

City of Houston, Texas, Ordinance No. 2010-889

**A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH THREE TRACTS OF LAND CONTAINING APPROXIMATELY 5.7719 ACRES COMMONLY KNOWN AS 1212 MILBY STREET AND 3503-3719 POLK STREET, HOUSTON, TEXAS AND PORTIONS OF MILBY STREET, POLK STREET AND YORK STREET 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 March 8, 2010, Hoerbiger Corporation of America, Inc., Morgan Advanced Materials and Technology, Inc. and Houston Warehouse Associates (hereinafter collectively referred to as "Applicant") applied to the

Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 1212 Milby Street and 3503-3719 Polk Street located in Houston, Texas 77023; and

**WHEREAS**, on September 21, 2010, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764, at the E. B. Cape Center, 4501 Leeland, Houston, Texas 77023, 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 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 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	
✓		<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 I

All that certain 3.157 acres of land out of the west half of lot 57, a subdivision of the S.M. Williams Survey, A-87, Harris County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a found 3/4" iron pipe marking the southwest corner of that certain called 119,606.05 square feet parcel described in a deed dated 1-13-1967 from Sidco Corporation to Maurice R. Teague, Trustee filed at Volume 6538, Page 111 Harris County Deed Records;

THENCE N 35° 43' 53" E – 189.66', along the west line of said 119,606.05 square feet parcel, to a set 5/8" iron rod for corner;

THENCE N 62° 19' 19" W – 3.55', along the south line of that certain called 3,605 square feet parcel of land described in a deed dated 8-13-1980 from Builders Mart, Inc. to Maurice R. Teague, Trustee filed in the official public records of real property of Harris County, Texas at Clerk File No. G-595091, Film Code No. 167-95-0085, to a set 5/8" iron rod for corner;

THENCE N 35° 16' 57" E – 17.66', along the west line of said 3,605 square feet parcel, to a set 5/8" iron rod for corner;

THENCE S 62° 19' 19" E – 3.69', along the north line of said 3,605 square feet parcel, to a set 5/8" iron rod for corner;

THENCE N 38° 03' 45" E – 27.60', along the southerly west line of that certain called 13,492.724 square feet parcel of land described in a deed dated 1-13-1967 from Sidco Corporation to Maurice R. Teague, Trustee filed at Volume 6538, Page 111 Harris County Deed Records, to a set 5/8" iron rod for corner;

THENCE N 58° 00' 00" W – 6.00', along the northerly south line of said 13,492.724 square feet parcel, to a set 5/8" iron rod for corner;

THENCE N 35° 16' 57" E – 77.11', along the northerly west line of said 13,492.724 square feet parcel, to a found fence corner post for corner;

THENCE S 46° 09' 30" E – 71.18', along the north line of said 13,492.724 square feet parcel, to a found 5/8" iron rod for angle point;

THENCE S 41° 26' 59" E – 136.08', continuing along the north line of said 13,492.724 square feet parcel, to a found 5/8" iron for corner;

THENCE S 34° 56' 04" W – 35.95', along the east line of said 13,492.724 square feet parcel, to a found 5/8" iron for angle point;

THENCE S 27° 40' 41" W – 17.50', along the east line of said 3,605 square feet parcel, to a set 5/8" iron for corner;

THENCE S 62° 19' 19" E – 162.70, along the north line of said 119,606.05 square feet parcel, to a set 5/8" iron rod being a point on a curve having a central angle of 6° 16' 52", a radius of 930.30', the center of said curve being located on a radial line bearing S 28° 21' 25" W from said point;

THENCE in a southeasterly direction along said curve, and continuing along the north line of said 119,606.05 square feet parcel, for an arc distance of 101.99' to a set 5/8" iron rod for angle point;

THENCE S 46° 31' 07" E – 90.83', continuing along the north line of said 119,606.05 square feet parcel, to a found 5/8" iron rod for angle point;

THENCE S 35° 57' 24" E – 95.72', continuing along the north line of said 119,606.05 square feet parcel, to a found 5/8" iron rod for corner;

THENCE S 35° 11' 00" W – 97.05', along the west right-of-way line of Milby Street (60' wide), to a set 5/8" iron rod for corner;

THENCE N 73° 34' 13" W – 140.13', along the south line of said 119,606.05 square feet parcel, to a found 5/8" iron rod for angle point;

THENCE N 62° 04' 54" W – 399.80', continuing along the south line of said 119,606.05 square feet parcel, to a set 1/2" iron rod being a point on a curve having a central angle of 7° 42' 08", a radius of 617.21', the center of said curve being located on a radial line bearing N 25° 31' 24" E from said point;

THENCE in a northwesterly direction along said curve and continuing along the south line of said 119,606.05 square feet parcel, for an arc distance of 82.97' to a found 5/8" iron rod for angle point;

THENCE N 55° 17' 45" W – 35.31', continuing along the south line of said 119,606.05 square feet parcel, to the POINT OF BEGINNING and containing 3.157 acres (137,526 square feet) of land more or less.

