



**MEETING OF THE
TEMPLE CITY COUNCIL**

MUNICIPAL BUILDING

2 NORTH MAIN STREET

THURSDAY, AUGUST 20, 2009

3:30 P.M.

3RD FLOOR CONFERENCE ROOM

WORKSHOP AGENDA

1. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, August 20, 2009.
2. Discuss appointments to various boards and commissions.
3. Discuss street lighting policy.
4. Discuss third quarter financial results for Fiscal Year 2009.

5:00 P.M.

MUNICIPAL BUILDING

2 NORTH MAIN STREET
CITY COUNCIL CHAMBERS – 2ND FLOOR

TEMPLE, TX

TEMPLE CITY COUNCIL

REGULAR MEETING AGENDA

I. CALL TO ORDER

1. Invocation
2. Pledge of Allegiance

II. PROCLAMATIONS & SPECIAL RECOGNITIONS

3. Presentation of [2009 Long-Range Planning Award](#) from the Central Texas Section of the American Planning Association for “*Choices '08 – Temple Comprehensive Plan.*”

III. PUBLIC COMMENTS

Citizens who desire to address the Council on any matter may sign up to do so prior to this meeting. Public comments will be received during this promotion of the meeting. Please limit comments to 3 minutes. No discussion or final action will be taken by the City Council.

IV. BUDGET ITEMS

4. PUBLIC HEARING – Conduct the second of two public hearings to receive comments on the [proposed tax rate](#) of 56.46 cents per \$100 valuation for fiscal year 2010 (2009 tax year), and announce meeting to adopt the proposed tax rate on September 3, 2009.

V. CONSENT AGENDA

All items listed under this section, Consent Agenda, are considered to be routine by the City Council and may be enacted by one motion. If discussion is desired by the Council, any item may be removed from the Consent Agenda at the request of any Councilmember and will be considered separately.

5. Consider adopting a resolution approving the Consent Agenda items and the appropriate resolutions for each of the following:

Minutes:

- (A) [August 6, 2009 Special Called Meeting and Regular Meeting](#)

Contracts, Leases & Bids:

- (B) [2009-5772-R](#): Consider adopting a resolution authorizing an Interlocal Cooperation Contract with the Texas Department of Public Safety for the purchase of alcohol and drug testing supplies by the Temple Police Department.
- (C) [2009-5773-R](#): Consider adopting a resolution authorizing a contract amendment with Architectural Edge Inc. of Temple to provide construction administration services for the renovation and interior upgrade of the Frank W. Mayborn Civic and Convention Center in the amount of \$7,500.
- (D) [2009-5774-R](#): Consider adopting a resolution authorizing a construction contract with J.H. Proofrock, Inc. of Dallas for remedial waterproofing at the Municipal Building in the amount of \$88,000.
- (E) [2009-5775-R](#): Consider adopting a resolution authorizing a four-year agreement with renewal options with CTWP of Temple for copier services.
- (F) [2009-5776-R](#): Consider adopting a resolution authorizing a professional services agreement with The Wallace Group, (TWG) for engineering services required to prepare and submit a Letter of Map Revision for Hog Pen Creek from FM 2305 to 1,000 feet south of Hogan Road in an amount not to exceed \$47,430.
- (G) [2009-5777-R](#): Consider adopting a resolution authorizing an agreement with the City of Belton and the Brazos River Authority to share the cost of land acquisition and engineering services for a proposed expansion of the Temple-Belton Regional Sewerage System.
- (H) [2009-5778-R](#): Consider adopting a resolution authorizing an agreement with Cord Financial Services of Temple to provide and install an ATM at the Frank W. Mayborn Civic and Convention Center.

Ordinance – Second & Final Reading:

- (I) [2009-4301](#): SECOND READING – Z-FY-09-16: Consider adopting an ordinance authorizing a zoning change from the Central Area District (CA) and Multiple Family Two District (MF2) to Single Family One District (SF1) and/or Neighborhood Services District (NS) for all of Blocks 1 and 26, Moore's First Addition; all of Blocks, 4, 7, 8, 9, & 10, and Block 3, Lots 2-4, L.R. Taylor Addition; and Outblocks, 263-2A, 2B, 2C, 2D, and 23, Temple Original.
- (J) [2009-4302](#): SECOND READING — Consider adopting an ordinance amending Chapter 12, "Fire Prevention and Protection," of the Code of Ordinances of the City of Temple, Texas, by adopting the 2006 International Fire Code.

- (K) [2009-4303](#): SECOND READING – Consider adopting an ordinance amending Chapter 37, "Traffic," Article IV, "Stopping, Standing and Parking," of the Code of Ordinances of the City of Temple, Texas, by amending Section 37-93, entitled, "Two-Hour Parking Zone," to provide that the City Manager may suspend by decree the fine for parking longer than two hours in the downtown area during public events or when the municipal parking lot adjacent to City Hall is closed.
- (L) [2009-4304](#): SECOND READING – Consider adopting an ordinance extending the life of preliminary plats for single family residential subdivisions that were: (1) approved in the past 2 years; (2) extended by the approval of a final plat for a phase of the subdivision in the past 2 years; or (3) that would have expired in the past 2 years, by giving them an additional life of 2 years from the effective date of this ordinance.
- (M) SECOND READING – Consider adopting ordinances establishing the prima facie speed of motor vehicles on a certain section of SH 36/LP363, within the City limits, as follows:
- (1) [2009-4305](#): The speed limit on Loop 363 access roads will be increased from 40 mph to 45 mph from Airport Road to a point 2,375 feet south of FM 2305 and from 30 mph to 50 mph from a point 2,375 feet south of FM 2305 to South 5th Street; and
 - (2) [2009-4306](#): The speed limit on Loop 363 will be increased from 55 mph to 60 mph from Airport Road to South 5th Street.
- (N) [2009-4307](#): SECOND READING – Consider adopting an ordinance establishing school crosswalks and setting speed limits within school zones to conform to school schedules.

Misc.:

- (O) [2009-5779-R](#): Consider adopting an amendment to Resolution No. 2008-5591-R, to clarify that resolution, which authorized and approved acquisition of 11 parcels of land and one utility easement adjacent to Old Waco Road, for the Outer Loop Phase III project, from approximately 950 feet south of Jupiter Drive to FM 2305; described the tracts to be acquired; determined that such acquisitions were necessary for public road, drainage and utility purposes, and authorized exercise of eminent domain if such became necessary.
- (P) [2009-5780-R](#): Consider adopting a resolution approving third quarter financial results for Fiscal Year 2009.
- (Q) [2009-5781-R](#): Consider adopting a resolution authorizing budget amendments for fiscal year 2008-2009.

V. REGULAR AGENDA

ORDINANCES

6. [2009-4308](#): FIRST READING – PUBLIC HEARING - Z-FY-09-25: Consider adopting an ordinance authorizing a zoning change from Agricultural (A) to Commercial (C) District on 1± acres, situated in the Maximo Moreno Survey, Abstract No. 14, on the west side of South 5th Street, 500± feet north of Waters Dairy Road, located at 4804 South 5th Street.

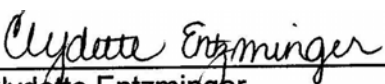
7. [2009-4309](#): FIRST & FINAL READING - PUBLIC HEARING - Consider adopting an ordinance approving rate tariffs and Proof of Revenues that reflect the negotiated rate change between the City and Atmos Mid-Tex pursuant to the Rate Review Mechanism process, and approving a revision to the Atmos Mid-Tex current Gas Cost Recovery ("GCR") tariff to allow the Company to recover certain hedging costs associated with natural gas futures through the GCR tariff; to be considered on an emergency basis.

BOARD APPOINTMENTS

8. [2009-5782-R](#): Consider adopting a resolution appointing members to the following City boards and commissions:
- (A) Airport Advisory Board – two members to fill expiring terms through September 1, 2012
 - (B) Animal Services Advisory Board – three members to fill expiring terms through September 1, 2012 and appoint Chair for the period of September 1, 2009 through August 31, 2010
 - (C) Civil Service Commission - one member to fill expiring term through September 1, 2012
 - (D) Community Services Advisory Board – three members to fill expiring terms through September 1, 2012
 - (E) Library Board – three members to fill expiring terms through September 1, 2012; and one member to fill an unexpired term through September 1, 2010
 - (F) Planning & Zoning Commission – three members to fill expiring terms through September 1, 2012
 - (G) Reinvestment Zone No. 1 Board of Directors – five members to fill expiring terms through September 1, 2011; and appoint Chair for the period of September 1, 2009 through December 31, 2009
 - (H) Temple Economic Development Corporation – four members to fill expiring terms through September 1, 2012; and one member to fill an unexpired term through September 1, 2011
 - (I) Temple Public Safety Advisory Board – four members to fill expiring terms through September 1, 2012; and two members to fill unexpired terms through September 1, 2010
 - (J) Transit Advisory Committee – three members to fill expiring terms through September 1, 2011

***The City Council reserves the right to discuss any items in executive (closed) session
Whenever permitted by the Texas Open Meetings Act.***

I hereby certify that a true and correct copy of this Notice of Meeting was posted in a public place at 8:30 AM, on August 17, 2009.


Clydette Entzminger
City Secretary

I certify that this Notice of Meeting Agenda was removed by me from the outside bulletin board in front of the City Municipal Building at _____ on the _____ day of _____ 2009. _____



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #3
Regular Agenda
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DEPT./DIVISION SUBMISSION & REVIEW:

William A. Jones, III, Mayor

ITEM DESCRIPTION: Presentation of 2009 Long-Range Planning Award from the Central Texas Section of the American Planning Association for “*Choices '08 – Temple Comprehensive Plan.*”

STAFF RECOMMENDATION: Receive award as indicated in item description.

ITEM SUMMARY: On July 17, 2009, the City of Temple was honored with the 2009 Long-Range Planning Award for “Choices '08 – Temple Comprehensive Plan,” by the Central Texas Section of the American Planning Association at the Section’s Sustainable Supper. As the Council recalls, Kendig Keast Collaborative was the lead consultant for the new comprehensive plan, adopted in September 2008.

Mr. Kevin Kluge, AICP, Awards Committee Chair & Director-Elect of the Central Texas American Planning Association, will be at the meeting to present the award to the City of Temple.

FISCAL IMPACT: None

ATTACHMENTS: None



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #4
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DEPT./DIVISION SUBMISSION & REVIEW:

David Blackburn, City Manager
Traci L. Barnard, Director of Finance

ITEM DESCRIPTION: PUBLIC HEARING – Conduct the second of two public hearings to receive comments on the proposed tax rate of 56.46 cents per \$100 valuation for fiscal year 2010 (2009 tax year), and announce meeting to adopt the proposed tax rate on September 3, 2009.

STAFF RECOMMENDATION: Conduct a public hearing but no action is required.

ITEM SUMMARY: At the August 6, 2009 regular meeting, Council discussed the proposed tax rate of 56.46 cents per \$100 valuation and adopted a resolution scheduling the adoption of the proposed tax rate for September 3, 2009, and setting public hearings for August 14, 2009 and August 20, 2009 on the proposed tax rate for FY 2009-2010. Following this action, the publication of a “Notice of Public Hearing on Tax Increase” occurred on August 7th and the “Notice of Tax Revenue Increase” occurred on August 15th and will occur again on August 21st. The proposed meeting dates and publication schedules comply with the Truth-In-Taxation requirements set forth in SB 18 adopted by the 79th Legislature and the City Charter.

The FY 2009-2010 budget was prepared with a preliminary total tax rate of 57.45 cents per \$100 valuation and a preliminary tax base of \$3,170,164,601 (estimated 2.24% increase from prior year). The preliminary tax rate was based on the FY 2009 rate of 55.95 cents plus an additional 1.5 cents as approved by the voters for the May 2008 Fire General Obligation Bond debt.

On July 20, 2009, the Chief Appraiser certified the tax roll of \$3,221,022,514 (a 3.88% increase from prior year). On July 29, 2009, the Chief Appraiser calculated a final effective tax rate of 55.11 cents. The increase in the certified tax base necessitated a slight decrease in the proposed total tax rate from 57.45 to 56.46 cents (2.45% above the effective tax rate). Changes in the tax rate components as compared to the preliminary budget filed June 26, 2009 are as follows:

Comparing proposed tax rate of 56.46 cents to the *preliminary* rate of 57.45 cents as proposed in the budget filed on June 26, 2009:

	PRELIMINARY FY 2010	PROPOSED FY 2010	Increase (Decrease)	Effective Tax Rate	% FY 2010 > ETR
Proposed Tax Rate					
M&O (Maintenance & Operation)	\$ 0.3228	\$ 0.3173	\$ (0.0055)		
I&S (Interest & Sinking - Debt)	0.2517	0.2473	(0.0044)		
	<u>\$ 0.5745</u>	<u>\$ 0.5646</u>	<u>\$ (0.0099)</u>	\$ 0.5511	<u>2.45%</u>

The decrease in the proposed tax rate; an adjustment of the certified taxable value (\$3,221,022,514) from the preliminary taxable value (\$3,170,164,601); and a decrease in the frozen tax levy to \$1,593,291 from a preliminary levy of \$1,606,251 will result in a net increase to the M&O revenue by \$703 as compared to the preliminary budget filed on June 26, 2009.

Comparing the proposed tax rate of 56.46 cents to the *current FY 2009 adopted* tax rate of 55.95 cents:

	FY 2009	PROPOSED FY 2010	Increase (Decrease)
Proposed Tax Rate			
M&O (Maintenance & Operation)	\$ 0.3322	\$ 0.3173	\$ (0.0149)
I&S (Interest & Sinking - Debt)	0.2273	0.2473	0.0200
	<u>\$ 0.5595</u>	<u>\$ 0.5646</u>	<u>\$ 0.0051</u>

Example 1 – Annual Property Tax - \$100,000 Taxable Value:

With the proposed tax rate of 56.46 cents per \$100 valuation, the cost to a homeowner with a taxable value of \$100,000 would be an annual increase of \$5.10, if there was no change in taxable value from the prior year. If a homeowner with a taxable value of \$100,000 in 2009 experienced an increase in taxable value of .90% (average increase in appraised value), the annual property tax would increase by \$10.18.

Example 2 – Annual Property Tax - Average Taxable Value for City of Temple:

The preceding tax year's average taxable value of a residence homestead in Temple was \$91,038. In the current tax year, the average taxable value a residence homestead in Temple is \$93,371. With the proposed tax rate of 56.46 cents per \$100 valuation, there would be an annual increase of \$17.81 in taxes.

