

ORDINANCE NO. 2014-02-010

AN ORDINANCE OF THE CITY OF MCKINNEY TEXAS PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH THE PROPERTY WHOSE ADDRESS IS 2050 COUCH DRIVE AND WHICH PROPERTY IS BOUNDED TO THE EAST BY COUCH DRIVE, BOUNDED TO THE WEST BY A DALLAS AREA RAPID TRANSIT RAIL LINE, AND IS SITUATED APPROXIMATELY 1,100 FEET SOUTH OF INDUSTRIAL BLVD CONTAINING APPROXIMATELY 15.013 ACRES OF LAND IN MCKINNEY TEXAS TO FACILITATE THE CERTIFICATION OF SAID PROPERTY WITH A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY PURSUANT TO THE TEXAS SOLID WASTE DISPOSAL ACT; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR CRIMINAL PENALTIES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the owner of that certain parcel of property whose address is 2050 Couch Drive and which property is bounded to the east by Couch Drive, bounded to the west by a Dallas Area Rapid Transit rail line, and is situated approximately 1,100 feet south of Industrial Blvd containing approximately 15.013 acres of land in McKinney Texas (the "Property" or "MSD Site") desires to obtain a municipal setting designation ("MSD") from the Texas Commission on Environmental Quality ("TCEQ") to address concerns regarding certain pollutants or contaminants that have been identified on the Property; and

WHEREAS, Texas Local Government Code Section 551.005 authorizes the governing body of a municipality to regulate the pumping, extraction, or use of groundwater by persons other than retail public utilities, as defined by Section 13.002 of the Texas Water Code, to prevent the use of or contact with groundwater that presents an actual or potential threat to human health for the purpose of establishing and enforcing a MSD; and

WHEREAS, the Texas legislature has provided legislation in the Texas Health & Safety Code, Chapter 361, Subchapter W of the Texas Solid Waste Disposal Act that authorizes the Executive Director of the TCEQ to certify a MSD for certain qualifying properties upon receipt and approval of a properly submitted application to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant (the "MSD legislation"); and

WHEREAS, the Texas legislature, in enacting the MSD legislation, found that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate a MSD advances a substantial and legitimate state interest; and

WHEREAS, as a part of the application process for a MSD, the owner is required to provide documentation that the property for which said designation is sought is subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; and

WHEREAS, in order to certify an MSD application, said application must be supported by a resolution adopted by the city council of the municipality as described by Section 361.8065(a)(1)(A) of the Texas Health & Safety Code; and

WHEREAS, the owner may have continuing obligations to satisfy applicable statutory and regulatory provisions concerning groundwater contamination investigation and response actions at the MSD Site; and

WHEREAS, in order for the TCEQ to certify a MSD for the Property, the City of McKinney must prohibit the use of groundwater from beneath the MSD Site as potable water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes; and

WHEREAS, a public drinking water supply system exists that supplies or is capable of supplying water to the MSD Site and to all surrounding properties within one-half mile of the MSD Site; and

WHEREAS, the City Council of the City of McKinney is of the opinion that it is in the best interest of the public and the City to facilitate the owner's efforts to secure a MSD from the TCEQ

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. All of the declarations and findings contained in the preamble of this ordinance are made a part hereof and incorporated herein by reference, and shall be fully effective as a part of the ordained subject matter of this ordinance.

Section 2. The City Council finds that it is in the best interest and welfare of the public to facilitate the Texas Commission on Environmental Quality's certification of a municipal setting designation for the Property, the legal description of which is set forth in Exhibit "A" attached hereto and incorporated herein by reference for all purposes allowed by law.

Section 3. The owner of the Property in further support of and compliance with the requirements of Tex. Health & Safety Code § 361.0865 to facilitate TCEQ's certification of a MSD for the Property shall execute, deliver, and file, or cause to be executed, delivered and filed, no later than 30 days from the effective date hereof, in the official real property records of Collin County, Texas, a restrictive covenant enforceable by the City (in a form approved by the City Attorney) that prohibits the drilling of wells and the use of groundwater beneath the property located at 2050 Couch Drive, McKinney, Texas, for any purpose including but not necessarily limited to any potable purpose, save and excepting only: (i) wells used as monitoring wells for the collection of groundwater samples for chemical or biological laboratory analysis; and, (ii) wells used for the purpose of remediation of soil or groundwater contamination.

Section 4. A file-stamped copy of said restrictive covenant shall be delivered to the City Attorney within three business days after the date of filing. The restrictive covenant required by this ordinance shall run with the land and be binding on and enforceable as to any and all subsequent owners of the MSD Site.

Section 5. The failure of the owner to diligently pursue and obtain the items outlined in Sections 3 and 4 of this ordinance as well as the failure of the owner to diligently pursue and obtain from TCEQ a (i) MSD certificate for the MSD Site within one year of the effective date of this Ordinance, and/or (ii) TCEQ closure documentation for the MSD Site within three years of the effective date of this Ordinance shall render this Ordinance voidable by the City Council following 60 days' advance written notice to TCEQ and the owner.

