



City of Abilene City Council Agenda

Shane Price, Mayor Pro-tem
Lynn Beard, Deputy Mayor Pro-tem
Blaise Regan, Council Member
Robert Hanna, City Manager

Weldon Hurt, Mayor

Brian Yates, Council Member
Kyle McAlister, 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 December 21, 2023, at 8:30 a.m., at City Hall, 555 Walnut Street, Council Chambers, 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 Kyle McAlister

PLEDGE TO THE UNITED STATES FLAG AND THE TEXAS FLAG

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS AND ANNOUNCEMENTS

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.

2. **Minutes:** Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on December 7, 2023 (**Shawna Atkinson**)
3. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving Change Order No. 2 to the Contract with ACE Pipe Cleaning Inc. for the Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining of Certain Sewer Main Sections (**Rodney Taylor**)
4. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving the Contract with ACE Pipe Cleaning, Inc. for the I-20 & Loop 322 Sewer Line Replacement (**Rodney Taylor**)
5. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Approving Changer Order No. 1 to the Contract with Western Municipal Construction of Texas, LLC for the Possum Kingdom Drought Response Improvement RO Concentrate Pipeline Phase I (**Rodney Taylor**)
6. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Adoption of a Resolution Expressing Official Intent to Reimburse Costs of Projects for Zoo and Recreation Center Improvements (**Mike Rains**)
7. **Resolution:** Receive a Report, Hold a Discussion, and Take Action to Approve the Award of Contracts for City Fuel Products to All Vendors Responding to the CB-2413 Fuel Products Bid (**Don Green**)
8. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Awarding Annual Street Services Division Materials to Ingram Concrete LLC, Bid #CB-2412 (**Max Johnson**)
9. **Resolution:** Receive a Report, Hold a Discussion and Take Action on Awarding Bid #CB-2415 S. 7th & Willis Concrete Intersection Project to Bontke Brothers Construction Co, Inc. (**Max Johnson**)
10. **Resolution:** Receive a Report, Hold a Discussion, and Take Action to Approve an Agreement with Enterprise Training Solutions, Inc. to provide a Learning Management System (**Pamela Williams**)
11. **Resolution:** Receive a Report, Hold a Discussion and Take Action to Approve an Agreement with GroupOne Services, Inc. to Provide Background Screening Services (**Pamela Williams**)
12. **Resolution:** Receive a Report, Hold a Discussion and Take Action to Approve and Agreement with Arthur J. Gallagher Risk Management Services, LLC to Provide Cyber Liability Insurance (**Pamela Williams**)
13. **Resolution:** Receive a Report, Hold a Discussion and Take Action to Approve an Agreement with Voya Financial, a Part of Reliastar Insurance Company, to Provide Stop Loss Insurance (**Pamela Williams**)
14. **Ordinance (First Reading) Z-2023-37:** Receive a Report, Hold a Discussion, and Take Action on A Request From Cosper Properties LLC, Represented By Jacob Martin, To Change The Zoning Of Approximately 2.2 Acres From Agricultural Open To General Retail. Located At 3509 Beltway, Abilene, TX 79606. (**Tim Littlejohn**)
15. **Ordinance (First Reading) Z-2023-40:** Receive a Report, Hold a Discussion, and Take Action on A Request From PB 6950, LLC, Represented By Jacob Martin, To Change The Zoning Of Approximately 11.14 Acres From Agricultural Open To General Commercial. Located At 7542x S Clack St, Abilene, TX 79606 (**Tim Littlejohn**)
16. **Ordinance (First Reading) CUP-2023-07:** Receive a Report, Hold a Discussion, and Take Action on A Request From Charles A. Doby Represented By Shawn Garrett, To Apply A Conditional Use Permit To Approximately 2.67 Acres To Allow For A Trade School Within General Retail (GR) Zoning. Located At 2449 South Willis Street, Suite 204. (**Tim Littlejohn**)

REGULAR AGENDA - ORDINANCES AND PUBLIC HEARINGS - RESOLUTIONS

17. **Ordinance (Final Reading):** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving an Ordinance Establishing the 2024 Standards of Care **(Lesli Andrews)**
18. **Ordinance (Final Reading):** Receive a Report, Hold a Discussion and Public Hearing, and Take Action regarding recommendations from the Sanctuary City for the Unborn Ordinance Amendment Committee, to Amend Chapter 20, "Offenses," Article VIII, "Abortion," Section 20-86, "Definitions," and Section 20-87, "Abortion Prohibited," Code of Ordinances **(Stanley Smith)**

EXECUTIVE SESSION

19. **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. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
4. 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
5. 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
6. 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
7. 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
8. Richard Scheriger, et al. v. City of Abilene; Cause No. CV33253, In the 90th Judicial District Court, Stephens County, Texas, filed April 21, 2023
9. The Woodlands Pride, Inc., et al. v. Angela Colmenero, Interim Attorney General of Texas, et al., Case No. 4:23-cv-02847, In the United States District Court, Southern District of Texas, Houston Division, filed August 2, 2023
10. City of Abilene, Texas v. 3W Brands, LLC; Cause No. 7820, In the County Court at Law #2, Taylor County, Texas; filed August 11, 2023
11. Abilene Apartments, LLC v. City of Abilene, Texas; Cause No. 51762-A, In the 42nd Judicial District Court, Taylor County, Texas; filed October 26, 2023
12. PFAS Litigation

B. 551.072 (Deliberations about Real 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)

RECONVENE

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 15th day of December, 2023, at 11:20 a.m.

Shawna Atkinson, TRMC, CMC
City Secretary



**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Honorable Mayor & Members of City Council

FROM: Shawna Atkinson, City Secretary

SUBJECT: 2. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on December 7, 2023
(*Shawna Atkinson*)

GENERAL INFORMATION

Approval of the Minutes from the Regular Meeting Held on December 7, 2023

SPECIAL CONSIDERATIONS

None.

FUNDING/FISCAL IMPACT

None

STAFF RECOMMENDATION

Approval of the Minutes

BOARD OR COMMISSION RECOMMENDATION

N/A

ATTACHMENTS:

1. 12-07-2023 Minutes - Regular - Morning

**CITY COUNCIL MEETING
December 7, 2023 at 8:30 a.m.**

**CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
COUNCIL CHAMBERS, CITY HALL**

The City Council of the City of Abilene, Texas met in Regular Session on December 7, 2023, at 8:30 a.m. in the Council Chambers, 555 Walnut St. Mayor Weldon Hurt was present and presiding, along with Mayor Pro-tem Shane Price, Deputy Mayor Pro-tem Lynn Beard, and Councilmembers Blaise Regan, Brian Yates, Kyle McAlister, and Travis Craver. Also present were City Manager Robert Hanna, City Attorney Stanley Smith, and City Secretary Shawna Atkinson.

Councilmember Travis Craver delivered the invocation.

Derek Cano, 3rd Grader at Martinez Elementary, led the Pledge of Allegiance to the Flag of the United States of America and State of Texas Flag.

PRESENTATIONS, RECOGNITIONS, PROCLAMATIONS, ANNOUNCEMENTS

- Service Awards:
 - Lesli Andrews – 20 Years – Parks and Recreation
 - Leonardo “Leon” Herrera – 20 Years – Fire Department
- Recognition:
 - Michael Flores was recognized for winning the Texas Recreation and Parks Society 2023 West Region Parks Professional of the Year
 - Dr. John Kelley presented the Abilene Veterans’ Cemetery with an award for a 99.03% customer satisfaction rate

PRESENTATION OF CONSENT AGENDA

The Consent Agenda consisted of items 4-15. Item 15 was pulled for individual consideration.

Item pulled for individual consideration:

- Item 15: Councilmember Regan

PUBLIC COMMENTS

Mayor Hurt opened the public comment period. The following addressed the city council:

- Brittany Hill
- Rosten Callerman

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

CONSENT AGENDA

Mayor Pro-tem Price moved to approve the consent agenda, now consisting of items 4-14. Councilmember Regan seconded the motion. Motion carried.

AYES (7): Mayor Hurt, Mayor Pro-tem Price, Deputy Mayor Pro-tem Beard, and Councilmembers Regan, Yates, McAlister and Craver
NAYS (0): None

4. Minutes: Receive a Report, Hold a Discussion and Take Action on Approving the Minutes from the Regular Meeting Held on November 16, 2023
5. 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. 216-2023]

Board	Term End Date
<i>Abilene-Taylor County Child Advocacy Center Advisory Board</i>	
Karon Hall [Reappointment]	December 2026
Craig Shaw [Reappointment]	December 2026
Sherita Nickerson [Reappointment]	December 2026
Kari Leong [Reappointment]	December 2026
Becky Poindexter [Reappointment]	December 2026
Casey Wasson [Reappointment]	December 2026
<i>Airport Development Board</i>	
James Boone [Reappointment]	November 2026
Gray Bridwell [Reappointment]	November 2026
Steve Krazer [New]	November 2026
Lori Dodd [Reappointment]	November 2026
<i>Board of Adjustment</i>	
Melissa Sparks [Alternate] [New]	November 2025
<i>Board of Building Standards</i>	
David Beard [Regular] [Chair] [Reappointment]	November 2025
Lloyd Turner [Regular] [Reappointment]	November 2025
Jeremy McBrayer [Regular] [Reappointment]	November 2025
JD Coffee [Alternate] [Reappointment]	November 2025
David Brosig [Alternate] [Reappointment]	November 2024
<i>Civil Service Commission</i>	
Gary Bone [New]	November 2026
<i>Keep Abilene Beautiful</i>	
Johanna Partain [New]	September 2026
Allicyn Evans [New]	September 2026
<i>Landmarks Commission</i>	
Johanna Partain [New] [Alternate]	November 2024 [unexpired term]
Pebbles Lee [Reappointment]	November 2026
Josh Black [Reappointment]	November 2026
<i>Library Advisory Board</i>	
Kathryn New [New]	November 2026
<i>Neighborhood Services Advisory Board</i>	
Rachel Slaymaker [Reappointment]	November 2025
Jeff Scott [New]	November 2025
Bill Enriquez [Reappointment]	November 2025
Lauren Cantrell [Reappointment]	November 2025
Kenneth Bowles [Reappointment]	November 2025
<i>Planning and Zoning Commission</i>	
Shawnte Fleming [Reappointment]	November 2026

6. Resolution: Receive a Report, Hold a Discussion and Take Action on the purchase of one (1) 2023 Komatsu WA200-8 Wheel Loader for Water Utilities from Kirby-Smith Machinery using BuyBoard Contract # 687-22
[ASSIGNED RESOLUTION NO. 217-2023]
7. Resolution: Receive a Report, Hold a Discussion and Take Action on the purchase of one (1) 2025 Autocar ACX64 with Heil Front Load Refuse truck for Solid Waste Services from Chastang Autocar through BuyBoard Cooperative #601-19
[ASSIGNED RESOLUTION NO. 218-2023]
8. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving Change Order No.1 to the Contract with Advanced Water Well Technologies for the Repair of NEWTP High Service Pump No. 4
[ASSIGNED RESOLUTION NO. 219-2023]
9. Resolution: Receive a Report, Hold a Discussion and Take Action on Awarding the Bid to Horseshoe Construction, Inc. for the South 14th Street Water Line Replacement Project
[ASSIGNED RESOLUTION NO. 220-2023]
10. Resolution: Receive a Report, Hold a Discussion and Take Action to Approve the Purchase Of Traffic Signal Equipment from Iteris, Inc. for the S. 27th Traffic Signal Improvement Project Through BuyBoard
[ASSIGNED RESOLUTION NO. 221-2023]

11. Resolution: Receive a Report, Hold a Discussion and Take Action on a Rebuild ABI Chapter 380 Economic Development Agreement between the City of Abilene and Thornton Custom Homes for 2634 N Willis St.
[ASSIGNED RESOLUTION NO. 222-2023]
12. Resolution: Receive a Report, Hold a Discussion and Take Action on a Rebuild ABI Chapter 380 Economic Development Agreement between the City of Abilene and Thornton Custom Homes for 2633 N Willis St.
[ASSIGNED RESOLUTION NO. 223-2023]
13. Resolution: Receive a Report, Hold a Discussion and Take Action on a Rebuild ABI Chapter 380 Economic Development Agreement between the City of Abilene and Thornton Custom Homes for 2641 N Willis St.
[ASSIGNED RESOLUTION NO. 224-2023]
14. Ordinance (First Reading): Receive a Report, Hold a Discussion and Take Action, regarding recommendations from the Sanctuary City for the Unborn Ordinance Amendment Committee, to Amend Chapter 20, "Offenses," Article VIII, "Abortion," Section 20-86, "Definitions," and Section 20-87, "Abortion Prohibited," Code of Ordinances

ITEMS PULLED FOR INDIVIDUAL CONSIDERATION

15. Ordinance (First Reading): Receive a Report, Hold a Discussion and Take Action on approving an Ordinance establishing the 2024 Standards of Care and Setting a Public Hearing for December 21, 2023

Having pulled the item, Councilmember Regan wanted clarification on the proposed change of allowing someone from inside the city to complete the audit. He wanted to make sure this wouldn't create a bias.

Mayor Hurt opened the public hearing. With no speakers coming forward, the public hearing was closed.

Councilmember Regan moved to approve the item as presented. Councilmember Craver seconded the motion; motion carried.

AYES (7): Mayor Hurt, Mayor Pro-tem Price, Deputy Mayor Pro-tem Beard, and Councilmembers Regan, Yates, McAlister and Craver

NAYS (0): None

REGULAR AGENDA

16. Resolution: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Authorizing the City Manager to Enter Into an Agreement with Freese and Nichols, Inc for a Comprehensive Land Development Code Rewrite
[ASSIGNED RESOLUTION NO. 225-2023]

Robert Hanna, City Manager, presented the item. Adoption of the item would approve an agreement with Freese and Nichols, Inc. for a Comprehensive Land Development Code rewrite.

Mayor Hurt opened the public hearing. With no speakers coming forward, the public hearing was closed.

Councilmember McAlister moved to approve the item as presented. Councilmember Yates seconded the motion; motion carried.

AYES (7): Mayor Hurt, Mayor Pro-tem Price, Deputy Mayor Pro-tem Beard, and Councilmembers Regan, Yates, McAlister and Craver
NAYS (0): None

Mayor Hurt announced a change to the agenda and moved Item 19 before Item 17.

19. Ordinance (Final Reading) Z-2023-31: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on A Request From Abilene Christian University, Represented By TJC Development And McMahon Surovik Suttle, To Amend The Terms And Conditions And Concept Plan Of Planned Development District 157 To Allow Single Family Residential Uses West Of Judge Ely Boulevard, To Reduce The Setback Requirement For Single Family Residential Uses, And To Provide A New Concept Plan. Located On The West Side 2500 Block Of Judge Ely Blvd
[ASSIGNED ORDINANCE NO. 68-2023]

Mayor Pro-tem Price and Councilmember McAlister had conflicts of interest on item 19 and left the room and abstained from voting. Conflict of Interest Affidavits were filled out before the meeting and filed with the City Secretary's office.

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would amend the terms, conditions, and concept plan of Planned Development District 157 (PD-157) to allow Single Family Residential uses.

Mayor Hurt opened the public hearing. The following spoke in support of Z-2023-31:

- Mike Murray

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

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

AYES (5): Mayor Hurt, Deputy Mayor Pro-tem Beard, and Councilmembers Regan, Yates and Craver
NAYS (0): None
ABSTAIN (2): Mayor Pro-tem Price and Councilmember McAlister

Mayor Hurt recessed for a five-minute break at 9:29 a.m. and left the meeting. Mayor Pro-tem Price presided over the remainder of the meeting.

17. Ordinance (Final Reading) HOZ-2023-02: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on A Request From Robert Hoemke To Apply Historic Overlay Zoning To Approximately 0.44 Acres Zoned Central Business (CB). Located At 1201 South 1st Street
[ASSIGNED ORDINANCE NO. 66-2023]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would apply Historic Overlay to the above referenced property.

Mayor Pro-tem Price opened the public hearing. With no speakers coming forward, the public hearing was closed.

Councilmember Regan moved to approve the item as presented. Councilmember Craver seconded the motion; motion carried.

AYES (6): Mayor Pro-tem Price, Deputy Mayor Pro-tem Beard, and Councilmembers Regan, Yates, McAlister and Craver
NAYS (0): None
ABSENT (1): Mayor Hurt

18. Ordinance (Final Reading) HOZ-2023-03: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on A Request From Matthew Meador To Apply Historic Overlay Zoning To Approximately 0.69 Acres Zoned Medium Density (MD). Located At 1941 North 3rd Street
[ASSIGNED ORDINANCE NO. 67-2023]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would apply Historic Overlay to the above referenced property.

Mayor Pro-tem Price opened the public hearing. The following spoke in support of HOZ-2023-03:

- Carrie Bloshkin

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

Councilmember Craver moved to approve the item as presented. Councilmember Regan seconded the motion; motion carried.

AYES (6): Mayor Pro-tem Price, Deputy Mayor Pro-tem Beard, and Councilmembers Regan, Yates, McAlister and Craver
NAYS (0): None
ABSENT (1): Mayor Hurt

20. Ordinance (Final Reading) Z-2023-35: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on A Request From Hoemke Property LLC Represented By Seth Merritt, To Change The Zoning Of Approximately 0.33 Acres From Heavy Industrial To Light Industrial. Located At 409 S Treadaway Blvd.
[ASSIGNED ORDINANCE NO. 69-2023]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced property from Heavy Industrial (HI) to Light Industrial (LI).

Mayor Pro-tem Price opened the public hearing. With no speakers coming forward, the public hearing was closed.

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

AYES (6): Mayor Pro-tem Price, Deputy Mayor Pro-tem Beard, and Councilmembers Regan, Yates, McAlister and Craver
NAYS (0): None
ABSENT (1): Mayor Hurt

21. Ordinance (Final Reading) Z-2023-38: Receive a Report, Hold a Discussion and Public Hearing, and Take Action on A Request From Nathan Hathorn, Represented By Jacob & Martin, To Change The Zoning Of

Approximately 12.97 Acres From Agricultural Open And General Commercial To General Commercial.
Located at 1209 Spur 707

[ASSIGNED ORDINANCE NO. 70-2023]

Tim Littlejohn, Director of Planning & Development Services, presented the item. Adoption of the item would rezone the above referenced property from Agricultural Open Space (AO) and General Commercial (GC) to General Commercial (GC).

Mayor Pro-tem Price opened the public hearing. The following spoke in support of Z-2023-38:

- Tal Filingim

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

Councilmember Craver moved to approve the item as presented. Councilmember Yates seconded the motion; motion carried.

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

NAYS (0): None

ABSENT (1): Mayor Hurt

EXECUTIVE SESSION

Mayor Pro-tem Price recessed into Executive Session at 9:48 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:

22. A. 551.071 (Consultation with Attorney)
 1. City of Abilene, Texas v. 3W Brands, LLC; cause No 7820
22. F.551.087 (Business Prospects/Economic Development)
 1. 718 Mulberry Development
 2. Old Abilene Reporter News Building Site

The Executive Session ended at 10:35 a.m. and reconvened to Open Session. Mayor Pro-tem Price reported no votes or action were taken in Executive Session.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:35 a.m.

Shawna Atkinson
City Secretary

Weldon Hurt
Mayor

Minutes approved on: _____



**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 3. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving Change Order No. 2 to the Contract with ACE Pipe Cleaning Inc. for the Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining of Certain Sewer Main Sections (*Rodney Taylor*)

GENERAL INFORMATION

Staff Recommends that the Abilene City Council approve Change Order No. 2 to the Contract with Ace Pipe Cleaning, Inc. for the Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining of Certain Sewer Main Sections. The Change Order No. 2 provides for the deletion of tasks and associated cost of \$75,543.25 approved under Change Order No. 1 for the pipe bursting and insertion of a new 12inch HDPE pipe. Additional work to accomplish a successful project will be presented under a new construction contract that is not a part of the original contracts and is not a part of this Change Order No. 2.

SPECIAL CONSIDERATIONS

On May 25, 2023 the Abilene City Council approved the contract with Ace Pipe Cleaning for the Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining of Certain Sewer Main Sections. The work is for restoring pipe wall integrity and flow capacity to each of the 24inch sewer main crossing under north Highway 277, the 12inch sewer main crossing under east Interstate 20, and the 8inch sewer main crossing under the Union Pacific Railroad in east Abilene. Initial cleaning efforts on the 12inch sewer main revealed a mostly deteriorated section of piping that is not suitable for CIPP insertion. The initial efforts for heavy cleaning and CIPP insertion lining on the 12inch sewer were not successful.

On July 27, 2023 the Abilene City Council approved Change Order No. 1 to substitute pipe bursting and HDPE pipe insertion in place of the original CIPP insertion for the 12inch sewer main. Due to complications beyond the control of ACE and the City, the pipe bursting installation did not result in an acceptable finished product. Change Order No. 2 removes from

the contract the work described under Change Order No. 1. Abilene has since hired Jacob and Martin, LLC to provide engineering services including easement acquisition, TxDOT permit, and the preparation of plans and specifications for installing a new parallel bore, 18inch steel casing, and 12inch HDPE piping in order to achieve an acceptable gravity sewer repair under Interstate 20. That work will be performed under a separate contract with ACE Pipe Cleaning.

FUNDING/FISCAL IMPACT

The Change Order No. 2 will remove \$75,543.25 from the current contract value.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council approve Change Order No. 2 to the contract with ACE Pipe Cleaning, Inc. for the Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining of Certain Sewer Main Sections resulting in the deletion from the contract of the work approved under Change Order No. 1 in the amount of \$75,543.25, and returning the contract value to the original contract price of \$442,247.10.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-Approve CO No 2-Ace Pipe Cleaning-Delete Pipe Bursting 12inch-PCA-12-7-2023
2. Change Order No 2-Ace Pipe Cleaning-Remove tasks of Change Order No 1 from contract-7-27-2023
3. Presentation-Authorize CO No 2-Ace Pipe Cleaning-Remove Pipe Bursting and HDPE pipe-PCA-12-7-2023

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING CHANGE ORDER NO. 2 TO THE CONTRACT WITH ACE PIPE CLEANING, INC. FOR THE HEAVY CLEANING, CCTV INSPECTION, AND CIPP INSERTION LINING OF CERTAIN SEWER MAIN SECTIONS.

WHEREAS, On May 25, 2023 the Abilene City Council approved a contract with Ace Pipe Cleaning, Inc., for the Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining of Certain Sewer Main Sections; and

WHEREAS, during initial efforts at heavy cleaning of the section of 12inch cast iron sewer main crossing under Interstate 20 it was determined that the existing pipe had failed and therefore the planned CIPP insertion of the pipe cannot be successfully accomplished; and

WHEREAS, On July 27, 2023 the Abilene City Council approved change order No. 1 to the contract for the deletion of heavy cleaning and CIPP insertion and the addition of pipe bursting and installation of 12inch HDPE pipe; and

WHEREAS, due to complications beyond the control of ACE and the City, the pipe bursting installation did not result in an acceptable finished product, and the City hired Jacob and Martin, LLC to evaluate the situation and provide an engineered solution, and the engineer recommends a new contract for installing a new encased parallel bore and 12inch HDPE pipe; and

WHEREAS, City staff recommends that the Abilene City Council approve Change Order No. 2 to delete from the contract the Change Order No. 1 pipe bursting and insertion of 12inch HDPE pipe and the associated cost of \$75,543.25 resulting in a contract price of \$442,247.10; and

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

That the City Manager is authorized to execute Change Order No. 2 to the contract with Ace Pipe Cleaning, Inc. for the Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining of Certain Sewer Main Sections to delete the pipe bursting and HDPE pipe insertion and associated cost of \$75,543.25 from the contract resulting in a contract price of \$442,247.10.

ADOPTED this 21st day of December, 2023.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley E. Smith, City Attorney

CHANGE ORDER
CITY OF ABILENE
CHANGE ORDER NUMBER: 02

1. **CONTRACTOR:** ACE Pipe Cleaning.

2. **Change Order Work Limits:**

Sta. N/A to Sta. N/A

3. **Type of Change:** Minor
(Major/Minor)

Project: 2023 12" Sewer Under I-20
Pipe Bursting

Street:

Contract Number:

4. **Reasons:** Request for reduction in SCOPE and contract price.

5. **Describe the work being revised:** The contractor was not able to complete pipe bursting and trenchless rehabilitation for 385FT to the City's satisfaction. This task will be removed from the current service contract.

6. New or revised plan sheet(s), sketch(es), and estimates are attached.

Each signatory hereby warrants that each has the authority to execute this Change Order (CO).

The contractor must sign the Change Order and, by doing so, agrees to waive any and all claims for additional compensation due. THE CONTRACTOR Date: 11/28/23 (Signature) <u>Bruce Vantine</u> Typed/Printed Name: Bruce Vantine Typed/Printed Title: Secretary/Treasurer	<i>The following information must be provided:</i> Change in contract time: N/A Original contract price: \$442,247.10 Existing contract price: \$515,790.35* Amount added or subtracted by this CO: (\$73,543.25) Revised Contract Price: \$442,247.10 * Includes previous COs
---	--

RECOMMENDED FOR EXECUTION:

DocuSigned by:
Scott Chandler
35D0C11EF73E49B...
City Engineer

12/11/2023 | 5:08 PM CST

Date

Director

Date

Approve Change Order No. 2 to the Contract with
Ace Pipe Cleaning, Inc. for the
Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining
of Certain Sewer Main Sections





Change Order No. 2

- Approve Change Order No. 2 to the contract with Ace Pipe Cleaning, Inc. for the Heavy Cleaning CCTV Inspection, and CIPP Insertion Lining of Certain Sewer Main Sections
- Delete Pipe Bursting and insertion of 12inch HDPE pipe of existing 12inch pipe section crossing under Interstate 20.
- Change Order No. 1 added \$75,543.25 increasing contract value to \$515,790.35.
- Change Order No. 2 deletes \$75,543.25 decreasing contract value to \$442,247.10.
- The Original contract and Change Order No. 1 are acquired through Purchasing Cooperative of America at contract pricing in compliance with Texas Local Government Code Chapter 271.





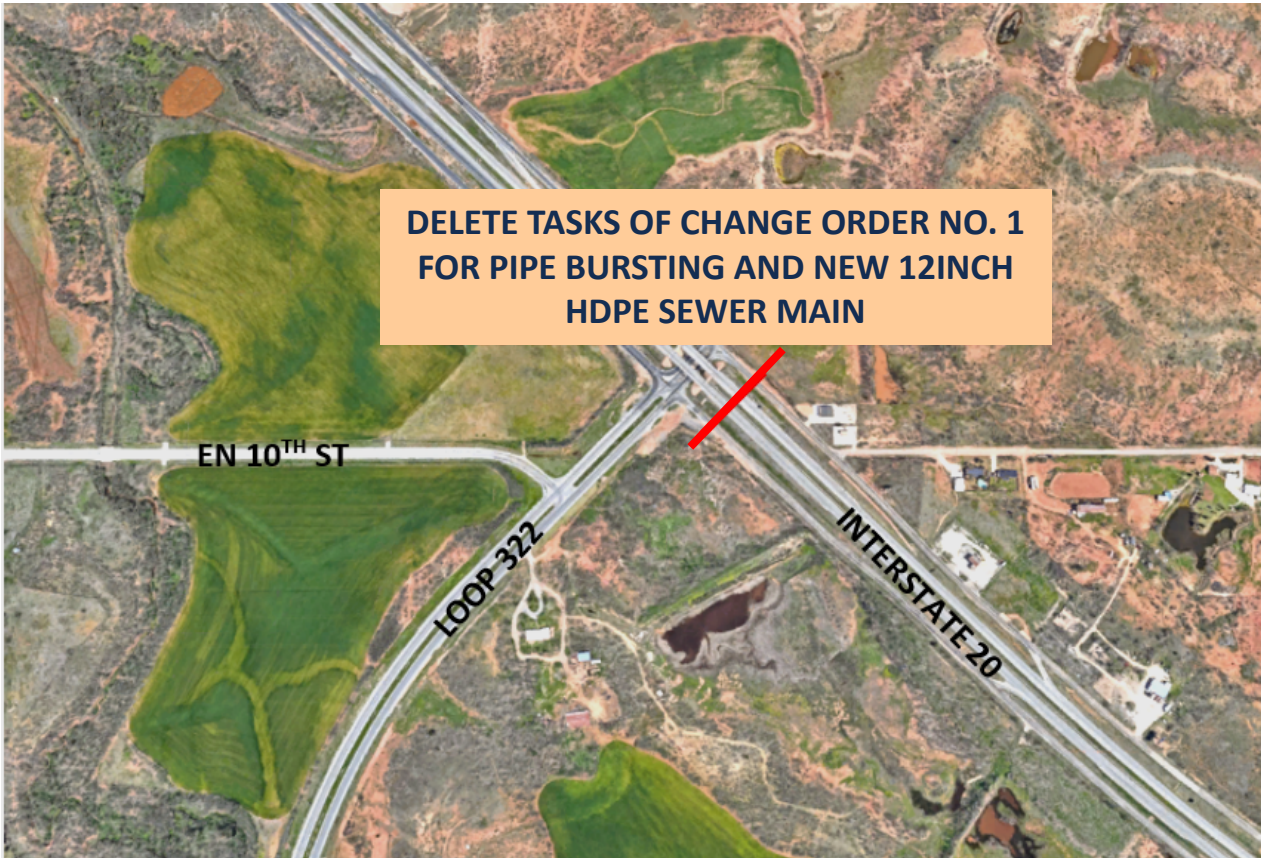
Change Order No. 2

- Initial Heavy Cleaning of 12inch pipe crossing under Interstate 20 revealed that the existing pipe was mostly collapsed and deteriorated and could not be lined using CIPP insertion.
- Change Order No. 1 provided for adding Pipe Bursting and HDPE pipe insertion in place of CIPP lining of that section of sewer main.
- Due to complications beyond the control of ACE and the City, the pipe bursting installation did not result in an acceptable finished product.
- The City hired Jacob and Martin, LLC to evaluate the situation and provide an engineered solution, and the engineer recommends a new contract for installing a new parallel bore, 18inch steel casing, and 12inch HDPE sewer main to restore the gravity flow capacity of the original installation.





Change Order No. 2



12 INCH CAST IRON SEWER MAIN CROSSING UNDER INTERSTATE 20

*DELETE TASKS OF CHANGE ORDER NO 1
FOR PIPE BURSTING AND INSTALLATION OF
A 12INCH HDPE SEWER MAIN TO RESTORE
ORIGINAL DESIGN CAPACITY*



Approve Change Order No. 2 to the Contract with
Ace Pipe Cleaning, Inc. for the
Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining
of Certain Sewer Main Sections

Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: 4. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving the Contract with ACE Pipe Cleaning, Inc. for the I-20 & Loop 322 Sewer Line Replacement (Rodney Taylor)

GENERAL INFORMATION

Water Utilities staff recommends that the Abilene City Council approve a contract with Ace Pipe Cleaning Inc. (Ace) for the I-20 & Loop 322 Sewer Line Replacement Project in the amount of \$419,216.24. Ace is able to offer the installation of a bore and encased sewer main through Purchasing Cooperative of America (PCA OD-307-20) at contract pricing in compliance with Texas Local Government Code Chapter 271. The contract provides for the construction of a new parallel bore, 18inch casing pipe, and 12inch HDPE sewer main under Interstate Highway 20 in northeast Abilene in order to restore gravity sewer flow at the original design capacity. This work is the result of failed attempts to first provide heavy cleaning and CIPP insertion lining as described in the original contract with ACE, and then to utilize pipe bursting technology to pull in a new section of HDPE pipe in the original piping alignment as approved through Change Order No. 1. Due to unforeseeable conditions, the contractor is not able to successfully complete the above-described tasks.

SPECIAL CONSIDERATIONS

On May 25, 2023 the Abilene City Council approved the contract with Ace Pipe Cleaning for the Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining of Certain Sewer Main Sections. The work is for restoring pipe wall integrity and flow capacity to each of the 24inch sewer main crossing under north Highway 277, the 12inch sewer main crossing under east Interstate 20, and the 8inch sewer main crossing under the Union Pacific Railroad in east Abilene. Initial cleaning efforts on the 12inch sewer main revealed a mostly deteriorated section of piping that is not suitable for CIPP insertion. On July 27, 2023 the Abilene City Council approved Change Order

No. 1 to the contract with Ace Pipe Cleaning to provide for pipe bursting and HDPE pipe insertion in place of the CIPP insertion for that 12inch sewer main section for a net increase in contract cost of \$73,543.25. Due to unforeseeable conditions within that section of piping, ACE is not able to complete the pipe bursting nor successfully install a HDPE pipe on an alignment that is favorable for a gravity flow sewer. On December 21, 2023 the Abilene City Council approved Change Order No. 2 to delete from the contract the work tasks of Change Order No. 1 valued at \$75,543.20.

The City of Abilene hired Jacob and Martin, LLC to evaluate the situation at this location, and to design a solution. The Engineer recommends the construction of a new bore and encased sewer main adjacent to and parallel with the original alignment, with new manholes at each end to tie back into existing piping at each end. The Contract provides the construction necessary to successfully complete the new parallel sewer main installation under Interstate Highway 20 in northeast Abilene. The project will restore original flow capacity to serve existing customers and future developments in that area.

FUNDING/FISCAL IMPACT

The project will utilize funds designated for Water Utilities Capital Improvement Projects.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council authorize the contract with Ace Pipe Cleaning, Inc. through Purchasing Cooperative of America for the I-20 & Loop 322 Sewer Line Replacement project in the amount of \$419,216.24.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Written Resolution-Approve Contract-Ace Pipe Cleaning-Parallel bore and encased sewer main under I20-PCA-12-7-2023
2. Contract-ACE Pipe Cleaning-I20 and Loop 322 Sewer Line Replacement-12-21-2023
3. Supplement to Agreement-ACE Pipe Cleaning-12-21-2023
4. Presentation-Approve contract-Ace Pipe Cleaning-Construct bore and encased 12inch sewer main under I20-PCA-12-7-2023

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AUTHORIZING THE CONTRACT WITH ACE PIPE CLEANING, INC. THROUGH PURCHASING COOPERATIVE OF AMERICA FOR THE I-20 & LOOP 322 SEWER LINE REPLACEMENT PROJECT.

WHEREAS, On May 25, 2023 the Abilene City Council approved a contract with Ace Pipe Cleaning, Inc., for the Heavy Cleaning, CCTV Inspection, and CIPP Insertion Lining of Certain Sewer Main Sections; and

WHEREAS, during initial efforts at heavy cleaning it was determined that the 12inch pipe crossing under I-20 had failed and therefore the CIPP insertion cannot be installed; and

WHEREAS, on July 27, 2023 the Abilene City Council approved a change order No. 1 to the contract for the deletion of heavy cleaning and CIPP insertion and the addition of pipe bursting and installation of 12inch HDPE pipe, and due to complications beyond the control of ACE and the City, the pipe bursting installation did not result in an acceptable finished product; and

WHEREAS, on December 21, 2023 the Abilene City Council approved Change Order No. 2 to delete from the contract the work tasks of Change Order No. 1; and

WHEREAS, the City hired Jacob and Martin, LLC to provide an engineered solution, and the engineer recommends installing an encased parallel bore and 12inch HDPE sewer main; and

WHEREAS, City staff recommends that the Abilene City Council approve the contract with ACE Pipe Cleaning, Inc., available through Purchasing Cooperative of America at contract pricing in compliance with Texas Local Government Code Chapter 271, for the I-20 & Loop 322 Sewer Line Replacement project in the amount of \$419,216.24; 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 I-20 & Loop 322 Sewer Line Replacement project in the amount of \$419,216.24.

ADOPTED this 21st day of December, 2023.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley E. Smith, City Attorney

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the ____ day of _____, 20____, is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Ace Pipe Cleaning of the City of Kansas City, State of Missouri. ("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. The Contractor hereby agrees to commence and complete the construction of Work required in the Contract Documents – incorporated herein by reference – I-20 & Loop 322 Sewer Line Replacement.

All work to be performed will be completed in conformance with (1) Part I 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 \$419,216.24.

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) attorney’s 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 executed copies is an original.

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

CONTRACTOR

Name of Contractor:

Ace Pipe Cleaning Inc.

