

05/30/14
06/02/14

Ordinance No. 14-031

An ordinance prohibiting the use of and contact with designated groundwater from beneath certain property known as 912 and 920 North Collins Street within the City of Arlington, Texas, and adjacent right-of-way on East Randol Mill Road, to facilitate certification of a Municipal Setting Designation of the property by the Texas Commission on Environmental Quality pursuant to the Texas Health and Safety Code; providing for a fine of up to \$2,000 for each violation of the ordinance; providing this ordinance be cumulative; providing for severability, governmental immunity, injunctions, publication and an effective date.

WHEREAS, Texas Health and Safety Code Chapter 361, Subchapter W (the "MSD Legislation") authorizes the Texas Commission on Environmental Quality (TCEQ) to certify Municipal Setting Designations for properties upon receipt and approval of a properly submitted application to 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 Municipal Setting Designation (MSD) advances a substantial and legitimate state interest where the quality of the groundwater subject to the designation is an actual or potential threat to human health; and

WHEREAS, as a part of the application process for an 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 an MSD, the applicant is required to provide documentation that the property for which designation is sought is supported by an ordinance adopted by this City Council; and

WHEREAS, David R. Warwick (the "Applicant") submitted an application for the City Council to adopt an Ordinance supporting the certification of an MSD for property at 912 and 920 North Collins Street (920 North Collins Street includes the current postal addresses for 922, 924, 926, 928A, 928B, 930, 932A, 932B, 934A, and 934B North Collins Street) and the City staff have reviewed and evaluated the subject MSD application; and

WHEREAS, Applicant will submit an application to TCEQ for certification of an MSD for property within the city limits of the City, commonly known as 920 North Collins Street, the legal description of which is set forth in Exhibit "A", and 912 North Collins Street, the legal description of which is set forth in Exhibit "B", attached hereto and made a part hereof, together with the full East Randol Mill Road right-of-way

fronting on the property set forth in Exhibit "A" (together, the "MSD Property"), provided that the ordinance being considered herein is passed; and

WHEREAS, the Applicant has certified that:

- 1) the purpose of its application is to conduct environmental investigation, cleanup and restoration activities in a more efficient and cost-effective manner;
- 2) it will seek to obtain a determination from TCEQ that regulatory closure is attained at the MSD Property;
- 3) as part of such application, the Applicant has submitted a statement to TCEQ regarding the type of known contamination in the groundwater beneath the MSD Property; and
- 4) notice of the application for the certification of MSD Property has been provided to each owner of a registered private water well that is located not more than five miles from the boundary of 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, after public hearing, the City Council believes that it is in the best interest of the public and the City to facilitate the efforts to secure an MSD and TCEQ closure documentation from the TCEQ by passage of this Ordinance; Now therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That all of the declarations and findings contained in the preambles of this Ordinance are made a part hereof and shall be fully effective as a part of the ordained subject matter of this Ordinance.

2.

That the City Council finds that 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 TCEQ closure documentation.

3.

That, 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.

4.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Two Thousand and No/100 Dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

5.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

6.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

7.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

8.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

9.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

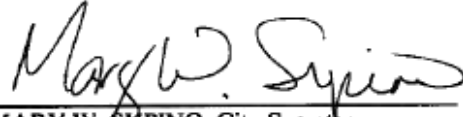
10.

This ordinance shall become effective immediately upon second publication.

PRESENTED AND GIVEN FIRST READING on the 13th day of May, 2014, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 27th day of May, 2014, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.


ROBERT N. CLUCK, Mayor

ATTEST:


MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 

MSD14-1

EXHIBIT "A"

LOT R-1, NORTH SIDE ADDITION

BEING THAT CERTAIN LOT, TRACT, OR PARCEL OF LAND LOCATED IN THE SOL DAVIS SURVEY, ABSTRACT NO. 425, IN THE CITY OF ARLINGTON, TARRANT COUNTY, TEXAS, AND DESCRIBED AS LOT R-1 BY PLAT RECORDED IN CABINET A, SLIDE 8681, P.R.T.C.T, SUBJECT TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT ON 'X' SET IN THE CONCRETE BASE OF A LIGHT POLE AT THE NORTHEAST CORNER OF LOT R-1, SAID IRON ROD BEING THE NORTHWEST CORNER OF LOT 9-AC, NORTH SIDE ADDITION, AN ADDITION TO THE CITY OF ARLINGTON, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 388-57, PAGE 154, P.R.T.C.T., SAID IRON ROD ALSO BEING IN THE SOUTH RIGHT OF WAY LINE OF EAST RANDOL MILL ROAD;

