

ORDINANCE NO. 31-2011

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH CERTAIN PROPERTY LOCATED IN AND AROUND THE PINE STREET CORRIDOR AND THE SOUTH DOWNTOWN REDEVELOPMENT AREA IN ABILENE, TEXAS AND SUPPORTING CERTIFICATION OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; CALLING A PUBLIC HEARING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Subchapter W, “Municipal Setting Designations,” of Chapter 361, “Solid Waste Disposal Act,” of the Texas Health and Safety Code authorizes the Texas Commission on Environmental Quality to create municipal setting designations; and

WHEREAS, pursuant to Section 401.005(a) of the Texas Local Government Code, for the purpose of establishing and enforcing a municipal setting designation, the governing body of a municipality may regulate the pumping, extraction, or use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, to prevent the use of or contact with groundwater that presents an actual or potential threat to human health; and

WHEREAS, pursuant to Section 401.005(b) of the Texas Local Government Code, for the purpose of establishing and enforcing a municipal setting designation, the governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances; and

WHEREAS, the city council finds that:

(1) The eligibility criteria of Section 361.803 of the Texas Health and Safety Code have been met;

(2) This municipal setting designation ordinance will not have an adverse effect on the current or future water resource needs or obligations of the City of Abilene;

(3) There is a public drinking water supply system that satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable of supplying

drinking water to the designated property and property within one-half mile of the designated property; and

(4) This municipal setting designation ordinance is necessary because the concentration of chemicals of concern exceed concentrations considered safe for human ingestion; and

WHEREAS, passing this municipal setting designation ordinance will encourage the redevelopment of the designated property consistent with the goals of the City's Comprehensive Plan.

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

SECTION 1. That for purposes of this municipal setting designation ordinance, the "designated property" means the property described in Exhibit A attached to the ordinance.

SECTION 2. That for purposes of this municipal setting designation ordinance, "designated groundwater" means water below the surface of the designated property to a depth of 150 feet.

SECTION 3. That use of the designated groundwater from beneath the designated property as potable water, as defined in Section 361.801(2) of the Texas Health and Safety Code, and the following uses of or contacts with the designated groundwater are prohibited:

- (1) Human consumption or drinking.
- (2) Showering or bathing.
- (3) Cooking.
- (4) Irrigation of crops for human consumption.

SECTION 4. That the City Council supports the application to the Texas Commission on Environmental Quality for certification of a municipal setting designation for the designated property.

SECTION 5. That any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal, state, and local statutes, ordinances, rules, and regulations relating to environmental protection, and that this municipal setting

designation ordinance in itself does not change any environmental assessment or cleanup requirements applicable to the designated property.

SECTION 6. That approval of this municipal setting designation ordinance shall not be construed to subject the City of Abilene to any responsibility or liability for any injury to persons or damages to property caused by any chemical of concern.

SECTION 7. That within 60 days after adoption of this municipal setting designation ordinance, the City Manager shall cause to be filed a certified copy of this municipal setting designation ordinance in the deed records of the county where the designated property is located.

SECTION 8. That the City Manager shall notify the Texas Commission on Environmental Quality 60 days prior to any amendment or repeal of this municipal setting designation ordinance.

SECTION 9. That a person violating Section 3 of this municipal setting designation ordinance, upon conviction, is punishable by a fine not to exceed \$2,000, and that the Texas Commission on Environmental Quality shall be notified of any violations.


SECTION 10. It is the intention of the City Council that this municipal setting designation ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this ordinance shall not affect the validity or unconstitutionality of any other portion of this ordinance.

SECTION 11. That this municipal setting designation ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Abilene, and it is accordingly so ordained.

PASSED on FIRST READING this 25th day of August, 2011.


A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on August 19, 2011, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 8th day of September, 2011, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

**PASSED on SECOND AND FINAL READING after PUBLIC HEARING this 8th
day of September, 2011.**



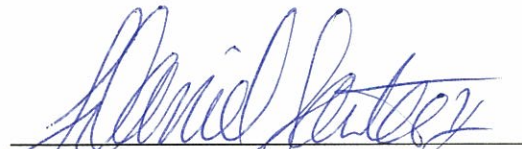
Norm Archibald, MAYOR

ATTEST:



Danette Dunlap, CITY SECRETARY

APPROVED:



T. Daniel Santee, CITY ATTORNEY

EXHIBIT A

Attachment A

Municipal Setting Designation (MSD) Boundary

The area subject to this Municipal Setting Designation (MSD) shall be as shown on the map on the following page and described by the boundary below:

Beginning at the intersection of Lowden Street and Treadaway Blvd., continuing south along Treadaway Blvd. to its intersection with South 7th Street, continuing west along South 7th Street to its intersection with Butternut Street, continuing west approximately 190 feet to the intersection with the north-south alley between Butternut and Poplar Streets, continuing north along the alley to its intersection with South 3rd Street, continuing west along South 3rd Street to its intersection with Poplar Street, continuing north approximately 770 feet to the intersection of Poplar Street and South 1st Street, continuing east along South 1st Street to its intersection with Hickory Street, continuing north along Hickory Street to its intersection with North 18th Street, continuing west along North 18th Street to its intersection with Grape Street, continuing north along Grape Street to its intersection with Lowden Street, and continuing east along Lowden Street to its intersection with Treadaway Blvd.

The boundary described above shall be inclusive of all public street rights-of-ways, including those of the bounding streets and alleys.

More specifically, the area within this proposed Municipal Setting Designation includes the properties listed on the following pages. However, the map and described area above shall supersede any discrepancies between the attached property list and the map and/or description above.