Bruce Vantine
Signature

Business Address: 6601 Universal Avenue

Kansas City, MO 64120

Business Phone No. 816-241-2891

Federal Tax I.D. # 44-0580656

Name – Typed or Printed

Bruce Vantine

Title – Typed or Printed

Secretary/Treasurer

ATTEST: (If Corporation)



CITY OF ABILENE

Authorized Signature

APPROVED:

City Attorney

ATTEST:

City Secretary

Seal

SUPPLEMENT TO AGREEMENT BETWEEN THE CITY OF ABILENE, TEXAS AND
Ace Pipe Cleaning, Inc **(“Company”)**

- (1) **Verification Against Boycott of Israel Provision.** In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement 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 agreement. The term “company” does not include a sole proprietorship. Chapter 2271 of the Texas Government Code only applies to an agreement that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000.00 or more that is paid wholly or partly from public funds of the governmental entity.
- (2) **Verification Against Discrimination of Firearm or Ammunition Industries Provision.** Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the company employs at least 10 full-time employees, and this agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company verifies that: (1) the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that contracts with a sole-source provider, or does not receive any bids from a company that is able to provide the written verification required.
- (3) **Verification Against Boycott of Energy Companies Provision.** Pursuant to Texas Government Code Chapter 2276, unless otherwise exempt, if the company employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company represents that: (1) the company does not boycott energy companies; and (2) the company will not boycott energy companies during the term of this Agreement. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that determines the requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.
- (4) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the company verifies that company is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Unless the company is not subject to a provision above, the signatory executing this Agreement on behalf of the company verifies that the company: (1) does not boycott Israel and will not boycott Israel during the term of this Agreement; (2) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade

association, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; (3) does not boycott energy companies, and will not boycott energy companies during the term of this Agreement; and (4) is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Bruce Vantine, Secretary/Treasurer

(printed name of company)

A handwritten signature in black ink, appearing to read "Bruce Vantine", written over a horizontal line.

(signature and printed name of signatory)

12/11/23

(date of signature)

Approve the Contract with
Ace Pipe Cleaning, Inc. for the
I-20 and Loop 322 Sewer Line Replacement Project





I-20 & Loop 322 Sewer Line Replacement

- Approve the contract with Ace Pipe Cleaning, Inc. for the I-20 & Loop 322 Sewer Line Replacement Project in the amount of \$419,216.24.
- The Project is the installation of an adjacent parallel bore, 18inch steel casing pipe, 12inch HDPE sewer main under Interstate Highway 20 in Northeast Abilene.
- The bid item includes an "Owners Allowance" in the amount of \$30,000.00 for work directed in writing by the City. The owner's allowance is for work not required within the Plans and Specifications and may be used in the event additional (or less) work from that shown on the Plans and Specifications is required.





I-20 & Loop 322 Sewer Line Replacement

- Ace is able to offer the installation of a bore and encased sewer main through Purchasing Cooperative of America (PCA OD-307-20) at contract pricing in compliance with Texas Local Government Code Chapter 271.
- Initial Heavy Cleaning of 12inch pipe crossing under Interstate 20 revealed that the existing pipe was mostly collapsed and deteriorated and could not be lined using CIPP insertion.
- Change Order No. 1 provided for adding Pipe Bursting and HDPE pipe insertion in place of CIPP lining of that section of sewer main.





I-20 & Loop 322 Sewer Line Replacement

- Due to complications beyond the control of ACE and the City, the pipe bursting installation did not result in an acceptable finished product.
- Change Order No. 2 deleted from the contract the tasks of Change Order No. 1.
- The City hired Jacob and Martin, LLC to evaluate the situation and provide an engineered solution, and the engineer recommends installing an adjacent parallel bore, 18inch steel casing, and 12inch HDPE sewer main to restore the original flow capacity.





I-20 & Loop 322 Sewer Line Replacement



12 INCH CAST IRON SEWER MAIN CROSSING UNDER INTERSTATE 20

*INSTALL ADJACENT PARALLEL BORE,
18 INCH STEEL ENCASEMENT PIPE, AND
12 INCH HDPE SEWER MAIN TO RESTORE
ORIGINAL DESIGN CAPACITY, AND ALSO
ABANDON EXISTING PIPING*



Approve the Contract with
Ace Pipe Cleaning, Inc. for the
I-20 and Loop 322 Sewer Line Replacement Project

Questions?





City Council Agenda Memo

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Rodney Taylor, Director

SUBJECT: **5. Resolution: Receive a Report, Hold a Discussion and Take Action on Approving Changer Order No. 1 to the Contract with Western Municipal Construction of Texas, LLC for the Possum Kingdom Drought Response Improvement RO Concentrate Pipeline Phase I (*Rodney Taylor*)**

GENERAL INFORMATION

Water Utilities staff is requesting that the Abilene City Council approve Change Order No. 1 to the contract with Western Municipal Construction of Texas, LLC (Western) for the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline - Phase I. Change Order No. 1 provides for a reduction of \$489,299.00 to the contract price resulting in a final contract price of \$2,605,325.00. The reduction in contract price is the result of Field Order #1 and #2 Scope Reduction and Quantity Adjustments. The contract includes a line item for "Owner's Allowance" as provided for in Administrative Directive No. AD-025. The value of the owners allowance item is \$100,000.00. The allowance bid item is for work not required within the Plans and Specifications and may be used in the event additional (or less) work from that shown on the Plans and Specifications is required. No funds were expended from the "Owners Allowance" and that value is being released back to the owner. There is no change in contract times. The final contract value was reduced by greater than \$50,000, therefore requiring that the Abilene City Council approve the reduction in final contract value. The project was determined to be substantially complete on August 8, 2023.

SPECIAL CONSIDERATIONS

On May 12, 2022, the Abilene City Council awarded the bid to Western Municipal Construction of Texas, LLC for the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline - Phase I for the amount of \$3,094,624.00. The Project was for the installation of approximately 15,000 linear feet of 12inch diameter pipeline beginning with the installation of a submerged discharge line into Possum Kingdom Lake, and continuing north and then west, generally paralleling FM 1148. Phase I is the installation of pipe purchased during construction of the Possum Kingdom Raw Water Roughting Facility (PKRWRF), but placed in inventory until final pipeline routing and design was completed. The Phase I and recently awarded Phase II projects will complete the pipeline for the discharge of Reverse Osmosis concentrate produced by the PKRWRF back into Possum Kingdom Lake. The original construction of the PKRWRF included the installation of a section of the RO concentrate pipeline beginning at the PKRWRF, extending east and then northeast along State Highway 67 to the intersection with FM 1148. Pipeline construction was halted at that

time as the City negotiated with regulatory agencies on an alternate discharge point into Possum Kingdom Lake. The City currently holds a TPDES permit to discharge RO concentrate into Possum Kingdom Lake.

FUNDING/FISCAL IMPACT

Change Order No. 1 will result in releasing \$489,299.00 back to the Water Utilities Funds designated for Capital Improvement Projects.

STAFF RECOMMENDATION

Staff recommends that the Abilene City Council approve Change Order No. 1 to the Contract with Western Municipal Construction of Texas, LLC for the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline - Phase I which provides for a reduction of \$489,299.00 and resulting in a final contract price of \$2,605,325.00.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. WrittenResolution-WtrDpt-Change Order No 1-Western Municipal Construction of Texas-PK DR Improvements RO Concentrate Pipeline-P1-12-21-2023
2. Change Order No 1-Western Municipal Contractors of Texas-PK RO Pipeline P1-Final Reduction in Price-12-21-2023
3. Change Order No 1-EJCDC Form-Western Municipal Contractors of Texas-PK RO Pipeline P1-Final Reduction in Price-12-21-2023
4. Presentation-Approve CO No 1-Western Municipal Construction of TX-PK DR Imp RO Concentrate Pipeline P1-12-21-2023

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, APPROVING CHANGE ORDER NO. 1 TO THE CONTRACT WITH WESTERN MUNICIPAL CONSTRUCTION OF TEXAS, LLC FOR THE POSSUM KINGDOM DROUGHT RESPONSE IMPROVEMENTS RO CONCENTRATE PIPELINE – PHASE I PROJECT.

WHEREAS, on May 12, 2022 the Abilene City Council awarded the bid to Western Municipal Construction of Texas, LLC (Western Municipal) for the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline – Phase 1 for the amount of \$3,094,624.00; and

WHEREAS, the Phase 1 project provides for the installation of approximately 15,000 feet of pre-purchased 12inch diameter water pipeline and a submerged discharge outlet into the lake; and

WHEREAS, Western Municipal has successfully completed all tasks associated with the construction of the Phase 1 project; and

WHEREAS, Western Municipal and the Project Engineer have determined that the installed quantities of certain items are less than the quantities of the bid documents, and that no part of the owner’s allowance was expended, resulting in a net reduction in the final amount due to the contractor; and

WHEREAS, staff is recommending that the Abilene City Council approve Change Order No. 1 to the contract with Western Municipal Construction of Texas, LLC for a reduction of \$489,299.00 from the contract resulting in a final contract price of \$2,605,325.00; and

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

That the City Manager is authorized to execute Change Order No. 1 to the contract with Western Municipal Construction of Texas, LLC for the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline – Phase I project reducing the contract by \$489,299.00 resulting in a final contract value of \$2,605,325.00.

ADOPTED this 21st day of December, 2023.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley E. Smith, City Attorney

CHANGE ORDER



CITY OF ABILENE

CHANGE ORDER NUMBER: 01

1. CONTRACTOR: Wester Municipal Construction of Texas

2. Change Order Work Limits: Sta. 0 397 to Sta. _____

3. Type of Change: Qty Adj (Major/Minor)

4. Reasons: City Request

5. Describe the work being revised: _____

~~Field work directives to remove portions of the work and~~
~~adjust quantities accordingly~~

6. New or revised plan sheet(s), sketch(es), and estimates are attached:

Each signatory hereby warrants that each has the authority to execute this Change Order (CO).

The contractor must sign the Change Order and, by doing so, agrees to waive any and all claims for additional compensation due. THE CONTRACTOR Date <u>12/11/23</u> <u>Clint Wilson</u> (Signature) Typed/Printed Name <u>Clint Wilson</u> Typed/Printed Title <u>Project Manager</u>	The following information must be provided: <table><tr><td>Change in contract time:</td><td><u>0</u></td></tr><tr><td>Original contract price:</td><td><u>\$3,094,624.00</u></td></tr><tr><td>Existing contract price: *</td><td><u>\$3,094,624.00</u></td></tr><tr><td>Amount added or subtracted by this CO:</td><td><u>\$498,299.00</u></td></tr><tr><td>Revised contract price:</td><td><u>\$2,605,325.00</u></td></tr></table> * Includes previous CO's	Change in contract time:	<u>0</u>	Original contract price:	<u>\$3,094,624.00</u>	Existing contract price: *	<u>\$3,094,624.00</u>	Amount added or subtracted by this CO:	<u>\$498,299.00</u>	Revised contract price:	<u>\$2,605,325.00</u>
Change in contract time:	<u>0</u>										
Original contract price:	<u>\$3,094,624.00</u>										
Existing contract price: *	<u>\$3,094,624.00</u>										
Amount added or subtracted by this CO:	<u>\$498,299.00</u>										
Revised contract price:	<u>\$2,605,325.00</u>										

RECOMMENDED FOR EXECUTION:

Inspection Services Manager _____ Date _____

[Signature] 12/11/2023
City Engineer _____ Date _____

Director _____ Date _____



Change Order No. 01

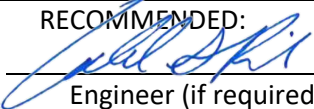
Date of Issuance: 12/11/2023 Owner: City of Abilene Contractor: Western Municipal Construction of Texas Engineer: Enprotec / Hibbs & Todd, Inc. Project: TWDB DWSRF	Effective Date: 12/11/2023 Owner's Contract No.: N/A Contractor's Project No.: N/A Engineer's Project No.: 6103 Contract Name: PK Second Stage Drought Strategy RO Concentrate Disposal Line Phase I
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The Contract is modified as follows upon execution of this Change Order:

Description: Formalizing Work Change Directive # 1 & # 2 (Field Order# 1 & # 2) Scope Reduction & Quantity Adjustments.

Attachments: *Contractor Change Order # 1 Quantity Adjustments & Closeout*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ 3,094,624.00	Original Contract Times: Substantial Completion: 230 Ready for Final Payment: 260 days
[Increase] [Decrease] from previously approved Change Orders No. 0 to No. 0: \$ 0	[Increase] [Decrease] from previously approved Change Orders No. 0 to No. 0: Substantial Completion: 0 Ready for Final Payment: 0 days
Contract Price prior to this Change Order: \$ 3,094,624.00	Contract Times prior to this Change Order: Substantial Completion: 230 Ready for Final Payment: 260 days
[Increase] [Decrease] of this Change Order: \$ 489,299.00	[Increase] [Decrease] of this Change Order: Substantial Completion: 0 Ready for Final Payment: 0 days
Contract Price incorporating this Change Order: \$ 2,605,325.00	Contract Times with all approved Change Orders: Substantial Completion: 230 Ready for Final Payment: 260 days

RECOMMENDED:
By: 
Engineer (if required)
Title: Project Manager
Date: December 11, 2023

ACCEPTED:
By: _____
Owner (Authorized Signature)
Title: _____
Date: _____

ACCEPTED:
By: 
Contractor (Authorized Signature)
Title: Project Manager
Date: 12/11/2024

Approved by Funding Agency (if applicable)

By: _____
Title: _____

Date: _____

**Approve Change Order No. 1 to Contract with
Western Municipal Construction of Texas, LLC for the
Possum Kingdom Drought Response Improvements
RO Concentrate Pipeline – Phase I Project**





Change Order No. 1

- Approve Change Order No. 1 to the contract with Western Municipal Construction of Texas, LLC for the Possum Kingdom Drought Response Improvements RO Concentrate Pipeline – Phase I Project.
- Original contract value of \$3,094,624.00.
- The contractor has completed the project and the final quantities of installed parts and materials is less than the contract quantities, and the owner's allowance was not utilized.
- Change Order No. 1 is a reduction of \$489,299.00.
- Final contract value of \$2,605,325.00.





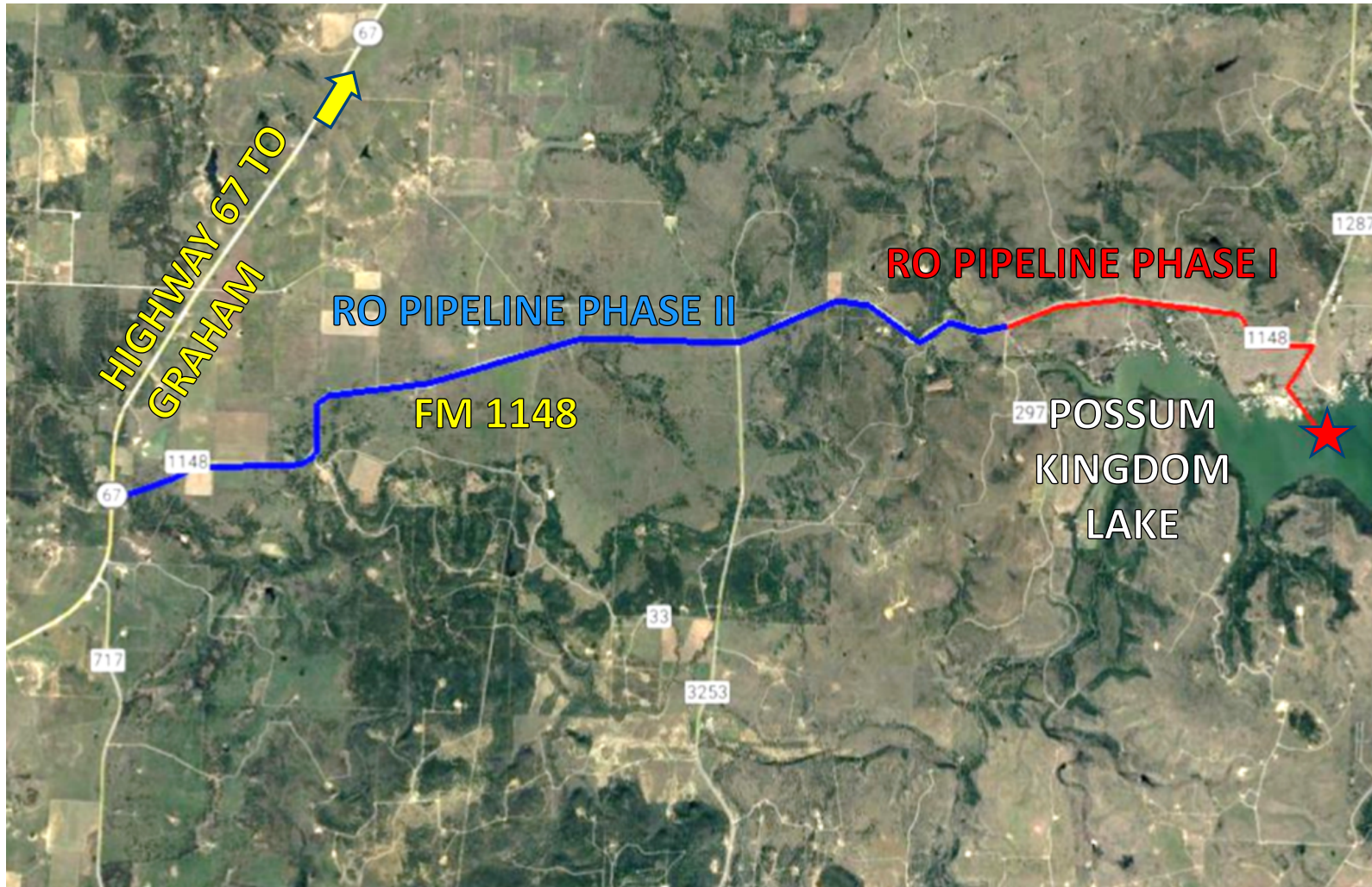
Change Order No. 1

- The Possum Kingdom Drought Response Improvements RO Concentrate Pipeline – Phase I Project included the installation of approximately 15,000 of pre-purchased 12inch diameter pipeline beginning at the lake and continuing north and then west paralleling FM 1148 and for the installation of submerged piping and a discharge manifold into Possum Kingdom Lake.
- The City holds a TPDES permit with the TCEQ authorizing the discharge of reverse osmosis concentrate produced by the Possum Kingdom Raw Water Roughing Facility (PKRWRF) back into Possum Kingdom Lake.
- RO Concentrate Pipeline Phase I and pending Phase II construction will complete the offsite construction related to the PKRWRF project.





Change Order No. 1



**Approve Change Order No. 1 to Contract with
Western Municipal Construction of Texas, LLC for the
Possum Kingdom Drought Response Improvements
RO Concentrate Pipeline – Phase I Project**

Questions?





City Council Agenda Memo

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Mike Rains, Finance Director

SUBJECT: 6. Resolution: Receive a Report, Hold a Discussion and Take Action on Adoption of a Resolution Expressing Official Intent to Reimburse Costs of Projects for Zoo and Recreation Center Improvements (Mike Rains)

GENERAL INFORMATION

The Citizens of Abilene approved two General Obligation bond referendums on November 7, 2023, for Zoo Projects and Recreation Center Improvements. We anticipate needing to expend funds on these projects prior to receipt of the bond proceeds. This resolution will allow us to receive reimbursement from the bond proceeds for capital costs incurred prior to issuance. The total amount of reimbursable costs are listed as \$43,000,000 which is the full amount of the bond issuance.

Currently, approval of the bond issuance by Council is anticipated for the January 11, 2024 Council meeting with receipt of bond proceeds on March 14, 2024.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

This resolution will allow reimbursement from bond proceeds for project costs incurred prior to the bond issuance. No fiscal impact will occur other than advancement of funds.

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Resolution - Reimbursement Resolution 2023 (Zoo and Rec. Centers) Bonds
2. Presentation - Resolution Expressing Intent to Reimburse Costs for Zoo and Recreation Center Improvements

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS
EXPRESSING OFFICIAL INTENT TO REIMBURSE COSTS OF PROJECTS

Page 48 of 329

SIGNED AND SEALED THIS _____.

Mayor

ATTEST:

City Secretary

[CITY SEAL]

APPROVED:

City Attorney

EXHIBIT A

Reimbursable Projects:

- (i) designing, acquiring, constructing, purchasing, renovating, improving, upgrading, updating, enlarging, and equipping the City Zoo, acquiring lands and rights-of-way necessary thereto, and completing related landscaping; and
- (ii) designing, acquiring, constructing, renovating, improving, and equipping recreation centers within the City, acquiring lands and rights-of-way necessary thereto, and completing related landscaping.

Resolution Expressing Official Intent to Reimburse Costs of Projects for Zoo and Recreation Center Improvements





Official Intent to Reimburse Costs of Projects for Zoo and Recreation Center Improvements

- On November 7, 2023, voters in the City approved two bond resolutions in connection with the Zoo Expansion project and Recreation Center Improvements. The City expects to incur expenditures in connection with the projects prior to the bonds being issued.
- This resolution will allow the City to reimburse itself from the bond proceeds for costs incurred prior to the bond issuance.
- The bonds are expected to be brought before Council at the January 11, 2024 Council Meeting for approval with receipt of funds on March 14, 2024.





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Don Green, Director

SUBJECT: 7. Resolution: Receive a Report, Hold a Discussion, and Take Action to Approve the Award of Contracts for City Fuel Products to All Vendors Responding to the CB-2413 Fuel Products Bid (Don Green)

GENERAL INFORMATION

Fleet Services and CityLink dispense over 700,000 gallons of fuel each year through City-owned tanks and pumps. We receive daily pricing from each of the participating fuel vendors for diesel and unleaded products and select the lowest overall price on the day that an order is placed. Fleet Services has found that this multiple vendor method allows us to receive the best pricing and helps prioritize the City receiving fuels if shortages occur.

To clarify, this resolution does not set the pricing of fuels, but allows the City to purchase the best daily price from any of the listed vendors throughout the year. The resolution allows the use of the five listed vendors for a three-year term with two one-year options.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

The purchase of fuel products was budgeted for \$2,517,950.00 in Fleet Services FY24 budget. It is budgeted annually and then billed to the City divisions as it is dispensed.

STAFF RECOMMENDATION

Fleet Services staff recommends the award of contracts to all responding bidders.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. CB-2413 Resolution
2. CB-2413 Bid Tabulation
3. CB-2413 Presentation

RESOLUTION NO _____

**A RESOLUTION OF THE CITY OF ABILENE, TEXAS
TO PURCHASE FUEL PRODUCTS FROM BIDDERS RESPONDING TO BID CB-2413**

WHEREAS, the City operates and purchases fuels for a large fleet of Gasoline and Diesel fueled vehicles, including CityLink vehicles; and

WHEREAS, the City conducted a bid (CB-2413) to stabilize fuel delivery and costs throughout a fiscal year; and

WHEREAS, the City received bids from five (5) qualified fuel providers, and

WHEREAS, City of Abilene Fleet Services will receive a daily bid from each vendor to determine the lowest cost to the City, and

WHEREAS, fuel purchases were approved in Fleet Services FY24 budget in the amount of \$2,517,950.00

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

PART 1: That the City Council approves entering into contracts for fuel purchases with United Oil and Grease, Wheat Energy, FM Fuel and Resources, Pinnacle Petroleum Inc., and Petroleum Traders Corporation. Fuel purchase contracts will be for a period of three (3) years and will allow for two (2) annual extensions.

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

ADOPTED this 21st day of December, 2023

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

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

PAGE
1 OF 1

DEPARTMENT: FLEET
BID NO.: CB-2413
TIME OF OPENING: 11:00 A.M.
DATE OF OPENING: NOVEMBER 21, 2023

PETROLEUM TRADERS
CORPORATION
FORT WAYNE, IN

PINNACLE PETROLEUM,
INC.
HUNTINGTON BEACH, CA

FM FUEL & RESOURCES
ABILENE, TX

UNITED OIL & GREASE
ABILENE, TX

WHEAT ENERGY SERVICES
ABILENE, TX

ITEM	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION	UNIT PRICE	EXTENSION
	FUEL PRODUCTS														
1.	NO. 2 DIESEL, CLEAR				\$0.0563		\$0.20701		\$0.2932		\$0.08		\$0.10		
							added \$5.45 fee per load								
2.	UNLEADED GASOLINE, 87 OCTANE MINIMUM				\$0.0512		\$0.20701		\$0.2873		\$0.08		\$0.10		
							added \$5.45 fee per load								
3.	DIESEL, RED-DYED				no bid		\$0.00701		\$0.6800		\$0.25		\$0.25		
							added \$1.70 fee per load								
4.	UNLEADED GASOLINE, 87 OCTANE MINIMUM**				no bid		\$0.20701		\$0.7800		\$0.25		\$0.25		
							added \$1.70 fee per load								
BASE BID															
DISCOUNT															
TOTAL BID															

*NOTES: INDICATES RECOMMENDED AWARD

[illegible]

City Council Meeting

12/21/23





CB-2413 Fuel Purchases

- Bid process CB-2413 was initiated to insure the City's fuel supply and pricing.
- Fleet Services received five responses, including 3 locally represented companies, to supply our fuel products.
- The companies bid their markup over the rack price and mandatory taxes. Each company will submit daily pricing and Fleet Services will identify and order the lowest price on the day that we need delivery.





Questions ?





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Max Johnson, Director of Public Works

SUBJECT: 8. Resolution: Receive a Report, Hold a Discussion and Take Action on Awarding Annual Street Services Division Materials to Ingram Concrete LLC, Bid #CB-2412 (Max Johnson)

GENERAL INFORMATION

The City of Abilene Street Services Division is requesting the City Council award bids, by resolution, for materials used in the maintenance and rehabilitation of the street and alley system. Notices were published in the Abilene Reporter News on October 29, 2023 and November 5, 2023, and bids were opened on November 14, 2023. The following table lists the individual material bids, staff recommended bidder and unit price bid.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

Funding for the materials is available in the 2023/2024 general operating budget for Street Maintenance Fund.

STAFF RECOMMENDATION

It is recommended that the City Council award, by resolution, the bulk materials supply contracts as listed and recommended by the City Staff, and to authorize the City Manager or his designee to execute all necessary documents related to these contracts.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. 2023-2024 Resolution CB-2412
2. CB-2412 Bid Tabsheet (2)
3. PP_Resolution Award of Bid CB-2412 12-13-2023

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDING THE BULK MATERIALS SUPPLY CONTRACTS TO VARIOUS VENDORS AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS RELATED TO THE PURCHASES

WHEREAS, the City of Abilene Street Services Division is requesting the City Council award bids, for materials used in the maintenance of street and alley system; and

WHEREAS, the City of Abilene duly advertised and gave such noticed, as required by law, and bids opened on November 14, 2023; and

WHEREAS, the following table lists the individual materials bid, and the staff recommended bidder and unit price bid:

Class A Portland Cement, 5 Sack	Ingram Concrete	\$ 163.00/Cu. Yd.
Class P Portland Concrete	Ingram Concrete	\$ 179.00/Yd.
Flowable Fill Concrete	Ingram Concrete	\$ 136.00/Yd.

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

PART 1: That the City Council award the supply contracts as listed in the table above recommended by the Street Service's Staff and to authorize the City Manager or his designee to execute all necessary documents related to the contracts.

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

ADOPTED this 21st day of December, 2023.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

PAGE
1 OF 1

INGRAM CONCRETE LLC
BROWNWOOD, TX

[illegible]

Page 64 of 329

Resolution Award of Annual Street Services Division Materials Bid #CB-2412 to Ingram Concrete, LLC

(Max Johnson)





Contracted Material Costs – Item by Item (page 1 of 1)

- Notices requesting bids published in newspaper on 10-29-2023 and 11-5-2023; bids opened 11-14-2023
- One bidder (Ingram Concrete, LLC) received for materials listed below

Item	Company	Unit Price
Class A Portland Cement, 5 Sack	Ingram Concrete	\$ 163.00/Cu.Yd.
Class P Concrete	Ingram Concrete	\$ 179.00/Yd.
Flowable Fill Concrete	Ingram Concrete	\$ 136.00/Yd.

- Staff recommends approval of material bids listed





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Max Johnson, Director of Public Works

SUBJECT: 9. Resolution: Receive a Report, Hold a Discussion and Take Action on Awarding Bid #CB-2415 S. 7th & Willis Concrete Intersection Project to Bontke Brothers Construction Co, Inc. (Max Johnson)

GENERAL INFORMATION

This construction contract involves removing existing asphalt and replacing it with 8” of Class “P” concrete and widening of the section of Willis St on the south side of S 7th St. Also included in the contract are signal modifications and pavement marking at the S. 7th St. and S. Willis St. intersection.

SPECIAL CONSIDERATIONS

This contract has a completion time of 60 working days (weather permitting)

FUNDING/FISCAL IMPACT

Funding for this project is through the Streets Maintenance Fee.

STAFF RECOMMENDATION

Staff recommends award to Bontke Brothers Construction Co., Inc. in the amount of \$720,308.05

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. S. 7th & Willis Concrete Intersection Resolution
2. S. 7th & Willis Concrete Intersection Contract (1)
3. Supplement to Agreement - boycott language 2023.docx (1) (1)
4. CB2415TAB
5. SCOPE OF PROJECT
6. PROJECT LOCATION MAP
7. S. 7th & Willis Concrete Intersection Presentation 12-11-2023

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, AWARDBID TO BONTKE BROTHERS CONSTRUCTION CO., ABILENE, TEXAS

WHEREAS, the City of Abilene duly advertised and gave such notice, as required by law, for bids for the S. 7th & Willis Concrete Intersection Project. This construction contract involves the the reconstruction and signal upgrade of the intersection located at S. 7th St. and S. Willis St.

WHEREAS, the City of Abilene has utilized the “Best Value” competitive bidding method in determining the award of the contract; and,

WHEREAS, the following base bid was received and opened on December 5, 2023

Bontke Brothers Construction Co., Abilene, Texas	\$720,308.05
--	--------------

WHEREAS, Bontke Brothers Construction Co., Abilene, Texas submitted the best value base bid amount of \$720,308.05 with the bid meeting specifications. Staff recommends awarding the bid to the best value bidder, Bontke Brothers Construction Co., Abilene, Texas.

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

PART 1: That the City Council approves this bid in the amount of \$720,308.05.

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

ADOPTED this 21st day of December, 2023.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made on the 21st day of December, 2023 is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and Bontke Brothers Construction Co., Inc. of the City of Abilene, 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 --

S. 7TH & WILLIS CONCRETE INTERSECTION

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 \$720,308.05.

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:

Bontke Brothers Construction Company, inc.

Signature

Brent Partain

Name - Typed or Printed

Senior Project Manager

Title - Typed or Printed

Business Address:

102 college drive

Abilene, TX 79601

325-677-6276

Business Phone No.

75-1331325

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: |

**SUPPLEMENT TO AGREEMENT BETWEEN THE CITY OF ABILENE, TEXAS AND
____Bontke Brothers Construction Co., Inc.____ (“Company”)**

- (1) **Verification Against Boycott of Israel Provision.** In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement 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 agreement. The term “company” does not include a sole proprietorship. Chapter 2271 of the Texas Government Code only applies to an agreement that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000.00 or more that is paid wholly or partly from public funds of the governmental entity.
- (2) **Verification Against Discrimination of Firearm or Ammunition Industries Provision.** Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the company employs at least 10 full-time employees, and this agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company verifies that: (1) the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that contracts with a sole-source provider, or does not receive any bids from a company that is able to provide the written verification required.
- (3) **Verification Against Boycott of Energy Companies Provision.** Pursuant to Texas Government Code Chapter 2276, unless otherwise exempt, if the company employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company represents that: (1) the company does not boycott energy companies; and (2) the company will not boycott energy companies during the term of this Agreement. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that determines the requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.
- (4) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the company verifies that company is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Unless the company is not subject to a provision above, the signatory executing this Agreement on behalf of the company verifies that the company: (1) does not boycott Israel and will not boycott Israel during the term of this Agreement; (2) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade

association, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; (3) does not boycott energy companies, and will not boycott energy companies during the term of this Agreement; and (4) is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Bontke Brothers Construction Company, inc.

(printed name of company)



Brent Partain

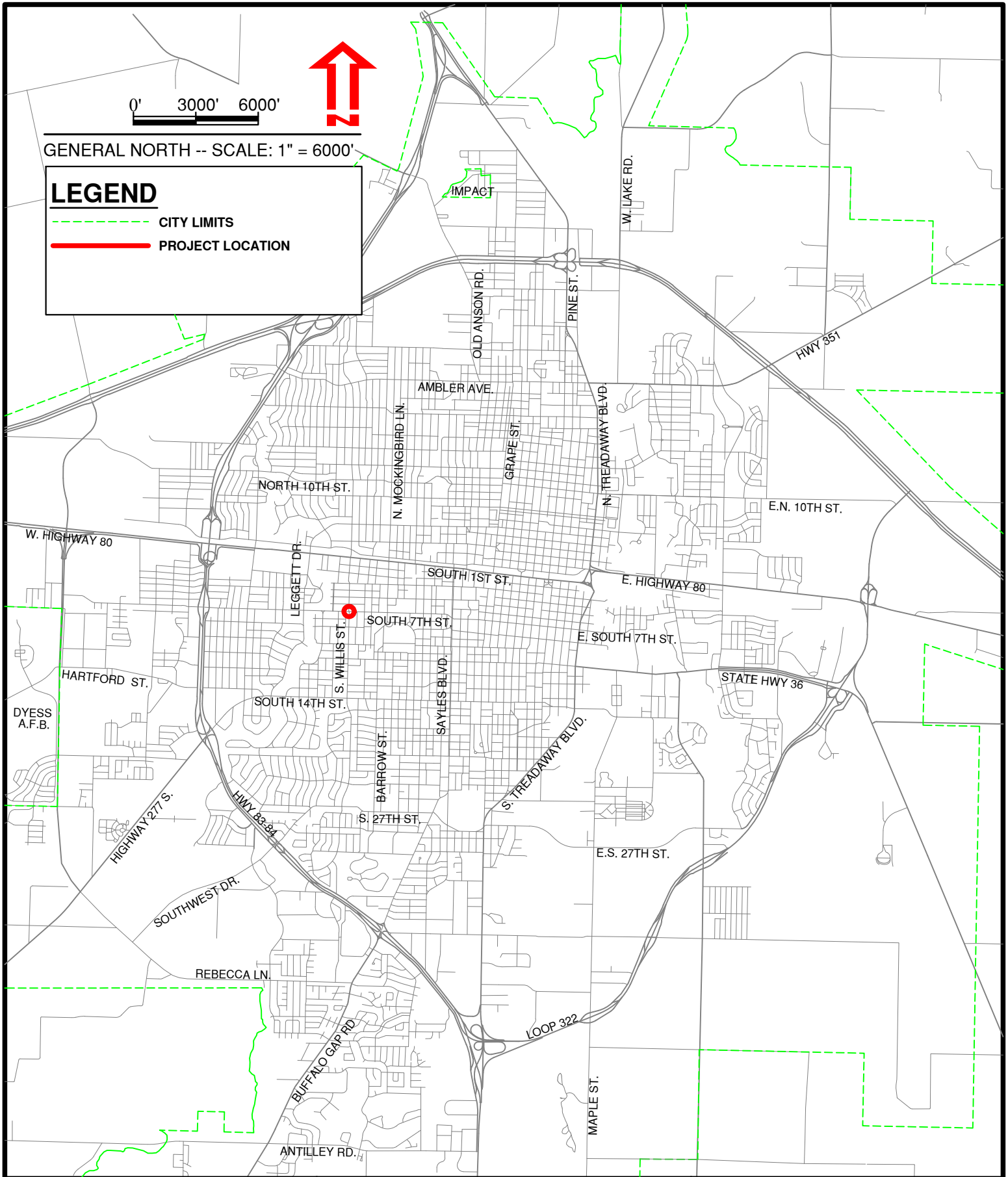
(signature and printed name of signatory)

12/13/2023

(date of signature)

SCOPE OF PROJECT

This construction contract involves removing existing asphalt and replacing it with 8" of class "p" concrete and widening of the section of Willis St on the south side of S 7th St. also included in the contract are signal modifications and pavement marking at the S. 7th St. and s. Willis St. intersection as shown in the construction plans.



Sheet
1
of
1

CITY OF ABILENE, TEXAS
PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION

**S. 7TH & WILLIS CONCRETE
INTERSECTION PROJECT**

Designed By: S. CHANDLER

Drawn By: M. MILLER

Checked By: S. CHANDLER

Horizontal Scale: 1"=6000'

Vertical Scale: N.T.S.

