

City of Houston, Texas, Ordinance No. 2008- 1062

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH A 4.29 ACRE SITE LOCATED IN 1210 SAN JACINTO STREET HOUSTON, HARRIS COUNTY, TEXAS, COMMONLY KNOWN AS HOUSTON PAVILIONS (BLOCK 273) AND SOUTH TEXAS COLLEGE OF LAW (BLOCK 293), HOUSTON, TEXAS, 77002 AND A PORTION OF THE POLK AVENUE RIGHT OF WAY, 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 February 1, 2008, Houston Pavilions 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 1210 San Jacinto Street, Houston, Texas

77002; and

WHEREAS, on September 24, 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 November 19, 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 3rd day of December, 2008.

Bill White
Mayor of the City of Houston

Prepared by Legal Department Ceil Price
Ceil Price, Senior Assistant City Attorney
November 20, 2008

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

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

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: DEC 09 2008

EXHIBIT A

DESCRIPTION OF A 4.29 ACRE TRACT OF LAND SITUATED IN THE S. S. B. B. ADDITION OUT OF THE JAMES S. HOMAN SURVEY, CITY OF HOUSTON, HARRIS COUNTY, TEXAS

COMMENCING at the re-determined location of City of Houston Engineering Department Monument originally found at the centerline intersection of Main Street (90' R.O.W.) and Polk Avenue (80' R.O.W.);

THENCE South 57°07'45' East, along the centerline of Polk Avenue, a distance of 377.50 feet ;

THENCE South 32°52'15' West, along the southeastern line of Fannin Street, a distance of 40.00 feet to the POINT OF BEGINNING;

~~THENCE South 57°05'45' East, along the southwestern R.O.W. of Polk Avenue, a distance of 292.00 feet to the northwestern R.O.W. of San Jacinto Avenue;~~

THENCE South 32°52'15' West, along the northwestern R.O.W. of San Jacinto Avenue, a distance of 290.00 feet to the northeastern line of Clay Street;

THENCE South 57°05'45' East, along the northeastern line of Clay Street, a distance of 205.00 feet;

THENCE North 32°52'15' East, a distance of 330.00 feet to the northeastern line of Polk Avenue;

THENCE North 57°05'45' West, along the northeastern line of Polk Avenue, a distance of 125.00 feet to the southeastern R.O.W. of San Jacinto Street;

THENCE North 32°52'15' East, along the southeastern R.O.W. of San Jacinto Street, a distance of 290.00 feet to the southwestern line of Dallas Street;

THENCE North 57°05'45' West, along the southwestern line of Dallas Street, a distance of 350.00 feet to the southeastern line of Fannin Street;

THENCE South 32°52'15' West, along the southeastern line of Fannin Street, a distance of 350.00 feet to the southwestern R.O.W. of Polk Avenue and the POINT OF BEGINNING and containing 147,600 square feet or 3.3884 acres of land.