

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 4.3950 ACRES COMMONLY KNOWN AS 5802 NAVIGATION BOULEVARD, HOUSTON, 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 28, 2010, Silver Bishop Holdings, L.P. and Farmer Brothers Co. (collectively, "Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 5802 Navigation Boulevard located in Houston, Texas 77011; and

WHEREAS, on May 6, 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 June 16, 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 23rd 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 29 2010.



City Secretary

Prepared by the Legal Department



June 17, 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: JUN 29 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 4.3950-ACRE (191,446 SQUARE FEET) TRACT OF LAND SITUATED IN THE S.M. WILLIAMS SURVEY, ABSTRACT NUMBER 87, HARRIS COUNTY, TEXAS, BEING OUT OF LOT 7 OF NIELS ESPERSON INDUSTRIAL DISTRICT, AS RECORDED IN VOLUME 9, PAGE 29 OF THE HARRIS COUNTY MAP RECORDS, AND OUT OF UNRESTRICTED RESERVE "A" OF CONTINENTAL COFFEE SECTION ONE, AS RECORDED UNDER FILM CODE NUMBER 387086 OF THE HARRIS COUNTY MAP RECORDS, AND OUT OF THAT CALLED 5.9509-ACRE TRACT DESCRIBED IN DEED TO SILVER BISHOP HOLDINGS, L.P., AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE NUMBER Z195935 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY AND CALLED 4.9654-ACRE TRACT DESCRIBED AS TRACT 2 IN A DEED TO FARMER BROS. CO., AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE NUMBER 20090089807 OF THE OFFICIAL PUBLIC RECORD OF REAL PROPERTY, ALSO BEING A PORTION OF NAVIGATION BOULEVARD (BASED ON A WIDTH OF 120-FEET) AS RECORDED IN VOLUME 663, PAGE 504 OF THE HARRIS COUNTY DEED RECORDS, AND A PORTION OF NORWOOD STREET (BASED ON A WIDTH OF 60-FEET), AS RECORDED IN VOLUME 9, PAGE 29 OF THE HARRIS COUNTY MAP RECORDS, SAID 4.3950-ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, (BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM OF 1983, SOUTH CENTRAL ZONE, AS DETERMINED BY GPS OBSERVATIONS. COORDINATES SHOWN HEREON ARE TEXAS SOUTH CENTRAL ZONE NO. 4204 STATE PLANE GRID COORDINATES (NAD83) AND MAY BE BROUGHT TO THE SURFACE BY APPLYING THE FOLLOWING COMBINED SCALE FACTOR OF 0.99988904557):

COMMENCING at a 1/2 -inch iron marking the intersection of the west right-of-way line of Greenwood Street (based on a width of 60-feet) as recorded in Volume 9, Page 29 of the Harris County Map Records with the south right-of-way line of said Navigation Boulevard, and being the northeast corner of said called 5.9509-acre tract and the northeast corner of said Lot 7, having coordinates X=3,137,823.29 and Y=13,837,782.55;

THENCE South 86°34'34" West 318.97', along the south right-of-way line of said Navigation Boulevard to the POINT OF BEGINNING of the herein described tract, having coordinates X=3,137,692.93 and Y=13,837,774.75;

THENCE South 03°23'57" East 400.44 feet, to an interior corner of said called 5.9509-acre tract, and being the southeast corner of the herein described tract, having coordinates X=3,137,716.67 and Y=13,837,375.06;

THENCE South 86°40'41", along the most westerly south line of said called 5.9509-acre tract, at 17.00 feet pass a 5/8-inch iron rod with cap stamped "Clark 1881" found marking the northeast corner of a called 1.332-acre tract described as Tract 1 in a deed to Farmer Bros. Co., as recorded under Harris County Clerk's File Number 20090089807 of the Official Public Records of Real Property, at 200.00 feet pass a 5/8" iron rod with cap stamped "Clark 1881" found marking the northwest corner of said called 1.332-acre tract and the most westerly southwest corner of said called 5.9509-acre tract, in the east right-of-way line of said Norwood Street, at 260.02 feet pass the west right-of-way line of said Norwood Street, and continuing over and across said called 4.9654-acre tract a

total distance of 368.02 feet to the southwest corner of the herein described tract, having coordinates X=3,137,349.30 and Y=13,837,353.74;

THENCE North 03°23'57" West, over and across said called 4.9654-acre tract, parallel to the west right-of-way line of said Norwood Street, at 401.13 feet pass a point in the south right-of-way line of said Navigation Boulevard and arc of a curve, having a radius of 1,492.69 feet, from which a nail found marking the end of a radial cut back at said Navigation Boulevard from Portwood Street (based on a width of 60-feet) as recorded under Film Code Number 387086 of the Harris County Map Records is in a westerly direction 253.87 feet along the arc of said curve to the right, having a central angle of 09°44'41" and a chord which bears North 86°07'18" West 253.56 feet, and from which a "X" cut in concrete found for the point of tangency of said curve is in an easterly direction 63.30 feet along said curve to the left, having a central angle of 02°25'48" and a chord which bears North 87°47'28" East 63.30 feet, and continuing on said parallel line over and across Navigation Boulevard a total distance of 521.25 feet to a point in the north right-of-way line of said Navigation Boulevard and in the arc of a curve to the left, whose center bears North 00°47'01" West, and being the northwest corner of the herein described tract, having coordinates X=3,137,318.40 and Y=13,837,874.01;

THENCE in an easterly direction, along the north right-of-way line of said Navigation Boulevard, 63.26 feet along the arc of said curve to the left, having a radius of 1,372.69 feet, a central angle of 02°38'25" and a chord which bears North 87°53'46" East 63.25 feet, to the point of tangency, having coordinates X=3,137,381.60 and Y=13,837,876.33;

THENCE North 86°34'34" East, continuing along the right-of-way line of said Navigation Boulevard, at 291.19 feet, pass a 5/8-inch iron rod found marking the southeast corner of a called 10,286 square foot tract described in a deed to General Stevedores, Inc., as recorded under Harris County Clerk's File Number E203091 of the Official Public Records of Real Property, and continuing for a total distance of 304.79 feet to the northeast corner of the herein described tract, having coordinates X=3,137,685.81 and Y=13,837,894.53;

THENCE South 03°23'57" East 120.00 feet, over and across said Navigation Boulevard to the POINT OF BEGINNING and containing 4.3950 acres (191,446 square feet) of land. This description accompanies an Exhibit, prepared by KMS Surveying, LLC and dated August 28, 2009.