

City of Houston, Texas, Ordinance No. 2010- 416

**A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 28.6276 ACRES COMMONLY KNOWN AS 11092 to 11311 FONDREN ROAD, AND INCLUDING PORTIONS OF THE RIGHTS-OF-WAY OF BRAESRIDGE DRIVE, WEST BELLFORT AVENUE, AND SANFORD ROAD, 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 January 6, 2010, Weingarten Realty Investors ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 11092 to 11311 Fondren Road located in Houston, Texas 77071; and

**WHEREAS**, on April 20, 2010, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764 at Bayland Community Center, 6400 Bissonnet, Houston, Texas 77074, and notified the community when the City Council public hearing would occur; and

**WHEREAS**, City Council conducted a public hearing on May 19, 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 four 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 2nd day of June, 2010.

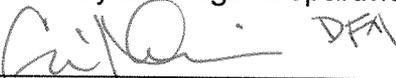
**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUN 08 2010.

  
\_\_\_\_\_  
City Secretary

Prepared by the Legal Department

 DFA  
\_\_\_\_\_  
Ceil Price, Senior Assistant City Attorney

26 May, 2010

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:**

**JUN 08 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

### Tract 1

All that certain 17.5997 acres being all of Unrestricted Reserve "A," Fondren Center Section One, according to the plat thereof recorded in Volume 204, Page 138, Harris County Map Records, Houston, Harris County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a set 5/8" iron rod with cap marking the north end of a cutback corner at the intersection of the east right-of-way line of Braesridge Drive (60' wide) with the north right-of-way line of West Belfort Avenue (100' wide);

THENCE N 02°30'16" W – 1,056.51', with the said east right-of-way line, to a set 5/8" iron rod with cap for angle point;

THENCE N 42°29'45" E – 14.11', with a cutback corner at the intersection of said east right-of-way line and the south right-of-way line of Sanford Road (60' wide), to a found 5/8" iron rod for angle point;

THENCE N 87°29'44" E – 693.85', with said south right-of-way line, to a set 5/8" iron rod with cap for angle point;

THENCE S 47°22'07" E – 14.11', with a cutback corner at the intersection of said south right-of-way line and the west right-of-way line of Fondren Road (100' wide), to a set 5/8" iron rod for angle point;

THENCE S 02°13'58" E – 1,059.70', with said west right-of-way line, to a set 5/8" iron rod with cap for angle point;

THENCE S 42°45'36" W – 14.13', with a cutback corner at the intersection of said west right-of-way line and the north right-of-way line of said West Belfort Avenue for angle point;

THENCE S 87°45'05" W – 688.75', with said north right-of-way line, to a found 5/8" iron rod for angle point;

THENCE N 47°22'36" W – 14.17' to the POINT OF BEGINNING of the herein described tract and containing 17.5997 acres (766,643 square feet) of land, more or less.

### Tract 2

All that certain 1.4222 acre out of Unrestricted Reserve "C," Fondren Center Section One according to the plat thereof recorded in Volume 204, Page 138, Harris County Map Records, Houston, Harris County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a found 5/8" iron rod marking the south end of a cutback corner at the intersection of the north right-of-way line of Sanford Road (60' wide) and the west right-of-way line of Fondren Road (100' wide);

THENCE S 87°29'44" W – 300.00', with said north right-of-way line to a set 5/8" iron rod with cap for corner;

THENCE N 02°13'58" W – 200.00', with the east line of a called 1.8593 acre tract described in a deed dated 09-21-2005 from Vihn Pham and spouse Lynn Pham to Phu Think, Incorporated filed in the Official Public Records of Real Property of Harris County, Texas at Clerk's File No. Y794351, Film Code 012-03-0179, to a found 5/8" iron rod for corner;

THENCE N 87°29'44" E- 310.00', with the south line of a 125' wide Harris County Flood Control District Fee Strip (Unit D140-01-00) filed in the Official Public Records of Real Property of Harris County, Texas at Clerk's File No. D617722, Film Code 147-38-1509, to a found 5/8" iron rod for corner;

THENCE S 02°13'58" E – 190.00', with the aforementioned west right-of-way line of Fondren Road, to a set 5/8" iron rod with cap for corner;

THENCE S 42°37'54" W – 14.18', with the aforementioned cutback corner to the POINT OF BEGINNING of the herein described tract and containing 1.4222 acres (61,950 square feet) of land, more or less.

