

ORDINANCE NO. _____

An ordinance amending CHAPTER 51, "DALLAS DEVELOPMENT CODE: ORDINANCE NO. 10962, AS AMENDED," and CHAPTER 51A, "DALLAS DEVELOPMENT CODE: ORDINANCE NO. 19455, AS AMENDED," of the Dallas City Code, by amending Section 51A-1.105 and adding new Sections 51-4.507 and 51A-4.507, providing for municipal setting designations to prohibit use of groundwater in areas designated as contaminated; providing a penalty not to exceed \$2,000; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, municipal setting designations is a process authorized by Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code that balances protection of human health and the environment with the economic welfare of the citizens and the city; and

WHEREAS, the city council, in accordance with the provisions of the Charter of the City of Dallas, the state law, and the applicable ordinances of the city, have given the required notices and have held the required public hearings regarding this amendment to the Dallas City Code; Now Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Article VI, "Environmental Performance Standards," of CHAPTER 51, "DALLAS DEVELOPMENT CODE: ORDINANCE NO. 10962, AS AMENDED," of the Dallas City Code, is amended by adding a new Section 51-6.108, "Municipal Setting Designations," to read as follows:

“SEC. 51-6.108.

MUNICIPAL SETTING DESIGNATIONS.

This section incorporates by reference the language of Section 51A-6.108, “Municipal Setting Designations,” of CHAPTER 51A of the Dallas City Code, as amended.”

SECTION 2. That Section 51A-1.105, “Fees,” of Article I, “General Provisions,” of CHAPTER 51A, "DALLAS DEVELOPMENT CODE: ORDINANCE NO. 19455, AS AMENDED," of the Dallas City Code, is amended by adding a new Subsection (t), “Fee for Municipal Setting Designation,” to read as follows:

“(t) Fees for municipal setting designations.

(1) An application will not be accepted until the initial filing fee has been paid. An application will not be placed on the city council agenda until the additional processing fee has been paid.

(2) The applicant shall pay the fees to the director. The director shall deposit fees received in the official city depository not later than the next business day following receipt of the fees.

(3) No refund of the fees may be made.

(4) The initial filing fee for a municipal setting designation under Section 51A-6.108 is \$2,500. An additional processing fee of \$5,000 must be paid before the municipal setting designation resolution and ordinance is placed on the city council agenda.”

SECTION 3. That Section 51A-6.108, “Reserved,” of Article VI, “Environmental Performance Standards,” of CHAPTER 51A, "DALLAS DEVELOPMENT CODE: ORDINANCE NO. 19455, AS AMENDED," of the Dallas City Code, is amended to read as follows:

“SEC. 51A-6.108.

MUNICIPAL SETTING DESIGNATIONS.

(a) Authority. This section is adopted pursuant to the authority provided in:

(1) Subchapter W, “Municipal Setting Designations,” of Chapter 361, “Solid Waste Disposal,” of the Texas Health and Safety Code;

(2) Paragraph (6) of Subsection (a) of Section 211.003, “Zoning Regulations Generally,” of Chapter 211, “Municipal Zoning Authority,” of the Texas Local Government Code;

(3) Subsection (a) of Section 212.003, “Extension of Rules to Extraterritorial Jurisdiction,” of Chapter 212, “Municipal Regulation of Subdivisions and Property Development,” of the Texas Local Government Code; and

(4) Section 401.005, “Restriction on Pumping, Extraction, and Use of Groundwater,” of Chapter 401, “Water Control by Municipalities,” of the Texas Local Government Code.

(b) Findings. The city council finds:

(1) Due to limited quantity and low quality, there are areas within the city and its extraterritorial jurisdiction where the groundwater is not valuable as a source for potable water.

(2) The city of Dallas does not utilize groundwater as a source for public potable water.

(3) Many commercial and industrial properties in the city and its extraterritorial jurisdiction are underlaid with unusable groundwater that has become contaminated by historical on-site or off-site sources.

(4) Municipal setting designations is a state-evaluated corrective process for groundwater that protects human health and the environment while also promoting the economic welfare of citizens.

(5) Where the quality of the groundwater presents an actual or potential threat to human health, and another source of potable water is available, the use of designated groundwater beneath a designated property should be prohibited to protect the public health, safety, and welfare.

(6) Municipal setting designations should be established only after a process that allows for public input.

(7) The use of municipal setting designations within the city of Dallas and its extraterritorial jurisdiction could encourage the economic development of properties that contain contaminated groundwater.

(c) Definitions. In this section:

(1) APPLICATION means the application submitted to the city for an ordinance creating a municipal setting designation.

(2) CONTAMINANT OF CONCERN means any contaminant that has the potential to adversely affect ecological or human receptors due to its concentration, distribution, or mode of toxicity.

