

City of Houston, Texas, Ordinance No. 2012- 347

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH PROPERTY CONTAINING 3.490 ACRES COMMONLY KNOWN AS 600 HUGHES 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 January 14, 2011, **SCHUMACHER INTERNATIONAL, INC.**, a Texas for-profit corporation (formerly known as Schumacher Co., Inc.) ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 600 Hughes Street, located in Houston, Texas 77023; and

WHEREAS, on March 7, 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 Eastwood Community Center, 5000 Harrisburg Road, Houston, Texas 77011, 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.

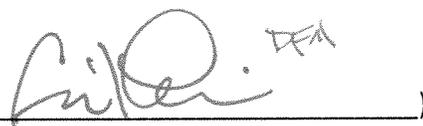
PASSED AND APPROVED this 18th day of April, 2012.

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	

Exhibit A

Legal Description

Being a tract of land containing 3.490 acres located in the S.M. Williams Survey, Abstract-87, Harris County, Texas; said 3.490 acre tract being all of a called 3.4551 acre tract, recorded in the name of Iweko, Inc., under Harris County Clerk's File Number (H.C.C.F.No.) M877253, said 3.490 acre tract being more particularly described by metes and bounds as follows (bearings based on the Texas Coordinate System of 1983, South Central Zone):

BEGINNING at a 5/8-inch iron rod with Miller Survey Group cap set marking the southwest corner of said 3.4551 acre tract, same being the northwest corner of the Lunnen Estate, a subdivision of record under Volume 3, Page 74 of the Harris County Map Records (H.C.M.R.), also called the Lunnon Estate a subdivision of record under Volume 553, Page 165, Harris County Deed Records (H.C.D.R.), said rod being on the west right-of-way (R.O.W.) line of Hughes Street (width varies) from which a 1-inch iron pipe found at the southwest corner of a tract recorded in the name of Theresa Lunnen Sims in Volume 1038, Page 321, H.C.D.R., bears South 31 degrees 45 minutes 56 second West, a distance of 148.70 feet;

THENCE, with the west line of said 3.4551 acre tract and the west R.O.W. line of said Hughes Street, North 31 degrees 45 minutes 56 seconds East, at a distance of 387.02 feet passing a 1-inch iron pipe found, and containing a total distance of 445.03 feet to the centerline of Slaughter Pen Bayou, for northwest corner of said 3.4551 acre tract, and a northwesterly corner of a called 10.4145 acre tract recorded in the name of Carter Precision Parts in H.C.C.F.No. F740489;

THENCE, with the common lines of said 3.551 acre tract, and 10.4145 acre tract with the centerline of said Slaughter Pen Bayou the following seventeen (17) courses:

1. South 65 degrees 53 minutes 11 seconds East, a distance of 47.09 feet;
2. South 48 degrees 56 minutes 13 seconds East, a distance of 31.96 feet;
3. South 19 degrees 26 minutes 08 seconds East, a distance of 12.54 feet;
4. South 07 degrees 55 minutes 12 seconds West, a distance of 40.49 feet;
5. South 00 degrees 48 minutes 13 seconds West, a distance of 21.80 feet;
6. South 40 degrees 28 minutes 33 seconds East, a distance of 26.04 feet;
7. South 79 degrees 24 minutes 48 seconds East, a distance of 49.18 feet;
8. South 72 degrees 36 minutes 18 seconds East, a distance of 42.18 feet;
9. South 78 degrees 31 minutes 20 seconds East, a distance of 43.48 feet;
10. South 75 degrees 24 minutes 57 seconds East, a distance of 40.51 feet;
11. South 68 degrees 23 minutes 52 seconds East, a distance of 34.70 feet;
12. South 12 degrees 06 minutes 43 seconds East, a distance of 20.89 feet;
13. South 16 degrees 28 minutes 36 seconds West, a distance of 33.13 feet;
14. South 08 degrees 50 minutes 20 seconds East, a distance of 94.81 feet;
15. South 24 degrees 29 minutes 01 seconds West, a distance of 34.33 feet;

16. South 11 degrees 23 minutes 24 seconds West, a distance of 125.41 feet;
17. South 03 degrees 13 minutes 49 seconds West, a distance of 26.96 feet to the southeast corner of said 3.4551 acre tract, being the northeast corner of said Lunnen Estates also called Lunnon Estates for the southeast corner of the herein described tract;

THENCE, with the common lines of said 3.4551 acre tract and said Lunnen Estates also called Lunnon Estates, North 74 degrees 26 minutes 58 seconds West, at a distance of 46.52 feet passing a found 1-inch iron pipe, and continuing a total distance of 507.05 feet to the **POINT OF BEGINNING** and containing 3.490 acres of land.

