

City of Houston, Texas, Ordinance No. 2010-294

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 6.75635 ACRES COMMONLY KNOWN AS 16514 DE ZAVALLA ROAD, CHANNELVIEW, 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 that occur within the corporate limits and within the extraterritorial jurisdiction of a municipality; 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 28, 2009, Flex Tank Systems, 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 16514 De Zavalla Road Site located in Channelview, Texas 77530;
and

WHEREAS, on March 3, 2010, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764, at the M.L. Flukinger Community Center, 16003 Lorenzo Street, Channelview, Texas 77530 and notified the community when the City Council public hearing would occur; and

WHEREAS, City Council conducted a public hearing on April 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 because the property is within the extraterritorial jurisdiction of the City of Houston;

(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 21st day of April, 2010.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is APR 27 2010.



City Secretary

Prepared by the Legal Department



April 5, 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 GAZET
REVIEW
DATE APR 27 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 OR PARCEL OF LAND CONTAINING 6.75635 ACRES LOCATED IN THE HARRIS AND CARPENTER SURVEY, ABSTRACT NO. 28, HARRIS COUNTY, TEXAS, ALSO BEING THE NORTH 6.75635 ACRE TRACT OUT OF AND A PART OF THAT TRACT OF LAND CONVEYED TO KOCH FUELS, INC. PER INSTRUMENT DATED DECEMBER 29, 1983 AND FILED FOR RECORD IN THE OFFICE OF REAL PROPERTY UNDER HARRIS COUNTY CLERK'S FILE NO. J-300043, FILM CODE NO. 069-81-0845, SAID 6.75635 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS TO-WIT:

BEGINNING at a ½ inch iron rod found for the Northwest corner of the National Marine Service, Inc. tract described per instrument filed for record in the Office of Real Property under Harris County Clerk's File No. D-338078, the Northeast corner of the original T.L. James and Company, Inc. 20.246 acre tract conveyed by Jacintoport Corporation to T.L. James and Company, Inc. per instrument dated March 5, 1979 and recorded in the Office of Real Property under Harris County Clerk's File No. F-994646, Film Code No. 122-81-2205, same being the Northeast corner of the herein described tract of land;

THENCE South 23° 44' 59" West along and with the West line of the said National Marine Service, Inc. tract at 108.18 ft. pass a ½ inch iron rod set in the South line of a 76.63 foot wide road easement, at 640.78 ft. pass a ½ inch iron rod found 0.90 ft. right of line in all a total distance of 708.18 ft. to a point for the most Southerly Southeast corner of the herein described tract of land, said point for corner also being the most Easterly Northeast corner of a 7.394 acre tract conveyed by Koch Fuels, Inc. to Channelview Terminal Corporation Class 2 Creditors Trust per instrument recorded in the Office of Real Property under Harris County Clerk's File No. J-470318 Film Code No. 079-93-0538;

THENCE in a Northerly and Westerly direction along and with the metes and bounds of the common boundary line between the said 7.394 acre tract and the herein described 6.75635 acre tract as follows:

North 66° 15' 01" West 60.00 ft. to a point for corner;

North 23° 44' 59" East at 90.00 ft. pass a ½ inch iron rod found on line, in all a total distance of 234.91 ft. to a ½ inch iron rod found for corner.

North 66° 15' 01" West 388.16 ft. to a ½ inch iron rod found for corner from which a ½ inch iron rod found bears South 81 degrees 10 minutes 09 seconds West 0.70 ft.;

North 23° 44' 59" East 336.80 ft. to an "x" mark found for corner;

North 66° 15' 01" West 79.00 ft. to a ½ inch iron rod set in a North-South chain link fence for the most Westerly common corner of the said 7.394 acre tract and the herein described tract, said ½ inch iron rod is also in the East line of a 19.98 acre tract conveyed by Jacintoport Corporation to Metal Arts Company per instrument dated September 29, 1975 and filed for record in the Office of Real Property under Harris County Clerk's File No. E-564058, Film Code 128-13-0134;

THENCE North 23° 44' 59" East, along and with the East line of the said 19.98 acre tract at 245.79 ft. found a 1-inch galvanized iron pipe on the line near a fence corner and in the South line of a 76.63 foot wide road easement, in all a total distance of 353.97 ft. to a ½ inch iron rod set for the common North corner of the said 19.98 acre tract and the herein described tract of land, said point also being the Northwest corner of the said original T.L. James and Company, Inc. 20.246 acre tract;

THENCE South 43° 53' 27" East, along and with the North line of the said 20.246 acre tract, a total distance of 570.27 ft. to the PLACE OF BEGINNING and containing 6.75635 acres of land and being known as 16514 De Zavalla Road, Channelview, Texas 77530.