FISCAL IMPACT: Changes from the preliminary tax rate and base used to calculate the filed budget on June 26, 2009 to the proposed rate with the certified tax roll as presented August 14, 2009 are as follows:

	Filed Budget 6/26/09	Proposed Budget 8/14/09	Increase/ (Decrease)
Tax Base*	\$3,170,164,601	\$3,221,022,514	\$50,857,913
Tax Rate:			
M&O	32.28¢	31.73¢	(0.55¢)
I&S	25.17¢	24.73¢	(0.44¢)
Total Tax Rate	57.45¢	56.46¢	(0.99¢)
Tax Levy:			
M&O	\$9,182,888	\$9,196,558	\$13,670
Frozen Taxes	1,606,251	1,593,291	(12,960)
I&S	7,160,263	7,167,693	7,430
Total Tax Levy*	\$17,949,402	\$17,957,542	\$8,140
Budget w/M&O at 99% Collection	\$17,841,510	\$17,849,643	\$8,133

*Excludes Reinvestment Zone No. 1

General Fund:

Explanation of Changes from Filed Budget to Proposed Budget @ 9/3/2009:

^A ***Revenue Changes:***

Increased property tax - from preliminary to certified roll	\$ 703
Increased solid waste revenues (\$1.25 per month rate increase)	276,139
Total Revenue Changes	\$ 276,842

^B ***Expenditure Changes:***

Increased personnel services, operations and capital to maintain 2x per week Residential garbage service and Brush/Bulk pickup at current service level	\$ 276,139
Corrected allocation for Keep Temple Beautiful - funded an additional \$7,400 for a total recommended funding level of \$23,900	7,400
Decrease in request for funding Bell County Communications Contract in FY 2010 based on their final budget as approved by their Executive Board	(14,530)
Increased Contingency for Judgments & Damages	7,833
Total Expenditures Changes	\$ 276,842

Net Revenue Over (Under) Expenditures	\$ -
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Debt Service Fund:

Explanation of Changes from Filed Budget to Proposed Budget @ 9/3/2009:

^A <i>Revenue Changes:</i>	
Increased property tax - from preliminary to certified roll	\$ 7,430
Increased line item for property tax discount	(7,430)
<i>Total Revenue Changes</i>	<u>\$ -</u>
^B <i>Expenditure Changes:</i>	
<i>Total Expenditures Changes</i>	<u>\$ -</u>
<i>Net Revenue Over (Under) Expenditures</i>	<u>\$ -</u>

ATTACHMENTS:

[Historical Tax Rate Information](#)

CITY OF TEMPLE, TEXAS

ADOPTED TAX RATE VS. EFFECTIVE TAX RATE

Fiscal Year	Adopted Tax Rate			Effective Tax Rate	Increase in Adopted Rate over Effective Tax Rate	
	I & S	M & O	Total		\$	%
2001	0.2402	0.3520	0.5922	0.5518	0.0404	7.32%
2002	0.2445	0.3520	0.5965	0.5792	0.0173	2.99%
2003	0.2620	0.3273	0.5893	0.5722	0.0171	2.99%
2004	0.2537	0.3510	0.6047	0.5972	0.0075	1.26%
2005	0.2349	0.3674	0.6023	0.5731	0.0292	5.10%
2006	0.2199	0.3546	0.5745	0.5579	0.0166	2.98%
2007	0.2339	0.3395	0.5734	0.5568	0.0166	2.98%
2008	0.2289	0.3392	0.5681	0.5516	0.0165	2.99%
2009	0.2273	0.3322	0.5595	0.5433	0.0162	2.98%
2010*	0.2473	0.3173	0.5646	0.5511	0.0135	2.45%

* PROPOSED tax rate



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(A)
Consent Agenda
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DEPT./DIVISION SUBMISSION & REVIEW:

Clydette Entzminger, City Secretary

ITEM DESCRIPTION: Approve Minutes:

(A) August 6, 2009 Special Called Meeting & Regular Meeting

STAFF RECOMMENDATION: Approve minutes as presented in item description.

ITEM SUMMARY: Copies of minutes are enclosed for Council review.

FISCAL IMPACT: N/A

ATTACHMENTS:

[August 6, 2009 Special Called Meeting & Regular Meeting](#)

TEMPLE CITY COUNCIL

AUGUST 6, 2009

The City Council of the City of Temple, Texas conducted a Special Meeting on Thursday, August 6, 2009, at 3:30 PM in the 3rd Floor Conference Room, 2 North Main Street.

Present:

Councilmember Marty Janczak

Councilmember Tony Jeter

Mayor Pro Tem Patsy E. Luna

Councilmember Russell Schneider

Mayor William A. Jones, III

1. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, August 6, 2009.

David Blackburn, City Manager, provided the Council with a handout of the presentation to be made during the regular meeting relating to the proposed budget and tax rate.

Councilmember Jeter expressed his concern with Walker Pool being closed 4 days per week and he referenced the letter to the editor in the Temple Daily Telegram this week.

Mr. Blackburn stated this was done as part of the department's efforts to cut costs. He stated that as the financial reports are reviewed during the upcoming fiscal year he hoped increasing revenues would allow some changes to the programming and services being proposed in the budget at this time.

Ken Cicora, Director of Parks and Leisure Services, stated he has received very few complaints about the new schedule at Clark and Walker pools.

Councilmember Jeter asked for data regarding the costs of operation at both of these pools.

2. Discuss the use of private property as recreational areas.

David Blackburn, City Manager, reviewed this presentation with the City Council which related to use of public and private property for recreational purposes. He explained the Zoning Ordinance has three categories for this use - public park or playground, public playfield or stadium and commercial athletic facility, and he reviewed the definition of each use and displayed photos as examples of each. The Zoning Ordinance does specifically address public and commercial recreation areas, but it does not allow private recreation areas anywhere, although they do exist within the City. The decision for the Council is whether private recreation areas should be addressed in the Zoning Ordinance.

Mr. Blackburn displayed a photo of the baseball field location on Jupiter Road, which has recently been an issue with the residents in that neighborhood. If this is a commercial operation and fees are charged, the use could be allowed by approval of a Conditional Use Permit. The issue is how to determine what is commercial use. The rationale has been that if the property is open to the public at large and there is a charge for lessons, then it is a commercial use. If only one person is invited by the property owner and that person is

charged for lessons, it is not a commercial use.

Councilmember Schneider stated it is great to have more athletic fields in the community but the problem is how to deal with them when they are a nuisance to those who live around the field.

Mr. Blackburn encouraged the Council to look at this as a City-wide issue to decide what criteria might be considered for private recreation areas, such as infrastructure, the size of the lot, and availability of parking.

Mayor Jones stated he felt it could be a safety issue for the neighborhood but that a Conditional Use Permit could be drafted to address any specific issues.

Councilmember Janczak stated if the issue is safety then the Council may need to address it. However, we don't need to create things to do and Councilmember Jeter agreed with that comment. Councilmember Schneider stated he felt it would be good to know how other cities handle this issue.

Citizens from the neighborhood were present and asked for input from the Council on what can be done to protect their neighborhood. They felt the location was an issue and too much traffic is being generated on the roadway. The citizens also felt that this was a commercial operation and that fees were being paid.

Mr. Blackburn stated staff would look at some options that would allow private recreation areas to continue but with some criteria and bring back to Council for further review.

3. Discuss parking in residential areas.

Tim Dolan, Director of Planning, discussed parking regulations for residential uses, which is a continuation of discussions from the June 4, 2009 City Council work session. He explained that motorized vehicles, non-motor vehicles and recreational vehicles are allowed to park anywhere on site except within 6 feet from the back of the curb or edge of pavement; if blocks or obstructs a paved sidewalk; or is within the visibility triangle. The current code does specify the number of required parking spaces for new houses and requires they be constructed of asphalt or concrete. The code also requires other parking to occur in the improved spaces. Front and side yards can be fully covered with concrete, asphalt, or gravel and rear yards have a maximum coverage of 50% for structures only, not concrete. The current code has no provisions for grass, landscaping or pervious material of any kind. Mr. Dolan displayed photos of parking on unimproved areas around the City.

Next, Mr. Dolan discussed some proposed residential parking standards for all parking. He suggested that parking for all residential uses must be on asphalt or concrete surfaces; no combination of improved driveways and/or improved surfaces shall cover more than a certain percentage (to be determined) of the front yard and the side yard; be straight-in parking or semi-circular driveway; a permit obtained for approaches, driveways, parking spaces, sidewalks and flatwork greater than 250 square feet; be located not closer than 3 feet from a side or rear property line, 6 feet from front property line and not located in visibility triangle; and extra paved parking areas perpendicular to the street are allowed so long as only one approach is utilized. It was recommended that straight-in parking be perpendicularly aligned with the public street and located between the garage or carport and the street or located in the side yard; have a maximum of one access point on the premises from each public street or private way; have a maximum approach of 20 feet and

meeting all spacing requirements for adjacent lots. Semi-circle parking must have a maximum of 2 access points, a maximum approach of 20 feet and also meet all spacing requirements for adjacent lots.

For existing development that does not have asphalt or concrete surface all other proposed standards must be met. If a garage or carport exists, parking must be perpendicularly aligned with the public street and be located between the garage or carport and the street or in the side yard. For undeveloped residential lots, it is recommended that parking occur on asphalt or concrete surfaces which take access from a driveway approach.

Mr. Dolan discussed the proposed timeline for these amendments to be presented to the Planning & Zoning Commission for consideration and then to the City Council for adoption. The amendment process could be completed by October 1st if Council chooses to move forward.

4. Discuss proposed amendments to the utility service fees.

Traci Barnard, Director of Finance, reviewed the various types of utility service fees charged to water and wastewater customers. These include deposits, which may be waived under certain circumstances, and if collected, refunded on most accounts after 12 billing periods of good payment history. Residential deposits are currently \$65 and it is proposed to be increased to \$75 as the average monthly bill is \$70. There are no changes being proposed to commercial deposits at this time. The Council discussed whether deposits should be retained instead of returning them to customers upon good payment.

Mrs. Barnard recommended fees for several other services be increased, as well as some adjustments in fee names to more adequately reflect what the customer is being charged for. These service fees include new account, non-payment, after hours, 10-day clean up, re-read, returned item, accuracy tests, unauthorized use of water, broken meter, broken lock, pulled meter and remove service line fees. Mrs. Barnard explained a number of these fees, noting some of the fees are being increased to cover costs of providing the service.

5. Discuss upcoming appointments to various boards and commissions.

There was no discussion of this item.

The City Council of the City of Temple, Texas conducted a Regular Meeting on Thursday, August 6, 2009 at 5:00 PM in the Council Chambers, Municipal Building, 2nd Floor, 2 North Main Street.

Present:

Councilmember Marty Janczak
Councilmember Tony Jeter
Mayor Pro Tem Patsy E. Luna
Councilmember Russell Schneider
Mayor William A. Jones, III

I. CALL TO ORDER

1. Invocation

Reverend Margaret Boles, First Presbyterian Church, voiced the Invocation.

2. Pledge of Allegiance

Ron Stewart, Temple Fire & Rescue, and Nicolas Hernandez, MDA Goodwill Ambassador, led the Pledge of Allegiance to the United States flag.

II. PUBLIC APPEARANCES

3. Receive comments from Ron Stewart, Temple Firefighter, regarding MDA Fill the Boot Campaign and presentation of check to Kristen Wheeler, MDA representative.

Ron Stewart thanked the City Council, local sponsors, and citizens of Temple for the success of the local MDA Fill the Boot Campaign. He presented Nicolas Hernandez, the MDA goodwill ambassador in Temple, with a retired firefighter helmet. Kristen Wheeler, MDA representative, accepted a check in the amount of \$20,222 from Mr. Stewart.

Fire Chief Lonzo Wallace also extended his appreciation to the City Council, firefighters and the citizens for their support of the Fill the Boot Campaign.

III. PUBLIC COMMENTS

Mr. James Roskey, 3901 Midway Drive, addressed the Council regarding the zoning change in the north historic district, item 7 on the regular agenda. He stated he is not opposed to some changes in the ordinance because the current zoning allows a broad spectrum of uses.

IV. BUDGET ITEMS

4. (A) PUBLIC HEARING - Receive presentation by the City Manager and conduct a public hearing on the proposed 2009-2010 operating budget.

(B) 2009-5761-R: Discuss proposed tax rate and consider adopting a resolution scheduling the adoption of the proposed tax rate for September 3, 2009, and setting public hearings for August 14, 2009 and August 20, 2009 on the proposed tax rate for FY 2009-2010.

David Blackburn, City Manager, began this presentation with an overview of fence posts used in developing the proposed budget, revenue highlights, proposed property tax rate, fee and rate adjustments, and fuel expenses. He highlighted a few departments that will be adjusting service levels during the upcoming year, including Parks and Leisure Services and Public Works. Funding for 12 Public Service Agencies is included in the proposed budget. Funding levels for economic development will also be maintained with a focus on marketing and business development efforts. Regarding employee compensation and benefits, Mr. Blackburn stated no layoffs are scheduled but the strategic hiring freeze will remain in effect and current compensation levels will be maintained, with the exception of civil service step increases, as well as TMRS benefits and restructuring of health benefits.

Mr. Blackburn reviewed the Capital Improvement Program, including the multi year bond funding projects and the annual operating/routine program. He also discussed proposed improvements to Sammons Golf Links, to be funded from 2007 General Obligation bonds. Funding and construction of Fire Stations 1 and 8 will also continue in the upcoming year as previously planned.

In summary, Mr. Blackburn stated the FY 2010 budget proposes a \$1,004,842 decrease in revenues from last year and a \$1,217,110 decrease in expenditures. Although there is a temporary lull in the economy, Mr. Blackburn felt the long term outlook was favorable.

Traci Barnard, Director of Finance, reviewed the tax base history, which reflects a 3.88% growth in 2010 over the prior year. She also discussed the total market value and new values, as well as 2009 property tax exemptions. The tax rate is proposed to be \$0.5646, with \$0.3173 for maintenance and operations and \$0.2473 for interest and sinking. Mrs. Barnard showed the impact to a homeowner with a taxable value of \$100,000 under the proposed tax rate and provided a comparison of tax rates over the past ten years, compared to the effective tax rate.

Mayor Jones declared the public hearing open with regard to agenda item 4(A) and asked if anyone wished to address this item. There being no comments, Mayor Jones closed the public hearing.

Motion by Mayor Pro Tem Patsy E. Luna to adopt resolution setting the proposed tax rate of \$0.5646 per \$100 in value and scheduling the adoption of the proposed tax rate for the September 3, 2009 Regular City Council meeting, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

Motion by Councilmember Marty Janczak to adopt resolution setting the public hearings on the proposed tax rate of \$0.5646 per \$100 in value for 5:00 p.m. August 14, 2009 Special City Council meeting and 5:00 p.m. August 20, 2009 Regular City Council meeting, seconded by Councilmember Russell Schneider.

Motion passed unanimously.

V. CONSENT AGENDA

- 5. Consider adopting a resolution approving the Consent Agenda items and the appropriate resolutions for each of the following:**

(A) July 10, 2009 Special Called Meeting

(B) July 16, 2009 Special Called Meeting and Regular Meeting

(C) 2009-5762-R: Consider adopting a resolution authorizing the renewal of a Cooperative Working Agreement (CWA) with Bell County for the Bell County Crime Coalition project that is administered by the Bell County Juvenile Probation Department.

(D) 2009-5763-R: Consider adopting a resolution authorizing a tax abatement agreement with Texquest Investments LLC for property located at 2006 South First Street.

(E) 2009-5764-R: Consider adopting a resolution authorizing a construction contract with Chaney-Cox Construction, Inc. of Temple for remediation of failing portions of the exterior at the Santa Fe Depot in the amount of \$291,810, and approving a deductive change order in the amount of \$66,810 for a net contract amount of \$225,000.

(F) 2009-5765-R: Consider adopting a resolution authorizing an amendment to a lease contract with the Health and Human Services Commission (HHSC), formerly the Texas Department of Human Services, for 19,617 sq. ft. in the Public Services Annex, 102 East Central Avenue.

(G) 2009-5766-R: P-FY-09-34: Consider adopting a resolution approving the final plat of Scallions Addition, 4 single-family lots on 2.71± acres located on the north side of FM 3117, 181± feet east of the City limits, in Temple's Eastern E.T.J, with exceptions to Subdivision Ordinance Section 33-94(a) Curbs and Gutters.

(H) 2009-4300: SECOND READING - Z-FY-09-24: Consider adopting an ordinance authorizing a zoning change from Agricultural District (A) to Light Industrial District (LI) located on 6.9 ± acres east of Pegasus Drive, west of Interstate 35, 180 ± feet south of Moore's Mill Road, out of the Vincent Barrow Survey, Abstract No. 64.

(I) 2009-5767-R: Consider adopting a resolution ratifying a grant application submission in the amount of \$1,146,285 for funding assistance for the construction of Fire Station 8 through the Department of Homeland Security's Federal Emergency Management Agency's Fire Station Construction Grant Program.

(J) 2009-5768-R: Consider adopting a resolution authorizing the use of Child Safety Funds to upgrade the school zone at Jefferson Elementary and Lamar Middle School on North 3rd Street in the amount of \$15,758.

(K) 2009-5769-R: Consider adopting a resolution approving the Temple Film Guidelines that will enable Temple to become a certified Texas Film Friendly Community and assist City and State tourism staff in recruiting filmmakers to consider Temple when producing films.

