

City of Houston, Texas, Ordinance No. 2013-205

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING AN AGGREGATE OF 3.6088 ACRES COMMONLY KNOWN AS 502 WEST 25TH 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 September 19, 2012, **HEIGHTS BLOCK 39, LLC**, a Texas limited liability company ("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 502 West 25th Street, Houston, Texas 77008; and

WHEREAS, on January 24, 2013, the Director of the Public Works and Engineering Department conducted a public meeting at the Independence Heights Community Center, 603 East 35th Street, Houston, Texas 77022 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 February 12, 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 Applicants 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 Applicants, TCEQ and EPA.

Section 10. That the Applicants 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 6th day of March, 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 MAR 12 2013.



City Secretary

Prepared by Legal Dept. 
CP/lks 2/22/2013 Senior Assistant City Attorney
Requested by Daniel W. Krueger, P.E., Director,
Public Works and Engineering Department

L.D. File No. 063-1300_____-001
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AYE	NO	
✓		MAYOR PARKER
....	COUNCIL MEMBERS
	✓	BROWN
✓		DAVIS
✓		COHEN
✓		ADAMS
✓		MARTIN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
✓		GREEN
✓		COSTELLO
	ABSENT-ON PERSONAL BUSINESS	BURKS
✓		NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: MAR 12 2013

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

FIELD NOTES OF TRACT – 1

A 1.8044 ACRE TRACT OF LAND BEING LOTS 1 THROUGH 24, BLOCK 39, HOUSTON HEIGHTS ADDITION, HARRIS COUNTY, TEXAS RECORDED IN VOLUME 1-A, PAGE 114 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

BEGINNING AT A ONE HALF INCH IRON ROD FOUND AT THE NORTHEAST CORNER OF LOT 1, SAID POINT BEING THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF WEST 25TH AVE. (70' RIGHT OF WAY) WITH THE WEST RIGHT OF WAY LINE OF NICHOLSON ST. (100' RIGHT OF WAY), SAID POINT BEING SOUTH 24 DEG 15 MIN. 47 SEC. EAST, 0.50 FEET FROM A ONE HALF INCH IRON PIPE FOUND,

THENCE SOUTH, WITH THE WEST LINE OF NICHOLSON ST SAME BEING THE EAST LINE OF LOT 1, A DISTANCE OF 131.0 FEET TO A ONE HALF INCH IRON ROD SET ON THE NORTH LINE OF A 38 FOOT ALLEY AT THE SOUTHEAST CORNER OF SAID LOT 1 FOR CORNER;

THENCE WEST, WITH THE SOUTH LINE OF LOTS 1 THROUGH 24 SAME BEING THE NORTH LINE OF SAID 38 FOOT ALLEY, A DISTANCE OF 600.0 FEET TO A ONE HALF INCH IRON ROD SET ON THE EAST RIGHT OF WAY LINE OF LAWRENCE ST (70' RIGHT OF WAY) AT THE SOUTHWEST CORNER OF LOT 24 FOR CORNER, SAID POINT BEING NORTH, 569 FEET FROM A THREE QUARTER INCH IRON ROD FOUND;

THENCE NORTH, WITH EAST LINE OF LAWRENCE ST. SAME BEING THE WEST LINE OF LOT 24, A DISTANCE OF 131.0 FEET TO A ONE HALF INCH IRON ROD FOUND ON THE SOUTH LINE OF WEST 25TH. AVE. FOR THE NORTHWEST CORNER OF LOT 24 FOR CORNER, SAID POINT BEING WEST, 0.15 FEET FROM A ONE HALF INCH IRON PIPE FOUND AND SOUTH, 70 FEET FROM A THREE QUARTER INCH IRON ROD FOUND;

THENCE EAST, WITH THE SAID SOUTH LINE OF WEST 25TH AVE SAME BEING THE NORTH LINE OF LOTS 1 THROUGH 24, A DISTANCE OF 600.0 FEET TO THE **POINT OF BEGINNING.**

FIELD NOTES OF TRACT – 2

A 1.8044 ACRE TRACT OF LAND BEING LOTS 25 THROUGH 48, BLOCK 39, HOUSTON HEIGHTS ADDITION, HARRIS COUNTY, TEXAS RECORDED IN VOLUME 1-A, PAGE 114 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

BEGINNING AT A ONE HALF INCH IRON ROD FOUND AT THE SOUTHEAST CORNER OF LOT 48, SAID POINT BEING THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF WEST 24TH AVE (70' RIGHT OF WAY) WITH THE WEST RIGHT OF WAY LINE OF NICHOLSON ST. (100' RIGHT OF WAY), SAID POINT BEING SOUTH 19 DEG 00 MIN. 31 SEC. EAST, 0.41 FEET FROM A ONE HALF INCH IRON PIPE FOUND;

THENCE WEST, WITH THE NORTH LINE OF WEST 24TH AVE SAME BEING THE SOUTH LINE OF LOTS 25 THROUGH 48, A DISTANCE OF 600.0 FEET TO A ONE HALF INCH IRON ROD FOUND ON THE EAST RIGHT OF WAY LINE LAWRENCE ST (70' RIGHT OF WAY) AT THE SOUTHWEST CORNER OF LOT 25 FOR CORNER, SAID POINT BEING NORTH, 400.0 FEET FROM A THREE QUARTER INCH IRON ROD FOUND;

THENCE NORTH, WITH THE EAST LINE OF LAWRENCE ST SAME BEING THE WEST LINE OF LOT 25, A DISTANCE OF 131.0 FEET TO A ONE HALF INCH IRON ROD SET ON THE SOUTH LINE OF A 38 FOOT ALLEY AT THE NORTHWEST CORNER OF SAID LOT 25 FOR CORNER, SAID POINT BEING SOUTH, 239.0 FEET FROM A THREE QUARTER INCH IRON ROD FOUND;

THENCE EAST, WITH THE SOUTH LINE OF SAID 38 FOOT ALLEY SAME BEING THE NORTH LINE OF LOTS 25 THROUGH 48, A DISTANCE OF 600.0 FEET TO A ONE HALF INCH IRON ROD SET ON THE WEST LINE OF NICHOLSON ST AT THE NORTHEAST CORNER OF LOT 48 FOR CORNER;

THENCE SOUTH, WITH THE SAID WEST LINE OF NICHOLSON ST SAME BEING THE EAST LINE OF LOT 48, A DISTANCE OF 131.0 FEET TO THE **POINT OF BEGINNING**.