



City of Abilene City Council Agenda

Kyle McAlister, Mayor Pro-tem
Weldon Hurt, Council Member
Lynn Beard, Council Member
Robert Hanna, City Manager

Anthony Williams, Mayor

Donna Albus, Council Member
Shane Price, Council Member
Travis Craver, Council Member
Stanley Smith, City Attorney
Shawna Atkinson, City Secretary

Notice is hereby given of a meeting of the City Council of City of Abilene to be held on April 14, 2022, at 8:30 a.m., at the Abilene Public Library, South Branch, Mall of Abilene, 4310 Buffalo Gap Road, Abilene, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

CALL TO ORDER

INVOCATION

1. Councilmember Lynn Beard

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

2. Proclamations:

- Public Safety Telecommunicators Week

CONSENT AGENDA AND PUBLIC COMMENTS

All items listed in the Consent Agenda are considered routine by the City Council and will be enacted by one motion. There will be no separate discussion or presentation of these items unless otherwise requested by a Council Member. In the event one or more Council Members remove an item from the consent Agenda for separate discussion or presentation, the item or items removed will be considered in numerical order as part of the Regular Agenda and shall include a public hearing.

After the Council Members have requested any item on the consent Agenda be considered separately, the public comment period will be held. The public comment section of the consent agenda allows members of the public to present any ideas or information to the City Council and staff, and also allows for public comment on the consent agenda items not otherwise pulled for separate consideration. Neither the City Council nor staff will engage in discussion with the public during the public comments unless the item is listed on the Council agenda.

Members of the public will have a total time limit of three (3) minutes to speak during the public comments section.

3. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on March 24, 2022 **(Shawna Atkinson)**
4. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Appointing Members to Various Boards and Commissions per the City Charter **(Shawna Atkinson)**
 - Airport Development Board
 - Board of Building Standards
 - Street Maintenance Advisory & Appeals Board
 - West Central Texas Municipal Water District Board
5. **Resolution:** Receive a Report, Hold a Discussion and Take Action on authorizing a contract with Ace Pipe Cleaning Inc. for the Manhole Rehabilitation 2022 Project **(Rodney Taylor)**
6. **Resolution:** Receive a Report, Hold a Discussion and Take Action Authorizing the City Manager to enter into an agreement with Texas Department of Transportation for the Bridge Replacement on ES 7th Street at Cedar Creek **(Max Johnson)**
7. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manager to accept the bid from CanTex Roofing & Construction, LLC for the Adaptive Recreation Roof Project. **(Lesli Andrews)**
8. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving the acceptance of the donated "Winnie" sculpture for placement on the Adamson Spalding Storybook Garden lawn of the Abilene Convention Center **(Lesli Andrews)**
9. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approval of Single-Family Rehabilitation/Reconstruction Program Project Budget with HOME Program Funds **(Tim Littlejohn)**
10. **Resolution:** Receive a Report, Hold a Discussion and Take Action to Authorize the City Manager to Enter into a Mutual Aid Agreement between the City of Abilene and Taylor County, Texas **(Cande Flores)**
11. **Resolution:** Receive a Report, Hold a Discussion, and Take Action to Authorize the City Manager to Execute an Agreement with Daco Fire Equipment for the Purchase of LION Structural Firefighting Protective Gear for the Abilene Fire Department **(Cande Flores)**
12. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving a Lease Agreement with Capps Van & Truck Rental **(Don Green)**
13. **Resolution:** Receive a Report, Hold a Discussion and Take Action to authorize the purchase of four Type III Cutaway Vans from Creative Bus Sales Through the State of Oklahoma Statewide Contract **(Don Green)**
14. **Oral Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving Updates to the City Council Rules of Procedure **(Stanley Smith)**
15. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Modifying and Extending the Declaration of Local Disaster (COVID-19) **(Robert Hanna)**

16. **Report:** Receive a Report on the Final Results of the Initiative Petition Filed in the City Secretary's Office on February 22, 2022, and Supplement Filed on March 21, 2022, for the Sanctuary City for the Unborn **(Shawna Atkinson)**
17. **Ordinance (First Reading):** Receive a Report, Hold a Discussion and Take Action on an Ordinance Outlawing Abortion, Declaring Abilene a Sanctuary City for the Unborn, Making Various Provisions and Findings, Providing for Severability, and Establishing an Effective Date **(Robert Hanna)**

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

18. **Resolution:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve an Extended Term Street Use License with TearTex, LLC **(Max Johnson)**
19. **Ordinance (Final Reading) Z-2022-04:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Roberto Valez to change zoning from General Commercial (GC) to a Neighborhood Retail (NR) District on approximately .32 acres of now-vacant land located within the 3200 block of South 2nd street (north side) approximately 200 feet east from the intersection of S. Willis St. and S. 2nd Street. **(Tim Littlejohn)**
20. **Ordinance (Final Reading) Z-2022-05:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from JGN Properties LLC to change zoning from Heavy Industrial (HI) to a Heavy Commercial (HC) District within the 2600-2700 blocks of South Treadaway Boulevard (east side) and the 2700 block of Palm Street (west side) located at 2641 thru 2765 S. Treadaway Blvd and 2718 Palm Street. **(Tim Littlejohn)**
21. **Ordinance (Final Reading) Z-2022-06:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from FL20 Inc. (represented by Andrea and Aaron Robison) to change zoning from Agricultural Open Space (AO) to a General Commercial (GC) District at 5308 Hwy 277 South, located within the 5200-5300 blocks of Hwy 277 South (west side); approximately 900-feet northeast from the intersection of Health Center Drive and Hwy 277 South. **(Tim Littlejohn)**

EXECUTIVE SESSION

22. **The City Council of the City of Abilene reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by the noted Texas Government Code Sections:**

A. 551.071 (Consultation with Attorney)

1. Robert Steven Reitz v. City of Abilene, Texas, et al., Case No. 1:16-cv-00181-BL; In the U.S. District Court, Northern District of Texas, Abilene Division, filed October 10, 2016
2. City of Abilene v. 3118 South 22nd Street, Abilene, Texas, et al.; Cause No. 11968-D, In the 350th Judicial District Court, Taylor County, Texas; filed October 11, 2019
3. Chandler Brooks v. Taylor County, et al.; Civil Action No. 1:20-cv-00049, In the United States District Court, Northern District of Texas, Abilene Division; filed March 5, 2020
4. John Doe v. Robert Hanna, Individually and as City Manager; Cause No. 28078-B; In the 104th Judicial District Court, Taylor County, Texas; filed July 7, 2020
5. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-004598, In the 53rd Judicial District Court, Travis County, Texas; filed September 1, 2020
6. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
7. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-007028, In the 459th Judicial District Court, Travis County, Texas; filed November 18, 2020
8. Natasha Jones v. City of Abilene, Texas; EEOC Charge of Discrimination, 450-2020-06446; filed September 15, 2020

9. Alton H. Smith, Jr. and Alicia Malorie Smith v. City of Abilene, Texas; Cause No. 51055-A, In the 42nd Judicial District Court, Taylor County, Texas; filed March 11, 2021
10. Steve Van Horne, et al. v. City of Abilene, et al.; Cause No. 12530-D, In the 350th Judicial District Court, Taylor County, Texas; filed September 7, 2021
11. Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District, et al.; Cause No. P827783CV, in the 83rd Judicial District Court, Pecos County, Texas; filed September 11, 2020
12. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-21-006299, In the 250th Judicial District Court, Travis County, Texas; filed October 20, 2021
13. James Easley v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed September 22, 2021
14. Samuel Hightower v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed December 28, 2021
15. Zach Williams v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed December 28, 2021
16. Governor's Executive Orders - COVID-19

B. 551.072 (Deliberations about Real Property)

1. 610 ES 11th & S 7th (McPhail Property)

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

1. City Council may consider appointment, employment, compensation, reassignment, duties, discipline, or dismissal of public officers or employees, City Manager, City Attorney, Municipal Court Judge, City Secretary, and City Board and Commission Members
2. City of Abilene Boards & Commissions May be Discussed, as needed for (re)appointment

E. 551.076 (Deliberations about Security Devices)

F. 551.087 (Business Prospect/Economic Development)

1. Trail Ridge Subdivision

RECONVENE

REGULAR AGENDA

ADJOURNMENT

In compliance with the Americans with Disabilities Act, the City of Abilene will provide for reasonable accommodations for persons attending City Council meetings. To better serve you, requests should be received 48 hours prior to the meetings. Please call 325-676-6208.

CERTIFICATION

I hereby certify the above meeting notice was posted on the bulletin board at the City Hall of the City of Abilene, Texas, on the 8th day of April, 2022, at 12:40 p.m.

Shawna Atkinson, TRMC, CMC
City Secretary



**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 3. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on March 24, 2022
(*Shawna Atkinson*)

GENERAL INFORMATION

Approval of the Minutes from the Regular Meeting Held on March 24, 2022

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 03-24-2022 Minutes - Regular - Morning

CITY COUNCIL MEETING
March 24, 2022 at 8:30 a.m.

CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
SOUTH BRANCH LIBRARY

The City Council of the City of Abilene, Texas met in Regular Session on March 24, 2022, at 8:30 a.m. at the South Branch Library, Mall of Abilene, 4310 Buffalo Gap Road. Mayor Anthony Williams was present and presiding, along with Mayor Pro-tem Kyle McAlister, Deputy Mayor Pro-tem Travis Craver, and Councilmembers Shane Price, Lynn Beard, Donna Albus, and Weldon Hurt. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, and City Secretary Shawna Atkinson.

Councilmember Donna Albus delivered the invocation.

Hattie McSherry, 3rd Grader at Alcorta Elementary, led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS, ANNOUNCEMENTS

- Proclamations:
 - National Library Week – accepted by Library Staff, Board and Friends of the Library
 - National Public Health Week – accepted by staff of the Abilene-Taylor County Public Health District
 - Justin Lelesch Day – accepted by Animal Services Director Justin Lelesch
- Service Awards:
 - David Gray – Police Department – 40 Years

Mayor Williams left the meeting after this item. Mayor Pro-tem McAlister presided over the remainder of the meeting in his absence.

PRESENTATION OF CONSENT AGENDA

The Consent Agenda consisted of items 4-18. No items were pulled for individual consideration.

PUBLIC COMMENTS

Mayor Pro-tem McAlister opened the public comment period. The following addressed the city council:

- David Swart – spoke about the most recent fires and stated that he has been through three, that he described.
- Charles Byrn – spoke about a pot hole patch product that he recommends.
- Shaun Martin, representing the Abilene Industrial Foundation – stated that they have worked with the Abilene Chamber of Commerce to develop a project and website to address workforce needs, targeting military spouses and families initially, but now open to everyone.
- Rosten Callerman, representing Habitat for Humanity – invited the Council to an upcoming event for Habitat to dry-in a home for a family; a special opportunity to work with other non-profits to help a family in need.
- Cynthia Alvidrez – requested that the public be able to pull items on the consent agenda again, stated there is no need for a petition for making Abilene a Sanctuary City for the Unborn, complained that \$70,000 is being spent on vehicles when we should be outsourcing spay and neuter programs instead, expressed her concern with the lack of assistance when contacting the city and Atmos about cross-bore locations, and had questions about the MIP fund.

- Ryan Goodwin – thanked the City Secretary’s Office for their expediency in processing their sanctuary city for the unborn petition. Mr. Goodwin also stated that the city charter makes it difficult for the citizens to have a voice with the requirements it takes to process a petition, and urged Council to consider that for an amendment.

With no other speakers coming forward, the public comment period was closed.

CONSENT AGENDA

Councilmember Beard moved to approve the consent agenda, consisting of items 4-18. Deputy Mayor Pro-tem Craver seconded the motion. Motion carried.

AYES (6): Mayor Pro-tem McAlister, Deputy Mayor Pro-tem Craver and Councilmembers Price, Beard, Albus and Hurt

NAYS (0): None

ABSENT (1): Mayor Williams

4. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on March 10, 2022
5. Report: Receive a Report on the Results of the Initiative Petition Filed in the City Secretary's Office on February 22, 2022, for the Sanctuary City for the Unborn
6. Resolution: Receive a Report, Hold a Discussion and Take Action on Appointing Members to Various Boards and Commissions per the City Charter
[ASSIGNED RESOLUTION NO. 43-2022]
7. Resolution: Receive a Report, Hold a Discussion and Take Action on the purchase of One Ford Transit Camera Van for Wastewater Collection Services from Rausch Electronics
[ASSIGNED RESOLUTION NO. 44-2022]
8. Resolution: Receive a Report, Hold a Discussion and Take Action on the Purchase of Two 2022 Chevrolet 3500 Cab and Chassis for Animal Services
[ASSIGNED RESOLUTION NO. 45-2022]
9. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving the Appointment of an Assistant City Attorney
[ASSIGNED RESOLUTION NO. 46-2022]
10. Resolution: Receive a Report, Hold a Discussion and Take Action on Accepting the Annual Comprehensive Financial Report for the Fiscal Year Ending September 30, 2021
[ASSIGNED RESOLUTION NO. 47-2022]
11. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving the Expenditure of General Fund FY 2021 Fund Balance in Excess of the Three Month Reserve Requirement
[ASSIGNED RESOLUTION NO. 48-2022]
12. Resolution: Receive a Report, Hold a Discussion and Take Action on Approval of the Investment Policy
[ASSIGNED RESOLUTION NO. 49-2022]

13. Resolution: Receive a Report, Hold a Discussion and Take Action on Awarding Bid No. 2227 to Andale Construction Inc., for Surface Treatment Project Work Zone S25
[ASSIGNED RESOLUTION NO. 50-2022]
14. Ordinance (First Reading) Z-2022-04: Receive a Report, Hold a Discussion and Take Action on a request from Roberto Valez to change zoning from General Commercial (GC) to a Neighborhood Retail (NR) District on approximately .32 acres of now-vacant land located within the 3200 block of South 2nd street (north side) approximately 200 feet east from the intersection of S. Willis St. and S. 2nd Street
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17. Ordinance (First Reading): Receive a Report, Hold a Discussion and Take Action on an Ordinance of the City of Abilene, Texas, and Providing for the Extension of the Boundary Limits of the City of Abilene, Texas, and for the Annexation of Certain Territory - 72.5 acres - Lying Adjacent and Contiguous to the Present Boundary Limits of the City of Abilene, and Granting to All the Inhabitants of the Territory, all the Rights and Privileges of Other Citizens and Binding the Inhabitants by All of the Acts, Ordinances, Resolutions, and Regulations of the City of Abilene; and Adopting a Service Plan Agreement
18. Ordinance (First Reading): Receive a Report, Hold a Discussion and Take Action on an Ordinance of the City of Abilene, Texas, and Providing for the Extension of the Boundary Limits of the City of Abilene, Texas, and for the Annexation of Certain Territory - 821.22 acres - Lying Adjacent and Contiguous to the Present Boundary Limits of the City of Abilene, and Granting to All the Inhabitants of the Territory, all the Rights and Privileges of Other Citizens and Binding the Inhabitants by All of the Acts, Ordinances, Resolutions, and Regulations of the City of Abilene; and Adopting a Service Plan Agreement

REGULAR AGENDA

19. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve an Extended Term Street Use License with EE&G, Inc.
[ASSIGNED RESOLUTION NO. 51-2022]

Max Johnson, Interim Director of Public Works, presented the item. Adoption of the item would approve an extended term street use license with EE&G, Inc., for two monitoring wells located at South 14th and Butternut.

Mayor Pro-tem McAlister opened the public hearing. The following addressed the city council:

- Cynthia Alvidrez – spoke about the recent fires in the area and the homeless population.
- Charles Byrn – questioned how the water flow through these areas is monitored so there is no possibility of it being mixed in the water system.

With no other speakers coming forward, the public hearing was closed.

Mr. Johnson addressed Mr. Byrn's question and stated that the TCEQ keeps a record of this and it's a requirement to put monitoring wells to keep track of where it is flowing.

Deputy Mayor Pro-tem Craver moved to approve the item as presented. Councilmember Hurt seconded the motion; motion carried.

AYES (6): Mayor Pro-tem McAlister, Deputy Mayor Pro-tem Craver and Councilmembers Price, Beard, Albus and Hurt

NAYS (0): None

ABSENT (1): Mayor Williams

EXECUTIVE SESSION

Mayor Pro-tem McAlister recessed into Executive Session at 9:13 a.m., pursuant to the following of the Open Meetings Act, with the following issues discussed during this session, as listed on the agenda and authorized by the noted Texas Government Code Section:

- 20. A. 551.071 (Consultation with Attorney)
 - 1. Robert Steven Reitz v. City of Abilene, Texas
 - 2. Chandler Brooks v. Taylor County, et al
 - 4. City Council Rules of Procedure
- 20. D. 551.074 (Personnel Matters)
 - 1. Blue Ribbon Committee (Agenda item #21)

The Executive Session ended at 9:32 a.m. and reconvened to Open Session. Mayor Pro-tem McAlister reported no votes or action were taken in Executive Session.

REGULAR AGENDA

- 21. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on appointing members to a Blue Ribbon Committee for a November Bond Election
[ASSIGNED RESOLUTION NO. 52-2022]

Earlier in the meeting, under Section 551.071 (Consultation with Attorney) of the Open Meetings Act, the item was discussed during the Executive Session, which started at 9:13 a.m., and ended at 9:32 a.m. No votes or actions were taken at that time.

Mayor Pro-tem McAlister opened the public hearing. The following addressed city council:

- David Swart – in favor of the item, and wanted to encourage the committee to focus on the new fire station and ensure they make it big enough to start with.
- Charles Byrn – requested the list of members for this committee be posted for the public.
- Cynthia Alvidrez – stated she is confused as to why we are having a bond election when we have so much excess money left over every year. Stated that 70% of our streets are failing, when we no longer have a Public Works Director, and claimed Greg McCaffery was forced to resign.
- James Sargent – stated his concern for expansion and growth, which can be a good thing, but stated that taking care of basic needs and not overlooking the massive amount of debt being incurred should be addressed first.

With no other speakers coming forward, the public hearing was closed.

Councilmember Price moved to approve the item as presented. Councilmember Beard seconded the motion; motion carried.

AYES (6): Mayor Pro-tem McAlister, Deputy Mayor Pro-tem Craver and Councilmembers Price, Beard, Albus and Hurt

NAYS (0): None

ABSENT (1): Mayor Williams

ADJOURNMENT

There being no further business, the meeting adjourned at 9:43 a.m.

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

Minutes approved on: _____



**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 4.

**Resolution: Receive a Report, Hold a Discussion and Take Action on
Appointing Members to Various Boards and Commissions per the City Charter
(Shawna Atkinson)**

- **Airport Development Board**
- **Board of Building Standards**
- **Street Maintenance Advisory & Appeals Board**
- **West Central Texas Municipal Water District Board**

GENERAL INFORMATION

The item provides for reappointment of new members as well as new members to certain boards and commissions.

SPECIAL CONSIDERATIONS

Member terms vary per board and commission and are outlined in Exhibit A of the resolution.

FUNDING/FISCAL IMPACT

No cost consideration to the city.

STAFF RECOMMENDATION

(Re)Appointment

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. B&C Resolution
2. Exhibit A
3. B&C Presentation Slide

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPOINTING MEMBERS TO VARIOUS BOARDS AND COMMISSIONS AS REQUIRED BY THE CHARTER OF THE CITY OF ABILENE AND STATUTES OF THE STATE OF TEXAS

WHEREAS, the Charter of the City of Abilene and the Statutes of the State of Texas require that certain Boards and Commissions be established with a portion of the memberships thereof to be filled by appointment each year; and

WHEREAS, the City Council is of the opinion that the following members should be appointed to the designated Boards and Commissions, and has requested the Mayor to appoint same with the approval of the Council.

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

PART 1: That the list of Members is attached hereto as Exhibit A, shall be in all things, approved.

PART 2: That this resolution shall take effect immediately from and after its passage.

PASSED this 14th day of April, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

RESOLUTION NO. _____
EXHIBIT "A"

Board	Term End Date
<i>Airport Development Board</i>	
James Boone [New]	November 2023 [unexpired term]
<i>Board of Building Standards</i>	
Jonathan Schmutz [Alternate] [Reappointment]	Nov-24
<i>Street Maintenance Advisory & Appeals Board</i>	
James McCoy [Reappointment]	May-24
Antonio Pallarez [Reappointment]	May-24
<i>West Central Texas Municipal Water District Board</i>	
Dani Ramsay [Reappointment]	May-24
Sam Chase [Reappointment]	May-24
Joe Cannon [Reappointment]	May-24

***Resolution:* Appointing Member(s) to various Boards and Commissions per the City Charter**

- Airport Development Board
- Board of Building Standards
- Street Maintenance Advisory & Appeals Board
- West Central Texas Municipal Water District Board





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 5. Resolution: Receive a Report, Hold a Discussion and Take Action on authorizing a contract with Ace Pipe Cleaning Inc. for the Manhole Rehabilitation 2022 Project (*Rodney Taylor*)

GENERAL INFORMATION

Water Utilities staff recommends that the Abilene City Council authorize a contract with Ace Pipe Cleaning Inc. (Ace) for the Manhole Rehabilitation 2022 Project. Ace is able to offer the manhole rehabilitation services through Purchasing Cooperative of America (RFP # OD-307-20) at contract pricing in compliance with Texas Local Government Code Chapter 271. The total price for the manhole rehabilitation services is \$80,000.00.

SPECIAL CONSIDERATIONS

The project is for the rehabilitation of 28 manholes located throughout Abilene's wastewater collection system. The rehabilitation work will consist of applying about 265 vertical feet of one inch thick Calcium-Aluminate cementitious liner on the interior wall surfaces of all manholes and upon certain manhole bottoms. The liner material is resistant to common sewer gasses. This work is consistent with the Water Utilities program to continually upgrade the wastewater collection system to extend the useful life of existing assets and to reduce the quantities of inflow and infiltration entering the collection system as the result of rainfall events and shallow groundwater. The project manholes were selected based on condition assessments made by City staff.

FUNDING/FISCAL IMPACT

The project will be funded from designated funds of the FY22 Annual Operating Budget of the Water Utilities Department.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council authorize the contract with Ace Pipe Cleaning, Inc. through Purchasing Cooperative of America for the Manhole Rehabilitation 2022 Project in the amount of \$80,000.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-Authorize contract with Ace Pipe Cleaning-Manhole Rehabilitation 2022-PCA-3-24-2022
2. Contract-Manhole Rehabilitation 2022-Ace Pipe Cleaning-4-14-2022
3. Presentation-Authorize Contract-Ace Pipe Cleaning-Manhole Rehabilitation 2022-PCA-3-24-2022

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING A CONTRACT WITH ACE PIPE CLEANING, INC. THROUGH PURCHASING COOPERATIVE OF AMERICA FOR THE MANHOLE REHABILITATION 2022 PROJECT.

WHEREAS, the City of Abilene owns and operates a permitted publicly owned treatment works that includes the Hamby Water Reclamation Facility and the wastewater collection system; and

WHEREAS, City staff developed and implemented a manhole and sewer main inspection and cleaning program, which is a provision of the Sanitary Sewer Overflow Initiative Agreement with the Texas Commission on Environmental Quality, and certain manholes have been identified and prioritized for a rehabilitation project; and

WHEREAS, it was determined that the City could obtain the manhole rehabilitation services through Purchasing Cooperative of America (PCA) at contract pricing in compliance with Texas Local Government Code Chapter 271, and said pricing is a good value for the City; and

WHEREAS, City staff recommends the contract with Ace Pipe Cleaning, Inc. for the Manhole Rehabilitation 2022 Project in the amount of \$80,000.00; and

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

That the Abilene City Council authorizes the City Manager to execute the contract with Ace Pipe Cleaning, Inc. for the Manhole Rehabilitation 2022 Project in the amount of \$80,000.00.

ADOPTED this 14th day of April, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley E. Smith, City Attorney



CONTRACT

This contract, dated the _____ day of _____, 2022, is between the City of Abilene ("City"), a home rule municipal corporation of the State of Texas and Ace Pipe Cleaning, Inc. ("Contractor"), a Corporation organized under the laws of the State of Missouri.

I. TERMS

In consideration of \$80,000.00, the Contractor must provide the services described in Attachment A, which is incorporated by reference, according to all its provisions.

After the CONTRACTOR has fully performed the terms of this AGREEMENT and the CITY'S agent is satisfied that the work has been completed with the terms of this Agreement, the CITY'S agent shall pay the contractor in one lump sum the money specified.

The CITY reserves the right to prorate or to withhold payment from the CONTRACTOR if the CITY'S agent determines that the CONTRACTOR fails to fully perform the work in accordance with the terms of this Agreement, in which case the CONTRACTOR shall bear all costs, including the cost of hiring someone else, due to the CONTRACTOR'S neglect, delay, or refusal to fulfill the terms of this Agreement.

The CITY reserves the right to have its agent inspect the premises to determine whether or not the CONTRACTOR has fully complied with the terms of this Agreement.

II. PAYMENT

Payment shall be made under the terms of Attachment B, which is incorporated by reference, according to all its provisions.

III. DURATION

Contractor must complete all required work within 45 calendar days after the effective date of this Contract.

IV. ASSIGNMENT

Contractor may not assign any interest under this contract without the City's prior written consent. All of the terms and provisions of this Contract are binding on Contractors successors and assigns and may be enforced by the City against such successors and assigns.

V. STATUS OF CONTRACTOR

The Contractor is an Independent Contractor. Contractor and Contractor's employees are not the agents, servants or employees of the City.

VI. AMENDMENT OR MODIFICATION

This contract, including any attachments, constitutes the parties' entire agreement. This agreement may not be modified or replaced except by another signed written agreement.

VII. INDEMNITY

A. Definitions

For the purpose of this section the following definitions apply:

"City" shall mean all officers, agents and employees of the City of Abilene.

"Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

"Contractor" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

"Contractor's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Contractor.

"Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

"Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

“Proven” shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

“Sole negligence” shall mean negligence of a party that is unmixed with the fault of any other person or entity.

B. Indemnity

The Contractor must indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Contractor's work and activities conducted in connection with this Contract.

The Contractor is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.

Contractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Contractor's employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Contractor or Contractor's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Contractor.

The City and Contractor must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Contractor or City. The City has the right to compromise and defend the same to the extent of its own interests.

BOTH CITY AND CONTRACTOR EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

VIII. INSURANCE

A. GENERAL REQUIREMENTS

The Contractor agrees to maintain the type and amounts of insurance required in this contract throughout the term of the agreement. The Contractor is solely responsible for providing the

required certificates of insurance. The City may terminate this agreement if the Contractor fails to timely comply with the insurance requirements.

The required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to examination and approval by the City for their adequacy as to content, form of protection, and providing company.

The required insurance naming the City as additional insured must be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Before the City executes the notice to proceed with any work under this agreement, the Contractor must provide the City Secretary with either an original certificate of insurance or a certified copy of the insurance policy evidencing the required insurance. Thereafter, the Contractor must furnish new certificates or copies of the policy before the expiration date.

Texas Labor Code Section 406.096 requires a city to ensure that contractors carry workers' compensation for each employee when the city is a party to any "building or construction contract." The code enumerates that "building and construction" includes:

(A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

(B) remodeling, extending, repairing, or demolishing a structure; or

(C) otherwise improving real property or an appurtenance to real property through similar activities.

B. ADDITIONAL REQUIREMENTS

The required liability insurances and their certificates must:

1. Name the City as an additional insured for operations under this contract.
2. Provide for 30 days advance written notice of cancellation or material change.

C. TYPES AND AMOUNTS OF INSURANCE

The following insurance is required under this contract:

<u>Type</u>	<u>Amount</u>
<u>X</u> 1. Workers' Compensation	Statutory
Employer's Liability	\$100,000 per occurrence

- ☒ **2. Commercial (Public) Liability** \$500,000 combined single
including, but not limited to:
• Premises/Operations limit for bodily injury
and property damage
• Independent Contractors (per occurrence)
• Products/Completed Operations
• Contractual Liability
(insuring above indemnity)
and where the exposures exist
• Explosion Collapse and Underground
- ☒ **3. Business Automobile Liability** \$500,000 combined single
to include coverage for:
• Owned/Leased Autos limit for bodily injury
and property damage
• Non-Owned Autos (per occurrence)
• Hired Cars
- ☐ **4. Professional Liability** \$500,000 combined single limit
(per occurrence)
- ☐ **5. See Addendum for Special Coverages and/or revisions**
- ☐ **6. No Insurance Required**

IX. VENUE, CHOICE OF LAW AND INTERPRETATION

Venue for any cause of action arising under this contract is Taylor County, Texas. This contract is governed by the laws of the State of Texas both as to interpretation and performance. This contract shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

X. VERIFICATION OF EMPLOYMENT ELIGIBILITY

Contractor must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Contractor -- not City -- must verify eligibility for employment as required by IRCA.

XI. INDEBTEDNESS TO CITY

Contractor agrees that no payments owed by him, of any nature whatsoever, to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not knowingly award contracts for goods or services to any bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty and interest. Contractor is responsible for ensuring that no indebtedness exists.

Section 130 of the City Charter authorizes the City to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation in arrears to the City for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty and interest.

XII. EQUAL EMPLOYMENT OPPORTUNITY

It is the City's policy to recruit, employ, and to provide compensation, promotion, and other conditions of employment without regard to race, color, religion, sex, age, national origin, or disability. The City affirms that employment decisions shall be made only on the basis of bonafide occupational qualifications. The City shall continually review its employment practices and personnel procedures and take positive steps to assure that equality of employment opportunity in the City of Abilene, Texas, is a fact as well as an ideal.

XIII. MINORITY AND WOMEN BUSINESS ENTERPRISES

The City hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids in for this contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 749 Gateway St., #301, Building C, Abilene, Texas, 79602, 325-670-0300.

XIV. SALES TAX

The City qualifies as an exempt agency under the Texas Limited Sales, Excise and Use Tax Act (the Tax Act), and is not subject to any State or City sales taxes on materials incorporated into the project. Labor used in the performance of this contract is also not subject to State or City sales taxes. The City will provide an exemption certificate to the Contractor. The Contractor must have a sales tax permit issued by the Comptroller of Public Accounts and shall issue a resale certificate complying with the Tax Act, as amended, when purchasing said materials. The Contractor is responsible for any sales taxes applicable to equipment purchases, rentals, leases, consumable supplies which are not incorporated into the project, tangible personal property purchased for use in the performance of this contract and not completely consumed, or other taxable services used to perform this contract, or other taxes required by law in connection with this contract.

XV. COMPLIANCE WITH LAWS, CHARTER, ORDINANCES

Contractor, its agents, employees and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Abilene, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Contractor must obtain all necessary permits and licenses that are required in completing the work contracted for in this agreement.

XVI. PAYMENT AND PERFORMANCE BONDS

If the value of this Bid is below \$50,000, Performance and Payment Bonds are not required; however, the City will not pay the Contractor until the work is accepted and the Contractor furnishes an acceptable Release of Lien and Affidavit of Bills Paid to the City.

If the value of this Bid exceeds \$50,000, the Contractor must also furnish a payment bond. If the value of this Bid exceeds \$100,000, the Contractor must furnish a performance bond when the Contract is executed and delivered to the City. The Bonds, for the full amount of the contract, must be executed by a corporate surety company authorized to do business in the State of Texas and acceptable to the City. Bonds for projects using federal dollars must be underwritten by a surety name in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

The City may require additional security if the initial surety becomes insolvent, bankrupt, or otherwise financially unable to protect the City under the terms of the contract. The City's requiring new or additional security relieves neither the original surety nor the Contractor of their obligations under the contract. City may, without incurring any liability, stop work under the contract until Contractor furnishes additional security.

XVII. SEVERABILITY AND WAIVER

The partial or complete invalidity of one or more provisions of the Contract shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Contract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

XVII. NOTICES

Any notices or other communications required or permitted under this agreement are sufficiently given if delivered personally or sent by registered or certified mail, postage prepaid, addressed to City at:

ATTN: Rodney Taylor
P.O. Box 60
Abilene, Texas 79604-0060

or to Contractor at:

ATTN: Craig Davidson – Assistant Operations Manager – ACE PIPE CLEANING, INC.
6601 Universal Avenue
Kansas City, MO 64120

or to such other address furnished in writing by any party to the others. Notice will be deemed given as of the date so delivered or on the date of deposit in the United States mail, as the case may be.

XVII. COUNTERPARTS

This Contract may be executed in two or more counterparts (including fax, email, or electronic PDF counterparts), each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

XVIII. BOYCOTT OF ISRAEL

In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that: (a) is between a governmental entity and a company with 10 or more full-time employees, and (b) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. Additionally, “company” does not include a sole proprietorship.

If this section is applicable, the signatory executing this contract on behalf of company verifies that the company does not boycott Israel and will not boycott Israel during the term of this contract.

XIX. SECTIONS AND OTHER HEADINGS

Section, paragraph, and other headings contained in this Contract are for reference purposes only and do not affect in any way the meaning or interpretation of this Contract.

{Remainder of Page Intentionally Left Blank—Signature Page Follows}

IN WITNESS HEREOF, the parties hereto have executed this contract effective as of the date written above:

CITY OF ABILENE

CONTRACTOR -Ace Pipe Cleaning, Inc.

By: _____

By: Theresa Calvert

Name: Robert Hanna

Name: Theresa Calvert

Title: City Manager

Title: Vice President

ATTEST:

City Secretary

Federal Tax ID#:

APPROVED:

By: _____
City Attorney

Corporate Seal if applicable

ATTACHMENT A

Scope of Work

Manhole Rehabilitation

APC will perform cementitious manhole rehabilitation on approximately 265 VF of 4 ft diameter brick manholes using Strong Seal MS2C at various locations in Abilene, TX per the Purchasing Cooperative of America Contract (PCA OD-307-20 Trenchless Rehabilitation & Related Items & Services).

Ace Pipe Cleaning will provide all personnel, equipment and materials necessary to perform sanitary sewer manhole rehabilitation on 28 manholes, four feet in diameter and containing 265 vertical feet. The manholes to be rehabilitated, see list below, are located at various locations throughout the City's collection system. Rehabilitation of all 28 manholes shall be completed using a Sulfate Resistant, one inch thick, Calcium-Aluminate cementitious liner. Fifteen of the 28 manholes shall be rehabilitated by repairing the Bench and Invert, in addition to the installation of the one inch thick Calcium-Aluminate cementitious liner.

Manholes to be rehabilitated (identified by City issued Manhole ID number):

MH # 024-021
MH # 030-119
MH # 030-120 (Includes Bench and Invert rebuild)
MH # 030-121
MH # 030-123
MH # 030-140
MH # 030-144 (Includes Bench and Invert rebuild)
MH # 032-013 (Includes Bench and Invert rebuild)
MH # 032-015 (Includes Bench and Invert rebuild)
MH # 032-018
MH # 032-335 (Includes Bench and Invert rebuild)
MH # 041-002 (Includes Bench and Invert rebuild)
MH # 049-050 (Includes Bench and Invert rebuild)
MH # 049-051 (Includes Bench and Invert rebuild)
MH # 064-079 (Includes Bench and Invert rebuild)
MH # 067-030
MH # 067-122 (Includes Bench and Invert rebuild)
MH # 067-123 (Includes Bench and Invert rebuild)
MH # 067-125 (Includes Bench and Invert rebuild)
MH # 067-127

MH # 067-135 (Includes Bench and Invert rebuild)

MH # 067-132

MH # 067-138

MH # 067-141

MH # 067-144

MH # 078-009 (Includes Bench and Invert rebuild)

MH # 080-001 (Includes Bench and Invert rebuild)

MH # 062-011

The spreadsheet listing all manholes to be rehabilitated is attached herein.

Proposal #: 22-278R for Manhole Rehabilitation provided by Ace Pipe Cleaning is incorporated into this contract and attached herein.



ACE PIPE CLEANING
A Carylton Company

6601 Universal Avenue
Kansas City, MO 64120
p: (816) 241-2891
f: (816) 241-5054
office@acepipe.com

CONTRACT PROPOSAL

Date: 3/10/22

City of Abilene
Attention: Kevin Jaeger
209 E Hwy 80
Abilene, TX 79601
Phone: 325-437-4907
Email: kevin.jaeger@abilenetx.gov

Proposal #: 22-278R for manhole rehabilitation

1. PROJECT DESCRIPTION:

Abilene, TX – Manhole Rehabilitation (Spring 2022) (PCA OD-307-20 Trenchless Rehabilitation & Related Items & Services)

2. SCOPE OF WORK:

Ace Pipe Cleaning, Inc. ("APC") will provide the labor, equipment, material, and supplies for manhole rehabilitation on the Project in accordance with this Proposal (the "Work"), and will include the following:

APC will perform cementitious manhole rehabilitation on approximately 265 VF of 4 ft diameter brick manholes using Strong Seal MS2C at various locations in Abilene, TX per the Purchasing Cooperative of America Contract (PCA OD-307-20 Trenchless Rehabilitation & Related Items & Services).

3. PRICING AND PAYMENT:

Description	Qty	Unit	Unit Price	Total
Mobilization	1	LS	\$ 5,000.00	\$ 5,000.00
MS2C Product @ 1" thick 4' dia Manholes (street access)	265	VF	\$ 225.00	\$ 59,625.00
Bench & Invert Repair/Replacement 4' dia Manholes	15	EA	\$ 975.00	\$ 14,625.00
Bond Fee (1%)	1	LS	\$ 750.00	\$ 750.00
TOTAL ESTIMATED PRICE				\$ 80,000.00

Payment shall be due Net 30 days from APC's invoice date. Invoicing will reflect actual quantities achieved.

4. SCHEDULE: To be determined upon acceptance of this Proposal.

5. CLARIFICATIONS/ASSUMPTIONS; TERMS & CONDITIONS:

The Clarifications/Assumptions are part of this Proposal. APC's Terms and Conditions are attached and are incorporated into and part of this Proposal. Please review the Clarifications/Assumptions and APC's Terms and Conditions carefully. The pricing is based upon Customer's acceptance of APC's Clarifications/Assumptions and Terms and Conditions. This Proposal represents our complete offering. If there are any conflicts between Customer's requirements or plans and specifications and this Proposal, this Proposal shall govern.

PREVAILING WAGE? YES NO x
If yes, please provide Wage Determination.

TAX EXEMPT? YES x NO
If yes, please provide Tax Exemption Certificate.

ACE PIPE CLEANING, INC.	ACCEPTED by CUSTOMER:
Signed: <u>Craig Davidson</u> Date <u>3/10/22</u> Title: <u>Asst. Operations Manager</u>	Signed: _____ Date _____ Title: _____

CLARIFICATIONS / ASSUMPTIONS

All pricing is conditioned upon the Clarifications/Assumptions listed below.

1. CLARIFICATIONS:

- a. If the Project is tax exempt, Customer shall provide APC the appropriate documentation.
- b. If payment of prevailing wages or submission of certified payroll reports is required, Owner shall provide a wage determination sheet and/or certified payroll instructions.
- c. The Proposal does not include external by-pass pumping or vacuum testing.
- d. The Proposal does not include stopping of active infiltration/leaks.
- e. This price does not include the replacement and/or adjustment of frame and covers.
- f. Customer will obtain all necessary permits.
- g. Customer will provide any necessary traffic control.

2. ASSUMPTIONS:

- a. Customer will provide free access to the work site which will be adequate for APC's equipment (within 75-100 feet from the manhole). APC reserves the right to charge Customer if additional mobilizations are required if access is not available.
- b. Customer will provide water for cleaning.
- c. Pricing is subject to change 90 days from the date of the proposal.
- d. There are no hazardous materials present in the project area.
- e. Customer will provide the anticipated milestones for completion of this project and will ensure that APC gets the NTP in sufficient time to coordinate the completion of our scope of work.

CUSTOMER	CITY OF ABILENE, TX
CONTRACTOR	ACE PIPE CLEANING
DATE	02/15/2022
PROJECT	FY 2022 MANHOLE REHABILITATION
JOB #	
REFERENCE	

MANHOLE I.D.	ADDRESS	Bench Repair QTY	Manhole Diameter	Manhole VF Depth	Notes
024-021	1041 Burger St	1	4	8	
030-119	557 EN 10th St	0	4	5	Close Left Lane
030-120	581 EN 10th St	0	4	5	Close Right Lane
030-121	1001 Cedar Crest Dr	0	4	8	Close Right Lane
030-123	1001 EN 10th St	0	4	4	Close Right Lane
030-140	826 EN 10th St	0	4	9	Possible inflow
030-144	901 Cockerel Dr				
032-013	401 N 8th	1	4	5	MH Holding water. City will need to jet the main.
032-015	403 W Washington St	1	4	17.5	MH Holding water. City will need to jet the main.
032-018	917 N 8th St	0	4	5	Possible Inflow
032-335	1707 N 10th St	1	4	5.5	
041-002	3825 Concord St	1	4	14	Need access in backyard
049-050	1102 N 3rd St	1	4	14	Inside drop needs re-attached. Downtown alley. Best to do after hours or early
049-051	1154 N 2nd St	1	4	8.5	Trim 4" pipes. Downtown alley. Best to do after hours or early
064-079	1218 S. 12th t	1	4	2.5	
067-030	2349 S. Treadaway	0	4	10	
067-122	2102 Vine St	1	4	9	Possible Inflow
067-123	2102 Vine St	1	4	9	Possible Inflow
067-125	2226 Vine St	1	4	9	
067-127	2318 Vine St	0	4	8	
067-135	2101 Meander St	1	4	10	Possible Inflow
067-132	1902 S 21st St	0	4	9	Possible Inflow
067-138	2102 Meander St	0	4	10	
067-141	2102 Amarillo St	0	4	11	
067-144	2102 Amarillo St	0	4	11	
078-009	EN 10th St at Almond Dr	1	4	17	Close Right Lane
080-001	2449 EN 10th St	1	4	13	
062-011	171 E S 11th	0	4	10	
TOTALS		15		265	

ATTACHMENT B
PAYMENT SCHEDULE

OPTION 1 ____

Compensation is based on actual hours of work/time devoted to providing the described professional services and will be paid at a rate of \$Click or tap here to enter text. per hour not to exceed \$Click or tap here to enter text..

Contractor must submit monthly invoices to City accompanied by an explanation of charges, professional fees, and services. City will pay invoices according to its normal payment procedures.

OPTION 2 X

Payment is in a lump sum amount of \$80,000.00 upon completion of the work and written acceptance by City's Project Representative.

No mechanic, contractor, subcontractor, materialman or other person can or will contract for or in any other manner have or acquire any lien upon any building or work covered by the contract or the land upon which the same is situated.

Before final acceptance of this project by the City, the Contractor must execute and provide City with an Affidavit that all bills for labor, materials and incidentals incurred by subcontractors, materialmen, mechanics and suppliers under this agreement have been paid in full, and that there are no claims pending of which Contractor has been notified.

OPTION 3 ____

Payment is a fixed fee amount of \$Click or tap here to enter text. payable per Click or tap here to enter text. upon completion of the work and written acceptance by City's Project Representative.

No mechanic, contractor, subcontractor, materialman or other person can or will contract for or in any other manner have or acquire any lien upon any building or work covered by the contract or the land upon which the same is situated.

Before final acceptance of this project by the City, the Contractor shall execute and provide City with an Affidavit that all bills for labor, materials and incidentals incurred by subcontractors, materialmen, mechanics and suppliers under this agreement have been paid in full, and that there are no claims pending of which Contractor has been notified.

ATTACHMENT C

STATE MANDATED WORKERS' COMPENSATION INSURANCE LANGUAGE

THIS ATTACHMENT IS ONLY APPLICABLE IF WORKERS' COMPENSATION COVERAGE IS PROVIDED

a. Definitions

Certificate of coverage ("certificate") - a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractors'/person's work on the project has been completed and accepted by the City.

Persons providing services on the project ("subcontractors" in 406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitations, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- b. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- c. The Contractor must provide a certificate of coverage to the City prior to being awarded the contract.
- d. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.
- e. Contractor shall obtain from each person providing services on a project and provide to City:
- (1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and

- (2) no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- g. The Contractor shall notify the City in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. The Contractor shall contractually require each person with whom it contracts to provide services on a project to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing service on the project, for the duration of the project;
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - (6) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the project;

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

- j. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- k. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City.

