

City of Houston, Texas, Ordinance No. 2010- 642

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH THREE TRACTS OF LAND CONTAINING 10.525 ACRES COMMONLY KNOWN AS 4516 HARRISBURG BOULEVARD, HOUSTON, TEXAS, AND INCLUDING PORTIONS OF THE RIGHTS-OF-WAY OF LOCKWOOD DRIVE, FELIX STREET, AND EASTWOOD AVENUE; 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 February 1, 2010, BAE Systems Resolution Corporation, Inc. ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting

designation ordinance for 4516 Harrisburg Boulevard, located in Houston, Texas 77011; and

**WHEREAS**, on May 20, 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 August 4, 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 three 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.

**PASSED AND ADOPTED** this 11th day of August, 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 AUG 17 2010.

  
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City Secretary

Prepared by the Legal Department

 *DFM*

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August 3, 2010, Ceil Price, Senior Assistant City Attorney

Requested by Daniel Krueger, P.E., Director,  
Public Works and Engineering Department  
L.D. File No. 0800900066001

**CAPTION PUBLISHED IN DAILY COURT  
REVIEW  
DATE:**

AUG 17 2010

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

EXHIBIT A

**METES AND BOUNDS DESCRIPTION  
10.525 ACRES (458,451 SQUARE FEET)  
S.M. WILLIAMS SURVEY, ABSTRACT NUMBER 87  
CITY OF HOUSTON, HARRIS COUNTY, TEXAS**

A metes and bounds description of a certain 10.525 acre (458,451 square feet) tract of land situated in the S.M. Williams Survey, Abstract Number 87, Harris County, Texas, being comprised of 3 tracts:

- 1) Being all of Block 3, Unrestricted Reserve D, Harrisburg Market as recorded under Film Code Number 601006 of the Harris County Map Records, and being conveyed to Six Westheimer, Ltd., (Parcel 2) Executed June 4, 2004 and recorded under Clerk's File Number X684793 of the Official Public Records of Real Property Harris County, Texas.
- 2) Being all of a called 0.5828 acre tract conveyed to Metropolitan Transit Authority of Harris County, Texas, Executed May 30, 2008 and recorded under Clerk's File Number 20080294816 of the Official Public Records of Real Property Harris County, Texas.
- 3) A portion of Felix Street south of Harrisburg Boulevard.

Said 10.525 acre tract being more particularly described as follows. All bearings being based on the Texas State Plane Coordinate System, South Central Zone (NAD 83) as determined from METRO monuments MC-307, MC-308, and MC-309. All distances and coordinates are surface and can be converted to grid by multiplying by the combined METRO scale factor of 0.99988701;

**BEGINNING** at a found 5/8 inch iron rod with "Survcon" cap marking the northeast corner of said Block 3, Unrestricted Reserve D, Harrisburg Market, said corner being at the intersection of the southerly right-of-way line of Harrisburg Boulevard (width varies) and the westerly right-of-way line of Lockwood Drive (width varies) said corner having coordinates of North= 13,837,691.25 East=3,133,622.89 (Surface) from which Metro monument MC-308 bears North 12°39'56" West, a distance of 1,194.40 feet.

THENCE, in a southwesterly direction with the westerly right-of-way line of Lockwood Drive and the easterly line of said Block 3, Unrestricted Reserve D, Harrisburg Market the following three (3) courses:

South 30°20'09" West, a distance of 49.88 feet, to a found 5/8 inch iron rod with "Earth Data" cap;

South 31°23'25" West, a distance of 70.09 feet, to a found 5/8 inch iron rod;

South 31°33'05" West, a distance of 381.41 feet, to a set cut "X" for the southeast corner of said Block 3, Unrestricted Reserved D, Harrisburg Market, said corner being on the northerly line of the G.H. & H. Railroad 50 foot right-of-way;