(L) 2009-5770-R: Consider adopting a resolution authorizing budget amendments for fiscal year 2008-2009.

Motion by Councilmember Marty Janczak to adopt resolution approving Consent Agenda, seconded by Mayor Pro Tem Patsy E. Luna.

Motion passed unanimously.

VI. REGULAR AGENDA

RESOLUTIONS

6. **2009-5771-R: Consider adopting a resolution naming the new Municipal Court & Utility Business Office facility at 401 North 3rd Street after Jamie Hager Clements.**

Mayor Jones presented this item to the Council. He recognized those present, including Ann Clements, the wife of the late Jamie H. Clements, and several citizens requesting the Council name the new Municipal Court & Utility Business Office complex in honor of Mr. Clements.

Motion by Councilmember Russell Schneider to adopt resolution, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

Mayor Jones presented the framed resolution to Mrs. Clements.

ORDINANCES

7. **2009-4301: FIRST READING - PUBLIC HEARING Z-FY-09-16: Consider adopting an ordinance authorizing a zoning change from the Central Area District (CA) and Multiple Family Two District (MF2) to Single Family One District (SF1) and/or Neighborhood Services District (NS) for all of Blocks 1 and 26, Moore's First Addition; all of Blocks, 4, 7, 8, 9, & 10, and Block 3, Lots 2-4, L.R. Taylor Addition; and Outblocks, 263-2A, 2B, 2C, 2D, and 23, Temple Original.**

Tim Dolan, Planning Director, presented this zoning case to the City Council. He began with a review of the history of this item with the Planning and Zoning Commission. He displayed maps of the area under consideration for rezoning and also showed responses to zoning notices for SF1 and NS districts. The Planning and Zoning Commission considered the following options: 1) rezone the areas from CA and MF2 to NS; or 2) rezone the area from CA and MF2 to SF1; or 3) keep the area zoned CA and MF2; or 4) reduce the area described keeping the choices above. The Planning and Zoning Commission unanimously recommended the area be rezoned from CA and MF2 to SF1, with the removal of the apartments and condominiums from the area.

Mayor Jones declared the public hearing open with regard to agenda item 7 and asked if anyone wished to address this item.

Scott Shine, 415 North 9th Street, asked for the Council's consideration of SF zoning. The current zoning allows many uses that will destroy property values and the quality of life in this area. There is not proper infrastructure to support commercial businesses. He also noted there is no lack of appropriate

commercial space in downtown.

Jim Hightower, 320 North 9th, stated his house built in 1920 and is surrounded by single family homes. There is one business north of them and no adequate parking. He never anticipated anything other than houses in this area and asked the Council to keep it single family.

Edwin Bailey, 317 North 9th, stated his house has been in their family since 1904. It has always been a residential area and he felt it is better suited for this use.

James Roskey, 3901 Midway, stated this area is partly residential with some rental properties which are not always maintained properly. He owns the house on the corner of 9th and Barton. He stated he is not supportive of approving just single family because some business uses, such as a law office or real estate office, would be appropriate in this area. Parking will always be an issue. He would favor NS zoning because the Council would have to approve each use.

Ken Elliott, 417 North 9th Street, stated his wife owns the business at the corner of 9th and Elm. They have worked with the Planning Department to ensure their business operation would be allowed in that area. They have played by the rules and will be grandfathered but expressed concern with rules that would come into play if the property is rezoned. They have invested about \$40,000 into that home and this rezoning could prevent some other homes from being restored and renovated in this area.

Chad Lee, 501 North 9th Street, stated his house was built in 1906. People buy these houses because of their personality and character. This is the entrance to the historical district of Temple so why would it turn commercial? This is a neighborhood, a place for families, not businesses, and Mr. Lee asked the Council to approve single family zoning.

Hillary Shine, 415 North 9th, stated she lives in a 1921 home. The CA zoning has to be changed and single family is the predominant use in the area. This change will not affect existing businesses but will prevent any further encroachment into the historic district. She asked the Council to consider single family zoning.

Councilmember Jeter asked what would happen to an existing business if the property is rezoned single family.

Jonathan Graham, City Attorney, stated the property would be grandfathered unless there was a change in use, from business to something else. If the property is vacant, the commercial status would continue. The Council discussed Mr. Roskey's property on the corner of 9th Street and Barton and whether it has a commercial use or not.

Councilmember Jeter asked if there should be any consideration for rezoning the block between Barton and Calhoun and between North 9th and North 7th Streets as NS to serve as a buffer to single family. He added he was looking for equity for all parties concerned.

Mr. Graham explained the legal non-conforming use of property. If Mr. Roskey's property is not being used for a commercial purpose and the property is rezoned to single family, Mr. Roskey could ask the Council for rezoning of his property.

Mr. Jeter asked if PD-NS would be appropriate so everything has to be approved by Council.

Edwin Bailey, 317 North 9th, stated he was opposed to NS zoning in the block where Mr. Roskey's property is located. This would only continue to reduce the amount of single family in this area.

There being no further comments, Mayor Jones closed the public hearing. He noted Brent Wheeler, 401 North 9th Street, submitted a written comment before leaving the meeting indicating his support of single family zoning.

Motion by Councilmember Tony Jeter to adopt ordinance on first reading as recommended by the Planning and Zoning Commission for rezoning to Single Family One, with second reading and final adoption scheduled for August 20, 2009, seconded by Mayor Pro Tem Patsy E. Luna.

Motion passed unanimously.

8. 2009-4302: FIRST READING — PUBLIC HEARING - Consider adopting an ordinance amending Chapter 12, "Fire Prevention and Protection," of the Code of Ordinances of the City of Temple, Texas, by adopting the 2006 International Fire Code.

Lonzo Wallace, Fire Chief. presented this item to the Council. He stated the ordinance being proposed was discussed during the July 16th work session and there have been no additional changes.

Mayor Jones declared the public hearing open with regards to agenda item 8 and asked if anyone wished to address this item. There being no comments, Mayor Jones closed the public hearing.

Motion by Mayor Pro Tem Patsy E. Luna to adopt ordinance on first reading, with second reading and final adoption scheduled for August 20, 2009, seconded by Councilmember Russell Schneider.

Motion passed unanimously.

9. 2009-4303: FIRST READING - PUBLIC HEARING - Consider adopting an ordinance amending Chapter 37, "Traffic," Article IV, "Stopping, Standing and Parking," of the Code of Ordinances of the City of Temple, Texas, by amending Section 37-93, entitled, "Two-Hour Parking Zone," to provide that the City Manager may suspend by decree the fine for parking longer than two hours in the downtown area during public events or when the municipal parking lot adjacent to City Hall is closed.

Jonathan Graham, City Attorney, presented this item to the Council. Approval of this ordinance would allow the City Manager to suspend two-hour parking during public events in downtown.

Mr. Blackburn stated this item is being presented for consideration at his request. It is appropriate to suspend two-hour parking during these types of events when the Municipal Parking Lot is closed and on-street parking is limited.

Mayor Jones declared the public hearing open with regards to agenda item 9 and asked if anyone wished to address this item. There being no comments, Mayor Jones closed the public hearing.

Motion by Councilmember Marty Janczak to adopt ordinance on first reading, with second reading and final adoption scheduled for August 20, 2009, seconded by Councilmember Russell Schneider.

Motion passed unanimously.

10. **2009-4304: FIRST READING - PUBLIC HEARING - Consider adopting an ordinance extending the life of preliminary plats for single family residential subdivisions that were: (1) approved in the past 2 years; (2) extended by the approval of a final plat for a phase of the subdivision in the past 2 years; or (3) that would have expired in the past 2 years, by giving them an additional life of 2 years from the effective date of this ordinance.**

Jonathan Graham, City Attorney, presented this item to the Council. This ordinance would re-set the clock on those plats that would have expired in the past two years by giving an additional life of 2 years. A timeframe has been added to the ordinance to allow developers 90 days from the date they receive the notice to request this extension. A more complete review of the Subdivision Ordinance as it relates to plats will be made in the near future.

Mayor Jones declared the public hearing open with regard to agenda item 10 and asked if anyone wished to address this item. There being no comments, Mayor Jones closed the public hearing.

Motion by Mayor Pro Tem Patsy E. Luna to adopt ordinance on first reading, with second reading and final adoption scheduled for August 20, 2009, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

11. **FIRST READING - PUBLIC HEARING - Consider adopting ordinances establishing the prima facie speed of motor vehicles on a certain section of SH 36/LP363, within the City limits, as follows:**

(A) 2009-4305: The speed limit on Loop 363 access roads will be increased from 40 mph to 45 mph from Airport Road to a point 2,375 feet south of

FM 2305 and from 30 mph to 50 mph from a point 2,375 feet south of FM 2305 to South 5th Street; and

(B) 2009-4306: The speed limit on Loop 363 will be increased from 55 mph to 60 mph from Airport Road to South 5th Street.

Michael Newman, Assistant Director of Public Works, presented this item to the Council. This request for changing speed limits on portions of Loop 363 was received from TxDOT, based on engineering studies they performed.

Mayor Jones declared the public hearing open with regard to agenda items 11 (A) & (B) and asked if anyone wished to address these items. There being no comments, Mayor Jones closed the public hearing.

Motion by Councilmember Russell Schneider to adopt ordinance on first reading, with second reading and final adoption scheduled for August 20, 2009, seconded by Mayor Pro Tem Patsy E. Luna.

Motion passed unanimously.

12. 2009-4307: FIRST READING - PUBLIC HEARING - Consider adopting an ordinance establishing school crosswalks and setting speed limits within school zones to conform to school schedules.

Michael Newman, Assistant Director of Public Works, presented this item to the Council. Temple Independent School District has requested three school zone changes for Scott Elementary, Jefferson Elementary and Lamar Middle School. Staff concurs with the proposed changes and the City will be responsible for changing the signs and markings if approved by Council.

Mayor Jones declared the public hearing open with regard to agenda item 12 and asked if anyone wished to address this item. There being no comments, Mayor Jones closed the public hearing.

Motion by Councilmember Marty Janczak to adopt ordinance on first reading, with second reading and final adoption scheduled for August 20, 2009, seconded by Mayor Pro Tem Patsy E. Luna.

Motion passed unanimously.

William A. Jones, III, Mayor

ATTEST:

Clydette Entzminger
City Secretary



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(B)
Consent Agenda
Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Gary Smith, Chief of Police

ITEM DESCRIPTION: Consider adopting a resolution authorizing an Interlocal Cooperation Contract with the Texas Department of Public Safety for the purchase of alcohol and drug testing supplies by the Temple Police Department.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: This interlocal agreement will allow the Police Department to purchase certain forms, manuals, and supplies to be used in breath testing and submitting blood samples for laboratory tests. The contract establishes uniform procedures, paperwork, and supplies used for these purposes throughout the state.

This contract will expire on August 31, 2011.

FISCAL IMPACT: These items are budgeted and routinely purchased through the Police Department's annual budget, account 110-2000-521-2116, in the estimated amount of \$210.00.

ATTACHMENTS:

[Interlocal Contract
Resolution](#)

INTERLOCAL COOPERATION CONTRACT

THE STATE OF TEXAS

COUNTY OF TRAVIS

THIS CONTRACT is entered into by and between the Texas Department of Public Safety and the local governmental agency shown below as the Contract Parties, pursuant to the authority granted and in compliance with the provisions of "The Interlocal Cooperation Contract Act," Government Code, Chapter 791, and in furtherance of the responsibilities of the Texas Department of Public Safety as provided in Government Code, Chapter 411.

I. CONTRACTING PARTIES

The Receiving Agency: _____

Complete Address: _____
Street Address City and State Zip Code

The Performing Agency: Texas Department of Public Safety

II. STATEMENT OF SERVICE TO BE PERFORMED:

The Texas Department of Public Safety will provide, in accordance with the procedures set forth in Department rules, certain forms, manuals, and supplies for the Receiving Agency to use in the Breath Testing and Laboratory Alcohol and Drug Testing Program. The purpose and objective of this Contract is to control and establish uniform procedures, paperwork and supplies used in the above mentioned programs.

III. BASIS FOR CALCULATING COSTS:

Cost shall be in accordance with the attached document (revised price sheet).

IV. PAYMENT FOR SUPPLIES:

Receiving Agency shall submit full payment to the Department of Public Safety at the time each order materials and supplies are submitted. Payment shall be made from the Receiving Agency's current revenues.

V. TERMS OF CONTRACT:

This Contract shall become effective September 1, 2009 and shall terminate on August 31, 2011

THE UNDERSIGNED CONTRACTING PARTIES bind themselves to the faithful performances of this Contract. It is mutually understood that this Contract shall be effective if signed by a person authorized to do so according to the normal operating procedure of said party. If the governing body of a party is required to approve this Contract, it shall not become effective until approved by the governing body of that party. In that event, this contract shall be executed by the duly authorized official(s) of the party as expressed in the approving resolution or order of the governing body of said party, a copy of which shall be attached to this Contract.

RECEIVING AGENCY

PERFORMING AGENCY

Name of Agency

TEXAS DEPARTMENT OF PUBLIC SAFETY
Name of Agency

By: _____
Authorized Signature

By: _____
Authorized Signature

Title

Title

Date: _____

Date: _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING AN INTERLOCAL COOPERATION AGREEMENT WITH THE TEXAS DEPARTMENT OF PUBLIC SAFETY (DPS) FOR THE PURCHASE OF ALCOHOL AND DRUG TESTING SUPPLIES BY THE POLICE DEPARTMENT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the Staff recommends entering into an interlocal cooperation agreement with the Texas Department of Public Safety (DPS) for the continued purchase of certain forms, manuals, and supplies for the Police Department to use in breath and laboratory testing for the presence of alcohol and other drugs;

Whereas, the purpose of the agreement is to control and establish uniform procedures, paperwork and supplies used for this purpose;

Whereas, these items are budgeted and routinely purchased through the Police Department's budget; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

PART 1: The City Manager, or his designee, is authorized to execute an Interlocal Cooperation Agreement between the City of Temple, Texas, and the Texas Department of Public Safety (DPS), after approval as to form by the City Attorney, for the purchase of certain forms, manuals, and supplies for the Police Department to use in breath and laboratory testing for the presence of alcohol and other drugs.

PART 2: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 20th day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydetta Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(C)
Consent Agenda
Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Ken Cicora, Director of Parks & Leisure Services

ITEM DESCRIPTION: Consider adopting a resolution authorizing a contract amendment with Architectural Edge Inc. of Temple to provide construction administration services for the renovation and interior upgrade of the Frank W. Mayborn Civic and Convention Center in the amount of \$7,500.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: At the July 16, 2009 City Council meeting, Council approved entering into a construction contract with Thaten Construction, Inc. of Sanger, for the interior renovation of the Frank W. Mayborn Civic & Convention Center in the amount of \$299,664. The renovations were designed by Architectural Edge Inc. of Temple for a cost of \$23,500.

In order to ensure that the renovation work be completed as designed we are requesting authorization to amend the contract with Architectural Edge Inc. to have them provide the construction administration services for this project. The original contract did not include Contract Administration, as this was originally going to be the responsibility of City staff. With the award of the construction phase of the project, however, outside contract administration services are needed.

The original contract with Architectural Edge was \$23,500. The amendment for contract administration is \$7,500, which would bring the total to be paid to Architectural Edge to \$31,000.

FISCAL IMPACT: In the CIP program adopted by Council on August 28, 2008, \$733,890 of hotel/motel unallocated fund balance was approved for Mayborn Center Improvement projects. Improvements included Kitchen upgrades, Wi-Fi & Data lines and facility improvements. Funding in the amount of \$519,290 has been appropriated in account 240-4400-551-6310, project# 100491 for facility improvements. After funding engineering related services in the amount of \$23,500, miscellaneous expenses in the amount of \$183, construction contract in the amount of \$299,664, and \$7,500 in contract administration services, a balance of \$188,443 is available to complete this project.

