

City of Houston, Texas, Ordinance No. 2009- 969

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH TWO TRACTS WITHIN A 43 ACRE SITE LOCATED AT 6800, 6900, 7010, and 7020 OLD KATY ROAD HOUSTON, HARRIS COUNTY, TEXAS, COMMONLY KNOWN AS STATE HIGHWAY NO. 73, HOUSTON, TEXAS, 77024 AND A PORTION OF THE OLD KATY ROAD RIGHT OF WAY, 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 January 31, 2008, Beeson Properties ("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 four contiguous industrial properties that are generally located at 6800, 6900, 7010 and 7020 Old

Katy Road, Houston, Texas 77024; and

WHEREAS, on March 3, 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 April 29, 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 APPROVED this 14th day of October, 2009.

Bill White
Mayor of the City of Houston

Prepared by the Legal Department

[Signature]
September 29, 2009, Ceil Price, Senior Assistant City Attorney

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

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

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: OCT 20 2009

EXHIBIT A

TRACT A DESCRIPTION OF A 11.142 ACRE TRACT OF LAND SITUATED IN THE JOHN REINERMAN SURVEY, ABSTRACT NUMBER 642 CITY OF HOUSTON, HARRIS COUNTY, TEXAS

All that certain 11.142 acres (485,338 square feet) of land situated in the John Reinerman Survey, Abstract 642, Harris County, Texas, and being out of and a portion of a called 5.7923 acre tract conveyed to John Beeson, et al, as described in deed recorded in Harris County Clerk's File Number S906427 and being out of and portion of a called 22.8478 acre tract conveyed to John S. Beeson, Trustee as described in deed recorded under Harris County Clerk's File Number X758312; said 11.142 acre tract being more particularly described by metes and bounds as follows: (Bearings are referenced to the west line a called 6.8779 acre tract conveyed to Trinity Fabricating Co. and recorded in Harris County Clerk's File No. E899294)

COMMENCING at a 4 inch by 4 inch concrete monument found marking the northwest corner of a called 0.6339 acre tract of land conveyed to John S. Beeson per final summary judgment in Case No. 2002-22,286, of the 157th Judicial District, Harris County, Texas, the southwest corner of a called 7.0065 acre tract conveyed to John S. Beeson, Trustee, as described in deed recorded under Harris County Clerk's File Number W681817, and the southeast corner of a called 15.019 acre tract conveyed to Resource Ten Group Limited Partnership and recorded in Harris County Clerk's File No. V219376 and RESOURCE CENTRE, L.T.D., a map or plat of which is recorded in Volume 314, Page. 111, Harris County Map Records;

THENCE, North 89°57'29" West, along the north line of said 0.6339 acre tract, common with the south line of said 7.0065 acre tract, at a distance of 522.02 feet pass the west line of Walne Road (30 feet wide, Private, Volume 2589, Page 348 and Volume 3106, Page 7 of the Harris County Deed Records), same being a 30 feet wide Roadway Easement as described in deed recorded under Volume 6810, Page 358 of the Harris County Deed Records, continuing for a total distance of 552.02 feet to a 60d nail found marking the common southeast corner of said 0.7520 acre tract and said Walne Road, common with the northeast corner of said 0.6339 acre and the northwest corner of a called 0.7520 acre tract of land conveyed to John S. Beeson and Paul Sirota, per final summary judgment in Case No. 2002-22,286, of the 157th Judicial District, Harris County, Texas, and marking the southwest corner of the aforesaid 5.7923 acre tract, common with the southwest corner and **POINT OF BEGINNING** of the herein described tract;

THENCE, North 00°02'06" East, along the east line of said Walne Road, at a distance of 545.01 feet pass a 60d nail found marking the northwest corner of said 5.7923 acre tract common with an angle point of the aforesaid 22.8478 acre tract, at a distance of 552.70 feet pass a 5/8-inch iron rod found marking the northeast corner of said 7.0065 acre tract, common with an interior corner of said 22.8478 acre tract, common with the northeast corner of said Walne Road, continuing over and across said 22.8478 acre tract for a total distance of 634.00 feet to a point for the northwest corner of the herein described tract;

THENCE, South 89°57'29" East, continuing over and across said 22.8478 acre tract, a distance of 352.00 feet to an angle point of the herein described tract;

THENCE, South 00°02'06" West, continuing over and across said 22.8478 acre tract, at a distance of 89.04 feet pass the south line of said 22.8478 acre tract, common with the north line of said 5.7923 acre tract, continuing over and across said 5.7923 acre tract for a total distance of 148.50 feet to an interior corner of the herein described tract;