(3) DESIGNATED GROUNDWATER means groundwater up to a maximum of 200 feet below ground surface that will be or is prohibited from use as potable water by a municipal setting designation.

(4) DESIGNATED PROPERTY means the property that will be or is subject to a municipal setting designation.

(5) DIRECTOR means the director of the Department of Development Services or the director's representative.

(6) GROUNDWATER means water below the surface of the earth.

(7) POTABLE WATER means water used for human or domestic consumption, including bathing, cooking, drinking, irrigating crops intended for human consumption, showering, swimming, or washing dishes.

(8) RESPONSE ACTION means the cleanup or removal from the environment of a hazardous substance or contaminant pursuant to Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code.

(9) TCEQ means the Texas Commission on Environmental Quality.

(10) TCEQ APPLICATION means the application submitted to the TCEQ for certification of a municipal setting designation.

(11) TEXAS WATER QUALITY CONTROL ACT means Chapter 26 of the Texas Water Code.

(d) Application.

(1) A person seeking a municipal setting designation shall file 10 copies of an application with the director.

(2) The application must be clear, complete, concise, correct, contain only relevant information, and be organized to facilitate analysis. Maps must be accurate and drawn to scale. Voluminous documentation should be submitted as a appendix to the application.

(3) The application must be certified as accurate by a licensed professional engineer authorized to practice in the state of Texas with expertise in environmental remediation. Any properties descriptions or maps must be certified by a professional surveyor registered with the Texas Board of Professional Surveying.

(4) The application must be on the form required by the director and contain the following:

- (A) An executive summary of the application.
- (B) The name, address, telephone number, and email of the property owner and any representative of the property owner.
- (C) A legal description of the boundaries of the designated property.
- (D) A site map showing:
 - (i) the location and topography of the designated property;
 - (ii) the detected area of groundwater contamination;
 - (iii) the location of all soil sampling locations and all groundwater monitoring wells;
 - (iv) groundwater gradients;
 - (v) the rate of migration of groundwater contaminants;
 - (vi) the direction of groundwater flow; and
 - (vii) the nonpotable extent of the contamination plume for each contaminant of concern.
- (E) A description of the current and anticipated uses of the designated property and properties within 500 feet of the designated property.
- (F) A description of the horizontal area, minimum depth below ground surface, and maximum depth below ground surface of the plume of contaminated groundwater for each contaminant of concern.
- (G) For each contaminant of concern within the designated groundwater:
 - (i) A description of the horizontal area, minimum depth below ground surface, and maximum depth below ground surface.
 - (ii) its chemical abstract system number;
 - (iii) the levels of contamination expressed as ug/L units and the protective concentration level expressed as ug/L units; and
 - (iv) its geophysical properties, including contaminant fate and transport properties (for example, whether the contaminant of concern migrates with groundwater, floats, or is soluble in water).

- setting designation.
- (v) protective concentration levels without the municipal designation;
- (vi) protective concentration levels with the municipal setting monitoring;
- (vii) a summary of actual test results from soil and groundwater concentration levels without the municipal setting designation;
- (viii) a table highlighting any exceedances of protective protective concentration levels with the municipal setting designation;
- (ix) a statement of whether the plume of contamination is stable, expanding, or contracting, with the basis for this statement. If this information is not known, a statement of why the information is not known; and
- (x) the material safety data sheet, if available.
- (H) A statement as to whether contamination off the designated property exceeds a residential assessment level and the basis for that statement.
- (I) Identification of the point of origin of the contamination and the persons responsible for the contamination, if known;
- (J) A description of any environmental regulatory actions taken in connection with the designated property.
- (K) A listing of all existing or U.S. Environmental Protection Agency registrations, permits, and identification numbers that apply to the designated property.
- (L) A statement of whether the designated property is in the Texas Voluntary Cleanup Program (Section 361.601 of the Texas Health and Safety Code), Innocent Owner/Operator Program (Section 361.751 of the Texas Health and Safety Code), or similar program.
- (M) A summary of any environmental site assessment reports filed with the TCEQ regarding the designated property, and any cleanup activities that are planned, ongoing, or completed.
- (N) An identification of a potable water supply system satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable

of supplying potable water to the designated property and property within one-half mile of the designated property.

(O) The name and address of each owner of a state-registered private water well within five miles of the designated property, along with

(i) a map showing the location of each well and a notation of whether each well is used for potable water (if known); and

(ii) a statement that the applicant has provided notice to each owner in compliance with Section 361.805 of the Texas Health and Safety Code.

(P) The name and address of each retail public utility, as defined in Section 13.002 of the Texas Water Code, that owns a groundwater supply well within five miles of the designated property, along with a statement that the applicant has provided notice as required by Section 361.805 of the Texas Health and Safety Code.

