

ORDINANCE NO. 19 - 07

An ordinance prohibiting the use of and contact with designated groundwater from beneath certain property known as 400 Maple Street in Commerce, Texas, 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 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;

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;

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 above a depth of 50 feet from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater;

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;

WHEREAS, Covidien LP (the "Applicant") submitted an application for the City Council to adopt an Ordinance supporting the certification of an MSD for property at 400 Maple Street, Commerce, Texas and the City staff have reviewed and evaluated the subject MSD application;

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 400 Maple Street, the legal description of which is set forth in Exhibit "A", attached hereto and made a part hereof, the "MSD Property", provided that the ordinance being considered herein is passed;

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;

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 COMMERCE, 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.

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, and hereby approves the application of Covidien LP for an MSD at 400 Maple Street in the City of Commerce, Texas.

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.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Commerce, 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.

5.

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.

6.

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 Commerce 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.

7.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Commerce 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 Commerce.

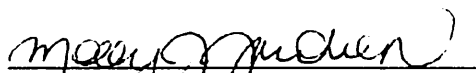
8

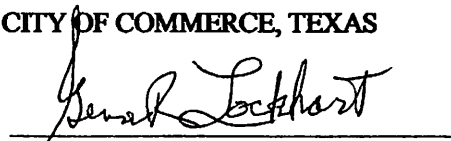
This ordinance shall become effective immediately upon second publication.

PRESENTED AND GIVEN FIRST READING on the 16th day of April 2019, at a regular meeting of the City Council of the City of Commerce, Texas; and GIVEN SECOND READING, passed and approved on the 21st day of May 2019, by a vote of ayes and nays at a regular meeting of the City Council of the City of Commerce, Texas.

ATTEST:

CITY OF COMMERCE, TEXAS


Molly Jacobsen, City Secretary


Gene Lockhart, Mayor Pro-Tempore

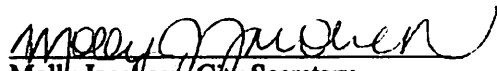
(seal)

APPROVED AS TO FORM:


Charles Anderson, City Attorney

I, Molly Jacobsen, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an Ordinance, and that the same has not been repealed and is in full force and effect.

(seal)


Molly Jacobsen, City Secretary
City of Commerce, Texas