

City of Houston, Texas, Ordinance No. 2012- 405

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH PROPERTY CONTAINING AN AGGREGATE OF 23.51 ACRES COMMONLY KNOWN AS 8945 MANCHESTER 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 November 9, 2011, **TEXAS PORT RECYCLING 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 8945 Manchester Street, located in Houston, Texas 77012; and

WHEREAS, on April 5, 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 Hartman Community Center, Houston, Texas 77012, 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 April 10, 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 the findings contained in the preamble of this Ordinance are determined to be true and correct and are adopted as part of this Ordinance.

Section 2. That for purposes of this Municipal Setting Designation Ordinance, the "designated property" means the property described in Exhibits A and B, attached to this Ordinance and incorporated by reference herein.

Section 3. 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 4. 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 5. 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 6. 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 7. 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 8. 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 9. 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 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 2nd day of May, 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 MAY 08 2012.

[Signature]
City Secretary

(Prepared by Legal Dept. [Signature] ^{DFA})
(CP:lks 4/12/12) Sr. Assistant City Attorney
(Requested by Daniel W. Krueger, P.E., Director, Public Works and Engineering Dept.)

L.D. File No. 063-12000____-001
TEXAS-PORT.wpd

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

METES AND BOUNDS DESCRIPTION
12.46 ACRES (542,873 SQUARE FEET)
TRACT 1

Being 12.46 acres (542,873 square feet) of land situated in the Callahan and Vince Survey, Abstract No. 9, Harris County, Texas and being all of that certain 12.46 acre tract of land conveyed to NW Port Properties, L.C. by instrument recorded under File Number Y468324 and Film Code 005-55-2468 of the Harris County Official Public Records of Real Property; said 12.46 acres (542,873 square feet) of land being more particularly described by metes and bounds as follows (all bearings are referenced to the monumented west line of said NW Port Properties, L.C. 12.46 acre tract):

BEGINNING at the intersection of the west right-of-way line of Interstate Highway 610, varying in width and recorded under File Number C657488 and Film Code 089-31-0302 of the Harris County Official Public Records of Real Property, with the north right-of-way line of Manchester Avenue, based on 80 feet in width, and being the southeast corner of the herein described tract of land and from which a disturbed 3/4 inch iron pipe with cap bears N 89°13' W, 0.15 feet and a 5/8 inch iron rod bears N 86°06' E 0.56 feet;

THENCE S 86°37'51" W 263.00 feet (called S 86°39'09" W 264.11 feet), with the north right-of-way line of said Manchester Avenue, to a point for the southeast corner of that certain 0.5791 acre tract of land conveyed to the City of Houston by instrument recorded in Volume 343, Page 320 of the Harris County Deed Records and being a corner in the south line of this tract and from which a 3/4 inch iron pipe with cap, found for reference, bears S 86°37'51" W 3.00 feet;

THENCE N 03°23'40" W 455.30 feet (called 455.47 feet), with the east line of said 0.5791 acre tract, to a 3/4 inch iron pipe found for the most southerly corner of that certain 1050 square foot tract of land conveyed to Lone Star Industries, Inc. by instrument recorded in Volume 1438, Page 396 of the Harris County Deed Records and quitclaimed to Texas Port Properties, Inc. by instrument recorded under File Number P731688 and Film Code 001-50-0937 of the Harris County Official Public Records of Real Property, and being an interior corner of this tract and from which a 5/8 inch iron rod bears N 32°29' W 0.22 feet;

THENCE N 26°33'24" W 76.27 feet to a 3/4 inch iron pipe with cap found for the most westerly corner of said 1050 square foot tract and being in the north line of said 0.5791 acre tract and being an interior corner of this tract;

THENCE S 86°50'20" W 20.00 feet, to a 1/2 inch iron pipe found for the northwest corner of said 0.5791 acre tract and being an interior corner of this tract;

THENCE S 03°23'40" E 525.48 feet (called 525.63 feet), to a 3/4 inch iron pipe with cap found for the southwest corner of said 0.5791 acre tract, same being a corner in the south

line of this tract and also being in the north right-of-way line of said Manchester Avenue and from which a 5/8 inch iron rod bears N 24°31' W 0.46 feet;

