

GROUNDWATER MANAGEMENT

AN APPLICATION AND REVIEW PROCESS FOR A
MUNICIPAL SETTING DESIGNATIONS

HEALTH, ENVIRONMENT AND HUMAN SERVICES
COMMITTEE

May 23, 2005

PURPOSE

- ◆ To present a proposed, revised ordinance providing a process for submission, review and processing of applications for an ordinance supporting a Municipal Setting Designation (MSD).
- ◆ To get feedback from the HEHS Committee.

BACKGROUND

- ◆ Staff briefed the Health, Environment and Human Services Committee on May 9, 2005.
- ◆ The stakeholders and their representatives expressed support for what was presented in the last briefing, but had a few minor concerns.
- ◆ Staff has met with the stakeholders and their representatives and has responded to all their questions / concerns.

BACKGROUND (continued)

- ◆ Major Points of Discussion with the Stakeholders and their representatives
 - Fee
 - Public right-of-way adjacent to the designated property
 - Depth of designated groundwater

BACKGROUND (continued)

◆ Current Verbiage Regarding These Major Points.

- Fee splits into three (Pg. 2 of the ordinance)
 - ◆ Initial Filing Fee of \$2,500
 - ◆ Mailing Fee Based on Actual Cost
 - ◆ Processing Fee of \$5,000

BACKGROUND (continued)

◆ Current Verbiage Regarding These Major Points (continued)

- The City may recommend that the MSD ordinance prohibit the use of the designated groundwater from beneath public right-of-way adjacent to the designated property as potable water (Pg. 12 of the ordinance).
- Designated groundwater can go lower than 200 feet (Pg. 13 of the ordinance).

NEXT STEPS

- ◆ Committee recommends approval of the ordinance by City Council on May 25, 2005.

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 Sections 51A-1.105 and 51A-6.108 and adding a new Section 51-6.108; providing for municipal setting designation ordinances 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 Designation Ordinance," to read as follows:

"SEC. 51-6.108. MUNICIPAL SETTING DESIGNATION ORDINANCE.

This section incorporates by reference the language of Section 51A-6.108, "Municipal Setting Designation Ordinance," 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 Ordinance," to read as follows:

"(t) Fee for municipal setting designation ordinance.

(1) An application will not be accepted until the initial filing fee has been paid. An application will not be placed on a 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 ordinance is \$2,500. The director shall not mail notices or advertise the public meeting until the estimated cost of mailing notices and advertising the public meeting is paid. The director shall not place a municipal setting designation ordinance on a city council agenda until an additional processing fee of \$5,000 is paid.

(5) The city council may, by resolution, waive the initial filing fee when the city council finds that payment of the fee would result in substantial financial hardship to the applicant."

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 DESIGNATION ORDINANCE.

(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 that:

(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 properties in the city and its extraterritorial jurisdiction are underlain with unused or unusable groundwater that has become contaminated by historical on-site or off-site sources;

(4) municipal setting designation ordinances enable a state 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 designation ordinances should be considered only after a process that allows for public notice and input; and

(7) the use of municipal setting designation ordinances within the city of Dallas and its extraterritorial jurisdiction will encourage the economic development of properties that have contaminated groundwater.

(c) Definitions. In this section:

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

(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) CRITICAL PROTECTIVE CONCENTRATION LEVEL means the lowest protective concentration level for a contaminant of concern within a source medium determined from all applicable human exposure pathways.

(4) DESIGNATED GROUNDWATER means groundwater that will be or is prohibited from use as potable water by a municipal setting designation ordinance.

(5) DESIGNATED PROPERTY means the property that will be or is subject to a municipal setting designation ordinance. The designated property may cover several platted lots or tracts of land.

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

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

(8) INGESTION PROTECTIVE CONCENTRATION LEVEL means the protective concentration level for human ingestion for contaminants of concern in groundwater established by the TCEQ under the Texas Risk Reduction Program, determined as if there were no municipal setting designation ordinance.

(9) INGESTION PROTECTIVE CONCENTRATION LEVEL EXCEEDENCE ZONE means the area where concentrations of contaminants of concern from sources on or migrating from or through the designated property are greater than the ingestion protective concentration level in groundwater, determined as if there were no municipal setting designation ordinance.

(10) MUNICIPAL SETTING DESIGNATION means a TCEQ designation authorized by Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal," of the Texas Health and Safety Code.

(11) MUNICIPAL SETTING DESIGNATION ORDINANCE means an ordinance adopted pursuant to this section.

