

City of Houston, Texas, Ordinance No. 2011-583

**A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH ONE TRACT OF LAND CONTAINING 20.6397 ACRES COMMONLY KNOWN AS 9800 CLINTON DRIVE, 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 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 December 16, 2010, Union Pacific Railroad Company ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 9800 Clinton Drive, located in Houston, Texas 77029; and

**WHEREAS**, on March 9, 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 Clinton Community Center, 200 Mississippi, Houston, Texas 77029, and notified the community when the public hearing would occur; and

**WHEREAS**, on March 25, 2011, the Director of the Public Works and Engineering Department conducted a second public meeting as required by Section 47-764 of the Code of Ordinances, Houston, Texas, at the Sweethome Missionary Baptist Church, 2503 16<sup>th</sup> Street, Galena, Texas 77547, 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 June 16, 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 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 July, 2011.

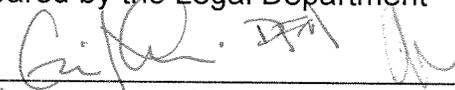
APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUL 12 2011.

  
City Secretary

Prepared by the Legal Department

  
29 June, 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  
REVIEW  
DATE: JUL 12 2011

AYE	NO	
✓		<b>MAYOR PARKER</b>
••••	••••	<b>COUNCIL MEMBERS</b>
✓		STARDIG
✓		JOHNSTON
	ABSENT DUE TO BEING ILL	CLUTTERBUCK
✓		ADAMS
✓	ABSENT ON	SULLIVAN
	PERSONAL BUSINESS	HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		COSTELLO
✓		LOVELL
✓		NORIEGA
✓		BRADFORD
✓		JONES
CAPTION	ADOPTED	

## EXHIBIT A

Being a tract of land containing 20.6397 acres (899,066 square feet) of land, more or less, and being out of the Union Pacific Railroad Company property located at 9800 Clinton, Houston, Harris County, Texas, and portions of adjacent properties, being described more particularly by metes and bounds as follows:

BEGINNING at Monitor Well OS-26 having a grid coordinates of N 13,830,502.21 E 3,157,944.54, said coordinates being NAD83 coordinates located in the Texas South Central Zone (combined factor is 0.99989507);

THENCE N 32 degrees 14 minutes 49 seconds W a distance of 1031.71 feet to Monitor Well OS-8 for corner;

THENCE N 01 degree 24 minutes 58 seconds W a distance of 677.83 feet to Monitor Well OS-2 for corner;

THENCE N 24 degrees 54 minutes 47 seconds W a distance of 131.71 feet to Monitor Well MWS-15 for corner;

THENCE N 62 degrees 43 minutes 47 seconds E a distance of 248.46 feet to Monitor Well MWS-3 for corner;

THENCE N 85 degrees 09 minutes 57 seconds E a distance of 104.88 feet to Monitor Well MWS-20 for corner;

THENCE N 83 degrees 12 minutes 00 seconds E a distance of 340.27 feet to Monitor Well TW-01 for corner;

THENCE S 35 degrees 04 minutes 43 seconds E a distance of 147.99 feet to Monitor Well MWS-19 for corner;

THENCE S 03 degrees 42 minutes 55 seconds W a distance of 383.19 feet to Monitor Well OS-24 for corner;

THENCE S 02 degrees 33 minutes 05 seconds W a distance of 1074.48 feet to Monitor Well OS-7 for corner; and

THENCE S 11 degrees 41 minutes 16 seconds W a distance of 261.13 feet to Monitor Well OS-26, the POINT OF BEGINNING containing 20.6397 acres (899,066 square feet) of land, more or less.