Computer File Name:
Project Location Map

Date: DEC. 2023

Bid Award of CB-2415 S. 7th & Willis Concrete Intersection Project

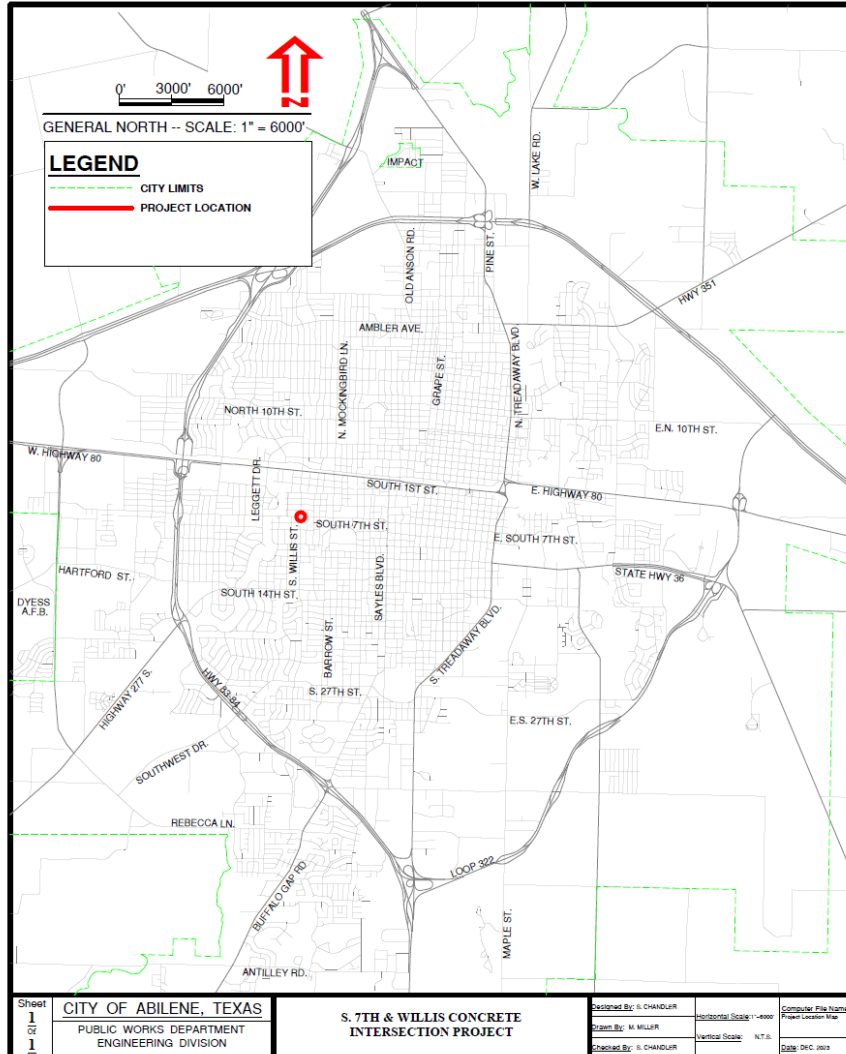
(Max Johnson)





Bid Award of CB-2415

S. 7th & Willis Concrete Intersection Project



Street

Intersection of South 7th St. and S. Willis St.



CITY OF
ABILENE
TEXAS



Bid Award of CB-2415

S. 7th & Willis Concrete Intersection Project

- Project includes:
 - Reconstruction in concrete of South 7th St. & S. Willis St. intersection.
- Project Advertised November 19, 2023 and November 26, 2023; bids opened December 5, 2023
- 1 bid received
- Project funded through The Street Maintenance Fee.
- Staff recommends awarding the bid to the best value bidder, Bontke Brothers Construction Co. Inc., with a base bid of \$720,308.05.





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Pamela Williams, Director

SUBJECT: 10. Resolution: Receive a Report, Hold a Discussion, and Take Action to Approve an Agreement with Enterprise Training Solutions, Inc. to provide a Learning Management System *(Pamela Williams)*

GENERAL INFORMATION

The City conducted a Request for Proposal for a Learning Management System (CB-2332) and a vendor was subsequently selected from the Texas Department of Information Resources. We were looking for an active vendor and business partner that would provide e-learning content that would integrate with our current HRIS system to improve the overall training experience and enhance learning opportunities for City employees.

SPECIAL CONSIDERATIONS

The Human Resources department generated an RFP in February 2023. This notice was published on February 10, 2023, with a proposal deadline of March 31, 2023. Within that timeline, we received six responses to the RFP and they were evaluated by the Employee Training and Human Resources team. The submitted proposals did not meet the criteria and needs of the Employee Training Division and Human Resources team. The department referenced the Texas Department of Information Resources and appraised three supplementary alternatives.

FUNDING/FISCAL IMPACT

The Learning Management System will be funded using the Employee Training budget.

STAFF RECOMMENDATION

Staff recommends awarding the contract to Enterprise Training Solutions, Inc.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Enterprise Training Solutions Maintenance Services Contract
2. Supplement to Agreement - boycott language 2023 Enterprise Training Solutions
3. LMS Cost Comparison Chart
4. Learning Management System Presentation
5. Learning Management System Resolution



SERVICES CONTRACT

This contract, dated the twenty-first day of December, 2023, is between the City of Abilene, a home rule municipal corporation of the State of Texas (“City”), and Enterprise Training Solutions, Incorporated (“Contractor”).

The purpose of this Contract is to state the terms and conditions under which Contractor will provide E-learning training services to the City during the term stated herein.

In consideration of the mutual promises contained in this Contract, City and Contractor agree as follows:

I. TERMS

Contractor must provide all services as described in Attachment A, which is incorporated by reference for all purposes for the entire duration of the contract ending on December 31, 2026.

II. PAYMENT

For the services to be rendered under this Contract, the Contractor will be entitled to a fee as described in Attachment B, which is incorporated by reference for all purposes.

III. MATERIALS AND SUPPLIES

The Contractor will furnish all materials and equipment necessary to perform the services agreed to under this Contract, which are to be supplied by the Contractor.

IV. TERMINATION

This agreement may be canceled or terminated by either party for (1) the other party's violation or failure to comply with any terms or conditions contained herein, or (2) upon the giving of sixty (60) days written notice by either party of the desire to terminate the same. Upon the termination of this agreement as provided herein, an accounting shall be made between the parties and payments made to the parties as provided for herein to the day of termination.

V. ASSIGNMENT

The Contractor may not assign in whole or in part any rights, duties, obligations or interest arising from this agreement without the City's prior written consent. In the event of an assignment by the Consultant to which the City has consented, the assignee or assignee's legal representative must agree in writing with the City to personally assume, perform, and be bound by all the provisions of this Contract. All of the terms and provisions of this Contract are binding on Contractor's successors and assigns and may be enforced by the City against such successors and assigns.

VI. STATUS OF CONTRACTOR

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

VII. AMENDMENT OR MODIFICATION

This contract, including attachments, constitutes the entire agreement of the parties. Any statements, promises, or agreements made by either party or its agent, which are not contained in this contract are of no effect. This contract may not be amended or modified except by both parties' written consent. This Contract supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Contract.

VIII. 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.

IX. 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 shall:

1. Name the City as an additional insured with respect to operations for which this agreement is made.
2. Provide for 30 day advance written notice of cancellation or material change.

c. TYPES AND AMOUNT OF INSURANCE

The types of insurance required in this contract are those indicated by initials. If no initials appear on any of items 1 through 6, items 1 through 4 shall be required.

<u>Type</u>	<u>Amount</u>
☐ 1. Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
☐ 2. Commercial (Public) Liability including, but not limited to: • Premises/Operations • 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)
☐ 3. Business Automobile Liability to include coverage for: • Owned/Leased Autos • Non-Owned Autos • Hired Cars	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
☐ 4. Professional Liability	\$500,000 combined single limit (per occurrence)
☐ 5. See Addendum for Special Coverages and/or revisions	
☒ 6. No Insurance Required	

X. 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.

XI. NOTICE

All notices must be in writing, hand-delivered or mailed by certified mail, to the other party at the address below. The name and address for notification may be changed by notice to the other party.

City - ATTN: Pamela Williams, Director of Human Resources

555 Walnut Street, Abilene TX 79601

Contractor - ATTN: Ken Gellerman, Principal, Vice-President

120 Bloomingdale Road, 4th Floor, White Plains,

NY 10605

XII. 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 required in completing the work contracted for in this agreement.

XIII. NO INDEBTEDNESS

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.

XIV. EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the City 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.

XV. VERIFICATION OF EMPLOYMENT ELIGIBILITY

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

XVI. 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.

XVII. 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 Professional. The Service 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 Service 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.

XVIII. LEGAL CONSTRUCTION

In the event that any one or more of the provisions contained in this Contract is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provisions, and the Contract will be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.

XIX. 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 the company verifies that the company does not boycott Israel and will not boycott Israel during the term of this contract.

XX. 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.

XXI. 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 instrument.

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

IN WITNESS HEREOF the parties have entered into this agreement as of the date written above.

CITY OF ABILENE

By: Robert Hanna

Title: City Manager

SERVICE CONTRACTOR

By: Ken Gellerman

Title: Principal, Vice President

Address: 120 Bloomingdale Road, 4th Floor

White Plains, NY 10605

Phone Number: 888-887-8244,

914-682-4331

Federal Tax ID #: 133954395

ATTEST:

City Secretary

APPROVED:

City Attorney

ATTEST: (If Corporation)

 12/06/2023

Corporation's Secretary

Corporate Seal (If available):

ATTACHMENT A

SCOPE OF SERVICES

Implementation, eLearning Content and Program Content Support:

Enterprise Training Solutions with over 20 years of experience in delivering online learning will provide the City of Abilene with 4,608 online eLearning content courses covering Professional Development, Office Productivity, Legal Compliance, and Environmental Health and Safety.

Enterprise Training Solutions delivers a proactive approach to online eLearning program success. Preparation, communication, and evaluation are the keys to managing a successful eLearning program that exceeds management expectations. For project planning support to ensure that the project is a success, Enterprise Training Solutions will:

1. Review learning program objectives with the City of Abilene.
2. Strategize on how to best position eLearning in the organization.
3. Develop an eLearning roll-out plan and schedule with the Training Division.
4. Establish an eLearning program assessment schedule and metrics, so that the overall program may be evaluated at regular intervals and managed to succeed.

Enterprise Training Solutions provides the following training and ramp-up activities:

1. Train the Training Division staff on technology-based training administration sites and other administrative tools/details.
2. Work closely with the Training Division to help them effectively utilize the training products so that the resources are understood and perceived at all administrative and management levels as a valuable solution to meet the training and development objectives of the City.
3. Communicate as required with Information Technology personnel, if necessary.
4. Conduct Training Division administrator orientation sessions (teleconferences, webinars).

Additional Implementation Support offerings/options include:

1. Develop, in conjunction with the Training Division, technology-based training program identity and branding.
2. Create promotional materials (i.e. information sheets, email templates, student info packets, etc.).

3. Help assimilate eLearning information into existing communication and promotion vehicles that the client relies upon.
4. Send monthly emails to the Training administrators with updated course information, training tips, and keep them informed of new courses, etc.
5. Knowledge transfer – position and enable clients to assume responsibility for the program over the long term as resources allow.
6. Provide a Designated Enterprise Training Solutions implementation consultant. Training administrators, key decision-makers, and stakeholders always have access to Enterprise Training Solutions personnel at any time.

ATTACHMENT B

PAYMENT SCHEDULE

Payment is a fixed fee amount of \$45,800 annually for three (3) years beginning January 1, 2024 and ending December 31, 2026.

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 Professional shall execute and provide City with an Affidavit that all bills for labor, materials and incidentals incurred by subprofessionals, materialmen, mechanics and suppliers under this agreement have been paid in full, and that there are no claims pending of which Professional 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 requires 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)

**SUPPLEMENT TO AGREEMENT BETWEEN THE CITY OF ABILENE, TEXAS AND
ENTERPRISE TRAINING SOLUTIONS (“Company”)**

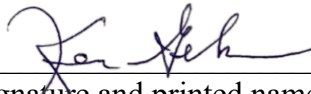
- (1) Verification Against Boycott of Israel Provision.** In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. The term “company” does not include a sole proprietorship. Chapter 2271 of the Texas Government Code only applies to an agreement that: (1) is between a governmental entity and a company with 10 or more full time employees; and (2) has a value of \$100,000.00 or more that is paid wholly or partly from public funds of the governmental entity.
- (2) Verification Against Discrimination of Firearm or Ammunition Industries Provision.** Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the company employs at least 10 full-time employees, and this agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company verifies that: (1) the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that contracts with a sole-source provider, or does not receive any bids from a company that is able to provide the written verification required.
- (3) Verification Against Boycott of Energy Companies Provision.** Pursuant to Texas Government Code Chapter 2276, unless otherwise exempt, if the company employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company represents that: (1) the company does not boycott energy companies; and (2) the company will not boycott energy companies during the term of this Agreement. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that determines the requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.
- (4) Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the company verifies that company is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Unless the company is not subject to a provision above, the signatory executing this Agreement on behalf of the company verifies that the company: (1) does not boycott Israel and will not boycott Israel during the term of this Agreement; (2) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade

association, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; (3) does not boycott energy companies, and will not

boycott energy companies during the term of this Agreement; and (4) is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Enterprise Training Solutions
(printed name of company)


(signature and printed name of signatory)

11/06/2023
(date of signature)

Vendor Name	Linkedin	Enterprise Training Solutions	Open Sesame
Year 1	\$20,700.00	\$45,800.00	\$61,506.00
Year 2	\$32,610.00	\$45,800.00	\$61,506.00
Year 3	\$45,540.00	\$45,800.00	\$61,506.00
Total	\$98,850.00	\$137,400.00	\$184,518.00
Notes	LinkedIn mainly offers leadership and professional development courses.	Enterprise offers safety courses tailored to front-line employees in addition to leadership and professional development training.	Open Sesame offers leadership, professional development, and safety courses but they are not a cost-effective option.

Learning Management System

December 21, 2023





Background

- Ceridian Dayforce is our comprehensive payroll and HR system implemented in 2021.
- Dayforce includes a Learning Module to centralize and manage employee training.





Combination Approach to Training

- Instructor Led Training Courses
- E-Learning Courses





Learning Management System Recommendation

Alternative vendors explored

- OpenSesame
- LinkedIn
- Enterprise

Enterprise Training Solutions

- 3,000 + Public Sectors Customers
- Personalized Learning Options
- Over 4,000 Courses offered





Why Enterprise Training Solutions?

- Extensive background for both state and local governments.
- Safety courses are specific to front-line employees.
- Encourage continuous education to improve professional leadership and reduce succession-planning related challenges.





What They Offer

Leadership and Professional Development

- Management and Leadership - 300+ Courses
- Business Skills and Workplace Development - 1000+ Courses
- End-user Software and Digital Productivity - 1700+ Courses

Compliance, Safety, and Risk Management

- Diversity Equity Inclusion - 15+ Courses
- Harassment Prevention - 50+ Courses
- Environmental & Workplace Safety - 500+ Courses
- Compliance Essentials - 300+ Courses
- HIPAA - 6+ Courses





Enterprise Training Solutions Cost

Proposal – Three-Year Contract

<u>Year</u>	<u>Cost</u>
2024	\$45,800
2025	\$45,800
2026	\$45,800

Total: \$137,400





Questions?



RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
APPROVING AN AGREEMENT WITH ENTERPRISE TRAINING SOLUTIONS, INC.
TO PROVIDE A LEARNING MANAGEMENT SYSTEM.**

WHEREAS, the Human Resources Department referenced the Texas Department of Information Resources and appraised three vendors for the best-fit candidate.

WHEREAS, it is the staff's recommendation that the City accept the agreement from Enterprise Training Solutions, Inc. to perform the services of Learning Management System. Additionally, we request the City Manager's endorsement to execute the final contract.

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

PART 1: The City Manager is authorized to negotiate and execute an agreement with Enterprise Training Solutions, Inc. as set forth above. Which is a three-year agreement, the total cost is \$137,400.00, and payments of \$45,800 are made on a yearly basis.

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

ADOPTED this 21st day of December, 2023

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney



**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Pamela Williams, Director

SUBJECT: 11. Resolution: Receive a Report, Hold a Discussion and Take Action to Approve an Agreement with GroupOne Services, Inc. to Provide Background Screening Services (Pamela Williams)

GENERAL INFORMATION

The City conducted a Request for Proposal for Employee Background Checks (CB-2347) to partner with a third-party vendor for Background Screening Services. We were looking for services from a qualified vendor with the knowledge and demonstrated experience in providing compliance-driven background screening services for applicants of various positions for public and private entities.

SPECIAL CONSIDERATIONS

The Human Resources department generated an RFP in May 2023. This notice was published on May 12, 2023, with a proposal deadline of June 23, 2023. Within that timeline, we received five responses to the RFP and they were evaluated by the Employee Benefits and Human Resources team.

FUNDING/FISCAL IMPACT

The Background Screening Services will be funded using the Workforce Services budget.

STAFF RECOMMENDATION

Staff recommends awarding the contract to GroupOne Services, Inc.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. GroupOne Resolution
2. GroupOne Service Agreement
3. RFP CB-2347 Evaluation
4. Background Screening Services Presentation

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
APPROVING AN AGREEMENT WITH GROUP ONE SERVICES, INC. TO PROVIDE
BACKGROUND SCREENING SERVICES.**

WHEREAS, the Human Resources Department went out for an RFP on 05/12/23 seeking proposals for Employee Background Checks. They received five responses and reviewed for the best fit candidate.

WHEREAS, it is the staff's recommendation that the City accepts the proposal from GroupOne Services, Inc. to perform the services of Background Screening Services. Additionally, we request the City Managers endorsement to execute the final contract.

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

PART 1: The City Manager is authorized to negotiate and execute an agreement with GroupOne Services, Inc. as set-forth above. Which is a one-year (with automatic renewal for successive one-year terms) agreement, the cost is dependent on the background screening package needed for job description requirements, and payments are made on a monthly basis.

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

ADOPTED this 21st day of December, 2023

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney



Service Agreement

THIS PER REPORT SUBSCRIPTION AGREEMENT (the "Agreement") is made and entered into on the **21st day of December, 2023**, by and between **GROUPONE SERVICES INC.**, with business offices at 300 Decker Drive Suite 300, Irving, Texas 75062 ("Agency") and **City of Abilene** with business offices at **555 Walnut Street, Abilene, Texas 79601.**

WHEREAS, Agency is a Consumer Reporting Agency, operating under the guidelines of the Fair Credit Reporting Act (the "FCRA"), in the business of providing Consumer Reports ("Reports"), as that term is defined under the FCRA, for employment and/or other lawful purposes and Client is an employer who desires to engage the services of Agency subject to the terms and provisions of this Agreement;

THEREFORE, the Agency and Client agree as follows:

I. OBLIGATIONS OF AGENCY

Agency will assemble and maintain files on consumers, upon a request made by Client in accordance with the requirements of Agency. Agency will provide to Client a Report with respect to the individual consumer who is a current or prospective Client employee or volunteer ("Consumer"). Agency shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the Consumer about whom the report relates. Agency will submit report to client within a reasonable period of time.

II. OBLIGATIONS OF CLIENT

Client must obtain a clear and conspicuous written disclosure in writing from the Consumer, before the Report is obtained, in a document that consists solely of the disclosure (**FCRA** 604b). Client must obtain a written authorization (release) before obtaining a consumer report (**FCRA** 604b) (Disclosure and Release can be combined as long as unnecessary verbiage is not included which might dilute consumer's understanding).

Client hereby warrants that each Report requested by Client shall be used only for employment or other lawful purposes, that the Report shall be used for no other purposes, and that the Reports be utilized exclusively by the "Client" office listed above. Client shall hold in strict confidence all Consumer information received from Agency, whether written, printed or oral; except as required by law. Client agrees that it will use only current information supplied by Agency and will not make employment decisions based on outdated Reports. (Outdated reports are defined as those that exceed -30 days from the date they were completed by Agency.)

Client shall designate one or more of its representatives authorized to request and receive Reports. Client agrees that Reports will be requested only by such designated representatives. Such designated representatives will sign an Authorized Access Agreement, the form of which will be provided to Client by Agency.

Whenever Client shall deny employment to a Consumer based in whole or in part on the information contained in the Report to Client by Agency, Client shall so advise the Consumer and disclose to Consumer the name and address of Agency. Client acknowledges that all decisions made by Client shall be Client's sole responsibility and nothing contained in Agency's Reports reflect any judgment or qualification as to a Consumer's suitability for employment. Client will not use any information from the Report in violation of any applicable Federal or State equal employment opportunity law or regulation.

III. MUTUAL OBLIGATIONS

Agency and Client understand and agree that both Agency and Client will comply with the provisions of the FCRA, Public Law 91-508 and any other applicable federal, state or local statute, and Joint Commission standards.

Each party hereto shall be responsible for maintaining reasonable procedures to cause the information it reports to the other to be investigated, up-to-date and accurate.

IV. FEES

Client shall promptly pay to Agency the following fees for services rendered by Agency under this Agreement: (See Appendix A for detailed package descriptions and pricing)

- A. A per report fee for the (Basic Package) plus any supplemental charges (based upon the attached package price schedule) is payable upon the receipt of invoice. The "per report" package fee is set annually. Client may request to switch to another package at any time during this agreement with the switch effective on the 1st day of the next month (the switch may be made immediately if Agency so chooses).
- B. A per report fee for the (Basic + Cash Handling Package) plus any supplemental charges (based upon the attached package price schedule) is payable upon the receipt of invoice. The "per report" package fee is set annually. Client may request to switch to another package at any time during this agreement with the switch effective on the 1st day of the next month (the switch may be made immediately if Agency so chooses).
- C. A per report fee for the (Basic + Driving Package) plus any supplemental charges (based upon the attached package price schedule) is payable upon the receipt of invoice. The "per report" package fee is set annually. Client may request to switch to another package at any time during this agreement with the switch effective on the 1st day of the next month (the switch may be made immediately if Agency so chooses).
- D. A per report fee for (Professional Package) plus any supplemental charges (based upon the attached package price schedule) is payable upon the receipt of invoice. The "per report" package fee is set annually. Client may request to switch to another package at any time during this agreement with the switch effective on the 1st day of the next month (the switch may be made immediately if Agency so chooses).
- E. A per report fee for (5-Panel Drug Screening) plus any supplemental charges (based upon the attached package price schedule) is payable upon the receipt of invoice. The "per report" package fee is set annually. Client may request to switch to another package at any time during this agreement with the switch effective on the 1st day of the next month (the switch may be made immediately if Agency so chooses).

Payment of each per report fee shall entitle Client to an unlimited number of Basic Service Reports as defined in the attached price schedule during the term of this agreement. Agency shall be entitled to adjust subsequent annual per report fees by written notice to Client at least thirty (30) days prior to the date such fee is due. **Unpaid invoices over 60 days old may result in immediate termination of service.**

V. TERM

This AGREEMENT shall be automatically renewed for successive one-year terms. Both parties may make changes to the package contract with 30 days' prior written notice. Services by Agency shall commence on **12/21/2023** the "Service Date"). Agency or Client shall be entitled to terminate the Agreement for any reason by giving thirty (30) days written notice to the other party.

Agency or Client shall be entitled to immediately terminate the Agreement by written notice to the other party upon any default by the other party hereunder or for other good cause, including any federal or state law, action or decision that affects the operation of the Agency or Client.

VI. MISCELLANEOUS

Agency warrants that it will maintain, in force, general liability insurance coverage (or similar coverage for liabilities arising from activities pursuant to this Agreement) for its operations with a minimum policy amount of \$1,000,000. Upon request of Client proof of such coverage will be provided to Client within ten (10) working days after receipt of the request.

To the fullest extent allowed by Texas laws, client shall indemnify and hold Agency harmless from and against any and all claims, demands, suits, and causes of action, judgments, liabilities, damages, losses, expenses, costs and attorney's fees resulting and due to the acts or omissions of Client in performing pursuant to this Agreement. This obligation of indemnification shall remain in effect after termination of this Agreement.

Agency shall indemnify and hold Client harmless from and against any and all claims, demands, suits, and causes of action, judgments, liabilities, damages, losses, expenses, costs and attorney's fees resulting and due to the acts or omissions of Agency in performing pursuant to this Agreement. This obligation of indemnification shall remain in effect after termination of this Agreement.

Notice: Any notice, demand or communication required, permitted or desired to be given under this Agreement shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, sent to the addresses noted in the signature blocks below. Agency and Client shall both notify each other of any change of address within five (5) days of such change.

NOTE: Statewide and Multijurisdictional criminal records are totally dependent upon each state's reporting entities to submit accurate criminal information to the state in a timely manner. There may be changes and variations in Statewide and Multijurisdictional criminal record reporting and county record reporting. GroupOne will add the county search for any Multijurisdictional or Statewide "hit" to ensure that the information being reported is accurate, complete and up to date. If charges are found in Statewide and Multijurisdictional criminal research, we will add the county where the charges were found to your request if that county was not already requested. Additional fees will be added only if the total number of counties researched is exceeded according to your package. This criminal search is generated on your behalf because of the due-diligence and best-practices policies of our organization. The results provided in your report are based on the new research. This procedure protects our clients, us, and most importantly the applicant.

*Access fees are applied to package and/or supplemental pricing only when assessed by court or verification source. Research and Verification types that may have associated fees include: Criminal, Employment, Education, and Professional Licensures Verifications. Note: Fee amounts vary and are subject to change depending on the research/verification source.

VIII. SEVERABILITY

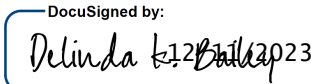
In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. AGENCY AND CLIENT AGREE THAT THE CONTRACT WILL BE PERFORMED IN DALLAS COUNTY, TEXAS.

EXECUTED in Dallas County, Texas as of the day and year first above written.

AGENCY"
GroupOne Services, Inc.

"CLIENT"
City of Abilene

DocuSigned by:
Signature: 
DD98A6A71D44476...

Name: Delinda Bailey
Title: EVP & CFO
Address: 300 Decker Drive Suite 300
Irving, Texas 75062

Signature: _____
Name: Robert Hanna
Title: City Manager
Address: 555 Walnut Street
Abilene, Texas 79601
Date: _____

Appendix A – Detailed Package Descriptions

Basic Package

BASIC PACKAGE
Package Price \$27.50 / Setup Fee Waived / ATS integration per-order transaction fee \$1.00
SSN Address Trace / Address History Locator A trace of the provided social security number provided for given name match and address history.
Social Security Number Verification/Validation Validates the provided social security numbers provided by using credit headers and against the SSN Master Death Index.
Add-to-Crim Feature This feature utilizes addresses revealed by SSN address trace to automatically select and add counties to the county criminal research based upon where the candidate has lived, resided, and/or applied for credit in the last seven years.
County Criminal Research Primary source search of court records for records in applicable jurisdictions based upon the candidate's 10-year address history. Cost includes up to five counties based on SSN address trace.
National Criminal Search - This multijurisdictional search is a powerful criminal record search that searches state, county, and federal criminal records of over 1500 database sources. This search complements the county criminal research by casting an even wider background screening net for discovering convictions in counties not identified by the SSN Address Trace. 1. State Criminal databases except for OSBI(OK), Kansas, New York, Missouri, ICORI (MA), New Mexico, Colorado, North Carolina, and Virginia. These may be run separately in separate searches. 2. 50 states sex offender registries, the District of Columbia, Guam, Virgin Islands, Northern Mariana Islands, Puerto Rico, and numerous Indian Tribe registries. 3. State and Federal Sanction/Exclusions (OIG, GSA, OFAC, Sam.gov, DAD's, Terrorist watch list)

**Access fees will be passed through to client at cost when assessed by a court or other verification source. This package contains up to five counties for the criminal county research. If the research goes over five counties an additional fee of \$15 will be accessed for each county that goes over the amount included in the package.*

Basic + Cash Handling Package

BASIC + CASH
Package Price \$37.50 / Setup Fee Waived / ATS integration per-order transaction fee \$1.00
SSN Address Trace / Address History Locator A trace of the provided social security number provided for given name match and address history.
Social Security Number Verification/Validation Validates the provided social security numbers provided by using credit headers and against the SSN Master Death Index.
Add-to-Crim Feature This feature utilizes addresses revealed by SSN address trace to automatically select and add counties to the county criminal research based upon where the candidate has lived, resided, and/or applied for credit in the last seven years.
County Criminal Research Primary source search of court records for records in applicable jurisdictions based upon the candidate's 10-year address history. Cost includes up to five counties based on SSN address trace.
National Criminal Search - This multijurisdictional search is a powerful criminal record search that searches state, county, and federal criminal records of over 1500 database sources. This search complements the county criminal research by casting an even wider background screening net for discovering convictions in counties not identified by the SSN Address Trace. 1. State Criminal databases except for OSBI(OK), Kansas, New York, Missouri, ICORI (MA), New Mexico, Colorado, North Carolina, and Virginia. These may be run separately in separate searches. 2. 50 states sex offender registries, the District of Columbia, Guam, Virgin Islands, Northern Mariana Islands, Puerto Rico, and numerous Indian Tribe registries. 3. State and Federal Sanction/Exclusions (OIG, GSA, OFAC, Sam.gov, DAD's, Terrorist watch list)
Employment Credit History - credit history check for employment purposes.

**Access fees will be passed through to client at cost when assessed by a court or other verification source. This package contains up to five counties for the criminal county research. If the research goes over five counties an additional fee of \$15 will be accessed for each county that goes over the amount included in the package.*

Basic + Driving (MVR) Package

BASIC + DRIVER HISTORY
Package Price \$32.50 / Setup Fee Waived / ATS integration per-order transaction fee \$1.00
SSN Address Trace / Address History Locator A trace of the provided social security number provided for given name match and address history.
Social Security Number Verification/Validation Validates the provided social security numbers provided by using credit headers and against the SSN Master Death Index.
Add-to-Crim Feature This feature utilizes addresses revealed by SSN address trace to automatically select and add counties to the county criminal research based upon where the candidate has lived, resided, and/or applied for credit in the last seven years.
County Criminal Research Primary source search of court records for records in applicable jurisdictions based upon the candidate's 10-year address history. Cost includes up to five counties based on SSN address trace.
National Criminal Search - This multijurisdictional search is a powerful criminal record search that searches state, county, and federal criminal records of over 1500 database sources. This search complements the county criminal research by casting an even wider background screening net for discovering convictions in counties not identified by the SSN Address Trace. 1. State Criminal databases except for OSBI(OK), Kansas, New York, Missouri, ICORI (MA), New Mexico, Colorado, North Carolina, and Virginia. These may be run separately in separate searches. 2. 50 states sex offender registries, the District of Columbia, Guam, Virgin Islands, Northern Mariana Islands, Puerto Rico, and numerous Indian Tribe registries. 3. State and Federal Sanction/Exclusions (OIG, GSA, OFAC, Sam.gov, DAD's, Terrorist watch list)
Motor Vehicle Report - Standard driver history report

**Access fees will be passed through to client at cost when assessed by a court or other verification source. This package contains up to five counties for the criminal county research. If the research goes over five counties an additional fee of \$15 will be assessed for each county that goes over the amount included in the package.*

Professional Package

PROFESSIONAL PACKAGE
Package Price \$58.50 / Setup Fee Waived / ATS integration per-order transaction fee \$1.00
SSN Address Trace / Address History Locator A trace of the provided social security number provided for given name match and address history.
Social Security Number Verification/Validation Validates the provided social security numbers provided by using credit headers and against the SSN Master Death Index.
Add-to-Crim Feature This feature utilizes addresses revealed by SSN address trace to automatically select and add counties to the county criminal research based upon where the candidate has lived, resided, and/or applied for credit in the last seven years.
County Criminal Research Primary source search of court records for records in applicable jurisdictions based upon the candidate's 10-year address history. Cost includes up to five counties based on SSN address trace.
National Criminal Search - This multijurisdictional search is a powerful criminal record search that searches state, county, and federal criminal records of over 1500 database sources. This search complements the county criminal research by casting an even wider background screening net for discovering convictions in counties not identified by the SSN Address Trace. 1. State Criminal databases except for OSBI(OK), Kansas, New York, Missouri, ICORI (MA), New Mexico, Colorado, North Carolina, and Virginia. These may be run separately in separate searches. 2. 50 states sex offender registries, the District of Columbia, Guam, Virgin Islands, Northern Mariana Islands, Puerto Rico, and numerous Indian Tribe registries. 3. State and Federal Sanction/Exclusions (OIG, GSA, OFAC, Sam.gov, DAD's, Terrorist watch list)
▪ Education Verification – Verify the highest degree obtained. *High School diploma can be verified for an additional \$15 processing fee.
▪ Employment Verification – <u>(Includes 2)</u> Verify current or previous employment history

**Access fees will be passed through to client at cost when assessed by a court or other verification source. This package contains up to five counties for the criminal county research. If the research goes over five counties an additional fee of \$15 will be assessed for each county that goes over the amount included in the package.*

Drug Screening (Standard 5-Panel Testing)

Standard 5-Panel Drug Screen

DRUG SCREENING
Setup Fee Waived
5-Panel Urine Testing \$30
Drug Screen includes: ▪ MRO and Lab Fees ▪ Electronic scheduling ▪ Using Quest or LabCorp ▪ 24-hour results for negative and up to 72 hours for MRO review ▪ Electronic Results can be provided in the same system as background screening, or they can be printed as a stand-a-lone report.

Drug testing panels can be tailored to meet your drug testing policy needs. If you need a quote for a drug screening panel outside of these panel listings, please request a quote.

Castle Branch				
		HR Staff Score		Max Points
FCRA Compliance Methodology		20		25
Expertise and Similar Project Experience		20		20
Qualifications		13		20
Cost		15		15
Quality of Proposal, including an expressed understanding of requirements		8		10
Staffing and Project Organization		8		10
Total		84		100
GroupOne				
		HR Staff Score		Max Points
FCRA Compliance Methodology		23		25
Expertise and Similar Project Experience		20		20
Qualifications		20		20
Cost		15		15
Quality of Proposal, including an expressed understanding of requirements		7		10
Staffing and Project Organization		10		10
Total		95		100
HireRight				
		HR Staff Score		Max Points
FCRA Compliance Methodology		5		25
Expertise and Similar Project Experience		15		20
Qualifications		15		20
Cost		5		15
Quality of Proposal, including an expressed understanding of requirements		10		10
Staffing and Project Organization		5		10
Total		55		100

Reveal				
		HR Staff Score		Max Points
FCRA Compliance Methodology		0		25
Expertise and Similar Project Experience		0		20
Qualifications		3		20
Cost		5		15
Quality of Proposal, including an expressed understanding of requirements		2		10
Staffing and Project Organization		3		10
Total		13		100
TruView				
		HR Staff Score		Max Points
FCRA Compliance Methodology		22		25
Expertise and Similar Project Experience		20		20
Qualifications		20		20
Cost		10		15
Quality of Proposal, including an expressed understanding of requirements		10		10
Staffing and Project Organization		10		10
Total		92		100

Background Screening Services

December 21, 2023





Background

- This year alone, Human Resources has conducted 534 background screenings.
- We are seeking collaboration with a vendor possessing the expertise and proven track record in delivering compliance-focused background screening services for candidates applying to diverse positions across the City.





Selection Process

Notices were published for RFP CB-2347 on June 23, 2023, with five companies responding.

- Our rating evaluation criteria consisted of:
 - FCRA Compliance Methodology - 25%
 - Experience and Similar Project Experience - 20%
 - Qualifications - 20%
 - Cost - 15%
 - Quality of Proposal, including an expressed understanding of requirements - 10%
 - Staffing and Project Organization - 10%





Vendor Evaluation and Recommendation

Criteria	GroupOne Services
● FCRA Compliance Methodology	23
● Expertise and Similar Project Experience	20
● Qualifications	20
● Cost	15
● Quality of Proposal	7
● Staffing and Project Organization	10
Total	95





Why GroupOne Services?

- **Comprehensive solutions tailored to the specific needs**
 - I-9 and E-Verify Electronic Processing
 - Turnaround time is less than 2 days
 - Variety of services to meet all potential
- **Dedication to accuracy and compliance**
 - Professional Background Screening Association (PBSA) and Federal Credit Reporting Act (FCRA) Certified
 - Employee's are licensed and bonded private investigators through the State of Texas DPS





GroupOne's Experience

GroupOne Services' extensive experience and expertise:

- More than 30 years of background screening experience
- A portfolio of 350 clients including current government, municipalities, universities, hospitals, and non profit organizations.

Completed similar projects for:

- City of Cleburne, TX
- City of Mustang, OK
- Tarrant County Hospital District





Cost Evaluation

Background Packages	Current Vendor Pricing - HireRight	Recommended Vendor Pricing - GroupOne Services
● Basic Package	\$40.45	\$27.50
● Basic + Driver Package	\$42.65	\$32.50
● Basic + Cash Package	\$47.70	\$37.50
● Professional Package	\$79.00	\$58.50
● Non-DOT Drug Screening	\$37.55	\$30.00





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Pamela Williams, Director

SUBJECT: 12. Resolution: Receive a Report, Hold a Discussion and Take Action to Approve and Agreement with Arthur J. Gallagher Risk Management Services, LLC to Provide Cyber Liability Insurance (Pamela Williams)

GENERAL INFORMATION

The City conducted a review and determined a need for a new vendor for Cyber Liability Insurance. Arthur J. Gallagher Risk Management Services, LLC provides a comprehensive option for coverage as well as being an advisor that would provide cyber liability insurance, identify vulnerabilities within the City's IT systems, and provide incident response in the event of a cyber attack.