(End of Document)

Authorize Contract with Ace Pipeline Cleaning, Inc. for the Manhole Rehabilitation 2022 Project.



- Authorize contract with Ace Pipe Cleaning, Inc.
- Acquisition through Purchasing Cooperative of America at contract pricing for total cost of \$80,000.00.
- Project is for the rehabilitation of 28 brick manholes with application of one-inch thick calcium-Aluminate cementitious liner on the interior wall surfaces and certain manhole bottoms.
- The treatment will extend the useful life of the assets and also reduce inflow and infiltration.
- The manholes were selected based on inspections and condition assessments made by City staff.



**Typical aged
brick
manhole
with
disintegrated
grout and
loose bricks.**



Authorize Contract with Ace Pipeline Cleaning, Inc. for the
Manhole Rehabilitation 2022 Project.

Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Max Johnson, Assistant Director of Public Works

SUBJECT: 6. Resolution: Receive a Report, Hold a Discussion and Take Action Authorizing the City Manager to enter into an agreement with Texas Department of Transportation for the Bridge Replacement on ES 7th Street at Cedar Creek (Max Johnson)

GENERAL INFORMATION

This contract is for an Advanced Funding Agreement (AFA) where in the City of Abilene will be entering an agreement with the Texas Department of Transportation (TxDOT) in order to participate in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP). The bridge located on ES 7th St at Cedar creek will be remedied at a 10% cost to the City of Abilene.

SPECIAL CONSIDERATIONS

This bridge is currently closed due to concerns for its structural integrity and the safety of the traveling public.

FUNDING/FISCAL IMPACT

Funding for this project is allocated through Street Maintenance Fee funds.

STAFF RECOMMENDATION

Staff recommends approval of this agreement which has an estimated cost to the City of Abilene of \$158,834.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. ES 7th Bridge Resolution
2. Full AFA
3. PROJECT LOCATION MAP Model (1)
4. ES 7th Bridge ppt

RESOLUTION NO _____

**RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT
BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION
AND THE CITY OF ABILENE TO PARTICIPATE WITHIN THE
BRIDGE REPLACEMENT OF THE ES 7th STREET BRIDGE AT CEDAR
CREEK THROUGH THE FEDERAL OFF-SYSTEM BRIDGE PROGRAM
ADMINISTERED BY THE TEXAS DEPARTMENT OF TRANSPORTATION.**

WHEREAS, the federal off-system bridge program is administered by the Texas Department of Transportation (the State) to replace or rehabilitate structurally deficient and functionally obsolete (collectively referred to as deficient) bridges located on public roads and streets off the designated state highway system; and

WHEREAS, City of Abilene, hereinafter referred to as the Local Government owns a bridge located at East South 7th Street at Cedar Creek, National Bridge Inventory (NBI) Structure Number 082210B21429001, State Control-Section-Job (CSJ) Number 0908-33-106; and

WHEREAS, a project to remedy the bridge is included in the currently approved program of projects as authorized by Texas Transportation Commission Minute Order Number 116073. Dated August 21, 2021; and

WHEREAS, the usual fund participation ratio for projects on such program is 80 percent federal, 10 percent state and 10 percent Local Government, unless reduced by participation in the Economically Disadvantaged County Program; and

WHEREAS, the estimated local match fund participation requirement on the approved federal off-system bridge project is \$158,834.00.

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

PART 1: That the City of Abilene confirms its agreement with the State to secure all match funding for the approved federal off-system bridge project, that all requirements of TAC 43 will be implemented, and the City Manager, in consideration of the foregoing premises and the mutual benefits to be derived therefrom, is hereby authorized and directed to execute and attest on behalf of the City of Abilene, and agreement to Contribute Funds for the above referenced project, referenced by the date of April 14, 2022.

PART 2: That the sum of One Hundred-Fifty-Eight Thousand-Eight Hundred-Thirty-Four Dollars and Zero Cents (\$158,834.00), which represents ten percent (10%) of, the estimated total cost of the bridge project, is hereby appropriated and the City Manager is hereby authorized and directed to pay the sum indicated from the funds available in the budget accounts.

ADOPTED: this 14th day of April, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney



MEMO

February 23, 2022

To: Jamie Griffin
Bridge Division

From: Tracy Jones, P.E.
Abilene District

Subject: Advance Funding Agreement for Bridge Replacement or Rehabilitation Off the State System
CSJ: 0908-33-106; Amendment #: N/A
Local Government: City of Abilene

The following information relates to the above referenced Bridge AFA:

1. Number of original counterparts for execution attached: Click here to enter number.
2. This standard Bridge Agreement **has** / **has not** been modified. (circle one)
3. If modified, date of Bridge approval: Click here to enter a date.
4. Modifications made are as follows: Click here to enter text.

Approval of this contract is requested.

Attachment

OUR VALUES: People • Accountability • Trust • Honesty

OUR MISSION: Through collaboration and leadership, we deliver a safe, reliable, and integrated transportation system that enables the movement of people and goods.

An Equal Opportunity Employer

CSJ # 0908-33-106
District # 08
Code Chart 64 # 00150
Project: East South 7TH @ Cedar Creek
NBI Structure # 082210B21429001
Federal Highway Administration
CFDA Title: Highway Planning and
Construction
CFDA No: 20.205
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
For Bridge Replacement or Rehabilitation
Off the State System**

THIS Advance Funding Agreement (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the “State”, and the **City of Abilene** acting by and through its duly authorized officials, called the “Local Government.”

WITNESSETH

WHEREAS, Title 23 United States Code Section 144 authorizes federal funds to assist the states in the replacement or rehabilitation of deficient bridges located on public highways, roads, and streets, including those under the jurisdiction of local governments; and

WHEREAS, the Texas Transportation Code Sections 201.103 and 222.052 establish that the State shall plan and make policies for the construction of a comprehensive system of state highways and public roads in cooperation with local governments; and

WHEREAS, the Local Government owns one or more bridges on a public road or street located at **East South 7th Street at Cedar Creek** and these bridges are included in the currently approved off-state system federal-aid Highway Bridge Replacement and Rehabilitation Program (HBRRP) as authorized by Texas Transportation Commission Minute Order Number **116073** dated **August 2021**; and

WHEREAS, the Governing Body of the Local Government has approved entering into this Agreement by resolution or ordinance, which is attached to and made a part of this agreement as Attachment D for the development of the specific programmed replacement or rehabilitation project, called the “Project”. The Project is identified in the location map shown as Attachment A, which is attached to and made a part of this agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties, to be by them respectively kept and performed as set forth, it is agreed as follows:

AGREEMENT

1. Period of this Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

2. Termination of this Agreement

This Agreement shall remain in effect until the Project is completed and accepted by all parties, unless:

- A.** The Agreement is terminated in writing with the mutual consent of the parties;
- B.** The Agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party;
- C.** The Local Government elects not to develop the project and the project does not proceed, in which case the Local Government agrees to reimburse the State for one-hundred percent (100%) of its reasonable actual direct and indirect costs incurred for the project; or
- D.** The project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may at its discretion terminate the agreement.

3. Amendments

Amendments to this Agreement may be made due to changes in the character of the work, the terms of the Agreement, or the responsibilities of the parties.

Amendments shall be enacted through a mutually agreed upon written amendment executed by all parties to this Agreement.

4. Remedies

This Agreement shall not be considered as specifying the exclusive remedy for any Agreement default, but all remedies existing at law and in equity may be availed of by either party to this Agreement and shall be cumulative.

5. Scope of Work

The scope of work for this Agreement is the replacement or rehabilitation of the bridges identified in the recitals of this Agreement. This replacement or

rehabilitation shall be accomplished in the manner described in the plans, specifications, and estimates developed in accordance with this Agreement and which are incorporated in this agreement by reference.

6. Right of Way and Real Property

- A.** The Local Government is responsible for the provision and acquisition of all necessary right of way and will not be reimbursed with federal or state funds for the required right of way.
- B.** The Local Government authorizes the State, its consultant, contractor, or other designated representative to enter the sites of these bridges and adjacent right of way or relocation right of way to perform surveys, inspections, construction, and other activities necessary to replace or rehabilitate these bridges and approaches.

7. Adjustment of Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable state laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

8. Environmental Assessment and Mitigation

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A.** The State is responsible for the identification and assessment of any environmental problems associated with the development of the Project governed by this Agreement.
- B.** Cost participation in environmental assessment and remediation work shall be paid by the parties in the same ratio as construction costs and will be included in the construction costs identified in Attachment C, Estimate of Direct Costs.
- C.** The State is responsible for providing any public meetings or public hearings required for development of the environmental assessment.

- D. The State will not begin construction of the Project until identified environmental problems have been remediated, unless provided for otherwise.

9. Compliance with Texas Accessibility Standards and ADA

All parties to this Agreement shall ensure that the plans for and the construction of the Project subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

10. Architectural and Engineering Services

The State is responsible for performance of any required architectural or preliminary engineering work. The Local Government may review and comment on the work as required to accomplish the public purposes of the Local Government. The State will cooperate fully with the Local Government in accomplishing these local public purposes to the degree permitted by state and federal law. The Local Government review shall not unduly delay the development of the Project.

11. Construction Responsibilities

- A. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- B. Upon completion of the Project, the State will issue a "Notification of Completion" acknowledging the Project's construction completion.

12. Project Maintenance

After the Project has been completed, the Local Government shall accept full ownership, and operate and maintain the facilities authorized by this Agreement for the benefit of and at no charge of toll to the public. This covenant shall survive the completion of construction under this Agreement.

13. Local Project Sources and Uses of Funds

- A. A Project Cost Estimate is provided in Attachment C, Estimate of Direct Costs.

- B.** Attachment C provides a source of funds estimate as well as the estimated direct preliminary engineering, construction engineering, and construction costs for the Project in total and by the Local Government.
- C.** The required Local Government participation is based solely upon the State's estimate of the eligible work at the time this Agreement is executed and will not be adjusted during construction except as needed to include any Project cost item or portion of a cost item ineligible for state or federal participation. In addition to its share of estimated direct engineering and construction costs, the Local Government is responsible for the direct cost of any project cost item or portion of a cost item that is not eligible for federal participation under the federal HRRP. The Local Government is also responsible for any cost resulting from changes made at the request of the Local Government. The State and the Federal Government will not reimburse the Local Government for any work performed before federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information.
- D.** If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- E.** After execution of this Agreement, but thirty (30) days prior to the performance of any work by the State, the Local Government shall remit to the State the amount specified in Attachment C for the Local Government's contribution for preliminary engineering. The Local Government will pay, at a minimum, its funding share for this estimated cost of preliminary engineering.
- F.** Forty-five (45) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs and any other costs owed.

- G.** If, at the completion or termination of the Project, the State determines that additional funding is required by the Local Government, the State shall notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- H.** Whenever funds are paid by the Local Government to the State under this Agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation". The check or warrant shall be deposited by the State and managed by the State. The funds may only be applied to the State Project.
- I.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.
- J.** The State will not pay interest on any funds provided by the Local Government.
- K.** The Local Government funding participation responsibilities include Project direct costs only, except when the Project is terminated before completion at the request of the Local Government as addressed in the Termination provision of this Agreement.
- L.** The amounts shown on Attachment C are estimates only. If actual costs exceed the estimates, this shall be considered a fixed price agreement, and no additional funding shall be required of the Local Government except to the extent that the additional costs result from changes made at the request of the Local Government or to the extent that the additional costs are not eligible for federal participation under the federal HBRP. If actual costs are less than the estimates, Local Government participation shall be recalculated based on actual costs. If the recalculation results in a reduction in participation by the Local Government, the State shall pay the difference to the Local Government upon completion of the Project.
- M.** Under the provisions of Texas Transportation Code Section 222.053 certain counties qualify as Economically Disadvantaged Counties (EDC) in comparison to other counties in the state as below average per capita property value, below average per capita income, and above average unemployment, for certain years. If applicable, in consideration of such EDC status that may be applicable for the Project, the required local match fund participation has been adjusted to _____ percent (____%).
- N.** The State will not execute the contract for the construction of a Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- O.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this

contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

- P. The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

14. Performance by Local Government of Equivalent-Match Projects (EMP) in Return for Waiver of Local Match Participation Funding on Participation-Waived Projects (PWP)

- A. Applicability. If a request for waiver has been received and approved by the State's District Engineer, then the required ten percent matching fund participation or percent as adjusted for EDC consideration, as shown in Attachment C, Estimate of Direct Costs, but excluding ineligible costs under the bridge program, is waived. This waiver is based on the commitment of the Local Government to spend an equivalent amount of funds for structural or safety improvement on "other" bridge structures and other conditions as specified in 43 TAC Section 15.55(d). If a waiver has been granted, the Project shall be defined to be a PWP and the work on the "other" bridge structures that will be improved by the Local Government shall be defined to be the EMPs. Attachment B to this Agreement shows a list of EMPs under this Agreement.
- B. Project Cost Estimate for PWP. Attachment C to this Agreement shows the estimated direct preliminary engineering, construction engineering, and construction costs for the PWP in total and local match fund participation being waived or partially waived.
- C. Credit Against EMP Work. Any local match fund participation that has already been paid, or which the Local Government is agreeable to paying to the State, will be credited against EMP work to be performed by the Local Government. If applicable, this credit will be reflected in Attachment C to this Agreement.
- D. Responsibilities of the Local Government on EMPs.
 - 1. The Local Government shall be responsible for all engineering and construction, related costs, and compliance with all applicable state and federal environmental regulations and permitting requirements.

2. The structural or safety improvement work on the EMPs shall be performed subsequent to the final execution of this Agreement but within three (3) calendar years after the earliest contract award of the related PWP.
 3. Written documentation, suitable for audit, of the structural or safety improvement work completed on the EMPs shall be kept on file by the Local Government for four (4) years after completion of work or claims, lawsuits, or audits related to those items, whichever is longer. A notice of completion of work on the EMPs shall be delivered to the State's District Engineer no later than thirty (30) calendar days after work is completed on the EMPs.
 4. Failure by the Local Government to adequately complete the EMPs within the stated three-year period shall result in the Local Government being excluded from receiving such waivers for a minimum of five (5) years.
- E.** Funding of Ineligible or Additional Work Not Waived. Regardless of any waiver of eligible program costs, the Local Government shall pay the State one-hundred percent (100%) of the cost of any PWP item or portion of a cost item that is not eligible for federal or state participation, and one-hundred percent (100%) of the costs resulting from additional work on the PWP performed solely at the request of the Local Government. If the ineligible or additional work is preliminary engineering, the payment shall be made at least thirty (30) days prior to the beginning of preliminary engineering work on the PWP. If the ineligible or additional work is for construction or construction engineering, the payment shall be made at least forty-five (45) days prior to the date set for receipt of bids for construction of the PWP.

15. Notices

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

State: Director, Bridge Division
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701

Local Government: Abilene, City Manager
City of Abilene
555 Walnut Street
Abilene, Texas 79601

All notices shall be deemed given on the date delivered in person or deposited in the mail, unless otherwise provided by this agreement. Either party may change

the above address by sending written notice of the change to the other party. Either party may request in writing that notices shall be delivered personally or by certified U.S. mail, and that request shall be carried out by the other party.

16. Legal Construction

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions and this Agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

17. Responsibilities of the Parties

The parties to this Agreement agree that no party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

18. Ownership of Documents

Upon completion or termination of this Agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this Agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

19. Compliance with Laws

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

20. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the subject matter of this Agreement.

21. Office of Management and Budget (OMB) Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project.

22. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

23. Inspection of Books and Records

The parties to the Agreement shall maintain all books, documents, papers, accounting records, and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA) and the U.S. Office of the Inspector General, or their duly authorized representatives, for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation or claims are resolved. Additionally, the State, the Local Government, the FHWA, and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

24. Civil Rights Compliance

- A. Compliance with Regulations:** The Local Government will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), the Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made part of this agreement.
- B. Nondiscrimination:** The Local Government, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Local Government will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Local Government for work to be performed under a subcontract, including

procurement of materials or leases of equipment, each potential subcontractor or supplier will be notified by the Local Government of the Local Government's obligations under this contract and the Acts and Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

- D. Information and Reports: The Local Government will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations or directives. Where any information required of the Local Government is in the exclusive possession of another who fails or refuses to furnish this information, the Local Government will so certify to the State or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the Local Government's noncompliance with the Nondiscrimination provisions of this contract, the State will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - 1. withholding of payments to the Local Government under the contract until the Local Government complies and/or
 - 2. cancelling, terminating, or suspending of the contract, in whole or in part.
- F. Incorporation of Provisions: The Local Government will include the provisions of paragraphs (A) through (F) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Local Government will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Local Government becomes involved in, or is threatened with, litigation with a subcontractor or supplier because of such direction, the Local Government may request the State to enter into such litigation to protect the interests of the State. In addition, the Local Government may request the United States to enter into such litigation to protect the interests of the United States.

25. Disadvantaged Business Enterprise (DBE) Program Requirements

- A. The parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B. The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C. The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size,

and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.

- D. The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity and attachments found at web address http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf.
- E. The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F. Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

26. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the Local Government certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549 and

further certifies that it will not do business with any party that is currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

27. Lobbying Certification

In executing this Agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A.** No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C.** The parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

28. Federal Funding Accountability and Transparency Act Requirements

- A.** Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.

B. The Local Government agrees that it shall:

1. Obtain and provide to the State, a Central Contracting Registry (CCR) number (Federal Acquisition Regulation, Part 4, Sub-part 4.1100) if this award provides for more than \$25,000 in Federal funding. The CCR number may be obtained by visiting the CCR web-site whose address is: <https://sam.gov/SAM/pages/public/index.jsf>;
2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
3. Report the total compensation and names of its top five (5) executives to the State if:
 - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
 - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

29. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this Agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this Agreement.

30. Local Government Restrictions

In the case that the Local Government has an existing, future, or proposed local ordinance, commissioners court order, rule, policy, or other directive that is more restrictive than the state or federal regulations that results in an increase cost to the State for the project, the local government is responsible for all increased costs associated with the ordinance, order, policy, directive, or change.

31. Single Audit Report

- A.** The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.
- B.** If threshold expenditures of \$750,000 or more are met during the fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Compliance Division, 125 East 11th Street,

Austin, TX 78701 or contact TxDOT's Compliance Division at
singleaudits@txdot.gov.

- C. If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Compliance Division as follows: "We did not meet the \$_____ expenditure threshold and therefore, are not required to have a single audit performed for FY_____."
- D. For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

32. Pertinent Non-Discrimination Authorities

During the performance of this contract, the Local Government, for itself, its assignees, and successors in interest agree to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects).
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), as amended, (prohibits discrimination on the basis of sex).
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27.
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age).
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. Chapter 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex).
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not).

- H. Titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38.
- I. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex).
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, the parties must take reasonable steps to ensure that LEP persons have meaningful access to the programs (70 Fed. Reg. at 74087 to 74100).
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits the parties from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

33. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

CSJ # 0908-33-106
District # 08
Code Chart 64 # 00150
Project: East South 7TH @ Cedar Creek
NBI Structure # 082210B21429001
Federal Highway Administration
CFDA Title: Highway Planning and
Construction
CFDA No: 20.205
Not Research and Development

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Robert Hanna
Typed or Printed Name

Abilene City Manager
Title

Date

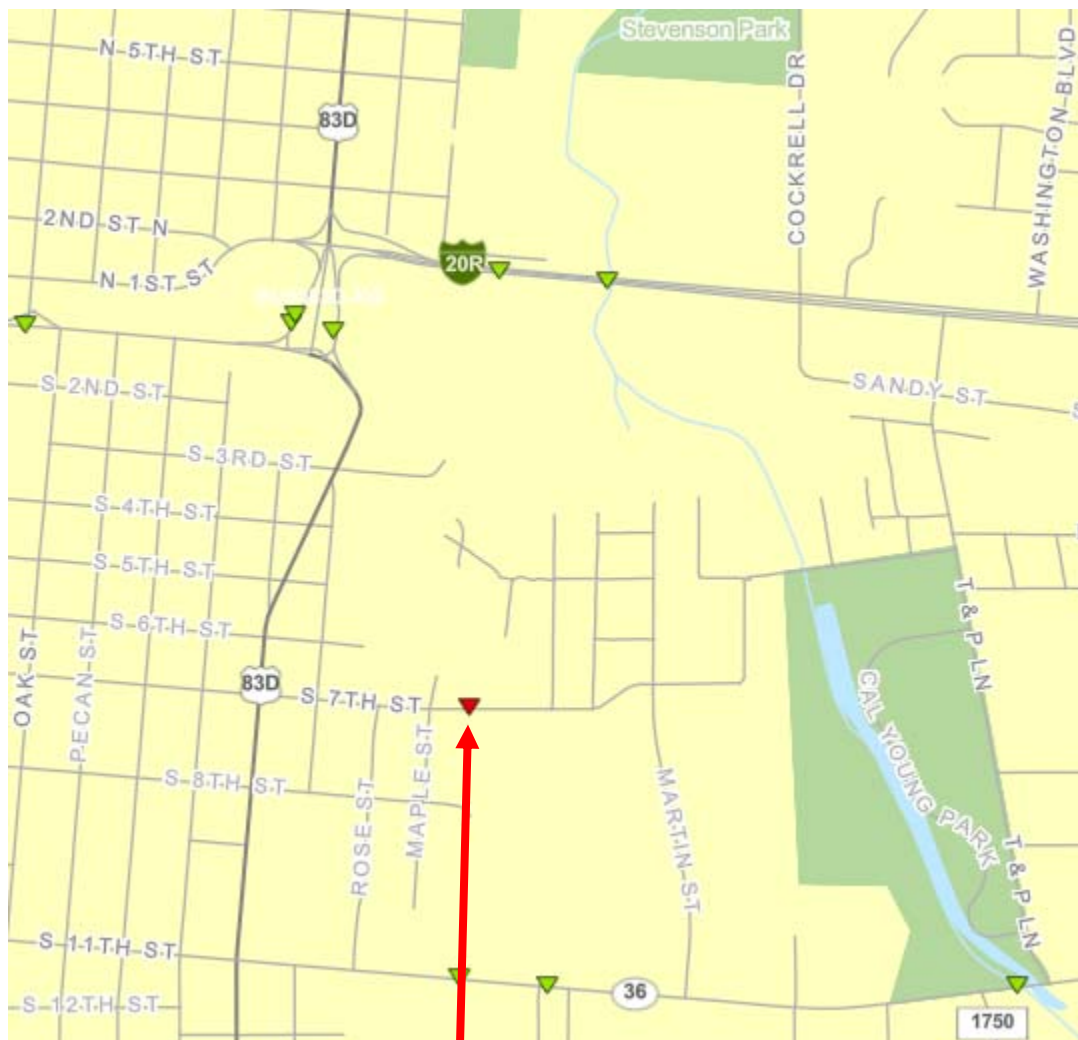
THE STATE OF TEXAS

Graham Bettis, P.E.
Bridge Division Director
Texas Department of Transportation

Date

CSJ # 0908-33-106
District # 08 AFA ID Z00002746
Code Chart 64 # 00150
Project: East South 7th @ Cedar Creek
NBI Structure # 082210B21429001
Federal Highway Administration
CFDA Title: Highway Planning and
Construction
CFDA No: 20.205
Not Research and Development

ATTACHMENT A PROJECT LOCATION MAP



NBI Structure #
082210B21429001

CSJ # 0908-33-106
District #08 AFA ID Z00002746
Code Chart 64 # 00150
Project: East South 7th @ Cedar Creek
NBI Structure # 082210B21429001
Federal Highway Administration
CFDA Title: Highway Planning and
Construction
CFDA No: 20.205
Not Research and Development

ATTACHMENT B **
LIST OF DISTRICT ENGINEER APPROVED
EQUIVALENT-MATCH PROJECTS

NOT APPLICABLE

ATTACHMENT C ESTIMATE OF DIRECT COSTS

	<u>Estimated Cost</u>	<u>Local Government Participation</u>
Preliminary Engineering (PE)	(1) \$373,100.00	
Ten Percent (10%) or EDC Adjusted Percent of PE for Local Government Participation		(3) \$37,310.00
Construction	\$1,066,000.00	
Engineering and Contingency (E&C)	\$149,240.00	
The Sum of Construction and E&C	(2) \$1,215,240.00	
Ten Percent (10%) or EDC Adjusted Percent of the Sum of Construction and E&C for Local Government Participation		(4) \$121,524.00
Amount of Advance Funds Paid by Local Government *		(5)
Amount of Advance Funds to be Paid by Local Government *		(6) \$158,834.00
Balance of Local Government Participation which is to be Waived where the Project is a PWP		(3+4-5-6)
Total Project Direct Cost	(1+2) \$1,588,340.00	

*Credited Against Local Government Participation Amount

If this Project is to be a PWP, Amount of EMP Work Being Credited to this PWP as Shown
 on Attachment B. _____

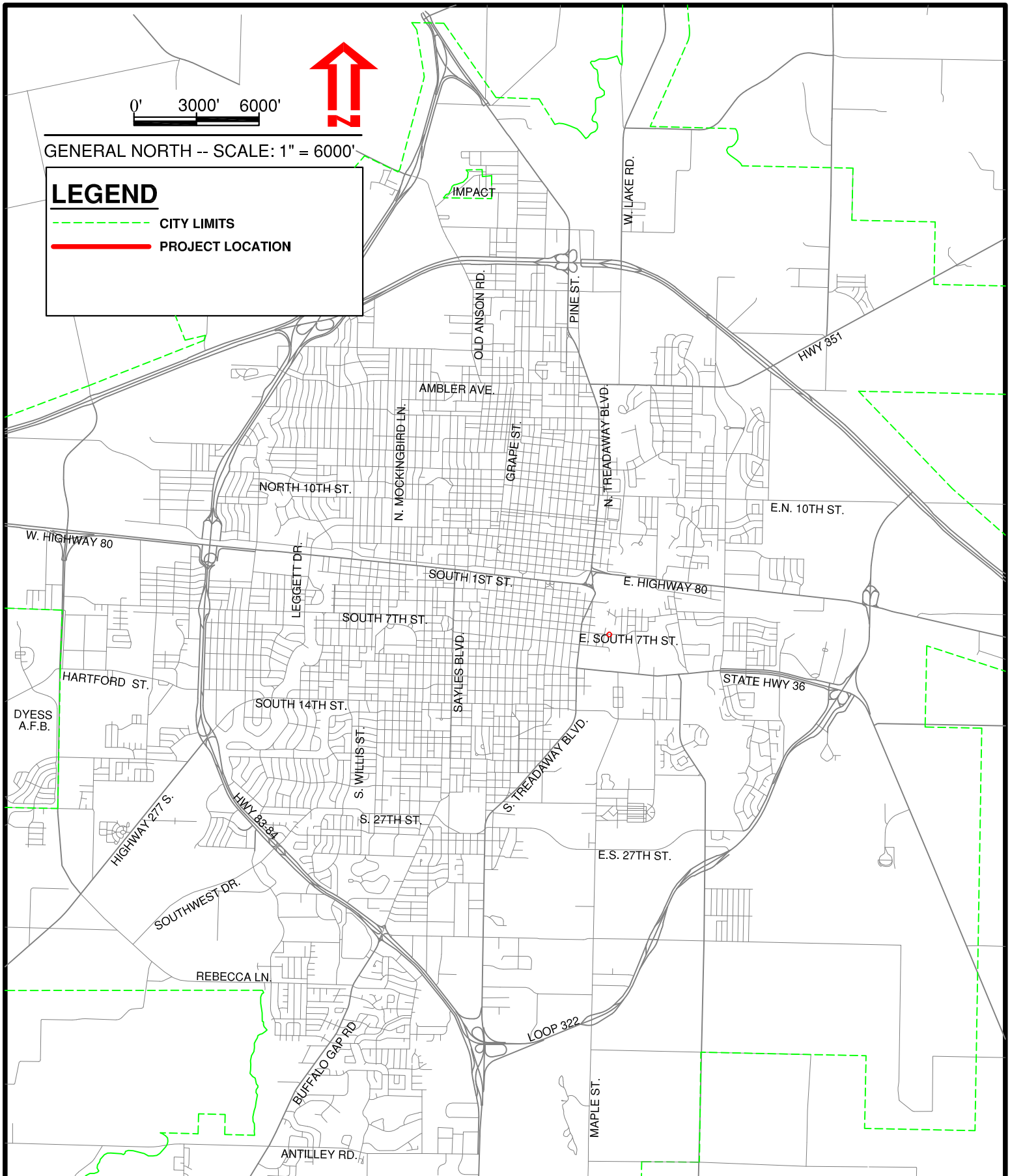
0' 3000' 6000'



GENERAL NORTH -- SCALE: 1" = 6000'

LEGEND

- CITY LIMITS
- PROJECT LOCATION



Sheet
1
of
1

CITY OF ABILENE, TEXAS
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

BRIDGE REPLACEMENT AT ES 7TH ST AND CEDAR CREEK

Designed By: S. CHANDLER

Drawn By: T. MATTHEWS

Checked By: S. CHANDLER

Horizontal Scale: 1"=6000'

Vertical Scale: N.T.S.

Computer File Name:
Project Location Map

Date: MARCH 2022

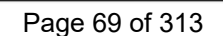
Agenda Item: Agreement with TxDOT for Bridge Repairs on ES 7th St at Cedar Creek

**Resolution: Approval of TxDOT AFA –
CSJ#0908-33-106**

(Johnson)



Creek Cedar



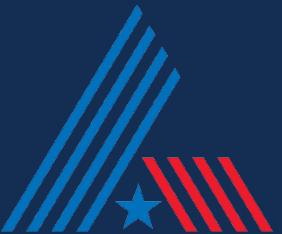
Agenda Item:

Agreement with TxDOT for Bridge Repairs on ES 7th St at Cedar Creek

- Agreement between the City of Abilene and the Texas Department of Transportation to replace the failing bridge structure at ES 7th St and Cedar creek.
- The bridge on ES 7th St. and Cedar Creek has reached its end of life. It was constructed in 1955, and is therefore eligible for replacement using the TxDOT Bridge Replacement Program.
- This agreement allows for the design and construction of a replacement structure at a fraction of the cost to the City of Abilene. The City's part is 10% of the total cost of design and construction or \$158,834.00 of the total \$1,588,340.00.



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Lesli Andrews, Director

SUBJECT: 7. Resolution: Receive a Report, Hold a Discussion and Take Action on Authorizing the City Manager to accept the bid from CanTex Roofing & Construction, LLC for the Adaptive Recreation Roof Project. (Lesli Andrews)

GENERAL INFORMATION

The City of Abilene went out for a Best Value Competitive bid for the Adaptive Recreation Roof. The bids were received on March 17th with eight (8) responses. The bids were graded on best value in the following categories:

1. the price;
2. the offeror's experience and reputation;
3. the quality of the offeror's goods or services;
4. the impact on the ability of the City of Abilene to comply with rules relating to historically underutilized businesses;
5. the offeror's safety record;
6. the offeror's proposed personnel;
7. whether the offeror's financial capability is appropriate to the size and scope of the project

CanTex Roofing & Construction, LLC ranked the highest. The estimated cost of the project prior to bid was \$93,000. The estimated time to complete the project is four (4) weeks.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

The \$92,585.00 for the Adaptive Recreation Roof Project will come from the Minor

Improvement Funds.

STAFF RECOMMENDATION

Staff recommends approving the contract with CanTex Roofing & Construction, LLC in the amount of \$92,585 for the Adaptive Recreation Roof Project.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution CanTex Adaptive Rec Roof 4142022
2. CanTex Roofing Contract
3. Presentation - CanTex Roofing 4142022

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CANTEX
ROOFING & CONSTRUCTION, LLC FOR THE ADAPTIVE RECREATION ROOF PROJECT
LOCATED IN OSCAR ROSE PARK**

WHEREAS, the City of Abilene would like to replace the roof at Adaptive Recreation Center; and

WHEREAS, the City of Abilene conducted a Best Value Competitive Bid Process with Eight Responses; and

WHEREAS, the City seeks to contract with CanTex Roofing & Construction, LLC; and

WHEREAS, the funding for the roof will come from the Minor Improvement Fund; and

WHEREAS, CanTex Roofing & Construction, LLC will receive compensation in the amount of \$92,585.00:

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

Part 1: The City Manager is hereby authorized to enter into a contract with CanTex Roofing & Construction, LLC for the Adaptive Recreation Center Roofing Project located in Oscar Rose Park for an amount of \$92,585.00.

Part 2: That this Resolution shall take effect immediately from and after passage.

ADOPTED this 14th day of April 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the 22nd day of March, 2022 is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and CanTex Roofing and Construction, LLC of the City of Idalou State of Texas. ("Contractor").

The City recognizes a need for high quality construction work; the Contractor agrees to complete the project in return for payment.

THE AGREEMENT

1. **Work and Consideration.** hereby agrees to commence and complete the construction of Work required in the Contract Documents -- incorporated herein by reference --

ADAPTIVE RECREATION ROOF PROJECT

All work to be performed will be completed in conformance with (1) Part I and II of the City of Abilene's Standard Specifications for Construction adopted September, 2006 with the attached amendments in these Contract Documents, and (2) the Technical Specifications and Plans attached to these Contract Documents. Technical Specifications and Plans attached to these Contract Documents control in the event of a conflict.

In consideration of this Work, the City will pay the Contractor the sum of \$92,585.00

2. **Timely Work.** The Contractor must begin and fully complete Work in the days stated in the Notice to Proceed. The time allows for normal delays associated with weather conditions, crew coordination, etc. Time is of the essence, and liquidated damages as set forth in the General Conditions (Paragraph 16) apply for late Work.
3. **Payment.** If Performance and Payment Bonds are required, the City will pay Contractor according to the General Conditions (Paragraph 20). If Performance and Payment Bonds are not required, the City will pay Contractor according to the Instructions to Bidders.
4. **No liens.** No mechanic, contractor, subcontractor, supplier, or other person can or will contract for, or in any other manner have or acquire any lien upon the work of this Contract, or the land upon which it is situated. The laws of the State of Texas govern this Contract.
5. **Venue.** Venue for any legal proceeding is Taylor County, Texas.
6. **Indemnity.**

A. Definitions

For the purpose of this section the following definitions apply:

"City" shall mean all officers, agents and employees of the City of Abilene.

"Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

"Contractor" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

"Contractor's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Contractor.

"Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

"Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

"Proven" shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

"Sole negligence" shall mean negligence of a party that is unmixed with the fault of any other person or entity.

B. Indemnity

The Contractor must indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Contractor's work and activities conducted in connection with this Contract.

The Contractor is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.

Contractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Contractor's employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Contractor or Contractor's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Contractor.

The City and Contractor must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Contractor or City. The City has the right to compromise and defend the same to the extent of its own interests.

BOTH CITY AND CONTRACTOR EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

7. **Insurance.** The Special Conditions found in the City of Abilene's Standard Specifications for Construction adopted September, 2006, Part I, Division I, Item 3, contain the insurance requirements of this Contract.

8. **Overcharges.** The Contractor assigns to City any claims for overcharges related to this Contract which arise under antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq., as amended.

9. **Contract Interpretation.** Any dispute about the Contract's meaning or application will be interpreted fairly and reasonably, and neither more strongly for or against either party.

10. **Indebtedness to City.** Contractor agrees that no payments owed by him of any nature whatsoever to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not knowingly award contracts for goods or services to any Bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty or interest. Contractor is responsible for ensuring that no indebtedness exists.

Section 130 of the City Charter authorizes the City to counterclaim and offset any debt, claim, demand or account owed by the City to any person, firm or corporation in arrears to the City for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty or interest.

11. **Boycott of Israel.** In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that: (a) is between a governmental entity and a company with 10 or more full-time employees and (b) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. Additionally, "company" does not include a sole proprietorship.

If this section is applicable, the signatory executing this contract on behalf of company verifies that the company does not boycott Israel and will not boycott Israel during the term of this contract.

12. **Contract Execution.** The Contractor must sign the Contract first, with any necessary attestation and seal. The City Attorney or designee must review the Contract, and approve or disapprove it. If approved, the City's authorized agent will then sign. The City Secretary must keep a signed original in the City Secretary's Office.

13. **Contract Copies.** Each of the two executed copies is an original.

IN WITNESS HERE OF, the parties hereto have executed this contract:

CONTRACTOR

Name of Contractor:

CanTex Roofing and Construction, LLC



Signature

Mike Hiebert

Name - Typed or Printed

Owner / President

Title - Typed or Printed

Business Address:

12108 E Hwy 62

Idalou, TX 79329

806-475-0010

Business Phone No.

35-2561700

Federal Tax I.D.#

ATTEST: (If Corporation)



Corporate Secretary's Signature

Corporate Seal

(if none, write "None")

CITY OF ABILENE

Authorized Signature

APPROVED:

City Attorney

ATTEST:

City Secretary

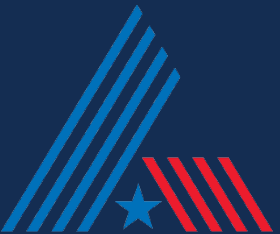
Seal: |

Adaptive Recreation Roofing Project



Adaptive Recreation Roofing Project

- The City of Abilene advertised a Best Value Competitive Bid For the Adaptive Recreation Roof Project.
- There were 8 responses to the bid.
- CanTex Roofing & Construction, LLC was selected.
- Cost will be \$92,585 from the Minor Improvement Fund.
- CanTex Roofing & Construction, LLC has the ability to start immediately and work should take approximately a month.





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Lesli Andrews, Director

SUBJECT: 8. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving the acceptance of the donated "Winnie" sculpture for placement on the Adamson Spalding Storybook Garden lawn of the Abilene Convention Center (Lesli Andrews)

GENERAL INFORMATION

The Abilene Cultural Affairs Council has commissioned "Winnie". If approved the sculpture will become a permanent addition to Abilene's Outdoor Sculpture Storybook Collection.

Each year, Cultural Affairs works to add one or more sculptures in conjunction with the Children's Art and Literacy Festival. Past sculptures approved by Council include:

- 1996 - Santa Calls, Everman Park
- 2000 - Dinosaur Bob, 133 Cedar St.
- 2012 - Cat in the Hat, Everman Park
- 2013 - The Lorax, Yertle the Turtle, The Grinch, Green Eggs and Ham, and Horton Hears a Who, Everman Park; Seymour, 174 Cypress St.
- 2014 - Sandman, 174 Cypress St.; Jack Frost, Main Library; Man in the Moon, T&P Depot; Easter Bunny, Corner of Cedar and North 1st St.; Santa Claus, National Center for Children's Illustrated Literature; The Tooth Fairy, Minter Park
- 2015 - Duck on Bike, 1201 N 1st St.
- 2016 - Good Night Dinosaur, Adamson Spalding Storybook Garden
- 2017 - Stuart Little, Charlotte and Wilbur (Charlotte's Web), Goldilocks and The Three Bears, Three Little Pigs and The Wolf, and Three Kittens and The Mama Kitten, Adamson Spalding Storybook Garden
- 2018 - Marcel and the Moose and his friend Wilfred, Adamson Spalding Storybook Garden
- 2019 - Mr. Tiger, Adamson Spalding Storybook Garden
- 2021 - Otis and the Calf, Adamson Spalding Storybook Garden

SPECIAL CONSIDERATIONS

Abilene Cultural Affairs Council is proposing the sculpture be located in the Adamson Spalding Storybook Garden on the lawn of the Abilene Convention Center and that it be unveiled on the first evening of the Children's Art and Literacy Festival on Thursday, June 9, 2022.

FUNDING/FISCAL IMPACT

The City of Abilene will have approximately 20 hours of labor by Parks staff to install the sculpture and ongoing maintenance in the future.

STAFF RECOMMENDATION

Staff recommends approval of the acceptance of the donated sculpture.

BOARD OR COMMISSION RECOMMENDATION

The sculpture was approved by the Visual Arts Jury at the March 28, 2022 board meeting.

ATTACHMENTS:

1. Resolution_2022_sculpture
2. Winnie A
3. Winnie B
4. Presentation - Adamson Spalding Storybook Garden Sculpture

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS APPROVING ACCEPTANCE OF THE DONATED SCULPTURE FOR PLACEMENT IN THE ADAMSON SPALDING STORYBOOK GARDEN ON THE LAWN OF THE ABILENE CONVENTION CENTER.

WHEREAS, the Abilene Cultural Affairs Council (ACAC) has commissioned Winnie; and

WHEREAS, ACAC works to add one or more sculptures in conjunction with the Children's Art and Literacy Festival.

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

Part 1: That the City Council approves acceptance of the donated sculpture for placement in the Adamson Spalding Storybook Garden on the lawn of the Abilene Convention Center.

Part 2: That this Resolution shall take effect immediately from and after passage.

ADOPTED this 14th day of April, 2022.

ATTEST:

Shawna Atkinson, Interim City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney





Adamson Spalding Storybook Garden Sculpture

Resolution: Approving the acceptance of the donated Winnie sculpture for the Adamson Spalding Storybook Garden on the lawn of the Abilene Convention Center



Adamson Spalding Storybook Garden Sculpture



- Winnie
- Located in the Adamson Spalding Storybook Garden on the lawn of the Abilene Convention Center
- Anticipated installation week of unveiling
- Unveiled on June 9, 2022 as part of the first evening of the Children's Art and Literacy Festival



**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Chief Building Official

SUBJECT: 9. Resolution: Receive a Report, Hold a Discussion and Take Action on Approval of Single-Family Rehabilitation/Reconstruction Program Project Budget with HOME Program Funds (*Tim Littlejohn*)

GENERAL INFORMATION

Neighborhood Services (NS) is seeking Council approval of a Resolution in support of a HOME-funded Single-Family Rehabilitation/Reconstruction Program project located at 1334 Cherry Street. The Single-Family Rehabilitation/Reconstruction Program is an eligible program under the HOME program which requires that the home being improved meet local building codes. The Single-Family Rehabilitation/Reconstruction Program is discussed in both the FY 2020-2024 Consolidated Plan and the FY 2021/2022 Action Plan that strategically addresses the City's goals and objectives for housing and community development over the course of a five-year period.

SPECIAL CONSIDERATIONS

Of particular importance to the health of the City have been programs that address the condition of the housing stock. There is an extensive need for rehabilitation programs in Abilene targeting the improvement of the City's oldest housing stock. Neighborhood Services has successfully funded housing rehabilitation activities throughout the City of Abilene. The Single-Family Rehabilitation/Reconstruction Program provides assistance to owner-occupied, single-family housing to facilitate needed repairs which have not been affected by current or previous owners. HOME funds continue to be used to help meet the demand for decent, safe and affordable housing, homelessness, and other special needs.

FUNDING/FISCAL IMPACT

There will be no local budgetary impacts. The project cost of \$192,500 is to be funded using FY 2021/2022 HOME Entitlement of \$440,520.

STAFF RECOMMENDATION

Staff recommends approval of the attached Resolution approving the Single-Family Rehabilitation/Reconstruction Program Project located at 1334 Cherry Street with C.E. Vann Construction of Abilene, LLC.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 1334 Cherry Street Resolution SFR-Recon Project
2. Agreement
3. CB2229 TABSHEET
4. Council. PP

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL, OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING A SINGLE-FAMILY REHABILITATION/RECONSTRUCTION PROJECT
WITH FY 2021/2022 HOME FUNDS

WHEREAS, As an entitlement city receiving funds from the U.S. Department of Housing and Urban Development (HUD), the City of Abilene receives Community Development Block Grant Funds (CDBG) and HOME Investment Partnership Funds (HOME); and

WHEREAS, the primary objective of the HOME Program is to expand the supply of decent, safe, sanitary, and affordable housing for very low income and low income individuals. Consistent with that primary objective, the Federal assistance provided in the Community Development Program is for the support of the community development goals, objectives, and strategies which are eligible under applicable regulations; and

WHEREAS, of particular importance to the health of the City, have been programs that address the condition of the housing stock; and

WHEREAS, there is an extensive need for Rehabilitation programs in Abilene targeting the improvement of the City's oldest housing stock. City has successfully funded housing Rehabilitation activities targeting lower income and elderly households unable to properly maintain their homes. The Single-Family Rehabilitation/Reconstruction Program provides assistance to owner-occupied, single-family households to facilitate needed repairs which have not been affected by current or previous owners. Homes that meet the eligibility factors for a Rehabilitation Project have been declared substandard by both HUD and the City of Abilene Building Standards. HOME funds continue to be used to help meet the demand for decent, safe, affordable housing, homelessness, and other special needs; and

WHEREAS, the City received bids on March 17, 2022 for the Single-Family Rehabilitation/Reconstruction Project located at 1334 Cherry Street with the lowest bid being received from C.E. Vann Construction of Abilene, LLC. in the amount of \$192,500.

