

City of Houston, Texas, Ordinance No. 2013- 644

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 13.5143 ACRES COMMONLY KNOWN AS 10516 OLD KATY ROAD, 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 February 22, 2013, **DAVIS HOLDINGS, L.P.**, a Texas limited partnership ("Applicant"), applied on behalf of **TOWN & COUNTRY SQUARE, LTD.** ("Owner"), 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 10516 Old Katy Road, Houston, Texas 77043; and

WHEREAS, on May 20, 2013, the Director of the Public Works and Engineering Department conducted a public meeting at the Kendall Library, 609 North Eldridge, Houston, Texas 77079 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 June 13, 2013; 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 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 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, to TCEQ and to 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 10th day of July, 2013.

APPROVED this _____ day of _____, 2013.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUL 16 2013.



City Secretary

Prepared by Legal Depart. 
CP/lks 6/25/2013 Senior Assistant City Attorney
Requested by Daniel W. Krueger, P.E., Director,
Public Works and Engineering Department

L.D. File No. 063-1300189-001
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AYE	NO	
✓		MAYOR PARKER
....	COUNCIL MEMBERS
	✓	BROWN
✓		DAVIS
✓		COHEN
✓		ADAMS
✓		MARTIN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
		ABSENT-ON PERSONAL BUSINESS RODRIGUEZ
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		BURKS
✓		NORIEGA
		ABSENT-OUT OF CITY ON PERSONAL BUSINESS BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: JUL 16 2013

**METES AND BOUNDS DESCRIPTION
EXHIBIT "A"**

Tract 1

FIELD NOTE DESCRIPTION OF 13.5143 ACRES (588,662 SQUARE FEET) OF LAND, BEING A PORTION OF UNRESTRICTED RESERVE "B" OF TOWN AND COUNTRY NORTH SECTION ONE, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 335, PAGE 52 OF THE HARRIS COUNTY MAP RECORDS, AND BEING A PART OF THAT CERTAIN CALLED 14.2048 ACRE TRACT CONVEYED TO TOWN & COUNTRY SQUARE, LTD., BY DEED RECORDED UNDER HARRIS COUNTY CLERK'S FILE NO. 0251801 OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS, SAID 13.5143 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 5/8 inch iron rod with cap found at the intersection of the North right-of-way line of Interstate Highway 10 (IH 10) (width varies) and the East right-of-way line of Lumpkin Road (60 feet wide), as recorded in Volume 3162, Page 91 Harris County Deed Records, said iron rod marks the Northwest corner that certain called 0.6875 acre tract conveyed to the State of Texas for the widening of said IH 10, as recorded under Harris County Clerk's File No. X850660, said iron rod also marks the Southwest corner of the herein described tract;

THENCE, North $00^{\circ} 08' 23''$ West (called N $00^{\circ} 11' 45''$ W), along the East right-of-way line of Lumpkin Road, a distance of 792.98 feet to a 5/8 inch iron rod found for the Southwest corner of the Unrestricted Reserve "C" and the Northwest corner of said Unrestricted Reserve "B", said iron also marks the Northwest corner of the herein described tract;

THENCE, South $88^{\circ} 37' 38''$ East, along the North line of said Reserve "B", a distance of 880.73 feet to a 5/8 inch iron rod found for the Southeast corner of Unrestricted Reserve "B", said iron rod also marks the Northeast corner of the herein described tract;

THENCE, South $00^{\circ} 11' 12''$ East, along the East line of said Unrestricted Reserve "B", same being the West line of that certain called 12.049 acre tract recorded under Harris County Clerk's File No. V819686, a distance of 321.74 feet to a point for the Easterly most Southeast corner of the herein described tract, from which a found 5/8 inch iron rod bears S $87^{\circ} 29'$ W, 0.80 feet and another found 5/8 inch iron rod with cap bears S $06^{\circ} 22'$ W, 6.13 feet;

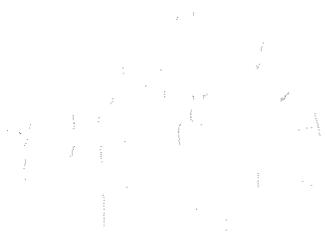
THENCE, North $88^{\circ} 37' 05''$ West, a distance of 235.83 feet (called 235.00 feet) to a P.K. Nail found for an interior corner of the herein described tract, from which a found cotton spindle in asphalt bears S $01^{\circ} 42'$ E, 8.04 feet;

THENCE, South $00^{\circ} 11' 12''$ East, a distance of 475.53 feet to a 5/8 inch iron rod with cap found in the North right-of-way line of said IH 10 for the Northeast corner of said called 0.6875 acre tract and the Southerly most Southeast corner of the herein described tract;

THENCE, North $88^{\circ} 15' 07''$ West (S $89^{\circ} 02' 20''$ W), along the North line of said Interstate Highway 10 (IH 10), same being the North line said called 0.6875 acre tract, a distance of 645.68 feet (called 646.31 feet) to the POINT OF BEGINNING and containing 13.5143 acres (588,682 square feet) of land, more or less.

I, ANNA RUSSELL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy of Ordinance No. 2013-644, passed and adopted by the City Council of said City on the 10th day of July, 2013, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 22nd day of July, 2012.



A handwritten signature in cursive script, reading "Anna Russell", is positioned above the typed name.

Anna Russell
City Secretary of the City of Houston