(12) NON-INGESTION PROTECTIVE CONCENTRATION LEVEL means the protective concentration level for dermal contact or inhalation for contaminants of concern in groundwater established by the TCEQ under the Texas Risk Reduction Program.

(13) NON-INGESTION PROTECTIVE CONCENTRATION LEVEL EXCEEDENCE ZONE means the area where concentrations of contaminants of concern from sources on or migrating from or through the designated property are greater than the non-ingestion protective concentration level in groundwater.

(14) POTABLE WATER means water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

(15) PROTECTIVE CONCENTRATION LEVEL means the non-site-specific concentration of a contaminant of concern that the TCEQ has determined can remain within the source medium and not result in a level that exceed the applicable human health risk-based exposure limit or ecological protective concentration level at the point of exposure for an exposure pathway.

(16) RESPONSE ACTION means the control, decontamination, 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.

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

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

(19) TO THE EXTENT KNOWN means information known by an applicant or applicant's agent after review of all public and private records and other information sources available in the exercise of due diligence.

(d) Application.

(1) A person seeking a municipal setting designation ordinance shall file 10 copies of an application and one copy of any supporting documentation 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. Supporting documentation, if necessary, should be submitted as a separate appendix to the application.

(3) A professional surveyor registered with the Texas Board of Professional Surveying must certify that any property descriptions or maps with metes and bounds descriptions are accurate.

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

(A) An executive summary of the application.

(B) The name, address, telephone number, and email of all applicants, all property owners within the designated property, and any representatives of the applicants or property owners.

(C) A legal description of the boundaries of the designated property and a copy of the deed for the designated property.

(D) A site map showing:

(i) the location of the designated property;

(ii) the topography of the designated property as indicated on publicly available sources;

(iii) the detected area of groundwater contamination;

(iv) the location of all soil sampling locations and all groundwater monitoring wells;

(v) groundwater gradients, to the extent known, and direction of groundwater flow;

(vi) the ingestion protective concentration level exceedence zone for each contaminant of concern, to the extent known.

(E) A description of the current use, and, to the extent known, the anticipated uses, of the designated property and properties within 500 feet of the designated property.

(F) For each contaminant of concern within the plume of contaminated groundwater, to the extent known:

(i) A description of the ingestion protective concentration level exceedence zone and the non-ingestion protective concentration

level exceedence zone, including a specification of the horizontal area and the minimum and maximum depth below ground surface.

(ii) The level of contamination, the ingestion protective concentration level, and the non-ingestion protective concentration level, all expressed as mg/L units.

(iii) Its basic geochemical properties (for example, whether the contaminant of concern migrates with groundwater, floats, or is soluble in water).

(G) For each contaminant of concern within the designated groundwater, to the extent known:

(i) A description of the ingestion protective concentration level exceedence zone and the non-ingestion protective concentration level exceedence zone, including a specification of the horizontal area and the minimum and maximum depth below ground surface.

(ii) The level of contamination, the ingestion protective concentration level, and the non-ingestion protective concentration level, all expressed as mg/L units.

(iii) Its basic geochemical properties (for example, whether the contaminant of concern migrates with groundwater, floats, or is soluble in water).

(H) A table displaying the following information for each contaminant of concern, to the extent known:

(i) the concentration level for soil and groundwater, the ingestion protective concentration level, and the non-ingestion protective concentration level, all expressed as mg/L units;

(ii) the critical protective concentration level without the municipal setting designation, highlighting any exceedences;

(iii) the critical protective concentration level with the municipal setting designation, highlighting any exceedences;

(I) A statement as to whether the plume of contamination is stable, expanding, or contracting, with the basis for that statement. If this information is not known, a statement of why the information is not known.

(J) A statement as to whether contamination on and off the designated property without a municipal setting designation exceeds a residential

assessment level as defined in the Texas Risk Reduction Program, if known, and the basis for that statement.

(K) A statement as to whether contamination on and off the designated property with a municipal setting designation will exceed a residential assessment level as defined in Texas Risk Reduction Program, if known, and the basis for that statement.

(L) Identification of the points of origin of the contamination and the persons responsible for the contamination, to the extent known;

(M) A description of any environmental regulatory actions that have been taken within the past five years in connection with the designated property, to the extent known.

(N) A listing of all existing state or U.S. Environmental Protection Agency registrations, permits, and identification numbers that apply to the designated property.

