

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 1.706 ACRES COMMONLY KNOWN AS 3939 MONTROSE BOULEVARD, HOUSTON, HARRIS COUNTY, TEXAS; 0 BRANARD STREET, HOUSTON, HARRIS COUNTY, TEXAS; AND ADJACENT PORTIONS OF THE RIGHTS-OF-WAY OF BRANARD STREET AND AN UNNAMED ALLEY, HOUSTON, HARRIS COUNTY, TEXAS; AND SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; CONTAINING OTHER PROVISIONS RELATED TO THE FOREGOING SUBJECT; 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, in June 2014, **Mortgage Recovery Fund 3939, Ltd.** ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for a property that is located generally at 3939 Montrose Boulevard, 0 Branard Street, and adjacent portions

of the rights-of-way of Branard Street and an unnamed alley in Houston, Texas 77006;
and

WHEREAS, on January 7, 2015, the Director of the Public Works and Engineering Department conducted a public meeting at the Houston Permitting Center, 1002 Washington Street, Houston, TX 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, the Transportation, Technology, and Infrastructure City Council committee, designated by the Mayor, conducted a public hearing on January 15, 2015;
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 totaling 1.706 acres as described in **Exhibit A**, attached to this Ordinance and incorporated by reference herein, and adjacent portions of the rights-of-way of Branard Street and an unnamed alley, Houston, Harris County, Texas.

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 February, 2015.
APPROVED this _____ day of _____, 2015.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is FEB 17 2015.



City Secretary

(Prepared by Legal Department )
(PMG/pmg/02/03/2015 Assistant City Attorney)
(Requested by Dale A. Rudick, P.E., Director, Public Works and Engineering Department)
(L.D. File No. 066-1400007-001)

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CAPTION PUBLISHED IN DAILY COURT
REVIEW
DATE: FEB 17 2015

AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
	ABSENT	DAVIS
	ABSENT	COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION
(Consisting of four pages)

EXHIBIT "A"

A tract or parcel of land containing 1.2052 acres or 52,500 square feet, being Lots 1 thru 9, Block 33 of MONTROSE ADDITION, a subdivision recorded in Volume 5, Page 32 of the Map Records of Harris County, Texas, said 1.2052-acre tract being composed of a called 0.1695-acre tract described in Harris County Clerk's File No. (H.C.C.F.) No. R530442 and a called 1.0357-acre tract described in H.C.C.F. No. R341882, and being more particularly described by metes and bounds as follows:

A TRACT OR PARCEL OF LAND CONTAINING 1.2052 ACRES OR 52,500 SQUARE FEET, BEING LOTS 1 THRU 9, BLOCK 33 OF MONTROSE ADDITION, A SUBDIVISION RECORDED IN VOLUME 5, PAGE 32 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS, SAID 1.2052-ACRE TRACT BEING COMPOSED OF A CALLED 0.1695-ACRE TRACT DESCRIBED IN HARRIS COUNTY CLERK'S FILE (H.C.C.F.) NO. R530442 AND A CALLED 1.0357-ACRE TRACT DESCRIBED IN H.C.C.F. NO. R341882 AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2-INCH IRON ROD FOUND ON THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF BRANARD STREET (60 FEET WIDE) AND THE EAST RIGHT-OF-WAY LINE OF MONTROSE BOULEVARD (90 FEET WIDE), MARKING THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH, ALONG THE EAST RIGHT-OF-WAY LINE OF SAID MONTROSE BOULEVARD A DISTANCE OF 250.00 FEET TO A 5/8-INCH IRON ROD SET ON THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF SAID ROSS STREET (60 FEET WIDE) AND THE EAST RIGHT-OF-WAY LINE OF SAID MONTROSE BOULEVARD, MARKING THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE NORTH 89 DEGREES 50 MINUTES 00 SECONDS EAST, ALONG THE SOUTH RIGHT-OF-WAY LINE SAID SUL ROSS STREET. A DISTANCE OF 210.00 FEET TO A 5/8-INCH IRON ROD FOUND ON THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF SAID SUL ROSS STREET AND THE WEST LINE OF AN ALLEY, MARKING THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH, ALONG THE WEST LINE OF SAID ALLEY, A DISTANCE OF 250.00 FEET TO A 1/2-INCH IRON ROD FOUND ON THE INTERSECTION OF THE WEST LINE OF SAID ALLEY AND THE NORTH RIGHT-OF-WAY LINE OF SAID BRANARD STREET, MARKING THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE SOUTH 89 DEGREES 50 MINUTES 00 SECONDS WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID BRANARD STREET, A DISTANCE OF 210.00 FEET TO THE PLACE OF BEGINNING AND CONTAINING 1.2052 ACRES OR 52,500 SQUARE FEET OF LAND.

