

City of Houston:

CITY OF HOUSTON ORDINANCE NO. 2010-_____

SECOND AMENDED AND RESTATED CONCURRENT ORDINANCE CREATING A FREIGHT RAIL DISTRICT PURSUANT TO CHAPTER 171, TEXAS TRANSPORTATION CODE; MAKING OTHER PROVISIONS AND FINDINGS RELATED TO THE SUBJECT; AND DECLARING AN EMERGENCY.

Harris County:

SECOND AMENDED AND RESTATED CONCURRENT ORDER CREATING A FREIGHT RAIL DISTRICT PURSUANT TO CHAPTER 171, TEXAS TRANSPORTATION CODE; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED TO THE SUBJECT.

Fort Bend County:

SECOND AMENDED AND RESTATED CONCURRENT ORDER CREATING A FREIGHT RAIL DISTRICT PURSUANT TO CHAPTER 171, TEXAS TRANSPORTATION CODE; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED TO THE SUBJECT.

Waller County:

SECOND AMENDED AND RESTATED CONCURRENT ORDER CREATING A FREIGHT RAIL DISTRICT PURSUANT TO CHAPTER 171, TEXAS TRANSPORTATION CODE; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED TO THE SUBJECT.

Galveston County:

SECOND AMENDED AND RESTATED CONCURRENT ORDER CREATING A FREIGHT RAIL DISTRICT PURSUANT TO CHAPTER 171, TEXAS TRANSPORTATION CODE; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED TO THE SUBJECT.

Montgomery County:

SECOND AMENDED AND RESTATED CONCURRENT ORDER CREATING A FREIGHT RAIL DISTRICT PURSUANT TO CHAPTER 171, TEXAS TRANSPORTATION CODE; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED TO THE SUBJECT.

WHEREAS, the Seventy-Ninth Legislature of the State of Texas, by H.B. 2958, 1st R.S. (to be codified as Chapter 171 of Subtitle I, Title 5, Texas Transportation Code) (the “Enabling Act”), authorized a county with a population of 3.3 million or more, counties adjacent to such a county and the most populous municipality in the most populous county to adopt a concurrent order or ordinance to create a freight rail district; and

WHEREAS, Harris County, Texas has a population of more than 3.3 million, the City of Houston, Texas is the most populous municipality in Harris County and the following counties are adjacent to Harris County: Montgomery County; Liberty County; Chambers County; Galveston County; Fort Bend County; and Waller County (collectively, such counties, the “Adjacent Counties”); and

WHEREAS, the Enabling Act requires that at the time of its creation a freight rail district must include a county with a population of 3.3 million or more and the most populous municipality in such county;

WHEREAS, pursuant to the Enabling Act, Harris County, the City of Houston and Fort Bend County previously created the Gulf Coast Freight Rail District, by approval of a Concurrent Order or Ordinance, respectively, on December 19, 2006, January 10, 2007 and January 23, 2007 (the “Original Concurrent Order or Ordinance”); and

WHEREAS, Harris County, the City of Houston, Fort Bend County, Waller County, and Galveston County amended and restated the Original Concurrent Order or Ordinance, respectively, on October 27, 2009, August 26, 2009, November 17, 2009, November 24, 2009, and December 9, 2009 (the “First Amended and Restated Concurrent Order or Ordinance”) to rename the District the Gulf Coast Rail District and to make certain other modifications thereto; and

WHEREAS, Harris County, the City of Houston, Fort Bend County, Waller County, and Galveston County now desire to further amend and restate the Original Concurrent Order or Ordinance, as previously amended and restated, to make certain modifications thereto and to add Montgomery County to the District; NOW, THEREFORE,

* * * *

Harris County:

BE IT ORDERED BY THE COMMISSIONERS COURT OF HARRIS COUNTY,
TEXAS:

City of Houston:

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

Fort Bend County:

BE IT ORDERED BY THE COMMISSIONERS COURT OF FORT BEND COUNTY,
TEXAS:

Waller County:

BE IT ORDERED BY THE COMMISSIONERS COURT OF WALLER COUNTY,
TEXAS:

Galveston County:

BE IT ORDERED BY THE COMMISSIONERS COURT OF GALVESTON COUNTY,
TEXAS:

Montgomery County:

BE IT ORDERED BY THE COMMISSIONERS COURT OF MONTGOMERY
COUNTY, TEXAS:

Section 1. By adoption of this Second Amended and Restated Concurrent Order or Ordinance, the Commissioners Court of Harris County, the City Council of the City of Houston, the Commissioners Court of Fort Bend County, the Commissioners Court of Waller County, the Commissioners Court of Galveston County, and the Commissioners Court of Montgomery County (collectively the “Parties”) hereby further modify the Original Concurrent Order or Ordinance, as previously modified, previously approved by such entities to create the District as a freight rail district under and pursuant to Chapter 171, Texas Transportation Code.