(O) A statement as to whether the designated property has been submitted to 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 state or federal program, and a description of the designated property's status in the program.

(P) A summary of any environmental site assessment reports filed with the TCEQ regarding any site investigations or response actions that are planned, ongoing, or completed related to the designated property.

(Q) A statement as to whether any public drinking water supply system exists 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 the designated property and the identity of each.

(R) 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, to the extent known, a notation of whether each well is used for potable water; and

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

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

(T) 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 notice as required by Section 361.805 of the Texas Health and Safety Code.

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

(V) The following statement signed and sealed by a licensed professional engineer or licensed professional geoscientist authorized to practice in the state of Texas with expertise in environmental remediation:

To the best of my knowledge and belief, based upon a review of all public and private records and other information sources available to me in the exercise of due diligence, the opinions stated and conclusions made in this application are supported by such information, and the technical and scientific information submitted with the application is true, accurate, and complete. Based on such review, the contaminants of concern from sources on the designated property or migrating from or through the designated property more likely than not (do exceed) *or* (do not exceed) a non-ingestion protective concentration level on property beyond the boundaries of the designated property.

(W) If the licensed professional engineer or licensed professional geoscientist determines that contaminants of concern from sources on the designated property or migrating from or through the designated property more likely than not do exceed a non-ingestion protective concentration level on property beyond the boundaries of the designated property, then the applicant must:

(i) Specify the name and address of the owner of each property.

(ii) Send a copy of the application to the owner of the property with the notice of the public meeting.

(iii) Provide documentation that the designated property has been included in a state or federal program that requires that the entire non-ingestion protective concentration level exceedance zone be addressed to the satisfaction of the agency administering the program, along with documentation of the estimated time period in which it is to be addressed. Examples of programs are the Texas Voluntary Cleanup Program (Section 361.601 of the Texas Health and Safety Code) and the Innocent Owner/Operator Program (Section 361.751 of the Texas Health and Safety Code).

(iv) Provide documentation upon completion of the state or federal program showing that the non-ingestion protective concentration level exceedances have been addressed to the satisfaction of the agency administering the program.

(X) The following statement certified by the applicant and any authorized representatives of the applicants listed in the application:

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 gathered and evaluated the information submitted. Based on my inquiry of the persons responsible for gathering and evaluating 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.

(Y) A copy of the TCEQ application, if it has been filed, excluding attachments.

(Z) 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.

(AA) The initial filing fee.

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

(5) Within 30 days after submission of an application, the director shall notify the applicant that the application is complete or 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 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 or the designated property.

(f) Public meeting.

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

(2) Upon receipt of the estimated cost of mailing notices and advertising the public meeting, 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 a 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 2,500 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, by certified mail;
- (iv) any retail public utility that owns or operates a groundwater supply well within five miles of the designated property, as indicated on the application, by certified mail;
- (v) any municipality with a boundary within one-half mile of the designated property, as indicated on the application, by certified mail;
- (vi) any municipality that owns or operates a groundwater supply well within five miles of the designated property, as indicated on the application, by certified mail; and
- (vii) the TCEQ.

(D) The director shall cause a copy of the application to be placed on display at the public library closest to the designated property at least 15 days prior to the public meeting.

(3) The applicant, the licensed professional engineer or licensed professional geoscientist who signed and sealed the application, or a licensed professional engineer or licensed professional geoscientist who is familiar with the application must be present at the public meeting. If the required person is not present at the public meeting, the director may either deem the application withdrawn and any fees forfeited or reschedule the public meeting at the applicant's expense.

(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, allow the applicant to explain the application, allow proponents and opponents to comment, and notify the community of the date of the city council public hearing.

(g) City council public hearing.

(1) Prior to the public hearing, the director shall prepare a recommendation as to whether the municipal setting designation ordinance should be granted or denied, and listing any conditions that should be imposed.

(A) The director may recommend that the municipal setting designation ordinance prohibit the use of the designated groundwater from beneath public rights-of-way immediately adjacent to the designated property as potable water.

(B) If the director, in his sole discretion, determines it is more likely than not that a source of a contaminant of concern originated on the designated property, and that the ingestion protective concentration level exceedance zone or the non-ingestion protective concentration level exceedance zone for that contaminant of concern extends to public rights-of-way immediately adjacent to the designated property, the director may recommend that the municipal setting designation ordinance include a condition that the public rights-of-way immediately adjacent to the designated property be included, at no additional cost to the city, in the TCEQ application.