ATTACHMENTS:

[Proposal from Architectural Edge for Contract Administration Resolution](#)



July 31, 2009

Nancy Glover
Frank Mayborn Center
City of Temple
3303 N. 3rd St.
Temple, Texas 76501

**RE: Construction Administration Services for the upgrade
and renovation of the Mayborn Center**

Architecture

Design Services

Consultation

Dear Nancy,

ARCHITECTURAL EDGE INC. is pleased to submit a proposal to perform Construction Administration services for the renovation and interior upgrade of the Frank Mayborn Center in Temple, Texas. Architectural Edge proposes the following services, please find below an outline of the scope of work required for this project.

SCOPE OF WORK: The contract amount for this project is \$300,000.00. The items involved in the renovation should include, but are not limited to, the following interior elements:

- New Floor Finish in the Main Meeting Rooms
- Upgrade Wall Finishes
- Repaint existing walls
- New Lighting throughout the main hall and scattered areas
- New stain and scoring of the main hall concrete floor
- New finishes on all doors
- Upgrade Concession stand area

Fee: 2.5% of the construction cost – NTE \$7,500.00

The fee for these services will be billed at an hourly rate, on a monthly basis based on the amount of completion.

There are no additional design professionals in this base proposal. Should the expertise of a structural engineer or MEP consultants be required, additional charges may apply.

ADDITIONAL SERVICES:

For additional drafting or design services requested by the owner, or a substantial change in the scope of work, compensation shall be executed with a change order:

3010 Scott Blvd.
Suite 102
Temple, TX 76504

P 254.771.2054
F 254.773.2144

email@
archedge.com

7/31/2009

1 of 2

Architect/Engineer:	\$105.00/hour
Intern:	\$90.00/hour
Designer/Technician:	\$75.00/hour

REIMBURSABLE EXPENSES and SUPPLEMENTAL FEES / COSTS: *(To be coordinated by the Architect at the expense of the owner, IF REQUIRED)* Submittal to TDLR for ADA Compliance (as required by state law)

Filing Fee	\$175.00
Plan Review:	\$315.00
Construction Inspection:	<u>\$375.00</u>

Total REQUIRED Supplemental Fees:

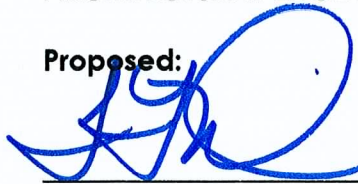
NTE \$865.00

Architectural Edge, Inc. has included reimbursibles such as copies, travel and shipping costs incurred for this project, in this proposal.

We look forward to working with you on this project. Please feel free to contact me if you have any questions or comments.

Sincerely,
ARCHITECTURAL EDGE INC.

Proposed:



7/31/09

Tanya Mikeska
Architectural Edge Inc

Date

Accepted:

Nancy Glover
City of Temple

Date

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AMENDING THE CONTRACT WITH ARCHITECTURAL EDGE, INC., OF TEMPLE, TEXAS, TO PROVIDE CONSTRUCTION ADMINISTRATION SERVICES FOR THE RENOVATION AND INTERIOR UPGRADE OF THE FRANK W. MAYBORN CIVIC AND CONVENTION CENTER; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the renovations and interior upgrade to the Frank W. Mayborn Civic and Convention Center were designed by Architectural Edge, Inc., for a contract price of \$23,500, and did not include construction administration services;

Whereas, the Staff recommends amending the contract with Architectural Edge, Inc., to provide the construction administration services which are needed for this project, for a price of \$7,500;

Whereas, funds are available for these services in Account No. 240-4400-551-6310, project # 100491; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

Part 1: The City Council authorizes an amendment to the contract with Architectural Edge, Inc., after approval as to form by the City Attorney, to provide construction administration services for the renovation and interior upgrade of the Frank W. Mayborn Civic and Convention Center, for a cost of \$7,500.

Part 2: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 20th day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(D)
Consent Agenda
Page 1 of 2

DEPT. /DIVISION SUBMISSION & REVIEW:

Ken Cicora, Director of Parks and Leisure Services

ITEM DESCRIPTION: Consider adopting a resolution authorizing a construction contract with J.H. Proofrock, Inc. of Dallas for remedial waterproofing at the Municipal Building in the amount of \$88,000.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: In 2008 the City of Temple entered into a contract with Building Diagnostics to provide an assessment of the condition of the exterior of the Municipal Building. Their report showed that most areas of the exterior walls appear to be in good condition but all of the mortar between the bricks needs to be re-pointed, areas of decorative limestone are deteriorating, and most of the construction joints need to be resealed, especially around the windows. There is an estimated \$500,000 in repairs needed for the exterior of the building, but not all of the work needs to be implemented at one time.

Building Diagnostics prepared plans and specifications for the repairs and the project was advertised as part of the 2009 CIP program. Bids were opened on July 21, 2009 with three bidders responding. The bid was broken into a base bid of items that need immediate attention and an alternate bid for the remainder of the repairs needed. J.H. Proofrock, Inc. of Dallas was the low bidder for the base bid at \$88,000. This amount exceeds the budget for this project, so we are preparing to use funds from cost savings realized from other projects to cover this difference.

This phase of the project will consist of re-pointing all of the mortar in the immediate area around all of the windows and doors, resealing all of the joints between the window/doors and the brick, and cleaning/priming/painting the shelf angles above all of the windows.

J.H. Proofrock has not provided services to the City or under the oversight of Building Diagnostics in the past. Accordingly, Building Diagnostics contacted prior customers of J.H. Proofrock from which they received favorable reports.

FISCAL IMPACT: Funding in the amount of \$110,000 was appropriated in account 361-2400-519-6807, Project # 100158 from the 2008 Certificate of Obligation Bond Issue for municipal building repairs.

After funding a building assessment in the amount of \$5,930, professional services for remedial waterproofing specifications for \$20,770 and testing fees in the amount of \$178, a balance of \$83,122 is available to fund this contract. A budget adjustment in the amount of \$4,878, is presented for Council's approval, reallocating project savings to cover the shortfall for this waterproofing contract.

ATTACHMENTS:

[Bid Tabulation](#)

[Budget Adjustment](#)

[Resolution](#)

Tabulation of Bids Received
on July 21, 2009 at 2:00 p.m.
Municipal Building Remedial Waterproofing Project

	Bidders		
	J.H. Proofrock, Inc. Dallas	Lassen Inc. dba: Mike Larsen Company Austin	ATC Contractors, Inc. Georgetown
Description			
Total Base Bid	\$88,000.00	\$359,172.00	\$89,179.00
Total Alternate #1 Bid	\$295,000.00	\$1,130,825.00	\$213,014.00
Acknowledge Addendum	Yes	Yes	Yes
Bid Bond (required at bid opening)	5%	5%	5%
Bond Affidavit	Yes	No	No
Insurance Affidavit	Yes	Insurance Certificate	Insurance Certificate
Credit Check Authorization Form	Yes	No	No

I hereby certify that this is a correct and true tabulation of all bids received.

Belinda Mattke

21-Jul-09

Belinda Mattke, Director of Purchasing

Date

**Note: Highlighted bid is recommended
for Council approval.**

FY 2009**BUDGET ADJUSTMENT FORM**

Use this form to make adjustments to your budget. All adjustments must balance within a Department.
Adjustments should be rounded to the nearest \$1.

+

-

ACCOUNT NUMBER	PROJECT #	ACCOUNT DESCRIPTION	INCREASE		DECREASE	
361-2400-519-68-07	100158	Fac Impr-Waterproofing @ Muni Bldg	\$ 4,878			
361-2400-519-68-07	100407	Facility Improvements			4,878	
TOTAL.....			\$ 4,878		\$ 4,878	

EXPLANATION OF ADJUSTMENT REQUEST- Include justification for increases AND reason why funds in decreased account are available.

This budget amendment appropriates additional funds from facility services projects savings for the remedial waterproofing at the Municipal Building.

DOES THIS REQUEST REQUIRE COUNCIL APPROVAL?

☒

Yes

☐

No

DATE OF COUNCIL MEETING

August 20, 2009

WITH AGENDA ITEM?

☒

Yes

☐

No

Department Head/Division Director

Date

☐

Approved

☐

Disapproved

Finance

Date

☐

Approved

☐

Disapproved

City Manager

Date

☐

Approved

☐

Disapproved

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONSTRUCTION CONTRACT WITH J.H. PROOFROCK, INC., OF DALLAS, TEXAS, FOR REMEDIAL WATERPROOFING AT THE MUNICIPAL BUILDING IN THE AMOUNT OF \$88,000; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, on July 21, 2009, the City received 3 bids for remedial waterproofing at the Municipal Building;

Whereas, the Staff recommends accepting the bid (\$88,000) received from J.H. Proofrock, Inc., of Dallas, Texas;

Whereas, funds are available for this project but an amendment to the FY2008-2009 budget needs to be approved to transfer the funds to the appropriate expenditure account; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

Part 1: The City Council authorizes the City Manager, or his designee, to execute a contract, for a cost not to exceed \$88,000, between the City of Temple, Texas, and J.H. Proofrock, Inc., of Dallas, Texas, after approval as to form by the City Attorney, for remedial waterproofing at the Municipal Building.

Part 2: The City Council approves an amendment to the FY2008-2009 budget, substantially in the form of the copy attached as Exhibit A, for this project.

Part 3: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 20th day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydetta Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(E)
Consent Agenda
Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

Belinda Mattke, Director of Purchasing

ITEM DESCRIPTION: Consider adopting a resolution authorizing a four-year agreement with renewal options with CTWP of Temple for copier services.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: The City's current four-year agreement for copier services expires on September 30, 2009. On July 21, 2009, the City received five (5) proposals for providing copier services for a four year term beginning October 1, 2009. Proposals were received from CTWP of Temple; Genco of Naples, Florida; Xerox c/o DocuMaxx of Belton; IKON Office Solutions, Inc. of Waco; and Johnnies Office Systems of Temple.

A committee comprised of staff representing the Police Department, Information Technology Services, Legal Department, City Secretary's Office, and City Manager's Office reviewed the proposals received and determined that CTWP provided the best solution and value for the City's copier needs. CTWP will also provide two (2) coin-op copiers at the Library for library patron use at no cost to the City with CTWP receiving all revenues generated.

All of the copiers will have network interface printing and scanning capabilities. All consumable supplies and parts, except paper, are included in the negotiated price along with all required maintenance.

Details related to the recommended copier contract are still under negotiations. Accordingly, an amended Agenda Item with more specific contract details will be made available prior to the Council meeting.

The City has not done business with CTWP in recent years nor does the City have experience with the operation of Kyocera copiers. Accordingly, references were checked on both accounts in which staff concluded that CTWP represents itself as a responsible vendor and that the Kyocera copier has high ratings from its users.

FISCAL IMPACT: Funding in the amount of \$139,275 has been designated for copier services in the proposed FY 2010 budget.

ATTACHMENTS:

Resolution (to be provided)



COUNCIL AGENDA ITEM MEMORANDUM

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Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

Bruce A. Butscher, PE, Director of Public Works
Michael C. Newman, PE, CFM, Assistant Director of Public Works/City Engineer

ITEM DESCRIPTION: Consider adopting a resolution authorizing a professional services agreement with The Wallace Group, (TWG) for engineering services required to prepare and submit a Letter of Map Revision for Hog Pen Creek from FM 2305 to 1,000 feet south of Hogan Road in an amount not to exceed \$47,430.

STAFF RECOMMENDATION: Adopt resolution as presented in the item description.

ITEM SUMMARY: Code of Federal Regulations CFR 44 65.3 requires communities to notify FEMA of physical changes affecting flooding conditions and base flood elevations. This requirement maintains flood insurance rate maps so that they reflect current conditions in the field.

City staff recommended that the City authorize professional services agreements with TWG for revising Federal Emergency Management Agency (FEMA) map by submitting a Letter of Map Revision (LOMR) related to Hogan Road reconstruction. Flood plain maps need to be revised due to construction activity. Basic services include identifying ground cross sections, developing contour surface model, developing and analyzing hydrologic and hydraulic models, providing individual and public notifications, preparing and submitting FEMA submittals and responding to FEMA comments in order to process appropriate LOMR. The cost of basic services for this portion of work is \$47,430.

The total length of flood plain to be analyzed with corresponding modifications due to construction changes is approximately 7,500 linear feet (1.4 miles). Deliverables for this work will include LOMR submittal complying with FEMA fees/forms and processes, appropriate correspondence copies, and computer models electronic and hard copy. The timeframe for completion is variable depending on FEMA responses.

In order that TWG provide the engineering services required for completion of this project, the following is a list of costs associated with each task:

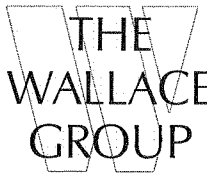
<u>Basic Services</u>	Total
Obtain FEMA Detailed Study	\$ 310
Topographic Survey	\$ 25,400
Prepare Hydraulic Model	\$ 5,800
Prepare Maps	\$ 3,840
Prepare LOMR documents	\$ 950
Individual & Public notifications	\$ 3, 530
Response to FEMA review	\$ 2,800
FEMA LOMR fee	\$ 4,800
Total Basic Services	\$ 47,430

FISCAL IMPACT: The cost of this professional services agreement is \$47,430. This cost includes developing cross sections for stream, roughness coefficients, contour surface, hydrologic model, hydraulic model, FEMA submittals and addressing FEMA comments.

A budget adjustment is attached reallocating funding within the Drainage Fund from account 292-2900-534-2317, Repair & Maintenance-Drainage Systems, to account 292-2900-534-2616, Professional, to fund this agreement.

ATTACHMENTS:

[TWG Engineer's Proposal](#)
[Budget Adjustment](#)
[Resolution](#)



ENGINEERS
ARCHITECTS
PLANNERS
SURVEYORS

WACO
KILLEEN
DALLAS
ROUND ROCK

August 10, 2009

City of Temple
2 North Main St
Temple, TX
76501

Attn: Michael Newman

Re: Letter of Map Revision (LOMR) Hog Pen Creek
Proposal of Professional Services and Outline of Tasks

Dear Mr. Newman;

The purpose of this letter is to provide the City of Temple with a Proposal for Professional Services in reference to a Letter of Map Revision (LOMR) for Hog Pen Creek. As a summary, The Wallace Group was the Engineer of Record for several Projects in the Hog Pen Creek Watershed, namely the construction of Tarver, Jupiter, and the reconstruction of Pea Ridge Road. In June 2001, The Wallace Group prepared the first Letter of Map Revision for Hog Pen Creek, starting approximately 1000 feet downstream of Hogan and ending north of FM 2305. At the time, Hog Pen Creek was an unstudied Zone 'A' floodplain according to the FIRM. Hydrology and Hydraulics for the detailed study were prepared and submitted to FEMA with ultimate approval obtained in 2002.

Since the LOMR was accepted by FEMA, The Wallace Group has been the Engineer of Record on two additional projects, the extension of Tarver Roadway and the reconstruction of Hogan Road. Both of these projects had modifications to Hog Pen Creek within their Scope of Work. Upon completion of the Hogan Road Construction Project, TWG approached the City about moving forward with a LOMR to update the map and remove residential property from the FIRM floodplain. At that time, no authorization to proceed was provided.

To document the modifications to the floodplain, we feel that the extend of the study will need to extend from the channelization at the northernmost section of Pea Ridge to 1000 feet downstream of Hogan Road, a length of approximately 7500 linear feet. Field Surveying of the channel cross-sections, culvert entrance and exits, as well as roadway cross-sections is a requirement of the LOMR. TWG anticipates use of the previously defined flows and that revised hydrology is not included within this Scope of Work.