SPECIAL CONSIDERATIONS

The Human Resources Department conducted an analysis of the coverage offered by our present liability insurers and compared them against those of other insurers listed on the Texas Department of Information Resources. Subsequently, responses were received and rigorously assessed by the Human Resources team. The vendor offering a superior level of coverage was chosen to fulfill the City's requirements.

FUNDING/FISCAL IMPACT

The Cyber Liability Insurance will be funded using the Self-Insurance fund.

STAFF RECOMMENDATION

Staff recommends awarding the contract to Arthur J. Gallagher Risk Management Services,

LLC.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Cyber Liability Insurance Resolution
2. Cyber Liability Insurance Proposal
3. Signed Cyber Liability Insurance Supplement to Agreement - boycott language 2023
4. Cyber Liability Insurance Cost Comparison
5. Cyber Liability Insurance Presentation

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
APPROVING AN AGREEMENT WITH ARTHUR J. GALLAGHER RISK
MANAGEMENT SERVICES, LLC TO PROVIDE CYBER LIABILITY INSURANCE.**

WHEREAS, the Human Resources Department referenced Choice Partners purchasing cooperative for the best-fit candidate.

WHEREAS, it is the staff's recommendation that the City accepts the proposal from Arthur J. Gallagher Risk Management Services, LLC to perform the services of Cyber Liability Insurance. Additionally, we request the City Managers endorsement to execute the final contract.

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

PART 1: The City Manager is authorized to negotiate and execute an agreement with Arthur J. Gallagher Risk Management Services, LLC as set-forth above. Which is a one year agreement, the cost is \$141,905.81 and payments are made on a yearly basis.

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

ADOPTED this 21st day of December, 2023

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney



Proposal of Insurance

City of Abilene

555 Walnut Street
Abilene, TX 79601

Presentation Date: October 23, 2023

Effective Date: October 23, 2023

Mike Kessler

Area Vice President

Arthur J Gallagher Risk Management Services, LLC

Park 7, 12750 Merit Drive Suite 1000

Dallas, TX 75251

(972) 663 6113

Mike_Kessler@ajg.com

AJG License Nos. IL 100292093 / CA 0D69293

Choice Partner Contract #20/031KN-02



Gallagher

Insurance | Risk Management | Consulting

Proposal Summary

We appreciate the opportunity to quote your business insurance. This proposal is a summary of policy terms and conditions.

This proposal provides coverage highlights along with the attached carrier quotations for the following coverages:

- Excess Cyber Liability
- Cyber Liability

We are not aware of any changes in your exposures to loss, nor are we aware of any changes in your business operations that would necessitate additional coverage options. Please notify us immediately if you are planning any new business operations.

The values and schedules are per the expiring policy or the information you have previously provided. It is your responsibility to notify us of all necessary changes to your schedules

Information contained in this proposal is intended to provide a brief overview of coverages. It should be used for reference purposes only. It is not intended to provide a full list of policy exclusions, limitations, and conditions. The provided quotes should be reviewed for further details. Coverage afforded to you is subject to all terms, conditions, and exclusions of the bound and issued policies.

To Bind Coverage:

Please refer to the attachment document titled, ***“Client Authorization to Bind Coverage”***:

- Note any changes you desire to be made
- Place a check mark next to the coverage(s) you wish to accept
- Date and Sign
- Return prior to the effective date of coverage

Thank you for allowing Gallagher to service your insurance needs. We appreciate your business and look forward to working with you in the coming year. Please contact me if you have any questions.

Sincerely,

Lisa Dominguez

Lisa Dominguez
Client Service Manager

Enclosure



Premium Summary

The estimated program cost for the options are outlined in the following table:

Line of Coverage		Expiring	Renewal Option
			Houston Casualty Company
Excess Cyber Liability	Premium		\$62,050.00
	Estimated Cost*		\$65,310.56 Choice
	Change (\$) Change (%)		Partners Contract # 20/031KN-02
			Associated Industries Insurance Company, Inc.
Cyber Liability	Premium		\$73,000.00
	Estimated Cost*		\$76,595.25 Choice
	Change (\$) Change (%)		Partners Contract # 20/031KN-02
Total Cost			\$141,905.81

*Estimated Cost includes all taxes, fees, surcharges and TRIA premium (if applicable)

Premiums are due and payable as billed and may be financed, subject to acceptance by an approved finance company. Following acceptance, completion (and signature) of a premium finance agreement with the specified down payment is required. Note: Unless prohibited by law, Gallagher may earn compensation for this optional value-added service.

Gallagher is responsible for the placement of the following lines of coverage: Excess Cyber Liability, Cyber Liability

It is understood that any other type of exposure/coverage is either self-insured or placed by another brokerage firm other than Gallagher. If you need help in placing other lines of coverage or covering other types of exposures, please contact your Gallagher representative.

Named Insured

Named Insured	Excess Cyber Liability	Cyber Liability
City of Abilene	X	X

Note: Any entity not named in this proposal may not be an insured entity. This may include affiliates, subsidiaries, LLCs, partnerships, and joint ventures.

Market Review

We approached the following carriers in an effort to provide the most comprehensive and cost effective insurance program.

Line Of Coverage	Insurance Company ** (AM Best Rate/Financial Strength)	Market Response *	Admitted ***
Excess Cyber Liability	Houston Casualty Company (A++ XV)	Quoted	Non-Admitted
Cyber Liability	Associated Industries Insurance Company, Inc. (A- XV)	Quoted	Non-Admitted

*If shown as an indication, the actual premium and acceptance of the coverage requested will be determined by the market after a thorough review of the completed application.

**Gallagher companies use AM Best rated insurers and the rating listed above was verified on the date the proposal document was created.

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A Best's Financial Strength Rating is an independent opinion of an insurer's financial strength and ability to meet its ongoing insurance policy and contract obligations. It is not a warranty of a company's financial strength and ability to meet its obligations to policyholders. Best's Credit Ratings™ are under continuous review and subject to change and/or affirmation. For the latest Best's Credit Ratings™ and Guide to Best's Credit Ratings, visit the AM Best website at <http://www.ambest.com/ratings>.

***If coverage placed with a non-admitted carrier, it is doing business in the state as a surplus lines or non-admitted carrier, and is neither subject to the same regulations as an admitted carrier nor do they participate in any state insurance guarantee fund.

Gallagher companies make no representations and warranties concerning the solvency of any carrier, nor does it make any representation or warranty concerning the rating of the carrier which may change.

Coverage Highlights

Excess Cyber Liability	Quoted – Include Highlights
Policy Term	10/01/2023 – 10/01/2024
Carrier Information	Houston Casualty Company
Payment Plan	Payment Of Premium Is Due 30 Days From The Effective Date Of Coverage
Payment Method	Agency Bill
Premium & Exposures	
Excess Cyber Liability Premium	\$62,050.00
Terrorism -TRIA	
Carrier Fee	\$195.00
Surplus Lines Tax	\$3,018.88
Stamping Office Fee	\$46.68
Estimated Cost	\$65,310.56
Core Excess Cyber Liability Coverages	
Policy Layer	Excess
Limit of Liability	\$1,000,000 Each Claim/\$1,000,000 Aggregate
Excess over - Aggregate	\$1,000,000
Business Interruption from Suppliers	\$500,000 Aggregate Excess Over \$500,000
Cyber Deception	\$250,000 Aggregate Excess Over \$250,000
Cryptojacking	\$250,000 Aggregate Excess Over \$250,000
Form Type	Claims Made And-Reported
Retroactive Date	Follow Form
Definition of a Claim	
Refer To The Attached Policy Form	
Incident and Claim Reporting Provisions	
Refer To The Attached Policy Form	
Pay on behalf of / Indemnity form	
Duty to defend	
First dollar defense protection	
Underlying Coverages	
Primary Policy - Amtrust	
- Limit of Liability	\$1,000,000
Endorsements including but not limited to:	
Significant policy endorsements include, but are not limited to, those listed on the attached quote/policy form/endorsements.	
Exclusions including but not limited to:	
Significant policy exclusions include, but are not limited to, those listed on the attached quote/policy form/endorsements.	
Excess Cyber Liability Deductible / Retention	
Binding Requirements	
All Subjectivities Requested By The Underlying Carrier Including Currently Valued Loss Runs (5 Years) And Warranty Of No Known Claims	
TML Application Currently Signed And Dated. #1 Under Prior Claims And Circumstances Must Be Answered "NO"	
Confirmation Of The Approximate Number Of Unique Records The Applicant Collects, Stores, Hosts, Processes, Controls, Uses Or Shares That Contain Any Private Or Sensitive Information In Either Paper Or Electronic Form. Do Not Include Duplicate Records.	
Is Your EDR Tool Deployed To 100% Of Endpoints?	
A Complete SL Form	
Receipt Of Copies Of Underlying Binders And Policies (Once Issued)	
Proof Of Loss	

Cyber Liability	Quoted – Include Highlights
Policy Term	10/23/2023 – 10/23/2024
Carrier Information	Associated Industries Insurance Company, Inc.

City of Abilene

Payment Plan	Any Fees Are Due To RPS Within 20 Days Of Binding
Payment Method	Agency Bill
Premium & Exposures	
Cyber Liability	\$73,000.00
Terrorism - TRIA	Included
Surplus Lines Tax	\$3,540.50
Stamping Office Fee	\$54.75
Total Cyber Premium	\$76,595.25
Core Cyber Coverages	
Aggregate Limit of Liability	\$1,000,000
Coverage For The Insured's Direct Loss	
Ransom Payment	\$1,000,000
Data And System Recovery	\$1,000,000
- Bricking Costs	\$1,000,000
Business Interruption	\$1,000,000
Business Interruption From Suppliers	\$500,000
Reputation Harm	\$1,000,000
Cyber Event	\$1,000,000
Cyber Deception	\$250,000
Proof Of Loss	\$250,000
Cryptojacking	\$250,000
Coverage For Claims Brought Against The Insured	
Privacy And Network Security	\$1,000,000
Regulatory Fines And Penalties	\$1,000,000
Payment Card	\$1,000,000
Media	\$1,000,000
Form Type	Claims-Made
Continuity Date	8/9/2023
Definition of a Claim	
Refer To The Attached Policy Form	
Incident and Claim Reporting Provisions	
Refer To The Attached Policy Form	
Endorsements including but not limited to:	
Significant policy endorsements include, but are not limited to, those listed on the attached quote/policy form/endorsements.	
Exclusions including but not limited to:	
Significant policy exclusions include, but are not limited to, those listed on the attached quote/policy form/endorsements.	
Cyber Liability Deductible / Retention	
Business Interruption Waiting Period	12 Hours
Coverage For The Insured's Direct Loss	
Ransom Payment	\$200,000
Data And System Recovery	\$200,000
- Bricking Costs	\$200,000
Business Interruption	\$200,000
Business Interruption From Suppliers	\$200,000
Reputation Harm	\$200,000
Cyber Event	\$200,000
Cyber Deception	\$200,000
Proof Of Loss	\$200,000
Cryptojacking	\$200,000
Coverage For Claims Brought Against The Insured	
Privacy And Network Security	\$200,000
Regulatory Fines And Penalties	\$200,000
Payment Card	\$200,000
Media	\$200,000



City of Abilene

Other Significant Terms and Conditions / Restrictions
Business Interruption Period of Restoration : 180 Days
Business Interruption From Suppliers :12 Hours
Business Interruption from Suppliers Period of Restoration: 180 Days
Binding Requirements
Confirmation Of Name And License Number Of Licensed Surplus Lines Broker Handling The Required Filings And Paying Required Fees
Receipt Of Favorable 5-Year Loss Runs, Currently Valued, Prior To Binding
Insured Warranty Of No Known Claims Or Circumstances Reasonably Likely To Give Rise To A Loss Under Our Proposed Participation
No Material Change In Risk Prior To Inception



Claims Reporting By Policy

Immediately report all claims. Each insurer requires notice of certain types of claims depending on the potential exposure or particular injury types. It is important to thoroughly review your policy to ensure you are reporting particular incidents and claims, based upon the insurer's policy requirements.

If you are using a third party administrator ("TPA"), your TPA may or may not report claims to an insurer on your behalf. Although we will assist you where requested, it is important that you understand whether your TPA will be completing this notification.

Reporting Direct to Carrier [Only When Applicable]

Coverage(s): Excess Cyber Liability	Immediately report claims directly to:
Insurer: Houston Casualty Company Policy Term: 10/01/2023 – 10/01/2024	Insurer/TPA Name: Houston Casualty Company Phone: 1-800-742-2210 Email: submitclaims@tmhcc.com Web: https://www.tmhcc.com/en-us/groups/cyber-and-professional-lines-group/cyber-and-professional-lines-claims

Coverage(s): Cyber Liability	Immediately report claims directly to:
Insurer: Associated Industries Insurance Company, Inc. Policy Term: 10/23/2023 – 10/23/2024	Insurer/TPA Name: Associated Industries Insurance Company, Inc. Phone: 866-272-9267 Email: ubiclaimsreporting@amtrustgroup.com Web: https://amtrustfinancial.com/claims

Reporting to Gallagher or Assistance in Reporting

Coverage(s): Excess Cyber Liability, Cyber Liability	Immediately report claims directly to:
Gallagher Claim Center Policy Term: Multiple	Phone: 855-497-0578 Fax: 225-663-3224 Email: ggb.nrcclaimscenter@ajg.com

Proposal Disclosures

The following disclosures are hereby made a part of this proposal. Please review these disclosures prior to signing the Client Authorization to Bind or e-mail confirmation.

Proposal Disclaimer

IMPORTANT: The proposal and/or any executive summaries outline certain terms and conditions of the insurance proposed by the insurers, based on the information provided by your company. The insurance policies themselves must be read to fully understand the terms, coverages, Exclusions including but not limited to: limitations and/or conditions of the actual policy contract of insurance. Policy forms will be made available upon request. We make no warranties with respect to policy limits or coverage considerations of the carrier.

Compensation Disclosure

1. Gallagher Companies are primarily compensated from the usual and customary commissions, fees or, where permitted, a combination of both, for brokerage and servicing of insurance policies, annuity contracts, guarantee contracts and surety bonds (collectively "insurance coverages") handled for a client's account, which may vary based on market conditions and the insurance product placed for the client.

2. In placing, renewing, consulting on or servicing your insurance coverages, Gallagher companies may participate in contingent and supplemental commission arrangements with intermediaries and insurance companies that provide for additional compensation if certain underwriting, profitability, volume or retention goals are achieved. Such goals are typically based on the total amount of certain insurance coverages placed by Gallagher with the insurance company, not on an individual policy basis. As a result, Gallagher may be considered to have an incentive to place your insurance coverages with a particular insurance company. If you do not wish to have your commercial insurance placement included in consideration for additional compensation, contact your producer or service team for an Opt-out form.

3. Gallagher Companies may receive investment income on fiduciary funds temporarily held by them, or from obtaining or generating premium finance quotes, unless prohibited by law.

4. Gallagher Companies may also access or have an ownership interest in other facilities, including wholesalers, reinsurance intermediaries, captive managers, underwriting managers and others that act as intermediaries for both Gallagher and other brokers in the insurance marketplace some of which may earn and retain customary brokerage commission and fees for their work.

If you have specific questions about any compensation received by Gallagher and its affiliates in relation to your insurance placements, please contact your Gallagher representative for more details.

TRIA/TRIPRA Disclaimer

If this proposal contains options to purchase TRIA/TRIPRA coverage, the proposed TRIA/TRIPRA program may not cover all terrorism losses. While the amendments to TRIA eliminated the distinction between foreign and domestic acts of terrorism, a number of lines of coverage excluded under the amendments passed in 2005 remain excluded including commercial automobile, burglary and theft insurance; surety insurance, farm owners multiple perils and professional liability (although directors and officers liability is specifically included). If such excluded coverages are required, we recommend that you consider purchasing a separate terrorism policy. Please note that a separate terrorism policy for these excluded coverages may be necessary to satisfy loan covenants or other contractual obligations. TRIPRA includes a \$100 billion cap on insurers' aggregate liability.

TRIPRA is set to expire on December 31, 2027. There is no certainty of extension, thus the coverage provided by your insurers may or may not extend beyond December 31, 2027. In the event you have loan covenants or other contractual obligations requiring that TRIA/TRIPRA be maintained throughout the duration of your policy period, we recommend that a separate "Stand Alone" terrorism policy be purchased to satisfy those obligations.

Property Estimator Disclaimer

These property values were obtained using a desktop Property Estimator software operated by non-appraisal professionals. These property values represent general estimates which are not to be considered a certified appraisal. These property values include generalities and assumptions that may produce inaccurate values for specific structures.

Terms and Conditions

City of Abilene

It is important that we clearly outline the nature of our mutual relationship. The following terms and conditions (these “Terms”) govern your relationship with Gallagher unless you have separately entered into a written services agreement with Gallagher relative to the policies and services outlined in this Proposal, in which case that services agreement will govern and control with respect to any conflicts with these Terms. These Terms will become effective upon your execution of the Client Authorization to Bind Coverage (the “CAB”) included in this Proposal and shall survive for the duration of your relationship with Gallagher relative to the policies placed pursuant to the CAB or otherwise at your request.

Services

Gallagher will represent and assist you in all discussions and transactions with insurance companies relating to the lines of insurance coverage set forth in the CAB and any other lines of insurance coverage with which you request Gallagher’s assistance. Gallagher will consult with you regarding any matters involving these or other coverages for which you have engaged Gallagher. You have the sole discretion for approving any insurance policies placed, as well as all other material decisions involving your risk management, risk transfer and/or loss prevention needs.

Although you are responsible for notifying applicable insurance companies directly in connection with any claims, demands, suits, notices of potential claims or any other matters as required by the terms and conditions of your policies, Gallagher will assist you in determining applicable claim reporting requirements.

Treatment of Information

Gallagher understands the need to protect the confidentiality and security of your confidential and sensitive information and strives to comply with applicable data privacy and security laws. Your confidential and sensitive information will be protected by Gallagher and only used to perform services for you; provided that Gallagher may disclose and transfer your information to our affiliates, agents or vendors that have a need to know such information in connection with the provision of such services (including insurance markets, as necessary, for marketing, quoting, placing and/or servicing insurance coverages). We may also disclose such information as required by applicable data protection laws or the order of any court or tribunal, subject to our providing you with prior notice as permitted by law.

We will (i) implement appropriate administrative, physical and technical safeguards to protect personal information; (ii) timely report security incidents involving personal information to affected parties and/or regulatory bodies; (iii) create and maintain required policies and procedures; and (iv) comply with data subjects’ rights, as applicable. To the extent applicable under associated data protection laws, you are a “business” or “controller” and Gallagher is a “service provider” or “data processor.” You will ensure that any information provided to Gallagher has been provided with any required notices and that you have obtained all required consents, if any and where required, or are otherwise authorized to transfer all information to Gallagher and enable Gallagher to process the information for the purposes described in this Proposal and as set forth in Gallagher’s Privacy Policy located at <https://www.ajg.com/privacy-policy/>. Gallagher may update its Privacy Policy from time to time and any updates will be posted to such site.

Dispute Resolution

Gallagher does not expect that it will ever have a formal dispute with any of its clients. However, in the event that one should arise, we should each strive to achieve a fair, expedient and efficient resolution and we’d like to clearly outline the resolution process.

- A. If the parties have a dispute regarding Gallagher’s services or the relationship governed by this Proposal (“**Dispute**”), each party agrees to resolve that Dispute by mediation. If mediation fails to resolve the Dispute, you and Gallagher agree to binding arbitration. Each party waives all rights to commence litigation in court to resolve a Dispute, and specifically waives all rights to pursue relief by class action or mass action in court or through arbitration. However, the parties do not waive the ability to seek a court order of injunction in aid of the mediation and arbitration required by these Terms.
- B. The party asserting a Dispute must provide a written notice (“**Notice**”) of the claim to the other party and to the American Arbitration Association (“**AAA**”) in accordance with its Commercial Arbitration Rules and Mediation Procedures. All Dispute resolutions will take place in Chicago, IL, unless you and Gallagher agree to another location. The parties will equally divide all costs of the mediation and arbitration proceedings and will each pay their own attorneys’ fees. All matters will be before a neutral, impartial and disinterested mediator or arbitrator(s) that have at least 20 years’ experience in commercial and insurance coverage disputes.
- C. Mediation will occur within sixty (60) days of filing the Notice with the AAA. Mediation results will be reduced to a memorandum of understanding signed by you, Gallagher and the mediator. A Dispute that is not resolved in mediation will commence to binding arbitration. For Disputes in excess of \$500,000, either party may elect to have the Dispute heard by a panel of three (3) arbitrators. The award of the arbitrator(s) must be accompanied by a reasoned opinion



City of Abilene

prepared and signed by the arbitrator(s). Except as may be required by law, neither you, Gallagher, nor a mediator or arbitrator may disclose the existence, content or results of any Dispute or its dispute resolution proceeding without the prior written consent of both you and Gallagher.

Electronic Delivery

In lieu of receiving documents in paper format, you agree, to the fullest extent permitted by law, to accept electronic delivery of any documents that Gallagher may be required to deliver to you (including, but not limited to, insurance policies and endorsements, account statements and all other agreements, forms and communications) in connection with services provided by Gallagher. Electronic delivery of a document to you may be made via electronic mail or by other electronic means, including posting documents to a secure website.

Miscellaneous Terms

Gallagher is engaged to perform services as an independent contractor and not as your employee or agent, and Gallagher will not be operating in a fiduciary capacity.

Where applicable, insurance coverage placements and other services may require the payment of federal excise taxes, surplus lines taxes, stamping or other fees to the Internal Revenue Service, various State(s) departments of revenue, state regulators, boards or associations. In such cases, you will be responsible for the payment of the taxes and/or fees, which Gallagher will separately identify on related invoices.

The Proposal and these Terms are governed by the laws of the State of Illinois, without regard to its conflict of law rules.

If an arbitrator/court of competent jurisdiction determines that any provision of these Terms is void or unenforceable, that provision will be severed, and the arbitrator/court will replace it with a valid and enforceable provision that most closely approximates the original intent, and the remainder of these Terms will remain in effect.

Except to the extent in conflict with a services agreement that you may enter into with Gallagher, these Terms and the remainder of the Proposal constitute the entire agreement between you and Gallagher with respect to the subject matter of the Proposal, and supersede all prior negotiations, agreements and understandings as to such matters.



City of Abilene

Bindable Quotations & Compensation Disclosure Schedule

Client Name: City of Abilene

Coverage	Insurance Company	Wholesaler, MGA, or Intermediary Name ¹	Est. Annual Premium ²	Comm. % or Fee ³	Gallagher U.S. Owned Wholesaler, MGA, or Intermediary % and/or Fee
Excess Cyber Liability	Houston Casualty Company	Risk Placement Services, Inc.	\$62,050.00	12.5%	7.5%
Cyber Liability	Associated Industries Insurance Company, Inc.	Risk Placement Services, Inc.	\$73,000.00	12.5%	7.5%

1 We were able to obtain more advantageous terms and conditions for you through an intermediary/ wholesaler.

2 If the premium is shown as an indication: The premium indicated is an estimate provided by the market. The actual premium and acceptance of the coverage requested will be determined by the market after a thorough review of the completed application.

* A verbal quotation was received from this carrier. We are awaiting a quotation in writing.

3 The commission rate is a percentage of annual premium excluding taxes & fees.

* Gallagher is receiving ___% commission on this policy. The fee due Gallagher will be reduced by the amount of the commissions received.



Client Authorization to Bind Coverage

After careful consideration of Gallagher's proposal dated 10/23/2023, we accept the following coverage(s). Please check the desired coverage(s) and note any coverage amendments below:

	Coverage/Carrier	TRIA	Description/Major Differences
☐ Accept ☐ Reject	Excess Cyber Liability Houston Casualty Company	Included	\$65,310.56 TRIA /Included):
☐ Accept ☐ Reject	Cyber Liability Associated Industries Insurance Company, Inc.	Included	\$76,595.25 TRIA (Included)

*For this coverage, TRIA cannot be rejected

Exposures and Values

You confirm the payroll, values, schedules, and any other information pertaining to your operations, and submitted to the underwriters, were compiled from information provided by you. If no updates were provided to Gallagher, the values, exposures and operations used were based on the expiring policies. You acknowledge it is your responsibility to notify Gallagher of any material change in your operations or exposures.

Additional Terms and Disclosures

Gallagher is not an expert in all aspects of your business. Gallagher's Proposals for insurance are based upon the information concerning your business that was provided to Gallagher by you. Gallagher expects the information you provide is true, correct and complete in all material respects. Gallagher assumes no responsibility to independently investigate the risks that may be facing your business, but rather have relied upon the information you provide to Gallagher in making our insurance Proposals.

Gallagher's liability to you arising from any of Gallagher's acts or omissions will not exceed \$20 million in the aggregate. The parties each will only be liable for actual damages incurred by the other party, and will not be liable for any indirect, special, exemplary, consequential, reliance or punitive damages. No claim or cause of action, regardless of form (tort, contract, statutory, or otherwise), arising out of, relating to or in any way connected with the Proposal, any of Gallagher's services or your relationship with Gallagher may be brought by either party any later than two (2) years after the accrual of the claim or cause of action.

Gallagher has established security controls to protect Client confidential information from unauthorized use or disclosure. For additional information, please review Gallagher's Privacy Policy located at <https://www.ajg.com/privacy-policy/>.

You have read, understand and agree that the information contained in the Proposal and all documents attached to and incorporated into the Proposal, is correct and has been disclosed to you prior to authorizing Gallagher to bind coverage and/or provide services to you. By signing below, or authorizing Gallagher to bind your insurance coverage through email when allowed, you acknowledge you have reviewed and agree with terms, conditions and disclosures contained in the Proposal.

City of Abilene

By: _____
Print Name (Specify Title)

Company

Signature

Date: _____





Insurance Quote

Dear: Mike Kessler, AJG - Dallas

Date: Oct 16, 2023

Attached please find Carrier quotation RPS has secured on your behalf for the below mentioned risk.

Please review the attached and below carefully as coverage described herein may be different from the original application submitted, or prior policy if applicable.

Insured: City of Abilene

RPS Reference #: 6201217B

Insured ID: 75750925

Mailing Address: P.O. Box 60 Abilene, TX 79604

Physical Address: P.O. Box 60, Abilene, TX 79604

Carrier: Associated Industries Insurance Company, Inc. / Non-Admitted AM Best Rating: A- XV

Policy Period: 10/23/2023 to 10/23/2024

Coverage: Cyber Liability

Policy Premium: \$73,000.00

Taxes:	\$3,540.50	Surplus Lines Tax
	\$54.75	Stamping Office Fee

Home State: TX

TOTAL: \$76,595.25

Commission: 12.5%

Gross Commission: 20%

Conditions/Subjectivities: per Carrier terms attached

Please note:

- You are responsible for reviewing and explaining the coverage to the client, including any options, available or not from our office. The terms hereon are not fully described and no assumption should be made as to the adequacy of the coverage of the risk to the client.
- You are not an Agent of the insurer, and as such, cannot bind coverage nor make any commitments on behalf of the insurer, nor of us. This policy cannot be assigned to another without the written consent of the insurer or their Agent.
- Insurance companies will not approve binding until all subjectivities (except inspections) have been received and accepted.
- This document is a representation of the Carrier's quotation and is subject to all premiums, limits, terms, conditions and exclusions as set forth by the carrier.
- If this policy is issued on a non-admitted basis, your office is responsible for completing, collecting and delivery to RPS any required surplus lines forms, taxes and fees from the insured at time of Binding. RPS will remit the applicable taxes and forms to the state. If this policy is subject to the surplus lines laws in your state, you should make every effort to comply with any special provisions and regulations of your state.

- You are responsible for the issuance and review of Certificates of Insurance (COI). COIs cannot amend or alter the terms provided herein.
- All premiums and any fees are due to RPS within 20 days of binding unless otherwise stipulated. Accounts with payments that are overdue and are not received within this time frame are subject to cancellation.
- By binding you commit to any provisions contained hereon, such as Minimum Earned Premiums. There are no flat cancellations allowed.

Please advise in writing if you would like to bind coverage per the attached terms and conditions. Should you have any questions please give us a call. Thank you for the opportunity to work on your business!

Sincerely,
Bryan Dobes
Risk Placement Services, Inc. - Executive Lines
Phone: (312) 803-6347
Email: Bryan_Dobes@rpsins.com



AmTrustCyber

Every business has cyber risk.

Be Prepared.
Stay Protected.



800 Superior Avenue, East 21st Floor Cleveland, OH 44114
www.amtrustfinancial.com



AmTrustCyber Insurance Proposal

Prepared for:

City of Abilene
PO Box 60
Abilene, TX 79604

Presented by:

Risk Placement Services, Inc.
12750 Merit Drive Suite 1000
Dallas TX 75251

Proposal Date: 9/13/2023

Policy Period: 8/9/2023 - 8/9/2024

Please note that Associated Industries Insurance Company, Inc. is eligible to issue an insurance policy in this state via a surplus lines broker or on a direct procurement basis and taxes for this placement will be paid by the broker and/or insured.

Please do not hesitate to reach out if you have any questions and thank you for purchasing insurance with us.

Best Regards,



Aaron Basilius

This indication will expire sixty (60) days from the date of this letter or at inception of the policy, whichever is the earlier.

AMTRUSTCYBER QUOTE (7209054)

Total Premium	\$73,000.00
Terrorism Premium	Included
Commission	15.0%

LIMITS

Aggregate Limit of Liability				\$1,000,000
Business Interruption Waiting Period	12 Hours	Business Interruption From Suppliers		12 Hours
Business Interruption Period of Restoration	180 Days	Business Interruption from Suppliers Period of Restoration		180 Days

COVERAGE FOR THE INSURED'S DIRECT LOSS

Coverage	Limit of Coverage	Retention
Ransom Payment	\$1,000,000	\$200,000
Data And System Recovery	\$1,000,000	\$200,000
Bricking Costs	\$1,000,000	\$200,000
Business Interruption	\$1,000,000	\$200,000
Business Interruption From Suppliers	\$500,000	\$200,000
Reputation Harm	\$1,000,000	\$200,000
Cyber Event	\$1,000,000	\$200,000
Cyber Deception	\$250,000	\$200,000
Proof Of Loss	\$250,000	\$200,000
Cryptojacking	\$250,000	\$200,000

COVERAGE FOR CLAIMS BROUGHT AGAINST THE INSURED

Coverage	Limit of Coverage	Retention
Privacy And Network Security	\$1,000,000	\$200,000
Regulatory Fines And Penalties	\$1,000,000	\$200,000
Payment Card	\$1,000,000	\$200,000
Media	\$1,000,000	\$200,000

CONTINUITY DATE

Continuity Date	8/9/2023
Choice of Law	NY

EXTENDED DISCOVERY PERIOD

Extended Discovery Period	12 Months
Extended Discovery Period Premium	100% percentage of annual premium

This indication will expire sixty (60) days from the date of this letter or at inception of the policy, whichever is the earlier.

FORMS AND ENDORSEMENTS APPLICABLE TO CYBER POLICY

Forms and Endorsement Edition Date	Endorsement Title
CY3300431222	Premium Payment And Termination Endorsement
CY3300460123	PRIOR AND PENDING LITIGATION EXCLUSION
CY9900120321	Cap On Losses From Certified Acts Of Terrorism And Disclosure Pursuant To Terrorism Risk Insurance Act
NMA1590	Nuclear Incident Exclusion
SURPLUS	Surplus Lines Endorsement

SUBJECTIVITIES

Our offer is subject to the following:

1. Confirmation of name and license number of licensed surplus lines broker handling the required filings and paying required fees.
2. Receipt of favorable 5-year loss runs, currently valued, prior to binding.
3. Insured warranty of no known claims or circumstances reasonably likely to give rise to a loss under our proposed participation.
4. No material change in risk prior to inception.

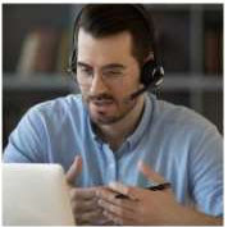
NOTICE TO THE INSURED:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code.

AmTrustCyber Services

When a cyber event happens, AmTrustCyber stands ready as a trusted partner to help you respond.

A cyber insurance policy from AmTrustCyber provides small businesses with the streamlined coverage they need to stay protected in the event of a cyber incident. We also offer an array of complimentary cyber services to our valued customers. Please email us at amtrustcyberclaims@amtrustgroup.com to schedule a cyber service today.



Meet With A Cybersecurity Expert

A consultation with a technical cybersecurity and incident response expert at one of AmTrustCyber's trusted cybersecurity service partners.



Scan Your Company's System For Cyber Threats

Get your cyber vulnerability scan and report from one of AmTrustCyber's trusted cybersecurity service partners. When vulnerabilities are identified, we show you where they are and how to fix them.



Train And Educate Your Employees

Training with one of AmTrustCyber's preferred cybersecurity and privacy counsel to help your company learn how to identify and avoid phishing attacks.



Meet With A Lawyer That Specializes In HIPAA

Consultation with AmTrustCyber's preferred healthcare information security counsel to help your healthcare practice avoid or mitigate the effects of potential cyberattacks, and ensure compliance with HIPAA.

We are constantly working to expand and build on our offerings to help our insureds defend against and recover from cyber threats.

Visit www.amtrustfinancial.com/insurance-products/cyber-liability to learn more.

59 Maiden Lane, New York, NY 10038 | www.amtrustfinancial.com



*AmTrustCyber refers to the cyber insurance underwriting unit of AmTrust Financial Services, Inc. ("AFSI"). **Each of the services referenced above (the "Services") is provided by a third party with no affiliation to AFSI, and AFSI offers to connect you with these service providers as a matter of convenience only. AFSI makes no representation or warranty as to the efficacy, adequacy or legality of the Services rendered by these third parties, and expressly disclaims any liability in connection therewith. By contacting AmTrustCyber to utilize the Services, you expressly waive any claim you may have against AFSI in connection with the Services.

AmTrust is AmTrust Financial Services, Inc., located at 59 Maiden Lane, New York, NY 10038. Coverages are provided by its affiliated property and casualty insurance companies. Consult the applicable policy for specific terms, conditions, limits and exclusions to coverage. For full legal disclaimer information, including Texas and Washington writing companies, visit: www.amtrustfinancial.com/about-us/legal-disclaimer.



Insurance Quote

Dear: Mike Kessler, AJG - Dallas

Date: Oct 19, 2023

Attached please find Carrier quotation RPS has secured on your behalf for the below mentioned risk.

Please review the attached and below carefully as coverage described herein may be different from the original application submitted, or prior policy if applicable.

Insured: City of Abilene

RPS Reference #: 5997163B

Insured ID: 75750925

Mailing Address: P.O. Box 60 Abilene, TX 79604

Physical Address: 555 Walnut Street, Abilene, TX 79601

Carrier: Houston Casualty Company / Non-Admitted

AM Best Rating: A++ XV

Policy Period: 10/1/2023 to 10/1/2024

Coverage: Excess Liability

Policy Premium: \$62,050.00

Fees (fully earned): Carrier Fee \$195.00

Taxes: \$3,018.88

\$46.68

Surplus Lines Tax

Stamping Office Fee

Home State: TX

TOTAL: \$65,310.56

Commission: 12.5%

Gross Commission: 20%

Conditions/Subjectivities: per Carrier terms attached

Please note:

- You are responsible for reviewing and explaining the coverage to the client, including any options, available or not from our office. The terms hereon are not fully described and no assumption should be made as to the adequacy of the coverage of the risk to the client.
- You are not an Agent of the insurer, and as such, cannot bind coverage nor make any commitments on behalf of the insurer, nor of us. This policy cannot be assigned to another without the written consent of the insurer or their Agent.
- Insurance companies will not approve binding until all subjectivities (except inspections) have been received and accepted.
- This document is a representation of the Carrier's quotation and is subject to all premiums, limits, terms, conditions and exclusions as set forth by the carrier.
- If this policy is issued on a non-admitted basis, your office is responsible for completing, collecting and delivery to RPS any required surplus lines forms, taxes and fees from the insured at time of Binding. RPS will remit the applicable taxes and forms to the state. If this policy is subject to the surplus lines laws in your state, you should make every effort to comply with any special provisions and regulations of your state.
- You are responsible for the issuance and review of Certificates of Insurance (COI). COIs cannot amend or alter the

terms provided herein.