THENCE S 86°37'51" W (called S 86°39'09" W) 150.00 feet, with the north right-of-way line of said Manchester Avenue, to a 5/8 inch iron rod found for the southeast corner of the residue that certain 2.8 acre tract of land, called Tract XVI, conveyed to Lone Star Cement Corporation by instrument recorded under File Number C876351 and Film Code 103-22-1206 of the Harris County Official Public Records of Real Property, and being the southwest corner of this tract;

THENCE N 03°23'40" W 526.03 feet (called 526.12 feet) to a 5/8 inch iron rod found for the northeast corner of the residue of said 2.8 acre tract and being a corner in the west line of this tract;

THENCE S 86°50'20" W 30.00 feet, with the north line of said 2.8 acre tract, to an iron rod with cap marked "A. Sikes-RPLS 2914" found for a corner in the west line of this tract and being the southeast corner of the residue that certain 1.96 acre tract of land, called Tract I, conveyed to Lone Star Cement Corporation by instrument recorded under File Number C899303 and Film Code I 04-28-2489 of the Harris County Official Public Records of Real Property;

THENCE N 03°25'00" W 646.03 feet to a bent 3/4 inch iron pipe with cap found for the northwest corner of this tract, same being the southwest corner of that certain 11.05 acre tract of land conveyed to WALNEW, LTD. by instrument recorded under File Number Y468328 and Film Code 005-55-2489 of the Harris County Official Public Records of Real Property, and being in the east line of the residue that certain 7.0 acre tract of land conveyed to Lone Star Cement Corporation by instrument recorded under File Number C603755 and Film Code 084-22-0685 of the Harris County Official Public Records of Real Property;

THENCE N 86°35'00" E 410.00 feet to a bent 3/4 inch iron pipe with cap found for a corner in the south line of said 11.05 acre tract and being a corner in the north line of this tract;

THENCE S 03°25'00" E 317.20 feet to a corner in the south line of said 11.05 acre tract and being a corner in the north line of this tract and from which a bent 3/4 inch iron pipe with cap bears N 89°08' E 0.25 feet;

THENCE N 86°35'00" E 140.34 feet to a 3/4 inch iron pipe with cap found for the southeast corner of said 11.05 acre tract and being the northeast corner of this tract and also being in the west right-of-way line of Interstate Highway 610, formerly Concrete Avenue, and conveyed to Harris County by instrument recorded in Volume 367, Page 523 of the Harris County Deed Records;

THENCE S 03°22'51" E (called S 03°25'00" E) 271.88 feet with the west right-of-way line of said Interstate Highway 610, to a TXDOT (Texas Department of Transportation)

monument in concrete found for the most northerly corner of said tracts conveyed by instrument recorded under File Number C657488 and Film Code 089-31-0302 of the Harris County Official Public Records of Real Property, and being an angle point in the east line of this tract;

THENCE S 02°11'57" W (called S 02°09'48" W) 586.28 feet to the PLACE OF BEGINNING and containing 12.46 acres (542,873 square feet) of land.

The areas stated in acres are compatible with the allowable precision of closure for this survey. The areas stated in square feet are calculated values only. All 3/4 inch iron pipes with caps found by this survey are marked "J. Heck- RPLS 4385". This metes and bounds description accompanies a plat of survey prepared by Give'm Heck, Inc. under Job No. 24-002B, dated January 30, 2006.

METES AND BOUNDS DESCRIPTION
11.05 ACRES (481,579 SQUARE FEET)
TRACT2

Being 11.05 acres (481,579 square feet) of land situated in the Callahan and Vince Survey, Abstract No. 9, Harris County, Texas and being all of that certain 11.05 acres (481,579 square feet) of land conveyed to WALNEW, LTD., by instrument recorded under File Number Y468328 and Film Code 005-55-2489 of the Harris County Official Public Records of Real Property; said 11.05 acres (481,579 square feet) of land being more particularly described by metes and bounds as follows (all bearings are referenced to the monumented west line of said WALNEW LTD. 11.05 acre tract):

