

City of Houston, Texas, Ordinance No. 2010- 166

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH TWO TRACTS OF LAND CONTAINING 4.1228 ACRES COMMONLY KNOWN AS 1610 OLIVER STREET AND 1701 OLIVER STREET, 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 June 25, 2009, Harcros Chemicals, Inc. and Union Pacific Railroad (both hereinafter jointly referred to as "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 1610 and 1701 Oliver Street Sites located in Houston, Texas 77007; and

WHEREAS, on January 13, 2010, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764, at the West End Multi Service Center, 170 Heights Boulevard, Houston, Texas 77007 and notified the community when the City Council public hearing would occur; and

WHEREAS, City Council conducted a public hearing on February 17, 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 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; 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 24th 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 MAR 0 2 2010



City Secretary

Prepared by the Legal Department

 DFH

February 11, 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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NOT PUBLISHED IN DAILY COURT
REVIEW
DATE: MAR 0 2 2010

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

Exhibit "A"

The legal description of the designated property for Harcros Chemicals, Inc. located at 1701 Oliver Street in Houston:

Being a 2.754 acre tract of land (119,952 square feet) lying in the John Austin League, Abstract No. 1 in Harris County, Texas, being the unrestricted Reserve "A", in Block one (1) of Harcros Addition, an addition in Harris County, Texas of record in Film Code No. 387062 of the Map Records of Harris County, Texas, said 2.754 acres being more particularly described by metes and bounds, as follows:

BEGINNING at a ½" Rod with yellow plastic cap stamped "ACCESS 5163" set marking the intersection of the North right-of-way line of Summer Street (a 60' public roadway) and the West right-of-way line of Oliver Street (called 50' wide driveway easement of record in Volume 3050 on Page 291 of the Deed Records of Harris County, Texas) and being the southeast corner of the herein described tract;

THENCE S 87°47'14" W (call S 87°27'00" W) with the North right-of-way line of Summer Street and the South line of the herein described tract for a distance of 198.61' (call 198.61') to a 5/8" Rod found marking the Southerly most Southeast corner of that certain 24.0319 acre tract of land as described in an instrument of record in County Clerk's File No. L893452 of the Official Public Records of Harris County, Texas and being the Southwest corner of the herein described tract;

THENCE N 02°12'47" W (call N 02°33'00" W) with the Southerly most East line of the said 24.0319 acre tract and the West line of the herein described tract for a distance of 609.47' (call 609.40') to a Iron Rod with yellow plastic cap found marking the Southwest corner of that certain 0.3578 acre tract of land as described in an instrument of record in County Clerk's File No. R355643 of the said Official Public Records and being the Northwest corner of the herein described tract;

THENCE N 87°48'49" E (call N 87°27'00" E) with the South line of the said 0.3578 acre tract and the North line of the herein described tract for a distance of 195.03' (call 195.07') to an Iron Rod with yellow plastic cap found marking the West right-of-way line of Oliver Street, the Southeast corner of the said 0.3578 acre tract and being the Northeast corner of the herein described tract;

THENCE S 02°33'00" E (bearing basis) with the West right-of-way line of Oliver Street and the East line of the herein described tract for a distance of 609.45' (call 609.41') to the point and place of beginning, containing in area 2.754 acres of land (119,952 square feet), more or less.

The legal description of the designated property for UPRR located at 1610 Oliver Street in Houston:

ALL THAT CERTAIN 1.3688 ACRE tract of land lying in and situated in the John Austin 2 League Grant Survey, Abstract 1, Harris County, Texas, being a portion of Lot 20, Block 3 of the Hollingsworth (unrecorded) Subdivision and being a portion of all that certain called 48.9 acre tract of land conveyed by deed on September 25, 1923 from

Houston Stock Yards Company to The Galveston, Harrisburg and San Antonio Railway Company, as recorded in Volume 552, Page 32 of the Harris County Deed Records (H.C.D.R.), the herein described tract of land being more particularly described by metes and bounds, using survey terminology which refers to the Texas State Plane Coordinate System, South Central Zone (NAD83), in which the directions are Lamber grid bearings and the distances are surface level horizontal lengths (S.F.=0.9998938554) as follows:

