

City of Houston, Texas, Ordinance No. 2011- 631

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH ONE TRACT OF LAND CONTAINING 6.5040 ACRES COMMONLY KNOWN AS 18310 MARKET STREET 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 February 18, 2011, MSJ Holdings, L.P. ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 18310 Market Street, located in Houston, Texas 77530; and

WHEREAS, on May 16, 2011, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-

WHEREAS, on May 16, 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 M.L. Flukinger Community Center, 16003 Lorenzo Street, Houston, Texas 77530, 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 20th day of July, 2011.

APPROVED this _____ day of _____, 2011.

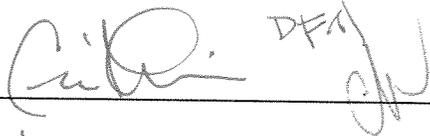
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUL 26 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. 0631100064001

CAPTION PUBLISHED IN DAILY COURT

REVIEW JUL 26 2011

DATE: G:\Real Estate\MSDs-2011\18310 Market Street.doc 6/23/2011

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

EXHIBIT A

DESCRIPTION

6.5040 ACRES OR 283,315 SQUARE FEET

A TRACT OR PARCEL CONTAINING 6.5040 ACRES OR 283,315 SQUARE FEET OF LAND, BEING OUT OF A CALLED 0.500 ACRE TRACT OF LAND ("TRACT I") AND A CALLED 23.000 ACRE TRACT OF LAND ("TRACT II") TO MARKET STREET REALTY COMPANY AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE NUMBER W585730, SITUATED IN THE J.T. HARRELL SURVEY, ABSTRACT NO. 330, HARRIS COUNTY, TEXAS, DESCRIBED AS FOLLOWS WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 1983;

COMMENCING AT A 1/2" IRON ROD FOUND ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF A CALLED 60 FOOT WIDE PRIVATE ROAD (A.K.A. MARKET STREET), ALSO BEING ON THE NORTHERLY LINE OF A CALLED 10.204 ACRE TRACT OF LAND TO KIRBY INLAND MARINE, LP. AND DIXIE CARRIERS, INC. AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE NUMBER X008312, MARKING THE MOST WESTERLY CORNER OF SAID 0.500 ACRES;

THENCE NORTH 31 DEGREES 13 MINUTES 46 SECONDS EAST, WITH SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 60.32 FEET TO A WESTERLY CORNER AND THE PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 31 DEGREES 13 MINUTES 46 SECONDS EAST, CONTINUING WITH SAID SOUTHEASTERLY RIGHT-OF-WAY LINE, AT A DISTANCE OF 87.30 FEET PASS A 1" IRON ROD FOUND MARKING THE MOST NORTHERLY CORNER OF SAID 0.500 ACRES AND A WESTERLY CORNER OF SAID 23.000 ACRES, CONTINUING FOR A TOTAL DISTANCE OF 599.00 FEET TO THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 55 DEGREES 07 MINUTES 11 SECONDS EAST, DEPARTING SAID RIGHT-OF-WAY LINE, A DISTANCE OF 569.92 FEET TO THE MOST EASTERLY CORNER OF THE HEREIN DESCRIBED TRACT, SAME BEING ON THE CALLED NORTH LINE OF THE SAN JACINTO RIVER;

THENCE SOUTH 40 DEGREES 51 MINUTES 26 SECONDS WEST, DEPARTING SAID NORTH LINE OF THE SAN JACINTO RIVER, A DISTANCE OF 204.63 FEET TO AN ANGLE POINT;

THENCE SOUTH 45 DEGREES 17 MINUTES 51 SECONDS WEST, A DISTANCE OF 288.91 FEET TO A SOUTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 78 DEGREES 49 MINUTES 14 SECONDS WEST, A DISTANCE OF 25.92 FEET TO A POINT ON SAID NORTH LINE OF THE SAN JACINTO RIVER, SAME BEING AN ANGLE POINT OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 51 DEGREES 33 MINUTES 10 SECONDS WEST, DEPARTING SAID NORTH LINE OF THE SAN JACINTO RIVER, A DISTANCE OF 246.80 FEET TO AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 38 DEGREES 29 MINUTES 51 SECONDS WEST, A DISTANCE OF 169.68 FEET TO A POINT ON THE COMMON LINE OF SAID 10.204 ACRES AND SAID 23.000 ACRES, SAME BEING A SOUTHERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 57 DEGREES 04 MINUTES 14 SECONDS WEST, WITH SAID COMMON LINE, AT A DISTANCE OF 26.11 FEET PASS A WESTERLY CORNER OF SAID 23.000 ACRES AND THE SOUTH CORNER OF SAID 0.500 ACRES, CONTINUING FOR A TOTAL DISTANCE OF 125.11 FEET TO A WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 32 DEGREES 56 MINUTES 24 SECONDS EAST, DEPARTING SAID COMMON LINE, A DISTANCE OF 61.78 FEET TO AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 58 DEGREES 45 MINUTES 36 SECONDS WEST, A DISTANCE OF 50.45 FEET TO THE PLACE OF BEGINNING AND CONTAINING 6.5040 ACRES OR 283,315 SQUARE FEET OF LAND.