### **Tract 3**

All that certain 8.4301 acres of land being all of Reserve "E," Fondren Center Section One according to the plat thereof filed in the Map Records of Harris County, Texas in Volume 204, Page 138, and being all that certain called 8.4301 acre tract of land described in a deed dated 07-14-1978 from Fondren Southwest Co. to Weingarten Realty, Inc. filed in the Official Public Records of Real Property of Harris County, Texas in Clerk File No. F-683965, Film Code No. 200-15-0437 and being more particularly described by metes and bounds as follows:

BEGINNING at a called & found 5/8" iron rod located in the north end of a 10' cutback corner for the north right-of-way line of West Bellfort Avenue (100' wide) at its intersection with the west right-of-way line of Larkwood Drive (60' wide);

THENCE S 42°45'34" W – 14.14', with the said cutback line to a set 5/8" iron rod with cap for the said north right-of-way line of West Bellfort Avenue, from which a found 5/8" iron rod bears S 83°17'46" E – 0.42';

THENCE S 87°45'05" W – 320.00', continuing with said north right-of-way line of West Bellfort Avenue to a set 5/8" iron rod with cap for the south end of a 10' cutback corner at its intersection with the east right-of-way line of Fondren Road (100' wide);

THENCE N 47°14'26" W – 14.14', with the said cutback line to a set 5/8" iron rod with cap for the said east right-of-way line of Fondren Road;

THENCE N 02°13'58" W- 1,060.13', continuing with said east right-of-way line of Fondren Road to a set 5/8" iron rod with cap for the south end of a 10' cutback corner at its intersection with the south right-of-way line of Sanford Road (60' wide), from which a found 5/8" iron rod bears N 00°23'36" E – 0.97';

THENCE N 42°37'54" E – 14.18', with the said cutback line to a said 5/8" iron rod with cap for the said south right-of-way line of Sanford Road;

THENCE N 87°29'44" E – 304.88', continuing with said south right-of-way line to a set 5/8" iron rod

with cap for the Point of Curvature of a curve to the right having a central angle of  $90^{\circ}16'18''$ , a radius of 25.00', a chord bearing of  $S\ 47^{\circ}22'07''\ E - 36.44'$ ;

THENCE in a southeasterly direction with said curve and with the west right-of-way line of said Larkwood Drive for an arc distance of 39.39' to a set 5/8" iron rod cap for the Point of Tangency;

THENCE  $S\ 02^{\circ}13'58''\ E - 1,046.53'$ , continuing with said west right-of-way line to the POINT OF BEGINNING and containing 8.4301 acres (367,215 square feet) of land, more or less.

#### **Tract 4**

All that certain 1.1758 acres of land out of Unrestricted "A," Fondren Southwest Northbrook Commercial Park, according to the plat thereof filed at Volume 189, Page 58 of the Harris County Map Records, out of the residue of that certain 5.243 acre tract described in deed dated 07-21-1980, from First City Bancorporation of Texas to Weingarten Realty, Inc. filed in the Official Public Records of Real Property of Harris County, Texas, at Clerk File No. G611336, Film Code No. 162-92-0241 and being more particularly described by metes and bounds as follows:

BEGINNING at a set 5/8" iron pipe with cap marking the southwest corner of said Unrestricted "A," Fondren Southwest Northbrook Commercial Park, in the east right-of-way line of Fondren Road (100' wide), according to the plat thereof filed at Volume 185, Page 6, H.C.M.R.;

THENCE  $N\ 02^{\circ}13'58''\ W - 160.00'$ , with said east right-of-way line, to found 5/8" iron rod for corner;

THENCE  $N\ 87^{\circ}45'05''\ E - 320.00'$ , with the south line of a called 2.4965 acre tract described in deed dated 01-17-2005, from Shamrock Adventure XXIX, LTD to Marwood Texas Group, LLC, filed in the Official Public Records of Real Property of Harris County, Texas, at Clerk File No. Y210029, Film Code No. 598-91-0871, to set 5/8" iron rod with cap for corner;

THENCE  $S\ 02^{\circ}13'58''\ E - 180.05'$ , with the west line of a 1.846 acre tract described in deed dated 03-16-2008, from Quang Nguyen et ux to Gemcraft Homes, filed in the Official Public Records of Real Property of Harris County, Texas, at Clerk File No. Z174079, Film Code No. 019-42-1455, to a found 5/8" iron rod for corner;

THENCE  $S\ 87^{\circ}45'44''\ W - 320.00'$ , with the south line of said Reserve "A", to the POINT OF BEGINNING and containing 1.1756 acres (51,210 square feet) of land, more or less.