200 West Hwy 6, Suite 620
Waco, Texas 76712

P.O. Box 22007
Waco, Texas 76702

(254) 772-9272
(800) 336-1683
Fax (254) 776-2924
www.wallace-group.com
TBPE F-54

Our Proposal for Professional Services is indicated as follows:

Section A: Downstream of FM 2305 to 1000 feet downstream of Hogan Road

Task #1A: Contact FEMA to obtain Upstream Detailed Study

TWG will contact FEMA to obtain a copy of a detailed study upstream of the development. Although TWG completed the previous study, we feel that this Task will insure that no other revised studies have been conducted.

Task #2A: Topographic Survey of Cross-Sectional Information

TWG will be required to conduct field surveys of the cross-sections needed to develop the hydraulic model for the Project. This information must be on the same datum as the FEMA benchmarks. TWG estimates that there will be approximately fifty-two cross-sections necessary to accurately determine the floodplain.

Task #3A: Preparation of Hydraulic Model ending 1000 feet downstream of Hogan Road (Use of FEMA Flows)

TWG will create a hydraulic model of Hog Pen Creek. The model will be developed to only analyze the 100-year discharge.

Task #3B: Preparation of Support Documentation for FEMA Submittal

Submission of the LOMR requires support information including, but not limited to, the following items:

- Drainage Area Map
- Detailed Calculations of Soil Coefficients
- Hydraulic Profiles of Cottonwood Creek
- Existing and Proposed Floodplain maps
- Annotated FIRM

TWG will prepare these items in anticipation of submittal to FEMA

Task #4A: Preparation of LOMR Document Overview and Concurrence Form

TWG will prepare the necessary form and obtain the necessary signatures from the City of Temple for submittal

Task #4B: Preparation of LOMR Document Riverine Hydrology & Hydraulics Form for Hog Pen Creek

TWG will prepare the necessary form for the post construction condition.

Task #4C: Preparation of Individual and Public Notifications

TWG will send out Certified Receipt copies of the notification to all affected land owners. The public notification will be published in the local newspaper.

Task #4D: Response of Individual Notifications

TWG is including a task for discussions, clarifications, etc, that will be required as individuals contact WG to discuss the potential differences. TWG limits the work under this task to twenty (20) hours for the Professional Engineer with eight (8) hours for Clerical work.

Task #5A: Response to FEMA First Review:

The Scope of Work for this task will be to address comments from FEMA in regards to the CLOMR. The initial review by FEMA is usually the most labor intensive as the majority of comments are issued at this stage.

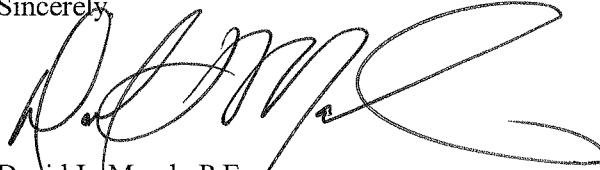
Task #6A: FEMA LOMR Review Fee

FEMA requires a lump sum payment of \$4800 for review of LOMR's according to their current fee schedule. The work under this task will include payment of the necessary fee.

Our lump sum fee proposal for the Project will be \$47,430.00. I have attached a breakdown of the time allotted to the individual tasks for your review. It should be noted that for the response to public notifications, if the time for this task is not utilized, TWG will not bill the City of Temple for the full amount.

We appreciate being asked to provide the City of Temple with a proposal for Professional Services and look forward to working together on the Project. If you have any questions, or concerns, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Marek', with a large, sweeping flourish extending to the right.

David L. Marek, P.E.
The Wallace Group, Inc.

DLM:dlm

Fee Proposal

Email

cc: File - Project # 21958

PROJECT NAME : TEMPLE HOG PEN CREEK LOMR																
WORK ORDER # 21958		Peer Review		Project Mgr/ Engineer1		Survey RPLS		Survey Crew		Technician		Survey Technician		Clerical		TASK TOTAL
DATE August 10, 2009		MH	\$	MH	\$	MH	\$	MH	\$	MH	\$	MH	\$	MH	\$	\$
LOMR FEE PROPOSAL																
Task #	Section A (Downstream of 2305 to 1000 Feet downstream of Hogan Road)															
1A	Contact FEMA to obtain Upstream Detailed Study		\$ -	2	\$ 260.00		\$ -		\$ -		\$ -		\$ -	1	\$ 50.00	\$ 310.00
2A	Topographic Survey of Cross-Sections. Cross-Sections will encompass previous cross-section location from prior LOMR. Additional cross-sections to define improvements constructed since LOMR to be conducted.		\$ -		\$ -	20	\$ 2,000.00	120	\$ 14,400.00		\$ -	120	\$ 9,000.00		\$ -	\$ 25,400.00
3A	Preparation of Hydraulic Model (USE FEMA FLOWS)		\$ -	36	\$ 4,680.00		\$ -		\$ -	16	\$ 1,120.00		\$ -		\$ -	\$ 5,800.00
3B	Preparation of Maps for FEMA Submittal (Watershed Map, Annotated Floodplain, Hydraulic Profile)		\$ -	8	\$ 1,040.00		\$ -		\$ -	40	\$ 2,800.00		\$ -		\$ -	\$ 3,840.00
4A	Preparation of LOMR Document Overview & Concurrence Form		\$ -	1	\$ 130.00		\$ -		\$ -		\$ -		\$ -	2	\$ 100.00	\$ 230.00
4B	Preparation of LOMR Document Riverine Hydrology & Hydraulics Form (Existing Conditions)		\$ -	4	\$ 520.00		\$ -		\$ -		\$ -		\$ -	4	\$ 200.00	\$ 720.00
4C	Preparation of Individual & Public Notifications (Section A)		\$ -	1	\$ 130.00		\$ -		\$ -		\$ -		\$ -	8	\$ 400.00	\$ 530.00
4D	Response to Public Notifications (Section A)		\$ -	20	\$ 2,600.00		\$ -		\$ -		\$ -		\$ -	8	\$ 400.00	\$ 3,000.00
5A	Response to FEMA First Review		\$ -	12	\$ 1,560.00		\$ -		\$ -	12	\$ 840.00		\$ -	8	\$ 400.00	\$ 2,800.00
6A	FEMA LOMR Fee		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -		\$ -	\$ 4,800.00

TOTAL PROFESSIONAL FEE: \$ 47,430.00

FY 2009**BUDGET ADJUSTMENT FORM**

Use this form to make adjustments to your budget. All adjustments must balance within a Department.

Adjustments should be rounded to the nearest \$1.

		+		-	
ACCOUNT NUMBER	PROJECT #	ACCOUNT DESCRIPTION	INCREASE		DECREASE
292-2900-534-26-16		Professional	47,430		
292-2900-534-23-17		Drainage Systems			47,430
TOTAL.....			\$ 47,430		\$ 47,430

EXPLANATION OF ADJUSTMENT REQUEST - Include justification for increases AND reason why funds in decreased account are available.

To fund the professional services agreement with The Wallace Group for engineering services required to prepare and submit a Letter of Map Revision (LOMR) for Hog Pen Creek from FM 2305 to 1,000 feet south of Hogan Road. Funds are available within the line item appropriated for drainage systems.

DOES THIS REQUEST REQUIRE COUNCIL APPROVAL?

☐

Yes

☒

No

DATE OF COUNCIL MEETING

8/20/2009

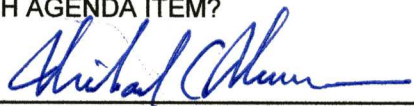
WITH AGENDA ITEM?

☒

Yes

☐

No


 Department Head/Division Director
8/11/09

Date

☐

Approved

☐

Disapproved

Finance

Date

☐

Approved

☐

Disapproved

City Manager

Date

☐

Approved

☐

Disapproved

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH THE WALLACE GROUP, FOR ENGINEERING SERVICES REQUIRED TO PREPARE AND SUBMIT A LETTER OF MAP REVISION FOR HOG PEN CREEK FROM FM 2305 TO 1,000 FEET SOUTH OF HOGAN ROAD, FOR AN AMOUNT NOT TO EXCEED \$47,430; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, Code of Federal Regulations CFR 44 65.3 requires communities to notify FEMA of physical changes affecting flooding conditions and base flood elevations – this requirement maintains flood insurance rate maps so that they reflect current conditions in the field;

Whereas, the Staff recommends entering into an agreement, for an amount not to exceed \$47,430, with The Wallace Group for revising the FEMA map by submitting a Letter of Map Revision (LOMR) for Hog Pen Creek from FM 2305 to 1,000 feet south of Hogan Road, related to the Hogan Road reconstruction;

Whereas, funds are available for this project but an amendment to the FY2008-2009 budget needs to be approved to transfer the funds to the appropriate expenditure account; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

Part 1: The City Council authorizes the City Manager, or his designee, to execute a professional services agreement, for a cost not to exceed \$47,430, between the City of Temple, Texas, and The Wallace Group, after approval as to form by the City Attorney, for engineering services required to prepare and submit a Letter of Map Revision for Hog Pen Creek from FM 2305 to 1,000 feet south of Hogan Road, for an amount not to exceed \$47,430.

Part 2: The City Council approves an amendment to the FY2008-2009 budget, substantially in the form of the copy attached as Exhibit A, for this project.

Part 3: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

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DEPT./DIVISION SUBMISSION & REVIEW:

David Blackburn, City Manager
Jonathan Graham, City Attorney

ITEM DESCRIPTION: Consider adopting a resolution authorizing an agreement with the City of Belton and the Brazos River Authority to share the cost of land acquisition and engineering services for a proposed expansion of the Temple-Belton Regional Sewerage System.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: The cities of Temple and Belton are parties to a 1971 agreement with the Brazos River Authority (BRA), under which BRA owns and operates the Temple-Belton Regional Sewerage System (T-BRSS WWTP) plant for Temple and Belton. Under the 1971 T-BRSS agreement, Temple and Belton share capital expenses for the plant (Temple 75% & Belton 25%) and share operating costs according to their actual usage.

Temple, Belton and BRA have determined that the T-BRSS WWTP needs to be expanded and have identified a 16.1 acre site adjacent to the T-BRSS WWTP for an expansion of that facility. The proposed site for the expansion is the former site of a rock wool plant in Belton, which was recently acquired by the city of Belton in a tax sale. Belton secured a broker's opinion to determine the land value for the property, a value of \$145,000 (\$9,000 an acre).

The 16.1 acre tract was part of an 80 acre tract formerly owned by Trump Development Inc. This property was bid into Trust to the City of Belton for the other taxing entities at a tax sale on March 9, 2009. Belton was able to secure a commitment from all other taxing entities to release their interests and waive back taxes through tax year 2008.

The Rockwool Superfund site clean-up by EPA was completed in 2005. The 80 acre Trump site, split by FM 93, was included in the Superfund site boundary due to ownership, although no clean-up occurred on the 16.1 acre site that is the subject of this Agreement, located on the south side of FM 93, adjacent to the plant. Completed preliminary engineering studies suggest that the 16.1 acre site is suitable for recommended expansion of the BRA plant.

Prior to acquisition of the 16.1 acre site from Belton, several issues need to be addressed ultimately under our agreement with BRA, including: (1) release of existing liens - \$16M federal and \$600,000 TCEQ liens, the cost of the clean-up to the Federal and State agencies; (2) expiration of redemption period – the former owners have 1 year [March 3, 2010] to recover their property by payment of the

back taxes; (3) conduct environmental and archeological reviews; and (4) the engineers engaged by Temple, Belton & BRA must confirm the site is suitable for the intended use.

The proposed agreement allocates the cost (\$145,000) of the 16.1 acre tract between the parties and directs BRA to seek the services of an engineering firm to perform the design work for the WWTP expansion. Under the agreement, the selection of an engineering firm has to be agreed upon by all three entities (Temple, Belton & BRA). 75% of the cost of both land acquisition and engineering services will be borne by the City of Temple.

Staff recommends the Council authorize the City Manager to execute a three party agreement in substantially the form presented.

FISCAL IMPACT: Preliminary estimates for the design and land acquisition total \$3 million. Temple's share of the total is \$2,250,000. The proposed FY 2010 Utility Revenue Capital Improvement Plan includes the \$2,250,000 allocation for our share of the land acquisition and design.

ATTACHMENTS:

[Draft Agreement
Resolution](#)

LAND ACQUISITION AND ENGINEERING SERVICES AGREEMENT

This Land Acquisition and Engineering Services Agreement ("Agreement") is entered into this ____ day of ____, 2009 ("Effective Date"), by and between the Brazos River Authority ("Authority"), the City of Belton ("Belton"), and the City of Temple ("Temple") (collectively, "Parties").

RECITALS

WHEREAS, Authority, Belton and Temple are presently Parties to that certain Contract for Sewerage Service Temple-Belton Regional Sewerage System ("Sewerage Contract") with an effective date of July 19, 1971, as amended, whereby Authority owns and operates a waste water treatment facility ("Facility") on behalf of Belton and Temple; and

WHEREAS, the Parties have determined that in order to meet the continuing needs of Belton and Temple, the Facility requires expansion, and that a tract of land ("Tract") currently owned by Belton and located adjacent to the Facility is the appropriate site to locate the Facility expansion ("Expansion"); and

WHEREAS, the Parties desire that Authority acquire the Tract from Belton in order to own and operate the Expansion in unison with the Facility; and

WHEREAS, the Tract is presently subject to various liens that must be released before the Tract can be acquired from Belton; and

WHEREAS, the Parties desire that an engineering firm be retained to design the Expansion; and

WHEREAS, the Parties agree that the Expansion and all assets that comprise the Expansion, including the Tract and any required lines, lift stations, and/or other facilities, shall become a part of the Temple-Belton Regional Sewerage System ("TBRSS") and as such, are acquired, constructed, owned, held and maintained by the Authority on behalf of and for the benefit of the TBRSS, until such time as they are transferred to Belton and Temple as provided in this Agreement and the Sewerage Contract; and

WHEREAS, this Agreement is intended to serve only until such time as the Sewerage Contract can be amended to incorporate the Expansion and associated costs, and once the tasks set forth in this Agreement have been accomplished, the Parties shall determine how to proceed.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I. LAND ACQUISITION

1.1. Prerequisites to Purchase. Prior to purchasing the Tract from Belton, the following prerequisites must be satisfied:

- i. **Liens.** The Tract shall be free of any liens, federal, state, local, or otherwise, and any liens on the Tract shall be permanently released.
- ii. **Right of Redemption.** Subject to Section 1.3(vi) below, the Tract shall not be subject to any right of redemption or right of acquisition by any third party.
- iii. **Environmental Review.** Phase I and Phase II Environmental Site Assessments, an endangered species assessment, and wetlands delineation assessment (as defined by the United States Environmental Protection Agency) shall be performed on the Tract. Authority shall retain a firm or firms on behalf of TBRSS to accomplish these tasks.
- iv. **Archeological Review.** Authority shall determine if an archeological review of the Tract is required by the Texas Historical Commission. If an archeological review of the Tract is required, Authority shall retain a firm on behalf of TBRSS to accomplish this task.

1.2. Feasibility Determination. Upon completion of the Environmental Review and the Archeological Review, the Parties shall meet and determine the feasibility of utilizing the Tract for the Expansion. If the Parties decide to proceed with utilization of the Tract for the Expansion, any issues identified in the Environmental Review and/or Archeological Review must be resolved to the satisfaction of the Authority, before any obligation to purchase the Tract shall arise. Upon resolution of any environmental or archeological issues and satisfaction of all prerequisites set forth in Section 1.1, Authority shall proceed with purchasing the Tract from Belton.

