City of Houston, Texas, Ordinance No. 2013-707

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 0.148 ACRE COMMONLY KNOWN AS 2500 SHAKESPEARE 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 March 13, 2013, **DUTCH LINE PROPERTIES II, LIMITED**, a Texas 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 its property that is located generally at 2500 Shakespeare Road, Houston, Texas 77030; and

WHEREAS, on May 23, 2013, the Director of the Public Works and Engineering Department conducted a public meeting at the Judson Robinson Jr. Community Center, 2020 Hermann Drive, Houston, Texas 77004 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 31st **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 AUG 0 6 2013.

_____
City Secretary

Prepared by Legal Depart. _____ DFM
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. 063-13_____-001
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AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
	✓	BROWN
✓		DAVIS
✓		COHEN
✓		ADAMS
ABSENT-ON PERSONAL BUSINESS		MARTIN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
ABSENT-OUT OF CITY ON PERSONAL BUSINESS		LASTER
✓		GREEN
✓		COSTELLO
✓		BURKS
ABSENT		NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT REVIEW DATE: AUG 0 6 2013

METES AND BOUNDS DESCRIPTION
EXHIBIT "A"

Tract II

0.148 ACRES OF LAND (6462.1 SQUARE FEET), BEING A PART OF LOT 1, BLOCK 1, WESSEX SUBDIVISION, REVISED PLAT, A SUBDIVISION IN HOUSTON, HARRIS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 14, PAGE 31, MAP RECORDS OF HARRIS COUNTY, TEXAS, AND BEING THAT SAME CERTAIN TRACT DESCRIBED AS TRACT 2 IN A DEED FROM RICHARD SERBIN AND WIFE, SUSAN SERBIN TO DUTCH LINE PROPERTIES II, LIMITED RECORDED IN HARRIS COUNTY FILM CODE (HCFC) 513-54-1909, SAID 0.148 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at an "X" set on concrete for the Southwest corner of the herein described tract at the Southwest corner of Lot 1, Block 1, and the Southwest corner of said Dutch Line Properties II, Limited, Tract 2, said point being at the intersection of the North right-of-way line of Shakespeare Road (60.0 foot public right-of-way) with the East right-of-way line of Kirby Drive (70.0 foot public right –of-way);

THENCE North 02 deg. 38 min. 31 sec. West, along the West line of Lot 1, Block 1, and the East right-of-way line of Kirby Drive, a distance of 122.30 feet to an "X" on concrete set for the Northwest corner of the herein described tract and the Southwest corner of a 0.407 acre tract this day surveyed, being the Southwest corner of Tract 1 described in the aforementioned Dutch Line Properties II, Limited deed;

THENCE North 87 deg. 42 min. 25 sec. East, along the South line of said Tract 1, at 50.06 feet pass an "X" set on concrete for reference corner, and continue for a total distance of 53.06 feet to a point marking the Northeast corner of the herein described in a deed to Samir N. Tuma, M.D., recorded in Harris County Clerk's File 20060067453, said point being in the common line of Lots 1 and 2, Block 1, Wessex Subdivision, Revised Plat, from which point a 5/8 inch iron rod found bears South 02 deg. 25 min. 53 sec. East – 0.56 feet;

THENCE South 02 deg. 25 min 53 sec. East, along the common line of Lots 1 and 2, Block 1, and the West line of the Tuma Tract, a distance of 122.30 feet to a ½ inch iron rod set for the Southeast corner of the herein described tract at the Southeast corner Lot 1 and the Southwest corner of Lot 2, in the North right-of-way line of Shakespeare Road;

THENCE South 87 deg. 42 min. 25 sec. West, along the South line of Lot 1 and the North right-of-way line of Shakespeare Road, a distance of 52.61 feet to the PLACE of BEGINNING and containing 0.148 acres of land (6464.1 square feet).

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 Ordinance No. 2013-707, passed and adopted, by the City Council of said City on the 31st day of July, 2013, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 8th day of August, 2013.

Anna Russell
City Secretary of the City of Houston