

City of Houston, Texas, Ordinance No. 2014- 696

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 9.66 ACRES COMMONLY KNOWN AS 21147 SH 249, 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 October 10, 2013, **ACF LAKEWOOD II, LLC** ("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 21147 SH 249, Houston, Texas 77070; and

WHEREAS, on April 16, 2014, the Director of the Public Works and Engineering Department conducted a public meeting at the Northwest Branch Library, 11355

Regency Green Drive, Cypress, TX 77429 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, the Transportation, Technology, and Infrastructure City Council committee, designated by the Mayor, conducted a public hearing on May 13, 2014; 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 9th day of July, 2014.

APPROVED this _____ day of _____, 2014.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUL 15 2014.



City Secretary

Prepared by Legal Depart.  ENO
06/30/2014 Assistant City Attorney

Requested by Daniel W. Krueger, P.E., Director,
Public Works and Engineering Department

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/		MAYOR PARKER
....	COUNCIL MEMBERS
/		STARDIG
/		DAVIS
/		COHEN
/		BOYKINS
/		MARTIN
/		NGUYEN
/		PENNINGTON
/		GONZALEZ
/		GALLEGOS
/		LASTER
/		GREEN
/		COSTELLO
/		ROBINSON
/		KUBOSH
/		BRADFORD
/		CHRISTIE
CAPTION	ADOPTED	

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION

LEGAL DESCRIPTION

TRACT 1:

Being a tract or parcel containing 9.667 acres (421,078 square feet) of land situated in the T. K. Wheeler Survey, Abstract Number 826, Harris County, Texas; being all of Reserve "B" and a portion of Reserve "C" of Lakewood Village Center, a subdivision of record in Volume 330, Page 21, Harris County Map Records, Harris County, Texas; being all of a called 9.667 acre tract conveyed to Lakewood Houston, LLC as described in deed recorded under Harris County Clerk's File (H.C.C.F.) Number 20080043712, Harris County, Texas; said 9.667 acre tract being more particularly described as follows (bearings are oriented to the bearing base reflected in said deed):

BEGINNING at an "X" found in a concrete curb in the southwesterly right-of-way (R.O.W.) line of State Highway 249 (width varies) and in the northerly line of the aforesaid Lakewood Village Center and marking southeast corner of Restricted Reserve "B" of Tomball Parkway Center, Section Two, a subdivision plat of record at Film Code Number 403086 and the most northerly corner of the herein described tract;

THENCE, South 32°56'16" East, along said R.O.W. line, a distance of 74.98 feet to an "X" found in concrete marking the most northerly corner of a called 0.567 acre tract conveyed to McDonald's Corporation, as described in deed recorded under H.C.C.F. Number P985327, Harris County, Texas;

THENCE, South 57°09'00" West, departing said R.O.W. line, a distance of 176.42 feet to the most westerly corner of said 0.567 acre tract for corner of the herein described tract, from which a found "X" in concrete bears South 48°02' West, 0.30 feet;

THENCE, South 32°51'00" East, a distance of 140.00 feet to an "X" in concrete found marking the most southerly corner of said 0.567 acre tract for corner of the herein described tract;

THENCE, North 57°09'00" East, a distance of 176.63 feet to the aforesaid R.O.W. line and the most easterly corner of said 0.567 acre tract for corner of the herein described tract, from which a found 5/8-inch iron rod with cap bears South 37°05' West, 0.30 feet;

THENCE, South 32°56'16" East, along said R.O.W. line, a distance of 104.02 feet to a TXDOT disk found marking the south corner of the aforesaid 0.138 acre tract and a point of curvature of non-tangent curve to the left;

THENCE, Southeasterly, an arc distance of 345.11 feet along said R.O.W. line and said curve to the left, having a central angle of 07°30'00", a radius of 2,636.48 feet, and a chord which bears South 29°11'15" East, 344.87 feet to a TXDOT disk found marking a point of tangency;