- All premiums and any fees are due to RPS within 20 days of binding unless otherwise stipulated. Accounts with payments that are overdue and are not received within this time frame are subject to cancellation.
- By binding you commit to any provisions contained hereon, such as Minimum Earned Premiums. There are no flat cancellations allowed.

Please advise in writing if you would like to bind coverage per the attached terms and conditions. Should you have any questions please give us a call. Thank you for the opportunity to work on your business!

Sincerely,

Bryan Dobes

Risk Placement Services, Inc. - Executive Lines

Phone: (312) 803-6347

Email: Bryan_Dobes@rpsins.com



Cyber & Professional Lines Group
16501 Ventura Blvd. Suite 200, Encino, CA 91436 USA
Main: 818-382-2030

Risk Placement Services

Re: Follow Form Excess Liability Insurance Indication for Tokio Marine HCC - Cyber and Professional Lines Group

Dear Julia,

Thank you for the opportunity to provide a Follow Form Excess Liability Insurance Indication for Tokio Marine HCC - Cyber and Professional Lines Group. In addition to the outstanding A++ (Superior) A.M. Best rating of our Houston Casualty Company paper, we provide prompt service and expert claims management. Please visit our website at tmhcc.com to learn more about the extensive products and services Tokio Marine HCC can provide.

The attached pages describe the basic terms and conditions of this Indication.

Sincerely,

Simon Chalabi
Senior Underwriter, Cyber
schalabi@tmhcc.com

FOLLOW FORM EXCESS LIABILITY INSURANCE QUOTE

REFERENCE #: 13025241

APPLICANT: City of Abilene
P. O. Box 60
Abilene, TX 79604

PRODUCER: Risk Placement Services

Insurance Carrier: Houston Casualty Company (A++ "Superior")
Policy Form: [EXS1000-12020](#)
Coverage Type: Follow Form Excess Liability Insurance
Retroactive Date: Follow Form
Policy Term: One Year
Underwriter: Simon Chalabi
Policy Issuance Fee: \$195; non-refundable**Producer Commission: 20%**

TERMS & CONDITIONS:

Claims-made and reported coverage.

Payment of premium is due 30 days from the effective date of coverage.

Indication is valid for 30 days.

It is your responsibility to do the E&S Filings, as well as collect and pay the E&S Tax if the above coverage is secured.

Below terms are subject to our receipt, review and acceptance of the following information, prior to binding:

- All subjectivities requested by the underlying carrier including currently valued loss runs (5 years) and warranty of no known claims.
- TML application currently signed and dated. #1 under Prior Claims and Circumstances must be answered "NO"

- Confirmation of the approximate number of unique records the Applicant collects, stores, hosts, processes, controls, uses or shares that contain any private or sensitive information in either paper or electronic form. Do not include duplicate records.

Below terms are subject to our receipt, review and acceptance of the following information, after binding:

- Is your EDR tool deployed to 100% of endpoints?
- A complete SL Form.
- Receipt of copies of underlying binders and policies (once issued)

Option 1
Premium: \$62,050
LIMIT OF LIABILITY:

Limit of Liability	Excess over
\$1,000,000 Each Claim/\$1,000,000 Aggregate	\$1,000,000 Aggregate

The Limit of Liability shown above includes the following Sub-limit(s) of Liability (if any):

Primary Policy Coverage	Sub-limit of Liability
Business Interruption from Suppliers	\$500,000 Aggregate Excess Over \$500,000
Cyber Deception	\$250,000 Aggregate Excess Over \$250,000
Cryptojacking	\$250,000 Aggregate Excess Over \$250,000

UNDERLYING INSURANCE:

	Underlying Insurer	Limit of Liability	Policy Number
Primary Policy	Amtrust	\$1,000,000	TBD

APPLICABLE ENDORSEMENTS:

Nuclear Incident Exclusion [EXS1028-52020](#)
 Prior Knowledge Exclusion [EXS1025-12020](#)
 Office of Foreign Assets Control (OFAC) [EXS1029-102020](#)
 Service of Suit [EXS1030-72021](#)
 Shaving of Limits [EXS1027-12020](#)
 Exclusion of Specified Underlying Sublimits [EXS1023-12020](#)

- *Proof of Loss*

**SUPPLEMENT TO AGREEMENT BETWEEN THE CITY OF ABILENE, TEXAS AND
ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, LLC (“Company”)**

- (1) **Verification Against Boycott of Israel Provision.** In accordance with Chapter 2271 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a company for the provision of goods or services unless the agreement 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 agreement. The term “company” does not include a sole proprietorship. Chapter 2271 of the Texas Government Code only applies to an agreement that: (1) is between a governmental entity and a company with 10 or more full time employees; and (2) has a value of \$100,000.00 or more that is paid wholly or partly from public funds of the governmental entity.
- (2) **Verification Against Discrimination of Firearm or Ammunition Industries Provision.** Pursuant to Texas Government Code Chapter 2274, unless otherwise exempt, if the company employs at least 10 full-time employees, and this agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company verifies that: (1) the company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the company will not discriminate during the term of the Agreement against a firearm entity or firearm trade association. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that contracts with a sole-source provider, or does not receive any bids from a company that is able to provide the written verification required.
- (3) **Verification Against Boycott of Energy Companies Provision.** Pursuant to Texas Government Code Chapter 2276, unless otherwise exempt, if the company employs at least 10 full-time employees, and this Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the company represents that: (1) the company does not boycott energy companies; and (2) the company will not boycott energy companies during the term of this Agreement. The term “company” does not include a sole proprietorship. This provision does not apply to a governmental entity that determines the requirements are inconsistent with the governmental entity’s constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.
- (4) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the company verifies that company is not on a list maintained by the State Comptroller’s office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Unless the company is not subject to a provision above, the signatory executing this Agreement on behalf of the company verifies that the company: (1) does not boycott Israel and will not boycott Israel during the term of this Agreement; (2) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade

association, and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association; (3) does not boycott energy companies, and will not

boycott energy companies during the term of this Agreement; and (4) is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.

Arthur J. Gallagher Risk Management Services, LLC
(printed name of company)

Mike Kessler 
(signature and printed name of signatory)

12/7/2023
(date of signature)

Coverage	Current Coverage - TML	Gallagher
Regulatory Defense	\$300,000	\$2M
Cyber Extortion	\$150,000	\$2M
First-Party Data Protection	\$200,000	\$2M
Direct Business Interruption	\$200,000	\$2M
Breach Response Costs	\$150,000	\$2M
Cyber Crime	\$150,000	\$250,000
Retention	\$20,000	\$200,000
Premium	\$47,251	\$141,905.81

Cyber Liability Insurance Coverage

December 21, 2023





Background

What is Cyber Liability Insurance Coverage?

- Insurance coverage designed to protect businesses and individuals from the financial risks associated with cyber threats and data breaches.
- Coverage for various expenses and liabilities that could result from the aftermath of a cyber incident.





Background

Why Cyber Liability Insurance Coverage?

- The average cost of a cyber incident in the United States is \$9.48 million.
- Incident Response and Recovery
- Risk Mitigation





Selection Process

Increased coverage is recommended due to increased cyber incidents.

- City of Dallas - \$8.5 million
- San Bernardino County - \$1.1 million
- Judson ISD - \$6 million

Referred to the Choice Partners purchasing cooperative to find new vendor.





Recommendation - Arthur J. Gallagher Risk Management Services

Recommendation One-Year Service Agreement





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Pamela Williams, Director

SUBJECT: 13. Resolution: Receive a Report, Hold a Discussion and Take Action to Approve an Agreement with Voya Financial, a Part of Reliastar Insurance Company, to Provide Stop Loss Insurance *(Pamela Williams)*

GENERAL INFORMATION

The City conducted a Request for Proposal for Stop Loss Insurance (CB-2406) with the goal of partnering with a third party vendor for Stop Loss Insurance. We were looking for a vendor to partner with who will match our existing plan benefits unless otherwise specified and agree to contract provisions to include lasers, rate cap, and no new lasers contract.

SPECIAL CONSIDERATIONS

The Human Resources department generated an RFP in October 2023. This notice was published on October 2, 2023, with a proposal deadline of October 27, 2023. Within that timeline, we received six responses to the RFP and they were evaluated by the Employee Benefits and Human Resources team.

FUNDING/FISCAL IMPACT

The Stop Loss Insurance will be funded using the Self-Insurance fund.

STAFF RECOMMENDATION

The Human Resources staff recommends awarding the contract to Voya Financial, a part of Reliastar Insurance Company.

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Stop Loss Insurance Resolution
2. Stop Loss Agreement
3. Stop Loss RFP Bid List
4. Stop Loss Marketing Analysis
5. Stop Loss Insurance Presentation

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS,
APPROVING AN AGREEMENT WITH VOYA FINANCIAL, PART OF RELIASTAR
INSURANCE COMPANY, TO PROVIDE STOP LOSS INSURANCE.**

WHEREAS, the Human Resources Department went out for an RFP on 10/02/23 seeking proposals for Stop Loss Insurance. They received six responses and reviewed for the best-fit candidate.

WHEREAS, it is the staff's recommendation that the City accept the proposal from Voya Financial, a part of Reliastar Insurance Company, to perform the services of Stop Loss Insurance. Additionally, we request the City Managers endorsement to execute the final contracts.

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

PART 1: The City Manager is authorized to negotiate and execute an agreement with Voya Financial, part of Reliastar Insurance Company as set-forth above. Voya Financial is a one-year agreement and the cost is \$1,062,622.44, and payments of \$88,551.87 are made on a monthly basis.

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

ADOPTED this 21st day of December, 2023

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

ADMINISTRATION AGREEMENT

ReliaStar Life Insurance Company, Minneapolis, MN
 ReliaStar Life Insurance Company of New York, Woodbury, NY
 Members of the Voya® family of companies
 (the "Company")



Policyholder Name (the "Policyholder") City of Abilene

Policy Effective Date 01/01/2024

Insurance Contracts. The Company issues insurance policies and certificates based on your application and our state approved products (the "Policies"). Our obligations are determined solely by the terms of the policies we issue.

EXCESS RISK COVERAGE

Claim Administration. Upon determination of a potential claim under the Policy, you will confirm employees' eligibility for coverage and provide required eligibility and claim documentation to the Company, either directly or through your health claim administrator. The Company shall be responsible for all claim reviews, determinations and payments under the Policy.

Confidentiality. We will keep confidential all information provided to us by you or your health claims administrator in connection with the Policy, in compliance with applicable law. You authorize your health claims administrator, if any, to release to the Company information and data regarding claims paid to be used in connection with the Policy.

GROUP ANNUAL TERM LIFE, PERSONAL ACCIDENT INSURANCE, DISABILITY, CRITICAL ILLNESS, ACCIDENT AND/OR HOSPITAL CONFINEMENT INDEMNITY COVERAGE

Policy Administration. Your group policy will be "Self-Administered". This means that you or a third party that you engage will be responsible to maintain all enrollment, beneficiary, and billing records for the Policies (as applicable). The records you keep must provide the ability for you and/or your employees to:

- appropriately apply Policy limits and rules
- know how much coverage the employee has at all times
- provide the employee with the appropriate "Conversion" and/or "Portability" documentation (as applicable)
- set up any payroll deductions correctly
- pay premium to the insurance company with supporting documentation
- file a claim

The parties agree that the Policies will be self-administered by Policyholder and that the insurance charges reflect that arrangement.

Communications. All forms and other materials we provide to you must be presented to employees without alteration. Any benefit and eligibility descriptions you or your third party service provider communicates to employees must be consistent with the materials and guidelines we provide to you. We will work carefully with you to make corrections in the case of any inadvertent error in communications. However, you are responsible for any costs incurred in correcting errors caused by incorrect data you provide to employees or to Company, including incorrect benefit descriptions and eligibility determinations.

Evidence of Insurability. If evidence of insurability is required in connection with an application for coverage under the terms of a Policy, you will apply the evidence of insurability rules appropriately, obtain the necessary forms from any applicant for such coverage and provide those forms to the Company.

Claim Administration. Upon receipt of notice of a potential claim under a Policy, you will confirm employees' eligibility for coverage and provide required claim documentation at the Company's request. The Company shall be responsible for all claim reviews, determinations and payments.

Certificates of Insurance and Summary Plan Description. If you request that we provide Summary Plan Description(s) ("SPD") for distribution to ERISA plan participants, we will provide the SPD using our standard language and format unless otherwise directed by you. If we agree to electronically post certificates of insurance and/or SPDs for access by your employees, you are responsible for assuring that each covered employee is informed how the documents can be accessed and that each employee has access or otherwise receives a copy(ies) of these documents. Any legal advice as to the style, format, content or distribution of the SPD or distribution of the certificate of insurance must be provided by your legal counsel. We are unable to provide legal advice to your plan and assume no responsibility for meeting ERISA's disclosure requirements.

Indemnity. To the fullest extent allowed by Texas laws, each party shall indemnify and hold the other harmless against any and all losses, claims, damages, costs or expenses (including reasonable attorneys' fees) which the indemnified party may become obligated to pay resulting from 1) the indemnifying party's error or omission in performing obligations under this Agreement, except to the extent that the indemnified party has caused or significantly contributed to such error or omission, and 2) any breach by the indemnifying party of any of its obligations under this Agreement regardless of whether such breach is either willful or negligent.

GENERAL ADMINISTRATION – ALL PRODUCTS:

Record Keeping. You agree to maintain accurate books and records documenting the administration of the Policies, including employee demographics, eligibility records, dependent data, coverage amounts, enrollment history, payroll deductions, benefit elections and beneficiary designations (as applicable). Such records must be maintained for a period of seven (7) years following termination of the Policies to which they relate. Upon reasonable notice, we shall have the right to review, inspect and audit, at our expense, the books, records, data files or other information maintained by you or your vendor related to the Policies.

Transmission of Data. You are responsible for the accuracy and security of data transmitted to us, including data transmitted by any third party service provider you engage to assist in administration of your benefit plans. Each party will establish and maintain (1) administrative, technical and physical safeguards against the destruction, loss or alteration of data, and (2) appropriate security measures to protect data, which measures are consistent with all state and federal regulations relating to personal information security, including, without limitation, the Gramm-Leach-Bliley Act.

Premium payment. If you engage a third party to submit premium to us, we will not consider the premium paid until it is received in our Home Office.

General terms. This Agreement will remain in effect during the duration of the Policy and will terminate automatically upon termination of all Policies. This Agreement may be amended only in writing signed by both parties. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Policy, the terms of the Policy shall control.

Governing law. This Agreement shall be governed in all respects, including validity, interpretation and effect, without regard to principles of conflict of laws, by the law of the state where the Policy is issued.

Accepted and Agreed to:

Policyholder Name (Please print.) City of Abilene

 Policyholder Authorized Signature _____ Date _____

Print signer's name and title _____

RELIASTAR LIFE INSURANCE COMPANY
RELIASTAR LIFE INSURANCE COMPANY OF NEW YORK

 Company Authorized Signature Mona Zielke _____ Date _____

Print signer's name and title Mona Zielke, Vice President

City of Abilene 2024 Stop Loss RFP Bid List

Stop Loss	A.M. Best	Comments
BCBS	A	Did Not Follow RFP Specs
Berkshire Hathaway	A++	Quoted
HCC	A++	Quoted
Optum	A	Quoted
QBE	A	Quoted
Voya	A	Quoted

City of Abilene
January 1, 2024
Stop Loss Renewal - \$225,000 Medical Rx

Stop Loss Carrier TPA / Network	BCBS-Current BCBS	BCBS - Renewal BCBS		Optum BCBS		HCC BCBS		Voya BCBS		Berkshire BCBS		QBE BCBS	
SPECIFIC RETENTION	\$225,000	\$225,000		\$225,000		\$225,000		\$225,000		\$225,000		\$225,000	
Contract	24/12	PAID		24/12		24/12		24/12		24/12		24/12	
Coverages	Medical & Rx	Medical & Rx		Medical & Rx		Medical & Rx		Medical & Rx		Medical & Rx		Medical & Rx	
Lifetime Maximum Reimbursement	Unlimited	Unlimited		Unlimited		Unlimited		Unlimited		Unlimited		Unlimited	
Specific Rates													
Single	508	\$79.37		\$93.59		\$92.12		\$93.66		\$107.12		\$116.02	
Family	405	\$79.37		\$93.59		\$92.12		\$93.66		\$107.12		\$116.02	
	913		% Incr.		% Incr.		% Incr.		% Incr.		% Incr.		% Incr.
Specific Monthly Premium	\$72,464.81	\$103,497.68		\$85,447.67		\$84,105.56		\$85,511.58		\$97,800.56		\$105,926.26	
Specific Annual Premium	\$869,577.72	\$1,241,972.16	42.8%	\$1,025,372.04	17.9%	\$1,009,266.72	16.1%	\$1,026,138.96	18.0%	\$1,173,606.72	35.0%	\$1,271,115.12	46.2%
Aggregate Rate													
Composite	\$3.28	\$3.28		\$4.19		\$4.49		\$3.33		\$3.11		\$3.00	
Aggregate Monthly Premium	\$2,994.64	\$2,994.64		\$3,825.47		\$4,099.37		\$3,040.29		\$2,839.43		\$2,739.00	
Aggregate Annual Premium	\$35,935.68	\$35,935.68	0.0%	\$45,905.64	27.7%	\$49,192.44	36.9%	\$36,483.48	1.5%	\$34,073.16	-5.2%	\$32,868.00	-8.5%
AGGREGATE RETENTION													
Contract	24/12	PAID		24/12		24/12		24/12		24/12		24/12	
Coverages	Medical & Rx	Medical & Rx		Medical & Rx		Medical & Rx		Medical & Rx		Medical & Rx		Medical & Rx	
Maximum Reimbursement	Unlimited	Unlimited		\$1,000,000		\$1,000,000		\$1,000,000		\$1,000,000		\$1,000,000	
Run-In Limit	n/a	n/a		n/a		n/a		n/a		n/a		n/a	
Aggregate Factors													
Single	\$1,134.66	\$1,145.99		\$1,225.43		\$1,217.63		\$1,261.35		\$1,221.79		\$1,219.20	
Family	\$1,134.66	\$1,145.99		\$1,225.43		\$1,217.63		\$1,261.35		\$1,221.79		\$1,219.20	
Monthly Attachment Factor	\$1,035,944.58	\$1,046,288.87		\$1,118,817.59		\$1,111,696.19		\$1,151,612.55		\$1,115,494.27		\$1,113,129.60	
Annual Attachment Factor	\$12,431,334.96	\$12,555,466.44	1.0%	\$13,425,811.08	8.0%	\$13,340,354.28	7.3%	\$13,819,350.60	11.2%	\$13,385,931.24	7.7%	\$13,357,555.20	7.5%
TOTAL FIXED COSTS			% Incr.		% Incr.		% Incr.		% Incr.		% Incr.		% Incr.
TOTAL MONTHLY STOP LOSS PREMIUM	\$75,459.45	\$106,492.32		\$89,273.14		\$88,204.93		\$88,551.87		\$100,639.99		\$108,665.26	
TOTAL ANNUAL STOP LOSS PREMIUM	\$905,513.40	\$1,277,907.84	41.1%	\$1,071,277.68	18.3%	\$1,058,459.16	16.9%	\$1,062,622.44	17.4%	\$1,207,679.88	33.4%	\$1,303,983.12	44.0%
Increase in Annual Premium	n/a	\$372,394.44		\$165,764.28		\$152,945.76		\$157,109.04		\$302,166.48		\$398,469.72	
Firm Through Date				Pending Large Claim Review		Firm through 11/17		Firm through 11/20		Pending Large Claim Review		Pending Large Claim Review	
Lasers	None	None				Laser 1: \$275,000 Laser 2: \$275,000 Laser 3: \$325,000 Laser 4: \$450,000 Laser 5: \$325,000 Laser 6: \$325,000		None		None		None	
Notes	No New Laser Contract 45% Rate cap	No New Laser Contract 45% Rate cap		No New Laser Contract 50% Rate cap		No New Laser Contract 45% Rate cap		No New Laser Contract 45% Rate cap		No New Laser Contract 45% Rate cap		No New Laser Contract 50% Rate cap	

Amwins Gene Therapy 5: \$1.99 PEPM \$21,802 Annual
Amwins Gene Therapy 3: \$1.15 PEPM \$12,599 Annual

City of Abilene
January 1, 2024
Stop Loss Renewal - \$250,000 Medical Rx

Stop Loss Carrier TPA / Network	BCBS-Current BCBS	BCBS - Renewal BCBS	Optum BCBS	HCC BCBS	Voya BCBS	Berkshire BCBS	QBE BCBS
SPECIFIC RETENTION Contract Coverages Lifetime Maximum Reimbursement Specific Rates Single 508 Family 405 913	\$225,000 24/12 Medical & Rx Unlimited \$79.37 \$79.37	\$225,000 PAID Medical & Rx Unlimited \$113.36 \$113.36	\$250,000 24/12 Medical & Rx Unlimited \$81.55 \$81.55	\$250,000 24/12 Medical & Rx Unlimited \$79.69 \$79.69	\$250,000 24/12 Medical & Rx Unlimited \$90.97 \$90.97	\$250,000 24/12 Medical & Rx Unlimited \$95.45 \$95.45	\$250,000 24/12 Medical & Rx Unlimited \$108.38 \$108.38
		% Incr.	% Incr.	% Incr.	% Incr.	% Incr.	% Incr.
Specific Monthly Premium	\$72,464.81	\$103,497.68	\$74,455.15	\$72,756.97	\$83,055.61	\$87,145.85	\$98,950.94
Specific Annual Premium	\$869,577.72	\$1,241,972.16	\$893,461.80	\$873,083.64	\$996,667.32	\$1,045,750.20	\$1,187,411.28
Aggregate Rate Composite	\$3.28	\$3.28	\$4.19	\$4.53	\$3.64	\$3.35	\$3.24
Aggregate Monthly Premium	\$2,994.64	\$2,994.64	\$3,825.47	\$4,135.89	\$3,323.32	\$3,058.55	\$2,958.12
Aggregate Annual Premium	\$35,935.68	\$35,935.68	\$45,905.64	\$49,630.68	\$39,879.84	\$36,702.60	\$35,497.44
AGGREGATE RETENTION Contract Coverages Maximum Reimbursement Run-In Limit Aggregate Factors Single Family	24/12 Medical & Rx Unlimited n/a \$1,134.66 \$1,134.66	PAID Medical & Rx Unlimited n/a \$1,145.99 \$1,145.99	24/12 Medical & Rx \$1,000,000 n/a \$1,248.13 \$1,248.13	24/12 Medical & Rx \$1,000,000 n/a \$1,237.24 \$1,237.24	24/12 Medical & Rx \$1,000,000 n/a \$1,303.76 \$1,303.76	24/12 Medical & Rx \$1,000,000 n/a \$1,235.83 \$1,235.83	24/12 Medical & Rx \$1,000,000 n/a \$1,241.48 \$1,241.48
Monthly Attachment Factor	\$1,035,944.58	\$1,046,288.87	\$1,139,542.69	\$1,129,600.12	\$1,190,332.88	\$1,128,312.79	\$1,133,471.24
Annual Attachment Factor	\$12,431,334.96	\$12,555,466.44	\$13,674,512.28	\$13,555,201.44	\$14,283,994.56	\$13,539,753.48	\$13,601,654.88
TOTAL FIXED COSTS		% Incr.	% Incr.	% Incr.	% Incr.	% Incr.	% Incr.
TOTAL MONTHLY STOP LOSS PREMIUM	\$75,459.45	\$106,492.32	\$78,280.62	\$76,892.86	\$86,378.93	\$90,204.40	\$101,909.06
TOTAL ANNUAL STOP LOSS PREMIUM	\$905,513.40	\$1,277,907.84	\$939,367.44	\$922,714.32	\$1,036,547.16	\$1,082,452.80	\$1,222,908.72
Increase in Annual Premium	n/a	\$372,394.44	\$33,854.04	\$17,200.92	\$131,033.76	\$176,939.40	\$317,395.32
Firm Through Date			Pending Large Claim Review	Firm through 11/17	Firm through 11/20	Pending Large Claim Review	Pending Large Claim Review
Lasers	None	None		Laser 1: \$275,000 Laser 2: \$275,000 Laser 3: \$325,000 Laser 4: \$450,000 Laser 5: \$325,000 Laser 6: \$325,000	None	None	None
Notes	No New Laser Contract 45% Rate cap	No New Laser Contract 45% Rate cap	No New Laser Contract 50% Rate cap	No New Laser Contract 45% Rate cap	No New Laser Contract 45% Rate cap	No New Laser Contract 45% Rate cap	No New Laser Contract 50% Rate cap

Amwins Gene Therapy 5: \$1.99 PEPM \$21,802 Annual

Amwins Gene Therapy 3: \$1.15 PEPM \$12,599 Annual

Stop Loss Insurance

December 21, 2023





Background

- Stop Loss Insurance is a risk management tool that provides financial protection against catastrophic or unexpected medical claims.
- We are seeking collaboration with a vendor who will match our existing plan.

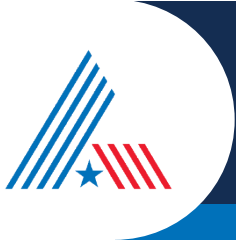




Selection Process

- Notices were published for RFP CB-2406 on October 2, 2023, with six companies responding.
- Our rating evaluation criteria consisted of:
 - Experience in the industry and in servicing governmental entities/references (15%)
 - Service(s) and support offered (10%)
 - Rates/pricing (60%)
 - Plan design and features (15%)





Recommendation - Voya Financial

Recommendation
One-Year Service Agreement effective 1/1/2024





Why Voya Financial?

- Voya Financial is a division of ReliaStar Life Insurance Company.
- Voya Financial is one of the nation's largest direct writers of excess risk (stop loss) insurance for more than 40 years.
- Selected as the best fit candidate based on RFP criteria.
- Agreed to all contract provisions requested:
 - Lasers
 - No New Lasers
 - Rate Caps





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **14. Ordinance (First Reading) Z-2023-37: Receive a Report, Hold a Discussion, and Take Action on A Request From Cosper Properties LLC, Represented By Jacob Martin, To Change The Zoning Of Approximately 2.2 Acres From Agricultural Open To General Retail. Located At 3509 Beltway, Abilene, TX 79606. (Tim Littlejohn)**

GENERAL INFORMATION

The subject property is currently zoned Agricultural Open (AO) requesting to rezone to General Retail (GR).

SPECIAL CONSIDERATIONS

The Commission, after conducting a public hearing, approved this request as submitted. It was discovered by staff that a technical error regarding the legal notice occurred, meaning that the owners who were entitled to notice were not notified. For that reason, new notice was completed to allow this item to be reheard by the Commission.

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends **approval**.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 4-0.

ATTACHMENTS:

1. Z-2023-37 Ordinance_MT
2. Z-2023-37 Staff ReportRSA
3. Application
4. Z-2023-37 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 A CERTAIN PROPERTY; 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 Two Thousand Dollars (\$2,000.00). 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 21st day of December, 2023.

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 20th day of November, 2023, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of January, 2024, 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 of the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 11th day of January, 2024.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

ORDINANCE NO. _____

EXHIBIT A

Change the zoning classification of the following described land, from Agricultural Open (AO) District to a General Retail (GR) District:

Location: 3509 Beltway S, Survey 104 WM E Vaughn, Tract 3 West



END

ZONING CASE Z-2023-37

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: December 5, 2023
City Council 1st Reading: December 21, 2023
City Council 2nd Reading: January 11, 2024

Applicant

Owner: Cospo Properties LLC
Agent: Jacob & Martin, LLC

Case Manager

Kiley Hannah – Planner

Request

Rezoning of approximately 2.2 acres from Agricultural Open (AO) to General Retail (GR).

Location

3509 Beltway S, Survey 104 WM E Vaughn, Tract 3 West

Background

The subject property is currently zoned Agricultural Open (AO) requesting to rezone to General Retail (GR).

Zoning, Existing and Proposed Land Use

AO zoning is located north and south of the subject property. Residential uses zoned RS-6 are located northwest of the subject property.

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, as amended.

The proposed amendment is consistent with the Comprehensive Plan and the Future Land Use Map.

(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.

The majority of properties between Buffalo Gap Road to South Clack Street are zoned as low intensity AO and RS-6. The introduction of General Retail zoning is not consistent with the surrounding uses, and if approved could be cited as creating a zoning precedent and could

destabilize the surrounding neighborhood. Abutting an expressway, staff realizes the need for retail uses.

- (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.**

All required utilities are available.

- (4) **Any other factors, which will substantially affect the public health, safety, morals, or general welfare.**

None known.

Staff Recommendation

Staff recommends **approval**.

Notification:

OWNER	Prop. ID	SITUS	Response
HOWARD ROBERT A & JERITA D	101635	7943 OLD FORREST HILL RD	
COSPER PROPERTIES LLC	20010		
PARR DAVID & SONJA CASEY	19509	3417 BELTWAY S	
ESTES DON & SHERRY	19382	3473 BELTWAY S	
SHEPHERD ASSET MANAGEMENT LLC	20141		
STATE OF TEXAS	99519		
HOWARD ROBERT A & JERITA D	101636	7941 OLD FORREST HILL RD	For
SHEPHERD ASSET MANAGEMENT LLC	20023	3573 BELTWAY S	
COSPER PROPERTIES LLC	19890	3509 BELTWAY S	
PARR DAVID & SONJA CASEY	19612		
ESTES DON & SHERRY	19495		

LOCATION MAP



ZONING MAP



PROJECT OVERVIEW

Project Type: Zoning Application | **Project Title:** Z-2023-37 AO to GR

ID # 23-000182 | **Started** 10/02/2023 at 4:14 PM



Address

3509 Beltway, Abilene, TX USA 79606

Legal

A0418 Sur 104 Wm E Vaughn Blk Tract 3 We Lot Acres 2.2

A0418 Sur 104 Wm E Vaughn, Tract 3 West, Acres 2.2

Description

Rezone from AO to GR

PROPERTY DETAILS

Property ID	19890
GEO ID	36670
Enforcement Area	Far Southside

PROPERTY ADDITIONAL INFORMATION

Account Number	A0418003300
Property ID	36670
Land Use	Single Family Res
High School	Wylie
Middle School	Wylie
Elementary School	Wylie
Super Neighborhood	Far Southside
Courier - Building Square Feet	0

CONTACTS	CONTACT INFO	ADDRESS	CREDENTIALS	ROLE
Clayton Farrow	cfarrow@jacobmartin.com 3256951070	3465 Curry Lane Abilene, TX 79606-2287	Engineer	APPLICANT
Cosper Properties LLC	-	1317 Lytle Way Abilene, TX 79602-4210	-	Property Owner

ATTACHED DOCUMENTS

UPLOADED ON

UPLOADED BY

No data for Attached Documents.

EPR DOCUMENTS

ASSOCIATED STEPS

STATUS

LAST REVIEW BY

Civil	Zoning Application Review	Not Uploaded	-
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REZONE REQUEST

Case: Z-2023-37

Owner: Cospers Properties LLC

Agent: Jacob & Martin, LLC

Request: Rezoning from Agricultural Open(AO) to General Retail (GR).

Location: 3509 Beltway S

Notification: 1 in Favor, 0 Opposed

P&Z: December 5, 2023

City Council: December 21, 2023
January 11, 2024

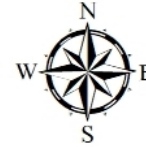




Z-2023-37 AERIAL LOCATION MAP



Aerial Map



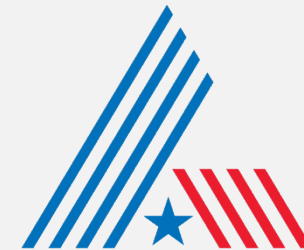
Legend

- Z-2023-37
- Roads
- CourierParcels





Z-2023-37 ZONING MAP



CITY OF
ABILENE
TEXAS



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

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





PERMITTED USES IN GR ZONING

RESIDENTIAL USES:

P Bed & Breakfast
P Dwelling – Industrialized Housing Unit
P Dwelling – Institutional
C Dwelling – Multiple-Family
P Dwelling – Single Family Detached
P 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
P Drive-Thru Facility
TP Field Office or Construction Office (temporary)
C Freight Container
P Fuel Sales
P Garage Sales
P Home Occupation
TP Itinerant Business
P Manufacturing (incidental)
TP Mobile Home (temporary security residence)
P Recreation Building, Multipurpose
P Recreation Equipment, Mobile (storage and parking)
P 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
P Cultural Facilities
C Recreation – Outdoors (active)
P Recreation – Outdoors (passive)
P Recreation and Commercial Entertainment - Indoor

GOVERNMENT, HEALTH, SAFETY AND WELFARE USES:

C Ambulance Service
P Fire/Police Station
P 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 Educational and Scientific Research
P School: Public/Private
C Trade/Business School
P University/College

SERVICE

P/C Automobile Wash
C Funeral Home/ Mortuary/Morgue
P Kennel (Without Outdoor Pens)
P Laundry/Dry Cleaning Services & Facilities
P Office (general, professional, financial)
P Personal Services
C Printing, Copying, Reproduction, Publishing
P Repair and Maintenance Services - Automobile/Small Truck (minor)
P Repair and Maintenance Services (indoor)
C Tattoo Parlor
P Veterinary Service (small animals)

TRADE – RETAIL USES

ATM's, Self-Serve Kiosks, and Similar Facilities
Fuel Sales
Liquor Store (Off Premises Consumption) *(Defined under Liquor Store)*
Liquor Store (On Premises Consumption) *(Defined under Liquor Store)*
Restaurant, Brew Pub
Restaurant, Fast Food
Restaurant, Standard
Retail Sales/Rental (indoor)
C Retail Sales/Rental (outdoors, non-vehicle)

TRANSPORTATION, COMMUNICATION AND UTILITIES:

C Antenna Tower- Commercial
P Automobile Parking Lot or Structure - Commercial
P Broadcast Studio
P Public Utility Facility

RESOURCE PRODUCTION AND EXTRACTION USES:

P Petroleum or Gas Well
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





Z-2023-37 VIEWS OF SUBJECT PROPERTY



East



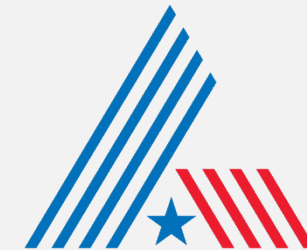
North



Subject Property



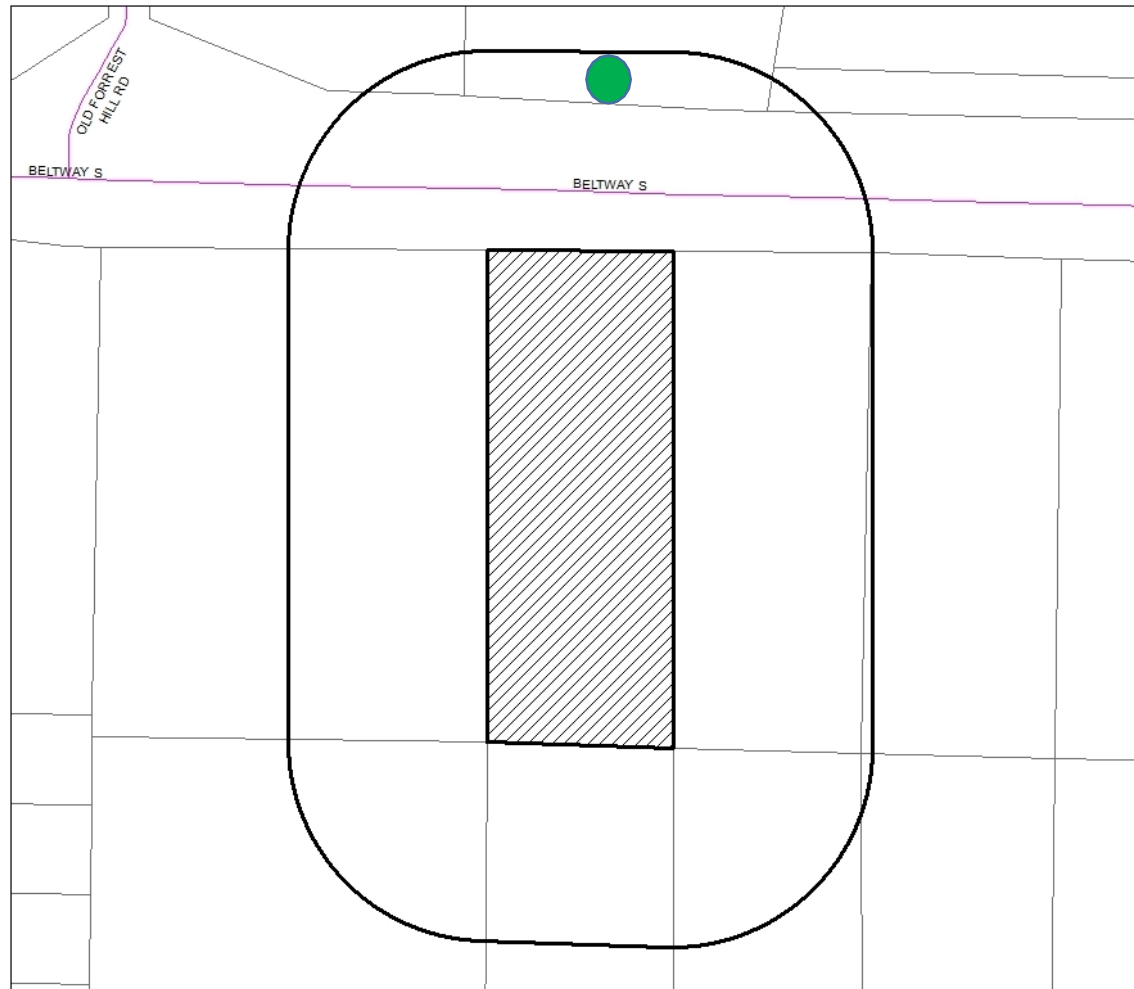
West



CITY OF
ABILENE
TEXAS



Z-2023-37 NOTIFICATION AREA MAP



Notification Map



Legend

- Notification area
- Z-2023-37
- Roads
- CourierParcels

1- In Favor- 

0- Opposed- 





FINDINGS AND RECOMMENDATIONS

The proposed request is consistent with:

- The proposed *Comprehensive Plan*;
- The surrounding uses and zoning;
- Generally accepted planning principals; and
- The Criteria for Approval in the LDC.

