

ORDINANCE NO. 18-2009

**AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH CERTAIN PROPERTY LOCATED AT 300 WALL STREET AND ADJACENT PROPERTIES, 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

**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 200 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 Director of Public Works 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 Director of Public Works 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 14th day of May, 2009.**

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 May 10, 2009, 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 28<sup>th</sup> day of May, 2009, 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 28th  
day of May, 2009.**

  
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Norm Archibald, MAYOR

ATTEST:

  
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Danette Dunlap, CITY SECRETARY

APPROVED:

  
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T. Daniel Santee, CITY ATTORNEY