COMPANY AS RECORDED IN VOLUME 3091, PAGE 298 AND VOLUME 3091, PAGE 305 OF THE HARRIS COUNTY DEED RECORDS (H.C.D.R.), WEST PARK DRIVE, A 100-FOOT RIGHT-OF-WAY (R.O.W.) AS RECORDED IN THE HARRIS COUNTY CLERK'S FILE NUMBER (H.C.C.F. NO.) F324484, THE RESIDUE OF A 6.7912-ACRE TRACT CONVEYED TO CRYSTAL CHEMICAL COMPANY AS RECORDED IN H.C.C.F. NO. G154538, THE HARRIS COUNTY FLOOD CONTROL DISTRICT EASEMENTS AS RECORDED IN VOLUME 6872, PAGE 340 AND VOLUME 7185, PAGE 146 H.C.D.R., AND A CALLED 3.8001-ACRE TRACT CONVEYED TO UNION PACIFIC RAILROAD COMPANY AS RECORDED IN H.C.C.F. NO. X654066, LOCATED IN THE HENRY WOODRUFF SURVEY, ABSTRACT 844, CITY OF HOUSTON, HARRIS COUNTY, TEXAS.

COMMENCING: At a found 5/8-inch iron rod in the south line of Westpark Drive, the most northerly northwest corner of said Corporate Centre Westchase;

THENCE: South 81 deg 42 min 51 sec West, a distance of 276.02 feet to a found 5/8-inch iron rod with cap, a point that is south of the south line of Westpark Drive, the POINT OF BEGINNING;

THENCE: Along the east line of the herein described tract the following two (2) courses and distances:

South 00 deg 23 min 36 sec East, a distance of 230.97 feet to a found monitor well (SW2);

South 01 deg 55 min 11 sec West, a distance of 314.57 feet to a found 5/8-inch iron rod with cap;

THENCE: Along the south line of the herein described tract the following six (6) courses and distances:

South 80 deg 30 min 09 sec West, a distance of 51.90 feet to a found 5/8-inch iron rod with cap;

South 65 deg 58 min 10 sec West, passing a found 5/8-inch iron rod with cap at 158.72 feet, for a total distance of 171.54 feet to a set 5/8-inch iron rod with cap (LIN 2414);

South 34 deg 56 min 47 sec West, a distance of 178.56 feet to a found

## Exhibit A

5/8-inch iron rod with cap;

South 64 deg 22 min 24 sec West, a distance 139.76 feet to a found 5/8-inch iron rod with cap;

South 13 deg 52 min 13 sec West, a distance of 185.94 feet to a found 5/8-inch iron rod with cap;

South 58 deg 21 min 24 sec West, a distance of 89.06 feet to a found 5/8-inch iron rod with cap, the most southerly corner of the herein described tract;

THENCE: Along the west line of the herein described tract, the following nine (9) courses and distances:

North 14 deg 04 min 47 sec West, a distance of 105.27 feet to a found 5/8-inch iron rod with cap;

North 01 deg 50 min 06 sec East, a distance of 102.21 feet to a found 5/8-inch rod with cap;

North 03 deg 41 min 34 sec East, a distance of 105.32 feet to a found 5/8-inch iron rod with cap;

North 09 deg 06 min 40 sec East, a distance of 133.15 feet to a found 5/8-inch iron rod with cap;

North 05 deg 25 min 57 sec East, a distance of 562.80 feet to a found 5/8-inch iron rod with cap, a point that is south of the south line of Westpark Drive;

North 26 deg 45 min 47 sec East, a distance of 125.80 feet to a found 5/8-inch iron rod with cap, a point that is north of the north line of Westpark Drive;

North 21 deg 46 min 25 sec East, a distance of 190.40 feet to a found monitor well (SW12);

North 30 deg 34 min 51 sec East, a distance of 312.74 feet to a found monitor well (SW10);

North 20 deg 09 min 14 sec East, a distance of 222.01 feet to a found monitor well (SW8A), the northwest corner of the herein described tract;

THENCE: Along the north line of the herein described tract, the following two (2) courses and distances:

**Exhibit A**

North 73 deg 41 min 19 sec East, a distance of 177.47 feet to a found 5/8-inch iron rod with cap;

North 87 deg 06 min 28 sec East, a distance of 65.18 feet to a found 5/8-inch iron rod with cap, the northeast corner of the herein described tract;

THENCE: Along the east line of the herein described tract, the following four (4) courses and distance:

South 01 deg 18 min 33 sec East, a distance of 160.66 feet to a found monitor well (SW4);

South 01 degree 26 min 24 sec East, a distance of 434.36 feet to a found 5/8-inch iron rod with cap;

South 62 deg 41 min 00 sec West, a distance of 120.68 feet to a found 5/8-inch iron rod with cap, a point that is north of the north line of Westpark Drive;

South 00 deg 31 min 04 sec East, a distance of 112.99 feet to the POINT OF BEGINNING and containing 15.6635 acres or 682,302 square feet of land, more or less.