

City of Houston, Texas, Ordinance No. 2009-1299

**A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 3.362 ACRES COMMONLY KNOWN AS 8880 BELLAIRE BOULEVARD, 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 October 15, 2008, 8880 Bellaire, 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 the 8880 Bellaire Boulevard Site located in Houston, Texas 77036; and

**WHEREAS**, on November 16, 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 December 16, 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 tract 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; however in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 16th day of December, 2009.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 22 2009.

  
\_\_\_\_\_  
City Secretary

Prepared by the Legal Department

 DPA  
\_\_\_\_\_  
December 10, 2009, Ceil Price, Senior Assistant City Attorney

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

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CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: DEC 22 2009

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

## EXHIBIT A

All that certain 3.362 acre tract of land being located in the J.M. Swisher Survey, A-1110, Harris County, Texas, more particularly being a portion of that certain 7.943 acre tract conveyed to Joe B. Ridings, Trustee, by instrument of record in Volume 7391, page 499, Mortgage Records, Harris County, Texas, and said 3.362 acres being more particularly described by metes and bounds as follows:

COMMENCING at a point of reference, said point being the intersection of the westerly line of South Gessner Road (100.00 feet wide) and the northerly line of Bellaire Boulevard (150.00 feet wide), said point also being the southeasterly corner of that certain 29.327 square foot tract leased to Texaco, Inc. by instrument of record in Volume 2131, Page 569, Contract Records, Harris County, Texas;

THENCE, West along said northerly line of Bellaire Boulevard, 565.00 feet to the POINT OF BEGINNING:

THENCE, continuing West along said northerly line of Bellaire Boulevard, 394.15 feet to a found 5/8 inch iron rod for corner, said point being the southeasterly corner of that certain 0.5746 acre tract described as Tract II and conveyed to Thad Grundy, Trustee, by instrument of record under File No. E-103583, Film Code No. 175-33-2570, Official Public Records of Real Property of Harris County, Texas;

THENCE, leaving said northerly line of Bellaire Boulevard and with the easterly line of said 0.5746 acre tract the following five (5) courses:

1. North, 77.63 feet to a found 5/8 inch iron rod, the beginning of a curve;
2. Along the arc of a tangent curve to the left, said curve being subtended by a Central Angle of  $24^{\circ}16'40''$ , having a Radius of 320.00 feet, and an Arc Length of 135.50 feet to a found 5/8 inch iron rod, a point of tangency;
3. North  $24^{\circ}16'40''$  West, 26.90 feet to a found 5/8 inch iron rod, the beginning of a curve;
4. Along the arc of a tangent curve to the right, said curve being subtended by a Central Angle of  $24^{\circ}16'40''$ , having a Radius of 265.00 feet, and an Arc Length of 112.29 feet to a found 5/8 inch iron rod, a point of tangency;
5. North, 7.31 feet to a found 5/8 inch iron rod for corner, said point being the northeasterly corner of said 0.5746 acre tract and in the southerly line of said certain 36.908 acre tract described as Tract I and conveyed to Thad Grundy, Trustee, by instrument of record under File No. E-103583, Film Code No. 175-33-2570, Official Public Records of Real Property of Harris County, Texas;

THENCE, East with the southerly line of said 36.908 acre tract, 456.95 feet to a found 5/8 inch iron rod for corner.

THENCE, leaving the southerly line of said 36.908 acre tract, South 349.99 feet to the POINT OF BEGINNING and containing an area of 3.362 acres (146,464 square feet) of land.