

City of Houston, Texas, Ordinance No. 2010-601

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 18.592 ACRES COMMONLY KNOWN AS 6712 TELEAN STREET, HOUSTON, 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 September 25, 2009, FPA/PinPoint Mykawa, 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 6712 Telean Street located in Houston, Texas 77075; and

WHEREAS, on June 15, 2010, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764, at the Crestmont Community Center, 5200 Selinsky Road, Houston, Texas 77048 and notified the community when the City Council public hearing would occur; and

WHEREAS, City Council conducted a public hearing on July 14, 2010; 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 one 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

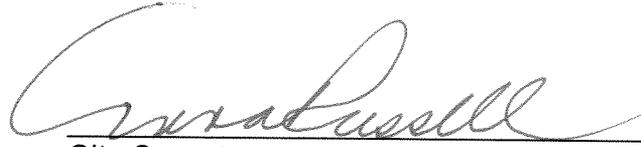
or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

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.

PASSED AND ADOPTED this 28th day of July, 2010.

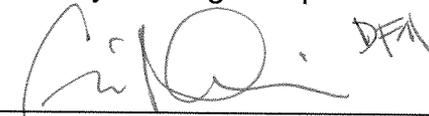
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG 03 2010.



City Secretary

Prepared by the Legal Department

 DFM

July 15, 2010, Ceil Price, Senior Assistant City Attorney

Requested by Daniel Menendez, P.E., Interim Director,
Public Works and Engineering Department
L.D. File No. 0800900066001
G:\LAND\CEIL\MSDs 2010\6712 Telean.doc

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: AUG 03 2010

AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
		ABSENT-ON PERSONAL BUSINESS
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
		ABSENT-ON PERSONAL BUSINESS
✓		HOANG
✓		PENNINGTON
		ABSENT-BUT BY CITY CITY BUSINESS
✓		GONZALEZ
✓		RODRIGUEZ
✓		COSTELLO
✓		LOVELL
		ABSENT-ON PERSONAL BUSINESS
✓		NORIEGA
✓		BRADFORD
✓		JONES
CAPTION	ADOPTED	

EXHIBIT A

METES AND BOUNDS DESCRIPTION "DESIGNATED PROPERTY"

18.592 ACRES IN THE
G. WILGUS SURVEY, ABSTRACT NO. 1127
J.M. SWISHER SURVEY, ABSTRACT NO. 1278
W.T. MCNEEL SURVEY, ABSTRACT NO. 1692
WM. J. LOVETT SURVEY, ABSTRACT NO. 526
HARRIS COUNTY, TEXAS

A 18.592-ACRE (809,856 SQUARE FEET) TRACT OF LAND SITUATED IN THE G. WILGUS SURVEY, ABSTRACT NO. 1127, J.M. SWISHER SURVEY, ABSTRACT NO. 1278, W.T. MCNEEL SURVEY, ABSTRACT NO. 1692, AND WM. J. LOVETT SURVEY, ABSTRACT NO. 526, HARRIS COUNTY, TEXAS, BEING OUT OF THAT CALLED 140.826-ACRE TRACT DESCRIBED AS TRACT 1 IN DEED TO FPA/PINPOINT HOBBY, LLC AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE NUMBER 20070147235 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, AND BEING ALL OF A CALLED 8.52-ACRE TRACT DESCRIBED IN A DEED TO ISADORE AND ESTHER ROBINSON AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE NUMBER B849280 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, AND A CALLED 6.24-ACRE TRACT DESCRIBED IN A DEED TO ISADORE AND ESTHER ROBINSON AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE NUMBER B849280 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, AND A CALLED 1.38-ACRE TRACT DESCRIBED IN A DEED TO ISADORE AND ESTHER ROBINSON HAS RECORDED UNDER HARRIS COUNTY CLERK'S FILE NUMBER B849299 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, AND A PORTION OF TELEAN STREET, SAID 18.592-ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, (BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM OF 1983, SOUTH CENTRAL ZONE, AS DETERMINED BY GPS MEASUREMENTS. COORDINATES SHOWN HEREON ARE TEXAS SOUTH CENTRAL ZONE NO. 4204 STATE PLANE GRID COORDINATES (NAD83) AND MAY BE BROUGHT TO THE SURFACE BY APPLYING THE FOLLOWING COMBINED SCALE FACTOR OF 0.99987863945):

