

City of Houston, Texas, Ordinance No. 20 13 - 1158

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 9.293 ACRES COMMONLY KNOWN AS WHITE OAK BAYOU AT 0 NORTH SHEPHERD 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 May 13, 2013, the **HARRIS COUNTY FLOOD CONTROL DISTRICT**, a body politic and corporate ("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 White Oak Bayou at 0 North Shepherd Drive, Houston, Texas 77008; and

WHEREAS, on July 30, 2013, the Director of the Public Works and Engineering Department conducted a public meeting at the Houston Permit Center, 1002 Washington Avenue, Houston, Texas 77002 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 September 10, 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 11th day of December, 2013.

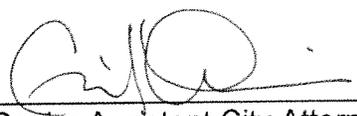
APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 17 2013.



City Secretary

Prepared by Legal Depart.  DFM
CP/lks 12/4/2013 Senior Assistant City Attorney
Requested by Daniel W. Krueger, P.E., Director,
Public Works and Engineering Department

L.D. File No. 063-13 00334-001
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AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
	✓	BROWN
✓		DAVIS
✓		COHEN
✓		ADAMS
✓		MARTIN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		BURKS
✓		NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

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

Description of 9.293 acres (404,815 square feet) of land situated in the Harris and Wilson Survey, Abstract No. 32, Harris County, Texas; being all of called 6.445 acre tract of land to Harris County Flood Control District recorded in Volume 3171, Page 125 of the Harris County Deed Records, all of called 0.3258 acre tract to Harris County Flood Control District recorded in Volume 2970, Page 580 of The Harris County Deed Records, all of called 1.581 acres to Harris County Flood Control District recorded under Volume 2970, Page 586 of the Harris County Deed Records, all of a called 6,353 square feet of land to Harris County Flood Control District recorded under Volume 4787, Page 135 of the Harris County Deed Records and a called 0.5320 acres of land to Harris County Flood Control District as recorded under Volume 2970, Page 577 of the Harris County Deed Records, said 9.293 acre tract being more particularly described as follows (all bearings are based on the Texas State Plane Coordinate System, South-central Zone, 4204):

COMMENCING, from a found 5/8-inch iron rod for the northwest corner of 77,738 square feet of land to Gaimpaloo Nundini by Warranty Deed with Vendor's Lien as record under Clerk's file No. X513336 of the Official Public Records of Real Property of Harris County (O.P.R.R.P.H.C.), the southwest corner of 3.582 acres to Galt Business Solutions, LLC by Special Warranty Deed with Vendor's Lien recorded under Clerk's File No. 20120048265 (O.P.R.R.P.H.C.) and the east right-of-way of North Shepherd Drive (width varies);

THENCE, South $15^{\circ}06'28''$ West, a distance of 200.00 feet to the northwest corner of said 9.293 acre tract and along the east right-of-way of said North Shepherd Drive, the southwest corner of said 77,738 square feet tract to a set 5/8-inch iron rod with cap for the POINT OF BEGINNING, of the herein described tract;

THENCE, along the south line of said 77,738 square feet tract the following three (3) courses and distances:

- 1) South $74^{\circ}53'48''$ East, a distance of 156.49 feet to a set 5/8-inch iron rod with cap;
- 2) North $66^{\circ}53'58''$ East, a distance of 239.40 feet to a set 5/8-inch iron rod with cap;
- 3) North $28^{\circ}41'28''$ East, a distance of 182.33 feet to a set 5/8-inch iron rod with cap;

THENCE, along the south line of said 3.582 acres the following three (3) courses and distances:

- 1) North $87^{\circ}11'28''$ East, a distance of 115.78 feet to a set 5/8-inch iron rod with cap;

- 2) North 43°52'28" East, a distance of 157.00 feet to a set 5/8-inch iron rod with cap;
- 3) North 84°12'28" East, a distance of 222.04 feet to a set 5/8-inch rod with cap;

THENCE, South 03°42'03" East, crossing White Oak Bayou and the west Patterson Street a distance of 218.21 feet to a set 5/8-inch iron rod, from which a found brass disc bears South 79°51'08" East, 2.00 feet;

THENCE, South 86°17'51" West, along the north line of said 2 acre remainder a distance of 100.01 feet to a set 5/8-inch iron for an interior corner herein and the northwest corner of the aforementioned remainder;