Section 2. The name of the District (formerly the Gulf Coast Freight Rail District) shall be the GULF COAST RAIL DISTRICT, which shall be referred to herein as the “District”.

Section 3. The territory of the District consists of the combined territories of Harris County, the City of Houston, Fort Bend County and all other Adjacent Counties that have adopted a concurrent order providing for the creation of the District and for the inclusion of such county in the District.

Section 4. A. The District shall be governed by a Board of Directors (the “Board”), consisting of fourteen (14) Directors, who shall be appointed or shall serve as follows:

Directors

Manner of Appointment/Service

Positions No. 1, 2 and 3
(Harris County)

Three (3) Directors appointed by the Commissioners Court of Harris County, which appointment shall be made effective by written notice to the Board.

Positions No. 4, 5 and 6
(City of Houston)

Three (3) Directors appointed by the Mayor of the City of Houston, which appointment shall be made effective by written notice to the Board.

Directors

Manner of Appointment/Service

Position No. 7

One (1) Director jointly appointed by the Commissioners Court of Harris County and by the Mayor of the City of Houston, which shall be made effective by written notice to the Board. Such Director shall serve as the Chairman of the Board.

Position No. 8
(Small Municipalities in Harris County)

One (1) Director jointly appointed by the mayors of all municipalities in Harris County (except for the Mayor of the City of Houston), which appointment shall be made in the manner set out in Section 4.B.1. hereof and which shall be made effective by written notice to the Board.

Position No. 9

The Chairman of the Port Commission of the Port of Houston Authority.

Position No. 10
(Fort Bend County)

One (1) Director appointed by the County Judge of Fort Bend County, which appointment shall be made effective by written notice to the Board.

Position No. 11
(Small Municipalities
in Fort Bend County)

One (1) Director jointly appointed by the mayors of all municipalities in Fort Bend County, which appointment shall be made in the manner set out in Section 4.B.2. hereof and which shall be made effective by written notice to the Board.

Position No. 12
(Waller County)

One (1) Director appointed by the County Judge of Waller County, which appointment shall be made effective by written notice to the Board.

Position No. 13
(Galveston County)

One (1) Director appointed by the County Judge of Galveston County, which appointment shall be made effective by written notice to the Board.

Directors

Manner of Appointment/Service

Position No. 14
(Montgomery County)

One (1) Director appointed by the County Judge of Montgomery County, which appointment shall be made effective by written notice to the Board.

Ex Officio Director No. 1

One (1) Director appointed by the Texas Transportation Commission, which appointment shall be made effective by written notice to the Board.

Ex Officio Director No. 2

One (1) Director appointed by the Metropolitan Transit Authority of Harris County, Texas ("METRO"), which appointment shall be made effective by written notice to the Board. The Director shall be a current member of the METRO Board of Directors.

Ex Officio Director No. 3

One (1) Director appointed by the Galveston County Transit District, which appointment shall be made effective by written notice to the Board. The Director shall be a current member of the Galveston County Transit District Board of Directors.

A quorum of the Board is a majority of the total number of Directors appointed or serving as provided in Section 4.A. hereof, excluding the Ex Officio Directors.

B. 1. The Director appointed to serve in Position No. 8 shall be appointed by the mayors who are members of the Harris County Mayors' and Councils' Association.

2. The Director appointed to serve in Position No. 11 shall be appointed by the mayors of the municipalities in Fort Bend County.

C. Except as provided in this paragraph, all Directors (except for the Ex Officio Directors) shall be entitled to vote on all matters coming before the Board; provided, however, that if at anytime there is an even number of Directors entitled to vote on a matter before the

Board, including the Director who is the Chair, which number shall be determined at the time the matter is called for a Board vote, then the Chair of the Board shall not be entitled to vote on such matter. All successive Directors shall be appointed or shall serve in the same manner as the original appointees.

D. 1. A Director appointed to a Position shall serve at the pleasure of the official or governing body or entity that appointed such Director; provided, however, that a Director must be reappointed at least every two years.

2. The Chairman of the Port Commission of the Port of Houston Authority shall serve as the Navigation District Director for so long as such person serves as such Chairman.