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

Part 1. That the FY 2021/2022 Single-Family Rehabilitation/Reconstruction Program project at 1334 Cherry Street funded by the HOME Program in the amount of \$192,500 is hereby approved.

Part 2. That the financial assistance authorized by the Community Development Block Grant and HOME Programs referred to above, is required to enable the City of Abilene to carry on appropriate community development activities, directed toward meeting the stated objectives of the program.

Part 3. That the City Manager, or his designee, of the City of Abilene, Texas is hereby authorized to sign said application and any and all appurtenant documents on behalf of the City.

Part 4. That this resolution shall take effect immediately from and after its passage.

ADOPTED this April 14th, day of 2022.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

AGREEMENT BETWEEN CITY OF ABILENE, APPLICANT FOR SINGLE-FAMILY REHABILITATION/RECONSTRUCTION PROGRAM AND CONTRACTOR

This agreement is between the City of Abilene ("City"), and applicant for the Single-Family Rehabilitation/Reconstruction Program, Alder Wayne Bleeker and Raquiel A. Bleeker (hereinafter "Homeowner" whether one or more persons), and Calvin Vann dba C.E. Vann Construction of Abilene, LLC, ("Contractor"). This Agreement applies only to the dwelling unit located 1334 Cherry Street, Abilene, Texas ("Property").

I. Purpose

The Homeowner desires Neighborhood Services (NS) to bid out the demolition and reconstruction of the real property located at 1334 Cherry Street, Abilene, Texas. The work to be completed shall include general Rehabilitation/Reconstruction and/or lead abatement if, applicable. The Contractor shall perform the improvements and/or repairs according to the project specifications and building plans.

II. Term

In consideration of the assistance described herein, Homeowner agrees to comply with each of the responsibility detailed below. The duration of this Agreement is twenty (20) years from the date of completion of Rehabilitation/Reconstruction work and runs concurrently with the affordability period and deed of trust.

III. The Contract Documents

The Contract Documents consist of this Agreement, Contractor's Bid and Proposal, Conditions of Bid, Specification, Schedules, Building Plans, and all Addenda issued prior to execution. These documents constitute the Agreement between Homeowner, Contractor and the City, and said documents are hereby incorporated by reference and are fully a part of the Contract as if attached to this Agreement or repeated herein.

IV. References to Parties

Contractor and Contractor's employees are not the agents, servants, or employees of the City. All rights conferred upon the respective parties and all agreements herein undertaken to be performed by them respectively shall insure to the benefit of and be binding upon said parties and their heirs, executors, administrators, grantees, successors, and assigns.

V. Use of HOME Program Funding

- A. The HOME Program funding provided by the City is in the amount of \$192,500.00.
- B. At the time Homeowner is approved for HOME Program assistance, Homeowner shall have an ownership interest in and occupy the Property to be reconstructed as the Homeowner's principal residence. Homeowner agrees to continue to occupy the Property as his/her principal residence for twenty (20) year period from the date of this agreement, the period of affordability.
- C. The balance due on the forgiven, deferred loan will decrease 1/240 monthly for twenty (20) year period beginning April 14th, 2022 and ending April 14th, 2042. This is the period of affordability.
- D. Homeowner shall qualify as a low-income household with a gross household income that does not exceed 80% of the area median income as established by the U.S. Department of Housing and Urban Development for the Abilene area, adjusted for household size, and as update annually.
- E. The HOME Program assistance provided by the City shall be secured by a promissory note and recorded subordinate deed of trust (no lower than second position).
- F. If, during the affordability period, the Homeowner sells or transfers title to the Property, rents or leases the Property, refinances the Property with cash-out, or if Homeowner no longer lives in the Property as his/her principal residence, all of part of the deferred payment loan will be due in an amount that shall be reduced pro-rata based upon the time (in full month) that the Homeowner has utilized the Property as his/her principal residence. However, in the event Homeowner sells the Property, if the net proceeds from the sale are less than the amount of HOME assistance due, the amount due shall be reduced in accordance with 24 CFR 92.254(a)(5)(ii)(A)(2). The amortized Rehabilitation/Reconstruction loans shall be due in full.
- G. An exception to the loans becoming due as stated in paragraph F, above, may be made in the event the person having interest in the property is able to qualify under the requirements of the HOME Program and enters into an agreement with the City.
- H. Housing reconstruction work will provide construction necessary to bring the Property into compliance with the City of Abilene's applicable building codes; the City's housing Rehabilitation/Reconstruction program standards; and applicable lead-based paint regulations (24 CFR 92.251 & 92.355). Rehabilitation/Reconstruction work to be performed will be completed in accordance with the written work specification for the Property and fully executed. All codes, standards, and regulations noted are incorporated by reference.

- I. The HOME statute and the HOME regulation at 24 CFR 92.250(a) limit the amount of HOME funds that a Participation Jurisdiction (PJ) may invest in a HOME-assisted unit. The maximum rehab for the single-family house located at 1334 Cherry Street, Abilene, TX is classified as modest housing and according to 24 CFR 92.250 HOME assistance in the amount of \$192,500.00 does not exceed the per unit maximum subsidy limit of \$243,000.

Estimated Start Date: May 16th, 2022 Estimated Completion November 16th, 2022.

VI. Duties of Homeowner

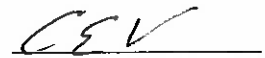
- A. Neither Homeowner, nor any household member of Homeowner, may engage in drug-related criminal activity, violent criminal activity, or felonious criminal activity. Any violation of this program is ground for default of the Agreement and will result in the repayment of the entire loan.
- B. Homeowner has a right of rescission period that is described in the Notice of Right of Rescission, which is attached and incorporated for all purpose as part of this agreement.
- C. Homeowner shall vacate the property of all belongings and personal effects as soon as possible, but before the expiration of 30-days from the date of execution of this agreement.
- D. The duties for the Homeowner shall include, but are not limited to: review Specifications and execute this Agreement with Contractor, and associated documents: and accommodate schedules of Contractor and City to facilitate timely completion of Rehabilitation/Reconstruction work, inspection and contractor reimbursement.
- E. Homeowner agrees to cooperate with the Contractor in making available utility services such as electricity, water and gas, as may be reasonably necessary for the performance of the work as specified in the Contract Documents.
- F. Homeowner must provide proof of Homeowner's Insurance Replacement Coverage and Flood Insurance Coverage (when applicable), for a period not less the twenty (20) years from work completion date, with amounts sufficient to cover all the debt secured by property and amount spent on the project.
- G. Upon the completion of the project, if contractor repairs are necessary, Homeowner is responsible for contacting the Contractor in accordance with the following procedures:
- H. Homeowner must contact the Contractor in writing, by certified mail return receipt requested, listing all repair problems.
- I. Homeowner must send a copy of the letter to the City of Abilene, Neighborhood Services, (hereinafter NS), P.O. Box 60, Abilene, Texas 79604 or bring it to the NS office at 555 Walnut.

- J. Homeowner must notify NS in writing when Contractor has completed repairs.

VII. Duties of Contractor

- A. The Contractor shall perform all work required by the Contract Documents for the commencement and completion of the following: The construction of certain repairs and/or improvement to the residence located at 1334 Cherry Street, ABILENE, TEXAS, TAYLOR, COUNTY, TEXAS 79602-3911; said improvements consisting of all “required items” listed on the Specifications and Contractor’s Bid and Proposal, including all necessary and required work in connection therewith. Work is to be commenced and completed under the terms of the Agreement. The Contractor agrees to furnish, at his own cost and expense, all of the materials, supplies, machinery, equipment, tools, insurance, supervision, labor and other accessories and services which are necessary to complete the construction project in accordance with the conditions, plans, specifications, and prices stated in the respective Contract Documents referred to in the Agreement.
- B. Duties of the Contractor also include, but are not limited to: communicating with the Homeowner and the City regarding status of the work during the construction period: notifying the City in writing with justification delineating and supporting the need for any change order (including itemized cost information); completing any items identified on the final building inspection and NS inspection; and adhering to warranties as specified under item VII. D (4) of the Contract.
- C. Contractor hereby agrees to complete this Project in a good and workmanlike manner, according to the Plans and Specifications agreed upon by the Parties, and according to all other Contract Documents mentioned in Article III of the Agreement. Contractor further agrees to employ only those reliable, workers and subcontractors who, to the best of his or her knowledge, are competent and skillful in the performance of the types of work required under this Contract. In compliance with 24 CFR 570.609, Contractor represents that at the time of execution hereof, Contractor and subcontractors (if any) are not listed on the HUD Disbarred Contractor’s List or removed from the NS Pre-Approved Contractors List. Contractor further agrees to discharge from the Project any workers, who are, in the Homeowner’s opinion, incompetent, unreliable, or disorderly, when Homeowner Provides Contractor with written notice of same. Such workers so discharged shall not be re-employed on the Project without Homeowner’s written consent.
- D. Warranties
For good and valuable consideration Contractor provides the following warranties:
1. Contractor is skilled and experienced in the type of work described herein:

2. Contractor possesses any and all permits or licenses required to do the work of the nature described herein, and that said permits or licenses are valid and current for a one (1) year period from the date of final acceptance of all work required by this contract:
3. That the material and workmanship conform to all documents described in Article III of this Agreement, at the time of final inspection: and,
4. Contractor will, at his own expense, correct any non-conformance with the Plans and Specifications and any defect in material or workmanship, for a period of one (1) year from the date of Homeowner's acceptance of the work. Contractor will complete said corrections within thirty (30) calendar days or reasonable amount of time as determined by the parties thereof after receipt from the Homeowner of written notice of nonconformities or defects, and will do so in such a manner as to meet the conditions specified in the Contract Documents. This warranty shall extend to subsequent homeowners, if any, during the warranty period. The warranty shall provide that improvements, hardware and fixtures of whatever kind or nature are installed or constructed on the property by the Contractor are new and free from defects in material or workmanship. Contractor and Homeowner agree, however, that the warranty set forth in the paragraph shall apply only to such deficiencies and defects as to which Homeowner or subsequent Homeowners shall have given written notice to the Contractor, at Contractor's principal place of business, within one (1) year from the date of Homeowner's acceptance of the work.


Contractor Initials

- E. Defects in workmanship or material shall include, but shall not be limited to, the following:
- 1) All or part of the work which is unsuitable or not in conformity with the requirements of any applicable Building, Plumbing, Electrical, or other such code;
 - 2) All or part of the work which does not conform to the Specification or the intent thereof;
 - 3) Any material or materials brought onto the work site whether or not actually used in the work, which are unsuitable or not in conformity with the requirements of any City building code; and
 - 4) Any material or materials brought on the work site, whether or not actually used in the work, which do not conform to, Specifications or the intent thereof.

The City building official or designee, or appropriate governmental authority shall have the power to determine whether any defect exist in material or workmanship of said project.

F. Breach of Warranty: Remedies

Should Contractors fail to fulfill or comply with any of the above warranties, such failure may be treated as a breach of warranty, and shall give rise to the following remedies on behalf of Homeowner;

- 1) Recession of the Agreement and obtaining substitute performance, at Contractor's expense, or,
- 2) Delay or withholding by Homeowner or Homeowner's agent of part or all of the Final Payment; or
- 3) Any other remedy provided by law or breach of any applicable implied or expressed warranty or warranties.

G. Final Clean Up

The Contractor shall remove from the work site any and all surplus or discarded materials, temporary structures, and debris of every kind; said Contractor shall leave the work site in a neat, orderly condition comparable to that which originally existed. Final clean-up shall be made upon completion of the work. Failure to finish final clean-up may, at the option of Homeowner, or Homeowner's agent, result in delay or withholding of final payment.

H. Risk of Loss

Contractor shall, at his own expense, bear the risk of loss arising from or related to any of the following:

- 1) Failure of the work to be performed;
- 2) Any additional costs associated with inclement weather conditions;
- 3) Any unforeseen circumstances occurring during the work progress;
- 4) Any unusual obstructions or difficulties which may be encountered in the process of the work; or,
- 5) Labor and/or material price increase.

I. In the event Contractor fails to comply with this contract, NS will take the necessary action to place Contractor on the HUD Disbarred Contractors list and remove contractor from the NS Pre-Approved Contractors List.

J. Contractor has notice of and agrees to the requirement of the "Section 3 Clause Notice", which is attached to this Agreement and incorporated for purposes.

K. Lead Based Paint Products

Lead based paint removal is a dangerous task and safety precautions shall be strictly enforced when workers are engaged in hazardous abatement.

L. Permits and Codes

Contractor agrees to acquire and pay for all necessary permits, license, bonds and registration required for Contractor's performance.

M. Contractor to Furnish Names and Addresses

As soon as practicable or before starting project, the Contractor shall furnish to NS the names and addresses of suppliers of materials, subcontractors and employees who will furnish labor and/or materials in value of excess of five hundred (\$500.00) dollars for purposes of performance under this Agreement. Contractor's failure to submit name and addresses of those parties who furnish materials and/or labor in excess of five hundred (\$500.00) dollars may result in withholding payment to Contractor under this Agreement. Contractor must submit proof of payment affidavit and lien waiver form each person/entity so named before final payment will be made.

N. Licensing/Bonding

Contractor shall provide copies of licenses and bonds as required by state law or City ordinance.

VIII. Insurance

A. General Requirements

Contractor and Homeowner must maintain the type and amounts of insurance required in this contract throughout the term of the agreement. Contractor and Homeowner must provide a Certificate of Insurance evidencing the required coverage types and amounts before the Contract is signed. All policies are subject to examination and approval by the Homeowner and the City for their adequacy. This contract may be terminated if the Contractor fails to comply with all insurance requirements.

Insurance naming Homeowner and City as additional insured, must be primary insurance and not contributing with any other insurance available to the Homeowner and/or City, under any third party liability policy.

B. Additional Requirements

The required liability insurance and their certificates must:

- 1) Name the Homeowner and City as an additional insured for operations under this contract.
- 2) Provide for 30 days advance written notice of cancellation or material change.

C. Types and Amounts of Insurance

The following insurance is required under this contract:

- | | | |
|----|--|---|
| 1. | Commercial (Public) Liability
Including, but not limited to:
Premises/Operations <ul style="list-style-type: none">• Independent Contractors• Products/Completed Operations• Contractual Liability
(Insuring above indemnity)
And where the exposures exist• Explosion Collapse and Underground | \$500,000 combined single
limit for bodily injury
and property damage
(per occurrence) |
| 2. | Business Automobile Liability
To include coverage for: <ul style="list-style-type: none">• Owned/Lease Auto• Non-owned Autos• Hired Cars | \$500,00 combined single
limit for bodily injury
and property damage
(per occurrence) |

IX. Disbursement of Funds

- A. Funds will be disbursed on a reimbursement basis per payment schedule or percent completed of contracted amount, plus any change orders, less 10% retainage, according to the schedule found in Article X of this Agreement.
- B. Partial payments may be made after:
 - 1. Inspections by NS and City building officials (if required)
 - 2. Contractor Request for Payment and Certification of Inspection, signed by the Homeowner, Contractor and the NS Inspector.
 - 3. Contractor must executed Lien Waiver, for the specified amount(s) paid to him/her AND from all subcontractors receiving such partial or in-progress payments.
- C. Upon completion of the Rehabilitation/Reconstruction work, retainage funds will be held for thirty (30) days and will be paid after the following requirements are met:
 - 1. The Contractor shall submit a final Contractor Request for Payment, signed by the Homeowner, Contractor and the NS Inspector in the amount of the 10% retainage.
 - 2. The NS Inspector, Homeowner, and Contractor, will execute the final Certification of Inspection.
 - 3. Contractor shall submit proof of Payment Affidavit and Lien Waiver from each person/entity so named before final payment will be made.

X. Contract Sum and Payment Schedule

The first payment shall not exceed 50% of the total Rehabilitation/Reconstruction cost of the amount of deferred payment loan funds, whichever is less. Upon completion of lead based paint abatement Contractor will be reimbursed for 100% of the cost in accordance with the requirements of Article IX. Rehabilitation/Reconstruction payments will be scheduled as follows:

Reconstruction Program: 40% - Demolition & Foundation; 20% - Framing; 15% - Dry-in & Decking; 15% - Roofing and Sheetrock; 10% - 30 Day Final Payment.

Rehabilitation Program: 50% - Removal of substandard; 40% - Reconstructing of all systems; 10% - 30 Day Final Payment

TOTAL \$ 192,500.00

XI. Financing Arrangements---Security

Contractor and Homeowner understand and agree the City will require a security for interim financing of the loan, and that furnishing of security will entail the execution and assignment by Homeowner, Contractor or both of a Security Interest Agreement and Deed of Trust. Each party therefore agrees to execute without unreasonable delay any and all instruments, documents or assignments therefore, which may be necessary to secure interim or permanent financing of the project.

XII. Liability Assumption of Risk and Indemnity

The Contractor must indemnify, hold harmless, and defend the City and Homeowner from and against liability for any claims arising out of the Contractor's work and activities conducted in connection with this Contract.

The Contractor is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City or Homeowner.

Contractor must at all times exercise, reasonable precautions on behalf of, and be solely responsible for, the safety of Contractor's employees while in the vicinity where the work is being done. The City or Homeowner is not liable or responsible for the negligence or intentional act or omissions of the Contractor or the Contractor's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Contractor.

The City, contractor and Homeowner must provide the other promptly and timely notice of any covered event which in anyway affects or might affect any party. The City has the right to compromise and defend the same to the extent of its own interests.

BOTH CITY AND CONTRACTOR EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

XIII. Lien

- A. In the event liens are filed against this property, Contractor agrees that Homeowner or the City has the option to withhold payment until any and all liens are release or satisfied. Final payment shall not be due until Contractor has delivered to Homeowner and the City release of all liens, if any, filed on this property arising out of performance by and Contractor, subcontractor, agent, employee, or supplier. Contractor shall provide a receipt in full covering all labor and materials for which a lien could be filed, or a satisfactory bond indemnifying Homeowner and the City against any lien.
- B. If a suit is brought upon any lien filed on the property, then Homeowner or City, may recover the amount of judgement and costs, including reasonable attorney's fee, from Contractor.
- C. If any cost or liens against this property arise after Contactor has been paid, then Homeowner may recover from Contractor the amounts for which Contractor is liable.

XIV. Property Standards

- A. All Rehabilitation/Reconstruction work will be completed in compliance with the City's adopted property standards and all applicable written local building and property codes and standards.
- B. Housing Rehabilitation/Reconstruction assistance will only be provided to cover the cost of reconstruction necessary to bring the property in compliance with locally adapted, written building and property standards, Rehabilitation/Reconstruction program standards and applicable Federal and State building and property standards.

XV. Duties of City of Abilene

- A. Roles and responsibilities of the City include, but are not limited to: ensuring payment to Contractor as set forth in the Rehabilitation/Reconstruction contract, communication with the

Homeowner and Contractor regarding all administrative procedures that affect completion of reconstruction work; advising the Homeowner regarding City property standards, building code requirements, local property standards and housing Rehabilitation/Reconstruction standards which may affect the prioritization of work items; and documenting project files in compliance with all applicable HUD regulations.

- B. Roles and responsibilities of the City, the Homeowner, and the Contractor are more specifically outlined in the NS Single-Family Rehabilitation/Reconstruction Program Guidelines, incorporated herein by reference.

XVI. Written Agreement Provisions

A. Modification

Homeowner and Contractor expressly agree that no material changes or alterations in the description of work or price provided in the Agreement shall be made unless in writing and mutually agreed to by Contractor, Homeowner, and NS.

- B. Change orders may be authorized for necessary work items that were initially overlooked which could not be determined until the course of the reconstruction work had already begun. Change orders must be approved in writing by Homeowner, City NS manager and department director prior to the commencement of the proposed changed work, in order for such cost to be reimbursable.

- C. Change order risk shall be carried by Contractor.

- D. Homeowner or Contractor with concerns about the administration or operation of the Rehabilitation/Reconstruction Program should communicate these concerns to the Housing Counselor in writing. If concerns cannot be negotiated or resolved successfully between the parties, a party may request a decision from the Neighborhood Services Manager. The program procedures may be found in the NS Single-Family Rehabilitation/Reconstruction Program Guidelines.

- E. Homeowner agrees to abide by the HOME regulations as set forth in 24 CFR part 92, which is incorporated as part of this agreement by reference. A copy of the regulation can be accessed at: <http://www.hud.gov/offices/cpd/affordablehousing/lawsandregs/regs/finalrule.pdf>.

F. Equal opportunities

Contractor and Homeowner agree to provide equal opportunity to all persons without discrimination as to race, color, religion, national origin, sex, marital status, age, and status with regard to public assistance or disability.

G. Interpretation of Contract

In the event of any dispute, this Agreement shall be interpreted in accordance with Texas law.

H. Boycott of Israel

In accordance with Chapter 2270, Texas Government Code, a Governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification form the company this it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

This section only applies to a contract that: (a) is between a government entity and a company with 10 or more full-time employees, and (b) has a value of \$100,000 or more that is to paid wholly or partly from public funds of the governmental entity. Additionally, "company" does not include a sole proprietorship.

If the section is applicable, the signatory executing this contract on behalf of company verifies that the company does not boycott Israel and will not boycott Israel during the term of the contract.

XVII. Completion and Liquidated Damages

- A. The commencement and completion dates are essential conditions of the Agreement. The work must begin as stated in the Notice to Proceed. The Contractor must proceed with the work at a rate of progress to endure full completion within the contract time. The Contractor and the Homeowner expressly agree that the contract time for completing the work is a reasonable time as determined by the parties considering the average climatic and economic conditions and other factors prevailing in the locale. Because time is of the essence in this contract liquidated damages apply to its performance. For each working day that any work remains uncompleted after the final completion time as stated in the Notice to Proceed, the City may deduct the amount stated below from money due to the Contractor.
1. If \$1.00 to \$25,000.00 is due to Contractor, the deduction amount will be \$10.00 per working day.
 2. If \$25,001 or more is due to Contractor, the deduction amount will be \$15.00 per working day.
 3. The sums of money deducted for failure to complete any portion of the work on time are not a penalty, but are reasonable liquidated damages, per working day, for defaulting on the contracted final completion date. The Homeowner and Contractor agree to fixed amounts because it is impractical and extremely difficult to ascertain actual damages that would be sustained. The Contractor or Contractor's surety must promptly pay any additional amounts if the amount the City withholds from money due the Contractor does not cover the amount of liquidated damages.
 4. The City will not charge Contractor liquidated damages or any excess cost when Contractor has given prompt written notice to Homeowner and NS prior to completion date, and NS confirms the delay in completion of the work is due to:

5. Any preference, priority or allocation order issued by NS; unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including acts of God, of the public enemy, of NS or another contractor or the performance of a contract with NS, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, and abnormal and unforeseeable weather; or any delays of subcontractors caused by the same occurrences that are previously listed above.

Executed this _____ day of _____, 2022

Homeowner

Alder Wayne Bleeker
Printed Name

This instrument was acknowledge before me on the _____ day of
April, 2022 by Alder Wayne Bleeker

Notary Public, State of Texas

Print Name

Commission Expires

Executed this _____ day of _____, 2022

Homeowner

Raquel A. Bleeker
Printed Name

This instrument was acknowledge before me on the _____ day of
April, 2022 by Raquel A. Bleeker

Notary Public, State of Texas

Print Name

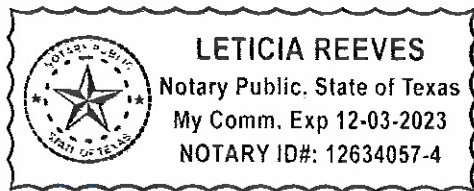
Commission Expires

Calvin E. Vann
Contractor

27-1432768
Federal Tax ID#

Owner
Title

This instrument was acknowledge before me on the 25th day of
March, 2022 by Calvin Vann



Leticia Reeves
Notary Public, State of Texas

Leticia Reeves
Print Name

12-03-2023
Commission Expires

CITY OF ABILENE

Robert Hanna, City Manager

ATTEST:

Shawna Atkinson, City Secretary

APPROVED:

Stanley Smith, City Attorney

**CITY OF ABILENE
PURCHASING DIVISION
TABULATION OF BIDS**

PAGE
1 OF 1

DEPARTMENT: ONS
BID NO.: CB-2229
TIME OF OPENING: 11:00 A.M.
DATE OF OPENING: MARCH 17, 2022

C.E. VANN CONSTRUCTION
OF ABILENE LLC
ABILENE, TX

MACKIE CONSTRUCTION
ABILENE, TX

RICKS CONSTRUCTION
ABILENE, TX

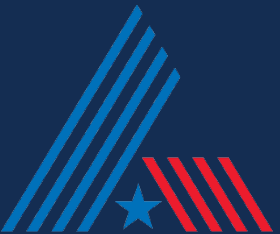
ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
1.	SINGLE-FAMILY REHABILITATION/RECONSTRUCTION PROGRAM				192,500.00		195,000.00		196,049						
BASE BID					192,500.00		195,000.00		196,049						
DISCOUNT															
TOTAL BID					192,500.00		195,000.00		196,049						

*NOTES: INDICATES RECOMMENDED AWARD

NEIGHBORHOOD SERVICES

SINGLE-FAMILY REHABILITATION/RECONSTRUCTION PROJECT

1334 Cherry Street

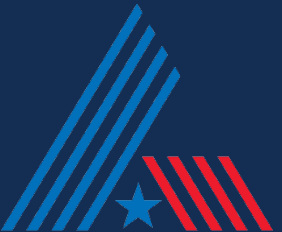


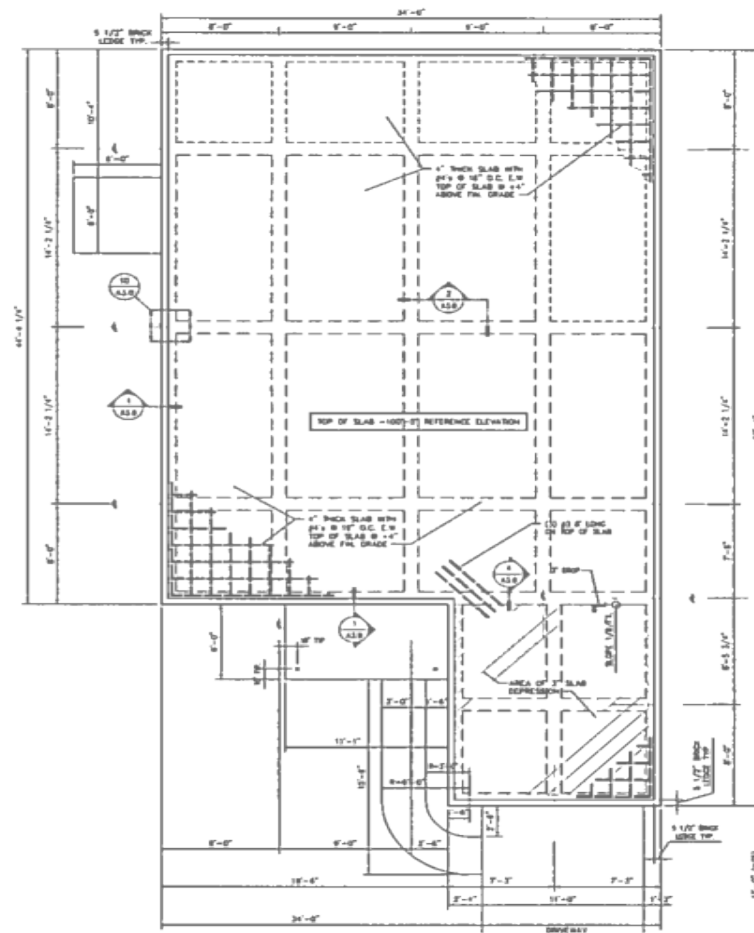
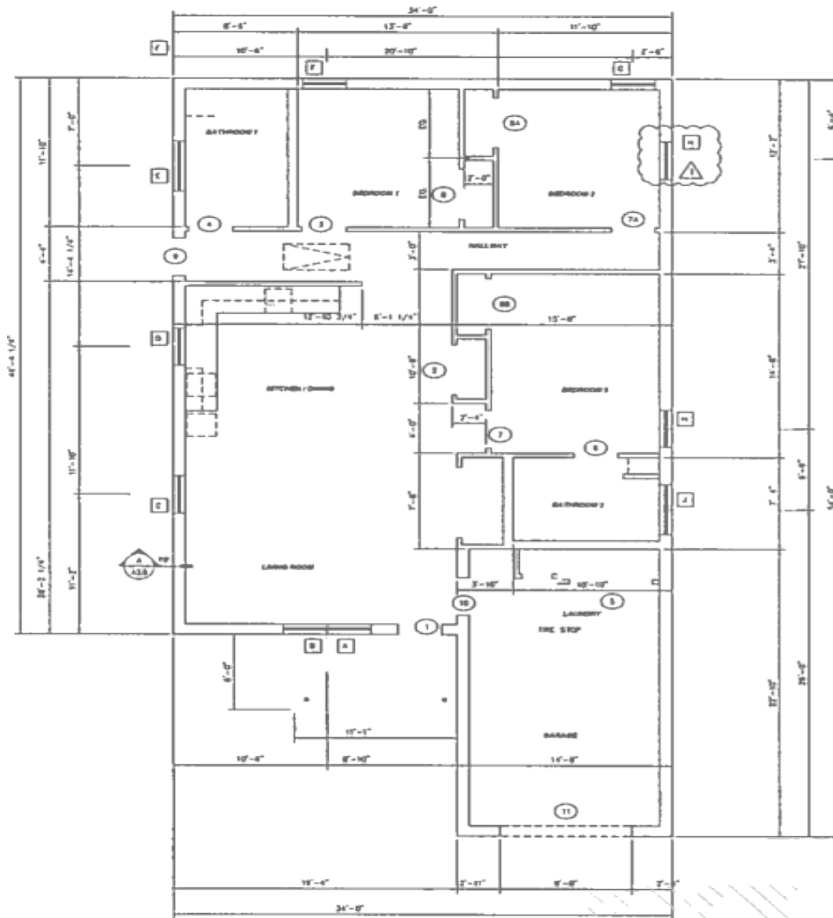
Agenda Item:

Reconstruction Project

#CB-2229

- The Agreement for this owner-occupied project involves the Demolition and Reconstruction of a substandard existing property. The project will provide the family a safe and secure home.
- Project Advertised February 27, 2022 & March 6, 2022. Bids were opened March 17, 2022.
- Three bids were received.
- Staff recommends award of contract to C.E. Vann Construction of Abilene, LLC., in the amount of \$192,500.

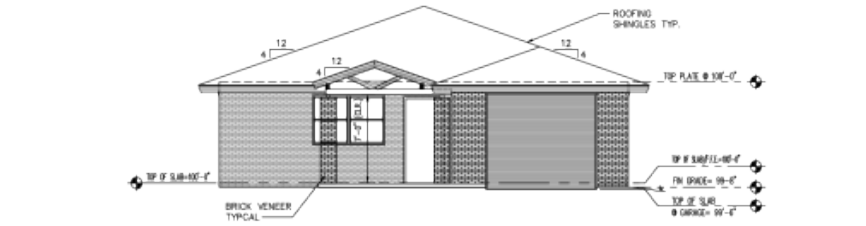
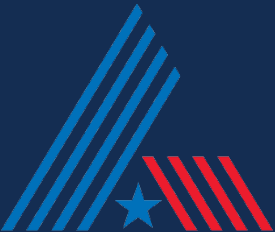




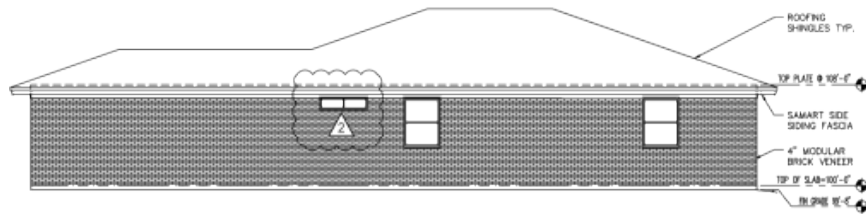
FOUNDATION PLAN - HOUSE 5
SCALE: 1/8"=1'-0"

REVISIONS		
NO.	DATE	BY
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3		
4		
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6		

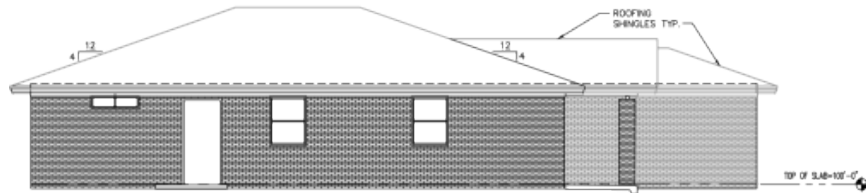
Page 112 of 313



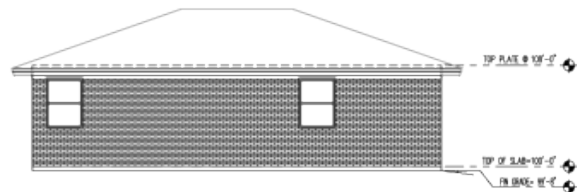
A
A2.0
FRONT ELEVATION
SCALE: 3/16"=1'-0"



B
A2.0
RIGHT SIDE ELEVATION
SCALE: 3/16"=1'-0"



C
A2.0
LEFT SIDE ELEVATION
SCALE: 3/16"=1'-0"



DOOR AND FRAME SCHEDULE			
NO.	MAT.	SIZE	REMARKS
01	STL	3068	EXT. PANELIZED, INSULATED, PRIME AND PAINT W/ RUST RESISTANT PAINT
02	WDB	DBL. PR. 24"	FLAT BI-FOLD
03	WDB	3068	INT. MOLDED FIBERGLAS, PANELIZED
04	WDB	3068	INT. MOLDED FIBERGLAS, PANELIZED
05	WDB	DBL. PR. 18"	FLAT BI-FOLD
06	WDB	3068	INT. MOLDED FIBERGLAS, PANELIZED
07	WDB	3068	INT. MOLDED FIBERGLAS, PANELIZED
08	WDB	3068	INT. MOLDED FIBERGLAS, PANELIZED
09	STL	3068	EXT. PANELIZED, PRIME AND PAINT W/ RUST RESISTANT PAINT
10	STL	3068	EXT. PANELIZED, PRIME AND PAINT W/ RUST RESISTANT PAINT
11	STL	9070	STEEL SECTIONAL OVERHEAD, PRIME AND PAINT W/ RUST RESISTANT PAINT

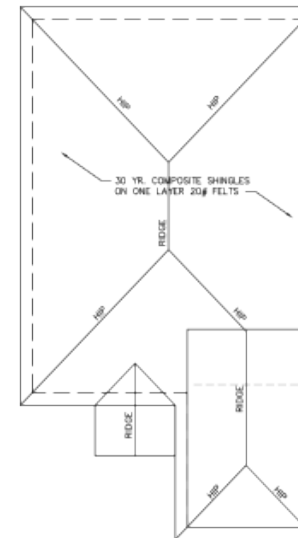
DOOR AND FRAME SCHEDULE NOTES

1. ALL EXTERIOR WINDOW AND DOOR OPENINGS SHALL BE COMPLETELY FLASHED AND SEALED TO SHEATHING. FILL ALL GAPS WITH SPRAY-TYPE FOAM INSULATION.
2. PROVIDE ALUMINUM THRESHOLD AT EXTERIOR DOORS SET IN BED OF SEALANT.
3. PROVIDE COMPLETE HARDWARE FOR EACH DOOR. EXTERIOR DOORS TO RECEIVE KEYS CYLINDER AND DEAD BOLT.

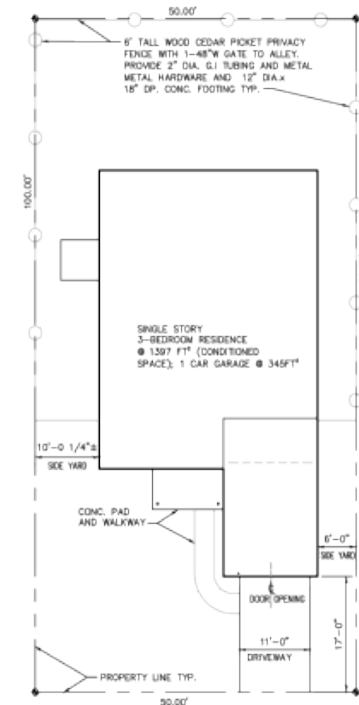
WINDOW SCHEDULE			
NO.	MAT.	SIZE	REMARKS
A	MD	3050	DBL. GLZ. DOUBLE HUNG WITH ARGON GAS
B	MD	3050	DBL. GLZ. DOUBLE HUNG WITH ARGON GAS
C	MD	3050	DBL. GLZ. DOUBLE HUNG WITH ARGON GAS
D	MD	3036 (45" TALL)	DBL. GLZ. DOUBLE HUNG WITH ARGON GAS
E	ALUM	4012	DBL. GLZ. SLIDER, EXTRUDED ALUMINUM
F	MD	3050	DBL. GLZ. DOUBLE HUNG WITH ARGON GAS
G	MD	3050	DBL. GLZ. DOUBLE HUNG WITH ARGON GAS
H	MD	3050	DBL. GLZ. DOUBLE HUNG WITH ARGON GAS
I	MD	3050	DBL. GLZ. DOUBLE HUNG WITH ARGON GAS
J	ALUM	4012	DBL. GLZ. SLIDER, EXTRUDED ALUMINUM

WINDOW SCHEDULE NOTES

1. ALL EXTERIOR WINDOW AND DOOR OPENINGS SHALL BE COMPLETELY FLASHED AND SEALED TO SHEATHING. FILL ALL GAPS WITH SPRAY-TYPE FOAM INSULATION.
2. CONTRACTOR TO PROVIDE AND INSTALL MIN BLINDS.
3. TEMPERED GLASS REQUIRED WHEN NEAREST VERTICAL EDGE (GLAZING IS WITHIN A 24" ARC OF OTHER VERTICAL EDGE OF THE DOOR. SEE R308.4.2. (DOOR 1)



HOUSE 5



F
A2.0
SITE PLAN
SCALE: 1"=10'-0"

DATE

BY

PROJ. NO.:
DATE:
REVISION:
DESIGNER: RRB
DRAFTER: LE

SITE PLAN, EXT. ELEV.,
SCHEDS & ROOF PLAN

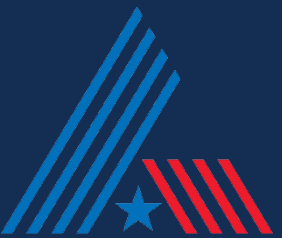
SINGLE-FAMILY DWELLING
FOR
CITY OF ABILENE
ABILENE, TX

6801 SANCHEZ AVE
WACO, TEXAS
(254) 344-7727
3444 N. 14TH STREET
ABILENE, TEXAS
(325) 691-1298
Texas Registered Engineering Firm F-3300



"We are a
design-build
firm. We are
not a
contractor.
We are a
design-build
firm. We are
not a
contractor."

Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Cande Flores, Fire Chief

SUBJECT: 10. Resolution: Receive a Report, Hold a Discussion and Take Action to Authorize the City Manager to Enter into a Mutual Aid Agreement between the City of Abilene and Taylor County, Texas (Cande Flores)

GENERAL INFORMATION

The City of Abilene and Taylor County recognize that people and communities located within the County are subject to damage, injury, loss of life, and property loss resulting from potential disasters, civil emergencies or other emergency incident.

It is also recognized that these incidents may present equipment, manpower, or facility requirements beyond the capacity of either party.

SPECIAL CONSIDERATIONS

The City of Abilene and Taylor County have maintained a Mutual Aid Agreement for several years. The last agreement was agreed upon and signed in 2015. The current proposed agreement maintains the same language and requirements as the 2015 agreement.

FUNDING/FISCAL IMPACT

The City of Abilene receives \$319,767 annually to support the Taylor County Mutual Aid Agreement.

STAFF RECOMMENDATION

Staff recommends approval of the Resolution to authorize the City Manager to enter into a Mutual Aid Agreement between the City of Abilene and Taylor County, Texas.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution - Taylor Co Mutual Aid
2. County Mutual Aid Agreement 3-15-22 (2)
3. MAA Presentation

RESOLUTION _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO A MUTUAL AID AGREEMENT BETWEEN THE CITY OF ABILENE AND TAYLOR COUNTY, TEXAS.

WHEREAS, the Parties recognize the vulnerability of the people and communities located within the County to damage, injury, loss of life and property resulting from disasters, civil emergencies, or incidents and recognize that disasters, civil emergencies, or incidents may present equipment, manpower, or facility requirements beyond the capacity of each Party; and

WHEREAS, the Parties recognize that, in the past, mutual aid has been provided between or among the Parties in the form of personnel, supplies, and equipment during disasters, civil emergencies, or incidents as well as during recovery periods; and

WHEREAS, the officials of the Parties desire to secure for each Party the benefits of mutual aid and protection of life and property in the event of a disaster, civil emergency, or incident; and

WHEREAS, the Parties wish to make suitable arrangements for furnishing mutual aid in coping with disasters, civil emergencies, or incidents and are authorized to make this Agreement; and

WHEREAS, the Parties recognize that a formal agreement for mutual aid would allow for better coordination of effort, would provide that adequate equipment, manpower, and facilities are available, and would help ensure that mutual aid is accomplished in the minimum time possible, and thus desire to enter into an agreement to provide mutual aid; and

WHEREAS, this Agreement is made pursuant to Chapter 418 of the Texas Government Code, "Emergency Management", Section 791 of the Texas Government Code, "The Interlocal Cooperation Act" and Section 362.002 of the Texas Local Government Code, "Law Enforcement Assistance".

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

Part 1: That the City Manager is hereby authorized to sign and enter into a Mutual Aid Agreement between the City of Abilene and Taylor County, Texas.

Part 2: That this Resolution shall take effect immediately from and after passage.

ADOPTED and approved by the City Council on the 14th of April, 2022.

ATTEST:

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

APPROVED:

Stanley Smith
City Attorney

**COUNTY MUTUAL AID AGREEMENT
FOR TAYLOR COUNTY, TEXAS**

State of Texas §

County of Taylor §

This Mutual Aid Agreement ("Agreement") is entered into by and between the County listed above (hereinafter, the "County"), Cities within the County, Volunteer Fire Departments, and any public safety agency providing services within the County but not under the jurisdiction of an incorporated city ("Parties").

RECITALS

WHEREAS, the Parties recognize the vulnerability of the people and communities located within the County to damage, injury, loss of life and property resulting from disasters, civil emergencies, or incidents and recognize that disasters, civil emergencies, or incidents may present equipment, manpower, or facility requirements beyond the capacity of each Party; and

WHEREAS, the Parties recognize that, in the past, mutual aid has been provided between or among the Parties in the form of personnel, supplies, and equipment during disasters, civil emergencies, or incidents as well as during recovery periods; and

WHEREAS, the officials of the Parties desire to secure for each Party the benefits of mutual aid and protection of life and property in the event of a disaster, civil emergency, or incident; and

WHEREAS, the Parties wish to make suitable arrangements for furnishing mutual aid in coping with disasters, civil emergencies, or incidents and are authorized to make this Agreement; and

WHEREAS, the Parties recognize that a formal agreement for mutual aid would allow for better coordination of effort, would provide that adequate equipment, manpower, and

facilities are available, and would help ensure that mutual aid is accomplished in the minimum time possible, and thus desire to enter into an agreement to provide mutual aid; and

WHEREAS, this Agreement is made pursuant to Chapter 418 of the Texas Government Code, "Emergency Management", Section 791 of the Texas Government Code, "The Interlocal Cooperation Act" and Section 362.002 of the Texas Local Government Code, "Law Enforcement Assistance".

