

ORDINANCE NO. O-2019-59

AN ORDINANCE OF THE CITY OF TYLER, TEXAS, PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH THE PROPERTY WHOSE ADDRESS INCLUDES 1700 EAST DUNCAN STREET WHICH CONTAINS APPROXIMATELY THIRTY-SEVEN (37) ACRES OF LAND IN TYLER, 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; AND, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the owner of a certain parcel of property whose addresses include 1700 East Duncan Street containing approximately thirty-seven (37) acres of land in Tyler, 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 401.005 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 applicant 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, as a part of the application process for a MSD, the applicant is required to provide documentation that the property for which 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, as a part of the application process for a MSD, the applicant is required to provide documentation that the property for which the designation is sought is supported by a resolution adopted by statutorily designated interested parties; and

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

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

PART 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.

PART 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 shown on "Attachment 6" and as set forth in "Attachment 7", and as attached hereto and incorporated herein by reference for all purposes allowed by law.

PART 3: Upon and after the effective date of this Ordinance, the drilling of wells and the use of designated groundwater for any purpose, including but not limited to any potable purpose, 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.

PART 4: 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 Services.

PART 5: 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 Tyler, which date is expected to be July 29, 2019.

PASSED AND APPROVED this 24th day of July, A. D., 2019.

ATTEST:

Cassandra Brager
CASSANDRA BRAGER, CITY CLERK



MH
MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

APPROVED:

Deborah G. Pullum
DEBORAH G. PULLUM,
CITY ATTORNEY