City of Houston, Texas, Ordinance No. 2013-394

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 2.228 ACRES COMMONLY KNOWN AS 6347 WESTHEIMER ROAD, 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 26, 2012, **DAR MARINER'S, LTD.**, a Texas limited partnership ("Applicant"), applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for its property that is located generally at 6347 Westheimer Road, Houston, Texas 77057; and

WHEREAS, on March 18, 2013, the Director of the Public Works and Engineering Department conducted a public meeting at the Burnett Bayland Community Center, 6000 Chimney Rock, Houston, Texas 77081 as required by section 47-764 of the Code of Ordinances, and notified the community when the City Council public hearing would occur; and

WHEREAS, a City Council committee, designated by the Mayor, conducted a public hearing on April 9, 2013; 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 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 Technology, Transportation and Infrastructure 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 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 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 5. 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 6. 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 7. 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 8. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Applicants shall provide the director of 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 9. 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 Applicants, TCEQ and EPA.

Section 10. That the Applicants 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 11. 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 12. 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 application 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 13. That 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 that date and shall take effect

immediately upon its passage and approval by the mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 1st day of May, 2013.

APPROVED this _____ day of _____, 2013.

_____
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is MAY 0 7 2013.

_____
City Secretary

Prepared by Legal Depart. _____ DFA
CP/lks 4/18/2013 Senior Assistant City Attorney
Requested by Daniel W. Krueger, P.E., Director,
Public Works and Engineering Department

L.D. File No. 063-1300089-001
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AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
	✓	BROWN
✓		DAVIS
✓		COHEN
ABSENT-OUT OF CITY CITY BUSINESS		ADAMS
✓		MARTIN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
ABSENT DUE TO BEING ILL		GREEN
✓		COSTELLO
	ABSENT	BURKS
✓		NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT REVIEW DATE: MAY 0 7 2013

METES AND BOUNDS DESCRIPTION
EXHIBIT "A"

2.228 ACRES (97,030 SQUARE FEET)
JOHN D. TAYLOR LEAGUE, ABSTRACT NUMBER 72
HARRIS COUNTY, TEXAS

Being a tract of parcel containing 2.228 acres (97,030 square feet) of land situated in the John D. Taylor League, Abstract Number 72, Harris County, Texas; being all of Tract 3 and Tract 4 as conveyed to Sid C Weiss, by deed recorded under Harris County Clerk's File (H.C.C.F.) Number E4222586, Harris County, Texas; said 2.228 acre tract being more particularly described as follows (bearings are referenced to the above described deed):

BEGINNING at a point in the south right-of-way (R.O.W.) line of Westheimer Road (120-foot wide R.O.W.), for the northeast corner of a 60-foot wide private roadway as delineated on the plat of MARINERS VILLAGE, a subdivision recorded in Volume 211, Page 74, Harris County Map Records (HCMR), and marking the northwest corner of said Tract 3 and the herein described tract, from which a found 5/8-inch iron rod bears North 63^{0}54' West, 0.17 feet;

THENCE, North 89^{0}53'30" East, along said south R.O.W. line and along the north line of said Tract 3, at a distance of 239.30 feet passing the common north corner of said Tract 3 and Tract 4, continuing along said south R.O.W. line and along the north line of said Tract 4, in all, a distance of 478.77 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the west line of a 5-foot wide easement conveyed to Harris County Fresh Water Supply district (HCFWSD) Number 26 by instrument recorded in Volume 2783, Page 395, Harris County Deed Records (HCDR), said iron rod marking the northeast corner of said Tract 4 and the herein described tract;

THENCE, South 00^{0}07'00" East, departing said south R.O.W. line, along the west line of said HCFWSD 5-foot wide easement and along the east line of said Tract 4, a distance of 110.30 feet to an angle point in the east line of said Tract 4 and the herein described tract;

THENCE, South 29^{0}53'00" East, continuing along the west line of said 5-foot wide easement and along the east line of said Tract 4, a distance of 16.57 feet to a cut "X" in concrete set in the west line of a City of Houston easement (21,017 square feet) (Parcel Number 4807-A) for flood control and drainage purposes recorded in Volume 4852, Page 237, HCDR, said cut "X" marking an angle point in the east line of said Tract 4 and the herein described tract;

THENCE, South 11^{0}41'20" East, along the east line of said Tract 4 and along the west line of said City of Houston easement, a distance of 76.88 feet to a 5/8-inch iron rod with cap stamped "Terra Surveying" set I the north line of Mariners Village Section Two, a subdivision recorded in Volume 223, Page 67, HCMR and marking the southeast corner of said Tract 4 and the herein described tract;

THENCE, South 89^{0}53'30" West, along the north line of said Mariners Village Section Two and along the south line or said Tract 4, at a distance of 262.70 feet passing the common south corner of said Tract 3 and Tract 4, continuing along the north line of said Mariners Village Section Two and along the south line of said Tract 3, in all, a distance of 502.78 feet to a cut "X" in concrete set in the east line of the aforesaid 60-foot wide private roadway, said cut "X" marking the southwest corner of aid Tract 3 and the herein described tract;

Thence, North 00^{0}07'00" East, along the east line of said 60-foot wide private roadway and along the west line of said Tract 3, a distance of 200.00 feet to the Point of Beginning and containing 2.228 acres (97,030 square feet) of land. This description is based on the Land Title Survey and plat made by Terra Surveying Company, Inc., dated June, 1998, TSC Project Number 2717-9801-S.