

City of Houston, Texas, Ordinance No. 2022- 87

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 0.2746 ACRES COMMONLY KNOWN AS 1701 COMMERCE STREET, HOUSTON, HARRIS COUNTY, TEXAS; SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AT THE REQUEST OF SCARLET Q COMMERCE LP; 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(c) 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 March 25, 2021, **SCARLET Q COMMERCE LP** ("Applicant") applied to the Director of Houston Public Works, requesting that the City Council support a municipal setting designation ordinance for property that is located generally at 1701 Commerce Street (0.2746 acres), Houston, Harris County, Texas 77002; and

WHEREAS, on November 04, 2021, the Director of Houston Public Works conducted a virtual public meeting via the Microsoft Teams Platform, 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 Regulatory and Neighborhood Affairs Council Committee, designated by the Mayor, conducted a public hearing on November 09, 2021; 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 concentrations of contaminants of concern exceed 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 Houston Public Works 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 Regulatory and Neighborhood Affairs Council Committee 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:

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 Houston Public Works 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 Houston Public Works shall send a certified copy of this ordinance to the Applicant, the TCEQ, and the EPA.

Section 10. That the Applicant shall provide the Director of Houston Public Works 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 Houston Public Works 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 2nd day of February, 2022.

APPROVED this _____ day of _____, 2022.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is FEB 08 2022.

Pat J. Kinnel
City Secretary

(Prepared by Legal Department *Michael G. Wolfe*)
(WC/jb 01/20/2022 Senior Assistant City Attorney)
(Requested by Carol Ellinger Haddock, P.E., Director, Houston Public Works)
(L.D. File No. 063-2101023-001)

Meeting 2/02/2022

Aye	No	
✓		Mayor Turner
....	Council Members
✓		Peck
✓		Jackson
✓		Kamin
✓		Evans-Shabazz
✓		Martin
✓		Thomas
✓		Huffman
✓		Cisneros
✓		Gallegos
✓		Pollard
Absent		Castex-Tatum
✓		Knox
✓		Robinson
✓		Kubosh
Plummer absent on personal business		Plummer
✓		Alcorn
Caption	Adopted	

Captions Published in DAILY COURT REVIEW

Date: 2/8/2022

EXHIBIT "A"

Survey of Designated Property

EXHIBIT A

Legal Description of the Land

All that certain 11,960 square feet of land being a portion of Lot 7 and 12 and all of Lot 6 Block 113, S. S. B. B. Addition, Houston, Harris County, Texas and being all that certain called Tract 1 and Tract 2 as described in that certain deed dated 01-23-2017 from Duke Furrh to The Estate of Lucy Reed Hibberd filed in the Official Public Records of Real Property of Harris County, Texas in Clerk's File No.201728672 and being more particularly described by metes and bound as follows:

Beginning at a found "X" in concrete located in the east right-of-way line of Jackson Street (80' wide) and being the southwest corner of Unrestricted Reserve A Block 1 City view Lofts according to the plat thereof file in Film Code No. 621290 of the Maps Records of Harris County, Texas;

THENCE S 59° 43' 13" E - 131.67', with the south line of said Unrestricted Reserve A, to a set 5/8" iron rod with cap for corner;

THENCE S 33° 10' 47" W - 94.28', with the west line of Unrestricted Reserve C Block 1 City view Lofts according to the plat thereof file in Film Code No. 621290 of the Maps Records of Harris County, Texas to a set "X" in concrete corner;

THENCE N 56° 49' 13" W - 131.50', with the north right-of-way of Commerce Avenue (80' wide), to a set "X" in concrete for corner;

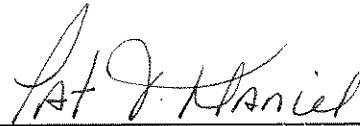
THENCE N 33° 10' 47" E - 87.62' with the east right-of-way line of said Jackson Street to the POINT OF BEGINNING

and containing 11,960 square feet (0.2746 acre) of land, more or less.

RP-2019-213822

I, PAT J. DANIEL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy of Ordinance 2022-87 passed and adopted by the City Council of said City on the 2nd day of February, 2022, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 15th day of February, 2022.

A handwritten signature in cursive script that reads "Pat J. Daniel". The signature is written in black ink and is positioned above a horizontal line.

Pat J. Daniel
City Secretary