3. Ex Officio Director No. 1 shall serve at the pleasure of the Texas Transportation Commission.

4. Ex Officio Director No. 2 shall serve at the pleasure of the METRO Board of Directors.

5. Ex Officio Director No. 3 shall serve at the pleasure of the Galveston County Transit District Board of Directors.

E. The Presiding Officer of the Board shall be its Chair, who shall be the Director appointed to and serving in Position No. 7. During the absence of the Chair, or in the event of a vacancy in such position, the Presiding Officer of the Board shall be the Director elected by the Board as Vice-Chair.

F. An official, governing body or entity that appoints one or more Directors or a majority of the mayors of the municipalities in Harris County (except for the Mayor of the City of Houston) or Fort Bend County may remove any Director whom he/she or it appointed at any

time without cause by written notice to the Chair of the Board and all officials and governing bodies or entities entitled to appoint one or more Directors.

G. The Board shall adopt conflict of interest rules for its Board of Directors and staff, which shall be consistent with applicable state law.

Section 5. The District shall have all powers of a freight rail district under Chapter 171, Texas Transportation Code, including the powers of a rural rail transportation district under Article 6550c, Vernon's Texas Civil Statutes, and the powers of an intermunicipal commuter rail district created under Article 6550c-1, Vernon's Texas Civil Statutes, including the powers related to a commuter rail facility and other types of passenger rail services, including intercity rail services, except as otherwise provided by Chapter 171, Texas Transportation Code.

Section 6.

A. The District may contract for its operations with an appropriate entity, including the Port of Houston Authority, on terms and conditions agreed on by the contracting parties.

B. Railroads, individually or through representatives, may attend all meetings of the Board and may have reasonable access to all information as provided by applicable law.

C. 1. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within Harris County unless such action or recommendation of action shall have been approved by at least three (3) of the Directors serving in Positions 1, 2, 3, 7 and 8.

2. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within the City of Houston unless such action or recommendation of action shall have been approved by at least three (3) of the Directors serving in Positions 4, 5, 6 and 7.

3. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within Fort Bend County unless such action or recommendation of action shall have been approved by both Directors serving in Positions No. 10 and 11.

4. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within Waller County unless such action or recommendation of action shall have been approved by the Director serving in Position No. 12.

5. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within Galveston County unless such action or recommendation of action shall have been approved by the Director serving in Position No. 13.

6. No Board action or Board recommendation of action shall be effective with respect to the location of new rail lines or the modification of rail lines within Montgomery County unless such action or recommendation of action shall have been approved by the Director serving in Position No. 14.

D. The Board shall not enter into any contract or agreement for the financing, construction or modification of freight or commuter rail lines within Fort Bend County unless such contract or agreement has been duly approved in principle by the Commissioners Court of Fort Bend County.

E. The Board may enter into agreements with the Texas Department of Transportation or any other agency or political subdivision of the State of Texas for the analysis

and study of a regional rail plan and for the funding from such entities of such analysis and study.

F. The Board shall not enter into any contract, nor shall it award any contract, for the construction of freight or commuter rail improvements located entirely within one city or county when such city or county has legal authority and financial capacity to do so, unless such contract has been duly approved in principle by the governing body of such city or county.

G. The Board shall not have the power to levy a tax or mandatory assessment. The Board may study or analyze a source of funding as part of a state or local match of funds that (1) is reasonably related to freight or commuter rail and (2) is not currently used by local taxing jurisdictions as a principal source of funding for essential local services.

H. The Board may not impose a fee or other charge on a railroad unless the railroad agrees to the fee or other charge, provided that the foregoing does not prohibit a railroad from voluntarily contributing to the cost of rail facilities or prohibit the District from charging for the use of a rail facility by a railroad or other person.

Section 7. One or more other Adjacent Counties may be included in the District by adoption of an amended and restated concurrent order or ordinance by Harris County, the City of Houston, Fort Bend County, all other Adjacent Counties already included in the District and the other Adjacent County or Counties proposed to be included. Such amended and restated concurrent order or ordinance may contain any terms and conditions permitted by the Enabling Act, including amendments to this Second Amended and Restated Concurrent Order or Ordinance.

Section 8. Harris County, the City of Houston, Fort Bend County and all other Adjacent Counties included in the District may withdraw from the District in accordance with

Section 171.301, Texas Transportation Code. The District may be dissolved in accordance with Section 171.302, Texas Transportation Code.