THENCE, South 03°42'09" East, along the west line of said 2 acre remainder, a called 25 feet by 100 feet tract to Conception and Martin Zapata by deed recorded under Clerk's File No. N262080 (O.P.R.R.P.H.C.), of a 35 feet by 100 feet tract to Marion Zapata ET UX by Warranty Deed as recorded under Clerk's File No. X9740808 (O.P.R.R.P.H.C.) and a 35 feet by 100 feet tract to Douglass Roy Thomas by General Warranty Deed recorded under Clerk's File No. Y742427 (O.P.R.R.P.H.C.) a distance of 140.00 feet to a set 5/8-inch iron rod for the northeast corner of a called "Tract of Land" to D & Y Investments, LLC by Special Warranty Deed recorded under Clerk's File No. 20100451359 (O.P.R.R.P.H.C.);

THENCE, along the north and west line of said "Tract of Land" the following five (5) courses and distance:

- 1) South 86°17'50" West, a distance of 215.06 feet to a set 5/8-inch iron rod;
- 2) South 54°16'09" East, a distance of 232.22 feet to a set 5/8-inch iron rod;
- 3) South 22°01'54" East, a distance of 96.30 feet to a set 5/8-inch iron rod;
- 4) South 12°34'29" West, a distance of 120.35 feet to a set 5/8-inch iron rod;
- 5) South 74°46'11" West, a distance of 182.43 feet to a set 5/8-inch iron rod;

THENCE, South 87°01'34" West, along the north line of Villas on Shepherd, Section Two as recorded under Film code No. 616036 of the Harris County Map Records a distance of 149.69 feet to a found 5/8-inch iron rod with cap;

THENCE, North 02°33'49" West, continuing along the northerly line of said Villas on Shepherd, Section Two a distance of 14.96 feet to a found 5/8-inch iron rod with cap;

THENCE, North 46°30'56" West, along a portion of said Villas on Shepherd, Section Two and the west line of Lot 7, Block 129 Brunner Addition as recorder under Volume 725, Page 46 of the Harris County Deed Records a distance of 69-68 feet to a set 5/8-inch iron rod;

THENCE, South 87°16'00" West, along the north line of said lot 7, Block 129 Brunner Addition a distance of 151.71 feet to a set 5/8-inch iron rod for the northwest corner of said Lot 7 and the east line of Tract B by quitclaim deed to Richard C. McKee and Wife as recorded under Clerk's File No. H215788 (O.P.R.R.P.H.C.);

THENCE, North 02°44'21" West, along the east line of said Tract B a distance of 50.00 feet to a set 5/8-inch iron rod for the northeast corner of said Tract B and in the south right-of-way line of Larkin Street (width varies) as recorded under Volume 725, Page 46 of the Harris County Deed Records;

THENCE, along the right-of-way of said Larkin Street the following five (5) courses and distances:

- 1) North 87°16'00" East, a distance of 102.41 feet to a set 5/8-inch iron rod;
- 2) North 45°52'11" West, a distance of 81.70 feet to a set 5/8-inch iron rod;
- 3) North 61°38'13" West, a distance of 112.70 feet to a set 5/8-inch iron rod;
- 4) South 02°42'40" East, a distance of 67.81 feet to a set 5/8-inch iron rod;
- 5) South 87°17'04" West, a distance of 299.99 feet to a set 5/8-inch iron rod at the intersection of the north right-of-way line of said Larkin Street and the east right-of-way of said North Shepherd Drive;

THENCE, along the east right-of-way of said North Shepherd Drive the following four (4) courses and distances:

- 1) North 02°43'22" West, a distance of 40.80 feet to a set 5/8-inch iron rod;
- 2) North 15°05'04" East, a distance of 72.72 feet to a set 5/8-inch iron rod;
- 3) South 71°23' 15" East, a distance of 7.83 feet to a set 5/8-inch iron rod;
- 4) North 15°05'06" East, a distance of 180.26 feet to the POINT OF BEGINNING and containing a computed area of 9.293 acres (404,815 square feet) of land.

This description is based on a ground survey and plat prepared by Mark Sherley, Registered Professional Land Surveyor and dated December 19, 2012.

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. 2013-1158, passed and adopted, by the City Council of said City on 11th day of December, 2013, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 20th day of December, 2013.



Anna Russell
City Secretary of the City of Houston