P&Z Recommendation: **Approval**





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **15. Ordinance (First Reading) Z-2023-40: Receive a Report, Hold a Discussion, and Take Action on A Request From PB 6950, LLC, Represented By Jacob Martin, To Change The Zoning Of Approximately 11.14 Acres From Agricultural Open To General Commercial. Located At 7542x S Clack St, Abilene, TX 79606 (*Tim Littlejohn*)**

GENERAL INFORMATION

The subject property is currently zoned Agricultural Open (AO) requesting to rezone to General Commercial (GC).

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends approval.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 4-0.

ATTACHMENTS:

1. Z-2023-40 Ordinance_MT

2. Z-2023-40 Staff ReportRSA
3. Z-2023-40 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 A CERTAIN PROPERTY; 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 Two Thousand Dollars (\$2,000.00). 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 21st day of December, 2023.

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 20th day of November, 2023, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of January, 2024, 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 of the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 11th day of January, 2024.

ATTEST:

CITY SECRETARY

MAYOR

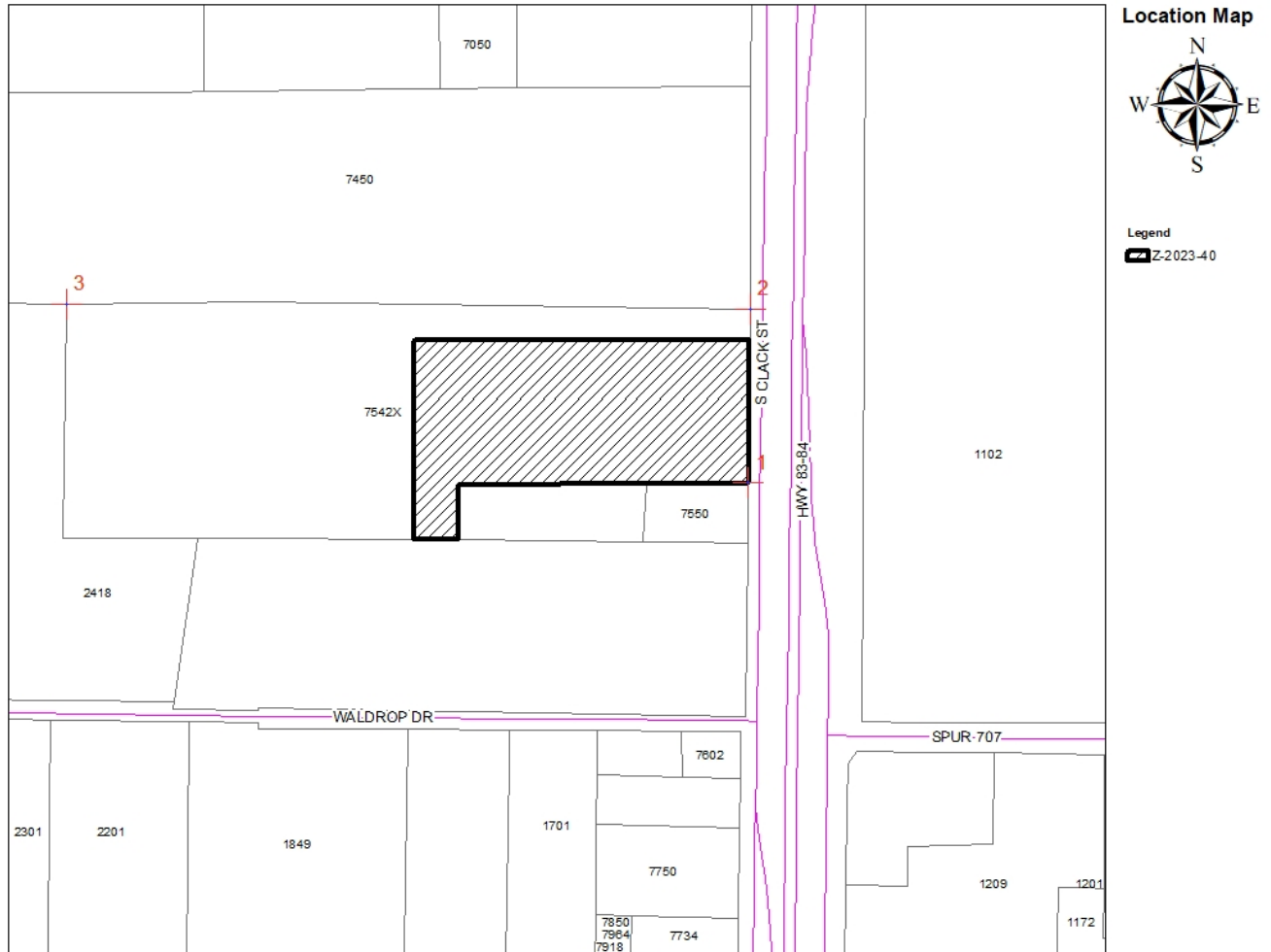
APPROVED:

CITY ATTORNEY

EXHIBIT A

Change the zoning classification of the following described land, from Agricultural Open (AO) District to a Neighborhood Retail (NR) District:

Location: 7542x S Clack St, South East Quarter of Survey 12 of Lunatic Asylum Land Tract 6, Abilene, Taylor County, Texas.



END

ZONING CASE Z-2023-40

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: December 5, 2023
City Council 1st Reading: December 21, 2023
City Council 2nd Reading: January 11, 2024

Applicant

Owner:
Agent: Jacob & Martin, LLC

Case Manager

Kiley Hannah – Planner

Request

Rezoning of approximately 11.14 acres from Agricultural Open (AO) to General Commercial (GC).

Location

7542x S. Clack Street, South East Quarter of Survey 12 of Lunatic Asylum Land Tract 6, Abilene, Taylor County, Texas.

Background

The subject property is currently zoned Agricultural Open (AO) requesting to rezone to General Commercial (GC).

Zoning, Existing and Proposed Land Use

AO zoning is located north, east, and west of the subject property. General Commercial (GC) is located to the south. Additional commercial zoning is located to the north along Denali Drive and to the south along Waldrop Drive.

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, as amended.**

The proposed amendment is in accordance with the Comprehensive Plan and the Future Land Use Map.

- (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.**

The property is located adjacent to a regional highway in an area where commercial uses are emerging. The requested zoning is appropriate at this location.

(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 will be required to be platted. During that process, the applicant will need to submit construction plans to extend water and sanitary sewer services to this site.

(4) Any other factors, which will substantially affect the public health, safety, morals, or general welfare.

None known.

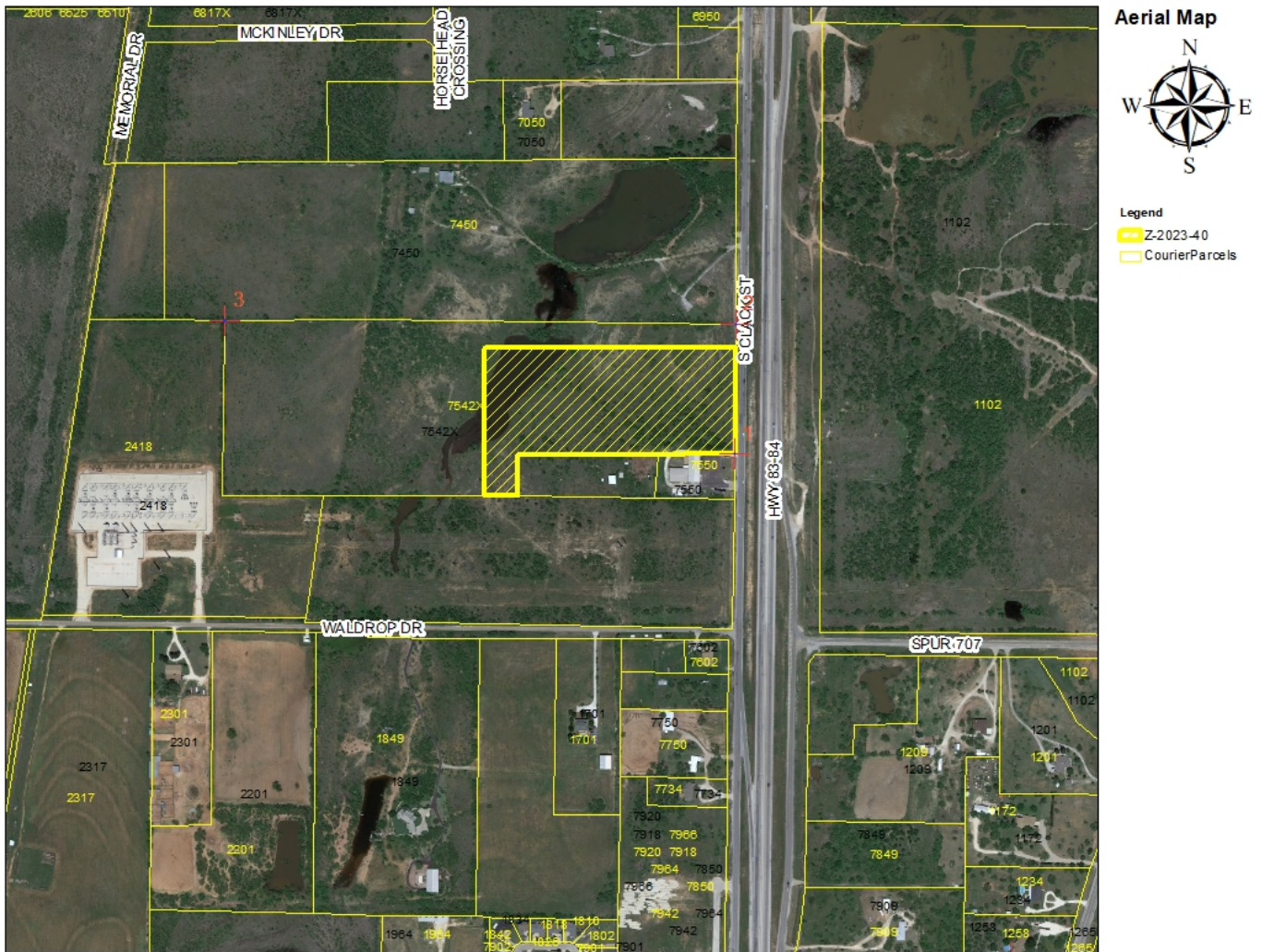
P&Z Recommendation

The Planning and Zoning Commission recommends **approval**.

Notification:

OWNER	PROP_ID	SITUS	RESPONSE
STRICKLIN JOE B	100784		
WEST TEXAS UTILITIES CO	13803		
BOLT ALLEN J & TANYA ELAINE	43664	7550 HWY 83-84	
PB 6950 LLC	14029	7542X S CLACK ST	
PB 6950 LLC	13695	7450 HWY 83-84	

LOCATION MAP



ZONING MAP





REZONE REQUEST

Case: Z-2023-40

Owner: PB 6950 LLC

Agent: Jacob & Martin, LLC

Request: Rezoning 11.14 acres from Agricultural Open(AO) to General Commercial (GC).

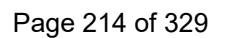
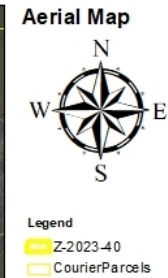
Location: 7542x S Clack St

Notification: 1 in Favor, 0 Opposed

P&Z: December 5, 2023

City Council: December 21, 2023
January 11, 2024









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

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





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
- C 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)

RESOURCE PRODUCTION AND EXTRACTION USES:

- P Petroleum or Gas Well
- P Urban Garden

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

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





Z-2023-40 VIEWS OF SUBJECT PROPERTY



East



North



Subject Property

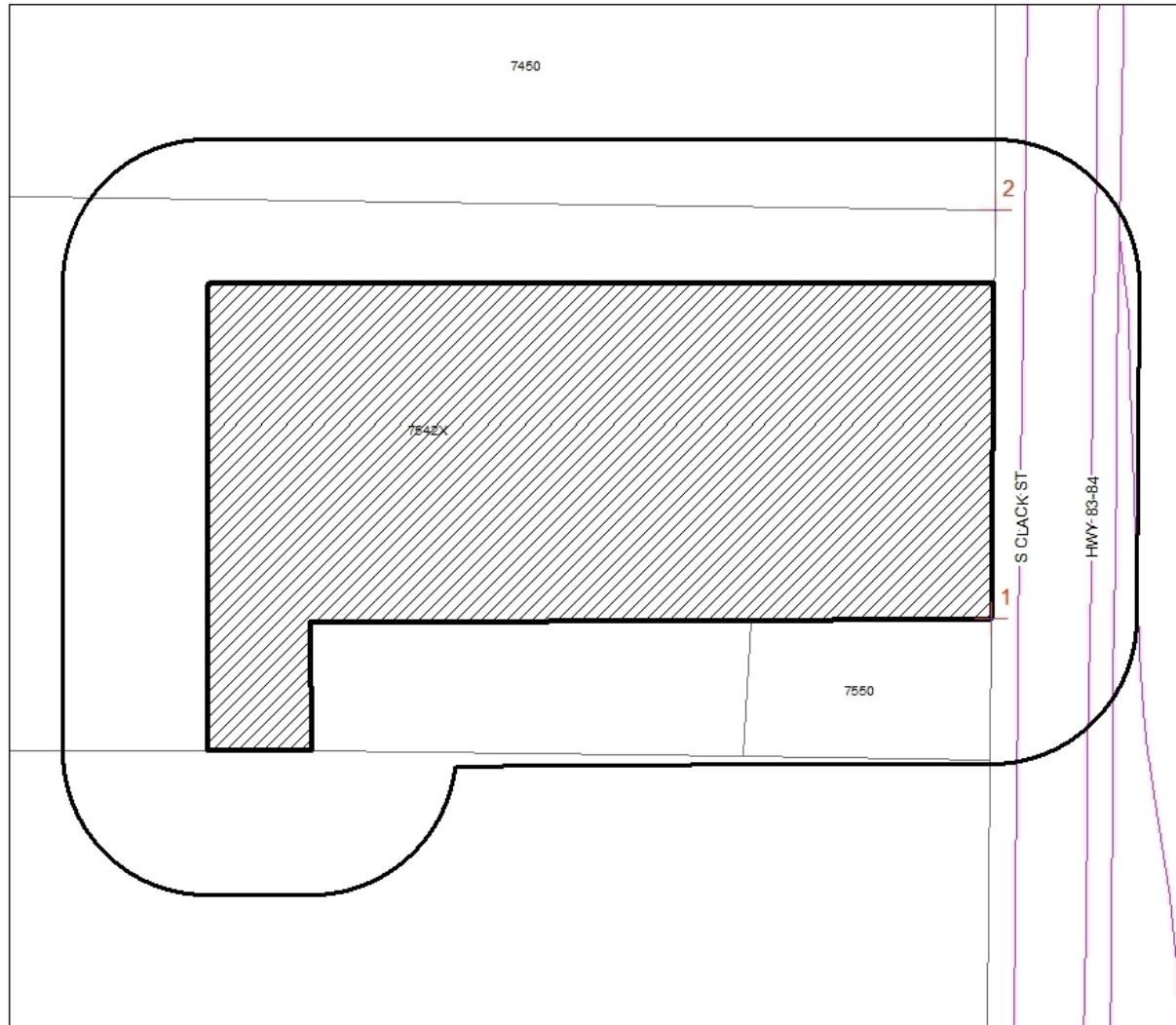


South





Z-2023-40 NOTIFICATION AREA MAP



Notification Map



Legend

- Notification Buffer
- Z-2023-40

1- In Favor- 

0- Opposed- 



CITY OF
ABILENE
TEXAS



FINDINGS AND RECOMMENDATIONS

The proposed request is consistent with:

- The proposed *Comprehensive Plan*;
- The surrounding uses and zoning;
- Generally accepted planning principals; and
- The Criteria for Approval in the LDC.

P&Z Recommendation: **Approval**





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Tim Littlejohn, Director of Planning & Development Services

SUBJECT: **16. Ordinance (First Reading) CUP-2023-07: Receive a Report, Hold a Discussion, and Take Action on A Request From Charles A. Doby Represented By Shawn Garrett, To Apply A Conditional Use Permit To Approximately 2.67 Acres To Allow For A Trade School Within General Retail (GR) Zoning. Located At 2449 South Willis Street, Suite 204. *(Tim Littlejohn)***

GENERAL INFORMATION

The subject property is located in the Chimney Square Subdivision. The applicant is currently using Suite 204 at 2449 South Willis Street as a Massage School. The applicant did not know that a Conditional Use Permit is required to allow a massage school at this location. The applicant was also unaware that a Certificate of Occupancy was required prior to operating. As a result, staff cannot determine how long this school has been operating.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

Staff recommends **approval**, subject to compliance with the Plan of Operations.

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommends approval by a vote of 4-0.

ATTACHMENTS:

1. Ordinance
2. Staff Report
3. Presentation

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, AMENDING THE, "LAND DEVELOPMENT CODE" OF THE ABILENE CITY CODE, BY APPROVING A CONDITIONAL USE PERMIT (CUP) AFFECTING A CERTAIN PROPERTY; 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 23 of the Land Development Code of the City of Abilene, is hereby amended by approving a Conditional Use Permit (CUP) 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 Two Thousand Dollars (\$2,000.00). 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 21st day of December, 2023.

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 20th day of November, 2023, the same being more than fifteen (15) days prior to a public hearing held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m. on the 11th day of January, 2024, 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 of the Charter of the City of Abilene.

PASSED ON FINAL READING THIS 11th day of January, 2024.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

Approve a Conditional Use Permit (CUP) to allow a Trade School on a property zoned General Retail (GR).

The Conditional Use Permit is subject to:

1. Compliance with the attached Plan of Operation (Exhibit B); and
2. The grant being limited to Suite 204, as shown on the attached Site Plan (Exhibit C).

Legal description being Block A, Lot 302 of the Chimney Square Subdivision, Abilene, Taylor County, Texas.

Located at 2449 South Willis Street, Suite 204, Abilene, Taylor County, Texas.

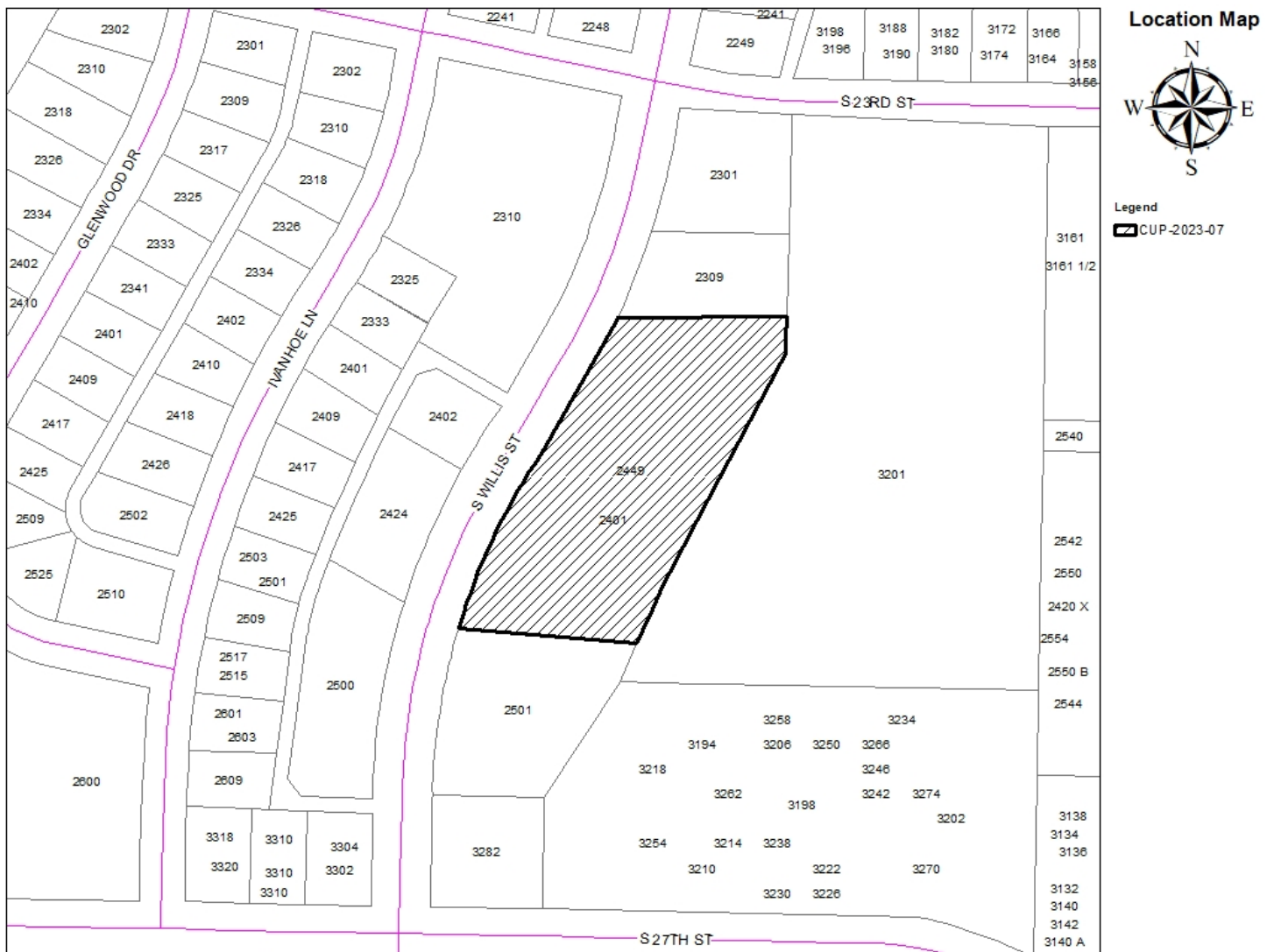


EXHIBIT B

Nov 1, 2023

Plan of Operation for On the Spot Massage Academy

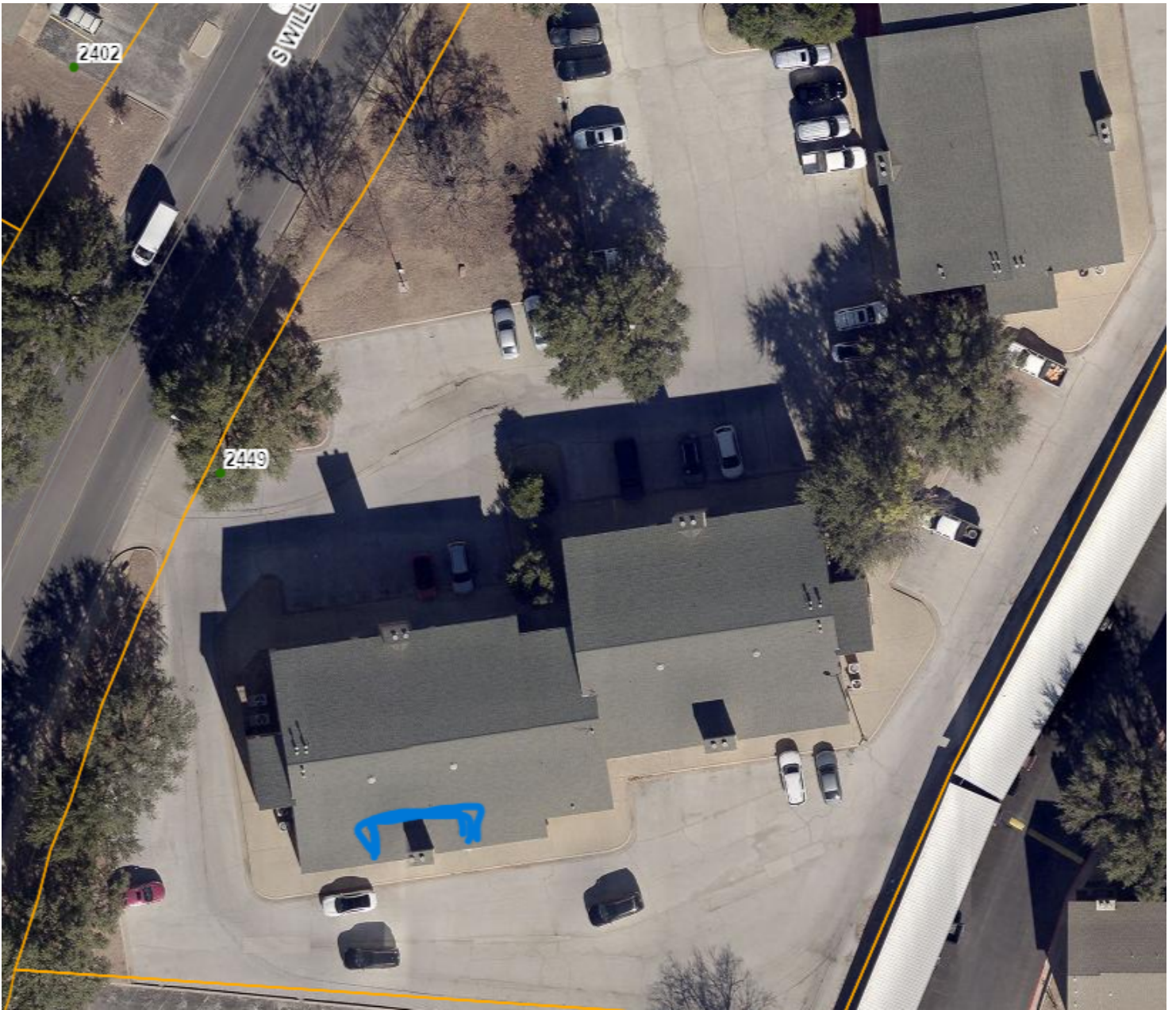
2449 S Willis, suite 204

The goal of On the Spot Massage Academy is to provide superior training to students who want to be Massage Therapist, in and around Abilene.

Our Plan of operation is as follows:

1. Hrs of operation are: Day class, Mon-Thurs 8:30-2:30, Evening Class 6:00pm-9:30Pm
2. We provide on site training for prospective massage therapist. We offer complete training fully compliant with Texas Department of Licensing and Regulation. We are licensed as Massage School #1096. Once a student completes our program, they are eligible to take the state licensing exam.
3. We operate a small school out of a suite in Chimney Plaza, no outdoor activity of any kind. All training takes place in our main teaching room inside said suite.
4. We will not add or subtract anything from the building or effect landscaping at all.
5. There are already several sole proprietor massage therapists operating out of Chimney Plaza so our school fits right in.
6. Students sign a conduct policy before they are allowed to join our program which assures no alcoholic beverages on site, no smoking, no loud noise or music, no sexual contact or conduct of any type, and no stealing from the school or Chimney Plaza property. If found in violation of any of these policies, the student is expelled from the program.
7. Since our instructors are the last to leave, we assure the building is properly secured/locked before leaving for the evening.
8. We do not store or sell any products out of our suite, it will be used for School purposes only.
9. Occasionally the school will be used on Sat, from 1:00pm-4:00pm, for student to complete their on-site clinical massages.
10. We only have one neighbor on our floor, and we are on good terms and make sure we do not disturb them at any time.

EXHIBIT C



END

ZONING CASE CUP-2023-07

STAFF REPORT

Scheduled Hearings

Planning & Zoning Commission: December 5, 2023
City Council 1st Reading: December 21, 2023
City Council 2nd Reading: January 11, 2024

Applicant

Owner: Charles A. Doby
Agent: Shawn Garrett

Case Manager

Mason Teegardin – Planner

Request

Apply a Conditional Use Permit to approximately 2.67 acres to allow for a Trade School within General Retail (GR) Zoning.

Location

Block A, Lot 302 of the Chimney Square Subdivision at 2449 South Willis Street, Suite 204.

Background

The subject property is located in the Chimney Square Subdivision. The applicant is currently using Suite 204 at 2449 South Willis Street as a Massage School. The applicant did not know that a Conditional Use Permit is required to allow a massage school at this location. The applicant was also unaware that a Certificate of Occupancy was required prior to operating. As a result, staff cannot determine how long this school has been operating. A detailed Plan of Operation describing the proposed trade school is attached with this report.

Existing Uses/Zoning

Properties to the north and south are zoned General Retail (GR). Properties to the east are zoned Multi-Family (MF). Properties to the west are zoned Office (O).

Criteria Assessment

Staff has reviewed the request based upon the factors established in Section 1.4.3.5, Criteria for Approval, of the Land Development Code. These factors are identified and addressed below:

1. The proposed use at the specified location is consistent with the policies embodied in the adopted Comprehensive Plan.

The Future Land Use Map designates the site as Low Density Residential (LDR). The primary zoning districts in LDR are residential. The Comprehensive Plan lists supporting zoning districts that may also be appropriate depending on the zoning of surrounding properties, which in this case include General Retail (GR) and General Commercial (GC) at this location. Since the GC district allows a trade school by right, the proposed school would be consistent with the Comprehensive Plan.

2. The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations

The use of the site as a trade school is consistent with the surrounding zoning and would be less intensive than most of the uses allowed in the GR district.

3. **The proposed use is compatible with and preserves the character and integrity of adjacent developments and neighborhoods, and includes improvements either on-site or within the public rights-of-way to mitigate development-related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods.**

The use is conducted indoors and should not negatively affect the surrounding uses. All business activity occurs within a suite located at the rear of the building, which faces a medical office.

4. **The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood.**

The use is located in a business plaza, which has adequate parking and accessibility for vehicles to park and maneuver properly without creating congestion and adequate pedestrian access.

5. **The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development-generated traffic on neighborhood streets.**

The use will not generate a level of traffic that would adversely affect the existing road network in the vicinity of the subject site.

6. **The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties.**

The use is conducted indoors and should not generate any impacts that require mitigation.

7. **The proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and the neighborhood.**

The use complies with all applicable LDC requirements. A Site Plan review is not required at this location because the use is conducted in an existing suite and no alterations to the plaza are proposed or required.

P&Z Recommendation

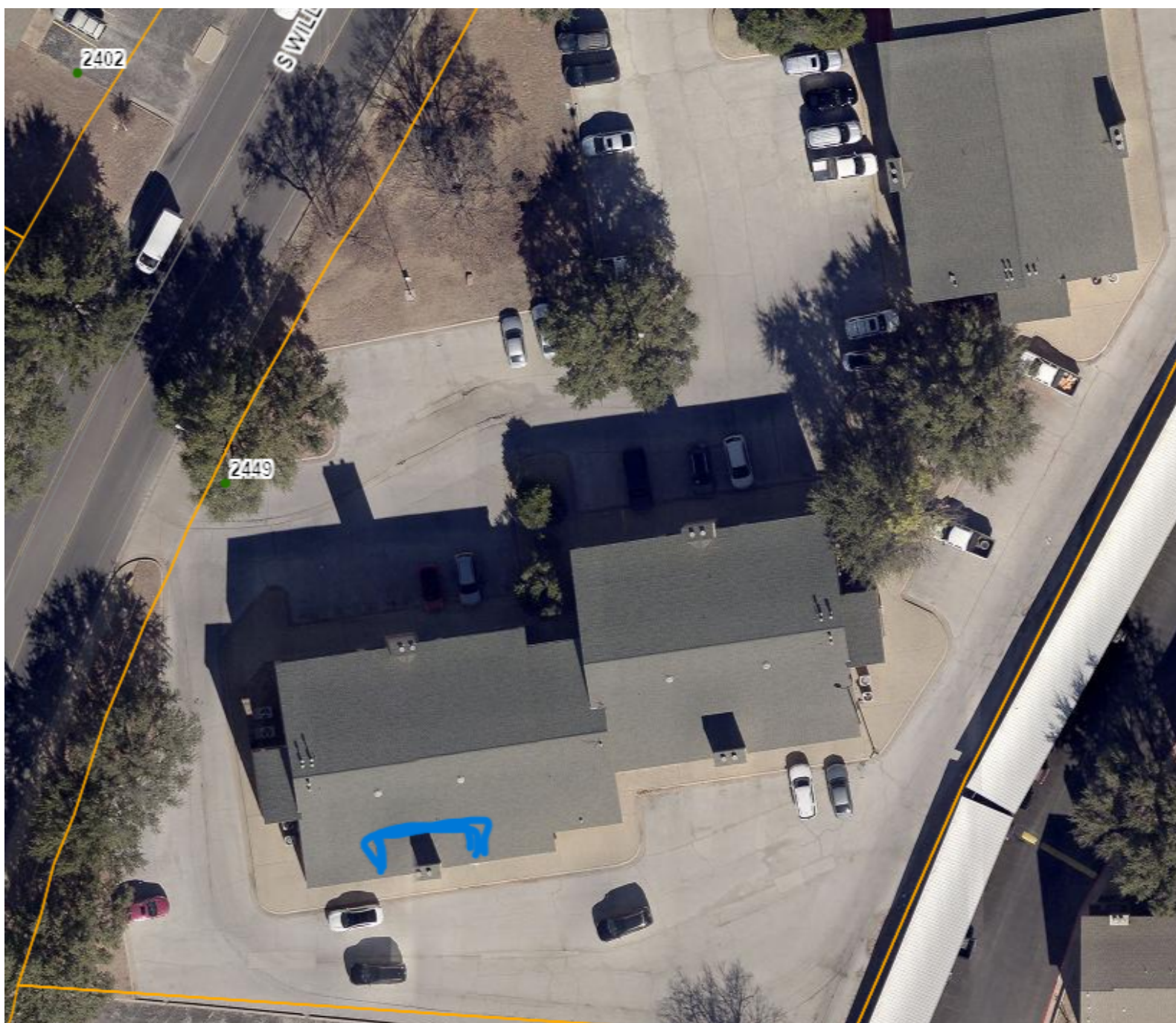
The Planning and Zoning Commission recommends **approval**, subject to compliance with the proposed Plan of Operation.