1.3. Purchase of Tract. Once the requirements of Section 1.1 and 1.2 have been satisfied, Authority shall, on behalf of TBRSS, proceed with purchasing the Tract from Belton as follows:

- i. **Title Assurances.** Within thirty (30) days after the date of execution of this Agreement, Belton shall procure and furnish to Authority an owner's title policy commitment ("Commitment") by a title insurance company authorized to write title insurance in the State of Texas to issue an owner's policy of title insurance covering the Tract, together with legible copies of any documents creating exceptions other than the usual printed conditions and stipulations of title policies approved by the State Board of Insurance of the State of Texas ("Standard Conditions and Stipulations"). If such Commitment reflects that the owner's policy of title insurance to be issued pursuant to Commitment will be subject to any exceptions other than (i) Standard Conditions and Stipulations; and (ii) the reservations and subordinations provided to be included in the warranty deed, including subordination of any third party mineral owners right of access

to the Tract. Authority shall have twenty (20) days after the receipt of Commitment and such copies to furnish Belton with a list of written objections to the title reflected by Commitment ("Closing Title Objections"). Absent the furnishing to Belton of Closing Title Objections within such period of time, it shall be conclusively presumed that Authority accepts title as reflected by Commitment. If Closing Title Objections are made, Belton shall have 120 days to cure same by removing the exception(s) causing Closing Title Objections from the Commitment. If any Closing Title Objections are not cured within such 120 day period, Authority may, at its option exercised by delivery of written notice to Belton within thirty (30) days after the close of such 120 day period, either terminate the obligations of the parties to buy and sell the Tract under the provisions of this Land Acquisition and Engineering Services Agreement or accept title to Tract subject to Closing Title Objections which have not been cured. Uncured Closing Title Objections shall in no event be or become the basis for a breach of warranty action by Authority against Belton. Absent delivery of such written notice to Belton, it shall be conclusively presumed that Authority has elected to accept title as shown by Commitment. Belton shall cause issuance of an owner's policy of title insurance ("Title Policy") in a form approved by the State Board of Insurance of the State of Texas insuring Authority's (or Authority's and City's) title to Tract in the face amount of the total price to be paid by Authority for the Tract, subject to exceptions permitted by the terms of Commitment and Closing Title Objections agreed to be waived by Authority.

ii. Survey. Upon Authority's acceptance of title shown by Commitment or subject to uncured Closing Title Objections, Authority shall retain a firm to provide a Land Title Survey of the Tract. The survey will be completed by a Registered Professional Land Surveyor licensed to perform surveys in the State of Texas.

iii. Purchase Price. The Authority shall purchase the Tract from Belton for the sum of \$145,000.

iv. Purchase Concurrence. Prior to closing, the Parties shall meet to determine whether the Survey and/or Title Work are acceptable. If the Parties determine such as acceptable, Authority and Belton shall proceed with the closing; however, if one or more of the Parties has a reasonable objection to the Survey and/or Title Work, then the Parties agree to work diligently and in good faith to resolve any issues. Authority shall not be obligated to purchase the Tract until such time as any such issues have been resolved.

v. Closing. Closing shall occur within one hundred eighty (180) days after satisfaction of Section 1.2. At closing, Belton shall provide the Authority with a general warranty deed for the Tract, and the Authority, on behalf of TBRSS, shall pay Belton the fair market value of the Tract as determined by the appraiser. The Authority shall take title of the Tract on behalf of TBRSS, and subject to Section 1.3(vi).

vi. Cessation of Use. The deed shall provide that upon cessation of use of the Tract for the Facility and the Expansion, and upon closure of the Expansion, including accomplishment of any legal, regulatory, and/or statutory requirements associated therewith, the Tract shall automatically vest in Belton and Temple in

proportion to their respective ownership interests in the Expansion at the time of the closure.

ARTICLE II. ENGINEERING & DESIGN

2.1. Request for Proposals. Authority shall, on behalf of TBRSS, request proposals for engineering services to design the Expansion and associated lift stations in accordance with Authority policies and procedures. Authority shall begin seeking proposals on or before September 1, 2009. Authority agrees to advertise a request for proposal on its website and the State Comptroller's website, as well as in local newspapers serving Temple and Belton. Authority agrees to send a copy of the request for proposals from any engineering firms identified by either Belton or Temple. Once proposals have been received, the Parties shall select a firm that is acceptable to each of the Parties.

2.2. Contract. Once selected, Authority shall, on behalf of TBRSS, enter into a contract with the selected firm. The contract shall provide for a not to exceed price for the services to be rendered. Authority shall manage and approve the engineering work.

2.3. Completion. Upon completion of the final design, the Parties will coordinate and determine how to proceed.

2.4. Relation to Land Acquisition. In the event the Tract is not purchased from Belton for any reason, Belton and Temple shall remain liable and responsible for any and all costs associated with procuring and engaging engineering services, including, but not limited to direct labor costs incurred by Authority.

ARTICLE III. LAND ACCESS

3.1. Land Access. Belton shall grant Authority, including its agents and contractors, access to the Tract prior to the closing for the purpose of accomplishing the activities contemplated by this Agreement.

ARTICLE IV. INSURANCE, INDEMNITY AND LIABILITY

4.1. Insurance. Belton shall maintain general liability insurance coverage for the Tract until such time as the Tract is purchased from Belton by Authority, on behalf of TBRSS. Insurance coverage shall be no less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury or property damage, and shall name the Authority, its agents and contractors as an additional insured. Once the Tract is purchased by Authority, Authority shall maintain like general liability insurance coverage for the Tract, and shall name Belton and Temple as additional insureds.

4.2. Indemnity and Liability. IN RECOGNITION THAT THE TRACT IS AN ENVIRONMENTAL PROTECTION AGENCY SUPERFUND SITE SUBJECT TO STRICTER REGULATION, GREATER SCRUTINY, AND A HIGHER POSSIBILITY THAT ADDITIONAL HAZARDOUS MATERIALS OR ENVIRONMENTAL ISSUES WILL

BE DISCOVERED OR DISTURBED THEREON OR THEREIN ("CONDITION OF THE TRACT"), BELTON AGREES, TO THE EXTENT ALLOWED BY LAW, TO KEEP, SAVE AND HOLD THE AUTHORITY, ITS AGENTS AND CONTRACTORS, HARMLESS FROM ANY AND ALL ACTIONS, LIABILITIES, DAMAGES, JUDGMENTS, COSTS AND EXPENSES INCLUDING REASONABLE ATTORNEY'S FEES, THAT ACCRUE DURING THE TERM OF THIS AGREEMENT AND WHICH ARE RELATED TO THE CONDITION OF THE TRACT.

ARTICLE V. FINANCING

5.1. Reimbursement of Costs and Expenses. It is agreed and understood by the Parties that all costs and expenses previously agreed to by the Parties and incurred by the Authority under this Agreement, including the fully burdened cost of all direct labor on the part of Authority, are incurred by the Authority on behalf of TBRSS, and shall be fully reimbursed to the Authority by Belton and Temple in the following proportions:

- i. Belton shall pay 25% of all costs and expenses.
- ii. Temple shall pay 75% of all costs and expenses.

5.2. Land Acquisition Costs and Expenses. All costs and expenses incurred by the Authority for land acquisition activities under Article I, including, but not limited to, costs and expenses associated with 1) obtaining lien and right of redemption/acquisition releases, 2) the environmental review, archeological review, and resolution of any identified issues, 3) the cost of the Survey and Title Policy, 4) Closing, and 5) actual purchase of the Tract, shall be based upon actual costs and shall be invoiced month to month as such costs and expenses are incurred. Authority shall pay costs and expenses as they arise, and then invoice Belton and Temple for their respective shares of such costs and expenses, including those provided for in Section 5.4 below.

5.3. Engineering Services Costs and Expenses. All costs and expenses associated with engineering services under Article II, shall be based upon actual costs and shall be invoiced month to month as such costs and expenses are incurred. It is contemplated that the engineering firm will submit monthly invoices which shall be reviewed and paid by Authority. Authority shall then invoice Belton and Temple for their respective shares of such costs and expenses, including those provided for in Section 5.4 below.

5.4. Authority's Services and Other Costs. Authority's direct labor costs and expenses and other previously-agreed upon miscellaneous costs and expenses associated with accomplishing the activities contemplated in this Agreement, including, but not limited to, insurance costs contemplated in Section 4.1, shall be based upon actual costs and shall be invoiced month to month as such costs and expenses are incurred. To the extent possible, such costs and expenses shall be itemized and incorporated into any land acquisition activity or engineering services invoices.

5.5. Invoicing. Authority shall invoice Belton and Temple by the 15th of each month,

and payments will be due and payable by the 15th of the following month.

5.6. Interest on Past Due Payments. In the event of failure of Belton or Temple to make any payment to Authority provided to be made in this Agreement at the time when same shall be due, the Authority may seek the past due payment in accordance with the terms of the Texas Prompt Payment Act.

5.7. Responsibility for Costs and Expenses. In the event this Agreement or any portion thereof is terminated prior to completion or the Tract is not purchased from Belton for any reason, Belton and Temple shall remain liable and responsible for all costs and expenses incurred by Authority through the date of such termination.

ARTICLE VI. TERMINATION

1.1 Termination. Any Party may terminate this Agreement upon thirty (30) days written notice to the other Parties. Authority shall cease all activity under this Agreement on or before the expiration of the thirty (30) day period, and provide Belton and Temple a statement showing in detail all costs and expenses not paid for under this Agreement through the date of termination. Belton and Temple shall then reimburse Authority in accordance with Article V.

ARTICLE VII. GENERAL PROVISIONS

7.1. Entire Agreement. The terms and provisions of this Agreement contain the entire Agreement between the Parties with respect to the matters addressed herein.

7.2. Severability. The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be deemed to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

7.3. Amendments. No modification, addition, deletion, revision or other change to this Agreement shall be effective unless such change is reduced to writing and executed by all Parties.

7.4. Assignment. This Agreement shall bind the Parties and their legal successors, but shall otherwise not be assignable by the Parties without prior written consent of the other Parties, which consent shall not be unreasonably withheld. All of the respective obligations of each of the Parties shall bind that Party and shall apply to and bind any successors or assigns of that Party.

7.5. Governing Law. This Agreement shall be governed by the Constitution and laws of the State of Texas, except as to matters exclusively controlled by the Constitution and Statutes of the United States of America.

7.6. Venue. Venue for any action arising hereunder shall be in Bell County, Texas.

7.7. Third Party Beneficiaries. Except as expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, benefits, or remedies under or by reason of this Agreement.

7.8. Relationship of Parties. This Agreement is based upon the active participation of the Parties. Neither the execution nor the delivery of this Agreement shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the Parties, except for the contractual arrangements specifically set forth in this Agreement. Except as is expressly agreed to in writing in this Agreement, no Party (or any of its agents, officers or employees) has any power to assume or create any obligation on behalf of the other Party.

7.9. Notices. All notices, communications, invoices, bills and reports required under the Contract shall be personally delivered or mailed to the respective Parties by certified mail, return receipt requested at the addresses shown below, unless and until either party is otherwise notified in writing by the other party of a change in address. Mailed notices shall be deemed communicated as of five (5) days after mailing regular mail.

If intended for Authority, to:

4600 Cobbs Drive
P.O. Box 7555
Waco, Texas 76714

If intended for Belton, to:

c/o City Manager
P.O. Box 120
Belton, Texas 76513

If intended for Temple, to:

c/o City Manager _____
2 North Main Street, Suite 306
Temple, TX 76501

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed, and effective upon the receipt of the last signature.

BRAZOS RIVER AUTHORITY

By: _____
PHILLIP FORD
Title: **GENERAL MANAGER/CEO**
Date: _____

CITY OF BELTON

By: _____
Title: _____
Date: _____

CITY OF TEMPLE

By: _____

Title:

Date: _____

Approved as to form:

Jonathan Graham, Temple City Attorney

Approved as to form:

John Messer, Belton City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING AN AGREEMENT WITH THE CITY OF BELTON AND THE BRAZOS RIVER AUTHORITY TO SHARE THE COST OF LAND ACQUISITION AND ENGINEERING SERVICES FOR A PROPOSED EXPANSION OF THE TEMPLE-BELTON REGIONAL SEWERAGE SYSTEM; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the cities of Temple and Belton are parties to a 1971 agreement with the Brazos River Authority (BRA), under which BRA owns and operates the Temple-Belton Regional Sewerage System (T-BRSS WWTP) plant for Temple and Belton – Temple and Belton share capital expenses and operating costs for the plant according to their actual usage;

Whereas, Temple, Belton and BRA have determined that the T-BRSS WWTP needs to be expanded and have identified a 16.1 acre site adjacent to the T-BRSS WWTP for an expansion of that facility;

Whereas, the Staff recommends entering into an agreement with the City of Belton and BRA to share the cost of land acquisition and engineering services for the proposed expansion – the proposed agreement allocates the cost (\$145,000) of the 16.1 acre tract between the parties and directs BRA to seek the services of an engineering firm to perform the design work;

Whereas, preliminary estimates for the design and land acquisition total \$3 million – the City’s share of the total is \$2,250,000, and the proposed FY 2010 Utility Revenue Capital Improvement Plan includes the \$2,250,000 allocation for the City’s share of the land acquisition and design; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

Part 1: The City Council authorizes the City Manager, or his designee, to execute an agreement with the City of Belton and the Brazos River Authority, after approval as to form by the City Attorney, to share the cost of land acquisition and engineering services for a proposed expansion of the Temple-Belton Regional

Sewerage System, and authorizes the City's share of the project for a cost not to exceed amount of \$2,250,000.

Part 2: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(H)
Consent Agenda
Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Ken Cicora, Director of Parks & Leisure Services

ITEM DESCRIPTION: Consider adopting a resolution authorizing an agreement with Cord Financial Services of Temple to provide and install an ATM at the Mayborn Center.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: The Frank W. Mayborn Civic and Convention Center often hosts public events that involve merchandise vendors who do not accept credit card payments when selling goods during these events. In the past, patrons of these events were directed to convenience stores in the area to access ATM machines.

Due to the regularity of this issue, we would like to enter into an agreement with Cord Financial Services of Temple to install an ATM machine at the facility. The agreement will be binding for five (5) years. There will not be cost to the city for the use or maintenance of the machine.

As per the agreement, the City will receive a portion of the surcharge added to each transaction. These payments will be made regularly by check from Cord Financial Services. It is not anticipated that there will be much revenue paid to the City but we are requesting to enter into the agreement primarily as a service to our customers.

FISCAL IMPACT: Estimated \$150.00 annual revenue

ATTACHMENTS:

[Cord Financial Services Agreement](#)
[Resolution](#)

CORD Financial Services

P. O. Box 1287 Temple, TX 76503

ATM LICENSE AGREEMENT

This ATM License Agreement ("this agreement") is entered into this 1st day of July, 2009, by and between City of Temple – Mayborn Center, dba, _____ ("you" or "Customer"), with its principle place of business at 3303 N. 3rd Street, Temple, TX 76501 and **CORD Financial Services** ("ATM Owner" or "CORD") with its principle place of business at 2002 Scott Blvd., Temple, TX 76504 mailing address: PO Box 1287, Temple, TX 76504. In consideration of the promises and covenants contained herein, you and **CORD Financial Services** hereby agree as follows:

1. LICENSED SITE.

- (a) You shall license to us and otherwise allow us to use in accordance with the terms of this agreement a portion (the "Licensed Site") of the properties listed on exhibit A attached hereto. You agree the Licensed Site shall be sufficient in area to permit easy installation, maintenance and service of and reasonable customer access to an automatic teller machine (ATM).
- (b) The exact location of the Licensed Site in each of the properties listed on Exhibit A shall be an area mutually acceptable to you and **CORD Financial Services**.
- (c) You agree that we shall have the right to quiet enjoyment of the Licensed Site. You further agree that at no time will you, your employees or agents place any merchandise or advertisement on top or in front of the ATM machine. You agree to maintain the area around the ATM so that it is clean, safe, accessible and visible to the general public.
- (d) You represent that you are the owner of the premises or you hold a lease or option to renew the lease for the said premises of equal or greater lengths than the term of this agreement or that you have authority to place an ATM at said premises. Should you sell the business, the premises, then this agreement shall be transferred to and be binding upon the new owners for the remaining term of this agreement.
- (e) In the event the Customer transfers or moves its business from the Location, Customer shall notify CORD Financial Services not less than thirty (30) days prior to any such event. In such event, this Agreement shall be automatically deemed amended to apply to Customer's new Location for the remaining term of this Agreement.
- (f) You agree to use your best efforts to protect the ATM from theft or damage.
- (g) You agree that you will not permit the removal of the ATM from the premises, nor allow the placement of any other ATM or cash back device on the premises, nor allow any other entity to process ATM transactions during the term of this agreement, except as authorized by CORD Financial services in writing.

