

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH THREE TRACTS OF LAND CONTAINING 18.180 ACRES COMMONLY KNOWN AS 800 BURNETT STREET, HOUSTON, TEXAS AND PORTIONS OF KEENE STREET, TRENTM STREET (A/K/A TRENTHAM STREET), NORTH MAIN STREET, NAYLOR STREET, VINE STREET, AND DALY STREET RIGHTS OF WAY, HOUSTON, HARRIS COUNTY, 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 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 19, 2010, Metropolitan Transit Authority of Harris County (METRO) ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal

setting designation ordinance for 800 Burnett Street, located in Houston, Texas 77009;

WHEREAS, on January 27, 2011, the Director of the Public Works and Engineering Department conducted a public meeting as required by Section 47-764 of the Code of Ordinances, Houston, Texas, at the Jefferson Davis High School, 1101 Quitman, Houston, Texas 77009 and notified the community when the public hearing would occur; and

WHEREAS, a City Council committee, designated by the Mayor, conducted a public hearing on February 17, 2011; 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 9th day of March, 2011.

APPROVED this _____ day of _____, 2011.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is MAR 15 2011.



City Secretary

Prepared by the Legal Department

 DPA

March 3, 2011, Ceil Price, Senior Assistant City Attorney
Requested by Daniel Krueger, P.E., Director,
Public Works and Engineering Department
L.D. File No. 0910700011002

CAPTION PUBLISHED IN DAILY COURT
RECORD
DATE: MAR 15 2011

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

EXHIBIT A

TRACT I METES AND BOUNDS DESCRIPTION OF A 2.985 ACRE TRACT IN THE JOHN AUSTIN 2 LEAGUE GRANT, ABSTRACT NO.1 CITY OF HOUSTON, HARRIS COUNTY, TEXAS

A 2.985 acre tract of land situated in the John Austin 2 League Grant, Abstract Number 1, Harris County Texas, being all of Tract 30, called 1.494 acre tract of land and all of Tract 31, called 1.491 acre tract conveyed to Metropolitan Transit Authority by deed and recorded under Harris County Clerk's File (H.C.C.F.) No. 20080230006 of Official Public Records of Real Property Harris County, Texas (O.P.R.R.P.H.C.T.); said 2.985 acre tract being more particularly described by metes and bounds as follows (bearings based on the Texas State Plane Coordinate System South Central Zone NAD 83. Coordinates shown are surface coordinates using a surface adjustment factor of 1.00010666):

BEGINNING at the intersection of the existing northerly right-of-way line of Trentem Street (aka Trentham Street) (variable width) with the existing westerly right-of-way line of Keene Street (variable width), being the most southern southeasterly corner of said Tract 30, having surface coordinates of North = 13,847,731.74 feet and East = 3,123,137.75 feet, from said corner Metropolitan Transit Authority of Harris County monument MC - 122 bears South 57°24'29" East, a distance of 575.54 feet;

THENCE, South 65°32'49" West, a distance of 73.40 feet, along the northwesterly right-of-way line of Trentem Street (aka Trentham Street), being the southeasterly line of said Tract 30 to a set 5/8-inch iron rod with "GS" cap in the existing northerly right-of-way line of the remainder of a called 5.14 acre tract of land conveyed to Texas and New Orleans Railroad Company by deed and recorded in Volume 58, Page 286 of Harris County Deed Records (H.C.D.R.);

THENCE, along the northerly right-of-way line of the main railroad tracks, being the southerly line of said Tract 30 for the following five (5) calls:

1. North 73°15'48" West, a distance of 101.52 feet to a found 5/8-inch iron rod with "GS" cap for the point of curvature of a curve to the left;
2. In a northwesterly direction, along said curve to the left, having a radius of 1,937.44 feet, a central angle of 02°00' 17", an arc length of 67.79 feet and a chord bearing and distance of North 74°15'57" West, 67.79 feet to a found 1/2-inch iron rod for the end of said curve;
3. North 75°16'05" West, a distance of 37.12 feet to a set 5/8-inch iron rod with "GS" cap for an angle point;

4. North $04^{\circ}40'31''$ West, a distance of 9.20 feet to a set 5/8-inch iron rod with "GS" cap;
5. North $57^{\circ}37'29''$ West, a distance of 100.37 feet to a point in the southeasterly line of said 1.491 acre tract, being the most northern northwesterly corner of said 1.494 acre tract, from which a found 5/8-inch iron rod bears South $77^{\circ}35'$ East, 0.36 feet;

THENCE, South $42^{\circ}45'39''$ West, a distance of 3.42 feet, along the northerly right-of-way line of the main railroad tracks, being the southeasterly line of said 1.491 acre tract to a found 5/8- inch iron rod for an angle point;

THENCE, South $52^{\circ}17'34''$ West, a distance of 7.89 feet, continuing along the northerly right-of-way line of the main railroad tracks, being the southeasterly line of said 1.491 acre tract to the southeasterly corner of that certain called 2.324 acre tract of land conveyed to Tuffli Company Inc, by deed and recorded in H.C.C.F. No. T351523 of said Official Public Records, being the southwesterly corner of said 1.491 acre tract, from which a found 3/8-inch iron rod with "Landtech" cap bears South $03^{\circ}07'$ West, 0.36 feet;

THENCE, North $42^{\circ}21'34''$ West, a distance of 66.34 feet, along the northeasterly line of said 2.324 acre tract, being the southwesterly line of said 1.491 acre tract to a set 5/8-inch iron rod with "GS" cap for the most southern corner of that certain called 2.31 acre tract of land conveyed to Sidney McClendon, III, Trustee, by deed and recorded in H.C.C.F. No. E999537 of said Official Public Records;

THENCE, North $25^{\circ}08'33''$ West, a distance of 154.83 feet, along the northeasterly line of said 2.31 acre tract, being the southwesterly line of said 1.491 acre tract to a found 3/4-inch iron pipe (bent) in the southeasterly line of a Private Street as recorded in Volume 161, Page 476 and Volume 210, Page 553 both of said Deed Records, being the northwesterly corner of said 1.491 acre tract;

THENCE, North $42^{\circ}33'28''$ East, a distance of 263.33 feet, along the southeasterly line of said Private Street, being the northwesterly line of said 1.491 acre tract to the intersection of the southeasterly line of said Private Street with the existing westerly right-of-way line of Keene Street (40' R.O.W.) as recorded in Volume 1, Page 48 of Harris County Map Records, being the northeasterly corner of said 1.491 acre tract, from which a found 1-inch iron pipe (bent) bears South $48^{\circ}58'$ East, 5.58 feet;

THENCE, South $49^{\circ}44'53''$ East, a distance of 211.99 feet, along the existing westerly right-of-way line of Keene Street, being the northeasterly line of said 1.491 acre tract to a found 1-inch iron rod at the northeasterly corner of said 1.494 acre tract, being the southeasterly corner of said 1.491 acre tract;

THENCE, along the existing westerly right-of-way line of Keene Street, being the southeasterly line of said 1.494 acre tract for the following four (4) calls:

1. South $24^{\circ}42'40''$ East, a distance of 118.96 feet to an angle point;

2. South $24^{\circ}42'24''$ East, a distance of 149.60 feet to an angle point;
3. South $73^{\circ}24'36''$ West, a distance of 19.96 feet to an angle point;
4. South $24^{\circ}59'54''$ East, a distance of 86.88 feet to the **POINT OF BEGINNING** and containing 2.985 acre (130,019 square feet) of land.