THENCE SOUTH 00° 03' 27" EAST WITH THE COMMON LINE OF LOTS R-1 AND 9-AC, A DISTANCE OF 149.38 FEET O A 'X' FOUND CUT IN CONCRETE AT THE SOUTHWEST CORNER OF LOT 9 -AC,

THENCE SOUTH 00° 02' 07" EAST WITH THE EAST LINE OF LOT R-1, A DISTANCE OF 20.14 FEET TO A PK NAIL SET IN ASPHALT IN THE NORTH LINE OF LOT R-2, OF THE AFOREMENTIONED NORTH SIDE ADDITION, FOR CORNER;

THENCE SOUTH 89° 7' 53" WEST WITH THE COMMON LINE OF LOTS R-1 AND R-2, A DISTANCE OF 34.50 FEET TO A PK NAIL SET IN ASPHALT AT THE MOST NORTHERLY NORTH LINE OF LOT R-2, FOR CORNER;

THENCE SOUTH 0° 02' 07" EAST WITH THE COMMON LINE OF LOTS R-1 AND R-2, A DISTANCE OF 44.38 FEET TO A PK NAIL SET IN ASPHALT FOR CORNER;

THENCE SOUTH 44° 57' 53" WEST WITH THE COMMON OF LOTS R-1 AND R-2, A DISTANCE OF 37.40 FEET TO A PK NAIL FOUND UNDER ASPHALT FOR CORNER;

THENCE SOUTH 89° 57' 53" WEST WITH THE COMMON LINE OF LOTS R-1 AND R-2, A DISTANCE OF 40.69 FEET TO A PK NAIL FOUND UNDER ASPHALT AT THE MOST SOUTHERLY NORTHWEST CORNER OF LOT R-2, NORTH SIDE ADDITION, FOR CORNER;

THENCE SOUTH 00° 02' 07" EAST WITH THE COMMON LINE OF LOTS R-1 AND R-2, A DISTANCE OF 10.00 FEET TO A 1/2 INCH IRON ROD WITH PLASTIC CAP STAMPED "JDZ" FOUND AT THE MOST WESTERLY SOUTHEAST CORNER OF LOT R-1, SAID IRON ROD BEING THE NORTHEAST CORNER OF LOT 6A, NORTH SIDE ADDITION, AN ADDITION TO THE CITY OF ARLINGTON, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLOT RECORDED IN VOLUME 388-46, PAGE 845, P.R.T.C.T. FOR CORNER;

THENCE SOUTH 89° 27' 53" WEST, WITH THE COMMON LINE OF LOT R -1, AND LOT 6A, A DISTANCE OF 44.20 FEET TO A 1/2 INCH IRON ROD WITH PLASTIC CAP STAMPED "DISCIULLO & TERRY" SET AT THE SOUTHWEST CORNER OF LOT R-1, SOME BEING THE SOUTHEAST CORNER OF LOT 9A, NORTH SIDE ADDITION, AN ADDITION TO THE CITY OF ARLINGTON, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 388-48, PAGE 267, P.R.T.C.T. FOR CORNER;

THENCE NORTH 00° 35' 53" EAST WITH THE COMMON LINE OF LOT R-1 AND LOT 9A, NORTH SIDE ADDITION, A DISTANCE OF 292.41 FEET TO A PK NAIL SET IN ASPHALT AT THE NORTHWEST CORNER OF LOT R -1, SAME BEING THE NORTHEAST CORNER OF LOT 9A, SAID PK NAIL ALSO BEING IN THE SOUTH RIGHT OF WAY LINE OF EAST RANDOL MILL ROAD, FOR CORNER;

THENCE SOUTH 79° 35' 19" EAST WITH THE SOUTH RIGHT OF WAY LINE OF EAST RANDOL MILL ROAD, A DISTANCE OF 85.56 FEET TO AN 'X' CUT IN CONCRETE (SET) FOR CORNER;

THENCE SOUTH 65° 55' 07" EAST WITH THE SOUTH RIGHT OF WAY LINE OF EAST RANDOL MILL ROAD, A DISTANCE OF 64.00 FEET TO THE POINT OF BEGINNING, OF THE HEREIN DESCRIBED TRACT OF LAND CONTAINING A CALCULATED AREA OF 0.826 ACRES (35,982 SQUARE FEET) OF LAND.