

City of Houston, Texas, Ordinance No. 2012-748

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 21.5656 ACRES COMMONLY KNOWN AS 2601 SPENWICK DRIVE, 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 March 8, 2012, **THE RECTORSEAL CORPORATION**, 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 2601 Spenwick Drive, Houston, Texas 77055; and

WHEREAS, on July 10, 2012, the Director of the Public Works and Engineering Department conducted a public meeting at the Sosa Community Center, 1414 Wirt Road, Houston, Texas 77055 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 August 14, 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 Applicant 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 Applicant, TCEQ and EPA.

Section 10. 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 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 29th day of August, 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 SEP 04 2012.



City Secretary

Prepared by Legal Dept. 
CP/lks 8/16/2012 Senior Assistant City Attorney
Requested by Daniel W. Krueger, P.E., Director,
Public Works and Engineering Department
L.D. File No. 063-1200225-001

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

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: **SEP 04 2012**

METES AND BOUNDS DESCRIPTION
2601 SPENWICK DRIVE
EXHIBIT "A"

All that certain 21.5656 acres of land out of the Daniel Alexander Survey, A-92, Houston, Harris County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at an "X" in concrete marking the intersection of the center line of Spenwick Drive (60' wide) with the north line of Kempwood Industrial Park, Section 1, according to the plat thereof filed at Volume 81, Page 47 Harris County Map Records;

THENCE S 89° 55' 38" W – 764.65', along the north line of said Kempwood Industrial Park, Section 1, to a 3/4" iron pipe for corner;

THENCE S 00° 00' 32" W – 125.59' to a 5/8" iron rod for corner;

THENCE West – 25.00' to the Point of Curvature of a curve having a central angle of 90° 00' 00", a radius of 125.00', the center of said curve being located on a radial line bearing West from said point;

THENCE in a northwesterly direction along said curve and along the center line of a 50' wide Harris County Flood Control District recorded at Volume 3064, Page 616, Harris County Deed Records, for an arc distance of 196.35' to the Point of Tangency;

THENCE West – 54.80', continuing along the center line of said easement, to the Point of Curvature of a curve to the right having a central angle of 85° 13' 00", a radius of 125.00';

THENCE along said curve to the right and continuing along the center line of said easement for an arc distance of 185.91' to the Point of Tangency;

THENCE N 04° 47' 00" W – 556.99', continuing along the center line of said easement, to a point for corner, being a point on a curve having a central angle of 17° 40' 28", a radius of 381.97', the center of said curve being located on a radial line bearing N 01° 47' 27" W from said point;

THENCE along the meanders of Brickhouse Gully, as improved, as follows:

In an easterly direction along said curve for an arc distance of 117.83' to the Point of Tangency;

Thence N 70° 32' 05" E – 449.40' to the Point of Curvature of a curve to the right having a central angle of 20° 01' 00", a radius of 381.97';

Thence along said curve for an arc distance of 133.44' to the Point of Tangency;

Thence S 89° 26' 55" E – 170.00';

Thence S 87° 53' 18" E – 52.52';

Thence N 85° 24' 06" E – 33.16' to a point for corner;

THENCE S 50° 25' 33" E – 371.52', along the southwesterly right-of-way for Southern Pacific Railroad Company (100' wide), to a 1" iron pipe for angle point;

THENCE S 50° 13' 45" E – 145.69', continuing along the southwesterly right-of-way for said Southern Pacific Railroad Company, to a 1/2" iron rod for corner;

THENCE S 23° 05' 02" W – 368.18', along the westerly line of that certain called 5.3960 acres of land described in a deed dated 8-7-1980 from Great-West Life Assurance Company to Reef Mid American Fund-I filed in the official public records of real property of Harris County, Texas at Clerk File No. G-636624, Film Code No. 164-83-1332, to the Point of Curvature of a curve to the left having a central angle of 23° 08' 19", a radius of 487.95';

THENCE along said curve and continuing along the westerly line of said 5.3960 acre tract, for an arc distance of 197.06' to the POINT OF BEGINNING and containing 21.5656 acres of land (939,399 square feet) of land, more or less.