NOW, THEREFORE, the Parties agree as follows:

TERMS

1. **Recitals.** The recitals set forth above are true and correct.
2. **Definitions.** For the purposes of this Agreement, the terms listed below will have the following meanings:
 - "Civil Emergency" means the unforeseen combination of circumstances or the resulting consequences thereof within the geographic limits of a given jurisdiction that calls for immediate action or for which there is an urgent need for assistance or relief to protect the general citizenry.
 - "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other hazardous contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, energy emergency (as that term is defined in Chapter 418 of the Texas Government Code), acts of terrorism, and other public calamity requiring emergency action.
 - "Incident" means a localized event that is generally routine in nature, characterized by limited impact, but requires specialized skills and equipment that the responding agency lacks necessitating mutual aid assistance.
 - "Local Government" means a county, municipality, special district, or any corporate/political entity organized under state law, of Texas or a state that borders Texas.
 - "Mutual Aid" includes, but is not limited to, such resources as equipment, supplies, facilities, and personnel possessed by jurisdictional fire, law enforcement, medical, and public works jurisdictions/agencies/volunteer organizations.

- "Political Subdivision" means county or incorporated city.

3. Activation of Agreement. This Agreement shall be activated in the event of either: (a) a declaration of a local state of disaster by a Party pursuant to Chapter 418 of the Texas Government Code; (b) the finding of a state of civil emergency by the presiding officer of the governing body of a Party; or (c) a determination by an incident commander that an incident requires assistance to address a shortfall in local resources. The activation of the Agreement shall continue, whether or not the local disaster declaration or state of civil emergency is still active, until the services of the Party rendering aid are no longer required or when the officer in charge of the resources of the Party rendering aid determines, in his sole discretion, that further assistance should not be provided. Reasonable notice of the discontinuation of assistance shall be given to the Requesting Entity.

4. Request for Mutual Aid.

(A) Local Disaster. In the event of a local disaster declaration, the Emergency Management Director or the designated Emergency Management Coordinator of a Party seeking mutual aid shall make the request directly to the Party from whom aid is sought, pursuant to the cost provisions of Section 8 of this Agreement. A Party from whom mutual aid is sought shall furnish mutual aid to cope with the disaster to the requesting Party, subject to the terms of this Agreement.

(B) Civil Emergency. If the presiding officer of the governing body of the Party is of the opinion that a state of civil emergency exists that requires assistance from another Party, the presiding officer of the Party requesting mutual aid shall make the request directly to the Party from which assistance is sought. Before the emergency assistance is provided, the governing body of the Party whose assistance has been requested shall authorize such assistance by resolution or other official action, in accordance with Chapter 791 of the Texas Government Code. In the event of a widespread civil emergency affecting more than one Party hereto, the County shall coordinate the call-up and assignment of resources to the affected area, pursuant to Section 6 of this Agreement.

(C) Incidents. If it is determined that assistance is needed to manage a routine localized event, a request for assistance shall be made by and to the respective elected or agency officials.

(D) Requests. A request for mutual aid may be submitted verbally or in writing. If a request is submitted verbally, it must be confirmed in writing.

5. Conditions. Any furnishing of resources under this Agreement is subject to the following conditions:

(A) When contacted by a requesting Party, the Emergency Management Director of the Party from which aid is requested or his or her designee agrees to assess local resources to determine availability of personnel, equipment, and other assistance required based on current or anticipated needs. All Parties shall render assistance to the extent that personnel, equipment, and resources are deemed available. No Party shall be required to provide mutual aid unless it determines that it has sufficient resources to do so based on current or anticipated events within its own jurisdiction. The agreement to render aid is expressly not contingent upon a declaration of a major disaster or emergency by the federal government or upon received federal funds;

(B) The Party rendering aid shall report to the officer in charge of the requesting Party's forces at the location to which the requested resources are dispatched in a presumed support role;

(C) All Parties to this Agreement agree to conduct response operations in accordance with National Incident Management System (NIMS) concepts and principles and to organize and manage all personnel and resources under the Incident Command System (ICS). Responding Parties will render mutual aid subject to the control of an Incident Commander. Parties providing assistance will coordinate response actions as instructed under ICS, unless such instructions violate local policies and procedures in the safe and prudent application of personnel and equipment, in such an instance local policies and procedures shall prevail;

(D) Each Party to this Agreement agrees to program radio equipment with channels called for by the Texas Statewide Interoperability Channel Plan, and does grant permission to all Parties and County/City agencies to program and use each other's local radio frequencies during mutual aid response;

(E) Law enforcement assistance. Each party to this agreement grants arrest authority to responding entity officers who perform activities pursuant to this Agreement and are operating outside of the jurisdiction in which they are regularly employed, but within the area covered by this Agreement. The law enforcement agencies of the requesting entity in which an arrest has been made shall be notified of the arrest without unreasonable delay. If a request for assistance involves a response by a Tactical Unit (SWAT and Hostage Negotiations), and/or a Bomb Squad, the responding entity's Unit Commander shall have entire control of the tactical situation until the Unit Commander determines the situation has been resolved. The Unit Commander will attempt to notify the requesting entity of any planning or decisions regarding the situation as time and safety allow; and

(F) Jurisdictions/Departments/Agencies shall observe and comply with all Federal, State, County, and City laws, rules, ordinances, and regulations in any manner affecting the conduct of the services provided and in the performance of all obligations undertaken by this Agreement.

6. Coordinating Agency for Mutual Aid. The County shall act as the coordinating agency for mutual aid responses to disasters and to civil emergencies that affect more than one Party hereto. As part of its duties as coordinating agency, the County shall maintain a current listing of all Parties to this Agreement. Such listing shall include personnel to be contacted in each city, appropriate telephone and facsimile numbers, and other information that would be needed in order to contact each Party in the event of disaster or civil emergency.

7. Waiver of Claims Against Parties; Immunity Retained. Each Party hereto waives all claims against the other Parties hereto for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this Agreement, except those caused in whole or in part by the negligence of an officer, employee, or agent of another Party. No Party waives or relinquishes any immunity of defense on behalf of itself, its officers, employees and agents as a result of the foregoing sentence or its execution of this Agreement and the performance of the covenants contained herein.

8. Costs. All costs associated with the provision of mutual aid, such as damage to equipment and clothing, medical expenses, and expenses of travel, food, and lodging, shall be paid by the Party rendering aid, although the Party rendering aid may be reimbursed by the requesting Party for such costs if the Parties in question so agree. Upon request by the party rendering aid, actual costs associated with the provision of assistance after one operational period has expired, including but not limited to personnel costs, operation and maintenance of equipment, damage to equipment, medical expenses, food, lodging, and transportation expenses, shall be paid by the requesting party. Actual costs shall be based upon standardized state mutual aid reimbursement rates when possible. Requests for reimbursement must be submitted within ten working days of the return of all personnel and should identify each service, labor, or equipment provided and the unit and total costs associated with each. Personnel who are assigned, designated or ordered by their governing body to perform duties pursuant to this Agreement shall continue to receive the same wages, salary, pension, and other compensation and benefits for the performance of such duties, including injury or death benefits, disability payments, and worker's compensation benefits, as though the service had been rendered within the limits of the jurisdiction where the personnel are regularly employed.

9. Equipment and Personnel. During the time mutual aid is being furnished, all equipment used by the Party rendering aid shall continue to be owned, leased, or rented by the Party rendering aid. At all times while equipment and personnel of a Party rendering aid are traveling to, from, or within the geographical limits of the requesting Party in accordance with the terms of this Agreement, such personnel and equipment shall be deemed to be employed or used, as the case may be, in the full line and cause of duty of the Party rendering

aid. In addition, such personnel shall be deemed to be engaged in a governmental function of their entity.

10. Expending Funds. Each Party which performs services or furnishes aid pursuant to this Agreement shall do so with funds available from current revenues of the Party including reimbursement by the state or federal government if appropriate. No Party shall have any liability for the failure to expend funds to provide aid hereunder.

11. Termination. It is agreed that any Party hereto shall have the right to terminate its participation in this Agreement upon ninety (90) days written notice to the other Parties hereto.

12. Term. This Agreement shall become effective as to each Party when approved and executed by that Party. This Agreement shall continue in force and remain binding on each and every Party until such time as the governing body of a Party terminates its participation in this Agreement pursuant to Section 11 of this Agreement. Termination of participation in this Agreement by a Party(ies) shall not affect the continued operation of this Agreement between and among the remaining Parties and this Agreement shall continue in force and remain binding on the remaining Parties.

13. Entirety. This Agreement contains all commitments and agreements of the Parties with respect to the mutual aid to be rendered hereunder during or in connection with a disaster and/or civil emergency. No other oral or written commitments of the Parties with respect to mutual aid under this Agreement shall have any force or effect if not contained herein, except as provided in Section 15 below.

14. Ratification. Each Party hereby ratifies the actions of its personnel taken prior to the date of this Agreement.

15. Other Mutual Aid Agreements. Notwithstanding Section 13, it is understood and agreed that certain signatory Parties may have heretofore contracted or may hereafter contract with each other for mutual aid in civil emergency and/or disaster situations, and it is agreed that this Agreement shall be subordinate to any such individual contract.

Specifically, the existence of this Agreement shall not prevent a municipality, county, rural fire prevention district, emergency services district, fire protection agency, organized volunteer group, or other emergency services entity from providing mutual aid assistance on request from another municipality, county, rural fire prevention district, emergency services district, fire protection agency, organized volunteer group, or other emergency services entity, in accordance with the provisions in Section 418.109 (d) of the Texas

Government Code. Additionally, the existence of this Agreement shall not prevent any Local Government which is a Party hereto from providing emergency assistance to another Local Government which is not a party hereto, in accordance with the provisions in Section 791.027 of the Texas Government Code.

Notwithstanding the foregoing, the Parties acknowledge and approve of the County being a Party to Mutual Aid agreements similar to this Agreement with other counties within the West Central Texas Council of Governments and/or other contiguous counties, which counties have or may have Mutual Aid agreements with municipalities within their respective jurisdictions. The Parties hereto agree to provide Mutual Aid to such other counties and municipalities upon request so long as there is a reciprocal agreement to provide Mutual Aid to the parties to this Agreement.

Furthermore, notwithstanding the foregoing, the Parties acknowledge and approve of the West Central Texas Council of Governments being a party to Mutual Aid agreements similar to this Agreement with other councils of government within the State of Texas and/or other contiguous councils of government, which councils of government have or may have Mutual Aid agreements with counties and municipalities within their respective jurisdictions. The Parties hereto agree to provide Mutual Aid to such other counties and municipalities upon request so long as there is a reciprocal agreement to provide Mutual Aid to the Parties to this Agreement.

16. Interlocal Cooperation Act. The Parties agree that mutual aid in the context contemplated herein is a "governmental function and service" and that the Parties are "local governments" as that term is defined herein and in the Interlocal Cooperation Act.

17. Severability. If a provision contained in this Agreement is held invalid for any reason, the invalidity does not affect other provisions of the Agreement that can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.

18. Validity and Enforceability. If any current or future legal limitations affect the validity or enforceability of a provision of this Agreement, then the legal limitations are made a part of this Agreement and shall operate to amend this Agreement to the minimum extent necessary to bring this Agreement into conformity with the requirements of the limitations, and so modified, this Agreement shall continue in full force and effect.

19. Amendment. This Agreement may be amended only by the mutual written consent of the Parties.

20. Third Parties. This Agreement is intended to inure only to the benefit of the Parties hereto. This Agreement is not intended to create, nor shall be deemed or construed to create, any rights in third parties.

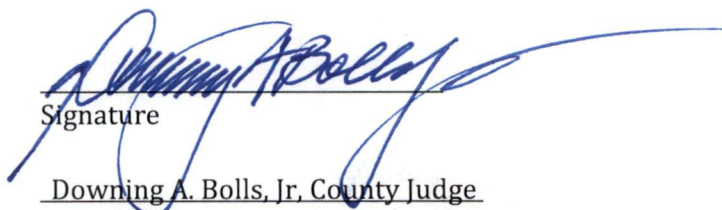
21. Warranty. The Agreement has been officially authorized by the governing body of each Party hereto and each signatory to this Agreement guarantees and warrants that the signatory has full authority to execute this Agreement and to legally bind the respective Party to this Agreement.

22. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. Venue for an action arising under this Agreement shall lie exclusively in the County to which this Agreement pertains.

23. Headings. The headings at the beginning of the various provisions of this Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Agreement.

**** The rest of this page is intentionally left blank ****

EXECUTED by the Parties hereto, each respective entity acting by and through its duly authorized official as required by law, on multiple counterparts each of which shall be deemed to be an original, on the date specified on the multiple counterpart executed by such entity.


Signature

Downing A. Bolls, Jr. County Judge
Print Name Title

Taylor
County

March 15, 2022
Date

Approved by Commissioner Court action on March 15, 2022.

Signature

Print Name Mayor Title

Abilene
City

Date

Approved by City Council action on _____.

Signature

Print Name Mayor Title

Town of Buffalo Gap
City

Date

Approved by City Council action on _____.

Signature

Print Name Mayor Title

Lawn
City

Date

Approved by City Council action on _____.

Signature

Print Name Mayor Title

Merkel
City

Date

Approved by City Council action on _____.

Trent
City

Date _____

Signature

City

Tuscola
City

Date

Signature _____ Tye _____
City _____

Tye _____
City _____
Date _____

Signature _____ City _____

Date _____

Signature

Cande Flores Fire Chief
Print Name Title

Signature

Derrick Sowell Fire Chief
Print Name Title

Signature

Gary Young Fire Chief
Print Name Title

Signature

Sam Stanaland Fire Chief
Print Name Title

Signature

James Burleson Fire Chief
Print Name Title

Abilene Fire Department
Department

Date

Buffalo Gap VFD
Department

Date

ECCA VFD
Department

Date

Jim Ned VFD
Department

Date

Lawn VFD
Department

Date

Signature

Print Name Fire Chief
Title

Signature

Print Name Fire Chief
Title

Signature

Print Name Fire Chief
Title

Signature

Andrew Carter Fire Chief
Print Name Title

Print Name Title

Signature

Print Name Fire Chief
Title

Merkel VFD

Department

Date

Mulberry Canyon

Department

Date

Potosi VFD

Department

Date

Moro VFD

Department

Date

Date

Trent VFD

Department

Date

Signature

Print Name

Fire Chief
Title

Signature



Print Name

Ricky Bishop
Fire Chief
Title

Signature

Print Name

Fire Chief
Title

Signature

Print Name

Title

Tye VFD
Department

Date

View VFD
Department

Date

3-15-22

Hamby VFD
Department

Date

Department

Date

Signature

Annette Lerma Manager
Print Name Title


Signature

Ricky Bishop Sheriff
Print Name Title

Signature

Marcus Dudley Police Chief
Print Name Title

Signature

Print Name Police Chief
Title

Signature

Print Name Title

Abilene/Taylor County Public Health Dept.
Department

Date

Taylor County Sheriff's Office
Department

3-15-22
Date

Abilene Police Department
Department

Date

Merkel Police Department
Department

Date

Tye Police Department
Department

Date

Signature

Print Name Title

Signature

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Taylor County Mutual Aid Agreement

ABILENE FIRE DEPARTMENT

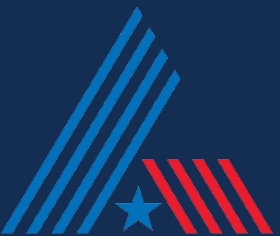
April, 2022



HISTORY

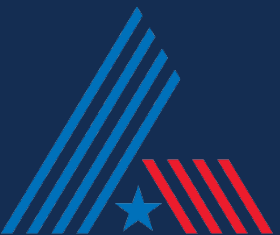
The City of Abilene entered into a Mutual Aid Agreement with Taylor County several years ago

- Earliest Agreement on file is from 1992
- Most recent Mutual Aid Agreement was signed in 2015
- Includes:
 - Abilene-Taylor County Public Health Department
 - Abilene Police Department
 - Abilene Fire Department
- Agreement is established for the benefit of all Taylor County agencies, including those within Abilene
- Agreement language has not significantly changed over time



MUTUAL AID AGREEMENT

- The Mutual Aid Agreement (MAA) outlines:
 - Activation of the Agreement
 - When and How to Request Mutual Aid
 - Responding personnel and resources will function within the Incident Command System (ICS)
 - Terms of the Agreement
- Agreement Terms
 - MAA is in effect upon the signing of all involved parties
 - Agreement will remain in effect until terminated or updated
 - Any Party may terminate their participation with (90) days written notice



FISCAL YEAR 2022 FUNDING REQUESTS

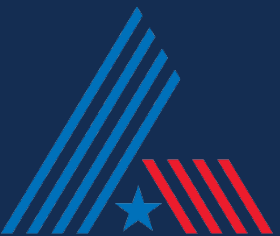
- Taylor County provides the City of Abilene funding to cover programs outlined within the Mutual Aid Agreement
- Requests Fulfilled for Fiscal Year 2022

Program	FY22 Request
Health Services	\$185,254
Child Advocacy Center	\$10,453
Property and Evidence Clerk	\$22,990
GIS Project	\$21,070
Fire Services	\$80,000
TOTAL	\$319,767



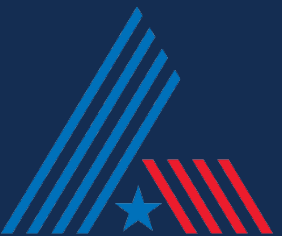
AFD/APD MUTUAL AID RESPONSES

- Abilene Fire from 2017-2021
 - 93 Mutual Aid Responses
 - 3 Mutual Aid Requests (Grass Fires)
 - Additional resources provided for non-emergency services
 - Does not include CRT responses
- Abilene Police from 2017-2021
 - 11 SWAT assists
 - 2 K9 responses
 - 25 Bomb Squad responses
 - Additional resources provided for victim services and non-emergency

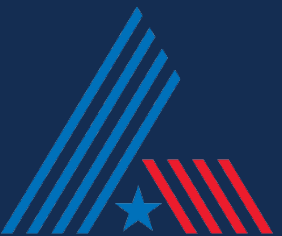


RECOMMENDATION

- Staff recommends allowing the City Manager to sign and enter into a Mutual Aid Agreement with Taylor County for 2022
- Additional signatures required:
 - Abilene Fire Chief
 - Abilene Police Chief
 - Abilene-Taylor County Public Health Director



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Cande Flores, Fire Chief

SUBJECT: 11. Resolution: Receive a Report, Hold a Discussion, and Take Action to Authorize the City Manager to Execute an Agreement with Daco Fire Equipment for the Purchase of LION Structural Firefighting Protective Gear for the Abilene Fire Department (Cande Flores)

GENERAL INFORMATION

The Abilene Fire Department (AFD) recently spent twelve months reviewing protective firefighting gear from several manufacturers. Sample sets of gear were provided to AFD personnel who wear tested these items for over six months. Tested brands include LION, MSA Globe, and Veridian. Following the wear test and final evaluation, LION proved to be the best choice for the AFD.

All firefighting protective gear must comply with NFPA 1971 – Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting.

SPECIAL CONSIDERATIONS

Daco Fire Equipment is an approved vendor with the City of Abilene and an approved distributor for LION structural firefighting gear.

Structural firefighting gear is custom fitted for each Abilene firefighter. This ensures a proper fit which provides the utmost protection within a hazardous environment.

FUNDING/FISCAL IMPACT

The total cost of this purchase is \$92,380.00. Funding will come from the AFD FY22 budget

for Protective Equipment.

This quote includes Buy Board Pricing which ensures best pricing for these items.

STAFF RECOMMENDATION

Staff recommends approval of the Resolution to authorize the City Manager to execute an agreement with Daco Fire Equipment for the purchase of LION structural firefighting gear for the Abilene Fire Department.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution - Daco Fire Equipment
2. Est_10886_from_DACO_FIRE_EQUIPMENT_13004 (1)
3. LION PPE Presentation

RESOLUTION _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH DACO FIRE EQUIPMENT FOR THE PURCHASE OF LION STRUCTURAL FIREFIGHTING PROTECTIVE GEAR FOR THE ABILENE FIRE DEPARTMENT.

WHEREAS, the Abilene Fire Department (AFD) utilizes structural firefighting protective gear during all emergency incidents for the health and safety of AFD personnel; and

WHEREAS, Daco Fire Equipment is an approved vendor for the City of Abilene and is an approved distributor for LION Protective Wear; and

WHEREAS, the AFD replaces structural firefighting gear on an annual and as needed basis each year; and

WHEREAS, \$92,380.00 will be funded through the AFD Protective Equipment budget for Fiscal Year 2022.

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

Part 1: The City Manager is hereby authorized to execute an Agreement with Daco Fire Equipment for the purchase of structural firefighting protective gear.

Part 2: This Resolution shall take effect immediately from and after passage.

ADOPTED and approved by the City Council on the 14th of April, 2022.

ATTEST:

Shawna Atkinson
City Secretary

Anthony Williams
Mayor

APPROVED:

Stanley Smith
City Attorney

DACO FIRE EQUIPMENT

201 AVE R
PO BOX 5006
LUBBOCK, TX 79408

Estimate

Date	Estimate #
2/1/2022	10886

Name / Address
ABILENE, CITY OF ACCOUNTING DIVISION PO BOX 60 ABILENE, TX 79604

Ship To
ABILENE FIRE DEPT. STATION #1 250 GRAPE STREET ABILENE, TX 79601

Terms	Rep	FOB
Net 30	GTJ	

Item	Description	Qty	Rate	Total
LIOCSTM-32	CUSTOM DELUXE COAT	31	1,671.00	51,801.00
LIOPSDM	SUPER-DELUXE PANT	31	1,141.00	35,371.00
LIOSTAYS SAFE	STAY SAFE	31	168.00	5,208.00
	BUY BOARD 603-20			

			Subtotal	\$92,380.00
			Sales Tax (0.0%)	\$0.00
			Total	\$92,380.00

Structural Protective Gear Purchase

ABILENE FIRE DEPARTMENT

April, 2022



STRUCTURAL PROTECTIVE GEAR

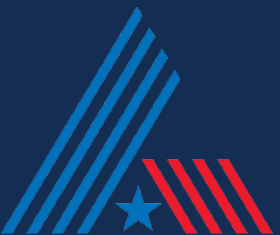
- Includes:

- Fire Helmet
- Protective Coat
- Protective Pants
- Protective Gloves
- Boots
- Protective Hood



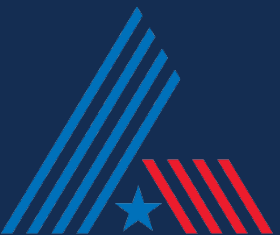
- All AFD Firefighting Gear must meet the requirements of:

- NFPA 1971 – Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting
- NFPA 1977 – Standard on Protective Clothing and Equipment for Wildland Fire Fighting



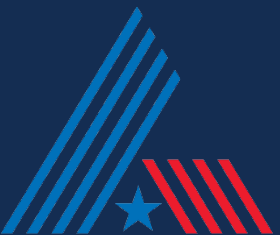
PROTECTIVE GEAR REPLACEMENT

- NFPA 1971
 - Recommends two (2) full sets of firefighting gear per firefighter
 - Limits structural firefighting gear to 10 years of service life
- AFD Protective Gear
 - Working towards providing two sets of gear per firefighter
 - Firefighting gear must be tested annually and must pass all tests in order to remain in service
 - Gear is replaced each year according to:
 - Expiring gear
 - Damaged gear or gear that does not pass annual testing
 - New hires



LION STAY SAFE PROGRAM

- Unique program through LION
- Also referred to as the Total Care Program
- Covered items receive:
 - Annual Advanced Cleaning
 - Annual Advanced Inspection
 - Annual Repairs caused by wear and tear as well as warranty
 - Priority Scheduling for warranty and non-warranty repairs
 - Free Shipping to and from LION
 - NFPA-Compliant Documentation
- LION also provides tracking software for new and existing gear

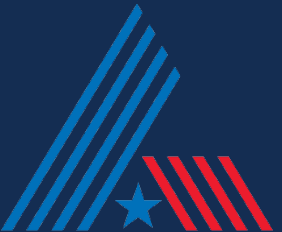


PURCHASE DETAILS

- Daco Fire Equipment
 - Lubbock, TX
- Total quote of \$92,380.00
 - 31 sets of structural firefighting coats and pants
 - Includes first year of Stay Safe/Total Care
 - Buy Board pricing
- Funds will come from the AFD Protective Equipment budget for Fiscal Year 2022.



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 12. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving a Lease Agreement with Capps Van & Truck Rental (Don Green)

GENERAL INFORMATION

On May 27, 2021, the City Council authorized the City Manager to enter into a lease agreement with Capps Van and Truck Rental for the lease of six vehicles in the annual amount of \$60,000.

There is now a need to increase the number of leased vehicles from six to twelve for pooled use, with an annual lease amount of \$122,400. The City desires to continue to lease vehicles from Capps Rent a Car, Inc. d/b/a Capps Van and Truck Rental.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to enter into a lease agreement with Capps Van and Truck Sales for twelve vehicles.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2022 Resolution Lease of Vehicles
2. 2022-2023 Pool Lease Vehicles

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE OF VEHICLES
FROM CAPPS RENT A CAR, INC.**

WHEREAS, on May 27, 2021, the City Council authorized the City Manager to enter into a lease agreement with Capps Van and Truck Rental for the lease of six vehicles in the annual amount of \$60,000; and

WHEREAS, there is now a need to increase the number of leased vehicles from six to twelve for pooled use, with an annual lease amount of \$122,400; and

WHEREAS, the City desires to continue to lease vehicles from Capps Rent a Car, Inc. d/b/a Capps Van and Truck Rental.

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

PART 1: That the City Council of the City of Abilene approves the lease of twelve vehicles from Capps Rent a Car, Inc. d/b/a Capps Van and Truck Rental in the amount of \$122,400 annually.

PART 2: That the City Council approves the renewal of the lease of vehicles on an annual basis.

PART 3: That this Resolution is effective immediately upon adoption.

ADOPTED this 14th day of April, 2022.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

Resolution: Approval for Pool Lease Vehicles

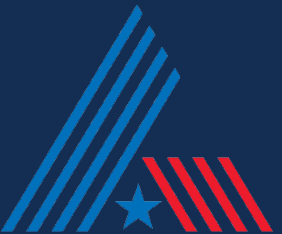


Pool Lease Vehicles

- In the past, the City had leased 6 used vehicles from a local dealer. In May 2021, the City desired to lease new vehicles, and was able to lease 6 new vehicles from Capps Van and Truck Rentals at a cost savings.
- The City has a need to increase the lease to 12 new vehicles.
- The City has had a good working relationship with Capps Van and Truck Rentals and desires to continue to lease from them.
- The annual lease payment for the 12 new vehicles will be \$122,400.



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 13. Resolution: Receive a Report, Hold a Discussion and Take Action to authorize the purchase of four Type III Cutaway Vans from Creative Bus Sales Through the State of Oklahoma Statewide Contract (Don Green)

GENERAL INFORMATION

CityLink Transit is recommending the purchase of four (4) Type III cutaway buses to replace nine (9) 2009 model cutaway buses that have far surpassed their useful life according to Federal Transit Administration (FTA) and Texas Department of Transportation (TXDOT) guidelines.

The average mileage for the expired cutaways is 250,000 miles whereas these vehicles are rated at 150,000 mile vehicles. The recommended manufacturer is Lone Star, a division of Forest River. These cutaways are built on the Dodge ProMaster platform.

The cutaway purchase order that was authorized by the Abilene City Council in June 2021 has been cancelled by the manufacturer, Elkhart Coach, due to the permanent closure of the plant.

The plant closure is due to the lack of availability of Ford chassis. This, in combination of the electronic chip shortage, has forced Ford and General Motors to slow production and may not reach acceptable production levels until 2025. CityLink Transit has researched all available options and determined the Lonestar Dodge ProMaster Frontrunner will meet the needs of our passengers and the vehicle production time of 6 months is acceptable. This vehicle was selected due to the unavailability of other cutaways and the manufacturing time is two (2) years less than any other cutaway options.

Creative Bus Sales is an authorized bus dealer in the State of Texas and an authorized vendor on the State of Oklahoma Statewide Contract. The cost per unit will be \$155,680 with the total overall cost of \$622,720. Creative Bus Sales has provided this quote.

SPECIAL CONSIDERATIONS

This purchase replaces the Council-approved purchase (Resolution 91-2021) on June 10, 2021 due to manufacturer cancellation of that order.

FUNDING/FISCAL IMPACT

Funding is being supplied by FTA for three (3) vehicles at \$467,040 through the TX-2021-026 Fleet Replacement grant and TXDOT State-U-2020-Abilene*-00194 for one (1) vehicle at \$155,680. There is no local match requirement with these funds as Transportation Development Credits have been secured as a match. No City funding is needed.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. CityLink Cutaway Vans Purchase Resolution 4-14-22
2. Abilene Citylink- Frontrunner 3 WC Quote- 4 units- 4-1-2022
3. Paratransit Vehicles Replacement 2021 4-14-22
4. Cutaway Vans Purchase Presentation (4-14-22)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
APPROVING PURCHASE OF FOUR TYPE III CUTAWAY VANS FROM CREATIVE BUS
SALES THROUGH STATE OF OKLAHOMA CONTRACT (SWO797C)**

WHEREAS, the City of Abilene (City) contracts for the operation of CityLink as the City's public transit service; and

WHEREAS, the City receives grant funding through Federal Transportation Administration (FTA), as authorized by the Congress of the United States of America and Texas Department of Transportation (TXDOT) operating costs; and

WHEREAS, CityLink has a need to replace nine cutaway vans used for Paratransit Service; and

WHEREAS, CityLink received a quote from Creative Bus Sales through State of Oklahoma Contract SWO797C; and

WHEREAS, State of Oklahoma Contract is a purchasing cooperative similar function to other the City purchases through in Texas and other states; and

WHEREAS, CityLink has funding from Federal Transit Administration (FTA) for three (3) vehicles at \$467,040.00 through the TX-2021-026 Fleet Replacement Grant and Texas Department of Transportation (TXDOT) grant State-U-2020-Abilene*-00194 for one (1) vehicle at \$155,680.00.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
ABILENE, TEXAS:**

- Part 1. That the City Manager is authorized to approve the purchase of four (4) Type III Lonestar Promaster 3500 Cutaways from Creative Bus Sales through the State of Oklahoma Contract (SWO797C) program for a total cost of \$622,720.00.
- Part 2. That this resolution is effective immediately.

ADOPTED this 14th day of April 2022

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

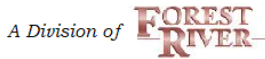
APPROVED:

Stanley Smith, City Attorney



Preparer: Jason Roy

Unpublished Options: \$ 6,180.00



Per Vehicle Price: \$ 155,680.00

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Chassis

Ram Promaster 3500 High Roof chassis - 9,350 GVWR, 159" WB EXT
3.6L V6 24V VVT gasoline engine
6-Speed Automatic 62TE Transmission
220-amp alternator
Power-assisted hydraulic front & rear disc brakes
4-wheel anti-lock brake system
22-gallon OEM fuel tank
16"x6" aluminum wheels
Cruise control
Cloth driver and co-pilot seats
Driver/Co-pilot sun visor
Power windows
Power door locks
Power-heated mirrors
OEM chassis dash heater, A/C, and defroster
Bright white clear coat

Body

Lowered floor behind driver/co-pilot for ADA access
Driver side step
Electric passenger entry door (A&M Systems)
3-pt passenger seat belts
ABS interior paneling - walls and ceiling
Altro flooring

ADA

Manual swing away ramp providing 32" usable width
One (1) set of Q'Straint retractable wheelchair securement systems
ADA interlock
ADA-compliant ramp and door entrance lighting

Safety

5 lb. fire extinguisher
First aid kit
Emergency triangle kit
Backup alarm
Emergency window

Other Available Options

Qty	Description	FY 2022 List Price	QTY Total
1	Bus body in lieu of van body (New England Wheels Fronrunner)	\$ 29,580.00	\$ 29,580.00
-	Subtotal Manufacturer Options:		\$ 29,580.00

CBS Unpublished Options

Qty	Description	FY 2022 List Price	QTY Total
1	Abilene Citylink Paint Scheme and graphics	\$ 3,750.00	\$ 3,750.00
1	Freight to Abilene	\$ 450.00	\$ 450.00
4	Freedman Bantam Wall Mounted Seats	\$ 495.00	\$ 1,980.00
-	Subtotal CBS Unpublished Options:		\$ 6,180.00

Additional Info Para-Transit Vehicles

Unit #	Assignment	Year	Make	Mileage	Total Maintenance Cost	Purchase Price	Disposal Method	Reasoning Replacement	Criteria-Score/Recommendation
906	Citylink	2010	Ford	265,004	\$103,339.87	\$66,245	City Auction	Has exceeded the useful life. 5yr/150,000. Has surpassed 120% benchmark utilized by TX-DOT fleet replacement standard guidelines. Replacement transmission is \$5500.00. Replacement of the original engine is \$5,000. The vehicle continues to have water leaks from previous hail damage which is compromising the integrity of the vehicle.	Total score of 4. CityLink recommends replacement due to surpassing useful life/miles/maintenace cost threshold; funding in place for replacement vehicle.
907	Citylink	2010	Ford	251,307	\$128,069.18	\$66,245	City Auction	Has exceeded the useful life. 5yr/150,000. Has surpassed 120% benchmark utilized by TX-DOT fleet replacement standard guidelines. Replacement transmission is \$5500.00. Replacement of the original engine is \$5,000. The vehicle continues to have water leaks from previous hail damage which is compromising the integrity of the vehicle.	Total score of 4. CityLink recommends replacement due to surpassing useful life/miles/maintenance cost threshold; funding in place for replacement vehicle with no local match requirement.
910	Citylink	2010	Ford	303,664	\$121,175.40	\$66,245	City Auction	Has exceeded the useful life. 5yr/150,000. Has surpassed 120% benchmark utilized by TX-DOT fleet replacement standard guidelines. Replacement transmission is \$5500.00. Replacement of the original engine is \$5,000. The vehicle continues to have water leaks from previous hail damage which is compromising the integrity of the vehicle.	Total score of 4. CityLink recommends replacement due to surpassing useful life/miles/maintenance cost threshold; funding in place for replacement vehicle with no local match requirement.
911	Citylink	2010	Ford	255,373	\$105,237.87	\$66,245	City Auction	Has exceeded the useful life. 5yr/150,000. Has surpassed 120% benchmark utilized by TX-DOT fleet replacement standard guidelines. Replacement transmission is \$5500.00. Replacement of the original engine is \$5,000. The vehicle continues to have water leaks from previous hail damage which is compromising the integrity of the vehicle.	Total score of 4. CityLink recommends replacement due to surpassing useful life/miles/maintenance cost threshold; funding in place for replacement vehicle with no local match requirement.
912	Citylink	2010	Ford	305,799	\$105,605.19	\$66,245	City Auction	Has exceeded the useful life. 5yr/150,000. Has surpassed 120% benchmark utilized by TX-DOT fleet replacement standard guidelines. Replacement transmission is \$5500.00. Replacement of the original engine is \$5,000. The vehicle continues to have water leaks from previous hail damage which is compromising the integrity of the vehicle.	Total score of 4. CityLink recommends replacement due to surpassing useful life/miles/maintenance cost threshold; funding in place for replacement vehicle with no local match requirement.
913	Citylink	2010	Ford	294,731	\$118,038.83	\$66,245	City Auction	Has exceeded the useful life. 5yr/150,000. Has surpassed 120% benchmark utilized by TX-DOT fleet replacement standard guidelines. Replacement transmission is \$5500.00. Replacement of the original engine is \$5,000. The vehicle continues to have water leaks from previous hail damage which is compromising the integrity of the vehicle.	Total score of 4. CityLink recommends replacement due to surpassing useful life/miles/maintenance cost threshold; funding in place for replacement vehicle with no local match requirement.
916	Citylink	2010	Ford	236,391	\$86,083.02	\$66,245	City Auction	Has exceeded the useful life. 5yr/150,000. Has surpassed 120% benchmark utilized by TX-DOT fleet replacement standard guidelines. Replacement transmission is \$5500.00. Replacement of the original engine is \$5,000. The vehicle continues to have water leaks from previous hail damage which is compromising the integrity of the vehicle.	Total score of 4. CityLink recommends replacement due to surpassing useful life/miles/maintenance cost threshold; funding in place for replacement vehicle with no local match requirement.
917	Citylink	2010	Ford	272,454	\$108,013.31	\$66,245	City Auction	Has exceeded the useful life. 5yr/150,000. Has surpassed 120% benchmark utilized by TX-DOT fleet replacement standard guidelines. Replacement transmission is \$5500.00. Replacement of the original engine is \$5,000. The vehicle continues to have water leaks from previous hail damage which is compromising the integrity of the vehicle.	Total score of 4. CityLink recommends replacement due to surpassing useful life/miles/maintenance cost threshold; funding in place for replacement vehicle with no local match requirement.
918	Citylink	2010	Ford	275,594	\$108,013.31	\$66,245	City Auction	Has exceeded the useful life. 5yr/150,000. Has surpassed 120% benchmark utilized by TX-DOT fleet replacement standard guidelines. Replacement transmission is \$5500.00. Replacement of the original engine is \$5,000. The vehicle continues to have water leaks from previous hail damage which is compromising the integrity of the vehicle.	Total score of 4. CityLink recommends replacement due to surpassing useful life/miles/maintenance cost threshold; funding in place for replacement vehicle with no local match requirement.

Category	Estimated Useful Life in Years	Mile
CityLink Buses		
Heavy Duty Large Bus (33-40,000 GVW)	12	
Heavy Duty Small Bus (26-33,000 GVW)	10	
Medium Duty Bus (16-26,000 GVW)	7	
Light Duty Mid-Sized Bus (10-16,000)	5	
Light Duty Small Bus (6-14,000 GVW)	4	

es and/or Hours
500,000 mi
350,000 mi
200,000 mi
150,000 mi
100,000 mi

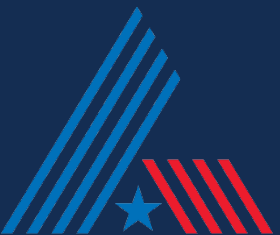
City Council Meeting

April 14, 2022



CityLink Cutaway Vans Replacement

- CityLink Transit is recommending the purchase of four (4) Type III cutaway vans to replace nine (9) 2009 model cutaway vans that have far surpassed their useful life according to Federal Transit Administration (FTA) and Texas Department of Transportation (TXDOT) guidelines.
- The average mileage for the expired cutaways is 250,000 miles whereas these vehicles are rated at 150,000-mile vehicles.
- The recommended manufacturer is Lonestar Dodge Promaster, which will meet the needs of our passengers with reduced manufacturing production times.
- Funding for this purchase comes from Federal Transit Administration and TxDOT grants. There is no cost to the City.



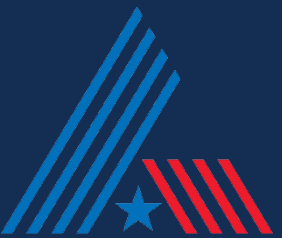
Cutaways being replaced



Dodge Frontrunner Cutaway



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Honorable Mayor and City Council Members

FROM: Stanley Smith, City Attorney

SUBJECT: 14. Oral Resolution: Receive a Report, Hold a Discussion and Take Action on Approving Updates to the City Council Rules of Procedure *(Stanley Smith)*

GENERAL INFORMATION

The proposed changes to the City Council's Rules of Procedure are to update certain rules to match the current practice of the Council regarding meeting start times and public comments.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Exhibit A - Art. II Rules of Procedure (redline 041422)
2. Amend Council's Rules of Procedure

Article II – Rules of Procedure

Article II, Section 17 of the City Charter of the City of Abilene, Texas grants the City Council the right to determine its own rules of procedure; the following rules are enumerated under and authority of said provision.

2.1 Construction of Authority

2.1.1 The construction of authority in all matters associated with the meetings and activities of the City Council, including the Agenda, shall be: (1) the U.S. Constitution and statutes of the United States of America; (2) The Texas Constitution and statutes of the State of Texas; (3) the City Charter; (4) the Code of Ordinances of the City of Abilene, Texas; and, (5) these Rules.

2.2 Purpose of Parliamentary Procedure

2.2.1 The purpose of these rules of parliamentary procedure is to establish orderly conduct of the meetings. Simple rules lead to a wider understanding and participation. Complex rules create two classes: (1) those who understand the rules, and (2) those who do not fully understand and therefore, do not fully participate. The ultimate purpose of these rules of parliamentary procedure is to encourage and facilitate decision-making by the City Council. In a democracy, the majority opinion carries the day. These rules enable the majority to express their opinion and fashion a result, while permitting the minority to also express itself (but not dominate) and fully participate in the process.

2.3 Meetings Shall be Public

2.3.1 Except as otherwise allowed by law, all meetings of the City Council shall be public, and notices thereof shall be posted as provided under the Texas Government Code, Chapter 551, Open Meetings Act. Except in the case of an emergency meeting, notice of all meetings shall be given at least 72 hours before the time set for any meeting. (Charter § 16)

2.4 Conduct of Meetings

2.4.1 Meetings of the City Council shall be conducted in accordance with the Rules adopted by the City Council as set forth herein, and as may be amended from time to time.

2.5 Council Meetings

2.5.1 For the months of January, February, March, April, May, June, July, August, and September, the Regular Meetings of the City Council shall be on the second and fourth Thursday of each month. For the month of October, Regular meetings will be either the first and third Thursday of the month, or the second and fourth

Thursday of the month, depending on the meeting date of the Texas Municipal League's Annual Meeting. The meeting dates for October shall be announced no later than the last meeting in September. For the months of November and December, the Regular Meetings of the City Council shall be on the first and third Thursdays of each month. ~~The meetings shall begin at 8:30 AM. The first regular meeting of the month shall begin at 8:30 AM, and the second regular meeting of the month shall begin at 4:30 PM for the purposes of holding executive session, and shall reconvene into open session at 5:30 PM for regular business.~~ (Charter § 16)

2.5.2 Meetings shall be held at City Hall unless another convenient place within the City is designated by the meeting agenda. (Charter § 16)

2.5.3 Special meetings may be called by the City Secretary upon written request of the Mayor, or any three members of the City Council. (Charter § 16) For purposes of administrative feasibility, the City Council specifically grants the City Manager authority to call a special called meeting when necessary through the adoption of these *Rules*.

2.5.4 In case of an emergency or urgent public necessity, which shall be expressed in the meeting notice, it shall be sufficient if members receive, and public notice is posted at least two (2) hours before the meeting is convened. Notice shall be provided also to the media in accordance with the Texas Government Code, Section 551.047.

2.5.5 The City Council may move a regular meeting date from a regularly scheduled meeting date expressed in Section 2.5.1 above, to an alternative meeting date upon the affirmative vote of four members or more, and by providing reasonable notice.

2.5.6 There is hereby established, as a part of every agenda for Regular Called Meetings of the City Council, a Public Comment category to allow commentary from any interested citizens in attendance at said meeting(s).

2.6 Workshop Sessions

2.6.1 Workshop Sessions are special meetings called for the purpose of conducting a detailed and thorough exploration of matters that may properly come before the City Council.

2.6.2 Workshop Sessions may be held at such times as may be convenient and necessary, and shall be scheduled in accordance with Section 2.5.3 of these Rules.

2.7 Executive Sessions (Closed Sessions)

2.7.1 Executive Sessions are closed to the public. They are only permitted for the purpose of discussing matters enumerated in Chapter 551, Open Meetings Act of the Texas Government Code. Notice of topics to be discussed during executive sessions shall

be made known to the public in accordance with the requirements of the Open Meetings Act.

2.7.2 The City Council may retire into an executive session as stated on a posted agenda during a regular or special meeting, or if a motion is duly made and seconded and affirmed by a majority of the Council. However, before said session begins, the Presiding Officer shall announce that the executive session is commencing. The order in which an executive session may appear on the agenda is subject to the discretion of the City Council. A certified record of the meeting will be created by the Presiding Officer or his or her designee, sealed and permanently kept, subject to opening by Court order. No voting or action shall be taken by the City Council during an executive session. No other subject but that posted on the agenda is to be considered. Adjournment of the executive session and any vote needed shall be made during an open public meeting.

