

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH ONE TRACT OF LAND CONTAINING 9.1677 ACRES COMMONLY KNOWN AS 3777 WEST 12TH STREET, HOUSTON, HARRIS COUNTY, TEXAS; SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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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 October 31, 2011, Wackman Properties, LLC ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 3777 West 12th Street, located in Houston, Texas 77055; and

WHEREAS, on January 18, 2012, 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 Love Community Center, 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 15, 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 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

(5) the public rights of way immediately adjacent to the designated property be included, at no additional cost to the city, in the TCEQ application; and

(6) certain reasonable and necessary conditions are imposed on the Applicant; 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.

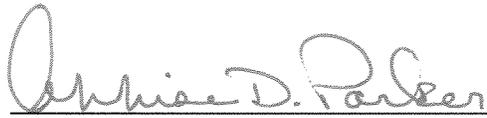
Section 12. That within 30 days after receipt of the municipal setting designation certificate from the TCEQ, the Director of the Public Works and Engineering Department shall file a certified copy of this Municipal Setting Designation Ordinance in the deed records of Harris County.

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 7th day of March, 2012.

APPROVED this 7th day of March, 2012.

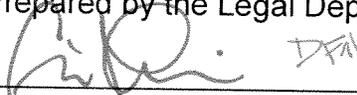


Mayor of the City of Houston

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

City Secretary

Prepared by the Legal Department



Cell Price, Senior Assistant City Attorney

29 February, 2012

Requested by Daniel Krueger, P.E., Director,
Public Works and Engineering Department

L.D. File No. 0631200018001

AYE	NO	
✓		MAYOR PARKER
....	COUNCIL MEMBERS
	✓	BROWN
✓		DAVIS
✓		COHEN
✓		ADAMS
✓		SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		BURKS
✓		NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

EXHIBIT A
METES AND BOUNDS DESCRIPTION
“DESIGNATED PROPERTY”
9.1677 ACRES IN THE
JOHN REINERMAN LEAGUE, ABSTRACT 642
HARRIS COUNTY, TEXAS

A 9.1677-ACRE (399,343 SQUARE FEET) TRACT OF LAND SITUATED IN THE JOHN REINERMAN LEAGUE, ABSTRACT NUMBER 642, HARRIS COUNTY, TEXAS, BEING THE RESIDUE OF THAT CALLED 8.62-ACRE TRACT OF LAND DESCRIBED AS TRACT ONE AND ALL OF THAT CALLED 2.667-ACRE TRACT OF LAND DESCRIBED AS TRACT TWO IN SPECIAL WARRANTY DEED TO WACKMAN PROPERTIES, LLC RECORDED UNDER HARRIS COUNTY CLERK'S FILE NUMBER 20090092830 OF THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, SAID 9.1677-ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, (BEARINGS BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, SOUTH CENTRAL ZONE (4204), AS DETERMINED BY GPS MEASUREMENTS. COORDINATES SHOWN HEREON ARE TEXAS SOUTH CENTRAL ZONE NO. 4204 STATE PLANE GRID COORDINATES (NAD83) AND MAY BE BROUGHT TO THE SURFACE BY APPLYING THE FOLLOWING COMBINED SCALE FACTOR OF 0.99989593068):

BEGINNING at a 1/2-inch iron rod found in the west right-of-way line of Penner Street (60-foot width) as dedicated by West Loop Industrial Park, Section One, a subdivision plat recorded in Volume 130, Page 41 of the Harris County Map Records marking the northeast corner of Lot 1, Block 1 of said West Loop Industrial Park, Section One, subdivision, same being the southeast corner of said called Tract Two and the herein described tract of land, having the coordinates X=3,095,132.98 and Y=13,851,960.05;

- (1) **THENCE** South 87°53'17" West, 1,168.35 feet to a TxDot monument with aluminum cap found in the arc of a curve, on the easterly right-of-way line of Interstate Highway West Loop 610 North (300-foot width) marking the northwest corner of said Lot 1, Block 1, same being the southwest corner of said Tract Two

and the herein described tract of land, having the coordinates X=3,093,965.54 and Y=13,851,916.99;

- (2) **THENCE** in a northeasterly direction with said easterly right-of-way line of Interstate Highway West Loop 610 North, the westerly line of said Tract Two and Tract One, along the arc of a curve to the right having an arc length of 355.77 feet, a radius of 5554.58 feet, a central angle of 03°40'11" and a chord which bears North 07°41'27" East, 355.71 feet to a TxDot monument with aluminum cap found in the south right-of-way line of West 12th Street (60-foot width) same being the north line of said Tract One for the northwest corner of the herein described tract of land from which a found 5/8-inch iron rod bears South 15°11' West, 10.7 feet, having the coordinates X=3,094,013.29 and Y=13,852,269.47;
- (3) **THENCE** North 87°54'53" East, a distance of 1,108.02 feet with the south right-of-way line of said West 12th Street and the north line of said Tract One to a 5/8-inch iron rod with cap stamped "RPLS 5485" set marking the intersection of the south right-of-way line of said West 12th Street and the west right-of-way line of said Penner Street at the northeast corner of said Tract One and the herein described tract of land, having the coordinates X=3,095,120.31 and Y=13,852,309.78;
- (4) **THENCE** South 02°04'27" East, a distance of 350.00 feet with the west right-of-way line of said Penner Street and the east line of said Tract One and Tract Two to the **POINT OF BEGINNING** and containing 9.1677 acres (399,343 Square Feet) of land.