City of Houston, Texas, Ordinance No. 2012-1094

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 64.75 ACRES COMMONLY KNOWN AS 5425 POLK 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 June 27, 2012, **BAKER HUGHES INCORPORATED**, a Delaware for-profit corporation ("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 5425 Polk Street, Houston, Texas 77023; and

WHEREAS, on November 6, 2012, the Director of the Public Works and Engineering Department conducted a public meeting at the Magnolia Multi-Service Center, 7037 Capitol, Houston, Texas 77011 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 November 13, 2012; 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 12th day of December, 2012.

APPROVED this _____ day of _____, 2012.

_____
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 18 2012.

_____
City Secretary

Prepared by Legal Depart. _____ DFM
CP/lks 12/4/2012 Senior Assistant City Attorney
Requested by Daniel W. Krueger, P.E., Director,
Public Works and Engineering Department

L.D. File No. 063-1200317-001
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AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
	✓	BROWN
✓		DAVIS
✓		COHEN
✓		ADAMS
	ABSENT	SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
✓		GREEN
	ABSENT-ON PERSONAL BUSINESS	COSTELLO
✓		BURKS
	ABSENT-OUT OF CITY ON PERSONAL BUSINESS	NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT REVIEW
DATE: DEC 18 2012

METES AND BOUNDS DESCRIPTION
EXHIBIT "A"

TRACT 2
METES AND BOUNDS DESCRIPTION
64.75 ACRES (2,820,539 SQ. FT.)
OUT OF RESTRICTED RESERVE "B"
BLOCK ONE, CENTRAL CITY INDUSTRIAL PARK
HARRIS COUNTY, TEXAS

Being a tract or parcel of land containing 64.75 acres (2,820,539 square feet) situated in S.M. Williams Survey Abstract No. 87, Harris County, Texas, and being out that certain tract called 67.5510 acres being Unrestricted Reserve "B", Block One, Central City Industrial Park, as recorded in Vol. 358, Pg. 49, of the Map Records of Harris County, Texas, said 64.75 acres being conveyed to Baker Real Estate, an operating division of BHOO, as portions of the First, Second, and Third Tracts, described in the deed of record in Harris County Clerk's File No. P288059, said 64.75 acres being more particularly described by metes and bounds as follows (with all bearing referenced to State Plane Coordinate System, South Central Zone):

BEGINNING at a railroad spike set for the northeast corner of said 67.5510 acre Reserve "B", in the south line of the G.H. & H. R.R. Co. right-of-way (50 feet wide) as described in Vol. 85, Pg. 463, of the Deed Records of Harris County, being located fifty feet west from the centerline of the H.B. & T main railroad tracks in the west line of the residue of the certain tract called 4.64 acres, conveyed to H.B. & T. R.R. Co., described in Vol. 252, Pg. 448, of the Deed Records of Harris County, and being the northeast corner of the herein described 64.75 acre tract;

Thence along the east line of said Reserve "B", along a line parallel with and fifty feet west of the H.B. & T. main railroad tracks, the following three courses:

South 28^{0}55'55" West, a distance of 211.38 feet to a 5/8-inch iron rod set for a point of curvature;

In a southerly direction, a distance of 519.34 feet following the arc of a curve to the right, having a radius of 2864.83 feet and a central angle of 10^{0}23'12" (Ch=S34^{0}07'32"W, 518.63') to a 5/8-inch iron rod set for a point of tangency;

South 39^{0}19'08" West, a distance of 639.44 feet to an "X" cut found in concrete for the most easterly southeast corner of the herein described parcel, being the northeast corner of the certain tract called 2.434 acres, conveyed to the State of Texas, described in Harris County Clerk's File No. R694217;

THENCE along the northerly line of said 2.4343 acre tract, the following seven courses:

North 50^{0}40'52" West, a distance of 157.64 feet to an "X" cut in concrete for an angle point;

North 72^{0}33'49" West, a distance of 54.43 feet to a P-K nail set in concrete for a corner;

North 17^{0}26'11" East, a distance of 3.70 feet to a P-K nail set in concrete for a point of curvature;

In a northwesterly direction, a distance of 72.26 feet along the arc of a curve to the left, having a radius of 46.00 feet and a central angle of 90°00'00" (Ch=N27°33'49"W, 65.05') to an "X" cut in concrete for a point of tangency;

North 72°33'49" West, a distance of 47.37 feet to a 5/8-inch iron rod found for a point of curvature;

In a southwesterly direction, a distance of 34.25 feet following the arc of the curve to the left, having a radius of 41.00 feet and a central angle of 47°51'44" (Ch=S83°30'19"W, 33.26') to an "X" cut found in concrete for point of compound curvature;

In a southwesterly direction, a distance of 52.22 feet following the arc of a curve to the left, having a radius of 71.00 feet and a central angle of 42°08'36" (Ch=S38°30'49"W, 51.05') to an "X" cut found in the concrete for point of tangency:

Thence South 17°26'11" West along the west line of said 2.434 acre tract, a distance of 339.37 feet to an "X" cut found in concrete in the north right-of-way line of Polk Avenue (width varies) as dedicated in Vol. 460, pg. 216, of the Deed Records of Harris County and widened in Vol. 358, Pg. 49, of the Map Records of Harris County, being the south line of said Reserved "B", for the most southerly southeast corner of the herein described parcel;

Thence North 72°33'49" West along the north right-of-way line of Polk Avenue and the south line of said Reserve "B", a distance of 1496.09 feet to a 5/8-inch iron rod set in the east line of Block 4, Jackson Court subdivision, as recorded in Vol. 655, Pg. 231, of the Deed Records of Harris County, being the southwest corner of said Reserve "B" and the herein described parcel;

Thence North 31°38'11" East along the east line of said Jackson Court, Blocks 4 and 3, being the west line of said Central City Industrial Park, a distance of 976.56 feet to a 5/8-inch iron rod set for an angle point in Slaughter Pen Bayou;

Thence North 38°52'30" West (Called N56°23'28"W) along the west line of said Central City Industrial Park, a distance of 7.92 feet to a 5/8-inch iron rod set for an angle point in the east line of Evergreen Cemetery as described in Vol. 73, Pg. 239, of the Deed Records of Harris County;

Thence North 31°13'43" East along the west line of said Central City Industrial Park and the east line of said Evergreen Cemetery, a distance of 677.11 feet to a 5/8-inch iron rod set in the south line of said G.H. & H. RR. Co. right-of-way, for the northwest corner of said Reserve "B" and the herein described parcel;

Thence South 71°58'17" East along the south line of said G.H. & H. RR. Co. right-of-way, being the north line of said Reserve "B", parallel with and 25 feet south of the centerline of the railroad tract, a distance of 1874.00 feet to the Point of Beginning and containing 64.75 acres (2,820,539 square feet) of land, more or less.