2. EXCLUSIVE LICENSE. You agree that during the term of this agreement and any renewal thereof, that CORD Financial Services is the sole owner of the ATM and we shall have the exclusive right to own, install and operate ATM's at the Licensed Site in each of the properties listed on Exhibit A. You agree that you will not own, install or operate any other ATM's at any of the properties listed on Exhibit A.

3. COMPENSATION TO CUSTOMER. CORD agrees that the Customer will be compensated as outlined in Exhibit B.

4. TERM OF AGREEMENT. This agreement shall be effective for a term of five (5) years from date hereof, unless sooner terminated, renewed or extended as herein provided. CORD Financial Services has the right, at its election to remove the ATM at any time when the ATM transactions have fallen below a minimum that would sustain operation of that ATM.

5. RENEWAL TERM. This agreement shall automatically renew every five (5) years on its anniversary date for a term of another five (5) years, unless, not less than 90 days prior to such date of renewal, either party sends written notice of their intention that the Agreement should expire on such anniversary date and not renew. Unless specifically agreed to otherwise in writing, there shall be no more than two such five (5) year renewal terms, and this Agreement shall expire at the end of the two such five (5) year renewal terms, if it has not been sooner terminated as herein provided. All of the terms and conditions of this Agreement shall continue in full force and effect during any such renewal term.

6. HOLDING OVER. If we should holdover after the expiration of the original or any renewal term, such tenancy shall be from month to month and all of the terms and conditions of this agreement shall continue in full force and effect during any such holdover tenancy.

7. USE OF LICENSED SITE.

- a. CORD agrees that we shall use the Licensed Site solely for the purpose of installing, maintaining, servicing and operating an ATM and such improvements or equipment as CORD reasonably deems necessary to support, protect or secure such ATM. Any changes to the Licensed Site after initial installation of the ATM shall require the Customer's written consent, which consent shall not be unreasonably withheld and shall be deemed to have been given if you have not responded to our written request for consent within five business days of such request having been given.
- b. You agree that CORD, our agents, contractors, courier service and employees shall have the nonexclusive and non-revocable right without any charge or fee to use Customer's property during business hours including, without

limitation, the parking facilities, driveways, sidewalks, concourses and other means of access to the ATM and the Licensed Site for purposes on ingress or egress, parking of motor vehicles, installation, maintenance, service, removal, replacement or operation of the ATM and for any other purpose necessary or incidental to the installation, maintenance, service, removal, replacement or operation of the ATM. Reasonable consideration on protecting parking and store access for customer priority is to be exercised by CORD.

8. SECURITY. CORD agrees that from time to time we shall provide to you a written list setting forth such of our employees, agents, contractors or courier service who are authorized to maintain or service the ATM (Authorized Persons). You agree that at no charge, your security personnel, if on the premises, will assist and accompany such Authorized Persons when they are on Customer's property in connection with the maintenance and servicing of the ATM. You are requested and authorized to refuse access to the Licensed Site by persons other than such Authorized Persons who request admittance for the stated purpose of maintenance or service of ATM.
9. ELECTRICAL AND TELEPHONE LINES. For each ATM you agree that you will provide and maintain at your expense a dedicated phone line or internet. You agree to provide (1) operating electrical power outlet (110v) with isolated ground within 2 feet of the ATM. In addition you agree to pay all ongoing electrical charges in connection with the operation of such ATM's.
10. REPAIRS. CORD agrees, at our expense, to keep the interior and exterior of the ATM in the Licensed Site in good order and repair, reasonable wear and tear and casualty excepted.
11. ALTERATIONS. You agree that we may make any alterations, changes or improvements in the Licensed Site that may be necessary for the secure and proper installation of the ATM with your prior written consent, which may not be unreasonably withheld and shall be deemed given if you have not responded to our written request therefore within ten business days of such request having been given. CORD agrees that we shall make all such alterations, additions or improvements in a good and workmanlike manner and in accordance with all valid applicable requirements of municipal or governmental authorities.
12. SIGNS. At our expense, we shall have the right to provide directional and informational signs regarding the ATM. The exact location of such signs shall be determined from time to time by the mutual consent of you and CORD Financial Services, which consent may not be unreasonably withheld by you. You agree that CORD will remove all signs for the Licensed Site at the expiration or termination of the Agreement.
13. TERMINATION. Subject to the following conditions and notwithstanding anything contained in this agreement to the contrary, **CORD Financial Services**, (the "Terminating Party") may terminate this Agreement as to any or all properties listed on Exhibit A hereto (the "Terminated Sites") at any time:
 - (a) **CORD Financial Services** shall send no less than 30 days written notification (the "Termination Notice") to the other party indicating hereto the Remaining Party's intent to terminate this agreement as to the properties specified in the Termination Notice and specifying the effective date of such termination (the Termination Date").
 - (b) **CORD Financial Services** shall continue to operate the ATM's in the Terminated Sites until the Termination date.
 - (c) Until the date of removal of the ATM's from the Terminated Sites, all terms of this Agreement shall remain in full force and effect with respect to such Terminated Sites.
14. ASSIGNMENT. CORD shall have the right, without first obtaining prior written consent from you, to assign this Agreement, and any interest therein, to delegate our duties hereunder and to sublet the Licensed Site, or any portion thereof, for use as provided in this agreement.
15. SURRENDER AT END OF TERM. We agree to peaceably and quietly surrender and yield up to you the Licensed Site upon the termination or expiration of this Agreement and any renewal term, in good order and condition.
16. SUBORDINATION. This Agreement is and shall be subject and subordinate to all ground and underlying leases and to all mortgages or deeds of trust which may now or hereafter be secured upon the building and/or the property on which it is located and to all renewals, modifications, consolidations, replacements, and extensions thereof. This clause shall be self-operative, and no further instrument of subordination shall be required; however, in confirmation of such subordination, we will execute and deliver to you within 30 days after your written request, any certificate that you may reasonably require acknowledging such subordination. Notwithstanding the foregoing, the party holding an instrument to which this agreement shall be subordinate shall have the right to recognize and preserve this Agreement in the event of any foreclosure sale or possessor action and, in such case this Agreement shall continue in full force and effect at the option of such party and we will execute, acknowledge and deliver any instrument that has for its purpose and effect the confirmation of such attainment.
17. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas, without regard to conflicts of law principles thereof.
18. CHOICE OF VENUE. The venue for all disputes arising out of this Agreement shall be Bell County, Texas.
19. NOTICES. Any notices required to have been given in connection with this Agreement shall be deemed to have been given when sent, postage prepaid, certified mail, return receipt requested or delivered by messenger to the parties at the addresses appearing on page 1 of this Agreement or to such other address as either party may specify in writing to the other party. Such written notice shall be effective as of the date of mailing if mailed to you or as of the date of delivery if by messenger.
20. MEDIATION. CORD and the Consumer agree in good faith to mediate prior to the filing of any legal action.
21. MISCELLANEOUS.

- (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective administrators, legal representatives, assigns (as permitted by this Agreement) and successors.
- (b) If one or more provisions of this Agreement should be or be declared to be illegal, invalid, or unenforceable in any respect under any applicable present or future laws or government regulations; the legality, validity and enforceability of the rest of this Agreement shall not be affected or impaired thereby, provide however, that if this entire Agreement shall be or be declared to be illegal, invalid or unenforceable, the parties agree that this Agreement shall thereafter be immediately terminated without liability to either party.
- (c) If any regulatory agency now or hereafter in existence shall disapprove or fail to approve the location and operation of an ATM on the Licensed Site or any aspect of our performance as required to satisfy this Agreement or if any such regulatory agency shall direct us to discontinue providing the services hereunder, the parties agree that this Agreement shall thereafter be immediately terminated without liability to either party.
- (d) This Agreement constitutes the entire understanding in respect of the subject matter hereof, and all prior negotiations, agreements and representations are merged herein. This Agreement may not be modified except in writing signed by an authorized person of each party.
- (e) For the purpose of this Agreement, a Transaction is "surchargeable"; if it is permissible under the applicable Agreements for us to assess a Terminal Usage Fee in connection with such Transaction, Whether or not we in fact do so; and a Transaction is "nonchargeable " if it is not permissible.
- (f) This Agreement may be executed in multiple counterparts and at different times, each of which shall be considered an original and all of which, taken together, shall be considered one original.
- (g) Time is of the essence of this Agreement.

IN WITNESS WHEREOF, City of Temple – Mayborn Center and **CORD Financial Services** have caused the Agreement to be executed by their duly authorized representative in multiple originals and it shall be effective as the date set forth above.

CORD Financial Services

X _____
Customers Signature

Customers Printed Name

Customers Title

X _____
Authorized Signature

Kenneth Gilbert

General Manager
Title

Approved as to form:

City Attorney

EXHIBIT A
ATTACHMENT TO ATM AGREEMENT
DATED 7/1/09

AUTOMATIC TELLER MACHINE LOCATION(S)

Site/Location # Address City, State, Zip Phone # ATM Phone

1. Mayborn Center 3303 N. 3rd Street Temple, TX 76501 (254) 298-5379

2.

3.

4.

5.

Customer

CORD Financial Services

Date

Date

Approved as to form:

City Attorney

EXHIBIT B

ATTACHMENT TO ATM LICENSE AGREEMENT

DATED: 7/1/09

CORD Financial Services shall pay no later than 20 days after the end of each month (or partial month) for the immediately ended month, the following surcharge:

Transactions

Revenue Sharing: \$.50 cents for each surcharged transaction

Customer

CORD Financial Services

Date

Date

Approved as to form:

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING AN AGREEMENT WITH CORD FINANCIAL SERVICES OF TEMPLE, TEXAS, TO PROVIDE AND INSTALL AN ATM AT THE FRANK W. MAYBORN CIVIC AND CONVENTION CENTER; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the Frank W. Mayborn Civic and Convention Center often hosts public events that involve merchandise vendors who do not accept credit card payments when selling goods during these events – in the past, patrons of these events were directed to convenience stores in the area to access ATM machines;

Whereas, due to the regularity of this issue and to better serve the customers at the Mayborn Center, the Staff recommends entering into an agreement with Cord Financial Services of Temple, Texas, to install an ATM machine at the Mayborn Center;

Whereas, there will be no cost to the City for the use or maintenance of the machine and the City will receive a portion of the surcharge added to each transaction (estimated \$150 annual revenue); and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

Part 1: The City Council authorizes the City Manager, or his designee, to execute an agreement with Cord Financial Services of Temple, Texas, after approval as to form by the City Attorney, to provide and install an ATM at the Frank W. Mayborn Civic and Convention Center.

Part 2: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 20th day of August, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(I)
Consent Agenda
Page 1 of 1

DEPT. /DIVISION SUBMISSION & REVIEW:

Tim Dolan, Planning Director

ITEM DESCRIPTION: SECOND READING – Z-FY-09-16: Consider adopting an ordinance authorizing a zoning change from the Central Area District (CA) and Multiple Family Two District (MF2) to Single Family One District (SF1) and/or Neighborhood Services District (NS) for all of Blocks 1 and 26, Moore's First Addition; all of Blocks, 4, 7, 8, 9, & 10, and Block 3, Lots 2-4, L.R. Taylor Addition; and Outblocks, 263-2A, 2B, 2C, 2D, and 23, Temple Original.

P&Z COMMISSION RECOMMENDATION: At its July 20, 2009 meeting the Planning and Zoning Commission voted 7/0 to recommend SF1 zoning only for Z-FY-09-16.

Commissioners Dusek and Martin were absent.

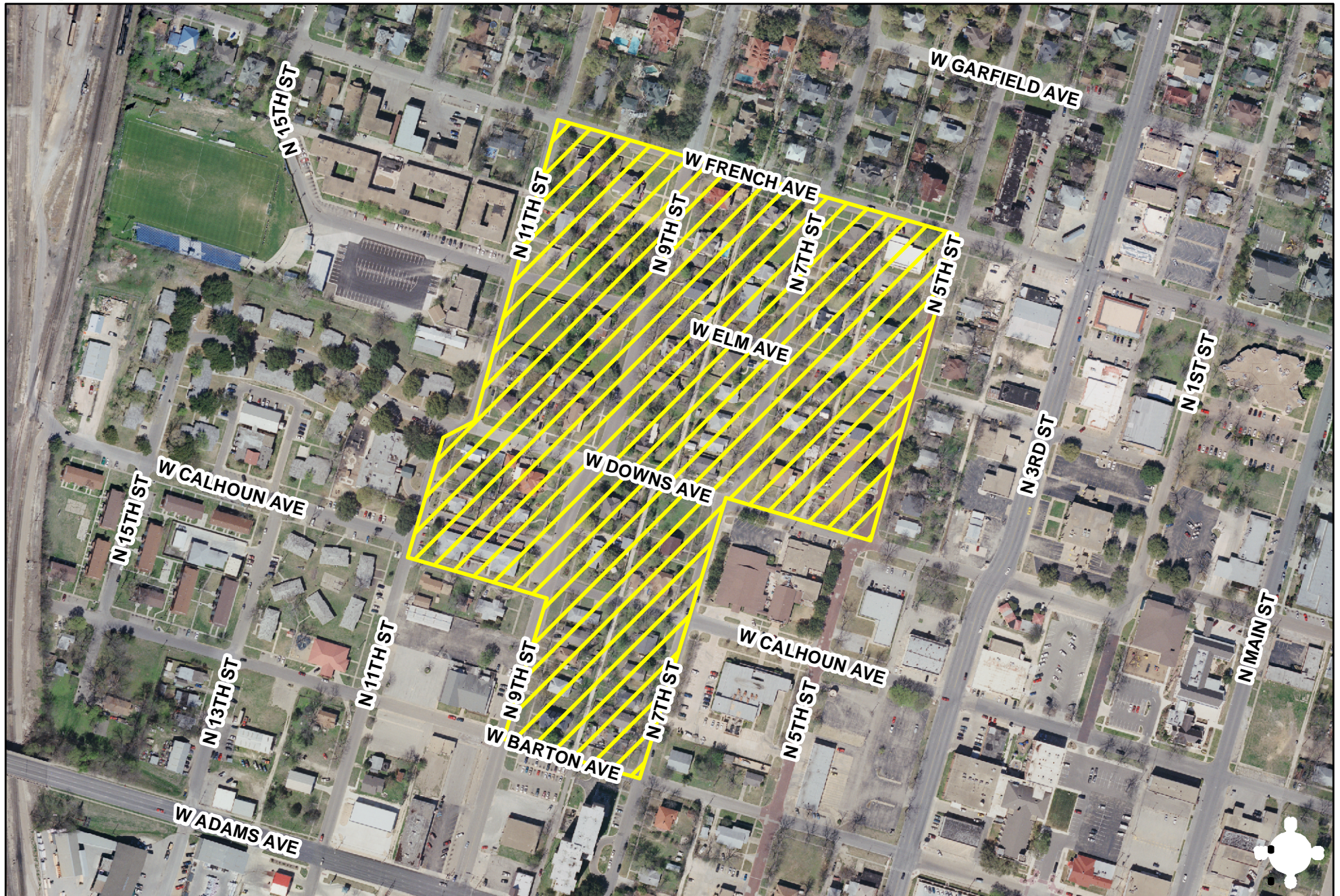
STAFF RECOMMENDATION: Adopt ordinance as presented in item description, on second and final reading.

ITEM SUMMARY: Please refer to the Staff Report and draft minutes of case Z-FY-09-16, from the Planning and Zoning Commission meeting, July 20, 2009. The City Council is the final authority for zoning cases.

