



ORDINANCE NO. 3430

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, PROHIBITING THE USE OF AND CONTACT WITH DESIGNATED GROUNDWATER FROM BENEATH THE PROPERTY GENERALLY DESCRIBED AS FARMERS BRANCH SHOPPING CENTER CONSISTING OF 16.994± ACRES LOCATED AT THE SOUTHWEST CORNER OF VALLEY VIEW LANE AND JOSEY LANE IN FARMERS BRANCH, TEXAS, 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 a 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, Valley View-Josey Property, L.P., Josey-Val Shopping Center, Inc. Josey-Val Retail, L.P., and Josey @ Valley Outparcels III, L.P., (collectively the "Applicant") intends to submit an application to the TCEQ for certification of an MSD for 16.994± acres of land within the city limits of the City of Farmers Branch generally located at the Southwest corner of Valley View Lane and Josey Lane, a metes and bounds description of which land is set forth in Exhibit "A" attached hereto and made a part hereof (the "MSD Property"); and

WHEREAS, the Applicant has certified that the type of known contaminants in the groundwater beneath the MSD Property are as set forth in Exhibit "B" 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 FARMERS BRANCH, TEXAS, THAT:

SECTION 1. 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. The City Council finds this Ordinance is necessary because the contaminant concentrations exceed TCEQ potable water standards.

SECTION 3. 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. 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. 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. All provisions of the ordinances of the City of Farmers Branch 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 Farmers Branch not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 7. 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 Ordinance as a whole.

SECTION 8. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 9. Any person, firm or corporation violating any of the provisions or terms of this Ordinance 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 10. This Ordinance shall take effect from and after its passage and the publication of the caption of said Ordinance as the law and the City Charter in such case provides.

**DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH,
TEXAS, ON THE 21ST DAY OF FEBRUARY, 2017.**

APPROVED:

Bob Phelps, Mayor

ATTEST:

Amy Piukana, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:2/15/17:83814)

ORDINANCE NO. 3430
Exhibit "A" – Boundary Description of the MSD Property

[to be inserted prior to final approval]

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Exhibit "B" – Summary of Known Contaminants

TABLE E-1
GROUNDWATER ANALYTICAL SUMMARY
Jung Lane & Valley 12th Lane Properties
Frisco, Tarrant County, Texas

ANALYTE ¹	Temporary Monitoring Wells									Permanent Monitoring Wells								
	TMV-01	TMV-02	TMV-03	MV-01	MV-02	DGP-296	MV-03	MV-04	MV-05	MV-06	MV-07	MV-08	MV-09					
VOCS²	22	0.017 J	<0.020	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010					
Acetone	0.05	<0.0033	<0.0033	<0.0033	<0.0033	0.0055 J	<0.0033	<0.0033	<0.0033	<0.0033	<0.0033	<0.0033	<0.0033					
Benzene	9.8	<0.0045	<0.0045	<0.0045	<0.0045	0.0069 J	<0.0045	<0.0045	<0.0045	<0.0045	<0.0045	<0.0045	<0.0045					
Chloroethane	0.07	<SDL	<SDL	<SDL	<SDL	0.0081 J	<SDL	<SDL	<SDL	<SDL	<SDL	<SDL	<SDL					
1,1-Dichloroethane	2,300	<SDL	<SDL	<SDL	<SDL	0.0012 J	<SDL	<SDL	<SDL	<SDL	<SDL	<SDL	<SDL					
1,2-Dichloroethane	0.7	0.0096 J	0.480	0.023 J	0.52	0.01	0.0038 J	0.0038 J	0.0038 J	0.0038 J	0.0038 J	0.0038 J	0.0038 J					
1,1,1-Trichloroethane	0.10	<0.0040	0.22	0.0094 J	0.28	0.0047 J	0.0094 J	0.0094 J	0.0094 J	0.0094 J	0.0094 J	0.0094 J	0.0094 J					
trans-1,2-DCE	0.24	<0.0040	0.019	0.0044 J	0.028	0.0047 J	0.0044 J	0.0044 J	0.0044 J	0.0044 J	0.0044 J	0.0044 J	0.0044 J					
Methyl tert-butyl ether	1.0	<SDL	<SDL	<SDL	<SDL	0.0017 J	<SDL	<SDL	<SDL	<SDL	<SDL	<SDL	<SDL					
Toluene	0.05	<0.0037	0.044	0.0190	0.0088 J	0.0078	0.0037	0.0037	0.0037	0.0037	0.0037	0.0037	0.0037					
Trichloroethane	0.05	<0.0040	0.085	0.0190	0.0088 J	0.0078	0.0037	0.0037	0.0037	0.0037	0.0037	0.0037	0.0037					
1,2,4-Trinitrobenzene	1.2	0.0066 J	<0.0019	<0.0037	0.0037	0.0037	0.0037	0.0037	0.0037	0.0037	0.0037	0.0037	0.0037					
1,2,3-Trinitrobenzene	1.2	0.0038 J	<0.0016	<0.0032	0.0032	0.0032	0.0032	0.0032	0.0032	0.0032	0.0032	0.0032	0.0032					
Tri-n-Pentylamine	0.02	<0.0026	0.020 J	0.0040 J	0.020	0.0034	0.0034	0.0034	0.0034	0.0034	0.0034	0.0034	0.0034					
Tri-n-Octylamine	10	0.026 J	<0.003	<0.011	<0.011	<SDL	<SDL	<SDL	<SDL	<SDL	<SDL	<SDL	<SDL					
All Other VOCs	Values	Values	Values	Values	Values	Values	Values	Values	Values	Values	Values	Values	Values					
TPH³	0.98	2.90	0.65 J	0.60	0.60	0.60	0.60											
Cr-C6	0.98	10.000	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60					
Cr-C8	0.98	10.000	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60					
Cr-C9	0.98	10.000	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60	<0.60					

¹ Samples collected by W&A Environmental Group, Inc. and analyzed by EPC Lab Science in Ft. Worth, Texas.
² Texas Commission on Environmental Quality (TCEQ) Texas Risk Reduction Program (TRRP) Tier 1 probe the concentration level (PCL) groundwater ingestion in fully residential land use, Class 1 groundwater.
³ TCEQ TRRP Tier 1 PCL "Cr" pathway, commercial and industrial land use, U.S. source area.
⁴ Volatile Organic Compounds (VOCs) analyzed by US Environmental Protection Agency (EPA) Method 8260B
⁵ Total Petroleum Hydrocarbons (TPH) analyzed by Test Method 1002
 (J) Indicates the value was not detected above the sample detection limit (SDL).
 (<SDL) Indicates the value was not detected above the sample detection limit (SDL).
 Bold values indicate the value is concentration for each chemical of concern (COC).
 Bold and italicized values indicate COCs exceeding the "Cr" CWS-CPL for Class 1 groundwater.
 The adjusted Maximum Allowable Groundwater (MAGW) PCLs are the "Cr" CWS-CPL pathway, commercial and industrial land use, U.S. source area.
 (...) Not applicable/analyzed.