THENCE, North 71°58'48" West, with the southerly line of said Block 3, Unrestricted Reserve D, Harrisburg Market and the northerly line of said G.H. & H. Railroad, a distance of 1,078.57 feet, to a found 5/8 inch iron rod with "Survcon" cap marking the southwest corner of said Block 3, Unrestricted Reserve D, Harrisburg Market, said corner being on the easterly right-of-way line of Eastwood Avenue (based on a width of 60 feet);

THENCE, North 31°39'12" East, with the west line of said Block 3, Unrestricted Reserve D, Harrisburg Market and with the easterly right-of-way line of Eastwood Avenue, a distance of 346.88 feet to a found cut "X" for the beginning of a curve to the right;

THENCE, in a northeasterly direction, along said curve to the right, having a radius of 30.00 feet, a central angle of 69°05'55", a chord length of 34.03 feet, bearing North 66°12'10" East, a distance along the arc of 36.18 feet to a found cut "X" in the southerly right-of-way line of said Harrisburg Boulevard;

THENCE, in a easterly direction with the northerly line of said Block 3, Unrestricted Reserve D, Harrisburg Market and with the southerly right-of-way line of Harrisburg Boulevard the following eleven (11) courses:

South 79°14'58" East, a distance of 90.96 feet to a found 5/8 inch iron rod with "Survcon" cap;

North 31°39'12" East, a distance of 3.65 feet to a found cut "X";

South 81°43'59" East, a distance of 99.92 feet to a found cut "X";

South 78°49'05" East, a distance of 87.59 feet to a found cut "X";

South 78°48'45" East, a distance of 82.96 feet to a found 5/8 inch iron rod;

South 78°21'40" East, a distance of 137.60 feet to a found "PK" nail;

South 78°46'55" East, a distance of 31.08 feet to a found 5/8 inch iron rod with "Earth Data" cap;

South 79°31'41" East, a distance of 100.78 feet to a found cut "X";

South 80°42'34" East, a distance of 32.04 feet to a found 5/8 inch iron rod with "Earth Data" cap;

South 28°03'49" West, a distance of 29.63 feet to a found cut "X";

South 80°13'08" East, at a distance of 100.28 feet pass a found cut "X" in the westerly right-of-way line of Felix Street (38.86 foot right-of-way) and continuing across Felix Street, for a total distance of 141.11 feet to a point for corner in the easterly right-of-way line of said Felix Street and in the west line of said called 0.5828 acre Metropolitan Transit Authority of Harris County, Texas tract;

THENCE, North 27°45'25" East, with the east right-of-way line of said Felix Street and the west line of said called 0.5828 acre Metropolitan Transit Authority of Harris County, Texas tract, a distance of 19.71 feet to a found 5/8 inch iron rod with "Survcon" cap on the southerly right-of-way line of said Harrisburg Boulevard, said corner being the beginning of a non-tangent curve to the left;

THENCE, in a southeasterly direction, with the southerly right-of-way line of said Harrisburg Boulevard and the northerly line of said called 0.5828 acre Metropolitan Transit Authority of Harris County, Texas tract, with said non-tangent curve to the left, having a radius of 1,185.92 feet, a central angle of 05°34'48", a chord length of 115.45 feet, bearing South 76°58'01" East, a distance along the arc of 115.49 feet to a set 5/8 inch iron rod with "Baseline Corp." cap for the northeasterly corner of said called 0.5828 acre tract;

THENCE, South 31°43'02" West, along the east line of said called 0.5828 acre tract and with the southerly right-of-way line of Harrisburg Boulevard, a distance of 11.74 feet to a found cut "X";

THENCE, South 80°21'35" East, with the north line of the aforesaid Block 3, Unrestricted Reserve D, Harrisburg Market and with the southerly right-of-way line of Harrisburg Boulevard, a distance of 68.90 feet to a point for corner from which a found 2 inch iron pipe bears North 87°35' East, a distance of 0.24 feet;

THENCE, South 81°53'34" East, a distance of 112.91 feet to the POINT OF BEGINNING and containing 10.525 acres (458,451 square feet) of land.