

City of Houston, Texas, Ordinance No. 2016- 625

**A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 5.6374 ACRES COMMONLY KNOWN AS 13911 and 13915 NORTH FREEWAY, 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.**

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**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 December 23, 2015, **Indigo Houston 13921 North Freeway, 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 property that is located generally at 13911 and 13915 North Freeway in Houston, Texas 77090; and

**WHEREAS**, on June 15, 2016, the Director of the Public Works and Engineering Department conducted a public meeting at the Pep Mueller Community Center, 14750 Henry Road, Houston, TX 77060 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 July 18, 2016; 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 property as 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 24<sup>th</sup> day of August, 2016.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is AUG 30 2016.

  
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City Secretary

(Prepared by Legal Department A. W. ng G. W. D.  
(AW/ng/08/02/2016 Assistant City Attorney )  
(Requested by Dale A. Rudick, P.E., Director, Public Works and Engineering Department)  
(L.D. File No. 063-1600188-001)

AYE	NO	
✓		<b>MAYOR TURNER</b>
....	....	<b>COUNCIL MEMBERS</b>
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		LE
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		EDWARDS
✓		CHRISTIE
CAPTION	ADOPTED	

**EXHIBIT "A"**

**Legal Description of Designated Property**

EXHIBIT A

Legal Description

All that certain 5.6374 acres of land out of the Pierce Sullivan Survey, A-750, Houston, Harris County, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a found 1/2" iron rod in the west right-of-way line of Interstate Highway 45 (width varies) marking the northeast corner of that certain called 2.001 acre tract described in a Deed dated 07/09/1987 from Pennel Hill Corporation to Dealership Realty Corporation, filed in the Official Public Records of Real Property of Harris County, Texas at Clerk File No. L216061, Film Code No. 185-35-0502; Thence South 11 degrees 41 minutes 22 seconds East - 88.40', with said west right-of-way line to a found 5/8" iron rod with cap for angle point; Thence South 16 degrees 07 minutes 02 seconds East - 157.32', continuing with said west right-of-way line to a set 3/4" iron rod marking the POINT OF BEGINNING of the herein described tract;

THENCE South 16 degrees 07 minutes 02 seconds East - 304.76', continuing with said west right-of-way line to a set PK Nail for angle point;

THENCE South 16 degrees 02 minutes 20 seconds East - 104.74', continuing with said west right-of-way line to a found 5/8" iron rod with cap for corner;

THENCE South 86 degrees 52 minutes 50 seconds West - 376.66', with the north line of a 47,503 square feet tract of land described in a Deed dated 07/28/1991 from O. Scott Rogers, Trustee to Houston Pipeline Company, filed in the Official Public Records of Real Property of Harris County, Texas at Clerk File No. H145833, Film Code No. 195-92-1631 to a set "X" in concrete for corner, same being in east right-of-way line of Old Kuykendahl Road 80" wide;

THENCE North 51 degrees 44 minutes 17 seconds West - 154.03', with the east right-of-way line of Old Kuykendahl Road (80' wide) to a found 5/8" iron rod for angle point;

THENCE North 51 degrees 31 minutes 29 seconds West - 516.98', with the east right-of-way line of Old Kuykendahl Road (80' wide) to a found 5/8" iron rod for corner;

THENCE North 86 degrees 53 minutes 23 seconds East - 522.04', with the south line of lands conveyed to Dealership Realty Corp. in aforementioned deed to a found PK nail for corner;

THENCE departing from said south line of the following bearings and distances: South 57 degrees 36 minutes 21 seconds East - 19.77' to a found PK nail for corner; South 02 degrees 40 minutes 33 seconds East - 33.13' to a found PK nail for corner; North 87 degrees 10 minutes 39 seconds East - 249.03' to the POINT OF BEGINNING, containing 5.6374 acres (245,565 square feet) of land, more or less.

Note: The above-described metes and bounds legal description being the same property as Restricted Commercial Reserve "B" of I.H. 45 Dealership Center, per Plat recorded as Instrument No. V953352 in the Office of the Harris County Clerk, Harris County, Texas.

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 2016-625 passed and adopted by the City Council of said City on the 24th day of August, 2016, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 7th day of September, 2016.



A handwritten signature in blue ink, reading "Anna Russell", is written over a horizontal line.

Anna Russell  
City Secretary of the City of Houston