

City of Houston, Texas, Ordinance No. 2010-295

**A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 8.8511 ACRES COMMONLY KNOWN AS 1111 LOCKWOOD DRIVE, HOUSTON, TEXAS; AND SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

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**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 December 22, 2009, Westbrook Investments, LP ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 1111 Lockwood Drive Site located in Houston, Texas 77020; and

**WHEREAS**, on March 11, 2010, 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 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;

(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.

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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.

  
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City Secretary

Prepared by the Legal Department

  
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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

**CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE: APR 27 2010**

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

## EXHIBIT A

DESCRIPTION OF A TRACT OR PARCEL OF LAND CONTAINING 8.8511 ACRES OR 385,553 SQUARE FEET SITUATED IN THE HARRIS & WILSON SURVEY, ABSTRACT NO. 32, IN THE CITY OF HOUSTON, HARRIS COUNTY, TEXAS BEING THAT SAME TRACT OF LAND CONVEYED TO WESTBROOK, LLC. DATED SEPTEMBER 21, 1998 AS DESCRIBED UNDER HARRIS COUNTY CLERK'S FILE NO. T—280901, SAID 8.8511 ACRES OR 385,553 SQUARE FOOT TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a chain link fence post in the West right-of-way line of Lockwood Drive (called 100 feet wide) marking the Southeast corner of the herein described tract, same being the Northeast corner of that certain called 12.3663 acre tract of land described under M—771363;

THENCE South 89° 58' 00" seconds West, along and with the North line of said 12.3663 acre tract, a distance of 540.17 feet to a 5/8-inch capped iron rod found in the East line of Restricted Reserve "A", in block 1 of Mt. Corinth Missionary Baptist Church, a subdivision in Harris County, Texas according to the map or plat thereof recorded under Film Code No. 492038 of the Harris County map records, marking the Southwest corner of the herein described tract, same being the Northwest corner of said 12.3663 acre tract;

THENCE north 00° 02' 00" West, along and with the East line of said restricted reserve "A", at 94.84 feet passing a 5/8-inch iron rod found marking the Northeast corner of said Restricted Reserve "A" and being at the east line of that certain 20 foot wide drainage ditch as depicted in the recorded plat of Park Hill addition, section 2, a subdivision in Harris County, Texas according to the map or plat thereof recorded in volume 25 page 23 of the Harris County Map Records, continuing in all a total distance of 713.97 feet to an "x" in concrete found in the South right-of-way line of Sonora Street (called 50 feet wide at this point) marking the northwest corner of the herein described tract;

THENCE North 89° 58' 00" East, along and with the South right-of-way line of said Sonora Street, a distance of 525.17 feet to a 5/8-inch capped iron rod found marking the most northerly northeast cutback corner of the herein described tract;

THENCE South 45° 02' 00" east, along and with said cutback, a distance of 21.21 feet to a 5/8-inch capped iron rod found in the West right-of-way line of said Lockwood Drive marking the most Easterly Northeast cutback corner of the herein described tract;

THENCE South 00° 02' 00" East, along and with the West right-of-way line of said Lockwood Drive, a distance of 698.97 feet to the PLACE OF BEGINNING and containing 8.8511 acres or 385,533 square feet of land.