211-34-172

RECORDER'S MEMORANDUM:

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS HEREBY AND WHERE CONCEALABLE UNDER FEDERAL LAW THE STATE OF TEXAS COUNTY OF HARRIS I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stated herein by me; and was duly RECORDED, to the OFFICIAL PUBLIC RECORDS of Real Property of Harris County, Texas on

JAN - 5 2005



Dorothy B. Kayman
COUNTY CLERK
HARRIS COUNTY, TEXAS

March 31, 2004

**0.1263 acre of land in the Obedience Smith Survey, South Side of Buffalo Bayou,
City of Houston, Harris County, Texas**

A FIELD NOTE DESCRIPTION of 0.1263 acre (5,500 square feet) of land in the Obedience Smith Survey, South Side of Buffalo Bayou, City of Houston, Harris County, Texas; said 0.1263 acre tract of land being the east 20 feet of Lots 3 and 4 and the West 35 feet of the North 100 feet of Lot 2, Block 34 of Montrose Addition, according to the map or plat recorded in Volume 5, Page 32 of the Harris County Map Records and being that same tract conveyed to Nick T. Aropolis, as recorded under Harris County Clerk's File No. F295206; said tract being more particularly described by metes and bounds as follows with the bearings being based on the south right-of-way line of Branard Street (50 feet wide), the bearing being East:

BEGINNING at a ½-inch iron rod found in the south right-of-way line of said Branard Street for the northeasterly corner of a tract of land conveyed to Edmond D Wulfe, as recorded under Harris County Clerk's File No. H904713 and for the northwesterly corner of this tract;

THENCE; East - 55.00 feet with the south right-of-way line of said Branard Street to a 5/8-inch iron rod with cap set for the northeasterly corner of this tract;

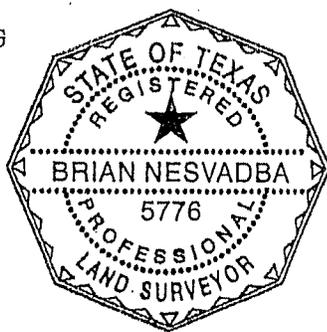
THENCE; South 00° 04' 58" West - 100.00 feet to a 5/8-inch iron rod with cap set for the southeasterly corner of this tract;

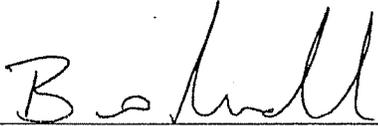
THENCE; West - 55.00 feet with the north line of a tract of land conveyed to Mainmont Venture, as recorded under Harris County Clerk's File No. F500846 to a 5/8-inch iron rod found for the southwesterly corner of this tract;

THENCE; North 00° 04' 58" East - 100.00 feet with the easterly line of said Edmond D. Wulfe tract to the POINT OF BEGINNING and containing 0.1263 acre (5,500 square feet) of land.