2.7.3 Items discussed in Executive Session are to remain private and confidential. Except as provided by law, no Council Member, staff member or legal counsel may discuss or reveal the proceedings of an Executive Session to persons not present during the Executive Session. In the event an elected official is absent from the Executive Session the Presiding Officer, the City Manager or the City Attorney may brief the elected official who was absent from the meeting on the discussion.

2.7.4 Additionally, the certified agenda or recording of the Executive Session is confidential, and no persons may disclose to a member of the public the certified agenda or recording of the Executive Session, except as provided by law. Section 551.146 of the Texas Government Code makes such an act a Class B Misdemeanor and opens the person who reveals such information personally liable for any damages resulting from such action.

2.8 Recessed Meetings

2.8.1 No meeting shall be recessed for a longer period of time than until the next regular meeting except when required information has not been received, or, in the case of workshops or special meetings, to a date certain by motion duly passed.

2.9 Quorum

2.9.1 Four or more members of the Council shall constitute a quorum for all meetings for the transaction of all business. (Charter § 17)

2.10 Presiding Officer

2.10.1 The Mayor shall serve as the Presiding Officer for all meetings of the City Council. In the absence of the Mayor, the Mayor Pro Tem shall serve as the Presiding Officer. In the absence of the Mayor Pro Tem, the Deputy Mayor Pro Tem shall serve as the Presiding Officer. In the absence of the Mayor, the Mayor Pro Tem and

the Deputy Mayor Pro Tem, the City Secretary shall call the meeting to order if a quorum of the Council is present and the first order of business shall be for Council to elect by majority vote, a temporary Presiding Officer from the members then seated and in attendance. The temporary Presiding Officer shall serve in such capacity until the meeting is adjourned, or until the Presiding Officer, the Mayor Pro Tem, or the Deputy Mayor Pro Tem is present at the meeting, whichever occurs first.

2.10.2 The Presiding Officer shall serve as the chair of all meetings and shall make final rulings on all questions pertaining to these rules. All decisions of the Presiding Officer are final unless overruled by the City Council through a Motion to Appeal as described in Section 2.18 – Courtesy, Decorum and Order of these *Rules*.

2.10.3 The Presiding Officer is entitled to participate in the discussion and debate, and is entitled to vote on all business before the City Council. Because the Presiding Officer conducts the meeting, it is common courtesy and custom for the chair to take a less active role than other members of the Council in debates and discussions. This practice in no way precludes the Presiding Officer from participating in the meeting fully and freely

2.11 Minutes of Meetings

2.11.1 The City Secretary shall keep an account of all proceedings of the City Council and they shall be open to public inspection in accordance with the laws of the State of Texas. (Charter § 15)

2.12 Suspension and Amendment of Rules

2.12.1 Any provisions of these *Rules* not governed by federal, state law or the City Charter may be temporarily suspended by a super majority vote of the City Council and may be amended in a similar fashion if such amendment was introduced at the previous regular meeting of the City Council and shall have received preliminary approval of the City Council at such meeting. For the purpose of this section, preliminary approval shall mean a motion and a second with a majority vote to approve the amendment preliminarily.

2.13 Agenda

2.13.1 The City Manager and the City Secretary shall prepare an agenda and cause the same to be posted at least 72 hours prior to the meeting. Agendas shall be delivered to the City Council on or before 6:00 PM of the day of the posting, or within such other times as established by the City Council from time to time. In the event of an emergency meeting of the City Council, this provision shall be suspended when not inconsistent with the provisions of federal or state law, or the City Charter.

2.13.2 In order to facilitate the agenda process, the City Manager is responsible for placing items on the agenda. A written request from the Mayor or any member of the Council shall cause the City Manager to place an item on the agenda for Council consideration. The Council Member requesting the item shall be identified in the agenda item heading for the requested item. Staff assistance, if required, should be requested through the City Manager (Charter § 13). If a Council requested agenda topic does not allow for staff to adequately prepare information for Council's consideration, the item shall be postponed by the City Manager until the next Regular Meeting, or until such time as mutually agreed.

2.14 Consent Agenda

2.14.1 There is hereby established, as a part of every agenda for Regular and/or Special Called Meetings of the City Council, a portion of said agenda that shall be labeled "Consent Agenda." Said Consent Agenda may consist of any and all business regularly coming before the City Council.

2.14.2 All items set out in the Consent Agenda shall be deemed passed upon passage of an affirmative motion, by a vote of at least four of the members of the City Council then seated, that the Consent Agenda be adopted. No further action shall be deemed necessary, and all such items appearing on the Consent Agenda, upon passage of such motion, shall be deemed adopted as if voted upon separately and as if the caption and/or body of any ordinance therein set out shall have been read in full.

2.14.3 Any member of the City Council ~~or a citizen~~ may request, that an item be removed from the Consent Agenda and considered separately. Such request shall be honored as if it had been passed by majority vote.

2.15 Model Format for an Agenda Item Discussion

2.15.1 The following ten steps can be used as a model or guidebook by the Presiding Officer. The meeting is governed by the agenda and the agenda constitutes the only items to be discussed. Each agenda item can be handled by the Presiding Officer in the following basic format:

(a) **Announce the Item.** The Presiding Officer should clearly announce the agenda item number, and should clearly state the subject matter of the agenda item by reading the caption for the item being considered.

(b) **Receive a Report.** The Presiding Officer should invite the appropriate people to report on the item, including any recommendations they might have.

(c) **Ask Clarifying Questions.** The Presiding Officer should ask the Council Members if they have any technical questions for clarification. At this point, members of the City Council may ask clarifying questions to the people who reported on the item, and those people should be given time to respond.

- (d) **Get Citizen Input.** The Presiding Officer may invite citizen comments – or if a public hearing, shall open the public hearing. Upon conclusion, the Presiding Officer should announce that public input is closed, or if a public hearing, close the public hearing. Unless the item requires a public hearing, no public input is required.
- (e) **Discussion.** The Presiding Officer should now invite the members of the City Council to discuss the item. If there is no desired discussion, the Presiding Officer may call for a motion.
- (f) **Motion First.** The Presiding Officer should invite a motion from the City Council after the initial discussion is concluded. The Presiding Officer should announce the name of the member who makes the motion.
- (g) **Motion Second.** The Presiding Officer should determine if any member of the City Council wishes to second the motion. The Presiding Officer should announce the name of the member who seconds the motion.
- (h) **Repeat Motion.** If the motion is made and seconded, the Presiding Officer should make certain that everyone (including the audience) understands the motion. This is done in three ways:
 - (1) The Presiding Officer may ask the maker of the motion to repeat it;
 - (2) The Presiding Officer can repeat the motion; and/or
 - (3) The Presiding Officer can ask the City Secretary to repeat the motion.
- (i) **Discuss the Motion.** The Presiding Officer should now invite the members of the City Council to discuss the motion. If there is no desired discussion, the Presiding Officer may call for a vote. If there has been no discussion or a brief discussion, then there is no need to repeat the motion before taking a vote. If the discussion has been lengthy, The Presiding Officer should repeat the motion before calling for the vote.
- (j) **Vote.** The Presiding Officer calls for the vote. Unless a super-majority is required for passage of the motion, an affirmative vote of at least four (4) members is required for any motion to pass (Charter §18). Unless a member of the Council abstains from discussing and voting on any question where the discussion and vote would constitute a conflict of interest, all members of the Council, including the Mayor, should vote upon every question, ordinance or resolution. For the purposes of these *Rules* a vote is properly made if it is cast *for the motion*, or *against the motion*. A member may properly abstain from voting on the motion if they choose to do so.

- (1) Upon consideration for passage of any ordinance, resolution, or motion, the City Secretary shall call the roll of the Council and record the voters, which record of votes shall constitute a public record. (Charter § 18)
- (2) Ordinances changing the zoning of a property that is properly protested by the owners of twenty percent (20%) or more of the area of the lots or land covered by the proposed change, or the area of the lots or land immediately adjoining the area covered by the proposed change and extending two hundred feet (200') from that area, requires a 3/4 super-majority vote, which is an affirmative vote of at least six Council Members.
- (3) Other votes of the City Council may require a 2/3 or 3/4 majority vote as determined by the statutes of the State of Texas or the ordinance of the City of Abilene.

(k) **Announce the Outcome.** The City Secretary announces the results of the vote and should also state what action (if any) the Council has taken.

2.16 The Basic Motions

2.16.1 **The Basic Motion.** The basic motion is the one that puts forward a decision for consideration. A basic motion might be: "I move for approval of the Ordinance as submitted."

2.16.2 **Motion to Amend.** If a member wants to change a basic motion, he or she would have to motion to amend it. A motion to amend might be: "I move that we amend the motion to include the changes we discussed to the Ordinance." A motion to amend seeks to retain the basic motion on the floor (a motion made and seconded), but to modify it in some way. It requires the agreement of the person making the original motion, and this agreement shall constitute the second required to amend the basic motion. No motion to amend shall be allowed after a motion has been called for a vote.

2.17 Discussion and Debate

2.17.1 The basic rule of motions is that they are subject to discussion and debate. Accordingly, the motion is eligible, for full discussion by and before the City Council. Discussion and debate can continue as long as the members wish to discuss it, or until the Presiding Officer decides to end discussion and call a vote on the motion.

2.17.2 There are exceptions to the general rule of free and open discussion and debate on motions. The exceptions all apply when there is a desire of the Council to move on. The following motions are not debatable, and the Presiding Officer must

immediately call a vote on the motion, if seconded by another member. The following motions require an affirmative vote of at least four (4) members.

- (a) **Motion to Adjourn.** This motion, if passed, requires the Council to immediately adjourn to its next regularly scheduled meeting.
- (b) **Motion to Recess.** This motion, if passed, requires the Council to immediately take a recess. Normally the Presiding Officer will determine the length of the recess which could last for a few minutes to several hours.
- (c) **Motion to Fix the Time to Adjourn.** This motion, if passed, requires the Council to adjourn the meeting at the specific time set in the motion. For example, “I move we adjourn this meeting at Midnight.”
- (d) **Motion to Table.** This motion, if passed, requires discussion of the agenda item to be halted immediately, and the agenda item to be placed on hold. The motion may contain a specific time to bring the item up again, or it may not specify a time. If no time is specified, the item should be placed on the agenda at the following regularly scheduled Council meeting.
- (e) **Motion to Allow Public Comment.** This motion, if passed, requires the Presiding Officer to allow public comment even though a public hearing may not be required under the law.

2.17.3 The following motions require a supermajority vote to pass (3/4 majority). In all cases, a super majority vote consists of at least 6 affirmative votes.

- (a) **Motion to Limit Debate.** This motion is sometimes referred to as, “moving the question” or, “calling the question.” When a member of the Council makes such a motion, the member is saying, “I have had enough discussion, let’s vote on the issue.” When such a motion is made, the Presiding Officer should ask for a second, stop the discussion and vote on the motion to limit debate.
- (b) **Motion to Object to the Consideration of an Item.** This motion, if passed, precludes the City Council from even considering the item on the agenda. It does not preclude the item from appearing on a future agenda.
- (c) **Motion to Suspend the Rules.** This motion is debatable. This motion allows the Council to suspend its own rules for a particular purpose. For example, the Council may desire to give a particular speaker more time than normally allowed. A “motion to suspend the rules and give the speaker ten additional minutes,” accomplishes this desire.

2.17.4 **Motion to Reconsider.** A motion to reconsider requires at least a four (4) member majority vote to pass, but there are two special rules that apply only to the motion to reconsider.

- (a) The first issue involves timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next meeting (if properly noticed and on the posted agenda). A motion to reconsider made at a later time is considered untimely and it may not be considered unless the Council suspends the rules to consider it.
- (b) Secondly, the motion to reconsider can only be made by a member of the Council who voted in the majority on the original motion. The motion to reconsider may be seconded by any member of the City Council regardless of how they voted on the original motion. If a member of the Council who voted in the minority on the original motion cannot make a motion to reconsider, it must be ruled out of order by the Presiding Officer. The purpose of this rule is finality.
- (c) If a motion to reconsider passes, then the original matter is back before the Council, and a new original motion is in order. The matter may be discussed as if it were on the floor for the first time.

2.18 Courtesy, Decorum and Order

2.18.1 These rules of order are meant to promote an atmosphere of courtesy and decorum appropriate for the efficient discussion of business. It is the responsibility of the Presiding Officer (and the members of the City Council) to maintain that atmosphere of courtesy and decorum. The Presiding Officer should always ensure that debate and discussion focus on the item and the policy in question, not on the personalities of the participants of the discussion. In order to assist in the creation and maintenance of that atmosphere the following rules shall govern all meetings:

- (a) **Request to Speak.** Before a Council Member, staff member or an audience member may speak, they must first be recognized by the Presiding Officer. Upon recognition the person requesting to speak shall hold the floor and shall make their point clearly and succinctly.
- (b) **Order.** If a person fails to request to speak before speaking, the Presiding Officer may rule them Out of Order and remind them that they do not have the floor. While the Council is in session, all Council Members should preserve order and decorum. No person or Council Member shall, by conversation or otherwise, delay or interrupt the proceedings or the peace of the meeting, nor disturb any other person or Council Member while speaking or refuse to obey the orders of the Presiding Officer.
- (c) **Improper References Prohibited.** Speakers shall use good manners and refrain from personal attacks and the use of profanity. Speakers shall confine themselves to the question under debate.

- (d) **Interruptions.** A Council Member, once recognized, shall not be interrupted when speaking unless it is to call him or her to order, or other such interruption expressed below (subsections e – through i). If the Council Member, while speaking, is called to order, he or she shall cease speaking until the question of order is determined, and if the Council Member is found to be in order, he or she shall be permitted to proceed speaking.
- (e) **Point of Privilege.** The proper interruption would be: “Point of Privilege.” The Presiding Officer would then ask the interrupter to, “state your point.” Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room might be too hot or cold, or a fan motor might interfere with a Council Members ability to hear.
- (f) **Point of Order.** The proper interruption would be: “Point of Order.” The Presiding Officer would then ask the interrupter to, “state your point.” Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the Presiding Officer called for a vote on a motion that permits debate, without first allowing any discussion.
- (g) **Motion to Appeal.** If the Presiding Officer makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the Presiding Officer by stating, “motion to appeal.” If the motion is seconded and after debate if it passes by a simple majority vote, the ruling of the Presiding Officer is reversed.
- (h) **Call for orders of the day.** This is simply another way of saying, “let’s return to the agenda,” if a Council Member believes the discussion has strayed from the agenda. The motion does not require a vote. If the Presiding Officer discovers that the discussion has strayed from the agenda, he or she simply returns to the business of the day.
- (i) **Withdraw a Motion.** During the debate and discussion of a motion, the original maker of the motion on the floor, at any time, may interrupt the speaker to withdraw his or her motion. The motion is immediately deemed withdrawn and discussion on the motion shall cease. Council Members are free to make the same motion or another motion.

2.18.2 The City Council is prohibited from using text messages, email, social media posts or other means of electronic messaging during a public meeting except in cases where they are being notified of something of a personal nature. The use of such messaging could constitute a violation of the Texas Open Meetings Act.

2.18.3 In the event a Council Member or the Presiding Officer declares a conflict of interest and files the affidavit required under Local Government Code §171.004, that Council Member shall leave the Council Chambers for the duration of the item. In the event of a conflict of the Presiding Officer, the Mayor Pro Tem or Deputy Mayor Pro Tem shall serve as the Presiding Officer. In the event a majority of the

members declare a conflict of interest for the item, they are not required to leave the Council Chambers and may participate in the item as allowed in Local Government Code §171.004 (c).

Exceptions:

- (a) If the conflict exists for a consent agenda item, the member with the conflict of interest is not required to leave the Council Chambers and their vote on the consent agenda items shall only be counted for those items where the member has not filed a conflict.
- (b) If a conflict exists for a member's relative, and the member and the relative are related in the first degree of consanguinity or the first degree of affinity, the member is not required to leave the Council Chambers, but they shall not discuss, provide direction or vote on the item.

2.19 Enforcement of Rules and Procedures

2.19.1 The following provisions may be used to enforce the good order and decorum of the meeting. The action may be taken by the Presiding Officer under his or her own action, or upon a Motion to Enforce by any Council Member.

- (a) **Warning.** The Presiding Officer may order any person (Council Member, staff member or audience member) in violation of these rules to be silent.
- (b) **Removal.** If, after receiving a warning from the Presiding Officer, the person continues to disturb the meeting or breach the peace and good order of the meeting, the Presiding Officer may order the person to leave the meeting. If the person does not leave the room, the Presiding Officer may order the Sergeant-at-Arms to remove the person. A Council member may only be removed from a Council meeting by a majority vote of the City Council. No person may be removed from a meeting merely due to the views or opinions expressed by the person.
- (c) **Sergeant-at-Arms.** The Sergeant-at-Arms shall be the highest ranking police officer in attendance at the Council Meeting, or such other officer designated by the Chief of Police for that purpose. Upon instruction of the Presiding Officer, it shall be the duty of the Sergeant-at-Arms to remove from the meeting any person who intentionally disturbs the proceedings of the City Council. A violation of these rules may be deemed an attempt to disrupt, obstruct, and/or interfere with a lawful meeting and subject the violator to prosecution under state law for disrupting a lawful meeting. (§ 42.05, Texas Penal Code)

- (d) **Motion to Enforce.** Any Council Member may move to require the Presiding Officer to enforce these rules and the affirmative vote of four (4) or more members of the Council shall require the Presiding Officer to do so. A motion to enforce is an allowable interruption and is not debatable.

2.19.2 In the event a Council Member violates the Charter, these *Rules* or any other Ordinance of the City, or acts in a manner that causes embarrassment or disgrace to the City of Abilene, the City Council on supermajority vote may discipline the offending member.

- (a) Such action may only take place after an Executive Session is held to discuss the offense. The offending member shall be present at the Executive Session to answer any questions asked by members of the City Council or make other statements as he or she may desire to make in his or her defense. If the offending member refuses to attend the Executive Session, the remaining members of the City Council may proceed in his or her absence.

- (1) The discipline by the City Council may be as follows, and if required by law, shall be made publicly in Open Session in accordance with the Texas Open Meetings Act:

- (2) **No Action.** The City Council chooses to take no action.

- (3) **Private Censure.** The City Council may choose to privately censure the offending member, leaving their comments to the offending member left in the confines of the Executive Session.

- (4) **Public Censure.** The City Council may choose to publicly censure the offending member through a resolution passed by supermajority vote and entered into the public record.

2.20 Regular Meeting Agenda Order

2.20.1 **Call to Order.** The Presiding Officer shall call the meeting to order.

2.20.2 **Invocation.** The Presiding Officer shall invite a Council Member or another member of the audience to lead the City Council in a prayer.

2.20.3 **Pledge to United States Flag and the Texas Flag.** The Presiding Officer shall announce who will lead the City Council in the pledges of allegiance and the pledges shall be said.

2.20.4 **Presentations, Recognitions, Proclamations and Announcements.** The Presiding Officer shall make any presentation, recognition, announcement, or deliver any proclamation as may be required from time to time.

2.20.5 **Minutes.** The Presiding Officer shall ask for a motion to approve or amend the minutes as required. The minutes may be considered as part of the consent agenda rather than as a separate agenda item.

2.20.6 **Consent Agenda and Public Comment.** Before seeking a motion on the consent agenda, the Presiding Officer shall first ask the Council if any member would like to remove an item from the Consent Agenda and discuss it as an item for individual consideration. Members of the public will then be given the opportunity to provide comment on any item on the consent agenda, any item on the regular agenda, or to present ideas and information to city officials and staff for matters not on the agenda. There will be no discussion, votes or formal action taken on subjects presented during public comment that are not listed on the consent or regular agenda. The same question will then be asked of any citizen(s) in attendance at the meeting. The remaining items on the consent agenda shall be voted upon before the consideration of any item removed for individual consideration.

2.20.7 **Regular Agenda – Ordinances and Public Hearings – Resolutions.** This section of the agenda requires each item to be considered individually. If a public hearing is required, the Presiding Officer shall open the public hearing and receive citizen input. While the public hearing is open, Council may ask questions of the speakers, but may not deliberate or argue with the public on the matter at hand. Those speaking at a public hearing are required to follow the rules establish herein for citizen comments. Upon conclusion of citizen comments, the Presiding Officer shall close the public hearing. Council may deliberate or take action on the matter at hand upon the closing of the public hearing. All items shall be considered by the City Council individually and approved by either an affirmative vote of at least four (4) members, or a super majority vote as the case may be.

~~2.20.8 **Public Comment.** There will be no votes or any formal actions taken on subjects presented during public comment. The public comment period will only allow members of the public to present ideas and information to city officials and staff.~~

2.20.~~89~~ **Executive Session.** The City Council shall convene into Executive Session only in accordance with Chapter 551 of the Texas Government Code.

2.20.~~94~~ **Reconvene.** The Presiding Officer shall reconvene the regular meeting at the conclusion of the executive session and shall take any action as may be required from the executive session through a continuation of the Regular Agenda.

2.20.~~101~~ **Adjournment.** There being no further business before the City Council, the Presiding Officer shall adjourn the meeting.

2.30 Rules Governing Citizen Comments

2.30.1 It is the desire of the City Council to hear from the citizens of Abilene and to stimulate discussion and offer a forum for a cordial and meaningful public debate

on matters that are properly a concern of the City Council. The following rules shall control and govern audience comments.

- (a) The Presiding Officer shall recognize each person requesting to speak in turn. A person may not speak unless recognized by the Presiding Officer.
- (b) Upon being recognized by the Presiding Officer, each person may have a time limit of three (3) minutes or such other time as the Presiding Officer may deem prudent, and shall be given notice that one (1) minute is remaining. The time limit shall govern all public hearings, citizen comments on agenda items and public comments at work sessions.
- (c) Every person desiring to speak shall address the entire Council and shall not single out a member of the Council, the audience, or a staff member. Speakers shall use good manners and refrain from personal attacks and the use of profanity. On items other than 'Public Comment', speakers shall confine themselves to the question under debate.

2.30.2 The Presiding Officer shall preserve order and decorum and, if necessary, shall cause to be silenced or removed from the Council Chambers any person speaking out of order or disrupting the order of the meeting.

2.40 Universal Applicability of these Rules to City Boards and Commissions

2.40.1 It is the intent of the City Council that these Rules shall serve as the model and guide for the City's Boards and Commissions, it being the intent of the City Council that all Boards and Commissions should follow similar rules of procedure for ease of understanding and full participation by the citizens in the public's business.

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Appendix 1 – Table of motions and points of order

MOTION/ORDER	REQUIRES SECOND	DEBATABLE	AMENDABLE	VOTE TYPE
Basic Motion	Yes	Yes	Yes	4 affirmative votes
Motion to Amend	*	No	**	N/A
Motion to Adjourn	Yes	No	No	4 affirmative votes
Motion to Recess	Yes	No	Yes	4 affirmative votes
Motion to Fix the Time to Adjourn	Yes	No	No	4 affirmative votes
Motion to Table	Yes	No	No	4 affirmative votes
Motion to Limit Debate	Yes	No	No	Super
Motion to Object to the Consideration of an Item	Yes	No	No	Super
Motion to Suspend Rules	Yes	No	No	Super
Motion to Reconsider	Yes	Yes	Yes	4 affirmative votes
Point of Privilege	No	No	No	N/A
Point of Order	No	No	No	N/A
Motion to Appeal	Yes	Yes	No	4 affirmative votes
Call for Orders of the Day	No	No	No	N/A
Withdraw a Motion	No	No	No	N/A
Motion to Enforce	Yes	No	No	4 affirmative votes

* For the purposes of these rules, Amendments are not debatable and only require the approval of the member who made the original motion.

** Once the original motion is amended, it becomes the motion on the floor and replaces the original motion, therefore you cannot amend an amendment. You simply amend the motion on the floor at the time.

AMEND CITY COUNCIL'S RULES OF PROCECURE





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: **Honorable Mayor & Members of City Council**

FROM: **Robert Hanna, City Manager**

SUBJECT: **15. Resolution: Receive a Report, Hold a Discussion and Take Action on Modifying and Extending the Declaration of Local Disaster (COVID-19) (*Robert Hanna*)**

GENERAL INFORMATION

On March 10, 2022, the City Council adopted a Further Modification and Extension of Declaration of Local Disaster due to the COVID-19 pandemic. That extension lasts through April 14, 2022.

On July 29, 2021, the Governor of the State of Texas issued his Executive Order GA-38, relating to the continuing response to the COVID-19 disaster.

On August 25, 2021, the Governor of the State of Texas issued his Executive Order GA-39, relating to vaccine mandates.

On March 23, 2022, the Governor of the State of Texas extended the State of Disaster for all counties in Texas due to the continuing COVID-19 pandemic.

SPECIAL CONSIDERATIONS

The Governor's Executive Orders GA-38 and GA-39 supersede any conflicting order issued by local officials in response to the COVID-19 disaster.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 29th Resolution Extending Declaration of Local Disaster COVID-19 redline draft
2. EO-GA-38-continued-response-to-the-COVID-19-disaster-IMAGE-07-29-2021 (1)
3. GA-39
4. proc03232022_COVID
5. Disaster Declaration PPT

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL, CITY OF ABILENE, TEXAS, FURTHER MODIFYING ITS EXTENSION OF DECLARATION OF DISASTER (COVID-19)

WHEREAS, on March 16, 2020, the Mayor of the City of Abilene, by proclamation, issued a Declaration of Local Disaster regarding COVID-19; and

WHEREAS, on March 23, 2020, the City Council issued its Resolution Renewing and Continuing the Mayor's Declaration of Disaster Issued on March 16, 2020, which prohibited the social gathering of more than 10 persons; and

WHEREAS, on March 30, 2020, the City Council issued its Resolution Modifying its Extension of Declaration of Disaster, which created a limited shelter in place through 11:59 p.m., April 14, 2020; and

WHEREAS, on April 13, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which continued the limited shelter in place through 11:59 p.m., April 30, 2020; and

WHEREAS, on April 30, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-18; and

WHEREAS, on May 15, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-21; and

WHEREAS, on June 1, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-23, which was effective until June 25, 2020; and

WHEREAS, on June 25, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-26, which was effective until July 23, 2020; and

WHEREAS, on July 23, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-28, as amended, and Executive Order GA-29, which was effective until August 27, 2020; and

WHEREAS, on August 27, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which continued to adopt the regulations and restrictions issued in the Governor's Executive Order GA-28, as amended, and Executive Order GA-29, which was effective until September 24, 2020; and

WHEREAS, on September 24, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which continued the adopt the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-30, which was effective until October 22, 2020; and

WHEREAS, on October 22, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-32, which was effective until November 19, 2020; and

WHEREAS, on November 19, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-32, which was effective until December 17, 2020; and

WHEREAS, on December 17, 2020, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-32, which was effective until January 14, 2021; and

WHEREAS, on January 14, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-32, which was effective until February 11, 2021; and

WHEREAS, on February 11, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster, which adopted the regulations and restrictions issued in the Governor's Executive Order GA-29, and Executive Order GA-32, which was effective until March 11, 2021; and

WHEREAS, on March 11, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-34, which was effective until April 8, 2021; and

WHEREAS, on April 8, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-34, and which was effective until May 13, 2021; and

WHEREAS, on May 13, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-34, and which was effective until June 10, 2021; and

WHEREAS, on June 10, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions

issued in the Governor's Executive Orders GA-34 and GA-36, and which was effective until July 8, 2021; and

WHEREAS, on July 8, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Orders GA-34 and GA-36, and which was effective until August 12, 2021; and

WHEREAS, on August 12, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-38, and which was effective until September 9, 2021; and

WHEREAS, on September 9, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-38, and which was effective until October 14, 2021; and

WHEREAS, on October 14, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-38, and which was effective until November 4, 2021; and

WHEREAS, on November 4, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Order GA-38 and GA-39, and which was effective until December 2, 2021; and

WHEREAS, on December 2, 2021, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Orders GA-38 and GA-39, and which was effective until January 13, 2022; and

WHEREAS, on January 13, 2022, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Orders GA-38 and GA-39, and which was effective until February 10, 2022; and

WHEREAS, on February 10, 2022, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions issued in the Governor's Executive Orders GA-38 and GA-39, and which was effective until March 10, 2022; and

WHEREAS, on March 10, 2022, the City Council issued its Resolution Further Modifying its Extension of Declaration of Disaster (COVID-19), which adopted the regulations and restrictions

issued in the Governor’s Executive Orders GA-38 and GA-39, and which was effective until April 14, 2022; and

WHEREAS, on July 29, 2021, the Governor of the State of Texas issued his Executive Order GA-38, effective until it is modified, amended, rescinded, or superseded by the Governor, and which related to the continue response to the COVID-19 disaster; and

WHEREAS, on August 25, 2021, the Governor of the State of Texas issued his Executive Order GA-39, effective until it is modified, amended, rescinded, or superseded by the Governor, which related to vaccine mandates; and

WHEREAS, on ~~March~~February ~~2321~~, 2022, the Governor of the State of Texas renewed his disaster proclamation for all counties in Texas due to COVID-19 continuing a state of disaster; and

WHEREAS, because of the continuing risk of the rapid spread of the COVID-19 virus, the need to protect the most vulnerable members of the community, the intent to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services and commerce to continue, and the desire to slow the spread of COVID-19 to maximum extent possible, this Order is required; and

WHEREAS, this Order is issued based on evidence of the continuing occurrence of COVID-19 within the City of Abilene and Taylor County, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically; and

WHEREAS, the City Council has determined that extraordinary and immediate measures must continue to be taken to respond quickly to prevent and slow down community spread of COVID-19 in the City of Abilene; and

WHEREAS, the City Council finds that it is in the public interest to authorize additional authority as described herein pursuant to the Texas Disaster Act of 1975, as amended, Texas Government Code, and provide rules to protect the health of persons in the City of Abilene, pursuant to the Texas Government Code and Texas Health and Safety Code.

NOW THEREFORE, IT IS HEREBY RESOLVED AND DECLARED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

1. The foregoing recitals as incorporated herein and made findings of fact.
2. That the City Council, effective immediately, hereby renews and continues the local state of disaster for the City of Abilene, Texas, pursuant to Section 418.108(b) of the Texas Government Code.

3. Pursuant to Section 418.108(c) of the Government Code, this renewal and continuation of the declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Secretary.
4. Pursuant to Section 418.108(d) of the Government Code, this renewal and continuation of the declaration of a local state of disaster continues activation of the emergency management plan for the City of Abilene. The furnishing of aid and assistance under the declaration is hereby authorized. The appropriate preparedness and response aspects of the plan are continued.
5. The use of all available resources of the City of Abilene that are reasonably necessary to cope with this disaster are hereby authorized.
6. To the extent permitted by law, any local ordinance or administrative rule prescribing the procedures for conduct of City business or any local ordinance or administrative rule that would in any way prevent, hinder, or delay necessary action in coping with this disaster, including any local ordinance or administrative rule regarding contracting or procurement with would impede the City's emergency response necessary to cope with this declared disaster, are hereby suspended, but only for the duration of this declared local disaster and only for that limited purpose.
7. Pursuant to Section 418.108(g) of the Government Code, the City of Abilene may control ingress to and egress from a disaster area within the incorporated limits of the City of Abilene and control the movement of persons and the occupancy of premises in that area.
8. Pursuant to Section 122.006 of the Texas Health and Safety Code, the City of Abilene may adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease.
9. The intent of this Order is to protect the physical health and well-being of City of Abilene residents, to protect the financial health and well-being of City of Abilene residents and businesses, and to slow the spread of COVID-19 to the maximum extent possible while safeguarding the Constitutional liberties of City of Abilene residents by utilizing the least restrictive means possible and encouraging the highest level of personal responsibility.

All persons should follow the CDC recommended guidelines to protect themselves from exposure and to protect the public from further community spread.

10. The City of Abilene hereby adopts and incorporates herein Governor Greg Abbott's Executive Orders GA-38 and GA-39, the same as if they were copied and set-forth at length herein. The City of Abilene will follow and enforce the conditions and restrictions as set forth in GA-38 and GA-39, and adopts and incorporates any further Proclamations

modifying, amending or superseding GA-38 or GA-39 during the term of Abilene's declaration of local disaster.

The City Manager is authorized without further Council action to enforce these provisions to the fullest extent allowed by law.

11. In the event the Governor of the State of Texas amends or modifies his Executive Order GA-38 or GA-39, this Declaration and Order is automatically amended or modified without further Council action to reflect said amendments or modifications to the Governor's Executive Orders. It being the express intent of the City Council and this Declaration and Order to follow the Governor's Executive Orders.
12. All public, private and commercial laboratories operating within the City of Abilene and performing COVID-19 testing shall report by 5:00 p.m. each day, Monday through Friday, but excluding holidays, for the period since the last report, to the Abilene-Taylor County Public Health District the following information:

- (a) The number of COVID-19 tests performed;
- (b) The number of positive COVID-19 tests; and
- (c) The patient names and demographic information of positive COVID-19 tests.

This information will be used solely for public health purposes to monitor the testing conducted in the City of Abilene, and mitigate and contain the spread of COVID-19.

13. That any City ordinance or regulation imposing a time requirement for payment, filing or appealing a decision, may be extended by the Mayor without further confirmation by the City Council.
14. That the Mayor may suspend or modify any other ordinance or regulation of the City of Abilene for a period of not more than seven days from the date of this resolution unless continued or renewed by the City Council.
15. That the City Manager or designee of the City Manager is authorized, without further approval of the City Council, to:
 - (a) Make application for local, state and federal assistance as necessary and/or applicable;
 - (b) Accept on behalf of the City services, gifts, grants, equipment, supplies, and/or materials whether from private, nonprofit, or governmental sources;

- (c) Enter into Interlocal cooperation agreements or memorandums of understanding with other cities, counties, or jurisdictions to provide for law enforcement assistance or other shared services to assist in this Resolution or the COVID-19 pandemic;
- (d) Contract for expenditures for budgeted items and emergency expenditures in an amount not to exceed \$250,000; and
- (e) Defer any fines or fees imposed by the City.

After cessation of this emergency and state of disaster, the City Manager shall provide the City Council a list of all actions taken under this paragraph.

16. That although not required by law and out of an abundance of caution, the City Manager is authorized to (and any prior acts in response to the COVID-19 pandemic are ratified):

- (a) Close, including closure to the public, of any City offices, facilities, or properties, including parks, playgrounds, or playground equipment; and
- (b) Provide city services by means other than in-person delivery, such as accepting permit applications online or by mail only, and/or to cease any city service that are not required by state or federal law.

17. That any ordinances, rules, or regulations of the City of Abilene, Texas, that conflict with this Resolution are hereby suspended, such suspension to remain in effect until the state of disaster is terminated or until there is a subsequent Resolution of this Council, whichever occurs first.

18. That pursuant to Section 418.020(d) of the Texas Government Code, the City of Abilene is authorized to:

- (a) Temporarily or permanently acquire by lease, purchase, or other means sites required for installation of temporary housing units or emergency shelters for disaster victims; and
- (b) Enter into arrangements necessary to prepare or equip the site to use the housing units or shelters, including arrangements for the purchase of temporary housing units or shelters and the payment of transportation charges.

19. That failure to comply with any of the provisions of this Order constitutes an imminent threat to public health.

20. Pursuant to Section 418.173, Government Code, failure to comply with this Order is an offense punishable by a fine not to exceed \$1,000, except as otherwise provided in the Governor's Executive Orders GA-38 or GA-39.

21. That any violation of this Resolution, Declaration and Order can be enjoined by the City of Abilene by a suit filed in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this Resolution, Declaration and Order or in the Code of Ordinances, City of Abilene, Texas.
22. That nothing in this Resolution, Declaration and Order shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this Resolution.
23. All provisions of this Resolution, Declaration and Order should be interpreted to effectuate its intent.
24. That this Declaration and Order is effective immediately and continues until 11:59 p.m. ~~May~~April 12~~14~~, 2022 unless otherwise modified, terminated or extended.
25. That the terms and provisions of this Resolution, Declaration and Order shall be deemed to be severable and that if any section, subsection, sentence, clause, phrase or word herein shall be declared to be invalid or unconstitutional, the same shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word herein, and the remainder of this Resolution, Declaration and Order shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

ADOPTED this ~~14~~10th day of ~~April~~March, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney



GOVERNOR GREG ABBOTT

July 29, 2021

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

3:15pm O'CLOCK

JUL 29 2021

Secretary of State

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-38 relating to the continued response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Davidson", written over the typed name and title.

Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
July 29, 2021

EXECUTIVE ORDER GA 38

Relating to the continued response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, from March 2020 through May 2021, I issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health by adjusting social-distancing and other mitigation strategies; and

WHEREAS, combining into one executive order the requirements of several existing COVID-19 executive orders will further promote statewide uniformity and certainty; and

WHEREAS, as the COVID-19 pandemic continues, Texans are strongly encouraged as a matter of personal responsibility to consistently follow good hygiene, social-distancing, and other mitigation practices; and

WHEREAS, receiving a COVID-19 vaccine under an emergency use authorization is always voluntary in Texas and will never be mandated by the government, but it is strongly encouraged for those eligible to receive one; and

WHEREAS, state and local officials should continue to use every reasonable means to make the COVID-19 vaccine available for any eligible person who chooses to receive one; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility “for meeting ... the dangers to the state and people presented by disasters” under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the “governor may issue executive orders ... hav[ing] the force and effect of law;” and

WHEREAS, under Section 418.016(a), the “governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;” and

WHEREAS, under Section 418.018(c), the “governor may control ingress and egress to

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JUL 29 2021

and from a disaster area and the movement of persons and the occupancy of premises in the area;” and

WHEREAS, under Section 418.173, the legislature authorized as “an offense,” punishable by a fine up to \$1,000, any “failure to comply with the [state emergency management plan] or with a rule, order, or ordinance adopted under the plan;”

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. To ensure the continued availability of timely information about COVID-19 testing and hospital bed capacity that is crucial to efforts to cope with the COVID-19 disaster, the following requirements apply:
 - a. All hospitals licensed under Chapter 241 of the Texas Health and Safety Code, and all Texas state-run hospitals, except for psychiatric hospitals, shall submit to the Texas Department of State Health Services (DSHS) daily reports of hospital bed capacity, in the manner prescribed by DSHS. DSHS shall promptly share this information with the Centers for Disease Control and Prevention (CDC).
 - b. Every public or private entity that is utilizing an FDA-approved test, including an emergency use authorization test, for human diagnostic purposes of COVID-19, shall submit to DSHS, as well as to the local health department, daily reports of all test results, both positive and negative. DSHS shall promptly share this information with the CDC.
2. To ensure that vaccines continue to be voluntary for all Texans and that Texans’ private COVID-19-related health information continues to enjoy protection against compelled disclosure, in addition to new laws enacted by the legislature against so-called “vaccine passports,” the following requirements apply:
 - a. No governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine administered under an emergency use authorization.
 - b. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual’s vaccination status for any COVID-19 vaccine administered under an emergency use authorization. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
 - c. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer’s vaccination status for any COVID-19 vaccine administered under an emergency use authorization. No consumer may be denied entry to a facility financed

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JUL 29 2021

- in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine administered under an emergency use authorization.
- d. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
 - e. This paragraph number 2 shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.
3. To ensure the ability of Texans to preserve livelihoods while protecting lives, the following requirements apply:
- a. There are no COVID-19-related operating limits for any business or other establishment.
 - b. In areas where the COVID-19 transmission rate is high, individuals are encouraged to follow the safe practices they have already mastered, such as wearing face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, but no person may be required by any jurisdiction to wear or to mandate the wearing of a face covering.
 - c. In providing or obtaining services, every person (including individuals, businesses, and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus.
 - d. Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow guidance from the Texas Health and Human Services Commission (HHSC) regarding visitations, and should follow infection control policies and practices set forth by HHSC, including minimizing the movement of staff between facilities whenever possible.
 - e. Public schools may operate as provided by, and under the minimum standard health protocols found in, guidance issued by the Texas Education Agency. Private schools and institutions of higher education are encouraged to establish similar standards.
 - f. County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.
 - g. As stated above, business activities and legal proceedings are free to proceed without COVID-19-related limitations imposed by local governmental entities or officials. This paragraph number 3 supersedes any conflicting local order in response to the COVID-19 disaster, and all relevant laws are suspended to the extent necessary to preclude any such inconsistent local orders. Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any conflicting or inconsistent limitation by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

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JUL 29 2021

4. To further ensure that no governmental entity can mandate masks, the following requirements shall continue to apply:
- a. No governmental entity, including a county, city, school district, and public health authority, and no governmental official may require any person to wear a face covering or to mandate that another person wear a face covering; provided, however, that:
 - i. state supported living centers, government-owned hospitals, and government-operated hospitals may continue to use appropriate policies regarding the wearing of face coverings; and
 - ii. the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, and any county and municipal jails acting consistent with guidance by the Texas Commission on Jail Standards may continue to use appropriate policies regarding the wearing of face coverings.
 - b. This paragraph number 4 shall supersede any face-covering requirement imposed by any local governmental entity or official, except as explicitly provided in subparagraph number 4.a. To the extent necessary to ensure that local governmental entities or officials do not impose any such face-covering requirements, I hereby suspend the following:
 - i. Sections 418.1015(b) and 418.108 of the Texas Government Code;
 - ii. Chapter 81, Subchapter E of the Texas Health and Safety Code;
 - iii. Chapters 121, 122, and 341 of the Texas Health and Safety Code;
 - iv. Chapter 54 of the Texas Local Government Code; and
 - v. Any other statute invoked by any local governmental entity or official in support of a face-covering requirement.

Pursuant to the legislature's command in Section 418.173 of the Texas Government Code and the State's emergency management plan, the imposition of any such face-covering requirement by a local governmental entity or official constitutes a "failure to comply with" this executive order that is subject to a fine up to \$1,000.

- c. Even though face coverings cannot be mandated by any governmental entity, that does not prevent individuals from wearing one if they choose.
5. To further ensure uniformity statewide:
- a. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order or allows gatherings restricted by this executive order. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the

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- COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.
- b. Confinement in jail is not an available penalty for violating this executive order. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.

This executive order supersedes all pre-existing COVID-19-related executive orders and rescinds them in their entirety, except that it does not supersede or rescind Executive Orders GA-13 or GA-37. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 29th
day of July, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".

