

City of Houston, Texas, Ordinance No. 2013-319

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 1.931 ACRES COMMONLY KNOWN AS 8600 COMMERCE PARK 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 November 9, 2012, **WEST FLEX 20, L.P.**, a Delaware 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 8600 Commerce Park Drive, Houston, Texas 77063; and

WHEREAS, on February 26, 2013, the Director of the Public Works and Engineering Department conducted a public meeting at the Sharpstown Community Center, 6600 Harbor Town, Houston, Texas 77036 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 March 21, 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 10th day of April, 2013.

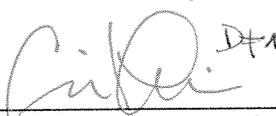
APPROVED this _____ day of _____, 2013.

Mayor of the City of Houston

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



City Secretary

Prepared by Legal Depart. 
CP/lks 3/29/2013 Senior Assistant City Attorney
Requested by Daniel W. Krueger, P.E., Director,
Public Works and Engineering Department

L.D. File No. 063-1300 68-001
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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	

CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: APR 16 2013

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

DESCRIPTION OF THE FIRST PARTY'S PROPERTY

A 1.931-ACRE (84,134 SQUARE FOOT) TRACT OF LAND BEING OUT OF A CALLED 3.9847-ACRE TRACT CONVEYED TO WEST FLEX 20, L.P. AS RECORDED UNDER THE HARRIS COUNTY CLERK'S FILE (H.C.C.F.) NO. Z472106, AND ALSO BEING OUT OF UNRESTRICTED RESERVE "A", BLOCK 1 OF COMMERCE PARK SECTION TWO, A SUBDIVISION RECORDED IN VOLUME 198, PAGE 136 OF THE HARRIS COUNTY MAP RECORDS (H.C.M.R.), LOCATED IN THE MAMES WELLS SURVEY, ABSTRACT 830, CITY OF HOUSTON, HARRIS COUNTY, TEXAS, SAID 3.985-ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWING:

COMMENCING AT A FOUND 5/8-INCH IRON ROD, BEING THE NORTH POINT OF A CUTBACK CORNER AT THE INTERSECTION OF THE WEST RIGHT-OF-WAY (R.O.W.) LINE OF COMMERCE PARK DRIVE, (60-FOOT PUBLIC R.O.W.) AS RECORDED IN VOLUME 179, PAGE III H.C.M.R. AND THE NORTH R.O.W. LINE OF IMOGENE STREET (60-FOOT PUBLIC R.O.W.) AS RECORDED IN VOLUME 198, PAGE 136 H.C.M.R, SAID POINT ALSO BEING THE MOST EASTERLY SOUTHEAST CORNER OF SAID UNRESTRICTED RESERVE "A" AND THE POINT OF A NON-TANGENT CURVE TO THE RIGHT;

THENCE IN THE NORTHWESTERLY DIRECTION, ALONG THE WEST R.O.W. LINE OF SAID COMMERCE PARK DRIVE AND THE EAST LINE OF SAID UNRESTRICTED RESERVE "A", WITH SAID CURVE TO THE RIGHT, HAVING AN ARC LENGTH OF 48.87 FEET, A RADIUS OF 210.00 FEET, A CENTRAL ANGLE OF 13 DEG 20 MIN 01 SEC, A CHORD BEARING NORTH 09 DEG 14 MIN 55 SEC WEST AND A DISTANCE OF 48.76 FEET TO THE POINT OF TANGENCY;

THENCE NORTH 02 DEG 34 MIN 55 SEC WEST, CONTINING ALONG THE WEST R.O.W. LINE OF SAID COMMERCE PARK DRIVE AND THE EAST LINE OF SAID UNRESTRICTED RESERVE "A", A DISTANCE OF 353.05 FEET TO A FOUND 5/8-INCH IRON ROD (BENT), BEING THE NORTHEAST CORNER OF A CALLED 3.4008-ACRES TRACT CONVEYED TO 8700 COMMERCE PARK DRIVE HOLDINGS, LLC AS RECORDED IN H.C.C.F. NO. 20100132676, ON THE WEST R.O.W. LINE OF SAID COMMERCE PARK DRIVE, AND FOR THE POINT OF BEGINNING AND SOUTHEAST CORNER OF HEREIN DESCRIBED TRACT;

THENCE DEPARTING THE R.O.W. OF SAID COMMERCE PARK DRIVE, SOUTH 87 DEG 25 MIN 05 SEC WEST, ALONG THE NORTH LINE OF SAID 3.4008-ACRES TRACT AND SOUTH LINE OF HEREIN DESCRIBED TRACT, A DISTANCE OF 349.92 FEET TO A FOUND 5/8-INCH IRON ROD WITH CAP (CLARK SURVEYING CO.), BEING THE NORTHWEST CORNER OF SAID 3.4008-ACRES TRACT, ON THE EAST LINE OF A HOUSTON LIGHTING & POWER COMPANY FEE STRIP AS RECORDED IN VOLUME 1822, PAGE 170 OF THE HARRIS COUNTY DEED RECORDS (H.C.D.R.), AND BEING SOUTHWEST CORNER OF HEREIN DESCRIBED TRACT;

THENCE NORTH 02 DEG 34 MIN 55 SEC WEST, ALONG THE EAST LINE OF SAID HOUSTON LIGHTING & POWER COMPANY FEE STRIP AND THE WEST LINE OF HEREIN DESCRIBED TRACT, A DISTANCE OF 240.44 FEET TO A SET 5/8-INCH IRON ROD WITH CAP (TRI-TECH), BEING THE NORTH CORNER OF HEREIN DESCRIBED TRACT;

THENCE NORTH 87 DEG 25 MIN 05 SEC EAST, ALONG THE NORTH LINE OF HEREIN DESCRIBED TRACT, A DISTANCE OF 349.92 FEET TO A SET CUT "X" IN CONCRETE, ON THE WEST R.O.W. LINE OF SAID COMMERCE PARK DRIVE, AND BEING NORTHEAST CORNER OF HEREIN DESCRIBED TRACT;

THENCE SOUTH 02 DEG 34 MIN 55 SEC EAST, ALONG THE WEST R.O.W. LINE OF SAID COMMERCE PARK DRIVE AND THE EAST LINE OF HEREIN DESCRIBED TRACT, A DISTANCE OF 240.44 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.931 ACRES OR 84.134 SQUARE FEET OF LAND.