COMMENCING at the intersection of the west right-of-way line of Interstate Highway 610, varying in width and recorded under File Number C657488 and Film Code 089-31-0302 of the Harris County Official Public Records of Real Property, with the north right-of-way line of Manchester Avenue, based on 80 feet in width, and being the southeast corner of a 12.46 acre tract of land conveyed to NW Port Properties, L.C. by instrument recorded under File Number Y468324 and Film Code 005-55-2468 of the Harris County Official Public Records of Real Property and from which a 3/4 inch iron pipe with cap bears N 89°13' W 0.15 feet and a 5/8 inch iron rod bears N 86°06' E 0.56 feet;

THENCE N 02°11 '57" E (called N 02°09'48" E) 586.28 feet, to a TXDOT (Texas Department of Transportation) monument in concrete found for the most northerly corner of said tracts conveyed by instrument recorded under File Number C657488 and Film Code 089-31-0302 of the Harris County Official Public Records of Real Property, and being an angle point in the east line of said 12.46 acre tract;

THENCE N 03°22'51" W (called N 03°25'00" W) 271.88 feet with the west right-of-way line of Interstate Highway 610, formerly Concrete Avenue, conveyed to Harris County by instrument recorded in Volume 367, Page 523 of the Harris County Deed Records, to a 3/4 inch iron pipe with cap found for the northeast corner of said 12.46 acre tract and being the PLACE OF BEGINNING and the southeast corner of the herein described tract of land;

THENCE S 86°35'00" W 140.34 feet to a corner in the north line of said 12.46 acre tract, same being a corner in the south line of this tract, and from which a 3/4 inch iron pipe with cap bears N 89°08' E 0.24 feet;

THENCE N 03°25'00" W 317.20 feet to a bent 3/4 inch iron pipe with cap found for a corner in the north line of said 12.46 acre tract and being a corner in the south line of this tract;

THENCE S 86°35'00" W 410.00 feet to a bent 3/4 inch iron pipe with cap found for the northwest corner of said 12.46 acre tract, same being the southwest corner of this tract, and being in the east line of the residue that certain 7.0 acre tract of land conveyed to

Exhibit "B"

Lone Star Cement Corporation by instrument recorded under File Number C603755 and Film Code 084-22-0685 of the Harris County Official Public Records of Real Property;

THENCE N 03°25'00" W 747.55 feet, passing at 637.55 feet a 3/4 inch iron pipe with cap found for reference, to the northeast corner of said 7.0 acre tract, same being the northwest corner of this tract, and being in the south bank of the Houston Ship Channel as conveyed to the United States of America by instruments recorded in Volume 166, Page 57 and Volume 166, Page 153, both of the Harris County Deed Records;

THENCE in a generally easterly direction with the meanders of said Houston Ship Channel the following courses and distances:

N 79°10'48" E 180.55 feet,
N 69°09'14" E 213.92 feet, and
S 82°27'58" E 171.01 feet
(called N 74°19'38" E 284.44 feet,
N 74°09'32" E 107.71 feet, and
S 82°27'58" E 170.88 feet)

to the northeast corner of this tract, and being in the west right-of-way line of that portion of Interstate Highway 610 conveyed to the State of Texas by instrument recorded under File Number C877050 and Film Code 103-23-0862 of the Harris County Official Public Records of Real Property and from which a 3/4 inch pipe with cap found for reference bears S 03°22'5" E 70.00 feet;

THENCE S 03°22'51" E 1119.60 feet, with the west right-of-way line of said Interstate Highway 610 and passing at 474.51 feet a Navigation District disk in concrete found for the southwest corner of that portion of said Interstate Highway 610 conveyed by instrument recorded under File Number C877050 and Film Code 103-23-0862 of the Harris County Official Public Records of Real Property, same being the northwest corner of that portion of said Interstate Highway 610, formerly Concrete Avenue, conveyed to Harris County by instrument recorded in Volume 367, Page 523 of the Harris County Deed Records, to the PLACE OF BEGINNING and containing 11.05 acres (481,579 square feet) of land.

The areas stated in acres are compatible with the allowable precision of closure for this survey. The areas stated in square feet are calculated values only. All 3/4 inch iron pipes with caps set by this survey are marked "J. Heck- RPLS 4385". This metes and bounds description accompanies a plat of survey prepared by Give'm Heck, Inc. under Job No. 24-00IB, dated January 30, 2006.