

City of Houston, Texas, Ordinance No. 2012-346

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH PROPERTY CONTAINING 5.028 ACRES COMMONLY KNOWN AS 1304 BLALOCK ROAD, SUITE F, 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 12, 2011, **RANDALL'S FOOD & DRUGS LP**, a Delaware 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 1304 Blalock Road, Suite F, located in Houston, Texas 77055; and

WHEREAS, on February 27, 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 the Sosa Community Center, 1414 Wirt Road, Houston, Texas 77055, 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 March 22, 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 property 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

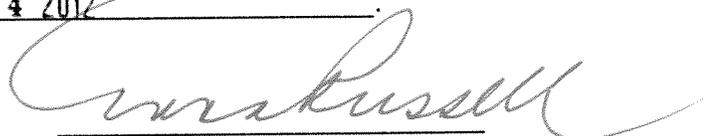
herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

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.

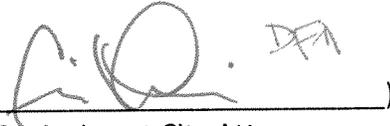
PASSED AND APPROVED this 18th day of April, 2012.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Charter of the City of Houston, Texas, the effective date of the foregoing Ordinance is APR 24 2012.



City Secretary

(Prepared by Legal Dept. )
(CP:lks 4/6/12) Sr. Assistant City Attorney

(Requested by Daniel W. Krueger, P.E., Director, Public Works and Engineering Dept.)

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

Legal Description

A 5.028 acre tract of land out of the East Quarter of Lot 11 of the THOMAS A. HOSKINS SURVEY, A-342, Harris County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found at the intersection of the South right-of-way line of Westview Drive, based on a width of 80 feet, with the West right-of-way line of Adkins Road, based on a width of 60 feet;

THENCE South 00 deg. 29 min. 35 sec. West, along the West right-of-way line of Adkins Road, a distance of 643.273 feet to a 5/8 inch iron rod for corner;

THENCE West, a distance of 382.20 feet to a 5/8 inch iron rod for corner in the East right-of-way line of Blalock Drive Extension, based on a width of 100 feet, said point being in a curve of the left whose radius is 1195.92 feet;

THENCE along the East right-of-way line of Blalock Drive Extension, following said curve to the left whose radius is 1195.92 feet, having a central angle of 14 deg. 18 min. 11 sec., a distance of 298.54 feet to a 5/8 inch iron rod for corner;

THENCE North 62 deg. 03 min. 08 sec. East, a distance of 190.00 feet to a 5/8 inch iron rod for corner;

THENCE North 25 deg. 59 min. 35 sec. West, a distance of 190.00 feet to a 5/8 inch iron rod for corner in the South right-of-way line of Westview Drive, said point being a curve to the right whose radius is 1105.92 feet;

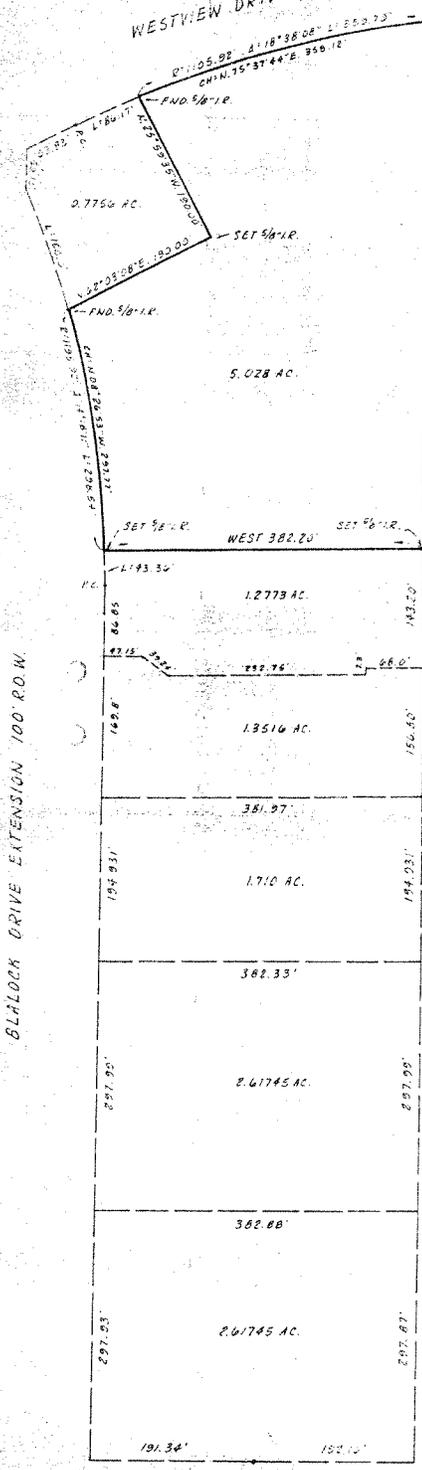
THENCE along the South right-of-way line of Westview Drive, following said curve to the right whose radius is 1105.92 feet, having a central angle of 18 deg. 38 min. 08 sec., a distance of 359.70 feet to the POINT OF BEGINNING and containing 219,009 square feet or 5.028 acres.

Exhibit "A"



WESTVIEW DRIVE 80' R/W

POINT OF BEGINNING
FND 5/8" I.P.



BLALOCK DRIVE EXTENSION 100' R.O.W.

300' 29' 39" W. 643.273'

LARSON RD.

ADKINS ROAD

ELIZABETH RD.

The undersigned does hereby certify that a survey was this day made on the property legally described hereon and is correct and that there are no encroachments of easements or rights-of-way except as shown.

Dated this 26th day of Nov, 1985.



Signed: Ralph C. Hilton
Registered Public Surveyor, No. 799

SKETCH OF SURVEY
OF
5.028 AC. IN THE E. QUARTER OF LOT 11
OF THE THOMAS A. HOSKINS SUR. A-342
HARRIS COUNTY, TX.
SCALE: 1"=100' NOV. 26, 1985

RALPH C. HILTON
CONSULTING ENGINEER