COMMENCING at a 5/8" iron rod found marking the southeast corner of all that certain called 24.0619-acre tract of land conveyed by deed on October 17, 1988 from Southern Pacific Transportation Company to Azrock Industries, Inc., as recorded in Clerk's File No. L893452 of the Harris County Official Records (H.C.O.R.), same being located in the eastern boundary line of the aforementioned all that certain called 48.9 acre tract of land conveyed by deed on September 25, 1923 from Houston Stock Yards Company to The Galveston, Harrisburg and San Antonio Railway Company, as recorded in Volume 552, Page 32 of the H.C.D.R. and at the intersection of the centerline projection of the 60 foot wide Summer Street with the eastern right-of-way boundary line of the 60 foot wide Oliver Street, as conveyed on May 16, 1957 from Texas and New Orleans Railroad Company to the City of Houston, as recorded in Volume 3319, Page 727 of the H.C.D.R., said Point of Commencement being at Texas at State Plane Coordinate System position X=3114806.62 and Y=13846282.00, from which a 5/8" iron rod with survey cap marked "RPLS 1628", at the northwest corner of all that certain 1.5995 acre tract conveyed to Redwood Retail Center, LTD, as recorded in Clerk's File No. L490752 of the H.C.O.R., bears North 2°01'24" West, a distance of 8.33 feet (called 8.37 feet);

THENCE South 3°02'32" East, coincident with the eastern boundary line of said Galveston, Harrisburg and San Antonio Railway Company called 48.9 acre tract and said Oliver Street, same being the western boundary line of said Redwood Retail Center, LTD called 1.5995 acre tract, a distance of 30.14 feet to a point, at X=3114808.22 and Y=13846251.90;

THENCE South 87°30'02" West, crossing said Oliver Street, a distance of 60.00 feet to the POINT OF BEGINNING of the herein described description, at a set 5/8" iron rod with survey cap marked "WPD 4467" for the intersection of the western right-of-way boundary line of said Oliver Street and the southern right-of-way boundary line of Summer Street and the northeast corner of the herein described 1.3688 acre tract, at position X=3114748.28 and Y=13846249.29;

THENCE South 3°02'32" East, coincident with the western right-of-way boundary line of said Oliver Street, a distance of 236.60 feet to a 5/8" iron rod with survey cap marked "WPD 4467" set in the northern or northwestern curved boundary line of all that certain 60 foot wide railroad fee strip, conveyed by deed on September 17, 1879 from Sarah Brashear to Galveston, Harrisburg and San Antonio Railway Company, as recorded in Volume 20, Page 26 of the H.C.D.R., same being the southern or southeastern curved boundary line of the said Galveston, Harrisburg San Antonio Railway Company called 48.9 acre tract, for the southeast corner of the herein described 1.3688 acre tract, at position X=3114760.84 and Y=13846013.05;

THENCE along said curved boundary to the left or southwest having a radius of 1995.25 feet and a central angle of 9°18'25", coincident with the northern or northwestern boundary line of said Galveston, Harrisburg and San Antonio Railway Company 60 foot wide railroad fee strip, same being the southern or southeastern curved boundary line of

the said Galveston, Harrisburg San Antonio Railway Company called 48.9 acre tract, an arc length of 324.10 feet, a chord bearing South 74°57'19" West and a chord distance of 323.74 to a 5/8" iron rod with survey cap marked "WPD 4467" set at the intersection with the southeastern curved right-of-way boundary line of the 30 foot wide Southern Pacific Transportation Company spur tract easement, for the most southerly southwest corner of the herein described 1.3688 acre tract, at position X=3114448.22 and Y=13845929.02;

THENCE along said curved boundary to the left or northeast having a radius of 306.59 feet and a central angle of 39°26'19", coincident with the southeastern boundary line of said 30 foot wide Southern Pacific Transportation Company spur tract easement, an arc length of 211.04 feet, a chord bearing North 26°21'24" East and a chord distance of 206.89 to a 5/8" iron rod with survey cap marked "WPD 4467" set for the point of compound curve of the herein described 1.3688 acre tract, at position X=3114540.07 and Y=13846114.39;

THENCE along said curved boundary to the left or northerly having a radius of 346.44 feet and a central angle of 9°07'05", coincident with the eastern boundary line of said 30 foot wide Southern Pacific Transportation Company spur track easement, an arc length of 55.13 feet, a chord bearing North 2°04'20" East and a chord distance of 55.07 to a 5/8" iron rod with survey cap marked "WPD 4467" set for the point of tangency of the herein described 1.3688 acre tract, at position X=3114542.06 and Y=13846169.42;

THENCE North 2°28'03" West, coincident with the eastern boundary line of said 30 foot wide Southern Pacific Transportation Company spur tract easement, a distance of 70.81 to a 5/8" iron rod with survey cap marked "WPD 4467" set in the southern boundary of said 60 foot wide Summer Street right-of-way, for the northwest corner of the herein described 1.3688 acre tract, at position X=3114539.01 and Y=13846240.15;

THENCE North 87°30'02" East, coincident with the southern right-of-way boundary line of said Summer Street, a distance of 209.49 to the POINT OF BEGINNING, containing 1.3688 acres of land, more or less.