BEGINNING at a 3/4-inch iron rod with EHRA cap found marking the southwest corner of a called 5-acre tract described in a deed to Leonard Holt Tozer, Jr. as recorded under Harris County Clerk's File Number R708328 of the Official Public Records of Real Property, and being the most southerly northwest corner of said Tract 1 and an interior corner of the herein described tract, having the coordinates X=3,142,636.64 and Y=13,793,030.48;

THENCE North 87°14'28" East 178.72 feet, along the common line of said called 5-acre tract and said Tract 1 to the most easterly northeast corner of the herein described tract, having the coordinates X=3,142,815.13 and Y=13,793,039.08;

THENCE South 03°12'02" East 481.64 feet, over and across said Tract 1 to a point for corner, having the coordinates X=3,142,842.02 and Y=13,792,558.25;

THENCE South 27°08'36" West 196.62 feet, to a point in the common line between said Tract 1 and a called 2.30-acre tract described in a deed to Paul Gregory Garza as recorded under Harris County Clerk's File Number L909196 of the Official Public Records of Real Property, and being the most easterly southeast corner of the herein described tract, having the coordinates X=3,142,752.32 and Y=13,792,383.30;

THENCE South 87°21'29" West 79.39 feet, along the common line of said called 2.30-acre tract and said Tract 1 to a point in the east line of said called 6.24-acre tract, and being the northwest corner of said called 2.30-acre tract, having the coordinates X=3,142,673.03 and Y=13,792,379.64;

THENCE South 03°12'02" East, along the common line of said called 2.30-acre tract and said called 6.24-acre tract, at 336.77 feet passing a PK-nail in asphalt found in the north right-of-way line of Telean Street (based on a variable width), from which a found ¾-inch iron pipe bears North 24°19'30" East 9.02 feet, and continuing for a total distance of 365.03 feet to a point in the south right-of-way line of said Telean Street, and being the most southerly southeast corner of the herein described tract, having the coordinates X=3,142,693.41 and Y=13,792,015.22;

THENCE South 86°19'49" West 249.74 feet, along the south right-of-way line of Telean Street to a point in the east right-of-way line of the G.C. & S.F. Railroad (based on a width of 100-feet), and being the southwest corner of the herein described tract, having the coordinates X=3,142,444.21 and Y=13,791,999.24;

THENCE North 16°28;30" West, along the east right-of-way line of said G.C. & S.F. Railroad, at 31.95 feet passing a ¼-inch iron rod with cap stamped "KMS Surveying" found in the north right-of-way line of said Telean Street marking the southwest corner of said called 1.38-acre tract, and continuing for a total distance of 1,647.23 feet to a railroad spike in a gravel road found marking the northwest corner of said called 8.52-acre tract and the southwest corner of a called 6.562-acre tract described in a deed to Houston Lighting and Power Company as recorded in Volume 1137, Page 128 of the Harris County Deed Records, having the coordinates X=3,141,977.12 and Y=13,793,578.65;

THENCE North 87°14'28" East 627.98 feet, along the common line of said called 6.52-acre tract and said called 8.52-acre tract to a ⅝-inch iron rod with Baseline cap found marking the northeast corner of said called 8.52-acre tract and of the herein described tract, having the coordinates X=3,142,604.29 and Y=13,793,608.87;

THENCE South 03°12'02" East, at 15.00 feet passing a ¾-inch iron rod with EHRA cap found marking the northwest corner of said called 5-acre tract, and continuing of a total distance of 579.37 feet to the **POINT OF BEGINNING** and containing 18.592 acres (809,856 square feet) of land. This description accompanies an Exhibit, prepared by KMS Surveying, LLC and dated September 18, 2009.

G:\LAND\CEIL\MSDs 2010\6712 Telean.doc