THENCE, South 32°56'15" East, along said R.O.W. line, a distance of 218.77 feet to the common east corner of Reserve "A" and Reserve "C" of the aforesaid Lakewood Village Center and the north corner of a called 38,240 square foot tract conveyed to Exxon Corporation and described in deed recorded under H.C.C.F. Number J992792 for the most easterly southeast corner of the herein described tract, from which a found 5/8-inch iron rod with cap bears South 16°13' West, 0.23 feet;

THENCE, South 57°05'21" West, departing said R.O.W. line and along the common line of said Reserve "A" and Reserve "C", a distance of 98.66 feet to a 5/8-inch iron rod with cap found marking the northwest corner of said Reserve "A" for corner of the herein described tract;

THENCE, South 00°01'16" West, continuing along said common line, at a distance of 28.00 feet passing the northeast corner of the aforesaid Reserve "B", and along the common line of said Reserves "A" and "B" for a total distance of 202.03 feet to a 5/8-inch iron rod found in the northerly R.O.W. line of Louetta Road (formerly known as Malcolmson Road) (width varies), as dedicated on the aforesaid plat of Lakewood Village Center and marking the common south corner of said Reserve "A" and Reserve "B" and the most southerly southeast corner of the herein described tract;

THENCE, South 89°59'07" West, along said R.O.W. line, at 94.31 feet passing the common south corner of said Reserves "B" and "C", continuing for a total distance of 461.36 feet to a 5/8-inch iron rod found marking the southeast corner of HIM Compaq, a subdivision plat of record at Film Code Number 425130 and marking the southwest corner of the aforesaid Lakewood Village Center and the herein described tract;

THENCE, Northwestly, along the common line of said HIM Compaq and said Lakewood Village Center, the following courses and distances:

North 00°08'27" West, a distance of 178.71 feet to a 5/8-inch iron rod found marking an angle point of the herein described tract;

North 32°30'25" West, a distance of 223.22 feet to an angle point of the herein described tract, from which a found 5/8-inch iron rod bears North 65°51" East, 0.42 feet;

North 20°45'09" West, a distance of 197.36 feet to a 3/8-inch iron rod found marking an angle point of the herein described tract;

North 08°19'56" West, a distance of 203.32 feet to a 5/8-inch iron rod found in the south line of the aforesaid Restricted Reserve "B" of Tomball Parkway Center, Section Two and marking the northeast corner of said HIM Compaq and the northwest corner of said Lakewood Village Center and the herein described tract;

THENCE, North 57°09'00" East, along the common line of the aforesaid Reserve "B" of Tomball Parkway Center, Section Two and said Lakewood Village Center, a distance of 394.91 feet to the POINT OF BEGINNING and containing 9.667 acres (421,078 square feet) of land. This description is based on the Land Title Survey and plat made by Terra Surveying Company, Inc., dated May 5, 1999, latest revision June 22, 2010, TSC Project Number 1070-9810-S.

TRACT 2: Easement Estate

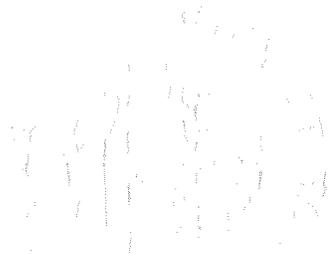
Rights in and to that certain Reciprocal Easement Agreement dated August 31, 1998, between Dayton Hudson Corporation, JC Rad, Inc. and Houston Lakewood Corp. recorded under Harris County Clerk's File No. T462057.

TRACT 3: Easement Estate

Non-exclusive rights for reciprocal ingress and egress as more fully set forth in General Warranty Deed recorded under Harris County Clerk's File No. P985327, and First Amendment to Easement Agreement as recorded under Harris County Clerk's File Number 20080308066.

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. 2014-696, passed and adopted by the City Council of said City on the 9th day of July, 2014, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 5th day of September, 2014.



A handwritten signature in cursive script, which reads "Anna Russell", is positioned to the right of the seal impression.

Anna Russell
City Secretary of the City of Houston