THENCE, South 89°57'29" East, over and across said 5.7923 acre tract, at a distance of 55.23 feet pass the east line of said 5.7923 acre tract, common with a west line of said 22.8478 acre tract, continuing over and across said 22.8478 acre tract for a total distance of 540.00 feet to the northeast corner of the herein described tract;

THENCE, South 00°02'06" West, over and across said 22.8478 acre tract, a distance of 486.50 feet to a point in the south line of said 22.8478 acre tract, common with the north line of a 0.8109 acre tract of land claimed by adjoining owner per "Doctrine Of Strips & Gores", for the southeast corner of the herein described tract;

THENCE, North 89°57'29" West, along said common line, at a distance of 236.73 feet pass a 5/8-inch iron rod found marking the northwest corner of said 0.8109 acre tract, common with the most westerly south corner of said 22.8478 acre tract, the northeast corner of the aforesaid 0.7520 acre tract and the southeast corner of the aforesaid 5.7923 acre tract, continuing along the south line of said 5.7923 acre tract, common with the north line of said 0.7520 acre tract, for a total distance of 892.00 feet to the **POINT OF BEGINNING** and containing 11.142 acres (485,338 square feet) of land. This description is based on the land title survey made by Terra Surveying Company, Inc. dated November 21, 2005, last updated February 27, 2008.

TRACT B
DESCRIPTION OF A 2.1811 ACRE TRACT OF LAND SITUATED
IN THE JOHN REINERMAN SURVEY, ABSTRACT NUMBER 642
CITY OF HOUSTON, HARRIS COUNTY, TEXAS

All that certain 2.1811 acres (95,008 square feet) of land situated in the John Reinerman Survey, Abstract 642, Harris County, Texas, and being out of and a portion of a called 6.8779 acre tract of land conveyed to Trinity Fabricating Co., recorded in Harris County Clerk's File No. E899294; said 2.1811 acre tract being more particularly described by metes and bounds as follows: (Bearings are referenced to the west line a called 6.8779 acre tract conveyed to Trinity Fabricating Co. and recorded in Harris County Clerk's File No. E899294)

COMMENCING at a 4 inch by 4 inch concrete monument found marking the northwest corner of a called 0.6339 acre tract of land conveyed to John S. Beeson per final summary judgment in Case No. 2002-22,286, of the 157th Judicial District, Harris County, Texas, the southwest corner of a called 7.0065 acre tract conveyed to John S. Beeson, Trustee, as described in deed recorded under Harris County Clerk's File Number W681817, and the southeast corner of a called 15.019 acre tract conveyed to Resource Ten Group Limited Partnership and recorded in Harris County Clerk's File No. V219376 and RESOURCE CENTRE, L.T.D., a map or plat of which is recorded in Volume 314, Page. 111, Harris County Map Records;

THENCE, North 00°02'43" East, along the west line of said 7.0065 acre tract common with the east line of said 15.019 acre tract and said RESOURCE CENTER, L.T.D., at 552.97 feet pass the northwest corner of said 7.0065 acre tract common with the most westerly southwest corner of a called 22.8478 acre tract conveyed to John S. Beeson, Trustee as described in deed recorded under Harris County Clerk's File Number X758312, at 868.61 feet pass the northwest corner of said (22.8478 acre tract, common with the southwest corner of said 6.8779 acre tract, continuing in all a total distance of 1180.76 feet to point from which a 2-inch metal fence post bears South 27°18'11" West, 0.45 feet, said point being in the south line of a tract of land conveyed Southern Pacific Railroad Co., recorded in Harris County Clerk's File No. B960751 and marking the northeast corner of said 15.019 acre tract;

THENCE, North 89°19'00" East, along the south line of said Southern Pacific Railroad Co. tract, common with the north line of said 6.8779 acre tract, a distance of 117.58 feet to a point for the northwest corner of the herein described tract;

THENCE, North 89°19'00" East, along the south line of said Southern Pacific Railroad Co. tract, a distance of 428.00 feet to a point for the northeast corner of the herein described tract;

THENCE, departing the south line of said Southern Pacific Railroad Co. tract, over and across said 6.8779 acre tract, the following three (3) courses and distance:

South 00°02'43" West, a distance of 222.00 feet to a point for the southeast corner of the herein described tract:

South 89°19'00" West, a distance of 428.00 feet to a point for the southwest corner of the herein described tract;

North 00°02'43" East, a distance of 222.00 feet to the **POINT OF BEGINNING** and containing 2.1811 acres (95,008 square feet) of land. This description is based on the land title survey made by Terra Surveying Company, Inc. dated November 21, 2005, last updated February 27, 2008.