JOE A. ESPARZA
Deputy Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:15pm O'CLOCK

JUL 29 2021



GOVERNOR GREG ABBOTT

August 25, 2021

Mr. Joe A. Esparza
Deputy Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2 PM O'CLOCK

AUG 25 2021

Secretary of State

Dear Deputy Secretary Esparza:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-39 relating to prohibiting vaccine mandates and vaccine passports subject to legislative action.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
August 25, 2021

EXECUTIVE ORDER GA 39

*Relating to prohibiting vaccine mandates and vaccine passports
subject to legislative action.*

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all Texas counties; and

WHEREAS, in each subsequent month effective through today, I have renewed the COVID-19 disaster declaration for all Texas counties; and

WHEREAS, I have issued a series of executive orders aimed at protecting the health and safety of Texans, ensuring uniformity throughout Texas, and achieving the least restrictive means of combatting the evolving threat to public health; and

WHEREAS, COVID-19 vaccines are strongly encouraged for those eligible to receive one, but have always been voluntary for Texans; and

WHEREAS, I issued Executive Orders GA-35 and GA-38, addressing COVID-19 vaccines administered under an “emergency use authorization” by prohibiting vaccine mandates from governmental entities and by prohibiting “vaccine passports” from governmental entities and certain others; and

WHEREAS, subsequently, on August 23, 2021, while the legislature was already convened in a special session, the U.S. Food and Drug Administration (FDA) approved one of the COVID-19 vaccines for certain age groups, such that this vaccine is no longer administered under an emergency use authorization for those age groups; and

WHEREAS, while this COVID-19 vaccine is now FDA-approved for certain age groups, others are not yet approved and still are administered under an emergency use authorization; and

WHEREAS, through Chapter 161 of the Texas Health and Safety Code, as well as other laws including Chapters 38 and 51 of the Texas Education Code, the legislature has established its primary role over immunizations, and all immunization laws and regulations in Texas stem from the laws established by the legislature; and

WHEREAS, in other contexts where the legislature has imposed immunization requirements, it has also taken care to provide exemptions that allow people to opt out of being forced to take a vaccine; and

WHEREAS, given the legislature’s primacy and the need to avoid a patchwork of regulations with respect to vaccinations, it is appropriate to maintain the status quo of

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2pm O'CLOCK

AUG 25 2021

prohibiting vaccine mandates through executive order while allowing the legislature to consider this issue while in session; and

WHEREAS, in this instance, given the legislature's prior actions, maintaining the status quo of prohibiting vaccine mandates and ensuring uniformity pending the legislature's consideration means extending the voluntariness of COVID-19 vaccinations to all COVID-19 vaccinations, regardless of regulatory status; and

WHEREAS, I am also adding this issue to the agenda for the Second Called Session of the legislature that is currently convened so that the legislature has the opportunity to consider this issue through legislation; and

WHEREAS, I will rescind this executive order upon the effective date of such legislation;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

1. No governmental entity can compel any individual to receive a COVID-19 vaccine. I hereby suspend Section 81.082(f)(1) of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that no governmental entity can compel any individual to receive a COVID-19 vaccine.
2. State agencies and political subdivisions shall not adopt or enforce any order, ordinance, policy, regulation, rule, or similar measure that requires an individual to provide, as a condition of receiving any service or entering any place, documentation regarding the individual's vaccination status for any COVID-19 vaccine. I hereby suspend Section 81.085(i) of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to enforce this prohibition. This paragraph does not apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.
3. Any public or private entity that is receiving or will receive public funds through any means, including grants, contracts, loans, or other disbursements of taxpayer money, shall not require a consumer to provide, as a condition of receiving any service or entering any place, documentation regarding the consumer's vaccination status for any COVID-19 vaccine. No consumer may be denied entry to a facility financed in whole or in part by public funds for failure to provide documentation regarding the consumer's vaccination status for any COVID-19 vaccine.
4. Nothing in this executive order shall be construed to limit the ability of a nursing home, state supported living center, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine.
5. This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster. Pursuant to Section 418.016(a) of the Texas Government Code, I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any

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SECRETARY OF STATE
2PM O'CLOCK

AUG 25 2021

other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order.

This executive order supersedes only paragraph No. 2 of Executive Order GA-38, and does not supersede or otherwise affect the remaining paragraphs of Executive Order GA-38. This executive order shall remain in effect and in full force unless it is modified, amended, rescinded, or superseded by the governor. This executive order may also be amended by proclamation of the governor.



Given under my hand this the 25th
day of August, 2021.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

ATTESTED BY:

A handwritten signature in black ink that reads "Joe A. Esparza".
JOE A. ESPARZA
Deputy Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2PM O'CLOCK

AUG 25 2021



GOVERNOR GREG ABBOTT

March 23, 2022

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

12 PM O'CLOCK

MAR 23 2022

The Honorable John B. Scott
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701


Secretary of State

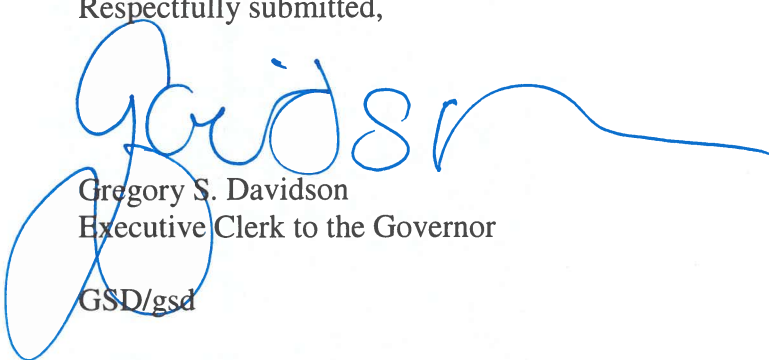
Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation renewing the declaration stating the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in Texas.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID- 19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a state of disaster continues to exist in all counties due to COVID-19;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 23rd day of March, 2022.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
12 pm O'CLOCK

MAR 23 2022

ATTESTED BY:



JOHN B. SCOTT
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
12 pm O'CLOCK
MAR 23 2022

Resolution:
**Modifying & Extending the
Local Disaster Declaration**



Questions?





City Council Agenda Memo

City Council Meeting Date: 4/14/2022

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: **16. Report: Receive a Report on the Final Results of the Initiative Petition Filed in the City Secretary's Office on February 22, 2022, and Supplement Filed on March 21, 2022, for the Sanctuary City for the Unborn (Shawna Atkinson)**

GENERAL INFORMATION

Abilene City Charter, Section 37, requires the City Secretary, after completing an examination of an initiative petition, to certify the result of the examination to the Council at its next regular meeting.

On February 22, 2022, an initiative petition was filed in the City Secretary's Office, by a group of citizens to make Abilene a sanctuary city for the unborn. The City Secretary's Office then had 20 days to verify that the petition met the required number of signatures, which was 6,483 (ten percent of the qualified voters of the last municipal election).

On March 10, 2022, the City Secretary's Office completed the verification process and sent a certified letter to the filer letting them know that they did not meet the required number of signatures. They then had 10 days to "correct" the petition.

On March 21, 2022, a supplement to the petition was filed in the City Secretary's Office. The City Secretary's Office verified 6,850 valid signatures (with some corrections to signatures from the first round not checked) total, which met the required 6,483 signatures. Because the required number of signatures have been met, the ordinance must be considered by City Council. The first reading of the ordinance will follow this item.

SPECIAL CONSIDERATIONS

Required number of signatures needed for the petition to pass: 6,483

Qualified signatures turned into the City Secretary's Office after the supplement: 6,850 (with additional signatures that were not checked)

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

N/A

BOARD OR COMMISSION RECOMMENDATION

N/A

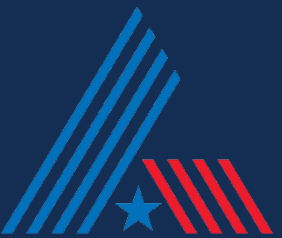
ATTACHMENTS:

1. Petition ppt

Final Results of the Initiative Petition Filed on February 22, 2022 for the Sanctuary City for the Unborn



- The City Secretary's Office received an initiative petition to make Abilene a sanctuary city for the unborn on February 22, 2022.
- The City Secretary's Office completed the verification and notified the petition filer on March 10, 2022, that the required number of signatures was not met and they then had 10 days to correct the petition.
- A supplement to the petition was turned in on March 21, 2022, and the required number of signatures were met with the additions.

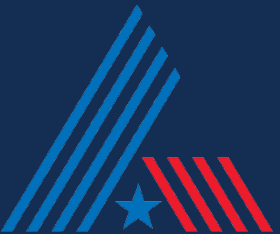


Results of Petition:

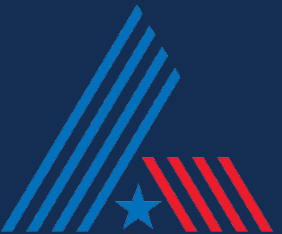
- Qualified Signatures that Were Needed: 6,483
- Qualified Signatures Received: 6,850

(there were some signatures not checked, since the number was met)

Because the required number of signatures was met, the ordinance will now go before Council for approval.



QUESTIONS?





City Council Agenda Memo

City Council Meeting Date: 4/14/2022

TO: Honorable Mayor & Members of City Council

FROM: Robert Hanna, City Manager

SUBJECT: **17. Ordinance (First Reading): Receive a Report, Hold a Discussion and Take Action on an Ordinance Outlawing Abortion, Declaring Abilene a Sanctuary City for the Unborn, Making Various Provisions and Findings, Providing for Severability, and Establishing an Effective Date (Robert Hanna)**

GENERAL INFORMATION

Abilene City Charter, Section 37, requires the City Secretary, after completing an examination of an initiative petition, to certify the result of the examination to the Council at its next regular meeting.

On February 22, 2022, an initiative petition was filed in the City Secretary's Office, by a group of citizens to make Abilene a sanctuary city for the unborn. The City Secretary's Office then had 20 days to verify that the petition met the required number of signatures, which was 6,483 (ten percent of the qualified voters of the last municipal election).

On March 10, 2022, the City Secretary's Office completed the verification process and sent a certified letter to the filer letting them know that they did not meet the required number of signatures. They then had 10 days to "correct" the petition.

On March 21, 2022, a supplement to the petition was filed in the City Secretary's Office. The City Secretary's Office verified 6,850 valid signatures (with some corrections to signatures from the first round not checked) total, which met the required 6,483 signatures. Because the required number of signatures have been met, the ordinance must be considered by City Council. The item before this was for the results of the petition.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

N/A

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. SCFTU Ordinance for Abilene, Texas (11-30-21)
2. Sanctuary City Ordinance ppt

ORDINANCE NO. _____

ORDINANCE OUTLAWING ABORTION, DECLARING ABILENE A
SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND
FINDINGS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN
EFFECTIVE DATE

BE IT ORDAINED BY THE CITY OF ABILENE, TEXAS THAT:

A. FINDINGS

The City of Abilene finds that:

- (1) Human life begins at conception.
- (2) Abortion is an act of violence that purposefully and knowingly terminates an unborn human life.
- (3) Unborn human beings are entitled to the full and equal protection of the laws that prohibit violence against other human beings.
- (4) The State of Texas has never repealed its pre-*Roe v. Wade* statutes that outlaw and criminalize abortion unless the mother's life is in danger. *See* West's Texas Civil Statutes, articles 4512.1 – 4512.6 (1974); *see also* Act of June 14, 1973, ch. 399, §§ 5–6, 1973 Tex. Acts 883, 995–96; *see also id.* 996a, 996e (including the Texas abortion laws in the table indicating the “Disposition of Unrepealed Articles of the Texas Penal Code of 1925 and Vernon's Penal Code.”).
- (5) The Texas Legislature has reaffirmed the continued existence and validity of the State's pre-*Roe v. Wade* criminal abortion statutes. *See* Senate Bill 8, 87th Leg., § 2 (2021) (“The legislature finds that the State of Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger.”).
- (6) The law of Texas therefore continues to define abortion as a criminal offense except when necessary to save the life of the mother. *See* West's Texas Civil Statutes, article 4512.1 (1974); Senate Bill 8, 87th Leg., § 2 (2021).
- (7) The law of Texas also imposes felony criminal liability on anyone who “furnishes the means for procuring an abortion knowing the purpose intended,” *see* West's Texas Civil Statutes, article 4512.2 (1974), as well as anyone who aids or abets an abortion performed in violation of Texas law, *see* Tex. Penal Code section 7.02.
- (8) The Supreme Court's judgment in *Roe v. Wade* did not cancel or formally revoke the Texas statutes that outlaw and criminalize abortion, and the judiciary has no power to erase a statute that it believes to be unconstitutional. *See Pidgeon v.*

Turner, 538 S.W.3d 73, 88 n.21 (Tex. 2017) (“When a court declares a law unconstitutional, the law remains in place unless and until the body that enacted it repeals it”); *Texas v. United States*, 945 F.3d 355, 396 (5th Cir. 2019) (“The federal courts have no authority to erase a duly enacted law from the statute books, [but can only] decline to enforce a statute in a particular case or controversy.” (citation and internal quotation marks omitted)).

(9) The Supreme Court’s pronouncements in *Roe v. Wade* and subsequent cases may temporarily limit the ability of State officials to impose penalties on those who violate the Texas abortion statutes, but they do not veto or erase the statutes themselves, which continue to exist as the law of Texas until they are repealed by the legislature that enacted them. The State’s temporary inability to prosecute or punish those who violate its abortion statutes on account of *Roe v. Wade* does not change the fact that abortion is defined as a criminal act under Texas law.

(10) The Texas murder statute defines the crime of “murder” to include any act that “intentionally or knowingly causes the death” of “an unborn child at every stage of gestation from fertilization until birth.” See Texas Penal Code § 19.02; Texas Penal Code § 1.07. Although the statute exempts “lawful medical procedures” from the definition of murder, see Texas Penal Code § 19.06(2), an abortion is not a “lawful medical procedure” under Texas law unless the life of the mother is in danger, see West’s Texas Civil Statutes, article 4512.1 (1974).

(11) The law of Texas also prohibits abortions unless they are performed in a facility that meets the minimum standards for an ambulatory surgical center, and by a physician who holds admitting privilege at a nearby hospital. See Texas Health and Safety Code § 171.0031, 245.010(a). The Supreme Court’s ruling in *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), did not alter or revoke these requirements of state law; it merely enjoined state officials from enforcing the penalties established in those statutes against the abortion providers who violate them. *Whole Woman’s Health v. Hellerstedt* does not change the fact that abortion is not a “lawful medical procedure” under Texas law unless it complies with sections 171.0031 and 245.010(a) of the Texas Health and Safety Code, and it does not change the fact that the Texas murder statute prohibits abortions that fail to comport with these still-existing requirements of Texas law.

(12) The Texas abortion laws are severable in each of their discrete applications, and they are severable as applied to each individual person, group of persons, or circumstances. See Tex. Gov’t Code § 311.032(c); Tex. Gov’t Code § 311.036(c) (“Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States

Constitution and Texas Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution.”). These laws therefore remain enforceable against any individual or entity that aids or abets an abortion performed in Texas, so long as the prosecution of the particular individual or entity that aids or abets the abortion will not impose an “undue burden” on abortion patients.

(13) The City of Abilene finds it necessary to supplement the existing state-law prohibitions on abortion with its own prohibitions on abortion, and to empower city officials and private citizens to enforce these prohibitions to the maximum extent permitted by state law and the Constitution. *See* Tex. Local Gov't Code §§ 54.001(b)(1); 54.004.

(14) The law of Texas explicitly allows municipalities and political subdivisions to outlaw and prohibit abortion, and to establish penalties and remedies against those who perform or enable unlawful abortions. *See* Tex. Gov't Code § 311.036(b) (“A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute.”).

(15) To protect the health and welfare of all residents within the City of Abilene, including the unborn, the City finds it necessary to outlaw abortion under city law, to outlaw acts that aid or abet abortions, and to establish penalties and remedies as provided in this ordinance. *See* Tex. Local Gov't Code §§ 54.001(b)(1); 54.004.

B. DECLARATIONS

(1) We declare Abilene, Texas to be a Sanctuary City for the Unborn.

(2) Abortion at all times and at all stages of pregnancy is declared to be an act of murder unless the mother's life is in danger.

(3) Abortion-inducing drugs are declared to be contraband, and we declare the possession of abortion-inducing drugs within city limits to be an unlawful act.

(4) Abortions performed anywhere in the state of Texas are criminal acts under Texas law, unless the abortion is procured or attempted by medical advice for the purpose of saving the life of the mother. *See* West's Texas Civil Statutes, articles 4512.1 – 4512.6 (1974); *see also* Senate Bill 8, 87th Leg., § 2.

(5) Any person who “furnishes the means for procuring an abortion knowing the purpose intended,” or who otherwise aids or abets an abortion performed in Texas,

is a criminal and a felon subject to prosecution and imprisonment under article 4512.2 of the Revised Civil Statutes and section 7.02 of the Texas Penal Code, unless the abortion is procured or attempted by medical advice for the purpose of saving the life of the mother.

(6) The City of Abilene urges the district attorneys of Taylor and Jones Counties to investigate and prosecute any individual or organization that “furnishes the means for procuring” an elective abortion, or that otherwise aids or abets such abortions, including:

- (a) employers and insurers who arrange for coverage of abortions in Texas;
- (b) individuals and organizations that knowingly provide transportation to or from a Texas abortion provider;
- (c) individuals and organizations that knowingly pay for another person’s abortion in Texas, including abortion funds and abortion-assistance organizations;
- (d) individuals who knowingly donate money to abortion funds and abortion-assistance organizations that aid or abet abortions performed in Texas;
- (e) individuals and organizations that offer or provide “abortion doula” services in Texas.

(7) The City of Abilene urges all of its citizens to regard those who perform or assist elective abortion in Texas as criminals, consistent with the abortion laws of Texas, and to report these criminal activities to the relevant district attorneys for investigation and criminal prosecution.

C. AMENDMENTS TO CITY CODE

Chapter 20 of the Abilene Code of Ordinances is amended by adding Article VIII to read as follows:

ARTICLE VIII. ABORTION

Sec. 20.86. Definitions

(a) For the purposes of this article, the following definitions shall apply:

- (1) “Abortion” means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth-control devices or oral contraceptives, and it does not include Plan B, morning-after pills, or emergency contraception. An act is not an abortion if the act is done with the intent to:

- (A) save the life or preserve the health of an unborn child;
 - (B) remove a dead, unborn child whose death was caused by accidental miscarriage; or
 - (C) remove an ectopic pregnancy.
- (2) “Unborn child” means a natural person from the moment of conception who has not yet completely left the womb.
- (3) “Abortion-inducing drugs” includes mifepristone, misoprostol, and any drug or medication that is used to terminate the life of an unborn child. The term does not include birth-control devices or oral contraceptives, and it does not include Plan B, morning-after pills, or emergency contraception. The term also does not include drugs or medications that are possessed or distributed for a purpose that does not include the termination of a pregnancy.

Sec. 20.87. Abortion Prohibited

(a) It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the city of Abilene, Texas.

(b) It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the city of Abilene, Texas. This section does not prohibit referring a patient to have an abortion which takes place outside the city limits of Abilene, Texas. The prohibition in this section includes, but is not limited to, the following acts:

- (1) Knowingly providing transportation to or from an abortion provider;
- (2) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;
- (3) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;
- (4) Providing or arranging for insurance coverage of an abortion;
- (5) Providing “abortion doula” services; and
- (6) Coercing or pressuring a pregnant mother to have an abortion against her will.

(c) It shall be an affirmative defense to the unlawful acts described in Subsections (a) and (b) if the abortion was in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a

serious risk of substantial impairment of a major bodily function unless an abortion is performed. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

(d) It shall be unlawful for any person to possess or distribute abortion-inducing drugs in the city of Abilene, Texas.

(e) No provision of this section may be construed to prohibit any action which occurs outside of the jurisdiction of the city of Abilene, Texas.

(f) No provision of this section may be construed to prohibit any conduct protected by the First Amendment of the U.S. Constitution, as made applicable to state and local governments through the Supreme Court's interpretation of the Fourteenth Amendment, or by Article 1, Section 8 of the Texas Constitution.

(g) Under no circumstance may the mother of the unborn child that has been aborted, or the pregnant woman who seeks to abort her unborn child, be subject to prosecution or penalty under this section.

(h) Whoever violates this section shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

(i) Neither the City of Abilene, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, may impose or threaten to impose the penalty described in Subsection (h) unless and until:

(1) The Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and permits states and municipalities to punish anyone who violates an abortion prohibition, or

(2) A state or federal court enters a declaratory judgment or otherwise rules that the imposition or threatened imposition of this penalty upon the particular person, corporation, or entity that committed the unlawful act described in Subsection (h) will not impose an "undue burden" on women seeking abortions; or

(3) A state or federal court enters a declaratory judgment or otherwise rules that the person, corporation, or entity that committed the unlawful act described in Subsection (h) lacks third-party standing to assert the rights of women seeking abortions in court.

(j) The penalty provided in Subsection (h) may not be imposed or threatened against any individual or entity if a previous decision of the Supreme Court of the United States established that the conduct of that individual or entity was constitutionally protected at the time it occurred.

(k) The non-imposition of the penalties described in Subsection (h) does not in any way legalize the conduct that has been outlawed by this section, and it does not in any way limit or affect the availability of the private-enforcement remedies established in Section 20.91, or the criminal penalties for abortion set forth in article 4512.1 of the Revised Civil Statutes and sections 1.07 and 19.02(b) of the Texas Penal Code. Abortion remains and is to be regarded as an illegal act under city law and a criminal act under state law, except when abortion is necessary to save the life of the mother. And abortion remains outlawed under both city and state law, despite the temporary and partial inability of city and state officials to punish those who violate the abortion laws on account of the Supreme Court's decisionmaking.

(l) Mistake of law shall not be a defense to the penalty established Subsection (h).

Sec. 20.88. Abortion Coverage Prohibited in Employer-Provided Health Insurance or Benefits

(a) It shall be unlawful for any employer in the city of Abilene, Texas, and for any person acting on that employer's behalf, to offer, provide, or arrange for coverage of abortion in any health-insurance policy or plan, flexible spending account, health savings account, or any other benefit provided to its employees, except for abortions performed in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(b) Whoever violates this section shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

(c) Any official of the city of Abilene, Texas, who becomes aware that an employer is aiding or abetting abortions by providing coverage of abortions in an employee-benefits package shall report that employer to the district attorneys of Taylor and Jones Counties, and to all other district attorneys with jurisdiction over that employer, for criminal prosecution under article 4512.2 of the Revised Civil Statutes and section 7.02 of the Texas Penal Code.

Sec. 20.89. Abortions Performed Outside Abilene, Texas

(a) It is the policy of Abilene, Texas to protect its unborn residents from individuals and organizations that aid or abet the killing of unborn children, and to protect the unborn from those who seek to kill or otherwise harm them, to the maximum extent permissible under state and federal law.

(b) Except as provided by Subsections (c), (d), (e), and (f), it shall be unlawful for any person to knowingly aid or abet an abortion performed on a resident of Abilene, Texas, or to attempt to aid or abet such an abortion, regardless of where the abortion is or will be performed. The prohibition in this subsection includes, but is not limited to:

- (1) Offering or knowingly providing transportation to or from an abortion provider;
- (2) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;
- (3) Offering or providing money with the knowledge that it will be used to pay for, offset, or reimburse the costs of an abortion or the costs associated with procuring an abortion;
- (4) Providing or arranging for insurance coverage of an abortion;
- (5) Offering or providing "abortion doula" services;
- (6) Providing referrals to an abortion provider;
- (7) Coercing or pressuring a pregnant mother to have an abortion; and
- (8) Engaging in any of the conduct that would make one an accomplice to abortion under section 7.02 of the Texas Penal Code.

(c) This section may not be construed to impose civil or criminal liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Article 1, Section 8 of the Texas Constitution.

(d) This section may not be construed to prohibit conduct that Abilene, Texas, is forbidden to prohibit or regulate under state or federal law.

(e) It shall be an affirmative defense if the unlawful acts described in Subsection (b) were taken in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is

performed. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

(f) Under no circumstance may the woman upon whom the abortion was performed, or the pregnant woman who seeks to abort her unborn child, be subject to prosecution or penalty under this section.

(g) Whoever violates this section shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

(h) Neither the City of Abilene, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, may impose or threaten to impose the penalty described in Subsection (g) unless and until:

(1) The Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and permits states and municipalities to punish anyone who violates an abortion prohibition, or

(2) A state or federal court enters a declaratory judgment or otherwise rules that the imposition or threatened imposition of this penalty upon the particular person, corporation, or entity that committed the unlawful act described in Subsection (g) will not impose an “undue burden” on women seeking abortions; or

(3) A state or federal court enters a declaratory judgment or otherwise rules that the person, corporation, or entity that committed the unlawful act described in Subsection (g) lacks third-party standing to assert the rights of women seeking abortions in court.

(i) The penalty provided in Subsection (g) may not be imposed or threatened against any individual or entity if a previous decision of the Supreme Court of the United States established that the conduct of that individual or entity was constitutionally protected at the time it occurred.

(j) The non-imposition of the penalties described in Subsection (g) does not in any way legalize the conduct that has been outlawed by this section, and it does not in any way limit or affect the availability of the private-enforcement remedies established in Section 20.91. Abortion remains and is to be regarded as an illegal act under city law and a criminal act under state law, except when abortion is necessary to save the life of the mother.

(k) Mistake of law shall not be a defense to the penalty established Subsection (g).

(l) Any official of the city of Abilene, Texas, who becomes aware that an individual or organization is aiding or abetting abortions performed in Texas by engaging in the conduct described in subsection (b) shall report that individual or organization to the district attorneys of Taylor and Jones Counties, or to the district attorneys with jurisdiction over that individual or organization, for criminal prosecution under article 4512.2 of the Revised Civil Statutes and section 7.02 of the Texas Penal Code.

Sec. 20.90. Abortions Performed in Violation of Texas Law

(a) It is the policy of the city of Abilene to ensure that the Texas abortion laws are enforced to the maximum possible extent consistent with the Constitution and existing Supreme Court doctrine.

(b) Except as provided by subsections (d), (e), (f), and (g), it shall be unlawful for any person to perform an abortion in violation of any statute enacted by the Texas legislature, including article 4512.1 of the Revised Civil Statutes, as well as sections 171.0031(a)(1) and 245.010(a) of the Texas Health & Safety Code.

(c) Except as provided by subsections (d), (e), (f), and (g), it shall be unlawful for any person to knowingly aid or abet an abortion performed in violation of any statute enacted by the Texas legislature, including article 4512.1 of the Revised Civil Statutes, as well as sections 171.0031(a)(1) and 245.010(a) of the Texas Health & Safety Code. The prohibition in this subsection includes, but is not limited to:

- (1) Offering or knowingly providing transportation to or from an abortion provider;
- (2) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;
- (3) Offering or providing money with the knowledge that it will be used to pay for, offset, or reimburse the costs of an abortion or the costs associated with procuring an abortion;
- (4) Providing or arranging for insurance coverage of an abortion;
- (5) Offering or providing “abortion doula” services;
- (6) Providing referrals to an abortion provider;
- (7) Coercing or pressuring a pregnant mother to have an abortion; and

(8) Engaging in conduct that makes one an accomplice to abortion under section 7.02 of the Texas Penal Code.

(d) This subsection may not be construed to impose civil or criminal liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Article 1, Section 8 of the Texas Constitution.

(e) This section may not be construed to prohibit conduct that Abilene, Texas, is forbidden to prohibit or regulate under state or federal law.

(f) It shall be an affirmative defense if the unlawful acts described in Subsection (b) were taken in response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. The defendant shall have the burden of proving this affirmative defense by a preponderance of the evidence.

(g) Under no circumstance may the woman upon whom the abortion was performed, or the pregnant woman who seeks to abort her unborn child, be subject to prosecution or penalty under this section.

(h) Whoever violates this section shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

(i) Neither the City of Abilene, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, may impose or threaten to impose the penalty described in Subsection (h) unless and until:

(1) The Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and permits states and municipalities to punish anyone who violates an abortion prohibition, or

(2) A state or federal court enters a declaratory judgment or otherwise rules that the imposition or threatened imposition of this penalty upon the particular person, corporation, or entity that committed the unlawful act described in Subsection (h) will not impose an "undue burden" on women seeking abortions; or

(3) A state or federal court enters a declaratory judgment or otherwise rules that the person, corporation, or entity that committed the unlawful act described in Subsection (h) lacks third-party standing to assert the rights of women seeking abortions in court.

(j) The penalty provided in Subsection (h) may not be imposed or threatened against any individual or entity if a previous decision of the Supreme Court of the United States established that the conduct of that individual or entity was constitutionally protected at the time it occurred.

(k) The non-imposition of the penalties described in Subsection (h) does not in any way legalize the conduct that has been outlawed by this section, and it does not in any way limit or affect the availability of the private-enforcement remedies established in Section 20.91. Abortion remains and is to be regarded as an illegal act under city law and a criminal act under state law, except when abortion is necessary to save the life of the mother.

(l) Mistake of law shall not be a defense to the penalty established Subsection (h).

(m) Any official of the city of Abilene, Texas, who becomes aware that an individual or organization is performing or aiding or abetting abortions in violation of in violation of any statute enacted by the Texas legislature, including articles 4512.1 and 4512.2 of the Revised Civil Statutes, as well as sections 171.0031(a)(1) and 245.010(a) of the Texas Health & Safety Code, shall report that individual or organization to the district attorneys of Taylor and Jones Counties, or to the district attorneys with jurisdiction over that individual or organization, for criminal prosecution under articles 4512.1 and 4512.2 of the Revised Civil Statutes and section 7.02 of the Texas Penal Code.

Sec. 20.91. Private Right of Action

(a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action in state court against any person who violates or intends to violate sections 20.87, 20.88, 20.89, or 20.90.

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating section 20.87, 20.88, 20.89, or 20.90 in the future;

(2) statutory damages in an amount of not less than \$10,000 for each violation of section 20.87, 20.88, 20.89, or 20.90 that the defendant committed; and

- (3) costs and attorney's fees.
- (c) Notwithstanding Subsection (b), a court may not award relief under this section if the defendant demonstrates that the defendant previously paid statutory damages in a previous action for the particular conduct that violated section 20.87, 20.88, 20.89, or 20.90.
- (d) There is no statute of limitations for an action brought under this section.
- (e) The following are not a defense to an action brought under this section:
- (1) ignorance or mistake of law;
 - (2) a defendant's belief that the requirements of this section, or the requirements of sections 20.87, 20.88, 20.89, or 20.90, are unconstitutional or were unconstitutional;
 - (3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates sections 20.87, 20.88, 20.89, or 20.90;
 - (4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;
 - (5) nonmutual issue preclusion or nonmutual claim preclusion;
 - (6) the consent of the unborn child's mother to the abortion; or
 - (7) any claim that the enforcement of sections 20.87, 20.88, 20.89, or 20.90 or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by section 20.92.
- (f) An action under this section must be brought in state court and not in the local or municipal courts;
- (g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Article 1, Section 8 of the Texas Constitution;
- (h) Neither the city of Abilene, Texas, nor any state or local official may intervene in an action brought under this section. This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action.

(i) A civil action under this section may not be brought by any person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other unlawful act.

(j) Under no circumstance may a civil action under this section be brought against the mother of the unborn child that has been aborted, or the pregnant woman who seeks to abort her unborn child.

Sec. 20.92. Civil Liability: Undue Burden Defense

(a) A defendant against whom an action is brought under Section 20.91 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(1) the United States Supreme Court or the Supreme Court of Texas holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal or state constitutional law; or

(2) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

(b) A defendant in an action brought under Section 20.91 may assert an affirmative defense to liability under this section if:

(1) the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Subsection (a); and

(2) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion, or otherwise violate the rights of women seeking abortions under the United States Constitution.

(c) A court may not find an “undue burden” under Subsection (b) unless the defendant introduces evidence proving that:

(1) an award of relief will prevent a woman or a group of women from obtaining an abortion; or

(2) an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

(d) A defendant may not establish an “undue burden” under this section by:

- (1) merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or
- (2) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.
- (e) The affirmative defense under Subsection (b) is not available if the United States Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973), or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).
- (f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 20.91, and a court may not award relief under Section 20.91 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

Sec. 20.93. Severability

(a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, the provisions and applications of this article shall be severable as follows:

- (1) It is the intent of the city that every section, provision, subsection, sentence, clause, phrase, or word in this article, and every application of the provisions in this article, are severable from each other. If any application of any provision in this article to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of the provisions in this article shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the city's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this article to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the city had enacted an provision limited to the persons, group of persons, or circumstances for which the provision's application do not present an undue burden. The city further declares

that it would have enacted this article, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this article, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this article were to be declared unconstitutional or to represent an undue burden.

- (2) If any court declares or finds a provision in this article facially unconstitutional, when there are discrete applications of that provision that can be enforced against a person, group of persons, or circumstances without violating the Constitution, then those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted, as a matter of city law, as if the city had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the Constitution.
- (3) If any provision of this article is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the declarations of the city's intent in Subsections (a)(1) and (a)(2), and the provision shall be interpreted, as a matter of city law, as if the city had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application do not present constitutional vagueness problems.
- (4) No court may decline to enforce the severability requirements in Subsections (a)(1), (a)(2), and (a)(3) on the ground that severance would "rewrite" the ordinance or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a locality or government official from enforcing a subset of an ordinance's applications is never "rewriting" an ordinance, as the ordinance continues to say exactly what it said before. A judicial injunction or declaration of unconstitutionality is nothing more than a non-enforcement edict that can always be vacated by later courts if they have a different understanding of what the Constitution requires; it is not a formal amendment of the language in a statute or ordinance. A judicial injunction or declaration of unconstitutionality no more "rewrites" an ordinance than a decision by an executive official not to enforce a duly enacted statute or ordinance in a limited and defined set of circumstances.

(5) If any federal or state court ignores or declines to enforce the requirements of Subsections (a)(1), (a)(2), (a)(3), or (a)(4), or holds a provision of this article invalid or unconstitutional on its face after failing to enforce the severability requirements of Subsections (a)(1), (a)(2), (a)(3) and (a)(4), for any reason whatsoever, then the Mayor shall hold delegated authority to issue a saving construction of this article that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of this article to the maximum possible extent. The saving construction issued by the Mayor shall carry the same force of law as an ordinance; it shall represent the authoritative construction of this article in both federal and state judicial proceedings; and it shall remain in effect until the court ruling that declares invalid or enjoins the enforcement of the original provision in this article is overruled, vacated, or reversed.

(6) The Mayor must issue the saving construction described in Subsection (a)(5) within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this article after failing to enforce the severability requirements of Subsections (a)(1), (a)(2), (a)(3), and (a)(4). If the Mayor fails to issue the saving construction required by Subsections (a)(5) within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this article after failing to enforce the severability requirements of Subsections (a)(1), (a)(2), (a)(3), and (a)(4), or if the Mayor's saving construction fails to enforce the provisions of the article to the maximum possible extent permitted by the Constitution or other superseding legal requirements, as construed by the federal or state judiciaries, then any person may petition for a writ of mandamus requiring the Mayor to issue the saving construction described in Subsection (a)(5).

D. EFFECTIVE DATE

This ordinance shall take effect upon: (1) approval by the City Council, or (2) approval by the voters, whichever occurs sooner.

PASSED, ADOPTED, SIGNED and APPROVED,

Mayor of the City of Abilene, Texas

City Secretary of the City of Abilene, Texas

FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS and WITNESSES TO THIS
PROCLAMATION, THIS _____ DAY OF _____, THE YEAR OF OUR LORD
_____.

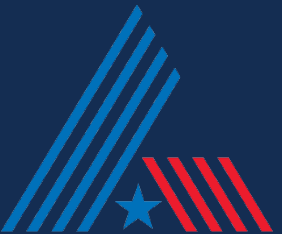
WITNESS: _____

WITNESS: _____

Ordinance: Sanctuary City for the Unborn



QUESTIONS?





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Max Johnson, Assistant Director of Public Works

SUBJECT: 18. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action to Approve an Extended Term Street Use License with TearTex, LLC (*Max Johnson*)

GENERAL INFORMATION

TearTex, LLC, has submitted an application for an Extended Term Street Use License to use a portion of City right-of-way in the alleyway behind the building located at 159 Walnut Street. The applicant is remodeling the building which requires new heating and air conditioning equipment. The request location will be for the chiller unit.

SPECIAL CONSIDERATIONS

NA

FUNDING/FISCAL IMPACT

NA

STAFF RECOMMENDATION

Staff has reviewed this request and recommends that the City Council authorize the City Manager to execute the attached Extended Term Street Use License with TearTex, LLC for use of a portion of the City's right-of-way in the alley on Walnut Street.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution (2b)
2. SULPkt
3. Presentation2020

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
AUTHORIZING THE CITY MANAGER TO EXECUTE THE EXTENDED TERM STREET USE
LICENSE WITH TEARTEX, LLC**

WHEREAS, the applicant has submitted an Extended Term Street Use License application for the placement of a new heating and cooling system (chiller unit) in the alleyway behind 159 Walnut Street; and

WHEREAS, this application and Extended Term Street Use License have been reviewed and approved by City Staff.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF ABILENE, TEXAS**

PART 1: That the City Manager is hereby authorized to execute the Extended Term Street Use License with TearTex, LLC.

PART 2: That this Resolution shall take effect immediately from and after its passage.

ADOPTED this ____ day of April, 2022.

ATTEST:

Shawna Atkinson, City Secretary

Anthony Williams, Mayor

APPROVED:

Stanley Smith, City Attorney

THE STATE OF TEXAS

STREET USE LICENSE AGREEMENT
EXTENDED TERM

COUNTY OF TAYLOR

THIS STREET USE LICENSE AGREEMENT, hereinafter referred to as "License", executed this ____ day of _____, A.D., 2022, by and between the CITY OF ABILENE, a municipal corporation situated in Taylor and Jones Counties, Texas, hereinafter referred to as "City", and TearTex, LLC, hereinafter referred to as "Licensee".

WITNESSETH:

That City, pursuant to Chapter 29, "Streets and Sidewalks", Article V, "Street Use License", does hereby grant to Licensee the privilege of using the following described public property, to-wit:

-Use a portion of city right-of-way in the existing alley east of the building at 159 Walnut Street

Commencing the date of execution unless otherwise specified, and upon the conditions and covenants set forth in this License and in Exhibit A incorporated by reference for all purposes herein.

I. Purpose:

The purpose of this License is to permit Licensee to:

- *Placement of a chiller for the new heating and cooling equipment for the building being remodeled (159 Walnut)*

II. Indemnity:

A. **Definitions**

For the purpose of this section the following definitions apply:

"City" shall mean all officers, agents and employees of the City of Abilene.

"Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

"Licensee" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

"Licensee's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Licensee.

"Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

injury or damage to any property or right

injury, damage, or death to any person or entity

attorneys fees, witness fees, expert witness fees and expenses, and

all other costs and expenses of litigation

“Premise Defects” shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

“Proven” shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

“Sole negligence” shall mean negligence of a part that is unmixed with the fault of any other person or entity.

B. Indemnity

The Licensee agrees to indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Licensee's occupancy or use of the premises described above and/or activities conducted in connection with this License.

Licensee must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Licensee's employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Licensee or Licensee's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects which may now exist or which may hereafter arise on the premises, whether or not caused in whole or in part by improvements constructed by the Licensee. Responsibility for all such defects is expressly assumed by the Licensee.

The City and Licensee must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Licensee or City. The City has the right to compromise and defend the same to the extent of its own interests.

BOTH CITY AND LICENSEE EXPRESSLY INTEND THIS LICENSE'S INDEMNITY PROVISION TO REQUIRE LICENSEE TO INDEMNIFY AND

PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

III. Insurance

Licensee agrees to secure and maintain the following types and amounts of insurance, for the term of this license:

<u>Type</u>	<u>Amount</u>
Comprehensive General Liability to include (but not limited to) the following:	\$250,000 -----Per Person \$500,000 -----Per Occurrence for Bodily Injury, and
a) Premises/Operations Coverage	\$100,000 -----Per Occurrence for
a) Contractual Liability Coverage	Property Damage

The preceding insurance requirements notwithstanding, the City reserves the right to revise the types and amounts of insurance required by this License prior to the approval of the License or if License is in effect, to be effective thirty (30) days after notice is sent to the address provided herein.

All insurance policies or certificates shall contain the following provisions:

- a. That the City of Abilene, Texas, is named as an additional insured.
- b. That such insurance shall not be cancelled or materially changed without a minimum of thirty (30) day's advance notice in writing to the City.

All insurance policies shall be subject to the examination and approval of the Office of the City Attorney, City of Abilene, Texas, for their adequacy as to form and content, form of protection, and insurance company. Licensee shall furnish to City Secretary for her License file certificates or copies of the policies, plainly and clearly evidencing such insurance at the time of application, and thereafter new certificates prior to the expiration date of any prior certificate.

Licensee understands that it is its sole responsibility to provide this necessary information and that failure to timely comply with the requirements of this article shall be a cause for termination of this License.

IV. License Requirements and Restrictions:

1. During the term of this License, Licensee shall maintain the premises licensed herein in a good and safe condition at all times. If the street surface, parkway, or facilities in the parkway, including landscaping, are damaged or disturbed by any activity associated with this License, the Licensee shall at its expense, restore the same to as good a condition as before the activity, to the satisfaction of the Director of Public Works or designee.

2. The construction signing and barricading requirements of the Texas Manual On Uniform Traffic Control Devices shall be met for all work done in the public right-of-way.

3. The Licensee shall be responsible for locating, protecting, and repairing (if damaged) all utilities within the area permitted and shall pay all costs associated with adjustments to utilities including street lights that are necessitated by the permitted use.

4. Permitted facilities shall be installed in accordance with all applicable laws, regulations, and codes.

5. The Licensee shall relocate its facilities at its own expense to accommodate public improvements in the right-of-way.

6. In the performing or permitting of work consistent with its normal course of duty within the right-of-way, the City shall not be liable for any damages to the Licensee's facilities or equipment or injury to Licensee, all such claim for damage or injury being expressly waived by Licensee.

7. If Street Use License regulations change, the Licensee shall agree to any new requirements or shall remove all constructed facilities from the right-of-way.

8. Upon termination the Licensee shall restore the property at its expense, to a good workmanlike condition and in a manner satisfactory to the Director of Public Works or designee.

9. The City Manager, Police Chief, Fire Chief, or a designee of such officials, shall have the authority to order immediate removal of any objects or materials placed on the premises by Licensee if, in the City's opinion, removal is necessary to protect the health, safety, or welfare of the public. If the Licensee fails to comply with the order, the City shall remove the materials, and the Licensee shall reimburse the City for the cost of compliance. The Licensee may appeal the removal order to the Abilene City Council by filing written notice with the City Secretary within 5 days of the order; provided, however that ANY APPEAL SHALL NOT STAY THE OFFICIAL'S ORDER OR THE REMOVAL PROCEDURE.

V. Termination

1. This License shall automatically terminate 10 years from the date of execution.

2. The City shall have the right to cancel this License at any time by giving Licensee thirty (30) days notice of its cancellation. The notice shall be in writing delivered to Licensee by certified mail.

3. In the event Licensee shall permit any City of Abilene, Abilene Independent School District, West Central Texas Municipal Water District, or any other taxes assessed against it to become delinquent, this License shall automatically terminate and become null and void.

4. This License may not be assigned or conveyed; any attempt by Licensee to do either shall automatically terminate the License. In the event Licensee should sell the property adjacent to the area for which the License has been granted, this License shall automatically terminate.