NOTIFICATIONS

Legend:
O- Opposed
F- In Favor

OWNER	PROPERTY ID	SITUS	RESPONSE
WANG FAMILY TRUST	75634	2309 S WILLIS ST	
BUMPUS DONALD R GRANTOR TRUST	75761	3201 S 23RD ST	
DOBY CHARLES A &	75896	2449 S WILLIS ST	
CATHER ENTERPRISES LTD	75897	2501 S WILLIS ST	
BROOKHOLLOW SHOPPING CENTER NORTH LTD	76084	2301 S WILLIS ST	
CONDER TONY	76147	3234 S 27TH ST	F
BELTWAY PARK BAPTIST	76567	2310 S WILLIS ST	
ABILENE SUNRISE PROPERTIES LP	76821	2402 S WILLIS ST	
CONQUESO LLC	76946	2424 S WILLIS ST	
CBAX PROPERTIES VII LLC	77188	2500 S WILLIS ST	

SUITE LOCATION MAP



LOCATION MAP



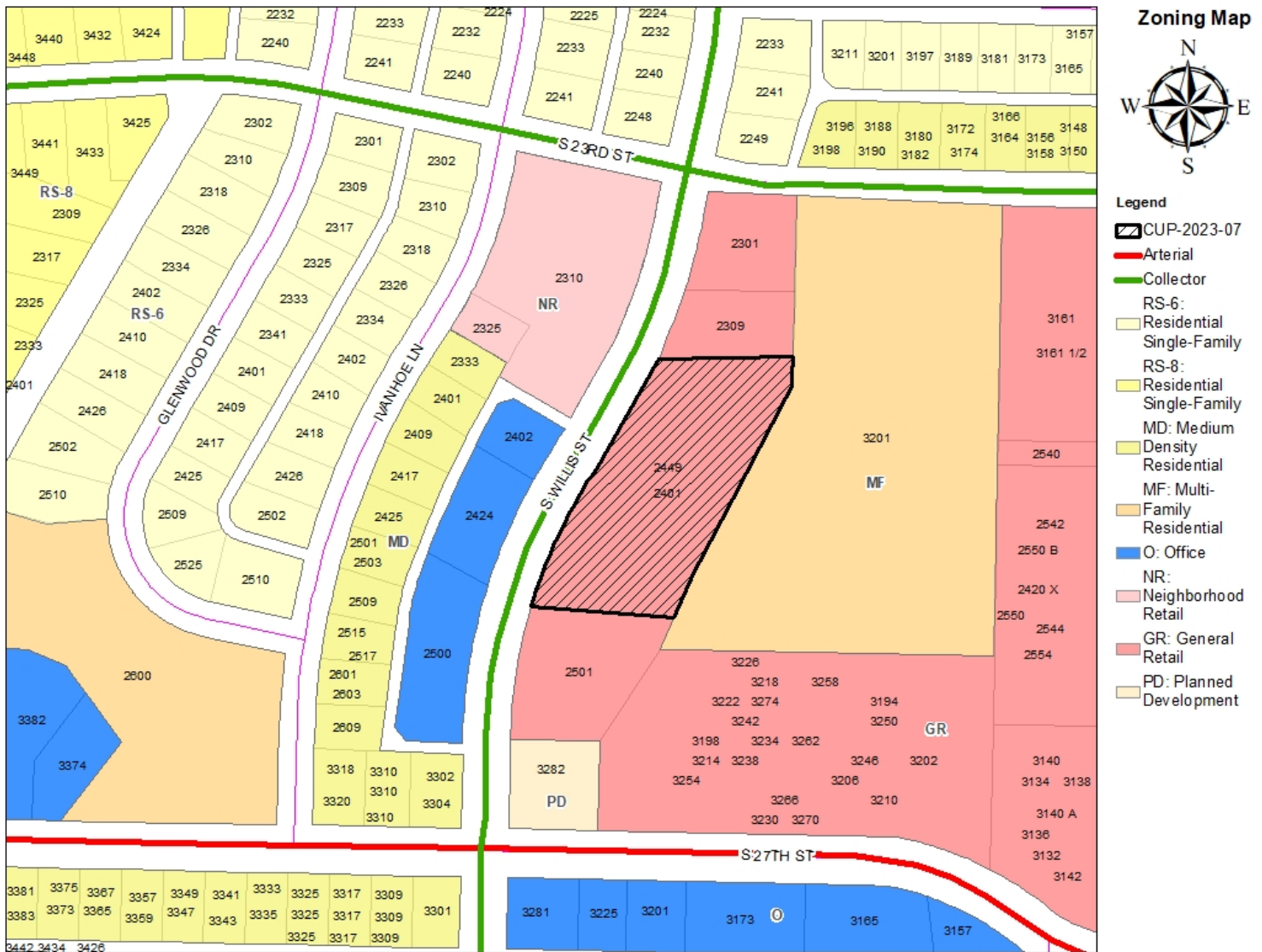
Aerial Map



Legend

-  CUP-2023-07
-  CourierParcels

ZONING MAP



PLAN OF OPERATION

Nov 1, 2023

Plan of Operation for On the Spot Massage Academy

2449 S Willis, suite 204

The goal of On the Spot Massage Academy is to provide superior training to students who want to be Massage Therapist, in and around Abilene.

Our Plan of operation is as follows:

1. Hrs of operation are: Day class, Mon-Thurs 8:30-2:30, Evening Class 6:00pm-9:30Pm
2. We provide on site training for prospective massage therapist. We offer complete training fully compliant with Texas Department of Licensing and Regulation. We are licensed as Massage School #1096. Once a student completes our program, they are eligible to take the state licensing exam.
3. We operate a small school out of a suite in Chimney Plaza, no outdoor activity of any kind. All training takes place in our main teaching room inside said suite.
4. We will not add or subtract anything from the building or effect landscaping at all.
5. There are already several sole proprietor massage therapists operating out of Chimney Plaza so our school fits right in.
6. Students sign a conduct policy before they are allowed to join our program which assures no alcoholic beverages on site, no smoking, no loud noise or music, no sexual contact or conduct of any type, and no stealing from the school or Chimney Plaza property. If found in violation of any of these policies, the student is expelled from the program.
7. Since our instructors are the last to leave, we assure the building is properly secured/locked before leaving for the evening.
8. We do not store or sell any products out of our suite, it will be used for School purposes only.
9. Occasionally the school will be used on Sat, from 1:00pm-4:00pm, for student to complete their on-site clinical massages.
10. We only have one neighbor on our floor, and we are on good terms and make sure we do not disturb them at any time.



CONDITIONAL USE PERMIT

Case: CUP-2023-07

Owner: Charles A. Doby

Agent: Shawn Garrett

Request: A CUP to allow a Trade School in a GR zoning district.

Location: 2449 South Willis Street, Suite 204

Notification: 1 in Favor, 0 Opposed

Planning & Zoning: December 5, 2023

Council Hearing: December 21, 2023
January 11, 2024





AERIAL LOCATION MAP

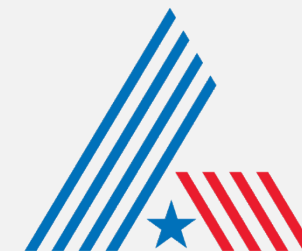


Aerial Map



Legend

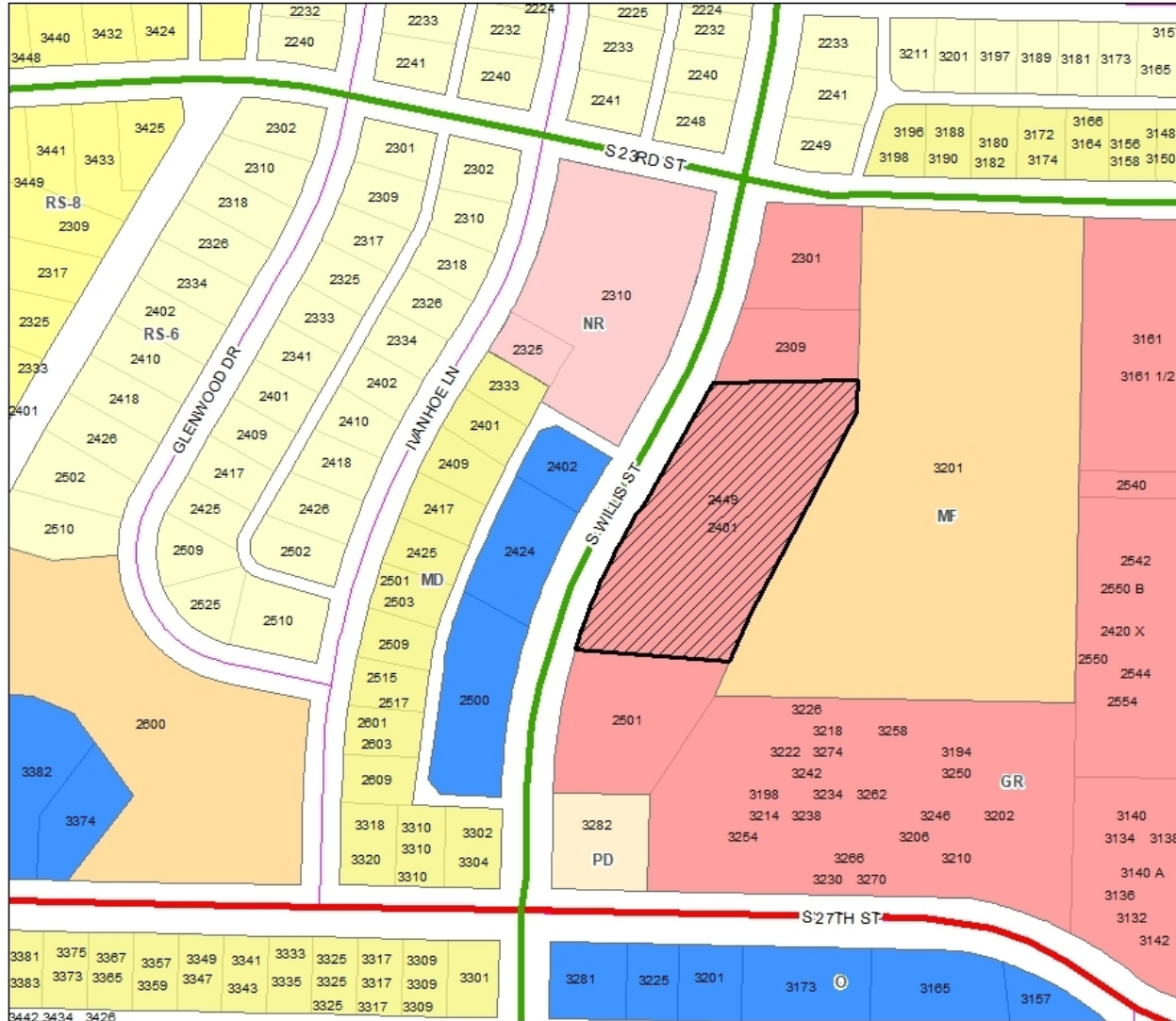
- CUP-2023-07
- CourierParcels



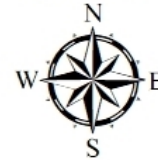
CITY OF
ABILENE
TEXAS



ZONING MAP

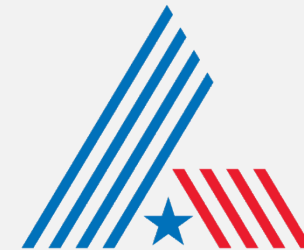


Zoning Map



Legend

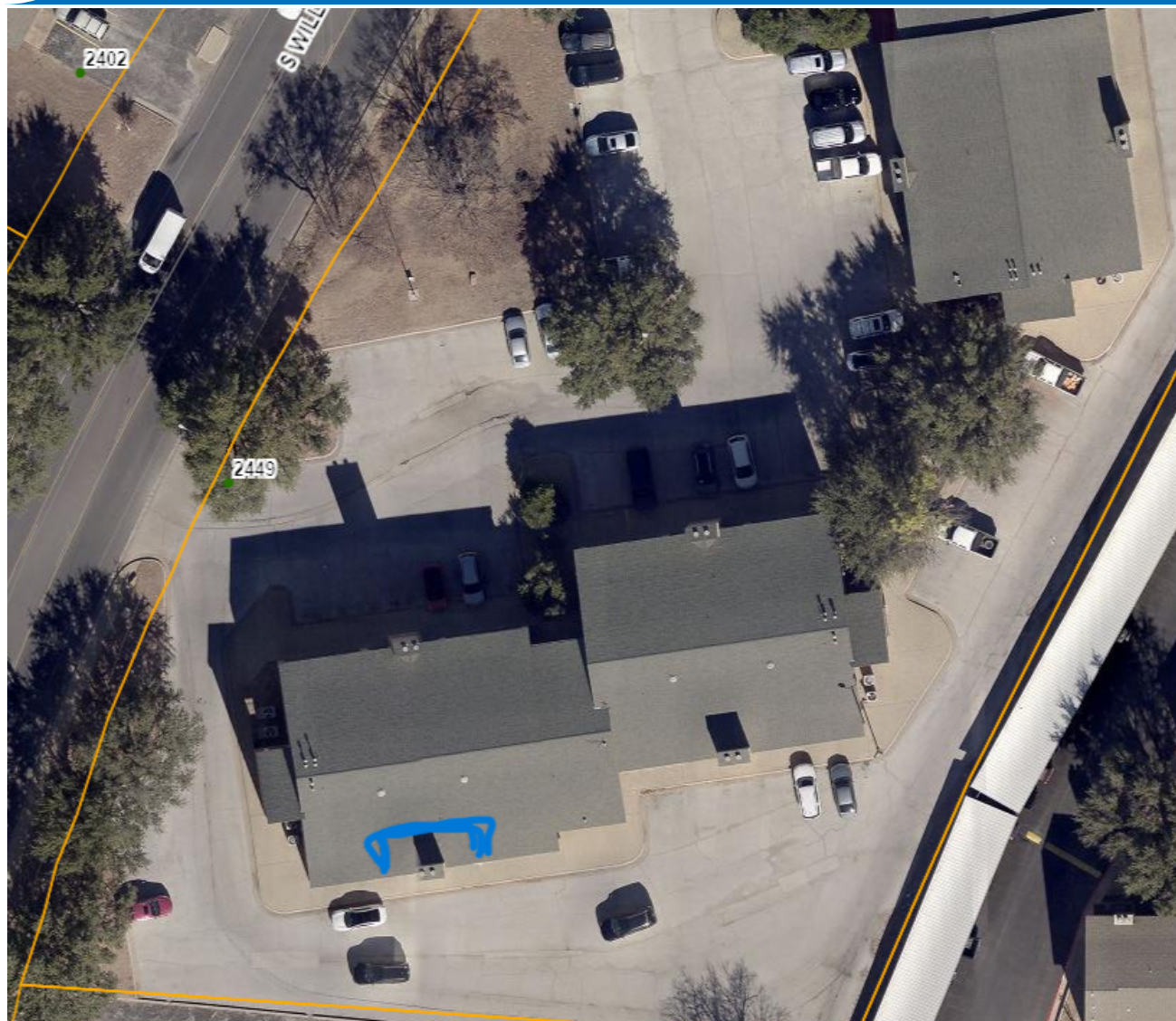
- CUP-2023-07
- Arterial
- Collector
- RS-6: Residential Single-Family
- RS-8: Residential Single-Family
- MD: Medium Density Residential
- MF: Multi-Family Residential
- O: Office
- NR: Neighborhood Retail
- GR: General Retail
- PD: Planned Development



CITY OF
ABILENE
TEXAS



SITE PLAN





VIEWS OF SUBJECT PROPERTY



Subject Property



South Neighboring Property



East Neighboring Property

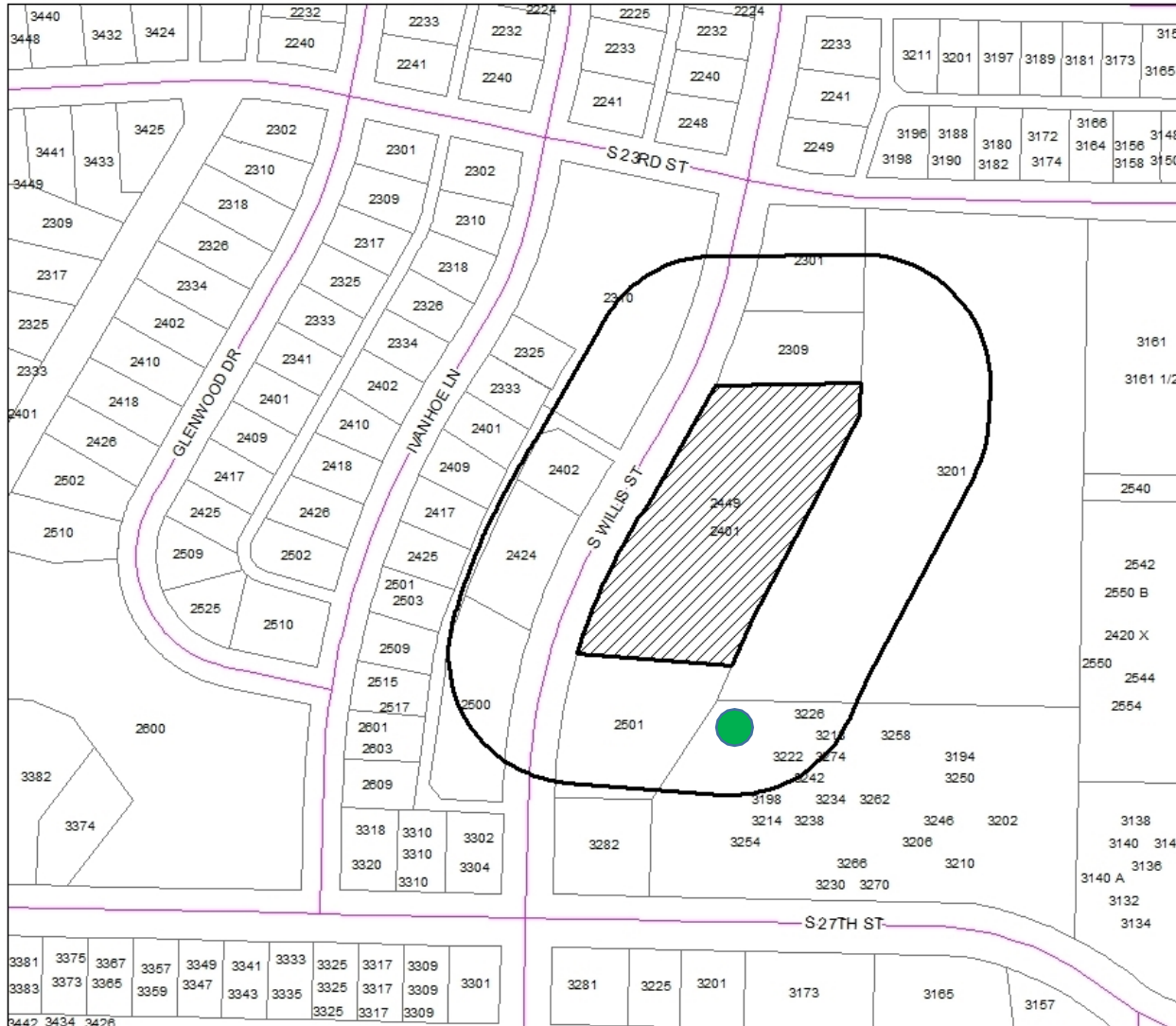


West Neighboring Property

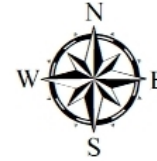




NOTIFICATION AREA MAP



Notification Map



Legend

- CUP-2023-07
- Notification Area

- 1- In Favor-
- 0- Opposed-



CITY OF
ABILENE
TEXAS



FINDINGS AND RECOMMENDATIONS

The request is consistent with:

- The *Comprehensive Plan*;
- The surrounding uses and zoning;
- Generally accepted planning principals; and
- The Criteria for Approval in the LDC.

P&Z Recommendation: Approval subject to the proposed Plan of Operation.





Questions?





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Robert Hanna, City Manager

FROM: Lesli Andrews, Director

SUBJECT: **17. Ordinance (Final Reading):** Receive a Report, Hold a Discussion and Public Hearing, and Take Action on Approving an Ordinance Establishing the 2024 Standards of Care *(Lesli Andrews)*

GENERAL INFORMATION

In August of 1997 the 74th Legislature enacted 42.041(14) of the Texas Human Resources Code, which exempts youth programs operated by a municipality from state child-care licensing requirements. The Texas Human Resources Code provides that in order for a municipality to be exempt from the state's licensing requirements, the governing body of the municipality must annually adopt standards of care by ordinance after a public hearing. The major difference in the City's standards is that we have established standards for 6-13 years of age, whereas the state's standard is for 0-6 years of age, a population we mostly do not serve.

The standards of care require three levels of inspection. Review levels are performed each year to ensure compliance. The first level is performed by the Recreation Coordinator to confirm adherence to the standards themselves. The second is a visual inspection of the facilities to be conducted by the division manager with the assistance of a Parks and Recreation professional not associated with the City of Abilene. The visual inspection was conducted on November 3, 2023. The Parks and Recreation Professional who assisted was Carl White, Parks and Recreation Director for the City of San Angelo, Texas. The third level is an annual inspection by both the Fire Department and Environmental Health. All of these inspections and reviews were satisfactorily completed, and the program is in compliance. A copy of the 2024 Standards of Care will be online for additional access.

SPECIAL CONSIDERATIONS

Besides updating the year to 2024, there is one additional requested change to the 2024 Standards of Care on page 5:
Currently Reads:

•...”The Administrator will make visual inspections of the facilities, based on the following schedule. A Parks and Recreation Professional that is not associated with the City of Abilene will assist on one of the following inspections.

- (1) A pre-summer check in April of each year; and
- (2) A fall check in October of each year.”

Proposed Change:

•...”The Administrator will make visual inspections of the facilities, based on the following schedule. An Administrator that is not associated with the City of Abilene Parks and Recreation Department will assist on one of the following inspections.

- (1) A pre-summer check in April of each year; and
- (2) A fall check in October of each year.”

FUNDING/FISCAL IMPACT

No funding or fiscal impact.

STAFF RECOMMENDATION

Staff recommends adopting the 2024 Standards of Care.

BOARD OR COMMISSION RECOMMENDATION

The 2024 Standards of Care were approved at the November 21, 2023 Parks and Recreation board meeting.

ATTACHMENTS:

1. 2024_Ordinance_Standards_of_Care
2. Standards of Care 2023
3. Redline Standards of Care 2024
4. Abilene recreation centers inspections November 8, 2023
5. Presentation 2024 Standards of Care (7)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ABILENE, TEXAS, ESTABLISHING STANDARDS OF CARE FOR CITY OF ABILENE YOUTH PROGRAMS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SAVINGS CLAUSE; AND CALLING A PUBLIC HEARING.

WHEREAS, the City of Abilene, through the Division of Recreation, provides youth programs that contribute to the overall wellbeing of youth and families of the City of Abilene; and

WHEREAS, these youth programs are presently held at the Recreation Centers; and

WHEREAS, the 74th Legislature enacted Section 42.041(14) of the Texas Human Resources Code, which would exempt youth programs operated by a municipality from child-care state licensing requirements provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing; and

WHEREAS, The City of Abilene has had Standards of Care in place for twenty three years which have functioned well; and

WHEREAS, Abilene Parks and Recreation Board the Administrator of Recreation for the City of Abilene recommends the Standards of Care as set forth in Exhibit "A" be adopted by the City of Abilene:

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

- Section 1.** That all of the recitals and preambles hereinabove stated are found to be true and correct and are incorporated herein and made a part of this ordinance.
- Section 2.** That the Youth Programs' Standards of Care for the City of Abilene, as detailed in Exhibit "A" attached hereto and incorporated herein for all purposes, are hereby approved and adopted.
- Section 3.** That all ordinances or parts of ordinances in conflict with the provisions of the ordinance are hereby repealed.
- Section 4.** That, if any provision of this ordinance will be held to be invalid or unconstitutional, the remainder of such ordinance will continue in full force and effect, the same as if such invalid or unconstitutional provision had never been a part hereof.
- Section 5.** That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given as required.

PASSED ON FIRST READING this 7st day of December, 2023.

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 17th day of December 2023, to permit the public to be heard prior to final consideration of this ordinance.

PASSED ON SECOND AND FINAL READING this 21st day of December 2023.

ATTEST:

Shawna Atkinson, City Secretary

Weldon Hurt, Mayor

APPROVED:

Stanley Smith, City Attorney

City of Abilene Recreation Division



Standards of Care for Youth Programs 2023

Parks and Recreation
633 Walnut Street
Abilene, TX 79601
(325) 676-6217

www.abilenetx.gov/parksandrec
parksandrec@abilenetx.gov

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ABILENE YOUTH PROGRAMS

STANDARDS OF CARE

General Administration

1. Organization

- A. The governing body of the City of Abilene Youth Programs is the Abilene City Council.
- B. Implementation of the Youth Program's Standards of Care is the responsibility of the Recreation Administrator and departmental employees.
- C. Youth Programs ("Program") to which these Standards apply are the programs held at the City Recreation Centers currently operated by the City of Abilene. Other programs may be subsequently designated by the City of Abilene.
- D. Each of the City of Abilene Youth Program sites will have a current copy of the Standards of Care available for public and staff review.
- E. Parents of participants will be provided a current copy of the Standards of Care during the registration process or the Standards of Care can be accessed on the City of Abilene website at www.abilenetx.gov/camps. Parents of participants will be informed that the City of Abilene Youth Programs is not licensed by the State.
- F. Criminal background checks will be conducted on prospective Youth Program employees. If results of the criminal checks indicate that an applicant has been convicted for any of the following offenses, he or she may not be considered for employment:
 - (1) A felony or a misdemeanor classified as an offense against a person or family;
 - (2) A felony or misdemeanor classified as public indecency;
 - (3) A felony or misdemeanor violation of any law intended to control the possession or distribution of any controlled substance or any violation of the City Policy;
 - (4) Any offense involving moral turpitude;
 - (5) Any offense that would potentially put the City of Abilene or participants of the Program at risk.
 - (6) In addition, a nationwide check of databases for the Sex Offender Registration Program will be conducted on prospective Program Staff. If results of the check indicate that an applicant is a registered sex offender, he or she will not be considered for employment.

2. Definitions

- A. City: City of Abilene.
- B. City Council: City Council of the City of Abilene.
- C. Department: Parks and Recreation Department of the City of Abilene.
- D. Director: City of Abilene Director of Parks and Recreation Department or designee.
- E. Division: Recreation Services Division of the City of Abilene.
- F. Employee: Someone who has been employed by the City of Abilene and has been assigned responsibility for managing, administering, or implementing some portion of the City of Abilene Youth Programs.
- G. Parent(s): A parent or guardian who has legal custody and authority to enroll a child in the City of Abilene Youth Programs.
- H. Participant: A youth whose parent has completed all required registration procedures and who has been determined to be eligible for the City of Abilene Youth Programs.
- I. Program Manual: A notebook of policies, procedures, required forms, and organizational and programming information relevant to City of Abilene's Youth Programs.
- J. Program Site: Any area or facility where the City of Abilene Youth Programs is held.
- K. Recreation Coordinator: City of Abilene Recreation Division full-time Programmer who has been assigned administrative responsibility for the City of Abilene Youth Programs.
- L. Recreation Specialist or Recreation Leader: Any City of Abilene Recreation Division employee (full-time or part-time) who has been assigned responsibility to implement the City of Abilene Youth Programs.
- M. Playground Supervisor or Playground Aide: Any City of Abilene Recreation Division temporary employee who has been assigned responsibility to implement the City of Abilene Youth Programs.
- N. Administrator: City of Abilene Administrator of Recreation Services or his or her designee.
- O. Youth Program(s) or Program: City of Abilene Youth Programs held at the City's Recreation Centers are currently operated by the City of Abilene. Other programs may be subsequently designated by the City of Abilene. These programs are not child-care facilities.

3. Objective of Youth Programs

- A. To provide Youth with the opportunity of recreational activities which may include sports, games, arts and crafts, education, dance, drama, special events, field trips, etc...
- B. To provide an encouraging atmosphere by emphasizing the positive development of physical skills, emotional development, and growth of self-confidence.
- C. To provide a safe environment by promoting good health and welfare for all participants.
- D. To teach Youth how to spend leisure time wisely in an effort to meet the emotional, physical, and social needs of Youth.

4. Inspections/Monitoring/Enforcement

- A. An annual facility inspection report will be initiated by the Recreation Coordinator of each Program to confirm adherence to the Standards of Care. This report will be submitted in March.
 - (1) Inspection reports will be sent to the Administrator for review and kept on record for at least two years.
 - (2) The Administrator will review the report and establish deadlines and criteria for compliance with the Standards of Care.
- B. The Administrator will make visual inspections of the facilities, based on the following schedule. A Parks and Recreation Professional that is not associated with the City of Abilene will assist on one of the following inspections.
 - (1) A pre-summer check in April of each year; and
 - (2) A fall check in October of each year.
- C. Complaints regarding enforcement of the Standards of Care will be directed to the Recreation Coordinator. The Recreation Coordinator will be responsible for taking the necessary steps to resolve the problems. Complaints regarding enforcement of the Standards of Care and their resolution will be recorded by the Recreation Coordinator and forwarded to the Administrator, the complaint and the resolution will be noted.
- D. The Administrator will provide an annual report to the Parks and Recreation Board on the overall status of the Youth Programs and their operation relative to compliance with the adopted Standards of Care.

5. Enrollment

- A. Before a child may be enrolled, a parent/guardian must sign registration forms that contain:
- (1) Name, address, and telephone number of the child;
 - (2) Name and address of parents/guardian and telephone numbers during program hours;
 - (3) The names and telephone numbers of people to whom the child may be released;
 - (4) A statement of the child's special needs; and
 - (5) A signed liability waiver which also includes permission for field trips and emergency medical authorization.
 - (6) Signed acknowledgement of program code of conduct.

6. Suspected Abuse

Program employees will report suspected child abuse in accordance with the Texas Family Code. In a situation where an Employee is involved in an incident with a child that could be considered child abuse, the incident shall immediately be reported to the Recreation Division Manager. The Recreation Division Manager will immediately notify the Police Department and any other agency, as may be appropriate.

Staffing – Responsibilities and Training

1. Recreation Center Coordinators

- A. Qualifications
1. Recreation Coordinators will be full-time, professional employees of the City of Abilene Recreation Division
 2. Recreation Coordinators must meet the minimum education/experience requirements for employment with the City of Abilene to plan and implement recreation activities.
 3. Recreation Coordinators must be able to pass a background investigation, including testing for illegal substances.
 4. Coordinators must have a current certification in First Aid and Cardiopulmonary Resuscitation (CPR)– Adult and Child. These certifications must be from a nationally recognized certifying organization, i.e., American Heart Association or American Red Cross.
 5. Recreation Coordinators must complete City of Abilene mandatory training.

B. Job Functions

1. Recreation Coordinators are responsible for administering the Youth Programs daily operations in compliance with the Adopted Standards of Care.
2. Recreation Coordinators are responsible for hiring, supervising, and evaluating Recreation Specialist/Leaders.
3. Recreation Coordinators are responsible for planning, implementing, and evaluating programs.
4. Recreation Coordinators maintain supplies, equipment and all necessary documentation for the operation of the Youth Programs.
5. Recreation Coordinators must communicate with Parent(s) as necessary.
6. Recreation Coordinators know and follow all City of Abilene, Division, and Program Manual standards, policies and procedures that apply to Youth Programs.
7. Recreation Coordinators ensure that participants are released only to a Parent(s) or an adult designated by the Parent(s).

2. Recreation Specialist/Recreation Leader

A. Qualifications

1. Recreation Specialists/Leaders may be full-time, part-time, or temporary employees of the City of Abilene Recreation Division.
2. Recreation Specialists/Leaders should be able to consistently exhibit competency, good judgment, and self-control when working with children.
3. Recreation Specialists/Leaders must relate to children with courtesy, respect, tolerance, and patience.
4. Recreation Specialists must have a current certification in First Aid and Cardiopulmonary Resuscitation (CPR)– Adult and Child. These certifications must be from a nationally recognized certifying organization, i.e., American Heart Association or American Red Cross.
5. Recreation Specialists/Leaders must pass a background investigation, including testing for illegal substances.
6. Recreation Specialist/Leaders will be responsible for understanding and following all City of Abilene, Departmental, Division, and Program standards, policies, and procedures that apply to the City of Abilene Youth Programs.

B. Job Functions

1. Recreation Specialist/Leaders will be responsible for providing participants with an environment in which they can feel safe, enjoy wholesome recreation activities, and can participate in appropriate social opportunities with their peers.
2. Recreation Specialist/Leaders will directly lead activities using a method that will provide opportunities for involvement of all participants on an equal basis.
3. Recreation Specialist/Leaders must exhibit enthusiasm for the activity to impart a feeling of excitement in the participants.
4. Recreation Specialist/Leaders will promote a non-competitive, positive, image-enhancing environment for each participant through the direction of fun, varied, and well-organized activities.
5. Recreation Specialist/Leader must be with participants at all times while they are participating in the Program.
6. Recreation Specialist/Leaders ensure that participants are released only to a Parent(s) or an adult designated by the Parent(s).

3. Playground Supervisor and/or Playground Aide

A. Qualifications

1. Playground Supervisor/Aides will be temporary employees of the City of Abilene Recreation Division.
2. Playground Supervisor/Aides should be able to consistently exhibit competency, good judgment, and self-control when working with children.
3. Playground Supervisor/Aides must relate to children with courtesy, respect, tolerance, and patience.
4. Playground Supervisor/Aides must pass a background investigation, including testing for illegal substances.
5. Playground Supervisor/Aides will be responsible for understanding and following all City of Abilene, Departmental, Division, and Program standards, policies, and procedures that apply to the City of Abilene Youth Programs.

B. Job Functions

1. Playground Supervisor/Aides will assist in leading activities using a method that will provide opportunities for involvement of all participants on an equal basis.
2. Playground Supervisor/Aides must exhibit enthusiasm for the activity to impart a feeling of excitement in the participants.
3. Playground Supervisor/Aides will promote a non-competitive, positive, image-enhancing environment for each participant through the direction of fun, varied, and well-organized activities.
4. Playground Supervisor/Aides will be responsible for picking up the areas used by their group after each activity.
5. Playground Supervisor/Aides must be with participants at all times while they are participating in the Program.
6. Playground Supervisor/Aides ensure that participants are released only to a Parent(s) or an adult designated by the Parent(s).

4. Training/Orientation

- A. The Division is responsible for providing training and orientation to Program employees in working with children and for specific job responsibilities.
- B. Program employees must be competent with the Standards of Care for Youth Program operation as adopted.
- C. Program employees must be competent with the Program's policies, including discipline, guidance, and release of participants as outlined in the Summer Playground Manual.
- D. Program employees will be trained in appropriate procedures to handle emergencies.
- E. Program employees will be trained in areas including City, Departmental, Division and Program policies and procedures; provision of recreation activities; safety issues; and organization.
- F. Program employees will be electronically tested annually over program manuals and Standards of Care.

Operations

1. Staff-Participant Ratio

- A. The City of Abilene Youth Programs, the minimum employee to participant ratio will be 1 to 20 for participants from ages 6-13.
- B. Each participant should have a Program employee who is responsible for him or her and who is aware of details of the participant's habits, interests, and any special needs as identified by the participant's parent during the registration process.

2. Notification

- A. Parents must be notified immediately when Program employees are aware of the following:
 - (1) Participant is injured; or
 - (2) Participant has a sign or symptom requiring exclusion from the site (i.e. communicable disease, fever, and/or illness).
- B. All parents must be notified if there is an outbreak of any communicable disease. The disease will be reported to the Abilene Taylor County Public Health District.

3. Discipline

- A. Program employees will implement discipline and guidance in a consistent manner, based on the best interests of Program participants.
- B. There will be no cruel or harsh punishment or treatment. Examples include, but not limited to:
 - 1. Using physical punishment or any action administered to the body such as, but not limited to rough handling, or forcing child(ren) to assume an uncomfortable position.
 - 2. Restraining movement by tying, enclosing in a confined space, shaking, or using exercise as punishment.
 - 3. Being verbally abusive, including, but not limited to, threats, belittling remarks, humiliation, embarrassment, or frightening a child.
 - 4. Giving any child the authority to punish another child.
 - 5. Placing a child out of visual/hearing range, in the dark, or in an unventilated area.
 - 6. Punishing a child for a toileting accident.
 - 7. Taunting a child by mocking or any other form of jeering.
 - 8. Giving preferential attention to any child over another child.

- C. Program employees may use brief, supervised separation from the activity if necessary.
- D. As necessary, Program employees will initiate discipline reports to the parents of participants. Parents will be asked to sign participant discipline reports to indicate they have been advised about a specific problem or incident.
 - 1. A sufficient number and/or severe nature of discipline report(s), as detailed by the Disciplinary Policy in the Program and Operations Manuals, may result in a Participant being suspended from the Youth Program immediately. If a Participant is suspended from the program, an Authorized Person must pick up the Participant.
 - 2. Participants will be removed from the Program Site as soon as possible in instances of danger to other Participants or Program Staff. This includes, but is not limited to, continuous disruption of the Youth Program, inappropriate sexual behavior, bullying, hitting or biting other Participants or Program Staff and damage to any City property.
- E. A sufficient number and/or severe nature of discipline reports as detailed in the Program manual may result in a participant being suspended and/or expelled from the Program.
- F. In instances where there is a danger to other participants or staff, offending participants will be removed from the Program site as soon as possible.
- G. Any person(s) creating a nuisance, causing a disturbance, or creating an unsafe environment at any Program Site will be subject to ejection from the site and possible arrest and legal action.

