

City of Houston, Texas, Ordinance No. 2010-779

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 6.7498 ACRES COMMONLY KNOWN AS 12534 MEMORIAL DRIVE, HOUSTON, TEXAS, AND PORTIONS OF TALLOWOOD AND MEMORIAL DRIVE RIGHTS OF WAY, HOUSTON, HARRIS COUNTY, TEXAS; 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 recently amended that process on July 14, 2010 by Ordinance No. 2010-556; 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 November 8, 2008, Differential Development-1994 Ltd. ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting

designation ordinance for 12534 Memorial Drive Site located in Houston, Texas 77024; and

WHEREAS, on August 31, 2010, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764, at the Tracey Gee Community Center, 3599 Westcenter Drive, Houston, Texas 77042, and notified the community when the City Council public hearing would occur; and

WHEREAS, the Development and Regulatory Affairs Committee of City Council conducted a public hearing on September 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, the Development and Regulatory Affairs Committee of 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, TEXAS:

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 6th day of October, 2010.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is OCT 12 2010.

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: OCT 12 2010



City Secretary

Prepared by the Legal Department



September 29, 2010, Ceil Price, Senior Assistant City Attorney
Requested by Daniel Krueger, P.E., Director,
Public Works and Engineering Department
L.D. File No. 0910700011002

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

EXHIBIT A

6.7498 acre tract in Lot 20 of BENIGNUS ACRES, recorded in Volume 15, Page 8 of the Map Records of Harris County, Texas out of the George Bellows Survey and being more particularly described by metes and bounds as follows:

Being a tract of land in the George Bellows Survey, Abstract No. 3, Harris County, Texas and being a portion of Lot 20 of Benignus Acres as per plat recorded in Volume 15, Page 8 of the Harris County Map Records and being that tract of land sold by Katherine Cullen Lesser, et al to Jacobo Freiman (Olbrish), et al as described in deeds recorded under Harris County Clerk's File Numbers C076022 and C077929 and being more particularly described by metes and bounds as follows with all bearings based on the north right-of-way line of Memorial Drive as being WEST:

BEGINNING at 3/4 inch iron pipe found marking the intersection of the north right-of-way line of Memorial Drive with the east right-of-way line of Tallowood and being the southwest corner of the herein described tract;

THENCE along the east right-of-way line of said Tallowood, N 00° 17' 00" E, 351.22 feet (Deed call 351.59 feet) to a 5/8 inch iron rod found marking the southwest corner of Memorial Pines, Section Two as per plat recorded in Volume 68, Page 8 of the Harris County Map Records and the northwest corner of the herein described tract;

THENCE along the south line of said Memorial Pines, Section Two, S 89° 58' 42" E, 836.83 feet (Deed call S 89° 56' 30" E, 837.58 feet) to a 5/8 inch iron rod found marking the southeast corner of said Memorial Pines, Section Two, the northeast corner of the herein described tract and a point in the west right-of-way line of Benignus Road;

THENCE along the west right-of-way line of said Benignus Road, S 00° 03' 29" W, 350.90 feet (Deed call SOUTH, 350.70 feet) to a 3/4 inch iron pipe found marking the intersection of the west right-of-way line of said Benignus Road with the north right-of-way line of said Memorial Drive;

THENCE along the north right-of-way of said Memorial Drive, WEST, 838.21 feet (Deed call 839.32 feet) to the POINT OF BEGINNING and containing 6.7498 acres of land.

Being the same property conveyed to Differential Development – 1994, Ltd. by Jacobo O. Freiman by that certain Special Warranty Deed recorded on June 8, 1994 in County Clerk's File No. P901413 of the Official Public Records of Real Property of Harris County, Texas.