CITY OF ABILENE, TEXAS

City Manager

ATTEST:

City Secretary

APPROVED:

City Attorney

NAME OF LICENSEE:

TEARTEX, LLC

By: 

Signature

TED EVANS owner

Printed Name and Title

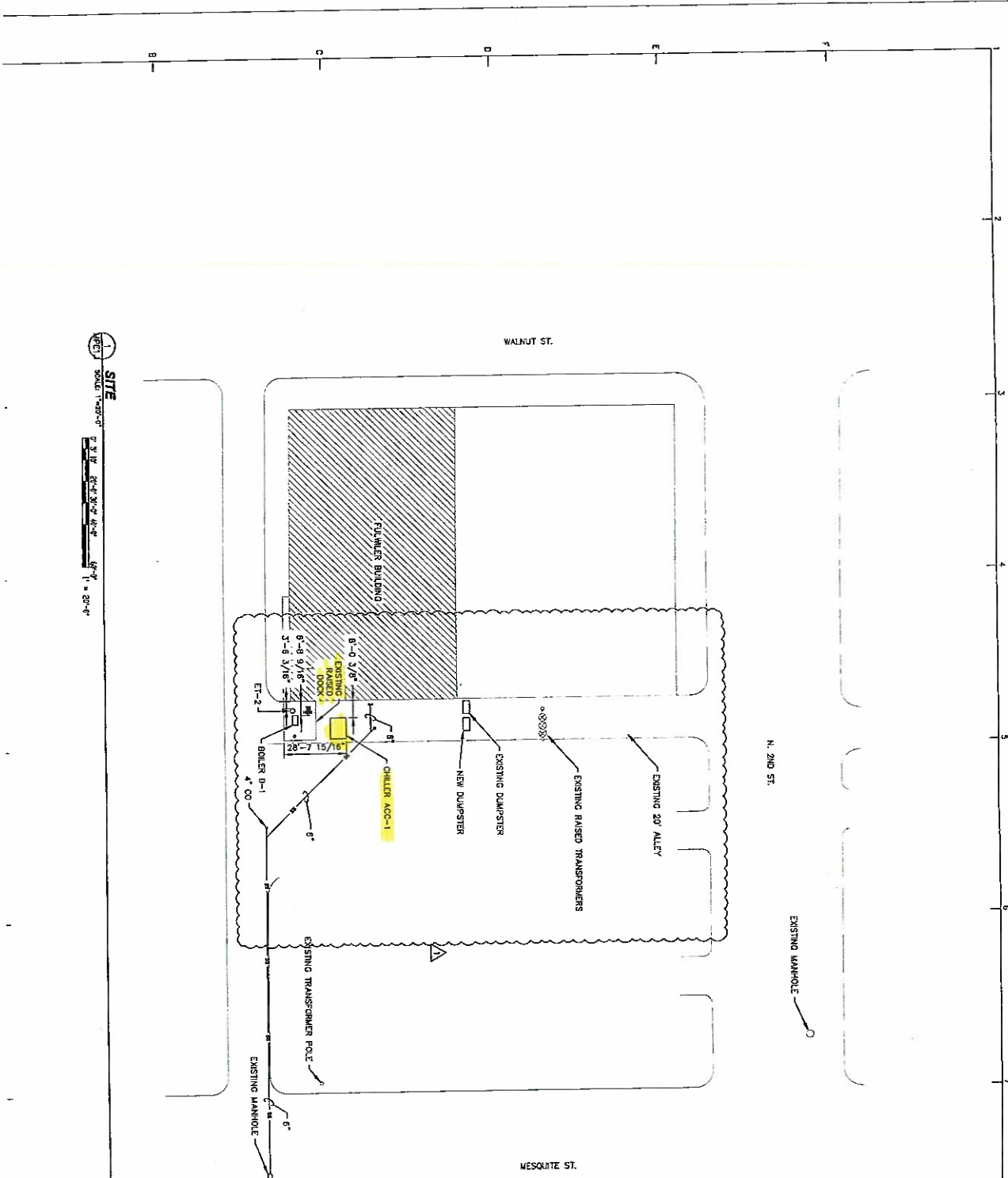
Business Address: 173 Walnut St
79601

EXHIBIT "A"
STREET USE LICENSE AGREEMENT
WITH
TEARTEX, LLC

CONDITIONS AND COVENANTS

The Street Use License Agreement is subject to the following conditions and covenants:

1. The Licensee shall contact the city's Engineering Division (676-6281) prior to commencing any work in the right-of-way.
2. The Licensee shall submit a traffic control plan to the Traffic and Transportation Division (676-6281) for approval before beginning any work that will result in blocking traffic lanes.
3. The Licensee shall contact the Traffic Signal Shop (676-6066) or the Traffic Engineering office (676-6281) for location of traffic signal facilities and shall contact the Water Utilities Department (676-6425) for location of water and sewer lines before beginning excavation in the right-of-way.
4. The Licensee shall contact the city of Abilene Building Inspections (676-6232) regarding any necessary permits for the installation of the requested facility.
5. The Licensee shall ensure all underground utilities are identified and marked prior to any excavation.
6. The Licensee shall barricade any excavation in the right-of-way to prevent pedestrian and/or vehicular access while excavation is unattended. Any barricades left in the right-of-way overnight must be lighted.
7. The Licensee shall promptly repair all signs, pavement markings, and other traffic control devices damaged by its work in the right-of-way.
8. If the City determines that the subject right-of-way is needed for purposes that would be adversely impacted by the permitted facility, the Licensee shall remove the permitted facility within sixty (60) days notice of cancellation.



SITE
SCALE: 1" = 20'-0"

N. 2ND ST.

WALNUT ST.

MESQUITE ST.

GENERAL NOTES:
1. TRASH BINS 18" APX X 3' - 5.4'
2. BINS REQUIRED TOTAL FOR NEW APARTMENTS.

See Note regarding on Site Survey and Survey Data. The Survey Data is the basis for the design and construction of the project. The Survey Data is the basis for the design and construction of the project.

NO.	DATE	REVISIONS
1	3/2/23	ISSUED SET PLAN TO CIVIL ALTY. REV.
2		
3		
4		
5		
6		
7		
8		
9		
10		

MEERS ENGINEERING INC.
344 N. 14th STREET
SUITE 200
ABILENE, TEXAS 79601
(315) 691-1300
Texas Registered Engineering Firm F-3300

FULWILER BUILDING RENOVATION
159 Walnut Street
Abilene, Texas 79601

ARCHIS ARCHITECTS
2001 S. 10th STREET
SUITE 100
ABILENE, TEXAS 79601
(315) 691-1300
www.archisarchitects.com

PROJ. NO. TEARBOOK
DATE: 21-07
REVISION: 01-20-22
DESIGNER: [blank]
DRAWN BY: [blank]

SITE PLAN
SHEET 42 OF 73
DRAWING NO. **MPE1.1**

ARCHIS ARCHITECTS
4330
FEBRUARY 21, 2023



STREET USE LICENSE AGREEMENT
EXTENDED TERM

APPLICATION

Applicant: TearTex, LLC Phone: 325-232-7897

Address: 159 Walnut Street, Abilene, TX 79601

Agent: Larry J. Meers, P.E. Phone: 325-691-1200

Description of Public Right-of-Way to be used: Existing Alley East of Building

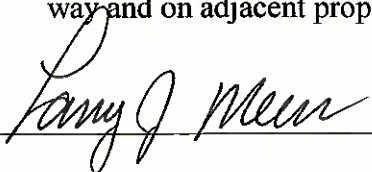
Owner of adjacent property: Abilene Independent School District

Proposed use of public right-of-way: Cooling and Heating equipment for remodeled
repurposed three (3) story building at 159 Walnut Street

Reasons for the request: No other available location for equipment.

Application is not complete unless all of the following are included:

- Application fee- \$300
- Certificate or other evidence of insurance
- A dimensioned drawing showing existing and proposed features in the public right-of-way and on adjacent property (sidewalks, curbs, fire hydrants, buildings, fences, etc.)



Signature of Applicant or Agent

February 22, 2022

Date

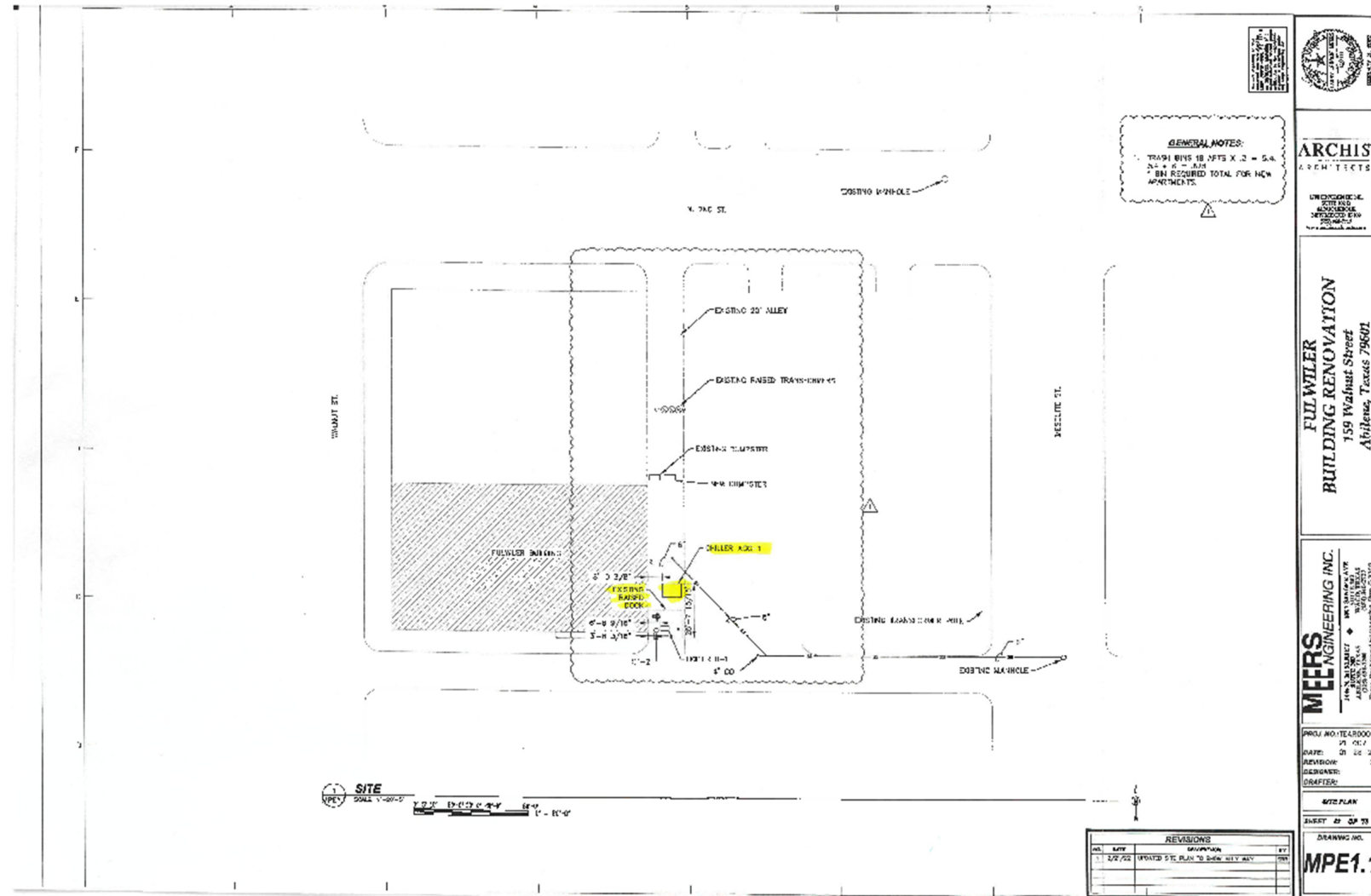
Return Application to:
Public Works Dept.
City of Abilene
PO Box 60
Abilene TX 79604

Agenda Item: Extended Term Street Use License

Resolution: Approval of Extended Term
Street Use License
(Johnson)



Drawing



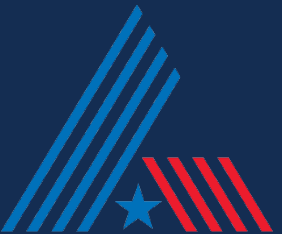
Agenda Item:

Extended Term Street Use License

- TearTex, LLC has submitted an application for an Extended Term Street Use License to use a portion of City right-of-way in the alleyway behind 159 Walnut Street for the purpose of placing a new heating and air conditioning (chiller) unit.
- The application has been reviewed and found to be complete.
- Staff recommends approval of the Extended Term Street Use License.



Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Chief Building Official

SUBJECT: **19. Ordinance (Final Reading) Z-2022-04:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from Roberto Valez to change zoning from General Commercial (GC) to a Neighborhood Retail (NR) District on approximately .32 acres of now-vacant land located within the 3200 block of South 2nd street (north side) approximately 200 feet east from the intersection of S. Willis St. and S. 2nd Street. *(Tim Littlejohn)*

GENERAL INFORMATION

The request is to rezone from General Commercial (GC) District to Neighborhood Retail (NR) District.

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

N/A

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of six (6) to zero (0).

ATTACHMENTS:

1. Z-2022-04 draft ordinance
2. Z-2022-04 staff report
3. Z-2022-04 PZC presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE, LAND DEVELOPMENT CODE OF THE ABILENE CITY CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 2 (Zoning Regulations) of the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit A, attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 3: That the Planning Director be, and is hereby authorized and directed to change the official Zoning Map of the City of Abilene to correctly reflect the amendments thereto.

PASSED ON FIRST READING the 24th day of March, 2022.

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 the 12th day of February, 2022, the same being more than fifteen (15) days prior to a public hearing at the Abilene Public Library's South Branch in the Mall of Abilene at 4310 Buffalo Gap Road in Abilene, Texas, at 8:30 a.m. on the 14th day of April, 2022, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 in the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 14th day of April, 2022.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

Change the zoning classification of the following described land, from a General Commercial (GC) to a Neighborhood Retail (NR) District:

Lots 13 and 14 of Block 18 of the Scott Highway Place Subdivision of the City of Abilene, Taylor County, Texas.



-END-

ZONING CASE Z-2022-04

STAFF REPORT



Scheduled Hearings

Planning & Zoning Commission: March 1, 2022

City Council 1st Reading: March 24, 2022

City Council 2nd Reading: April 14, 2022

Applicant

Owner: Roberto E. Velez

Request

Rezone from General Commercial (GC) District to Neighborhood Retail (NR) District.

Location

Approximately .32 acres located in the 3200 block of South 2nd Street (north side).

Legal Description: Lots 13 and 14 of Block 18 of the Scott Highway Place subdivision

Background

The subject properties were annexed in 1927 and have been zoned as a General Commercial (GC) District since at least 1974. These properties have remained vacant since being annexed. The owners of the subject properties would now like to rezone to Neighborhood Retail (NR) zoning to allow the construction of duplexes within the boundaries of this subdivision.

Zoning and Existing Land Use

The current zoning of properties adjacent to (and in the immediate area of) this proposed zone change are illustrated on a map included in this report. As indicated on the map, properties to the North, East, and West are General Commercial, with the property immediately East being a legally non-conforming single-family residence. Properties to the South of the subject property are zoned Office with single-family residences.

Criteria Assessment

Section 1.4.1.4 of Abilene's Land Development Code states that, in making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council may consider the following factors:

(1) Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan, including the land use classification of the property on the Future Land Use and Development Plan Map, as amended.

The Future Land Use and Development Plan Map identifies these properties as being a mixture of commercial and residential uses. Neighborhood retail is a lower intensity zoning that allows for residential and light retail uses, which are characteristic of the land uses surrounding the subject property. This would promote the Comprehensive Plan's value of mixed-use zoning, while also helping to promote infill within the city limits.

(2) Whether the uses permitted by the proposed change in zoning classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified.

It is the opinion of the staff that the uses permitted by the proposed zone change are consistent with the surrounding properties in the immediate vicinity. The properties to the East and South consist of single-family homes. The character of development permitted by Neighborhood Retail (NR) zoning will serve as an effective transitional land use between the commercially zoned properties fronting South 1st St. and existing single-family homes immediately East and South of the subject property within the Scott Highway Place Subdivision.

(3) Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area.

The subject properties currently have access to existing utilities and public amenities. No additional development of said infrastructure will be required for the development of these subject properties.

(4) Any other factors, which will substantially affect the public health, safety, morals, or general welfare.

It is the opinion of the staff that there are no other factors present that substantially affect the public health, safety, morals, or general welfare of the City of Abilene.

Staff Recommendation

City staff recommends approval of the request. The rezoning request was reviewed pursuant to Section 1.4.1.4 (Criteria for Approval) of the Land Development Code.

Notification

Pursuant to Section 1.2.2.2 of Abilene's Land Development Code, City staff mailed personal notices on January 20 of 2022, to the applicant and to other owners of property within a 200-foot radius of this subject property. These property owners and associated parcel identification numbers are identified in Table 1.

TABLE 1

Owner	Property ID	Situs	Response
BOWDEN TOMMY H	37368	3201 S 2ND ST	Y
CLEARVIEW FAMILY LTD PTR	30116	3156 S 2ND ST	
CORTEZ FELIPE SANTIAGO	37847	3257 S 2ND ST	
GARCIA LYDIA	37595	3239 S 2ND ST	
GARCIA LYDIA	37727	3241 S 2ND ST	
GARVIN DIONILA RAMOS	37370	3209 S 2ND ST	
MARTINEZ ROY JR	31956	3157 S 2ND ST	
N P D LLC	29991	3153 S 1ST ST	
OM SAI KRISHNA LLC	38970	3201 S 1ST ST	
OM SAI KRISHNA LLC	39432	3206 S 2ND ST	
SLATER JAMES C	37483	3233 S 2ND ST	Y
SLATER JAMES C	37372	3217 S 2ND ST	Y
STARK BILL	39312	3210 S 2ND ST	
VELEZ ROBERT & OLIVIA	983090	3226 S 2ND ST	
VELEZ ROBERT & OLIVIA	39194	3220 S 2ND ST	
VELEZ ROBERT & OLIVIA	39086	3241 S 1ST ST	
VELEZ ROBERT & OLIVIA	983091		

Attachments

Application

PowerPoint Presentation

This is a detailed plat map of a portion of the City of St. Louis, Missouri. The map shows several blocks of land, with lots numbered. Two lots, 30104 and 30105, are shaded with diagonal lines, indicating they are the subject of the legal action. The map is bounded by S 10th St to the north, S 2nd St to the south, S Valley St to the west, and Carr St to the east. Other streets shown include S 11th St, S 12th St, and S 13th St. The lots are numbered as follows:

- Block 1 (top left): 30794, 30803, 30844
- Block 2 (top middle): 30090, 30070
- Block 3 (top right): 28991
- Block 4 (middle left): 40155, 40305, 40430
- Block 5 (middle middle): 30300, 30104, 30105, 30312, 30432
- Block 6 (middle right): 30110, 30255, 1002185, 30552, 30681, 30009
- Block 7 (bottom left): 40197, 41048, 1051942, 40000
- Block 8 (bottom middle): 37847, 37727, 37595, 37483, 37372, 37370, 37308
- Block 9 (bottom right): 31550, 31626, 31090, 31070, 31441, 31310, 31196

The map also shows the following lot numbers at the bottom:

- 37859, 30051, 30217, 38338, 38400, 30594, 38111, 38998

Zoning Map

N
W E
S

Legend

Z-2022-04

MD: Medium Density Residential

O: Office

NR: Neighborhood Retail

GC: General Commercial

Arterial

Collector

Map details:

- Streets: S 1st St, S 2nd St, S Willis St, Carl St
- Lots and Zoning:
 - Top row: 39544 (GC), 39086 (GC), 38970 (GC), 29991 (GC)
 - Second row: 40438 (GC), 383090 (GC), 38194 (GC), 382081 (GC), 39312 (GC), 39432 (GC), 30116 (MD), 30255 (MD), 1002186 (MD)
 - Third row: 40808 (GC), 37847 (MD), 37727 (O), 37595 (O), 37483 (O), 37372 (O), 37370 (O), 37368 (MD), 31950 (MD), 31826 (MD), 31696 (MD)
 - Bottom row: 42680 (NR), 37959 (MD), 38081 (MD), 38217 (MD), 38338 (MD), 38400 (MD), 38594 (MD), 38712 (MD), 38835 (MD), 31570 (MD)

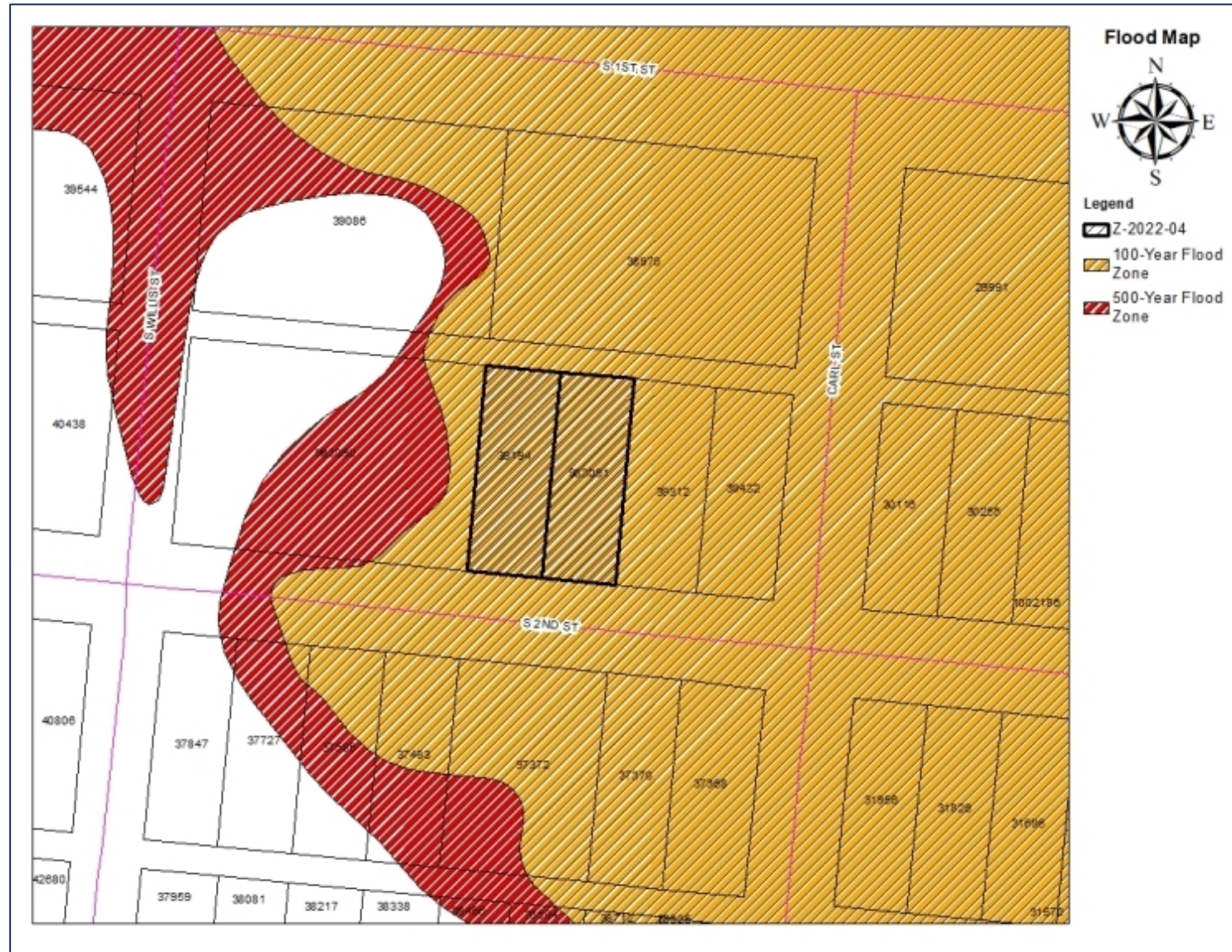
Case:	Z-2022-04
Owner:	Roberto E. Velez
Request:	Rezone from General Commercial (GC) to Neighborhood Retail (NR) District
Location:	Approximately .32 acres in the 3200 Block of S 2 nd St (north side).
Notification:	3 in Favor, 0 Opposed
Planning & Zoning:	March 1, 2022
City Council Hearings:	1 st : March 24, 2022 2 nd : April 14, 2022

Z-2022-04 LOCATION MAP



Z-2022-04 ZONING MAP





Permitted Uses in GC Zoning

RESIDENTIAL USES:

- P Hotel/Motel
- C Vacation Travel Trailer Park

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Drive-Thru Facility
- TP Field Office or Construction Office (temporary)
- C Freight Container
- P Fuel Sales
- TP Itinerant Business
- P Manufacturing (incidental)
- C Mobile Home (permanent security residence)
- TP Mobile Home (temporary security residence)
- C Mobile Home or Temporary Building (office for sales and service)
- P Recycling Collection Point
- C Travel Trailers (accessory to hospitals)
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- P Civic, Social, and Fraternal Organization
- P Cultural Facilities
- P Drive-in Theater
- P Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Recreation and Commercial Entertainment – Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Ambulance Service
- P Fire/Police Station
- C Homeless/Emergency Shelter
- P Hospital
- P Medical/Dental Laboratory
- P Post Office
- C Rehabilitation Facility
- P Social Service Facility

EDUCATIONAL AND RELIGIOUS USES:

- P Arts School
- C Cemetery, Crematorium, and Mausoleum
- P Church or Place of Worship
- P Day-Care Operation - Center-Based
- P Educational and Scientific Research
- P School: Public/Private
- P Trade/Business School
- P University/College

SERVICE

- P/C Automobile Wash
- C Contractor Services
- P Funeral Home/ Mortuary/Morgue
- C Kennel (With Outdoor Pens)
- P Kennel (Without Outdoor Pens)
- P Laundry, Dry Cleaning, Dyeing, and Linen Service (no retail customers)
- P Laundry/Dry Cleaning Services & Facilities
- P Office (general, professional, financial)
- P Personal Services
- P Printing, Copying, Reproduction, Publishing
- C Recycling Collection and Processing Center
- P Repair and Maintenance Services - Automobile/Small Truck (major)
- P Repair and Maintenance Services - Automobile/Small Truck (minor)
- P Repair and Maintenance Services (indoor)
- C Repair and Maintenance Services (outdoors)
- P Storage - Self-Service Units
- P Tattoo Parlor
- P Taxidermist
- P Veterinary Service (small animals)

TRADE – RETAIL USES

- C Aircraft and Accessories
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Fuel Sales
- P Liquor Store (Off Premises Consumption) (*Defined under Liquor Store*)
- P Liquor Store (On Premises Consumption) (*Defined under Liquor Store*)
- P Restaurant, Brew Pub
- P Restaurant, Fast Food
- P Restaurant, Standard
- P Retail Sales/Rental (automobile/small truck)
- P Retail Sales/Rental (indoor)
- P Retail Sales/Rental (outdoors, non-vehicle)
- C Retail Sales/Rental (trucks and other large vehicles and equipment)

TRADE – WHOLESALE USES

- C Wholesaling and Storage (indoor)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Antenna Tower - Commercial
- P Automobile Parking Lot or Structure - Commercial
- P Broadcast Studio
- P Passenger Ground Transportation Terminal
- P Pressure Control Station
- P Public Utility Facility

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

LEGEND

- P
- C
- TP

Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)

Permitted as a Conditional Use Permit, Requiring Approval by City Council

Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

Permitted Uses in NR Zoning

RESIDENTIAL USES:

- P Bed & Breakfast
- P Dwelling - Duplex
- P Dwelling – Industrialized Housing Unit
- P Dwelling – Institutional
- C Dwelling – Multiple-Family
- P Dwelling – Single Family Detached
- C Hotel/Motel

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P/C Day Care Operation – Home Based
- C Drive-Thru Facility
- TP Field Office or Construction Office (temporary)
- C Fuel Sales
- P Garage Sales
- P Home Occupation
- C Mobile Home (temporary security residence)
- P Recreation Building, Multipurpose
- P Recreation Equipment, Mobile (storage and parking)
- C Recycling Collection Point
- P Subdivision Sales Office (temporary)
- P Swimming Pools, Private (accessory to residential use)
- P Tennis Courts, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- P Civic, Social, and Fraternal Organization
- C Cultural Facilities
- P Recreation – Outdoors (passive)
- C Recreation and Commercial Entertainment - Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Fire/Police Station
- C Medical/Dental Laboratory
- P Post Office
- C Social Service Facility

EDUCATIONAL AND RELIGIOUS USES:

- P Arts School
- P Church or Place of Worship
- P Day-Care Operation - Center-Based
- P School: Public/Private

SERVICE

- C Automobile Wash
- P Laundry/Dry Cleaning Services & Facilities
- P Office (general, professional, financial)
- P Personal Services
- C Printing, Copying, Reproduction, Publishing
- P Repair and Maintenance Services (indoor)
- C Tattoo Parlor
- P Veterinary Service (small animals)

TRADE – RETAIL USES

- P ATM's, Self-Serve Kiosks, and Similar Facilities
- C Fuel Sales
- P Liquor Store (Off Premises Consumption) (*Defined under Liquor Store*)
- C Restaurant, Brew Pub
- C Restaurant, Fast Food
- P Restaurant, Standard
- P Retail Sales/Rental (indoor)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Broadcast Studio
- P Public Utility Facility

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

LEGEND

P
C
TP

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Permitted as a Conditional Use Permit, Requiring Approval by City Council
Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

Z-2022-04 VIEWS OF SUBJECT & ADJACENT PROPERTIES

Subject Property



South Eastern Properties on South 2nd



Neighboring Property (South)



Neighboring Property (West)



Neighboring Property (East)



Z-2022-04 NOTIFICATION AREA MAP



- Consistent with the *Comprehensive Plan* and *Future Land Use and Development Plan Map*
- Reviewed Pursuant to Section 1.4.1.4 of Land Development Code (Criteria for Approval)
- Staff Recommendation: Approval
- P&Z Recommendation: Approval

Questions?



**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Chief Building Official

SUBJECT: **20. Ordinance (Final Reading) Z-2022-05:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from JGN Properties LLC to change zoning from Heavy Industrial (HI) to a Heavy Commercial (HC) District within the 2600-2700 blocks of South Treadaway Boulevard (east side) and the 2700 block of Palm Street (west side) located at 2641 thru 2765 S. Treadaway Blvd and 2718 Palm Street. *(Tim Littlejohn)*

GENERAL INFORMATION

The request is to rezone 1.59 acres from Heavy Industrial (HI) to Heavy Commercial (HC) District.

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

N/A

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of six (6) to zero (0).

ATTACHMENTS:

1. Z-2022-05 Draft ordinance
2. Z-2022-05 Staff Report
3. Z-2022-05 Presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE, LAND DEVELOPMENT CODE OF THE ABILENE CITY CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 2 (Zoning Regulations) of the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit A, attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 3: That the Planning Director be and is hereby authorized and directed to change the official Zoning Map of the City of Abilene, to correctly reflect the amendments thereto.

PASSED ON FIRST READING the 24th day of March, 2022.

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 the 12th day of February, 2022, the same being more than fifteen (15) days prior to a public hearing at the Abilene Public Library's South Branch in the Mall of Abilene at 4310 Buffalo Gap Road in Abilene, Texas, at 8:30 a.m. on the 14th day of April, 2022, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 in the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 14th day of April, 2022.

ATTEST:

Shawna Atkinson
CITY SECRETARY

Anthony Williams
MAYOR

APPROVED:

Stanley Smith
CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT A

Change the zoning classification of the following described land, from a Heavy Industrial (HI) to a Heavy Commercial (HC) District:

TRACT 1:

BEING the West part of that same tract described in Volume 1322, page 78, Deed records, Taylor County, Texas, and being part of Block 17 of the Bowery Addition to the City of Abilene, Taylor County, Texas, as shown by plat recorded in Volume Y, page 356, Probate Minutes of Taylor County, Texas, and being more particularly described as follows:

BEGINNING at a 3/8" iron pin set at an interior corner of said tract described in Volume 1322, page 78 and the Southwest corner of a tract described in Volume 390, page 163 and being North 271 feet and S 88° 23' W 108.8 ' from the Southeast corner of said Block 17,

THENCE S 2° 17' W 48.17 feet to a 3/8" iron pin set in the SBL of said tract in Volume 1322, page 78 and the WBL of a tract described in Volume 1033, page 682,

THENCE S 89° 06' 20" W (record – West) 140.75 feet to a point on the EBL of South Treadaway Boulevard for the Southwest corner of this tract, N 89° 06' 20" E 2.89 feet from a found 3/8" iron pin,

THENCE in a northeasterly direction along a curve to the right with a radius of 9614.08 feet and a long chord bearing N 17° 17' 41" E 100.1 feet to the Northwest corner of this tract, W 88° 32' 21" E 1.26 feet from a found 1/2" iron pipe,

THENCE N 88° 32' 21" E 126.65 feet (record – East 130 feet) to a 3/8" iron pin set for the record corner of a tract described in Volume 390, page 163,

THENCE S 14° 45' W 50' matching the WBL call for said Volume 390, page 163 to the place of beginning.

TRACT 2:

BEING 0.251 acre out of Block 17, Bowyer Addition to the City of Abilene, Taylor County, Texas, according to the map or plat thereof recorded in Volume 1, Page 618 and/or Cabinet 4, Slide 327, Plat Records of Taylor County, Texas, said 0.251 acre being part of that same land described as Tract 2: First Tract, Second Tract and Third Tract in a Gift Deed to Kathleen Janice Travis in Document No. 2009-275, Official Public Records, Taylor County, Texas, said 0.251 acre being more particularly described as follows:

BEGINNING at a point on the east right-of-way line of South Treadaway Boulevard (U.S. Highway 277-83) (100' ROW) in a curve to the right on the north line of said First Tract and the south line of that certain tract designated Tract 3, conveyed to Bimbo Bakeries USA, Inc., of record in Volume 3401, Page 939, O.P.R.T.C.T., for the northwest corner of this tract, whence a 3" pipe post bears S 71° 31' 26" E 13.5 feet;

THENCE S 71° 31' 26" E 127.95 feet, with the north line of said First Tract and the south line of said Tract 3, to a 5" pipe post found at the northeast corner of said First Tract and the northwest corner of that certain tract designated Tract 4 in said Volume 3401, Page 939, O.P.R.T.C.T., for the northeast corner of this tract;

THENCE in a southwesterly direction with the east line of said First, Second and Third Tract and the west line of said Tract 4, the following two (2) calls:

1. S 18°09'01"W 51.54 feet, to a 4" pipe post found for an angle corner of this tract;
2. S 71°35'34"W 17.57 feet, to a 4" pipe post found at an angle corner of said Second Tract and the southerly northwest corner of said Tract 4, same being the northeast corner of that certain tract designated Exhibit "A", conveyed to Thomas Lee Willis, of record in Document #2009-14082, O.P.R.T.C.T., for an angle corner of this tract;

THENCE S89°15'39"W 134.60 feet, with the south line of said Second Tract and the north line of said Willist tract, to a point in said curve to the right on the east right-of-way line of said South Treadaway Boulevard at the southwest corner of said Second Tract and the northwest corner of said Willis tract, for the southwest corner of this tract, whence a 4" pipe post bears N89° 15'39" E 5.7 feet;

THENCE in a northeasterly direction with the west line of said Second and Third Tracts, the easts right-of-way line of said South Treadaway Boulevard and along said curve to the right, having a radius of 904.93 feet, an arc length of 107.23 feet and a long chord bearing N25°23'46" E 107.16 feet, to the place of beginning and containing 0.251 acre of land.

TRACT 3

BEING 0.825 acres of land containing Tract 3, Tract 4, Tract 5 and Tract 6, all recorded in Volume 3401, Page 939, Official Public Records, Taylor County, Texas and being all of Block 16 and a portion of Block 17 and all of the right-of-way of South 27th Street between said Block 16 and Block 17 as shown by the Bowyer Addition plat to the City of Abilene, Taylor County, Texas, recorded in Volume 1, Page 618, Plat Records, Taylor County, Texas, and Plat Cabinet 4, Slide 327, Plat Records, Taylor County, Texas. Said 0.825-acre tract being more particularly described as follows:

BEGINNING: at a found ½" metal rebar on a curve on the East line of South Treadaway Boulevard (100' right-of-way) at the Northwest corner of Lot 101, Block A, B&B Polebenders Subdivision recorded in Plat Cabinet 4, Slide 178, Plat Records, Taylor County, Texas, whence a found 3/8" metal rebar on the West line of Palm Street (60' right-of-way) at the South most Northeast corner of said Lot 101 bears S 70°03'32"E 257.47';

THENCE along the East line of South Treadaway Boulevard and with said curve, (to the right), a radius of 895.29' a chord bearing N19°44'55"W 201.46' an arc distance of 201.88' to a set ½" metal rebar on the North line of a 0.251 acre tract recorded in instrument No. 202020812, Official Public Records, Taylor County, Texas, for the North most Southwest corner and POINT OF BEGINNING of this tract, whence the center of a 4" pipe fence corner post, called for a reference on the North line of said 0.251 acre tract bears S72°06'17"E 3.88';

THENCE continuing along the East line of said South Treadaway Boulevard and along said curve to the right a radius of 895.29' a chord bearing N35°19'47"E 283.85' an arc distance of 285.06' to a found concrete right-of-way monument at the end of said curve, whence a found concrete right-of-way monument of the West line of said South Treadaway Boulevard bears N44°15'47"W 101.03';

THENCE N44°58'55"E with the East line of said South Treadaway Boulevard 11.20' to a set ½" metal rebar on the West line of said Palm Street for the North most corner of this tract, whence a found 3/8" metal rebar on the East line of said South Treadaway Boulevard at a point of intersection on the West line of a 5.72 acre tract recorded in Volume 2959, Page 718, Official Public Records, Taylor County, Texas, bears N44°58'55"E 84.47' and from this found 3/8" metal rebar, another found 3/8" metal rebar at the Southwest corner of said 5.72-acre tract bears S00°30'08"E 16.08';

THENCE S00° 11' 57"E with the West line of said Palm Street, 376.11' to a set ½" metal rebar for the Southeast corner of this tract, whence a found 3/8" metal rebar on the West line of said Palm Street at the common East corner of tracts of land recorded in Instrument No. 2017-00012138, and Instrument No. 2019-00013171, Official Public Records, Taylor County, Texas, and being recognized as the Southeast corner of a tract recorded in Volume 1322, Page 78, Official Public Records, Taylor County, Texas, bears S00° 11'57"E 71.00';

THENCE S88°24'59"W 108.57' to a found 3/8" metal rebar at a point of intersection on the East line of a tract recorded in Instrument No. 2009-00014082, Official Public Records, Taylor County, Texas, at the Northwest corner of said tract recorded in Instrument No. 2017-00012138, Official Public Records, Taylor County, Texas, and an interior corner of said tract recorded in Volume 1322, Page 78, Official Public Records, Taylor County, Texas for the South most Southwest corner of this tract;

THENCE N17°56'22"E 50.92' to the center of a 5" pipe fence corner post called to be the Southmost Southeast corner of said 0.251 acre tract and called to be the South most Northwest corner of said Tract 4, recorded in Volume 3401, Page 393, Official Public Records, Taylor County, Texas, for a point of intersection of this tract;

THENCE N67°36'45"E 17.34' to the center of a 5" pipe fence corner post called to be a point of intersection of said 0.251 acre tract for an interior corner of this tract;

THENCE N18°11'57"E 50.80' to the center of a 5" pipe fence corner post called to be the Northeast corner of said 0.251 acre tract and called to be the Northwest corner of said Tract 4 for an interior corner of this tract;

THENCE N72°06'17"W at 114.26' pass the center of a 4" pipe fence corner post and continue on a total distance of 118.14' to the point of beginning and containing 0.825 acres of land.

TRACT 4

BEING the East part of the same tract described in Volume 1322, page 78, Deed Records, Taylor County, Texas, and being part of Block 17 of the Bowyer Addition to the City of Abilene, Taylor County, Texas, as shown by plat recorded in Volume Y, page 356, Probata Minutes of Taylor County, Texas, and being more particularly described as follows:

BEGINNING at a 3/8" iron pin set on the WBL of Palm Street, 200 feet North of the Southeast corner of said Block 17,

THENCE S 89°50'W55.74' to a 3/8" iron pin set for a corner,

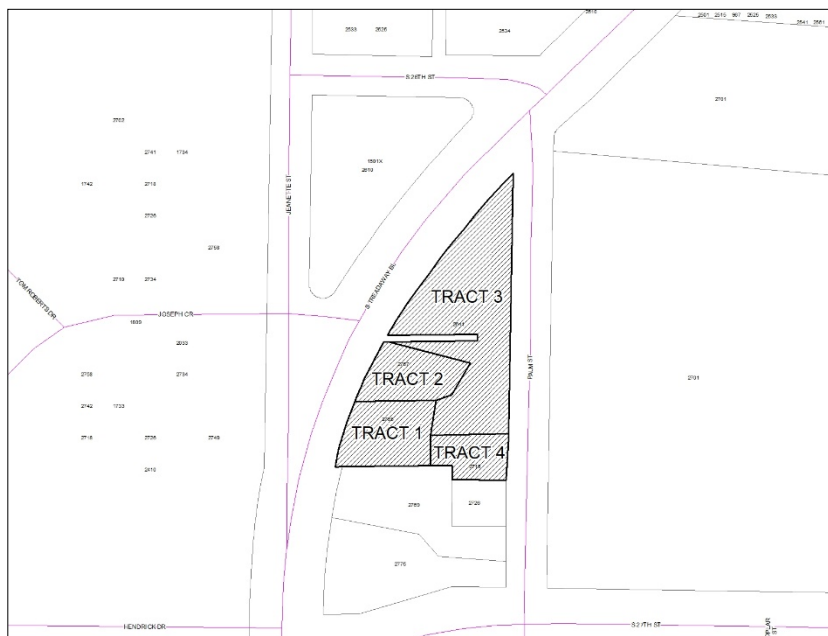
THENCE North 20.82 feet (record = 21 feet) to a 3/8" iron pin found at an interior corner;

THENCE S89°06'20"W(record = west) 54.9' to a 3/8" iron pin set on the SBL of said tract described in Volume 1322, page 78, and the NBL of a tract described in Volume 1033, page 682, Deed Records;

THENCE N2°17'E 48.17 feet to a 3/8" iron pin set by a corner post at an interior corner of said tract in Volume 1322, page 7, Deed Records and the Southwest corner of a tract described in Volume 390, page 163, Deed Records;

THENCE N 88°23' E (record = East) 108.8 feet to a 1/2" iron pine found at the most easterly Northeast corner of said tract in Volume 1322, page 78 and Southeast corner of Volume 390, page 163 on the WBL of Palm Street;

THENCE south 71 feet to the place of beginning.



Location: 2600-2700 Blocks of S. Treadaway Blvd. & 2700 Block of Palm St.

-END-

ZONING CASE Z-2022-05

STAFF REPORT



Scheduled Hearings

Planning & Zoning Commission: March 1, 2022

City Council 1st Reading: March 24, 2022

City Council 2nd Reading: April 14, 2022

Applicant

Owner: JGN Properties LLC

Request

Rezone 1.59 acres from Heavy Industrial (HI) to Heavy Commercial (HC) District.

Location

2600-2700 blocks of South Treadaway Boulevard (east side) and the 2700 block of Palm Street (west side). Specifically, being property located at 2641, 2757, and 2765 S. Treadaway Blvd as well as 2718 Palm Street.

Legal Description: Approximately 1.59 acres out of Blocks 16 and 17 in the Bowyer Addition, Abilene, Taylor County, Texas

Background

The subject properties were annexed into the City limits of Abilene in 1951. In 1961 an ordinance was approved authorizing the abandonment of a segment of right-of-way that was previously dedicated toward S 27th St; which divided Blocks 16 & 17 of the Bowyer Addition, this ordinance dedicated a 20-foot-wide utility easement along the northern boundary of what was previously the right-of-way for S 27th Street, in 2021 this easement was formally released by the City of Abilene. Each of these subject properties has been zoned Heavy Industrial (HI) since at least 1974. The following are brief backgrounds for each respective property:

- 2641 S Treadaway Blvd:
 - In 2003 a sign permit was issued to construct a billboard at this location.
- 2757 S Treadaway Blvd:
 - There are no permits on file for the buildings at this location, City staff believes that these buildings pre-date annexation. In 2021 a certificate of occupancy was issued to occupy the buildings at this location for warehousing and storage.
- 2765 S Treadaway Blvd:
 - In 1994 building permits were issued for an automotive sales office at this location. It appears this location has most recently been occupied for a wrecking/towing service.
- 2718 Palm St:
 - In 1953 a building permit was issued for a residence to be constructed at this location. It is presently a legally non-conforming residence within its present Heavy Industrial (HI) zoning classification.

The owner of the property now wishes to rezone to Heavy Commercial (HC) in order to make the properties marketable to a wider range of commercial uses.

Zoning and Existing Land Use

Current zoning and existing land use of properties adjacent to and in the subject property's immediate area are illustrated on the map included in this report. As indicated on the map, adjacent zoning consists of General Commercial (GC) north of S Treadaway Blvd. which is presently occupied by an office. To the west of S. Treadaway Blvd. is Hendrick Home For Children which is located in Planned Development District 146 (PDD 146). The properties south and east of the subject property are within Heavy Industrial (HI) zoning districts. The properties to the south are occupied by an office building and private school. The property east of Palm Street is occupied by Bimbo Bakeries.

Criteria Assessment

Section 1.4.1.4 of the Land Development Code states that, in making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council may consider the following factors:

(1) Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan, including the land use classification of the property on the Future Land use and Development Plan Map, as amended;

It is the opinion of the staff that the proposed zoning map amendment will serve to implement the goals, objectives, and policies of the Comprehensive Plan. The Future Land Use and Development Plan Map classifies the properties as a mixture of commercial and Heavy Commercial/Light Industrial. The proposed rezoning will allow for greater commercial uses not generally allowed in industrial zoning districts. Furthermore, the properties are located near the intersection of two major arterial streets that are designated as community enhancement corridors on the Future Land Use and Development Plan Map. According to the Comprehensive Plan, enhancement corridors should provide enhanced physical and visual links between Activity Centers, these corridors should be unique, memorable, and attractive. Rezoning these properties to a less intensive commercial zoning district from their present Heavy Industrial zoning may mitigate the potential for land uses that are often considered obnoxious and unattractive. The continuance of uses routinely found in Heavy Industrial (HI) zoning along these enhancement corridors may be contrary to the goals of creating attractive, memorable corridors.