COMPILED BY:

TEXAS ENGINEERING AND MAPPING
Civil Engineers - Land Surveyors
Stafford, Texas
Job No. 670-1
WA:670-1.wpd

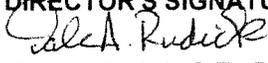
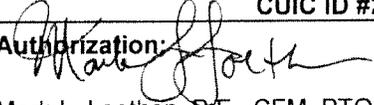




Brian Nesvadba
Registered Professional Land Surveyor
State of Texas No. 5776

TO: Mayor via City Secretary

REQUEST FOR COUNCIL ACTION

SUBJECT: An ordinance to adopt a Municipal Setting Designation prohibiting the use of designated groundwater for Mortgage Recovery Fund 3939, Ltd. for the site located at 3939 Montrose Boulevard, Houston, TX 77006. (MSD # 2014-076-MRF)		Page 1 of 1	Agenda Item #
FROM (Department or other point of origin): Department of Public Works and Engineering		Origination Date	Agenda Date
DIRECTOR'S SIGNATURE:  Dale A. Rudick, P.E., Director		Council District affected: C 	
For additional information contact: Jennifer M. Clancey, Program Manager  (832) 394-9005		Date and identification of prior authorizing Council action:	
RECOMMENDATION: (Summary) It is recommended that City Council adopt a Municipal Setting Designation (MSD) ordinance prohibiting the use of designated groundwater at the Mortgage Recovery Fund 3939, Ltd. site located at 3939 Montrose Boulevard, Houston, TX 77006, and support issuance of an MSD by the Texas Commission on Environmental Quality (TCEQ). (MSD # 2014-076-MRF)			
Amount and Source of Funding: N/A			
BACKGROUND: In 2003, the Texas Legislature authorized the creation of Municipal Setting Designations (MSD), which designate an area in which the use of contaminated groundwater is prohibited for use as potable water. The law is administered by the Texas Commission on Environmental Quality (TCEQ) and requires local City support to designate an MSD. The intent of the legislation is to encourage redevelopment of vacant or abandoned properties while protecting public health. On August 22, 2007, City Council approved an ordinance amending Chapter 47 of the Code of Ordinances by adding Article XIII relating to groundwater, which provides a process to support or not support an MSD application to the State (ordinance amended 7/14/2010).			
MORTGAGE RECOVERY FUND 3939, LTD. APPLICATION: Mortgage Recovery Fund 3939, Ltd. is seeking a Municipal Setting Designation (MSD) for 1.706 acres of land located at 3939 Montrose Boulevard, Houston, TX 77006. The contamination consists of Tetrachloroethene (PCE), Trichloroethene (TCE), and cis-1,2-dichloroethene (cis-1,2-DCE). The site was undeveloped from the 1960s to the 1980s. The current onsite shopping center was built in 1984 and a dry cleaner has occupied one of the suites since 1986. In 2013, the dry cleaning equipment was removed and now serves as a drop location. Future use of the shopping center is expected to remain the same. A licensed Professional Engineer has certified that the area of contamination has been thoroughly investigated, is fully defined and is stable.			
Mortgage Recovery Fund 3939, Ltd. is seeking an MSD for this property to restrict access to groundwater to protect the public against possible exposure to the contaminants. There is a public drinking water supply system that meets state requirements that supplies or is capable of supplying drinking water to the MSD property and all properties within one-half mile of the MSD property. A public meeting was held on January 7, 2015 at the Houston Permitting Center, and a public hearing was held on January 15, 2015 during the Transportation, Technology, and Infrastructure Council Committee. Both meetings are necessary steps prior to City Council's consideration of support.			
RECOMMENDATIONS: It is recommended that City Council adopt a Municipal Setting Designation (MSD) ordinance prohibiting the use of designated groundwater at the Mortgage Recovery Fund 3939, Ltd. site located at 3939 Montrose Boulevard, Houston, TX 77006, and support issuance of an MSD by the Texas Commission on Environmental Quality.			
MLL:TJH:RM:jmc <small>P:\UTILITY ANALYSIS-DEVELOPER SERVICES\MSD\GENERIC INFO, LETTERS, MEMOS, ETC\GENERIC RCA - ORDINANCE SUPPORT.DOC</small> C: Marta Crinejo, Phillip Goodwin			
REQUIRED AUTHORIZATION		CUIC ID #20UPA317	
Other Authorization:	Authorization:  Mark L. Loethen, P.E., CFM, PTOE Deputy Director Planning & Development Services Division	Other Authorization:	