## Tract II

All that 2,488 square feet of land out of the west half of Lot 57, a subdivision of the S.M. Williams Survey, A-87 Harris County Texas and being more particularly described by metes and bounds as follows: All that certain 2,488 square feet of land out of the west half of Lot 57, a subdivision of the S.M. Williams Survey, A-87 Harris County, Texas and being all of that certain called 2,462.80 square feet of land described as "Tract III" in a deed dated 1-13-1967 from Sidco Corporation to Maurice R. Teague, Trustee filed at Volume 6638, Page 104 Harris County Deed Records and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8" iron rod marking the southwest corner of said "Tract III" from which the City of Houston Engineering Department Reference Rod No. 739 bears N 54° 49' W – 30.82' and S 35° 11' W – 197.02' from said point;

THENCE N 35° 11' E – 39.06', along the east right-of-way line of Milby Street (60' wide), to a 5/8" iron rod for corner;

THENCE S 64° 44' 02" E – 33.41' to a 5/8" iron rod for corner;

THENCE S 17° 37' 31" E – 74.37' to a 5/8" iron rod for corner, being a point on a curve having a central angle of 17° 53' 03", a radius of 296.44' the center of said curve being located on a radial line bearing S 44° 12' 36" W from said point;

THENCE along said curve in a Northwesterly direction for an arc distance of 92.53' to the POINT OF BEGINNING and containing 2,488 square feet of land, more or less.

### Tract III

Being a 2.6149 acre tract of land located in the S.M. Williams Survey, A-87, located in the City of Houston in Harris County, Texas and also being that same tract of land recorded in Harris County Clerks File Number H-244746, said tract being bounded in the north by the Houston Belt and Terminal Railroad R.O.W. (abandoned), Milby Street in the east, Polk Street in the south, and York Street in the west, said 2.6149 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at an "X" set in concrete for the Southwest corner of 2.619-acre tract (H.C.C.F. No. H-244746), said point also being at the intersection of the Southeasterly R.O.W. of York Street (called 80' wide) and the Northerly R.O.W. of Polk Street (called 60' wide);

THENCE North 19° 24' 00" East, a distance of 219.49 feet, along the Southeasterly R.O.W. of York Street (called 80' wide) to a point found for corner from whence a found building corner bears N 52° 51' W, 0.17 feet;

THENC South 56° 20' 05" East, a distance of 205.66 feet, along Northerly line of said 2.6149 acres tract to an "X" in concrete set for an angle point;

THENCE South 62° 38' 36" East, a distance of 413.82 feet, continuing along the Northerly line of said tract to an "X" in concrete set for an angle point;

THENCE South 77° 22' 43" East, as distance of 137.27 feet, continuing along the Northerly line of said tract to a 1/2" iron rod with cap set for the Eastern most corner of said 2.6149 acre tract and a point in the Northwesterly R.O.W. of Milby Street (called 60' wide);

THENCE South 35° 31' 00" West, a distance of 139.96 feet, along the Easterly line of said tract and also along the Northwesterly R.O.W. of Milby Street (called 60' wide), to a

point in the Northerly R.O.W. of Polk Street (called 60' wide), from whence a building corner bears S 52° 51' E 0.18 feet;

THENCE North 70° 30' 00" West, a distance of 612.76 feet along the Southerly line of said 2.6149 acre tract also the Northerly R.O.W. of Polk Street (called 60' wide), to an "X" in concrete set for corner;

THENCE North 19° 30' 00" East, a distance of 5.50 feet, following a jog in the Northerly R.O.W. of Polk Street, to an "X" in concrete set for corner;

THENCE North 70° 30' 00" West, a distance of 93.86 feet, continuing along the Northerly R.O.W. of Polk Street to an "X" in concrete set for corner and also a point in the Southeasterly R.O.W. of York Street (called 80' wide) to the PLACE OF BEGINNING and containing 2.6149 acres of land or 113,905.61 square feet, more or less.