

City of Houston, Texas, Ordinance No. 2009-1260

**A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH 1.003 ACRES OF LAND COMMONLY KNOWN AS 8200 SOUTHWEST FREEWAY, 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 March 5, 2009, 8200 Southwest Freeway LLC ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 8200 Southwest Freeway, located in Houston, Texas 77074; and

**WHEREAS**, on October 28, 2009, 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 18, 2009; 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 two tracts 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 ADOPTED** this 9<sup>th</sup> day of December, 2009.

*Bill White*

Mayor of the City of Houston

Prepared by the Legal Department

*Cecil Price* DPA

November 18, 2009, Cecil Price, Senior Assistant City Attorney

Requested by Michael Marcotte, D.WRE, BCEE, Director, Public Works and Engineering Department  
L.D. File No. 0800900066001

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

CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: DEC 15 2009

## EXHIBIT A

1.0003 ACRES OF LAND IN THE JAMES WELLS SURVEY, ABSTRACT NO. 830, HARRIS COUNTY, TEXAS, DESCRIBED AS FOLLOWS, TO-WIT:

ALL THAT CERTAIN TRACT OR PARCEL OF LAND CONTAINING 1.0003 ACRES (43,573 SQUARE FEET) OF LAND IN THE JAMES WELL SURVEY, ABSTRACT NO. 830, HARRIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, TO-WIT:

BEGINNING AT A 5/8 INCH IRON ROD IN THE NORTHWEST RIGHT-OF-WAY LINE OF THE SOUTHWEST FREEWAY (U.S. 59) MARKING THE MOST SOUTHERLY CORNER OF A TRACT CONVEYED FROM HORNE DEVELOPMENT COMPANY TO SAM WHITE OLDSMOBILE COMPANY BY DEED RECORDED IN VOLUME 6681, PAGE 607 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS;

THENCE NORTH 55° 01' 45" WEST, ALONG THE SOUTHWEST LINE OF SAID SAM WHITE TRACT FOR A DISTANCE OF 146.62 FEET TO A 5/8 INCH IRON ROD SET FOR THE MOST WESTERLY CORNER OF THIS TRACT;

THENCE NORTH 34° 58' 15" EAST, 299.73 FEET TO A 5/8 INCH IRON ROD SET FOR THE MOST NORTHERLY CORNER OF THIS TRACT;

THENCE SOUTH 55° 01' 45" EAST, 119.88 FEET TO A POINT FOR CORNER;

THENCE SOUTH 34° 58' 15" WEST, 14.23 FEET TO A POINT FOR CORNER;

THENCE SOUTH 55° 01' 45" EAST, 27.04 FEET TO A POINT MARKING THE MOST EASTERLY CORNER LYING ON A CURVE IN THE NORTHWEST RIGHT OF WAY LINE OF SAID SOUTHWEST FREEWAY;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT IN SAID NORTHWEST RIGHT OF WAY WHOSE CHORD BEARS SOUTH 35° 15' 35" WEST, HAVING A RADIUS OF 5879.58 FEET AND A DELTA ANGLE OF 00° 34' 39" FOR A DISTANCE 59.27 FEET TO A T.H.D. MONUMENT MARKING THE END OF SAID CURVE;

THENCE SOUTH 34° 58' 15" WEST ALONG THE NORTHWEST RIGHT OF WAY LINE OF SAID SOUTHWEST FREEWAY FOR A DISTANCE OF 226.23 FEET TO THE PLACE OF BEGINNING AND CONTAINING 1.0003 ACRES OR 43,573 SQUARE FEET OF LAND.