

City of Houston, Texas, Ordinance No. 2010- 888

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 24.101 ACRES COMMONLY KNOWN AS 8901 MANCHESTER STREET, HOUSTON, TEXAS, 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 July 15, 2010, Lone Star Terminal LLC ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 8901 Manchester Street, Houston, Texas 77012; and

WHEREAS, on October 13, 2010, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764, at the Magnolia Multi Service Center, 7037 Capitol, Houston, Texas 77011, 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 October 28, 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 17th day of November, 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 NOV 23 2010.

CAPTION PUBLISHED IN DAILY COURT

REVIEW

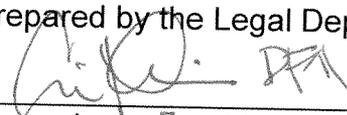
DATE:

NOV 23 2010



City Secretary

Prepared by the Legal Department



November 15, 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
✓		NORIEGA
✓		BRADFORD
✓		JONES
CAPTION	ADOPTED	

EXHIBIT A

A tract of land containing 24.101 acres, more or less, being part of and out of a 47.3593 acres of land, and also being described as part of and out of those several tracts described in deeds recorded under Harris County Clerk's File Nos. C876351, C899303, and C603755 of the Official Public Records of Real Property for Harris County (OPRRPHC), in the J. R. Harris Survey, Abstract No. 27, and the Callahan & Vince Survey, Abstract No. 9, in Houston, Harris County, Texas; said 24.101 acres being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8-inch iron rod found marking the Southwesterly corner of TEXAS PORT RECYCLING-MANCHESTER, a subdivision of land according to the map or plat thereof recorded in County Clerk's File No. 608018 in the Harris County Map Records (HCMR), on the northerly line of Manchester Avenue (80 feet wide), and being the Southeasterly corner of the herein described tract;

THENCE, S 86 deg. 37' 51" W, along the northerly line of Manchester Avenue, for a distance 328.02 feet to an "X" set in concrete for corner;

THENCE, N 02 deg. 08' 12" W, for a distance of 523.47 feet to a 5/8-inch iron rod set for an angle point;

THENCE, N 03 deg. 00' 06" W, for a distance of 375.00 feet to an "X" found on top of a 4 foot high wall;

THENCE, S 86 deg. 52' 55" W, for a distance of 601.89 feet to a 5/8-inch iron rod set for corner;

THENCE, N 03 deg. 22' 07" W, for a distance of 349.42 feet to a 5/8-inch iron rod set for angle point;

THENCE, N 23deg. 12' 30" E, along the southeasterly line of a "Save and Except" Tract as described in Clerk's File No. G524664 (OPRRPHC), for a distance of 167.64 feet to a 5/8-inch iron rod set for an angle point, same being to Northeast corner of said "Save and Except" Tract;

THENCE, N 03 deg. 38' 07" W, for a distance of 306.15 feet to the Northwest corner of the herein described tract, on the southerly bank of the Houston Ship Channel, from which the corner of a bulkhead bears witness at N 07 deg. 40' 39" W, a distance of 9.87 feet;

THENCE in a general NORTHEASTERLY direction, along the meanders of the southerly bank of the Houston Ship Channel, with calls for course and distance as follows:

N 73 deg. 20' 52" E – 87.48 feet;

N 68 deg. 27' 13" E – 149.98 feet;

N 75 deg. 08' 06" E – 194.96 feet;

N 75 deg. 26' 25" E – 164.08 feet;

N 41 deg. 57' 09" E – 74.44 feet;

and N 79 deg. 12' 25" E – 180.21 feet to a point for corner, same being the Northwest corner of aforesaid TEXAS PORT RECYCLING-MANCHESTER Subdivision;

THENCE, S 03 deg. 25' 00" E, along the westerly line of said TEXAS PORT RECYCLING-MANCHESTER Subdivision, at a distance of 105.67 feet pass a 1/2-inch Galvanized Iron Pipe found for reference inside a 1.5 inch diameter iron pipe, and continuing for a total distance of 1,393.55 feet to a 5/8-inch iron rod found for corner;

THENCE, N 86 deg. 50' 20" E, continuing along a westerly line of said TEXAS PORT RECYCLING-MANCHESTER Subdivision, for a distance of 30.00 feet to a 5/8-inch iron rod found for a re-entrant corner of said subdivision;

THENCE, S 03 deg. 23' 40" E, continuing along a westerly line of said TEXAS PORT RECYCLING-MANCHESTER Subdivision, for a distance of 526.03 feet to the PLACE OF BEGINNING, of a tract containing 24.101 acres of land, more or less, including those areas inundated by the waters of the Houston Ship Channel as indicated by the plat attendant to the description herein and issued the date indicated above.