(C) The director may recommend that the municipal setting designation ordinance specify a time period for a state or federal program to address the entire non-ingestion protective concentration level exceedance zone originating from sources on the designated property or migrating from or through the designated property.

(2) Upon payment of the additional processing fee, 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 a 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, the licensed professional engineer or licensed professional geoscientist who signed and sealed the application, or a licensed professional engineer or licensed professional geoscientist who is familiar with the application must be present at the public hearing. If the required person is not present at the public hearing, the city council may either deny the application or continue the public hearing.

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

(A) the eligibility criteria of Section 361.803 of the Texas Health and Safety Code have not been met;

(B) the municipal setting designation will have an adverse effect on the current or future water resource needs or obligations of the city; or

(C) there is not 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 the designated property.

(5) In order to approve an application, the city council must adopt a municipal setting designation ordinance that:

(A) states that the ordinance is necessary because the concentrations of contaminants of concern exceed human ingestion protective concentration levels;

(B) provides a legal description of the designated property;

(C) describes the designated groundwater, including the maximum depth below ground surface of the designated groundwater (the maximum depth shall not exceed 200 feet below ground surface unless the applicant specifically requests and the ordinance specifically provides a greater depth);

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

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

(F) lists any reasonable and necessary conditions;

(G) indicates support of the applicant's TCEQ application, with any comments.

(6) The municipal setting designation ordinance may prohibit the use of the designated groundwater from beneath public rights-of-way immediately adjacent to the designated property as potable water.

(7) The municipal setting designation ordinance may include a condition that the public rights-of-way immediately adjacent to the designated property be included, at no additional cost to the city, in the TCEQ application.

(8) The municipal setting designation ordinance may specify a time period for a state or federal program to address the entire non-ingestion protective concentration level exceedence zone originating from sources on the designated property or migrating from or through the designated property.

(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 one year 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 one year limitation if there are changed circumstances sufficient to warrant a new application.

(i) Effect of municipal setting designation ordinance.

(1) The effect of a municipal setting designation ordinance is to prohibit use of designated groundwater as potable water and thereby enable the TCEQ to certify a municipal setting designation for the designated property. If certified by the TCEQ, the municipal setting designation may limit the scope of or eliminate the need for risk-based site investigations and response actions pursuant to Section 361.808 of the Texas Health and Safety Code based on the non-existence, elimination, or control of pathways for human ingestion of contaminated groundwater.

(2) Any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal and state laws and regulations; all ordinances, rules, and regulations of the city; and all environmental regulations. 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.

(3) Approval of a municipal setting designation ordinance 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, the applicant shall provide the director 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.

(2) Within 60 days after adoption, the director shall file a certified copy of the municipal setting designation ordinance in the deed records of the county where the designated property is located.

(3) Within 60 days after adoption, the director shall send a certified copy of the municipal setting designation ordinance to the applicant and 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 or other documentation 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 to the satisfaction of the TCEQ within the time period required. The director may, for good cause, extend the time for submitting the documentation.

(6) Within the time period required in the municipal setting designation ordinance for the state or federal program to address the entire non-ingestion protective concentration level exceedance zone originating from sources on the designated property or migrating from or through the designated property, the applicant shall provide the director documentation that it has been addressed to the satisfaction of the agency administering the program. If it has not been addressed, the director may, for good cause, take any of the following actions:

(A) allow additional time to address the non-ingestion protective concentration level exceedance zone;

(B) request a review by the TCEQ or the agency administering the program;

(C) recommend to the city council that the municipal setting designation ordinance be repealed;

(D) request additional information or documentation from the applicant; or

(E) pursue other actions that the director believes may be warranted.

(7) The applicant shall notify the director in writing if the applicant determines that notice is required to be sent to an owner of other property beyond the boundaries of the designated property under Title 30 Texas Administrative Code, Chapter 30, Section 350.55(b), providing the name of the property owner, the property address, and a copy of the notice sent to the property owner.

(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 municipal setting designation ordinance;

(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 within 30 days after issuance of the certificate;

(3) fails to provide the director with a copy of the certificate of completion or other documentation 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 to the satisfaction of the TCEQ within the time period required.

(4) fails to notify provide documentation to the director within the time period required in the municipal setting designation ordinance that the entire non-ingestion protective concentration level exceedance zone originating from sources on the designated property or migrating from or through the designated property has been addressed to the satisfaction of the state or federal agency administering the program.”

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 CHAPTERS 51 and 51A 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 _____