



ORDINANCE NO. 3456

AN ORDINANCE OF THE CITY OF FARMERS BRANCH, TEXAS, PROHIBITING THE USE OF AND CONTACT WITH DESIGNATED GROUNDWATER FROM BENEATH 59.49± ACRES DESCRIBED IN EXHIBIT "A" HERETON GENERALLY LOCATED AT SOUTH OF VALLEY VIEW LANE, WEST OF HUTTON DRIVE, AND NORTH OF WITTINGTON PLACE 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, Edina Park Plaza Associates, L.P., Art GNB, Inc., and CADG Mercer Crossing Holdings, LLC (collectively the "Applicant") intend to submit an application to the TCEQ for certification of an MSD for 59.49± acres of land within the city limits of the City of Farmers Branch generally located at the south of Valley View Lane, west of Hutton Drive, and north of Wittington Place, 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 12TH DAY OF SEPTEMBER, 2017.**

APPROVED:

Robert C. Dye, Mayor

ATTEST:

Amy Piukana, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney
(kbl:8/17/17:89207)

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Exhibit "A" – Boundary Description of the MSD Property

BEING all or portions of those certain tracts of land situated in the Francis Miller Survey, Abstract Number 926, Dallas County, Texas and being all of that tract of land described by deed to Edina Park Plaza Associates Limited Partnership, recorded in Instrument Number 20070299861, Official Public Records, Dallas County, Texas and being the remainder of that tract of land described by deed to ART GNB, Inc., recorded in Instrument Number 20070248392 Official Public Records, Dallas County, Texas, and being all of Block F, of Westside Addition, Section 1, an addition to the City of Farmers Branch, according to the plat thereof recorded as Instrument Number 200600172708, Map Records, Dallas County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at the northwest corner of said Edina tract in the south right-of-way of Valley View Lane (a variable width right-of-way) and being the beginning of a non-tangent curve to the right;

THENCE with the south right-of-way of said Valley View Lane the following courses and distances;

with said non-tangent curve to the right, an arc distance of 230.90 feet, through a central angle of $07^{\circ} 30' 06''$, having a radius of 1763.60 feet, the long chord of which bears $N 58^{\circ} 52' 15'' E$, 230.74 feet, to the beginning of a non-tangent curve to the right;

with said non-tangent curve to the right, an arc distance of 347.09 feet, through a central angle of $14^{\circ} 32' 26''$, having a radius of 1367.69 feet, the long chord of which bears $N 68^{\circ} 43' 04'' E$, 346.16 feet, to the beginning of a non-tangent curve to the left;

with said non-tangent curve to the left, an arc distance of 759.20 feet, through a central angle of $05^{\circ} 59' 37''$, having a radius of 7257.62 feet, the long chord of which bears $N 74^{\circ} 08' 39'' E$, 758.85 feet, to the beginning of a non-tangent curve to the left;

with said curve to the left, an arc distance of 384.50 feet, through a central angle of $03^{\circ} 35' 42''$, having a radius of 6128.08 feet, the long chord of which bears $N 68^{\circ} 52' 24'' E$, 384.44 feet;

THENCE $N 67^{\circ} 04' 16'' E$, 251.16 feet, continuing with said south right-of-way, to the northeast corner of said Edina tract;

THENCE $S 01^{\circ} 19' 18'' E$, 308.82 feet, departing said south right-of-way, to the north line of aforesaid ART GNB tract remainder;

THENCE $N 89^{\circ} 36' 19'' E$, 252.32 feet, with said north line, to the northeast corner of said ART GNB tract remainder;

THENCE $S 01^{\circ} 10' 40'' E$, 835.58 feet to an ell corner in the east line of said ART GNB tract;

THENCE N 89° 29' 14" E, 196.38 feet, continuing with said east line, to the northwest corner of a Street Easement recorded in Instrument Number 200002802701, Official Public Records, Dallas County, Texas;

THENCE S 01° 10' 43" E, 121.49 feet, with the west line of said Street Easement, to the south line of said ART GNB remainder, and being in the north line of aforementioned Block F;

THENCE N 88° 42' 52" E, 3.98 feet, with said common line, to the west right-of-way of Hutton Road (a called 64-foot right-of-way) at the beginning of a non-tangent curve to the right;

THENCE with said non-tangent curve to the right, an arc distance of 199.73 feet, through a central angle of 07° 37' 45", having a radius of 1500.00 feet, the long chord of which bears S 03° 53' 22" W, 199.58 feet;

THENCE S 07° 42' 15" W, 123.56 feet, continuing with said west right-of-way;

THENCE S 48° 12' 33" W, 38.02 feet, to the north right-of-way line of Wittington Place (a called 110-foot right-of-way);

THENCE S 88° 42' 52" W, 1493.14 feet, with said north right-of-way, to the beginning of a curve to the left;

THENCE with said curve to the left, with said north right-of-way, an arc distance of 305.68 feet, through a central angle of 16° 33' 18", having a radius of 1057.93 feet, the long chord of which bears S 80° 26' 13" W, 304.62 feet;

THENCE N 66° 09' 25" W, 22.29 feet, to the easterly right-of-way of Chartwell Drive (an 85-foot right-of-way);

THENCE N 24° 04' 09" W, 38.83 feet, with said easterly right-of-way, to the beginning of a curve to the left;

THENCE, continuing with said easterly right-of-way, with said curve to the left, an arc distance of 387.71 feet, through a central angle of 34° 34' 27", having a radius of 642.50 feet, the long chord of which bears N 41° 21' 23" W, 381.85 feet;

THENCE N 44° 06' 55" E, 358.93 feet;

THENCE N 45° 55' 16" W, 597.40 feet to the Point of Beginning and containing 2,591,374 square feet or 59.49 acres of land more or less.

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Exhibit “B” – Summary of Known Contaminants

Contaminates in groundwater that exceed the groundwater ingestion PCL -

- Arsenic
- Cadmium and Vinyl Chloride historically exceeded the PCL during 1 sampling event.

Contaminants in soil that exceed the soil-leaching-to-groundwater ingestion PCL

- Arsenic
- Barium
- Cadmium
- Lead
- Silver