(Q) A listing of each municipality, other than the city of Dallas, with a boundary within one-half mile of the designated property, and a statement as to whether the applicant has provided each municipality with notice as required by Section 361.805 of the Texas Health and Safety Code.

(R) A listing of each municipality, other than the city of Dallas, that owns or operates a groundwater supply well located within five miles of the designated property; and a statement as to whether the applicant has provided each municipality with notice as required by Section 361.805 of the Texas Health and Safety Code.

(S) A statement as to whether, based on all available information, limiting the municipal setting designation to the designated property will create a public health or safety hazard or will result in harm to environmental quality.

(T) The following statement certified by the authorized representative of every person who has a property interest in the designated property:

I certify under penalty of law that this application and all attachments were prepared under my direction or supervision in a manner designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(U) A copy of the TCEQ application, excluding attachments.

(V) The signature of the applicant and proof that the applicant has the legal authority to restrict the use of the groundwater on the designated property.

(W) The initial filing fee.

(X) Any other information that the director deems necessary.

(5) Within 30 days after submission of an application, the director shall notify the applicant in writing of any deficiencies in the application and of any additional documentation required. The applicant shall have 60 days from the date of the deficiency letter to correct the deficiencies or submit additional documentation. The director may, for good cause, extend the deadline to correct or supplement the application. If the applicant fails to correct or supplement the application within 60 days or the extended period, the application shall be deemed withdrawn and the initial filing fee forfeited. No application shall be deemed complete until all supporting documentation is supplied. The director shall the notify the applicant in writing when the application is deemed complete.

(e) Staff review.

(1) The director shall distribute a copy of the complete application to the City Attorney, the Department of Development Services, Environmental and Health Services, Office of Environmental Quality, the Park and Recreation Department, Public Works and Transportation, and Dallas Water Utilities for review and comment. The director shall also send a copy of the application to the TCEQ.

(2) The city of Dallas is not responsible for conducting an environmental risk assessment with respect to the application.

(f) Public meeting.

(1) The director shall schedule a public meeting within 45 days after the application is deemed complete. The public meeting must be held at a public facility near the designated property.

(2) The director shall provide notification of the public meeting in the following manner:

(A) The notice of the public meeting must include:

- (i) the date, time, and location of the public meeting;
- (ii) the identity of the applicant;
- (iii) the location and legal description of the designated property;
- (iv) the purpose of the municipal setting designation; and

(v) the type of contamination identified in the designated groundwater.

(B) The director shall publish notice of the public meeting in the official newspaper of the city at least 15 days before the public meeting.

(C) The director shall mail notice of the public meeting at least 15 days before the date of the public meeting by depositing the notice properly addressed and postage paid in the United States mail. The notice must be written in English and Spanish. The applicant may not alter, change, amend, or enlarge the application after notices for the public meeting have been mailed. The director shall mail notice of the public meeting to:

- (i) the applicant;
- (ii) owners of real property within 500 feet of the designated property as indicated by the most recent appraisal district records;
- (iii) owners of state-registered private water wells within five miles of the designated property, as indicated on the application;
- (iv) any retail public utility that owns or operates a groundwater supply well located within five miles of the designated property, as indicated on the application;
- (v) any municipality with a boundary located within one-half mile of the designated property, as indicated on the application;
- (vi) any municipality that owns or operates a groundwater supply well located within five miles of the designated property, as indicated on the application; and
- (vii) the TCEQ.

(3) The applicant and the licensed professional engineer who certified the application must be present at the public meeting. If the applicant or the licensed professional engineer who certified the application are not present at the public meeting, the application shall be deemed withdrawn and the initial filing fee forfeited.

(4) The purpose of the public meeting is to provide information to the community about municipal setting designations in general and the application in specific, and to allow proponents and opponents of the application to present their comments prior the creation of a recommendation by the director, and notify the community of the date of the city council hearing.

(g) City council hearing.

(1) Prior to the public hearing, the director shall prepare a written report summarizing:

(A) the application;

(B) the horizontal area, minimum depth below ground surface, and maximum depth below ground surface of designated groundwater;

(C) an inspection of the property;

(D) the comments of reviewing departments;

(E) the comments of the TCEQ;

(F) the comments received at the public meeting;

(G) any conditions that should be imposed; and

(H) whether the application should be granted or denied.

(2) The director shall provide notification of the public hearing in the following manner:

(A) The notice of the public hearing must include:

(i) the date, time, and location of the public hearing;

(ii) the identity of the applicant;

(iii) the location and legal description of the designated property;

(iv) the purpose of the municipal setting designation; and

(v) the type of contamination identified in the designated groundwater.

