

ORDINANCE NO. 4418

AN ORDINANCE OF THE CITY OF RICHARDSON, TEXAS, PROHIBITING THE USE OF AND CONTACT WITH DESIGNATED GROUNDWATER FROM BENEATH, DESCRIBED IN EXHIBIT "A" HERETO, TO FACILITATE CERTIFICATION OF A MUNICIPAL SETTING DESIGNATION ("MSD") OF SAID PROPERTY BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ") PURSUANT TO THE TEXAS SOLID WASTE DISPOSAL ACT; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED \$2,000.00; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Chapter 361, Subchapter W, of the Texas Solid Waste Disposal Act ("MSD legislation") authorizes the TCEQ to certify Municipal Setting Designations for properties upon receipt and approval of a proper application to the TCEQ; 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 an MSD advances a substantial and legitimate State interest; and

WHEREAS, as part of the application process for an MSD, an applicant is required to provide the TCEQ with documentation of a resolution or ordinance of support from the municipality in which the MSD is being sought, which ordinance prohibits the use of and contact with groundwater from beneath the designated property for potable purposes; and

WHEREAS, due to limited quantity and low quality, there are areas of shallow groundwater within the City and its extraterritorial jurisdiction that are not valuable as potable water sources and therefore are not utilized for potable water; and

WHEREAS, some commercial and industrial properties within the City and its extraterritorial jurisdiction are underlain with unusable groundwater that has become contaminated by historical on-site or off-site sources; and

WHEREAS, the potable use of groundwater in designated areas should be prohibited to protect public health and welfare when the quality of the groundwater presents an actual or potential threat to public health; and

WHEREAS, the use of an MSD allows for a State-evaluated corrective action process for groundwater that is directed towards the protection of human health and the environment; and

WHEREAS, Hartman Promenade LLC (the "Applicant") has submitted an application to the TCEQ and has obtained conditional approval for certification of an MSD for property located in and around the Promenade Shopping Center at 970 North Coit Road in Richardson, Texas, generally described by metes and bounds and depicted in Exhibit "A" attached hereto and made a part hereof (the "MSD Property"), the MSD Property being generally within the boundaries shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Applicant has certified that the type of known contaminants in the uppermost groundwater beneath the MSD Property are as set forth in Exhibit “C” attached hereto and made a part hereof; and

WHEREAS, the Applicant has certified to the City that:

1. The purpose of the application is to assist the Applicant in obtaining from the TCEQ closure documentation demonstrating the TCEQ's determination, after completion of any remediation requirements and appropriate review by the TCEQ, that no further environmental cleanup or restoration is required by the TCEQ with respect to the MSD Property; and
2. As a part of the application, the Applicant has or will submit to the TCEQ a statement regarding the type of known contamination in the groundwater beneath the MSD Property and has identified that shallow groundwater contains chemicals of concern above Tier 1 groundwater ingestion protective concentration levels, as set forth in 30 Texas Administrative Code, Chapter 350, the Texas Risk Reduction Program; and

WHEREAS, the Applicant has continuing obligations to satisfy applicable statutory and regulatory provisions concerning groundwater contamination investigation and response actions at the MSD Property; and

WHEREAS, a public drinking water supply system exists that satisfies the requirements of Texas Health and Safety Code Chapter 341 for the MSD Property and property within one-half mile of the MSD Property; and

WHEREAS, the City Council finds it to be in the best interest of the public and the City to facilitate the Applicant's efforts to secure an MSD and TCEQ closure documentation by passage of this Ordinance; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RICHARDSON, TEXAS:

SECTION 1. That the City Council finds the declarations and findings set forth in the preamble of this Ordinance are true and correct and are incorporated herein.

SECTION 2. That the City Council finds this Ordinance is necessary because the contaminant concentrations exceed TCEQ potable water standards.

SECTION 3. That the City Council finds it is in the best interest and welfare of the public to facilitate TCEQ's certification of an MSD for the MSD Property as well as the TCEQ closure documentation.

SECTION 4. That upon and after the effective date of this Ordinance, the drilling of wells and use of designated groundwater for any purpose, including, but not limited to, any potable purpose, 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, is hereby prohibited on or from any portion of the MSD Property.

SECTION 5. That failure of the Applicant to diligently pursue and obtain from the TCEQ an MSD certificate for the MSD Property and TCEQ closure documentation for the MSD Property shall render this Ordinance voidable by the City Council following 30 days' written notice to the TCEQ and the Applicant.

SECTION 6. That all provisions of the ordinances of the City of Richardson 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 Richardson not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 7. That 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.

SECTION 8. That any person, firm or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances

of the City of Richardson, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

SECTION 9. That this ordinance shall take effect immediately from and after its passage as the law and charter in such cases provide,

DULY PASSED by the City Council of the City of Richardson, Texas, on the 28th day of March 2022.



APPROVED:

A handwritten signature in black ink, appearing to be "Peter G. Smith", written over a horizontal line.

MAYOR

CORRECTLY ENROLLED:

A handwritten signature in black ink, appearing to be "Aimee Perre", written over a horizontal line.

CITY SECRETARY

APPROVED AS TO FORM:

A handwritten signature in black ink, "Peter G. Smith", written over a horizontal line.

CITY ATTORNEY

(PGS:3-14-22:TM 128161)



ORDINANCE NO. 4418
Exhibit "B" – Boundary Map of MSD Property



ORDINANCE NO. 4418
Exhibit "C" – Summary of Known Contaminants

Contaminates in groundwater that exceed the groundwater ingestion PCL:

Tetrachloroethylene

Trichloroethylene

cis-1,2-Dichloroethylene

trans-1,2-Dichloroethylene

1,1-Dichloroethene

Vinyl Chloride