(2) Whether the uses permitted by the proposed change in zoning classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified.

It is the opinion of the staff that the uses permitted by the proposed zone change are consistent with the surrounding properties in the immediate vicinity. During recent years properties along S. Treadaway Boulevard that have been historically zoned and used for industrial purposes have begun to transition to less intense commercial zoning districts. This trend has led to a wider range of commercial uses that are generally in character and compatible with nearby residential land uses. Additionally, these subject properties are near the intersection of S. Treadaway Blvd. and S. 27th St. each being classified as major arterial streets. Intersections such as this are customarily appropriate for commercial activities, as they optimize public access and exposure for businesses.

(3) Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area.

The subject property currently has access to existing utilities and public amenities adequate for the proposed uses. This request presents no apparent conflicts with existing or proposed plans for community facilities and related infrastructure.

(4) Any other factors, which will substantially affect the public health, safety, morals, or general welfare.

It is the opinion of staff that no other factors are present that would substantially affect the public health, safety, morals, or general welfare.

Staff Recommendation

City staff recommends approval.

Notification

Pursuant to Section 1.2.2.2 of the Land Development Code, staff mailed personal notices on February 18, 2022 (via certified mail) to the applicant and other property owners within a 200-foot radius of the subject property. These property owners and associated property identification numbers are identified in Table 1.

TABLE

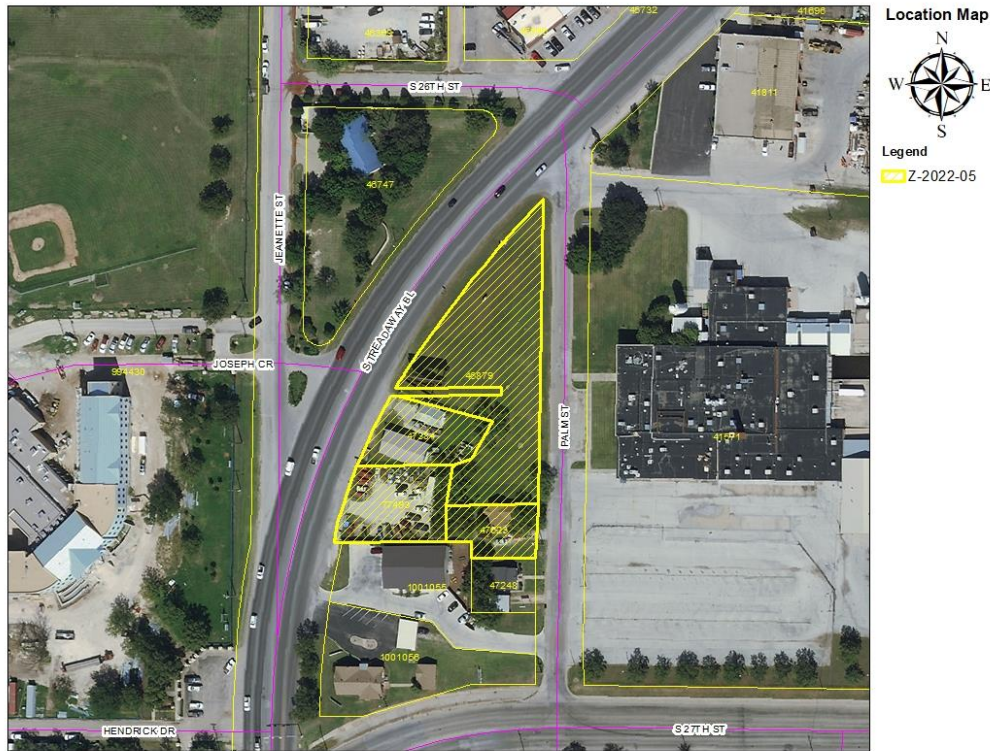
Owner	Property ID	Situs	Response
B&B POLEBENDERS INC	1001056	2775 S TREADAWAY BL	
CHISUM CAROL S	47623	2718 PALM ST	
CRETESCAPES INC	1001055	2769 S TREADAWAY BL	
DBD ENTERPRISES LTD	41571	2701 PALM ST	
EPIC CONSTRUCTION CO	41811	2701 S TREADAWAY BL	
HENDRICK HOME FOR	994430	1742 TOM ROBERTS DR	
JGN PROPERTIES LLC	47384	2757 S TREADAWAY BL	
JGN PROPERTIES LLC	77493	2765 S TREADAWAY BL	
JGN PROPERTIES LLC SERIES P	46879	2641 S TREADAWAY BL	
LOS HINKLES INVESTMENTS LLC	45996	2534 S TREADAWAY BL	
MC CLARTY TIM RICE	46747	2610 S TREADAWAY BL	
MC DANIEL JACK RUSSELL	47248	2726 PALM ST	

Attachments

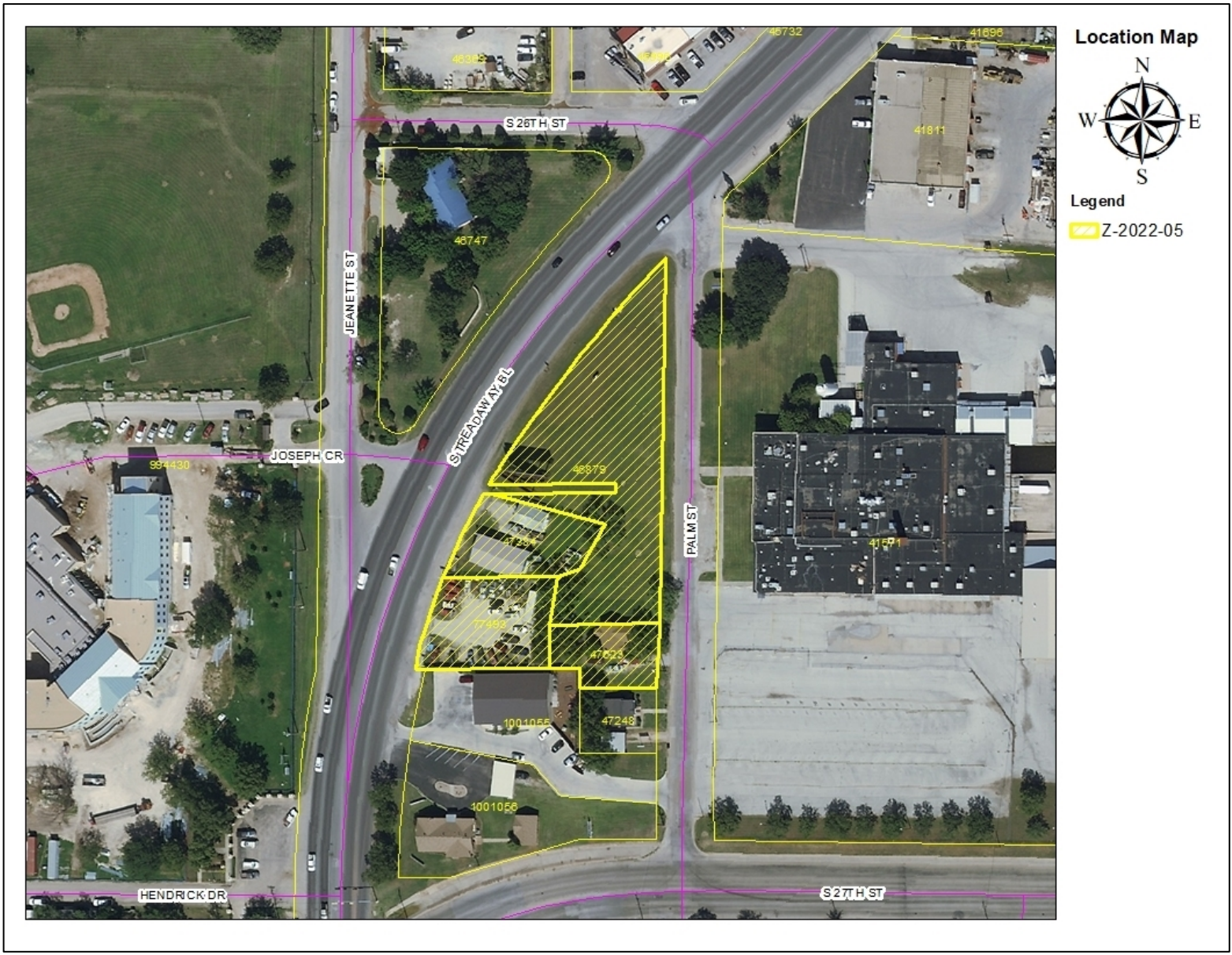
Application

PowerPoint Presentation

LOCATION MAP



Case:	Z-2022-05
Owner:	JGN Properties LLC
Request:	Rezone from Heavy Industrial (HI) District to Heavy Commercial (HC) District
Location:	2600-2700 blocks of S Treadaway Blvd (east side) and 2700 block of Palm St. (west side)
Notification:	0 in Favor, 0 Opposed
Planning & Zoning:	March 1, 2022
City Council Hearings:	1 st March 24, 2022 2 nd : April 14, 2022





Existing Uses in HI Zoning

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- TP Field Office or Construction Office (temporary)
- P Freight Container
- P Manufacturing (incidental)
- C Mobile Home (permanent security residence)
- TP Mobile Home (temporary security residence)
- P Recreation Building, Multipurpose
- P Recycling Collection Point
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- P Adult Entertainment Enterprise
- C Motorized Racing

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Fire/Police Station
- P Homeless/Emergency Shelter
- P Post Office
- P Sanitary Landfill

EDUCATIONAL AND RELIGIOUS USES:

- P Church or Place of Worship
- P Educational and Scientific Research
- P School: Public/Private

SERVICE

- P Contractor Services
- P Recycling Collection and Processing Center
- P Scales (public)
- P Wrecker/Towing

TRADE – RETAIL USES

- P Head Shop
- C Scrap and Waste Material

TRADE – WHOLESALE USES

- C Livestock – Wholesale or Auction
- P Wholesaling and Storage (indoor)
- P Wholesaling and Storage (outdoors)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- P Airport, Heliport and Flying Field Terminals - Commercial (passenger and freight)
- P Antenna Tower - Commercial
- P Automobile Parking Lot or Structure - Commercial
- P Pressure Control Station
- P Public Utility Facility
- P Railroad Switching and Marshaling Yard
- P Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Mining
- P Petroleum or Gas Well
- P Liquor
- P Manufacturing (light)
- P Manufacturing (heavy)
- P Urban Garden

LEGEND

P
C
TP

Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)
Permitted as a Conditional Use Permit, Requiring Approval by City Council
Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

Permitted Uses in HC Zoning

RESIDENTIAL USES:

C Hotel/Motel

ACCESSORY AND INCIDENTAL USES:

P Accessory Structure (Also see Division 4 of this article)
P Antenna, Non-Commercial/Amateur
P ATM's, Self-Serve Kiosks, and Similar Facilities
P Drive-Through Facility
TP Field Office or Construction Office (temporary)
P Freight Container
P Fuel Sales
TP Itinerant Business
P Manufacturing (incidental)
C Mobile Home (permanent security residence)
TP Mobile Home (temporary security residence)
P Mobile Home or Temporary Building (office for sales and service)
P Recycling Collection Point
C Travel Trailers (accessory to hospitals)
P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

C Adult Entertainment Enterprise
P Civic, Social, and Fraternal Organization
P Cultural Facilities
P Drive-in Theater
C Motorized Racing
P Recreation – Outdoors (active)
P Recreation – Outdoors (passive)
P Recreation and Commercial Entertainment - Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

P Ambulance Service
C Correction, Detention, or Penal Facilities
P Fire/Police Station
P Homeless/Emergency Shelter
P Hospital
P Medical/Dental Laboratory
P Military and Armed Forces Reserve Center
P Post Office
P Rehabilitation Facility
C Sanitary Landfill
P Social Service Facility

EDUCATIONAL AND RELIGIOUS USES:

P Arts School
C Cemetery, Crematorium, and Mausoleum
P Church or Place of Worship
P Educational and Scientific Research
P School: Public/Private
P Trade/Business School

SERVICE

P/C Automobile Wash
P Contractor Services
P Funeral Home/ Mortuary/Morgue
P Kennel (With Outdoor Pens)
P Kennel (Without Outdoor Pens)
P Laundry, Dry Cleaning, Dyeing, and Linen Service (no retail customers)
P Laundry/Dry Cleaning Services & Facilities
P Office (general, professional, financial)
P Printing, Copying, Reproduction, Publishing
P Recycling Collection and Processing Center
P Repair and Maintenance Services - Automobile/Small Truck (major)
P Repair and Maintenance Services - Automobile/Small Truck (minor)
P Repair and Maintenance Services (indoor)
P Repair and Maintenance Services (outdoors)
P Repair and Maintenance Services (truck and other large vehicles)
P Scales (public)
P Storage - Self-Service Units
P Tattoo Parlor
P Taxidermist
P Veterinary Service (all size animals)
P Veterinary Service (small animals)
P Wrecker/Towing

TRADE – RETAIL USES

P Aircraft and Accessories
P ATM's, Self-Serve Kiosks, and Similar Facilities
P Fuel Sales
P Head Shop
P Liquor Store (Off Premises Consumption) (*Defined under Liquor Store*)
P Liquor Store (On Premises Consumption) (*Defined under Liquor Store*)
P Restaurant, Brew Pub
P Restaurant, Fast Food
P Restaurant, Standard
P Retail Sales/Rental (automobile/small truck)
P Retail Sales/Rental (indoor)
P Retail Sales/Rental (outdoors, non-vehicle)
P Retail Sales/Rental (trucks and other large vehicles and equipment)

TRADE – WHOLESALE USES

P Liquor, Wholesale/Distribution
P Wholesaling and Storage (indoor)
C Wholesaling and Storage (outdoors)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

P Airport, Heliport and Flying Field Terminals - Commercial (passenger and freight)
C Antenna Tower - Commercial
P Automobile Parking Lot or Structure - Commercial
P Broadcast Studio
P Passenger Ground Transportation Terminal
P Pressure Control Station
P Public Utility Facility
C Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

P Petroleum or Gas Well
C Manufacturing (light)
P Urban Garden

LEGEND

P Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)
C Permitted as a Conditional Use Permit, Requiring Approval by City Council
TP Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment



**Subject Property
(2718 Palm St)**



**Subject Property (2765
S Treadaway)**



**Subject Property (North of
2757 S Treadaway)**



**Neighboring Property
(East)**



**Subject Property
(2757 S Treadaway)**



**Neighboring Property
(Northwest)**

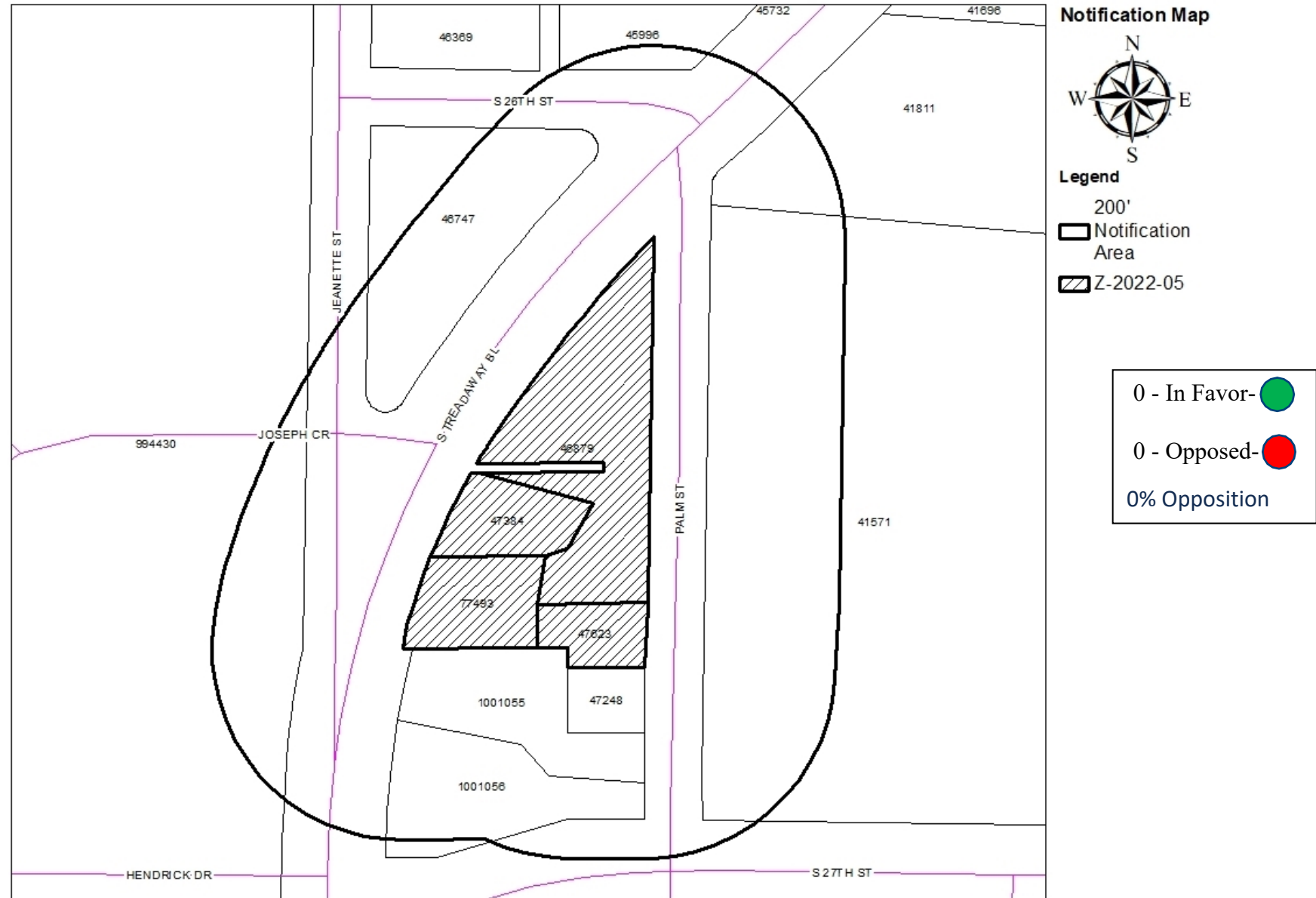


**Neighboring
Property (West)**



**Neighboring
Property (South)**

Z-2022-05 NOTIFICATION AREA MAP



- Consistent with the *Comprehensive Plan* and *Future Land Use and Development Plan Map*
- Reviewed Pursuant to Section 1.4.1.4 of Land Development Code (Criteria for Approval)
- Staff Recommendation: Approval
- P&Z Recommendation: Approval

Questions?



**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Chief Building Official

SUBJECT: **21. Ordinance (Final Reading) Z-2022-06:** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on a request from FL20 Inc. (represented by Andrea and Aaron Robison) to change zoning from Agricultural Open Space (AO) to a General Commercial (GC) District at 5308 Hwy 277 South, located within the 5200-5300 blocks of Hwy 277 South (west side); approximately 900-feet northeast from the intersection of Health Center Drive and Hwy 277 South.
(Tim Littlejohn)

GENERAL INFORMATION

The request is to rezone 1.59 acres from Agricultural Open (AO) to General Commercial (GC) District.

SPECIAL CONSIDERATIONS

N/A

FUNDING/FISCAL IMPACT

N/A

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of six (6) to zero (0).

ATTACHMENTS:

1. Z-2022-06 draft ordinance
2. Z-2022-06 Staff Report
3. Z-2022-06 PZC presentation

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE, LAND DEVELOPMENT CODE OF THE ABILENE CITY CODE, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES; CALLING A PUBLIC HEARING; PROVIDING A PENALTY AND AN EFFECTIVE DATE.

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

PART 1: That Chapter 2 (Zoning Regulations) of the Land Development Code of the City of Abilene, is hereby amended by changing the zoning district boundaries as set out in Exhibit A, attached hereto and made a part of this ordinance for all purposes.

PART 2: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 3: That the Planning Director be and is hereby authorized and directed to change the official Zoning Map of the City of Abilene, to correctly reflect the amendments thereto.

PASSED ON FIRST READING the 24th day of March, 2022.

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 the 12th day of February, 2022, the same being more than fifteen (15) days prior to a public hearing at the Abilene Public Library's South Branch in the Mall of Abilene at 4310 Buffalo Gap Road in Abilene, Texas, at 8:30 a.m. on the 14th day of April, 2022, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 in the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 14th day of April, 2022.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

Change the zoning classification of the following described land, from an Agricultural Open Space (AO) to a General Commercial (GC) District:

BEING 3.166 acres of land and being that same tract of land previously recorded as Tract Sixteen in Instrument No. 202013682, Official Public Records, Taylor County, Texas, out of the Joseph Beck Survey # 42, City of Abilene, Taylor County, Texas. Said 3.166 acre tract being more particularly described as follows;

BEGINNING at a found 1" metal pipe on the West line of U.S. Highway 277 South (100' right-of-way) at the Northeast corner of said Tract Sixteen and the Southeast corner of Block A, Fulcher Addition, Plat Cabinet 2, Slide 144-D, Plat Records, Taylor County, Texas, whence found a 1" metal pipe on the West line of said U.S. Highway 277 South at the Northeast corner of said Block A, bears N38°20'10"E 245.85' and from said point of beginning the Northeast corner of said Joseph Beck Survey # 42 is record to bear North 354 varas and East 856.66 varas;

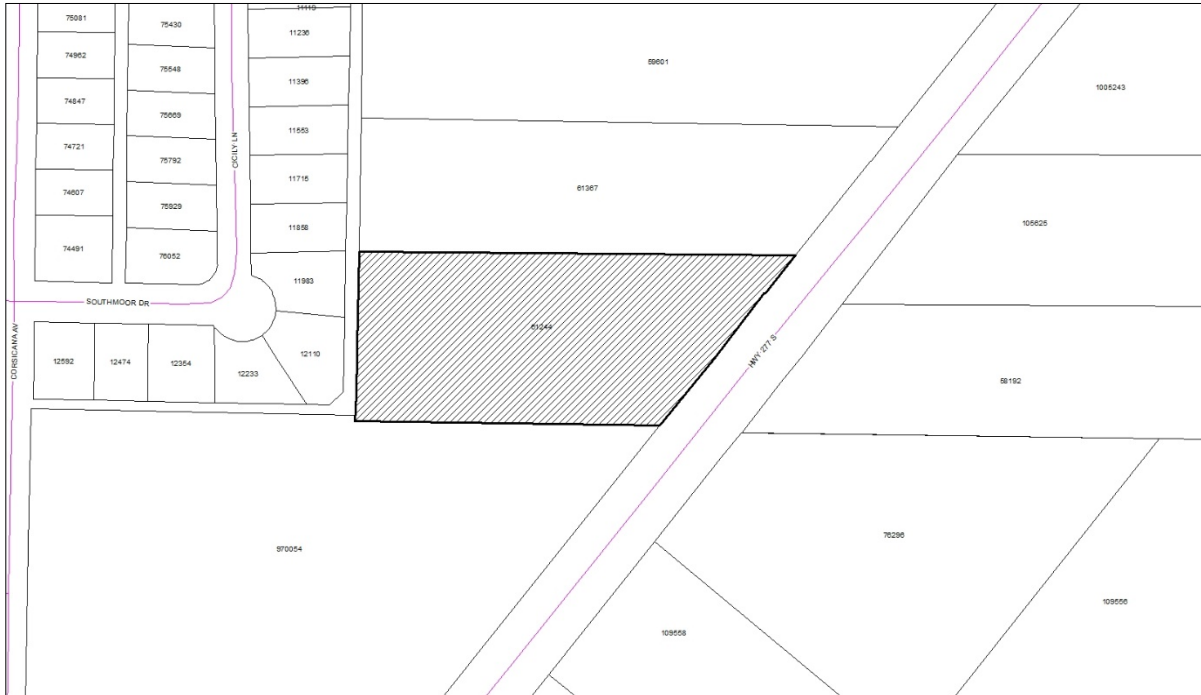
THENCE S38°37'02"W with the West line of said U.S. Highway 277 South, 313.85' to a found ¾" metal pipe at the Southeast corner of said Tract Sixteen for the Southeast corner of this tract, whence a found aluminum monument on the West line of said U.S. Highway 277 South at the Northeast corner of Lot 101, Block D, The Medical Plaza Subdivision, Plat Cabinet 3, Slide 674, Plat Records, Taylor County, Texas bears S38°38'30"W 5.31' and from said ¾ metal pipe another aluminum monument on the West line of said U.S. Highway 277 South at the Southeast corner of said lot 1 bears S38°38'30"W 909.40';

THENCE North 89°24'46"W 462.02' to a found 2" metal pipe on the East line of a 20' alley, Plat Cabinet 2, Slide 275-A, Plat Records at the Southwest corner of said Tract Sixteen for the Southwest corner of this tract, whence a found aluminum monument at the Northwest corner of said lot 101 bears N88°52'25"W 481.80';

THENCE N00°49'19"E with the East line of said 20' alley 246.91' to a found 1" metal pipe at the Northwest corner of said Tract Sixteen and the Southwest corner of said Block A, Fulcher Addition, whence a found 1" metal pipe at the Northwest corner of said Block A bears N01°15'52"E 194.60';

THENCE S89°26'24"E 654.36' to the point of beginning containing 3.166 acres of land

location: 5308 Hwy 277 S.



-END-

ZONING CASE Z-2022-06

STAFF REPORT



Scheduled Hearings

Planning & Zoning Commission: March 1, 2022

City Council 1st Reading: March 24, 2022

City Council 2nd Reading: April 14, 2022

Applicant

Owner: FL20 Inc.

Agent: Andrea & Aaron Robison

Request

Rezone 1.59 acres from Agricultural Open (AO) to General Commercial (GC) District.

Location

5308 Hwy 277 S.

Legal Description: 3.21 acres in Tract 8 of the Joseph Beck Survey Number 42, Abilene, Taylor County, Texas.

Background

The subject property has remained vacant since being annexed into the City limits of Abilene in 1959. The property has been located within an Agricultural Open (AO) Zoning district since at least 1974. The owner of the property has a prospective purchaser who would now like to utilize this property for a private recording studio. According to information provided with the application for a zone change, this private recording studio will be utilized for recording music, live band practice, and podcasts. These uses are categorized as being a "Broadcast Studio" in Abilene's Land Development Code. Broadcast Studios are not permitted within the property's current Agricultural Open (AO) Zoning Classification but would be allowed within General Commercial (GC) zoning.

Zoning and Existing Land Use

Current zoning and existing land use of properties adjacent to and in the subject property's immediate area are illustrated on the map included in this report. As indicated on the map, adjacent zoning consists of General Commercial (GC) north of the subject property which is presently occupied by an event center. To the west are single-family residential homes located within Residential Single Family (RS-6) zoning. South of the subject property is vacant land located within Planned Development District 76 (PDD 76), this portion of the PD 76 is reserved for a variety of commercial activities. The property east of the subject property across HWY 277 S is presently vacant and located within an Agricultural Open (AO) zoning district.

Criteria Assessment

Section 1.4.1.4 of the Land Development Code states that, in making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council may consider the following factors:

(1) Whether the proposed zoning map amendment implements the policies of the adopted Comprehensive Plan, including the land use classification of the property on the Future Land use and Development Plan Map, as amended;

It is the opinion of the staff that the proposed zoning map amendment will serve to implement the goals, objectives, and policies of the Comprehensive Plan. Although the Future Land Use and Development Plan Map identifies the subject property to be low-density residential; neighboring properties north and south of the subject property have long been zoned for and occupied by commercial uses. General Commercial (GC) zoning on this subject property would promote the objective of the comprehensive plan by creating a mixture of integrated residential and non-residential land uses. According to the Comprehensive Plan, creating a mixture of mutually supportive land uses provides an interesting dynamic urban environment. Furthermore, the Comprehensive Plan states that vibrant neighborhoods contain a variety of housing opportunities and should provide access to essential uses and services that meet the daily needs of local residents. Rezoning this property to commercial provides an opportunity for such uses to exist in close proximity to nearby residences.

(2) Whether the uses permitted by the proposed change in zoning classification and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified.

It is the opinion of the staff that the uses permitted by the proposed zone change are consistent with the surrounding properties in the immediate vicinity. The commercial uses that would be permitted by this zone change will serve as a transitional land use between the major arterial street (Hwy 277 S) and the existing single-family residences immediately west of the subject property. In addition to this, during the development of this commercial site a type "B" land use buffer will be required along the western property boundary between the aforementioned single-family residences and the commercial land use. This land-use buffer is an effort to mitigate nuisances created by commercial uses in close proximity to residences. Lastly, the subject property adjoins the right-of-way of a major arterial street, traditional planning considers locations along such roadways to be appropriate for commercial uses due to the high volume of traffic that they accommodate. This large volume of traffic provides the exposure and accessibility often considered necessary for commercial business success.

(3) Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area.

The subject property currently has access to a major arterial street which is presently 62-feet-wide. Roadways such as this are routinely considered acceptable for carrying high volumes of traffic that may be generated by commercial activity. Additionally, the subject property has direct access to an improved alley that embraces a 12" water main and 10" sewer main. These existing utilities and public amenities would appear adequate for the proposed uses. This request presents no apparent conflicts with existing or proposed plans for community facilities and related infrastructure.

(4) Any other factors, which will substantially affect the public health, safety, morals, or general welfare.

It is the opinion of staff that no other factors are present that would substantially affect the public health, safety, morals, or general welfare.

Staff Recommendation

City staff recommends approval.

Notification

Pursuant to Section 1.2.2.2 of the Land Development Code, staff mailed personal notices on February 18, 2022 (via certified mail) to the applicant and other property owners within a 200-foot radius of the subject property. These property owners and associated property identification numbers are identified in Table 1.

TABLE

Owner	Property ID	Situs	Response
B SENTER PROPERTIES LTD &	59601	5226 HWY 277 S	
B SENTER PROPERTIES LTD &	61367	5250 HWY 277 S	Y
BHUJEL MOM LAL	11715	2341 CICILY LN	
CUNNINGHAM LORAN B	12233	5301 SOUTHMOOR DR	
FERGUSON RONALD M &	12110	2365 CICILY LN	
FL20 INC	61244	5308 HWY 277 S	
MARSH GREG	11553	2333 CICILY LN	
PATEL SUNIL S	76296		
RUSHMORE INVESTMENT LLC	109558	5401 HWY 277 S	
SUGAR AGUA #1 LTD	105625	5301 HWY 277 S	Y
SUGAR AGUA #1 LTD	58192	5309 HWY 277 S	Y
TAYLOR GLENN F JR &	11983	2357 CICILY LN	
THOMPSON GERALD D &	11858	2349 CICILY LN	
WHITNEY ENTERPRISE LLC	970054	5302 HEALTH CENTER DR	

Attachments

Application

PowerPoint Presentation

LOCATION MAP



ZONING MAP

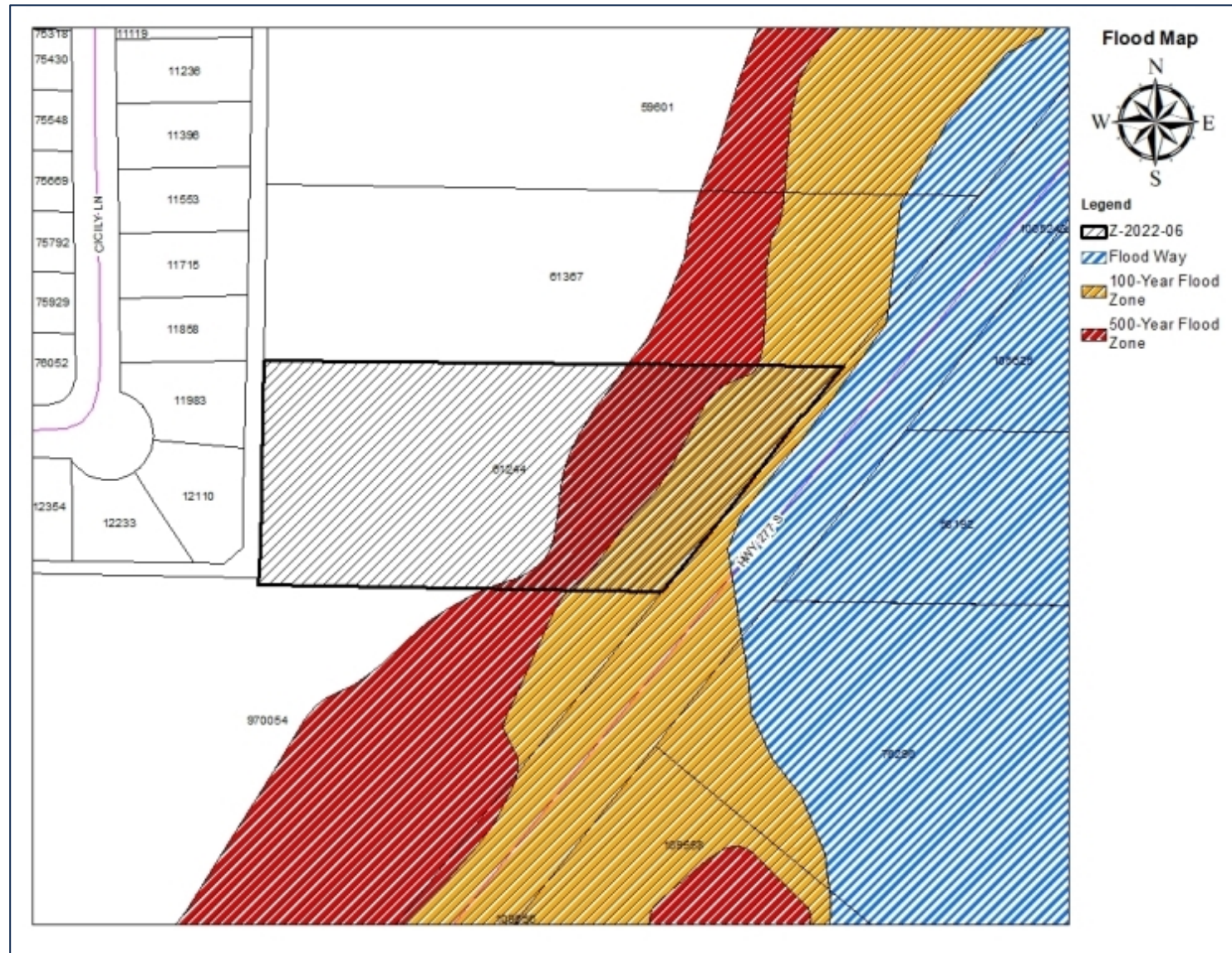


Case:	Z-2022-06
Owner:	F120 Inc.
Agent:	Andrea & Aaron Robison
Request:	Rezone from Agricultural Open (AO) to a General Commercial (GC) District
Location:	5308 Hwy 277 S.
Notification:	3 in Favor, 0 Opposed
Planning & Zoning:	March 1, 2022
City Council Hearings:	1 st : March 24, 2022 2 nd : April 14, 2022





Z-2022-06 FLOOD MAP



Permitted Uses in AO Zoning

RESIDENTIAL USES:

- C Bed & Breakfast
- P Dwelling– Industrialized Housing Unit
- P Dwelling – Single-Family Detached
- C Vacation Travel Trailer Park

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P Animal Lot
- P/C Day Care Operation – Home-Based*
- P Dwelling – Accessory*
- TP Field Office or Construction Office (temporary)*
- P Freight Container*
- P Garage Sale
- P Home Occupation
- C Mobile Home (permanent security residence)
- C Mobile Home (temporary security residence)
- TP Subdivision Sales Office (temporary)
- P Swimming Pool, Private (accessory to residential use)
- P Tennis Court, Private (accessory to residential use)
- P/SE Wind Energy Conversion Systems*

CULTURAL AND RECREATIONAL USES:

- p Civic, Social, and Fraternal Organization
- P Fairgrounds/Rodeo
- C Motorized Racing
- C Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Zoo

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Community Home
- C Correction, Detention, or Penal Facilities
- P Fire/Police Station
- C Military and Armed Forces Reserve Center
- C Sanitary Landfill

EDUCATIONAL AND RELIGIOUS USES:

- C Cemetery, Crematorium, and Mausoleum
- P Church or Place of Worship
- P School: Public/Private

SERVICE

- C Kennel (with outdoor pens)
- P Kennel (without outdoor pens)
- P Veterinary Service (all size animals)

TRADE – RETAIL USES

- C Liquor Store (on premises consumption) (Defined under Liquor Store)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Airport, Heliport and Flying Field Terminals – Commercial
- C Antenna Tower – Commercial
- P Public Utility Facility
- C Utility Generation, Production, Treatment

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Farming, Ranching & Livestock, Hatchery
- C Mining
- C Petroleum or Gas Well
- P Urban Garden

LEGEND

P
C
TP

Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)
Permitted as a Conditional Use Permit, Requiring Approval by City Council
Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

Permitted Uses in GC Zoning

RESIDENTIAL USES:

- P Hotel/Motel
- C Vacation Travel Trailer Park

ACCESSORY AND INCIDENTAL USES:

- P Accessory Structure (Also see Division 4 of this article)
- P Antenna, Non-Commercial/Amateur
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Drive-Thru Facility
- TP Field Office or Construction Office (temporary)
- C Freight Container
- P Fuel Sales
- TP Itinerant Business
- P Manufacturing (incidental)
- C Mobile Home (permanent security residence)
- TP Mobile Home (temporary security residence)
- C Mobile Home or Temporary Building (office for sales and service)
- P Recycling Collection Point
- C Travel Trailers (accessory to hospitals)
- P/SE Wind Energy Conversion Systems

CULTURAL AND RECREATIONAL USES:

- P Civic, Social, and Fraternal Organization
- P Cultural Facilities
- P Drive-in Theater
- P Recreation – Outdoors (active)
- P Recreation – Outdoors (passive)
- P Recreation and Commercial Entertainment – Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

- P Ambulance Service
- P Fire/Police Station
- C Homeless/Emergency Shelter
- P Hospital
- P Medical/Dental Laboratory
- P Post Office
- C Rehabilitation Facility
- P Social Service Facility

EDUCATIONAL AND RELIGIOUS USES:

- P Arts School
- C Cemetery, Crematorium, and Mausoleum
- P Church or Place of Worship
- P Day-Care Operation - Center-Based
- P Educational and Scientific Research
- P School: Public/Private
- P Trade/Business School
- P University/College

SERVICE

- P/C Automobile Wash
- C Contractor Services
- P Funeral Home/ Mortuary/Morgue
- C Kennel (With Outdoor Pens)
- P Kennel (Without Outdoor Pens)
- P Laundry, Dry Cleaning, Dyeing, and Linen Service (no retail customers)
- P Laundry/Dry Cleaning Services & Facilities
- P Office (general, professional, financial)
- P Personal Services
- P Printing, Copying, Reproduction, Publishing
- C Recycling Collection and Processing Center
- P Repair and Maintenance Services - Automobile/Small Truck (major)
- P Repair and Maintenance Services - Automobile/Small Truck (minor)
- P Repair and Maintenance Services (indoor)
- C Repair and Maintenance Services (outdoors)
- P Storage - Self-Service Units
- P Tattoo Parlor
- P Taxidermist
- P Veterinary Service (small animals)

TRADE – RETAIL USES

- C Aircraft and Accessories
- P ATM's, Self-Serve Kiosks, and Similar Facilities
- P Fuel Sales
- P Liquor Store (Off Premises Consumption) (*Defined under Liquor Store*)
- P Liquor Store (On Premises Consumption) (*Defined under Liquor Store*)
- P Restaurant, Brew Pub
- P Restaurant, Fast Food
- P Restaurant, Standard
- P Retail Sales/Rental (automobile/small truck)
- P Retail Sales/Rental (indoor)
- P Retail Sales/Rental (outdoors, non-vehicle)
- C Retail Sales/Rental (trucks and other large vehicles and equipment)

TRADE – WHOLESALE USES

- C Wholesaling and Storage (indoor)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

- C Antenna Tower - Commercial
- P Automobile Parking Lot or Structure - Commercial
- P Broadcast Studio
- P Passenger Ground Transportation Terminal
- P Pressure Control Station
- P Public Utility Facility

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

LEGEND

- P
- C
- TP

Permitted as a Right-of-Use (may be subject to compliance with conditions described within Division 3- Requirements Applicable to Specific Land Uses of the Land Development Code)

Permitted as a Conditional Use Permit, Requiring Approval by City Council

Permitted by Temporary Permit Only, Requiring Approval by Board of Adjustment

Z-2022-06 VIEWS OF SUBJECT & ADJACENT PROPERTIES



Z-2022-06 NOTIFICATION AREA MAP



- Consistent with the *Comprehensive Plan* and *Future Land Use and Development Plan Map*
- Reviewed Pursuant to Section 1.4.1.4 of Land Development Code (Criteria for Approval)
- Staff Recommendation: Approval
- P&Z Recommendation: Approval

Questions?



**City Council
Agenda Memo**

City Council Meeting Date: 4/14/2022

TO: Honorable Mayor and City Council Members

FROM: Stanley Smith, City Attorney

SUBJECT: 22. The City Council of the City of Abilene reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by the noted Texas Government Code Sections:

GENERAL INFORMATION

The City Council of the City of Abilene reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed below, as authorized by the noted Texas Government Code Sections:

A. 551.071 (Consultation with Attorney)

1. Robert Steven Reitz v. City of Abilene, Texas, et al., Case No. 1:16-cv-00181-BL; In the U.S. District Court, Northern District of Texas, Abilene Division, filed October 10, 2016
2. City of Abilene v. 3118 South 22nd Street, Abilene, Texas, et al.; Cause No. 11968-D, In the 350th Judicial District Court, Taylor County, Texas; filed October 11, 2019
3. Chandler Brooks v. Taylor County, et al.; Civil Action No. 1:20-cv-00049, In the United States District Court, Northern District of Texas, Abilene Division; filed March 5, 2020
4. John Doe v. Robert Hanna, Individually and as City Manager; Cause No. 28078-B; In the 104th Judicial District Court, Taylor County, Texas; filed July 7, 2020
5. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-004598, In the 53rd Judicial District Court, Travis County, Texas; filed September 1, 2020
6. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
7. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-20-007028, In the 459th Judicial District Court, Travis County, Texas; filed November 18, 2020
8. Natasha Jones v. City of Abilene, Texas; EEOC Charge of Discrimination, 450-2020-06446; filed September 15, 2020
9. Alton H. Smith, Jr. and Alicia Malorie Smith v. City of Abilene, Texas; Cause No. 51055-A, In the 42nd Judicial District Court, Taylor County, Texas; filed March 11, 2021
10. Steve Van Horne, et al. v. City of Abilene, et al.; Cause No. 12530-D, In the 350th Judicial District Court, Taylor County, Texas; filed September 7, 2021
11. Cockrell Investment Partners, L.P. v. Middle Pecos Groundwater Conservation District, et al.; Cause No.

P827783CV, in the 83rd Judicial District Court, Pecos County, Texas; filed September 11, 2020

12. The City of Abilene, Texas v. Ken Paxton, Attorney General of Texas; Cause No. D-1-GN-21-006299, In the 250th Judicial District Court, Travis County, Texas; filed October 20, 2021

13. James Easley v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed September 22, 2021

14. Samuel Hightower v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed December 28, 2021

15. Zach Williams v. City of Abilene, Appeal of Temporary Suspension to Hearing Examiner, filed December 28, 2021

16. Governor's Executive Orders COVID-19

B. 551.072 (Deliberations about Real Property)

1. 610 ES 11th & S 7th (McPhail Property)

C. 551.073 (Deliberations about Gifts and Donations)

D. 551.074 (Personnel Matters)

1. City Council may consider appointment, employment, compensation, reassignment, duties, discipline, or dismissal of public officers or employees, City Manager, City Attorney, Municipal Court Judge, City Secretary, and City Board and Commission Members
2. City of Abilene Boards and Commissions may be discussed, as needed for (re)appointment

E. 551.076 (Deliberations about Security Devices)

F.551.087 (Business Prospect/Economic Development)

1. Trail Ridge Subdivision

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None