

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 12.3663 ACRES COMMONLY KNOWN AS 1025 LOCKWOOD DRIVE, AND A PORTION OF THE TEXAS AVENUE 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 April 6, 2009, Annie D. Adams Family Partnership, Ltd. ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 1025 Lockwood Drive Site located in Houston, Texas 77020; and

WHEREAS, on December 16, 2009, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764, at the Ripley House, 4410 Navigation, Houston, Texas 77011 and notified the community when the City Council public hearing would occur; and

WHEREAS, City Council conducted a public hearing on January 27, 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.

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 3rd day of February, 2010.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is FEB 09 2010.



City Secretary

Prepared by the Legal Department

 DFM

January 28, 2010, 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: FEB 09 2010

AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
✓		JOHNSON
✓		CLUTTERBUCK
✓		ADAMS
✓		SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		COSTELLO
✓		LOVELL
✓		NORIEGA
✓		BRADFORD
✓		JONES
CAPTION	ADOPTED	

Exhibit "A"

A tract of land containing 12.3663 acres and being out of the Harris and Wilson Two League Grant, Abstract Number 32, Harris County, Texas, also being out of that 35 acre tract conveyed to W. H. Sharp by deed recorded in Volume 746, Page 481 of the Deed Records for said county; said 12.3663 acres being all of that called 12.456 acres described in deed recorded in Volume 1022, Page 93 of said deed records, SAVE AND EXCEPT 3,934 square feet off the Southeast corner thereof conveyed for street purposes; said 12.3663 acres being more particularly described by metes and bounds as follows:

COMMENCING at a ½ inch iron pipe found at the apparent intersection of the Northerly right-of-way line of Clinton Drive with the Westerly right-of-way line of Lockwood Drive;

THENCE, South 01° 11' 21" West, 369.36 feet to a fence corner found for the POINT OF BEGINNING of the herein described tract, same being the intersection of the North right-of-way line of Texas and New Orleans Railway Clinton Branch with the West right-of-way line of Lockwood Drive;

THENCE North 71° 09' 30" West, 547.04 feet along and coincident with said Railway's North right-of-way line to a ½ inch iron rod set in the West line of the aforementioned 35 acre tract;

THENCE North 00° 48' 30" East, 916.58 feet along said West line to a ½" iron rod set for the Northwest corner of said 35 acre tract and of the herein described tract, from which a ¾ inch iron rod bears South 24° 15' East, 2.55 feet;

THENCE, South 89° 11' 30" East, 540.17 feet along the North line of said 35 acre tract to a fence corner found on the West right-of-way line of Lockwood Drive, (100.00 feet wide at this point);

THENCE, South 00° 48' 30" West, 703.17 feet along and coincident with said right-of-way line to an "X" found in concrete at the beginning of a curve to the right;

THENCE, 124.64 feet along and coincident with said right-of-way line and along said curve to the right having a radius of 1587.02 feet, a central angle of 04° 30' 00", and a chord which bears South 03° 03' 28" West, 124.61 feet to a ½ inch iron rod set at the end of said curve;

THENCE, South 05° 18' 28" West, 126.27 feet continuing along and coincident with said right-of-way line to an "X" found in concrete at the beginning of a curve to the left;

THENCE, 132.50 feet along and coincident with said right-of-way line and along said curve to the left, having a radius of 1687.02 feet, a central angle of 04° 30' 00" and a chord which bears South 03° 03' 28" West, 132.46 feet to the POINT OF BEGINNING and containing within these calls a computed area of 12.3663 acres.