(B) The director shall publish notice of the public hearing in the official newspaper of the city at least 15 days before the public hearing.

(3) The applicant and the licensed professional engineer who certified the application must be present at the public hearing. If the applicant or the licensed professional engineer who certified the application are not present at the public hearing, the application shall be deemed withdrawn and the initial filing fee and the additional processing fee forfeited.

(4) The city council shall deny the application if it finds that:

(A) limiting the municipal setting designation to the designated property will create a public health or safety hazard or will result in harm to environmental quality; or

(B) the municipal setting designation has an adverse effect on:

(i) public health, safety and welfare,

(ii) the environment, including terrestrial and aquatic life,

(iii) the operation of existing businesses,

(iv) the economic development of the city; or

(v) the current or future water resource needs of the city, a retail public utility, or a private well owner.

(5) In order to approve an application, the city council must adopt an ordinance that prohibits the potable use of designated groundwater from beneath the designated property. The ordinance must:

(A) provide a legal description of the designated property;

(B) provide the horizontal area, minimum depth below ground surface, and maximum depth below ground surface of the designated groundwater, but in no case shall the maximum depth below ground surface of the designated groundwater exceed 200 feet;

(C) list the contaminants of concern;

(D) prohibit the use of the designated groundwater from beneath the designated property as potable water;

(E) appropriately restrict other uses of or contact with the designated groundwater;

(F) state that the ordinance is necessary because the contaminant concentrations exceed potable water standards; and

(G) list any reasonable and necessary conditions on the use of the designated groundwater.

(H) indicate support of the TCEQ application, with any comments.

(h) Limitation on reapplication. If the applicant withdraws the application, or if the city council denies the application, no further applications may be accepted for that property for

two years from the date of the withdrawal or denial, unless the city council denies the application without prejudice. The city council, by simple majority vote, may waive the two year limitation if there are changed circumstances sufficient to warrant a new application.

(i) Effect of municipal setting designation.

(1) The purpose of a municipal setting designation is to eliminate ingestion of the designated groundwater as an exposure pathway for any contaminant of concern by prohibiting the use of designated groundwater as potable water. The effect of a municipal setting designation is to limit the scope of or eliminate the need for site investigations and response actions pursuant to Section 361.808 of the Texas Health and Safety Code.

(2) Except to the extent excused by the municipal setting designation, any person owning, operating, or controlling the designated property remains responsible for complying with all federal and state laws and regulations; all ordinances, rules, and regulations of the city; and all environmental regulations.

(3) Approval of a municipal setting designation pursuant to this section shall not be construed to subject the city of Dallas to any responsibility or liability for any injury to persons or damages to property caused by any contaminant of concern.

(j) Additional requirements following adoption of an ordinance.

(1) Within 30 days after adoption of the municipal setting designation ordinance, the applicant shall provide the director with an electronic file showing the location of the municipal setting designation and the horizontal area, minimum depth below ground surface, and maximum depth below ground surface of the designated groundwater in a format compatible with the city's geographic information system.

(2) Within 30 days after adoption of the municipal setting designation ordinance, the director shall file a certified copy of the ordinance granting a municipal setting designation in the deed records of the county where the designated property is located.

(3) Within 30 days after adoption of the municipal setting designation ordinance, the director shall send a certified copy of the ordinance granting a municipal setting designation to the TCEQ.

(4) The applicant shall provide the director 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.

(5) The applicant shall provide the director with a copy of the certificate of completion issued by the TCEQ showing that any site investigations and response actions required pursuant to Section 361.808 of the Texas Health and Safety Code have been completed within 30 days after issuance of the certificate.

(k) Authority of the director. The director is authorized to:

(1) Enter public or private property to determine whether designated groundwater is being used in violation of this section.

(2) Administer and enforce the provisions of this section.

(l) Offenses. A person commits an offense if the person:

(1) uses designated groundwater as a potable water source or for a purpose prohibited in the ordinance creating that municipal setting designation;

(2) fails to provide the director 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; or

(3) fails to provide the director with a copy of the certificate of completion issued by the TCEQ showing that any site investigations and response actions required pursuant to Section 361.808 of the Texas Health and Safety Code have been completed.”

SECTION 4. That a person violating a provision of this ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

SECTION 5. That CHAPTER 51, "DALLAS DEVELOPMENT CODE: ORDINANCE NO. 10962, AS AMENDED," and CHAPTER 51A, "DALLAS DEVELOPMENT CODE: ORDINANCE NO. 19455, AS AMENDED," of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 6. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 7. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., Interim City Attorney

By _____

DAVID HOWE
Assistant City Attorney

By _____

JOHN ROGERS
Assistant City Attorney

Passed _____