Section 6. The owner shall submit, upon receipt of the MSD certificate from TCEQ respecting the MSD Site, a true and correct copy of same to the Director of Engineering.

Section 7. No person or entity shall drill wells upon the Property or use the groundwater from beneath the MSD Site as potable water for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

Section 8. All provisions of the ordinances of the City of McKinney in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of McKinney not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 9. Should any sentence, paragraph, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances of the City of McKinney, Texas.

Section 10. Any person violating the terms and provisions of this ordinance shall, upon conviction, be punished by a fine of not more than Two Thousand Dollars (\$2,000.00) and each and every day this ordinance is violated shall constitute a separate offense. This section shall be in addition to and cumulative of the applicable provisions of Chapter 54 of the Texas Local Government Code, which chapter provides for the enforcement of municipal ordinances.

Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this ordinance.

Section 11. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 4th DAY OF FEBRUARY, 2014.

CITY OF MCKINNEY, TEXAS

TRAVIS USSERY
Mayor Pro Tem

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

EXHIBIT A

BEING a tract of land situated in the W. S. RICHARDSON SURVEY, ABSTRACT NO. 747, City of McKinney, Collin County, Texas, being part of Block B of McKinney Industrial Park No. 2, an Addition to the City of McKinney, Texas, according to the map recorded in Volume 10, Page 64, Map Records, Collin County, Texas, and Lot 2-A, Block B of McKinney Industrial Park No. 2 Replat, an Addition to the City of McKinney, Texas, according to the plat recorded in Volume C, Page 46, Map Records, Collin County, Texas, and being more particularly described as follows:

BEGINNING at the intersection of the Northwest line of Couch Drive, (a 60 foot R.O.W.), with the Southwest line of the Southern Pacific Transportation Spur Tract 50 foot R.O.W., an iron stake found for corner;

THENCE, South 46 deg. 41 min. 13 sec. West, with the said Northwest line of Couch Drive, a distance of 39.27 feet to the beginning of a curve to the left, having a central angle of 45 deg. 51 min. 57 sec., a radius of 360.00 feet, an iron stake found for corner;

THENCE, Southerly, with said curve to the left, same being with the said Northwest line of Couch Drive, an arc distance of 288.18 feet to the end of said curve, an iron stake for corner;

THENCE, South 00 deg. 49 min. 16 sec. West, with the said West line of Couch Drive, a distance of 223.62 feet to the beginning of a curve to the left, having a central angle of 36 deg. 04 min., a radius of 60.00 feet, tangent bearing North 89 deg. 10 min. 44 sec. West, an iron stake for corner;

THENCE, Westerly, with said curve to the left, an arc distance of 37.77 feet, to the end of said curve, an iron stake for corner;

THENCE, North 89 deg. 10 min. 44 sec. West, with the common line of Lots 2-A and 2-B, a distance of 829.06 feet to the Southwest corner of said Lot 2-A, an iron stake for corner;

THENCE, North 05 deg. 49 min. 41 sec. West, a distance of 101.23 feet, an iron stake for corner;

THENCE, North 00 deg. 39 min. 53 sec. East, a distance of 91.70 feet to a point in the Southeast line of the Southern and Pacific Transportation Company 100 foot Right-of-Way, same being in a curve to the left, having a central angle of 18 deg. 18 min. 56 sec., a radius of 2879.19 feet, tangent bearing North 37 deg. 59 min. 56 sec. East, an iron stake for corner;

THENCE, Northeasterly, with said curve to the left, same being with the Southeast line of said Southern Pacific Transportation Company Right-of-Way, an arc distance of 920.38 feet to the end of said Curve, an iron stake for corner;

THENCE, North 19 deg. 41 min. East, with the Southeast line of said Southern & Pacific Transportation R.O.W., a distance of 148.85 feet to the intersection of the said Southeast line of said Southern Pacific Transportation 100 foot R.O.W., with the Southwest line of said Southern Pacific Transportation Company Spur Track (50 foot R.O.W.), an iron stake for corner;

THENCE, Southeasterly, with the Southwest line of said Spur Track Right-of-Way, same being with a curve to the left, having a central angle of 27 deg. 28 min. 50 sec., a radius of 430.00 feet, tangent bearing South 15 deg. 49 min. 57 sec. East, an arc distance of 206.24 feet to the end of said curve, an iron stake for corner;

THENCE, South 43 deg. 18 min. 47 sec. East, with the Southwest line of said Southern & Pacific Transportation Spur Tract Right-of-Way, a distance of 620.17 feet to the PLACE OF BEGINNING and CONTAINING 15.013 acres of land.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW (THE STATE OF TEXAS)

(COUNTY OF COLLIN)
I hereby certify that this instrument was FILED in the (County of Collin) on the date and the time stamped hereon by me, and was duly RECORDED, on the Official Public Records of Real Property of Collin County, Texas on

SEP 22 1993

Helene Starnes
COUNTY CLERK, COLLIN COUNTY, TEXAS



Filed for Record in:
COLLIN COUNTY, TX
HONORABLE HELEN STARNES

On 1993/09/22

At 3:31P

Number: 93- 0080510
Type : D1 15.00

4