4. Programming

- A. Program employees will provide activities for each group according to the participants' ages, interests, and abilities. The activities will be appropriate to participants' health, safety, and well-being. The activities also will be flexible and designed to promote the participants' emotional, social, and mental growth.
- B. Program employees will provide indoor and outdoor time periods to include:
 - (1) Alternating active and passive activities;
 - (2) Opportunity for individual and group activities; and
 - (3) Outdoor time each day that weather permits.
- C. Program employees will be attentive and considerate of the participants' safety on field trips and during any transportation provided by the Program. Participants must be counted before leaving the Program Site and before boarding the transportation to return to the Program Site.

- (1) During trips, Program employees supervising participants must have immediate access to emergency medical forms and emergency contact information for each participant.
- (2) Program employees will have transportation cards of the participants in the group and must check the roll frequently.
- (3) Program employees should have First-Aid supplies and a guide to First-Aid and emergency care available on field trips.
- (4) Notice of any field trips will be displayed at a prominent location at each Program site.

5. Communication

- A. Each Program site will have access to a telephone for use in contacting the Recreation Center or making emergency calls.
- B. The Recreation Coordinator will post the following telephone numbers adjacent to a telephone accessible to all Program employees at each site:
 - (1) Ambulance or emergency medical services.
 - (2) City of Abilene Police Department.
 - (3) City of Abilene Fire Department.
 - (4) Poison control.
 - (5) The telephone number for the site itself.

6. Transportation

- A. First-Aid supplies and a First-Aid emergency care guide will be available in all Program vehicles that transport children.
- B. All Program vehicles used for transporting participants must have available a portable fire extinguisher located in the passenger compartment of the vehicle which will be accessible to the adult occupants.

Facility Standards

1. Safety

- A. Program employees will inspect Program sites daily to detect sanitation and safety concerns that might affect the health and safety of the participants.
- B. Buildings, grounds, and equipment on the Program site will be inspected, cleaned, repaired, and maintained to protect the health of the participants.
- C. Program equipment and supplies should be safe for the participants' use.

- D. Program employees should have First-Aid supplies available at each site, during transportation and for the duration of any off-site activity.
- E. Program employees should have first-aid supplies readily available to staff in a designated location. Program employees should have an immediately accessible guide to First-Aid and emergency care.
- F. Program air conditioners, electric fans, and heaters should be mounted out of participants reach or have safeguards that keep participants from being injured.

2. Fire

- A. In case of fire, danger of fire, explosion, or other emergency, Program employee's first priority is to evacuate the participants to a designated safe area.
- B. The Program site will have an annual fire inspection by the City of Abilene Fire Department, and the resulting report will detail any safety concerns observed. The report will be forwarded to the Administrator who will review and establish deadlines and criteria for compliance.
- C. Each Program site must have at least one (1) fire extinguisher approved by the Fire Marshall readily available to all Program employees. The fire extinguisher is to be inspected monthly by the Recreation Center Coordinator. All of the City of Abilene Youth Program employees will be trained in the proper use of fire extinguishers.

3. Health

- A. **Illness or Injury**
 - (1) A participant who is considered to be a health or safety concern to other participants or staff will not be admitted to the Program.
 - (2) Illnesses and injuries will be handled in a manner to protect the health of all participants and employees. Emergency responders will be notified in the event of an injury that cannot be remedied through basic first aid. An accident report shall be completed and forwarded to the Recreation Supervisor.
 - (3) An ill Youth will not be allowed to attend or participate if the Youth is suspected of having a temperature and/or accompanied by behavior changes or other signs or symptoms until a medical evaluation indicating that the Youth can return to the Youth Program.
 - (4) Program employees will follow plans to provide emergency care for injured participants or for participants with symptoms of an acute illness as specified in the Program manual.

- (5) Program employees will follow the recommendation of the Texas Department of State Health Services concerning the admission or readmission of any participant after a communicable disease.

C. Toilet Facilities

- (1) The Program site will have inside toilets located and equipped so children can use them independently and Program employees can supervise as needed.
- (2) There must be at least one flush toilet for every thirty (30) children. Urinals may be counted in the ratio of toilets to children but must not exceed fifty percent (50%) of the total number of toilets.
- (3) An appropriate and adequate number of lavatories will be provided.

D. Sanitation

- (1) The Program site must have adequate light, ventilation, and heat.
- (2) The Program must have an adequate supply of water, meeting the standards of the Texas Department of State Health Services for drinking water, and ensure that it will be supplied to the participants in a safe and sanitary manner.
- (3) Program employees must see that garbage is removed from Program sites daily.
- (4). The Program site will have an annual health inspection by the City of Abilene Health Department, and the resulting report will detail any health concerns observed. The report will be kept on file at the center. Information from this report will be included in the Director's annual report to the City Council.

4. Participants

- A. All participants must wear tennis shoes daily, unless the Youth is in the swimming pool or participating in an activity that requires no shoes to be worn.
- B. Youth must respect the Employees, Program Site, and each other.

City of Abilene Recreation Division



Standards of Care for Youth Programs

20243

Parks and Recreation
633 Walnut Street
Abilene, TX 79601
(325) 676-6217

www.abilenetx.gov/parksandrec
parksandrec@abilenetx.gov

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ABILENE YOUTH PROGRAMS

STANDARDS OF CARE

General Administration

1. Organization

- A. The governing body of the City of Abilene Youth Programs is the Abilene City Council.
- B. Implementation of the Youth Program's Standards of Care is the responsibility of the Recreation Administrator and departmental employees.
- C. Youth Programs ("Program") to which these Standards apply are the programs held at the City Recreation Centers currently operated by the City of Abilene. Other programs may be subsequently designated by the City of Abilene.
- D. Each of the City of Abilene Youth Program sites will have a current copy of the Standards of Care available for public and staff review.
- E. Parents of participants will be provided a current copy of the Standards of Care during the registration process or the Standards of Care can be accessed on the City of Abilene website at www.abilenetx.gov/camps. Parents of participants will be informed that the City of Abilene Youth Programs is not licensed by the State.
- F. Criminal background checks will be conducted on prospective Youth Program employees. If results of the criminal checks indicate that an applicant has been convicted for any of the following offenses, he or she may not be considered for employment:
 - (1) A felony or a misdemeanor classified as an offense against a person or family;
 - (2) A felony or misdemeanor classified as public indecency;
 - (3) A felony or misdemeanor violation of any law intended to control the possession or distribution of any controlled substance or any violation of the City Policy;
 - (4) Any offense involving moral turpitude;
 - (5) Any offense that would potentially put the City of Abilene or participants of the Program at risk.
 - (6) In addition, a nationwide check of databases for the Sex Offender Registration Program will be conducted on prospective Program Staff. If results of the check indicate that an applicant is a registered sex offender, he or she will not be considered for employment.

2. Definitions

- A. City: City of Abilene.
- B. City Council: City Council of the City of Abilene.
- C. Department: Parks and Recreation Department of the City of Abilene.
- D. Director: City of Abilene Director of Parks and Recreation Department or designee.
- E. Division: Recreation Services Division of the City of Abilene.
- F. Employee: Someone who has been employed by the City of Abilene and has been assigned responsibility for managing, administering, or implementing some portion of the City of Abilene Youth Programs.
- G. Parent(s): A parent or guardian who has legal custody and authority to enroll a child in the City of Abilene Youth Programs.
- H. Participant: A youth whose parent has completed all required registration procedures and who has been determined to be eligible for the City of Abilene Youth Programs.
- I. Program Manual: A notebook of policies, procedures, required forms, and organizational and programming information relevant to City of Abilene's Youth Programs.
- J. Program Site: Any area or facility where the City of Abilene Youth Programs is held.
- K. Recreation Coordinator: City of Abilene Recreation Division full-time Programmer who has been assigned administrative responsibility for the City of Abilene Youth Programs.
- L. Recreation Specialist or Recreation Leader: Any City of Abilene Recreation Division employee (full-time or part-time) who has been assigned responsibility to implement the City of Abilene Youth Programs.
- M. Playground Supervisor or Playground Aide: Any City of Abilene Recreation Division temporary employee who has been assigned responsibility to implement the City of Abilene Youth Programs.
- N. Administrator: City of Abilene Administrator of Recreation Services or his or her designee.
- O. Youth Program(s) or Program: City of Abilene Youth Programs held at the City's Recreation Centers are currently operated by the City of Abilene. Other programs may be subsequently designated by the City of Abilene. These programs are not child-care facilities.

3. Objective of Youth Programs

- A. To provide Youth with the opportunity of recreational activities which may include sports, games, arts and crafts, education, dance, drama, special events, field trips, etc...
- B. To provide an encouraging atmosphere by emphasizing the positive development of physical skills, emotional development, and growth of self-confidence.
- C. To provide a safe environment by promoting good health and welfare for all participants.
- D. To teach Youth how to spend leisure time wisely in an effort to meet the emotional, physical, and social needs of Youth.

4. Inspections/Monitoring/Enforcement

- A. An annual facility inspection report will be initiated by the Recreation Coordinator of each Program to confirm adherence to the Standards of Care. This report will be submitted in March.
 - (1) Inspection reports will be sent to the Administrator for review and kept on record for at least two years.
 - (2) The Administrator will review the report and establish deadlines and criteria for compliance with the Standards of Care.
- B. The Administrator will make visual inspections of the facilities, based on the following schedule. An [Parks and Recreation Professional- Administrator](#) that is not associated with the City of Abilene [Parks and Recreation Department](#) will assist on one of the following inspections.
 - (1) A pre-summer check in April of each year; and
 - (2) A fall check in October of each year.
- C. Complaints regarding enforcement of the Standards of Care will be directed to the Recreation Coordinator. The Recreation Coordinator will be responsible for taking the necessary steps to resolve the problems. Complaints regarding enforcement of the Standards of Care and their resolution will be recorded by the Recreation Coordinator and forwarded to the Administrator, the complaint and the resolution will be noted.
- D. The Administrator will provide an annual report to the Parks and Recreation Board on the overall status of the Youth Programs and their operation relative to compliance with the adopted Standards of Care.

5. Enrollment

- A. Before a child may be enrolled, a parent/guardian must sign registration forms that contain:
- (1) Name, address, and telephone number of the child;
 - (2) Name and address of parents/guardian and telephone numbers during program hours;
 - (3) The names and telephone numbers of people to whom the child may be released;
 - (4) A statement of the child's special needs; and
 - (5) A signed liability waiver which also includes permission for field trips and emergency medical authorization.
 - (6) Signed acknowledgement of program code of conduct.

6. Suspected Abuse

Program employees will report suspected child abuse in accordance with the Texas Family Code. In a situation where an Employee is involved in an incident with a child that could be considered child abuse, the incident shall immediately be reported to the Recreation Division Manager. The Recreation Division Manager will immediately notify the Police Department and any other agency, as may be appropriate.

Staffing – Responsibilities and Training

1. Recreation Center Coordinators

- A. Qualifications
1. Recreation Coordinators will be full-time, professional employees of the City of Abilene Recreation Division
 2. Recreation Coordinators must meet the minimum education/experience requirements for employment with the City of Abilene to plan and implement recreation activities.
 3. Recreation Coordinators must be able to pass a background investigation, including testing for illegal substances.
 4. Coordinators must have a current certification in First Aid and Cardiopulmonary Resuscitation (CPR)– Adult and Child. These certifications must be from a nationally recognized certifying organization, i.e., American Heart Association or American Red Cross.
 5. Recreation Coordinators must complete City of Abilene mandatory training.

B. Job Functions

1. Recreation Coordinators are responsible for administering the Youth Programs daily operations in compliance with the Adopted Standards of Care.
2. Recreation Coordinators are responsible for hiring, supervising, and evaluating Recreation Specialist/Leaders.
3. Recreation Coordinators are responsible for planning, implementing, and evaluating programs.
4. Recreation Coordinators maintain supplies, equipment and all necessary documentation for the operation of the Youth Programs.
5. Recreation Coordinators must communicate with Parent(s) as necessary.
6. Recreation Coordinators know and follow all City of Abilene, Division, and Program Manual standards, policies and procedures that apply to Youth Programs.
7. Recreation Coordinators ensure that participants are released only to a Parent(s) or an adult designated by the Parent(s).

2. Recreation Specialist/Recreation Leader

A. Qualifications

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2. Recreation Specialists/Leaders should be able to consistently exhibit competency, good judgment, and self-control when working with children.
3. Recreation Specialists/Leaders must relate to children with courtesy, respect, tolerance, and patience.
4. Recreation Specialists must have a current certification in First Aid and Cardiopulmonary Resuscitation (CPR)– Adult and Child. These certifications must be from a nationally recognized certifying organization, i.e., American Heart Association or American Red Cross.
5. Recreation Specialists/Leaders must pass a background investigation, including testing for illegal substances.
6. Recreation Specialist/Leaders will be responsible for understanding and following all City of Abilene, Departmental, Division, and Program standards, policies, and procedures that apply to the City of Abilene Youth Programs.

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3. Playground Supervisor and/or Playground Aide

A. Qualifications

1. Playground Supervisor/Aides will be temporary employees of the City of Abilene Recreation Division.
2. Playground Supervisor/Aides should be able to consistently exhibit competency, good judgment, and self-control when working with children.
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 - (5) The telephone number for the site itself.

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- A. First-Aid supplies and a First-Aid emergency care guide will be available in all Program vehicles that transport children.
- B. All Program vehicles used for transporting participants must have available a portable fire extinguisher located in the passenger compartment of the vehicle which will be accessible to the adult occupants.

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- A. In case of fire, danger of fire, explosion, or other emergency, Program employee's first priority is to evacuate the participants to a designated safe area.
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- C. Each Program site must have at least one (1) fire extinguisher approved by the Fire Marshall readily available to all Program employees. The fire extinguisher is to be inspected monthly by the Recreation Center Coordinator. All of the City of Abilene Youth Program employees will be trained in the proper use of fire extinguishers.

3. Health

- A. Illness or Injury
 - (1) A participant who is considered to be a health or safety concern to other participants or staff will not be admitted to the Program.
 - (2) Illnesses and injuries will be handled in a manner to protect the health of all participants and employees. Emergency responders will be notified in the event of an injury that cannot be remedied through basic first aid. An accident report shall be completed and forwarded to the Recreation Supervisor.
 - (3) An ill Youth will not be allowed to attend or participate if the Youth is suspected of having a temperature and/or accompanied by behavior changes or other signs or symptoms until a medical evaluation indicating that the Youth can return to the Youth Program.
 - (4) Program employees will follow plans to provide emergency care for injured participants or for participants with symptoms of an acute illness as specified in the Program manual.

- (5) Program employees will follow the recommendation of the Texas Department of State Health Services concerning the admission or readmission of any participant after a communicable disease.

C. Toilet Facilities

- (1) The Program site will have inside toilets located and equipped so children can use them independently and Program employees can supervise as needed.
- (2) There must be at least one flush toilet for every thirty (30) children. Urinals may be counted in the ratio of toilets to children but must not exceed fifty percent (50%) of the total number of toilets.
- (3) An appropriate and adequate number of lavatories will be provided.

D. Sanitation

- (1) The Program site must have adequate light, ventilation, and heat.
- (2) The Program must have an adequate supply of water, meeting the standards of the Texas Department of State Health Services for drinking water, and ensure that it will be supplied to the participants in a safe and sanitary manner.
- (3) Program employees must see that garbage is removed from Program sites daily.
- (4). The Program site will have an annual health inspection by the City of Abilene Health Department, and the resulting report will detail any health concerns observed. The report will be kept on file at the center. Information from this report will be included in the Director's annual report to the City Council.

4. Participants

- A. All participants must wear tennis shoes daily, unless the Youth is in the swimming pool or participating in an activity that requires no shoes to be worn.
- B. Youth must respect the Employees, Program Site, and each other.



**City of San Angelo
Parks & Recreation Department
702 South Chadbourne
San Angelo, Texas 76903
(325) 657-4279/4450**

November 8, 2023

Ann Hall
Division Manager
City of Abilene Parks & Recreation
633 Walnut St.
Abilene, TX 79601

I hope this letter finds you well. On Friday, November 3, 2023, I had the privilege of visiting your recreation centers: Daniels, Chavez, Cobb, and Rose. It is with great pleasure that I share my findings from the inspection, as they exceeded our expectations in terms of care and operation.

Despite the fact that these centers have been serving the community for some time, it is evident that they have been exceptionally well-maintained and are still vibrant hubs of recreational activity. Each center is furnished adequately, with all the necessary resources in place to ensure their smooth operation. I am pleased to note that all required communication postings for emergency situations were in place and easily accessible. Furthermore, all fire extinguishers were present, fully charged, and none were overdue for inspections. The necessary safety equipment was also found in its designated locations, in line with the established requirements.

However, the most outstanding asset of the recreation centers is undeniably the dedicated and knowledgeable staff. It is clear that they possess an unwavering passion for their work, which is both commendable and inspiring. Their commitment to providing quality services is truly remarkable.

I have attached my inspection sheets, which include a few notes on items that could be considered for further improvement. These recommendations are made with the intention of enhancing the overall experience and safety for visitors to your centers.

I would like to extend my sincere gratitude for the opportunity to visit and inspect your recreation centers. Your commitment to maintaining these valuable community resources is evident, and I applaud your efforts. Please do not hesitate to reach out if you have any questions or require further assistance in implementing the suggested improvements.

Thank you once again for your dedication to the well-being of the community and the provision of exceptional recreational facilities.

Carl White
Parks and Recreation Director
City of San Angelo, Texas
325-657-4279
Carl.white@cosatx.us

Standards of Care Review

Recreation Center: G.V. Daniels

Date: Nov 3, 2023 Inspector: Carl White, San Angelo

SAFETY	Yes	No
First Aid kit stocked with Band-Aids and other essential items	✓	
First Aid kit readily accessible in designated area	✓	
Center Coordinators: CPR/First Aid Certified	✓	

Comments:

FIRE	Yes	No
At least one fire extinguisher	✓	
Fire Extinguishers were current	✓	
Fire Extinguishers locations were labeled	✓	
Emergency Exit map posted	✓	

Comments: sign

COMMUNICATION	Yes	No
Emergency Contact Numbers Posted	✓	
EMS or Ambulance contact information posted	✓	
Police Department contact information posted	✓	
Fire Department contact information posted	✓	
Poison Control contact information posted	✓	
Recreation Center contact information posted	✓	

Comments:

Note: center to be considered for replacement under upcoming bond election (Nov 7)

- paint entrance doors - main entrance doors should be painted for more appealing entrance
- Fall fest ... still cleaning + putting up from recent fall festival.

Standards of Care Review

Recreation Center: Cesar Chavez

Date: Nov 3, 2023 Inspector: Carl White, San Angelo

SAFETY	Yes	No
First Aid kit stocked with Band-Aids and other essential items	✓	
First Aid kit readily accessible in designated area	✓	
Center Coordinators: CPR/First Aid Certified	✓	

Comments:

FIRE	Yes	No
At least one fire extinguisher	✓	
Fire Extinguishers were current	✓	
Fire Extinguishers locations were labeled	✓	
Emergency Exit may posted	✓	

Comments: sign

COMMUNICATION	Yes	No
Emergency Contact Numbers Posted	✓	
EMS or Ambulance contact information posted	✓	
Police Department contact information posted	✓	
Fire Department contact information posted	✓	
Poison Control contact information posted	✓	
Recreation Center contact information posted	✓	

Comments:

ladders at electrical panels in back - remove & keep mechanical room clear of all obstacles

Standards of Care Review

Recreation Center: Cobb

Date: Nov 3, 2023 Inspector: Carl White, San Angelo

SAFETY	Yes	No
First Aid kit stocked with Band-Aids and other essential items	✓	
First Aid kit readily accessible in designated area	✓	
Center Coordinators: CPR/First Aid Certified	✓	

Comments:

FIRE	Yes	No
At least one fire extinguisher	✓	
Fire Extinguishers were current	✓	
Fire Extinguishers locations were labeled	✓	
Emergency Exit map posted	✓	

Comments: sign

COMMUNICATION	Yes	No
Emergency Contact Numbers Posted	✓	
EMS or Ambulance contact information posted	✓	
Police Department contact information posted	✓	
Fire Department contact information posted	✓	
Poison Control contact information posted	✓	
Recreation Center contact information posted	✓	

Comments:

- Mc ramp 6 entrance + 1/4" ? gravel? → accessible ramp at entrance looks to need some attention - ramp and walkway look to be at more than 1/4" difference. Grnd higher portion to make level.
 - building is very clean and tidy
 - open hours not posted

Standards of Care Review

Recreation Center: Rose

Date: Nov 3, 2023 Inspector: Carl White, San Angelo

SAFETY	Yes	No
First Aid kit stocked with Band-Aids and other essential items	✓	
First Aid kit readily accessible in designated area	✓	
Center Coordinators: CPR/First Aid Certified	✓	

Comments:

FIRE	Yes	No
At least one fire extinguisher	✓	
Fire Extinguishers were current	✓	
Fire Extinguishers locations were labeled	✓	
Emergency Exit map posted	✓	

Comments: sign

COMMUNICATION	Yes	No
Emergency Contact Numbers Posted	✓	
EMS or Ambulance contact information posted	✓	
Police Department contact information posted	✓	
Fire Department contact information posted	✓	
Poison Control contact information posted	✓	
Recreation Center contact information posted	✓	

Comments:

→ the restrooms are generally clean, but do have some foul odor.

→ exit sign (M) at back door → it is scheduled for installation

Approval of 2024 Standards of Care



Standards of Care

- Summer Camp and After School Programs are open to ages 6 to 13.
- Parents are provided with a copy of the document and it is posted www.abilenetx.gov/camps.
- The Standards of Care are intended to be minimum standards by which the City of Abilene will operate the City's Youth Programs. The programs operated by the City are recreational in nature and are not licensed by the state of Texas as certified day care programs.



Basic Requirements

- Adequate and readily available first aid kits.
- Full time staff must be certified in CPR and First Aid.
- Non-expired fire extinguisher / properly labeled
- Emergency exit signs are posted
- Posting of emergency contact including fire, police, poison control, as well as contact information for Recreation Center.
- Registration collection of names, addresses, phone numbers, and signed waiver of liability. This is done electronically through the registration software.
- Defines job titles, qualifications, and responsibilities.
- Outlines the ratio (Abilene is 20 children per 1 staff).
- Lists facility standards that includes lighting, toilet facilities, and communicable diseases.



Standards of Care

- Internal annual inspection
- Environmental Health and Fire Department conducts an annual inspection.
- We also have an outside Parks and Recreation professional perform a review. This was done on November 8th, by Carl White, City of San Angelo Parks and Recreation Director.



Proposed Change

Proposed Change:

- ...”The Administrator will make visual inspections of the facilities, based on the following schedule. An Administrator that is not associated with the City of Abilene Parks and Recreation Department will assist on one of the following inspections.
 - (1) A pre-summer check in April of each year; and
 - (2) A fall check in October of each year.”



Standards of Care

Steps in the adoption:

- Approval by Parks and Recreation Board – November 21, 2023
- First Reading by City Council – December 7, 2023
- Public Hearing and vote by City Council – December 21, 2023





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Honorable Mayor and City Council Members

FROM: Stanley Smith, City Attorney

SUBJECT: **18. Ordinance (Final Reading):** Receive a Report, Hold a Discussion and Public Hearing, and Take Action regarding recommendations from the Sanctuary City for the Unborn Ordinance Amendment Committee, to Amend Chapter 20, "Offenses," Article VIII, "Abortion," Section 20-86, "Definitions," and Section 20-87, "Abortion Prohibited," Code of Ordinances (Stanley Smith)

GENERAL INFORMATION

On November 8, 2022, as part of a Special Election held by the City of Abilene, a majority of Abilene voters approved the Sanctuary City for the Unborn Ordinance. The Ordinance is codified as Chapter 20, Article VIII, of the Code of Ordinances, City of Abilene.

Since the adoption of the Ordinance, citizens within Abilene have discussed the effect of the Ordinance. Thereafter, the City Council held a public meeting regarding the possibility of amending the Ordinance to address questions raised by citizens. The Mayor appointed a five-member Committee to review the Ordinance and make any recommendations to the City Council to amend the Ordinance.

This Agenda item is to present the recommendations made by the Committee, and to consider amending the Ordinance based upon those recommendations of the Committee.

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

1. Revised 2023 Amend Sanctuary City for the Unborn Ordinance
2. EXHIBIT A amend sanctuary city unborn ordinance
3. 059-2022 - Outlawing Abortion, Declaring Abilene A Sanctuary City for the Unborn
4. SCFU Changes
5. Mark Dickson email - proposed changes 071123
6. Amend Sanctuary City for the Unborn Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE AMENDING CHAPTER 20, “OFFENSES,” ARTICLE VIII. “ABORTION,” SECTION 20-86, “DEFINITIONS,” AND SECTION 20-87, “ABORTION PROHIBITED” OF THE ABILENE CODE OF ORDINANCES AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.

WHEREAS, on November 8, 2022, as part of a Special Election held by the City of Abilene, a majority of Abilene voters approved the Sanctuary City for the Unborn Ordinance; and

WHEREAS, the Ordinance is codified as Chapter 20, Article VIII, of the Code of Ordinances, City of Abilene; and

WHEREAS, since the adoption of the Ordinance, citizens within Abilene have discussed the effect of the Ordinance; and

WHEREAS, City Council held a public meeting regarding the possibility of amending the Ordinance to address questions raised by citizens, and the Mayor appointed a five-member Committee to review the Ordinance and make any recommendations to the City Council to amend the Ordinance;

WHEREAS, the Committee is making a recommendation to amend some portions of the Ordinance; and

WHEREAS, Abortion-inducing drugs are declared to be contraband if used for the purpose of the termination of an unborn child, and we declare the possession of abortion-inducing drugs used for the purpose of the termination of an unborn child within the city limits to be an unlawful act.

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

PART 1: That Chapter 20, “Offenses,” Article VIII, “Abortion,” Section 20-86, “Definitions,” and Section 20-87, “Abortion Prohibited: is hereby amended as set out in Exhibit A, attached and made a part of this ordinance for all purposes.

PART 2: That if the provisions of any section, subsection, paragraph, subdivision or clause of this amended ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

PART 3: That any person, firm, or corporation violating the provisions of this Ordinance, shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code

PART 4: Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene, or as specifically provided for in this ordinance. That each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 7th day of December, 2023.

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 17th day of December, 2023, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 21st day of December, 2023, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 21st day of December, 2023.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT “A”

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 spontaneous miscarriage; or
- c. Remove an ectopic pregnancy.

~~(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.~~

(3) "Abortion-inducing drugs" includes any drug or medication, irrespective of medically intended use, either on or off label, that is used to terminate the life of an unborn child. The term does not include:

- (A) Plan B, morning-after pills, intrauterine devices, or any other type of contraception or emergency contraception; or
- (B) Drugs or medications that are possessed or distributed for a purpose other than the termination of a pregnancy.
- (C) For purpose of this section:
 1. "Medically intended use" refers to the mechanism of action and general purpose of the drug.
 2. "On Label" refers to the prescription or use of a drug for the purpose approved by the United States' Food and Drug Administration.
 3. "Off Label" refers to the prescription or use of a drug for a different purpose than what the United States' Food and Drug Administration approved.

Sec. 20-87. - Abortion prohibited.

~~(d) It shall be unlawful for any person to possess or distribute abortion-inducing drugs in the City of Abilene, Texas.~~

(d) It shall be unlawful for any person to possess or distribute abortion-inducing drugs for the purpose of the termination of an unborn child in the city of Abilene, Texas.

ORDINANCE NO. 59-2022

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: _____

Declarations, B3:

~~(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.~~

(3) Abortion-inducing drugs are declared to be contraband if used for the purpose of the termination of an unborn child, and we declare the possession of abortion-inducing drugs used for the purpose of the termination of an unborn child within city limits to be an unlawful act.

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~~ spontaneous 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.~~

(3) "Abortion-inducing drugs" includes any drug or medication, irrespective of medically intended use, either on or off label, that is used to terminate the life of an unborn child. The term does not include:

- (A) Plan B, morning-after pills, intrauterine devices, or any other type of contraception or emergency contraception; or
- (B) Drugs or medications that are possessed or distributed for a purpose other than the termination of a pregnancy.
- (C) For purpose of this section:
 1. "Medically intended use" refers to the mechanism of action and general purpose of the drug.

2. "On Label" refers to the prescription or use of a drug for the purpose approved by the United States' Food and Drug Administration.

3. "Off Label" refers to the prescription or use of a drug for a different purpose than what the United States' Food and Drug Administration approved.

(Ord. No. 59-2022, § C, 11-8-22)

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.~~

(d) It shall be unlawful for any person to possess or distribute abortion-inducing drugs for the purpose of the termination of an unborn child 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 V.T.C.A., Penal Code §§ 1.07 and 19.02(b). 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 decision making.

(l) Mistake of law shall not be a defense to the penalty established subsection (h).

(Ord. No. 59-2022, § C, 11-8-22)

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 V.T.C.A., Penal Code § 7.02.

(Ord. No. 59-2022, § C, 11-8-22)

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 V.T.C.A., Penal Code § 7.02.

(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 V.T.C.A., Penal Code § 7.02.

(Ord. No. 59-2022, § C, 11-8-22)

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 V.T.C.A., Health and Safety Code §§ 171.0031(a)(1) and 245.010(a).

(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 V.T.C.A., Health and Safety Code §§ 171.0031(a)(1) and 245.010(a). 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 V.T.C.A., Penal Code § 7.02.

(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 any statute enacted by the Texas legislature, including articles 4512.1 and 4512.2 of the Revised Civil Statutes, as well as V.T.C.A., Health and Safety Code §§ 171.0031(a)(1) and 245.010(a), 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 V.T.C.A., Penal Code § 7.02.

(Ord. No. 59-2022, § C, 11-8-22)

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 ten thousand dollars (\$10,000.00) 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 section 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 section 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 section 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.

(Ord. No. 59-2022 , § C, 11-8-22)

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.

(Ord. No. 59-2022, § C, 11-8-22)

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 a 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 subsection (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 twenty (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 subsection (a)(5) within twenty (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).

(Ord. No. 59-2022, § C, 11-8-22)

Secs. 20-94—20-115. - Reserved.

----- Forwarded message -----

From: Mark Lee Dickson <[REDACTED]>
Date: Tue, Jul 11, 2023 at 3:52 PM
Subject: Sanctuary City for the Unborn Ordinance
To: Lynn Beard <lynn.beard@abilenetx.gov>, RYAN GOODWIN <[REDACTED]>

Councilman Lynn Beard,
Subcommittee Member Ryan Goodwin:

Thank you for attending the educational meeting on Sunday night. I wanted to send you an email expressing a good-faith effort on my part, to be a help and not a hindrance to the task which you have been assigned.

I wanted to provide the following notes for your consideration:

Currently the Abilene Ordinance, under Definitions, in regards to "Abortion-inducing drugs" reads:

(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.

The definition in the Abilene Ordinance, in regards to "Abortion-inducing drugs" could be changed to read:

(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:

(A) Plan B, morning-after pills, intrauterine devices, or any other type of contraception or emergency contraception; or

(B) Drugs or medications that are possessed or distributed for a purpose that does not include the termination of a pregnancy, such as misoprostol that is possessed or distributed for the purpose of treating stomach ulcers.

If this change is made in the definitions, I would also encourage the following changes for extra clarity throughout the declarations and the ordinance:

Under Declarations, B3:

The current section reads:

(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.

This is not law, but it could be changed to read:

(3) Abortion-inducing drugs are declared to be contraband if used for the purpose of the termination of an unborn child, and we declare the possession of abortion-inducing drugs used for the purpose of the termination of an unborn child within city limits to be an unlawful act.

Section 20.87, Abortion Prohibited currently states:

(d) It shall be unlawful for any person to possess or distribute abortion-inducing drugs in the city of Abilene, Texas

This could be changed to read,

(d) It shall be unlawful for any person to possess or distribute abortion-inducing drugs for the purpose of the termination of an unborn child in the city of Abilene, Texas.

If this is done, in this way, this would not negatively impact Jonathan F. Mitchell's offer to represent the City of Abilene at no cost to the city or the taxpayers for any litigation which may arise. We have actually used similar language in other ordinances.

If there are questions about other things mentioned in the ordinance, which you think merit a definition being added, I would be glad to help provide those definitions. We do have a definition for "abortion doula services" which is very specific and could be added if you believe it would be helpful.

Jonathan F. Mitchell will also be available for a call with you and Ryan, if you so wish. I'll be glad to help set that up, if necessary.

Sincerely,

Mark Lee Dickson

Founder, Sanctuary Cities for the Unborn Initiative

Co-Author, Abilene Sanctuary City for the Unborn Ordinance



**Ordinance:
Amend Chapter 20, "Offenses,"
Article VIII, "Abortion,"
Section 20-86, "Definitions," and
Section 20-87, "Abortion Prohibited,"
Code of Ordinances**





At Issue

- Feedback from the local medical community indicated there was confusion regarding the definition of “Abortion Inducing Drugs”:
 - Two commonly used abortion drugs, Mifepristone and Misoprostol were specifically named and declared to be contraband.
- Current Ordinance:
- 20.86 (a) (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.





At Issue

- By listing two drugs by name, one with other medical uses, yet omitting other drugs by name that both can be used to induce an abortion and have other medical uses, unintentional confusion has been created and some in the medical community are reluctant to use drugs associated with abortion that have other medical uses for treatment of other conditions.
- Examples of drugs with other medical uses, that can be used in abortion, but not named in the original ordinance include:
 - Pitocin-used for labor induction and to treat post partum bleeding/can also be used to induce abortion.
 - Hemabate-used to treat post partum bleeding/can also be used to induce an abortion.



CITY OF
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TEXAS



The Solution

- By adjusting the wording in the “Abortion Inducing Drug” definition, a more comprehensive and clearer prohibition is created, while still allowing doctors to treat women in Abilene with medical conditions.
- The amended wording also covers future drug development, and yet to be discovered “off label” uses that could be utilized for abortions.
- The original intent and prohibitions on abortion remain fully intact and unaltered.
- Further adjustments to the “Declarations” and 20.87 “Abortion Prohibited” are minor and align the language across the ordinance.





The Changes

- (3) “Abortion-inducing drugs” includes any drug or medication, irrespective of medically intended use, either on or off label, that is used to terminate the life of an unborn child. The term does not include:
 - (A) Plan B, morning-after pills, intrauterine devices, or any other type of contraception or emergency contraception; or *(original language)*
 - (B) Drugs or medications that are possessed or distributed for a purpose other than the termination of a pregnancy. *(original language)*





The Changes

- (C) For purpose of this section:
 - 1. “Medically intended use” refers to the mechanism of action and general purpose of the drug.
 - 2. “On Label” refers to the prescription or use of a drug for the purpose approved by the United States’ Food and Drug Administration.
 - 3. “Off Label” refers to the prescription or use of a drug for a different purpose than what the United States’ Food and Drug Administration approved.





Additional Changes

- Declarations, B3:
 - Existing Language:
 - (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.
- Amended Language:
- (3) Abortion-inducing drugs are declared to be contraband if used for the purpose of the termination of an unborn child, and we declare the possession of abortion-inducing drugs used for the purpose of the termination of an unborn child within city limits to be an unlawful act. (*Dickson*)





Additional Changes

- 20.87-Abortion Prohibited
- Existing Language:
 - (d) It shall be unlawful for any person to possess or distribute abortion-inducing drugs in the City of Abilene, Texas.
- Amended Language
 - (d) It shall be unlawful for any person to possess or distribute abortion-inducing drugs for the purpose of the termination of an unborn child in the city of Abilene, Texas.
(Dickson)





**City Council
Agenda Memo**

City Council Meeting Date: 12/21/2023

TO: Honorable Mayor and City Council Members

FROM: Stanley Smith, City Attorney

SUBJECT: 19. 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. Sharra Sampson v. City of Abilene; Cause No. 8144-B, In the 104th Judicial District Court, Taylor County, Texas; filed September 14, 2020
4. 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
5. 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
6. 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
7. 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
8. Richard Scheriger, et al. v. City of Abilene; Cause No. CV33253, In the 90th Judicial District Court, Stephens County, Texas, filed April 21, 2023
9. The Woodlands Pride, Inc., et al. v. Angela Colmenero, Interim Attorney General of Texas, et al., Case No. 4:23-cv-02847, In the United States District Court, Southern District of Texas, Houston Division, filed August 2, 2023
10. City of Abilene, Texas v. 3W Brands, LLC; Cause No. 7820, In the County Court at Law #2, Taylor County, Texas; filed August 11, 2023
11. Abilene Apartments, LLC v. City of Abilene, Texas; Cause No. 51762-A, in the 42nd Judicial District

Court, Taylor County, Texas; filed October 26, 2023
12. PFAS Litigation

B. 551.072 (Deliberations about Real 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)

SPECIAL CONSIDERATIONS

FUNDING/FISCAL IMPACT

STAFF RECOMMENDATION

BOARD OR COMMISSION RECOMMENDATION

ATTACHMENTS:

None