Section 9. The Commissioners Court of Harris County, the City Council of the City of Houston, the Commissioners Court of Fort Bend County, the Commissioners Court of Galveston County, the Commissioners Court of Waller County, and the Commissioners Court of Montgomery County, as appropriate, officially find, determine, recite and declare that a sufficient written notice of the date, hour, place and subject of the meeting at which this Second Amended and Restated Concurrent Order or Ordinance, as appropriate, was presented was posted at a place convenient to the public at the location and for the time required by law preceding such meeting, as required by the Open Meetings Act, Tex. Gov't Code Ann. ch. 551 (Vernon 1994); and that such meeting has been open to the public as required by law at all times during which this Second Amended and Restated Concurrent Order or Ordinance, as appropriate, and the subject matter thereof has been discussed, considered and formally acted upon. Such Commissioners Courts and City Council further ratifies, approves and confirms such written notice and the contents and postings thereof.

Section 10. If any provision, section, subsection, sentence, clause or phrase hereof, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions hereof or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the Commissioners Courts and the City Council in adopting this Second Amended and Restated Concurrent Order or Ordinance, as appropriate, that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Second Amended and

Restated Concurrent Order or Ordinance, as appropriate, are declared to be severable for that purpose.

Section 11. A. Upon final passage and adoption hereof by the Commissioners Court of Harris County, the County Clerk of Harris County is directed to give prompt written notice to the Board.

B. Upon final passage and adoption hereof by the City Council of the City of Houston, the City Secretary of the City of Houston is directed to give prompt written notice to the Board.

C. Upon final passage and adoption hereof by the Commissioners Court of Fort Bend County, the County Clerk of Fort Bend County is directed to give prompt written notice to the Board.

D. Upon final passage and adoption hereof by the Commissioners Court of Waller County, the County Clerk of Waller County is directed to give prompt written notice to the Board.

E. Upon final passage and adoption hereof by the Commissioners Court of Galveston County, the County Clerk of Galveston County is directed to give prompt written notice to the Board.

F. Upon final passage and adoption hereof by the Commissioners Court of Montgomery County, the County Clerk of Montgomery County is directed to give prompt written notice to the Board.

Section 12. As to the City of Houston, there exists a public emergency requiring that this Second Amended and Restated Concurrent Ordinance be passed finally on the date of its introduction as required in writing by the Mayor; therefore, this Second Amended and Restated

Concurrent Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Second Amended and Restated Concurrent Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

Section 13. This Second Amended and Restated Concurrent Order or Ordinance will be effective only if approved by all parties within 90 calendar days of the date of approval hereof by the City of Houston. As of such effective date, the Original Concurrent Order or Ordinance and the First Amended and Restated Concurrent Order or Ordinance will no longer be in force and effect.

* * *

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APPROVED this _____ day of _____, 2010, by the Commissioners
Court of Harris County, Texas.

HARRIS COUNTY, TEXAS

County Judge

ATTEST:

County Clerk

(SEAL)

PASSED AND ADOPTED this _____ day of _____, 20____.

APPROVED this _____ day of _____, 20____.

Mayor of the City of Houston, Texas.

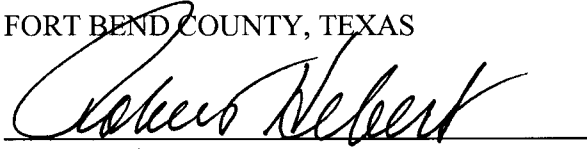
Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the
foregoing Ordinance is _____.

City Secretary

(Prepared by Legal Dept. _____)
(MPB 10/15/10) Assistant City Attorney

APPROVED this 9th day of November, 2010, by the Commissioners
Court of Fort Bend County, Texas.

FORT BEND COUNTY, TEXAS

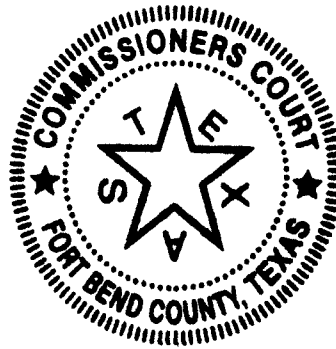


County Judge
Robert Hebert

ATTEST:



County Clerk
Dianne Wilson
(SEAL)



APPROVED this _____ day of _____, 2010, by the Commissioners
Court of Waller County, Texas.

WALLER COUNTY, TEXAS

County Judge

ATTEST:

County Clerk

(SEAL)

APPROVED this _____ day of _____, 2010, by the Commissioners
Court of Galveston County, Texas.

GALVESTON COUNTY, TEXAS

County Judge

ATTEST:

County Clerk

(SEAL)

APPROVED this _____ day of _____, 2010, by the Commissioners
Court of Montgomery County, Texas.

MONTGOMERY COUNTY, TEXAS

County Judge

ATTEST:

County Clerk

(SEAL)