FISCAL IMPACT: NA

ATTACHMENTS:

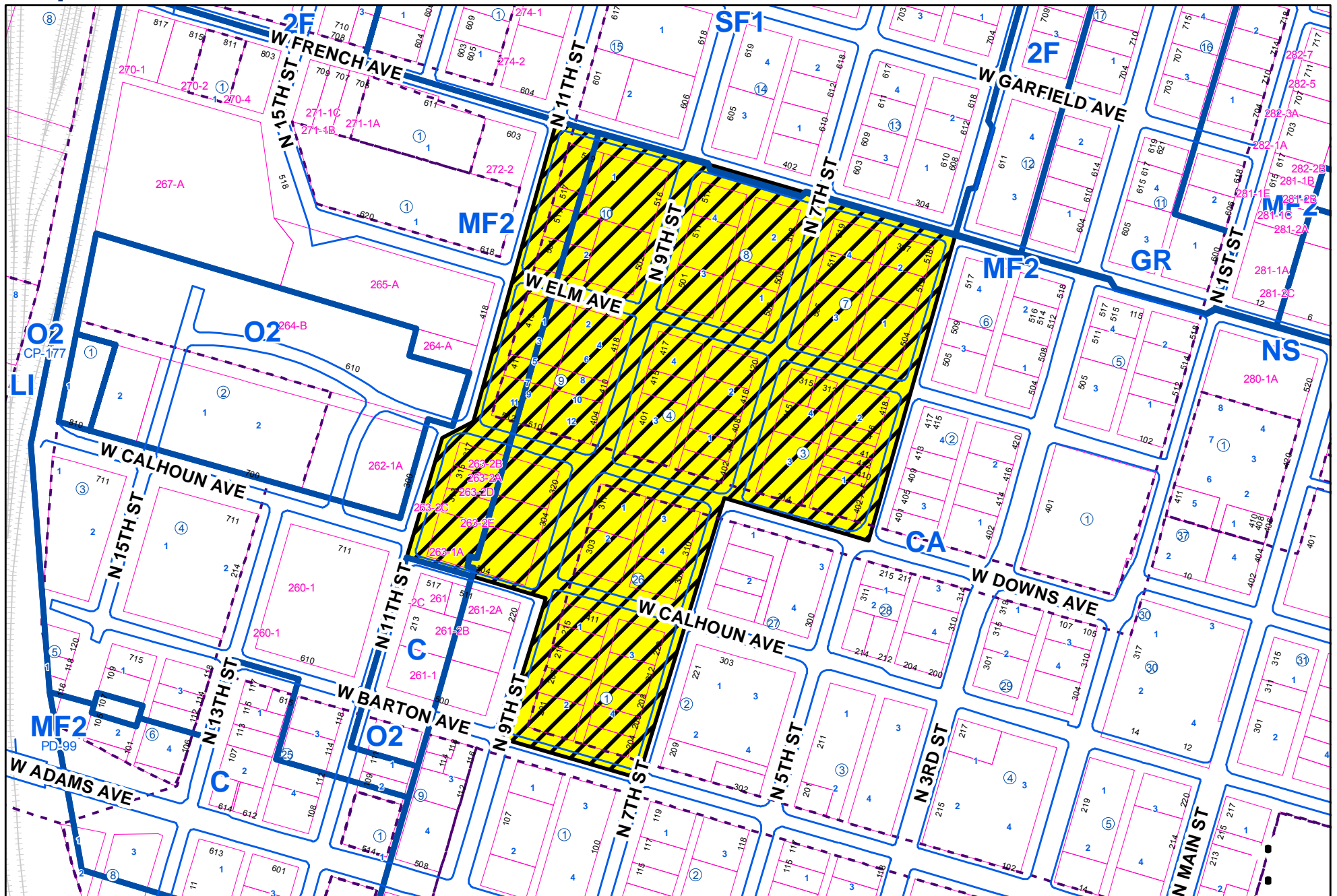
[Aerial](#)
[Zoning Map](#)
[Future Land Use & Character Plan](#)
[Buffer](#)
[Respondent's Letters](#)
[P&Z Staff Report](#)
[P&Z Excerpts](#)
[Ordinance](#)





Z-FY-09-16

CA & MF2 District Rezoning



 ZFY0916

CA & MF2 to SF1 or NS

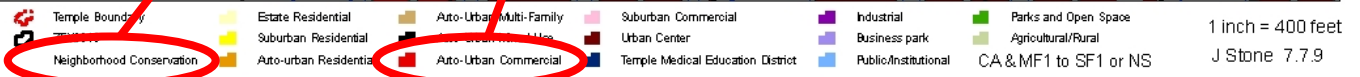
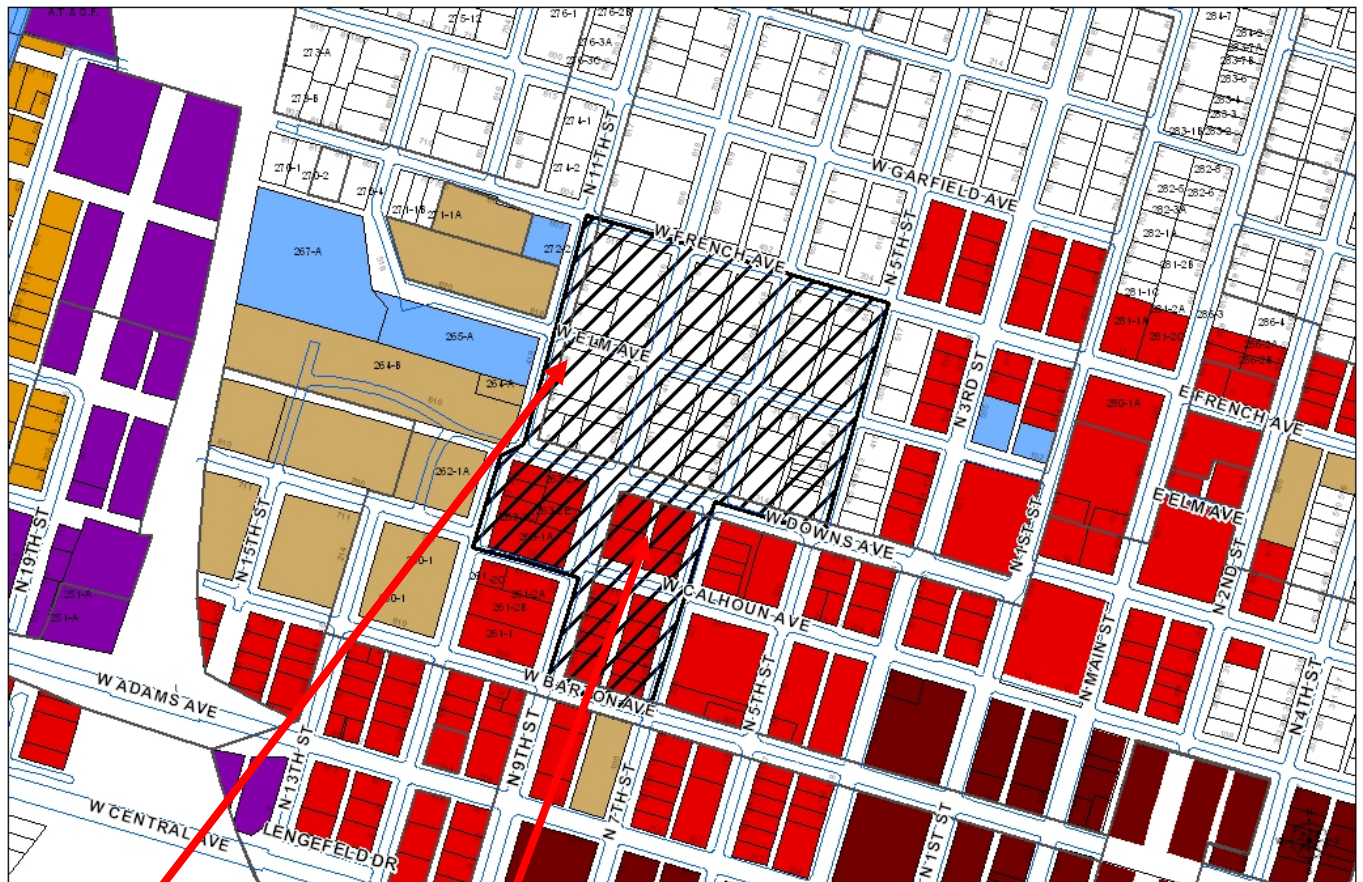
1 inch = 300 feet

J Stone 7.7.9



Z-FY-09-16

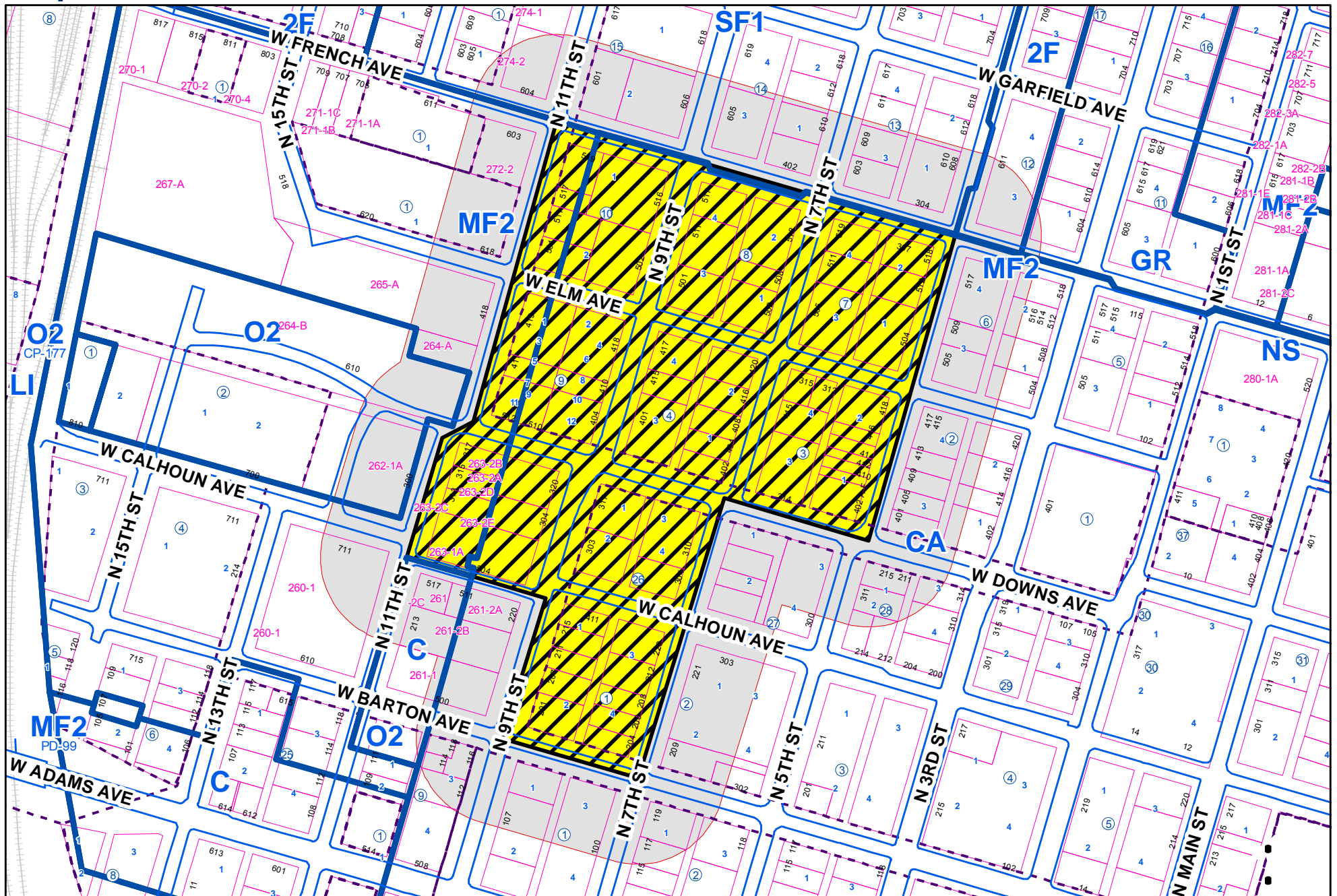
CA & MF2 District Rezoning to SF1 or NS





Z-FY-09-16

CA & MF2 District Rezoning



 ZFY0916  200' Buffer

CA & MF2 to SF1 or NS

1 inch = 300 feet

J Stone 7.7.9



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

James & Edith Roskey
3901 Midway Drive
Temple, Texas 76502

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval

☒ denial of this request.

Comments:

but would approve if it's district

for single family zone only

7-20-09
James Roskey / Edith Roskey
Signature

7-20-09
JAMES ROSKEY EDITH ROSKEY
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 23 2009

City of Temple
Planning & Development

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Terri L. Wheeler
511 North 7th Street
Temple, Texas 76501

"Approved"
per TDM
7-22-09

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend () approval () denial of this request.

Comments:

I agree with the rezoning for single family. My small business is located to home for the neighborhood I am caring it - I live across from the quilt shop (the Ferguson house) and can drive up and down the street - there are times I wish my driveway is on halter road - I am to the point of putting up traffic cones so I can access my own walkway and driveway.

Terri L. Wheeler

Signature

Terri Wheeler

Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 22 2009

City of Temple
Planning & Development

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Frances I. Bowker
504 North 7th Street
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☐ approval ☒ denial of this request.

Comments:

Frances I. Bowker
Signature

FRANCES I. BOWKER
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 22 2009

City of Temple
Planning & Development

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Virginia Sanders
~~Jonathan Etux Rhonda Sanders~~
420 North 7th Street
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval () denial of this request.

Comments:

*We strongly support this change and believe it will
improve the quality of this neighborhood as well as the value of
our homes.*

Jonathan Sanders
Signature

Virginia Sanders

Jonathan I. Sanders
Print Name

Virginia B. Sanders

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

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JUL 22 2009

City of Temple
Planning & Development

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Darren Etux Katherine Mowbray
P.O. Box 2713
Temple, Texas 76503-2713

418 N. 9th St

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend () approval (X) denial of this request.

Comments:

Leave the zoning alone.

Katherine M. Mowbray
Signature

Katherine M. Mowbray
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

William Etux Pearline Stanley
304 West French Avenue
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

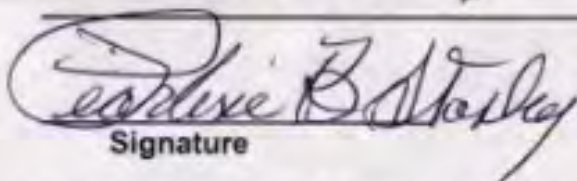
Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend (☒) approval (☐) denial of this request.

Comments:

Look carefully at the area proposed for change. Perhaps this area needs to be rezoned in some way. Down to French & 517 away to 9th St. Making that a 2 family area seems to make sense. Perhaps even single family. I can't not see a neighborhood being an asset to the home.


Signature

William Etux Pearline Stanley
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

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JUL 20 2009

City of Temple
Planning & Development

Number of Notices Mailed: 41

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Conrado & Virginia Rangel
303 North 9th Street
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval ☐ denial of this request.

Comments:

We prefer single family and
not Neighborhood Services.

Conrado & Virginia Rangel
Signature

CONRADO + VIRGINIA RANGEL
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED
JUL 21 2009
City of Temple
Planning & Development

Number of Notices Mailed: 41

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

317 N. 9TH

Elizabeth Geyer & Edwin Bailey
P.O. Box 146
Temple, Texas 76503-146

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend (☒) approval (☐) denial of this request.

Comments:

I WOULD LIKE TO SEE SINGLE FAMILY ONLY IN
THIS AREA. THE MAJORITY HAS BEEN SINGLE FAMILY
AND IT IS NOT THE CLIMATE FOR BUSINESS.

Edwin Bailey
Signature

EDWIN BAILEY
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 20 2009

City of Temple
Planning & Development

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

James H. Adams Family Ltd
P.O. Box 887
Temple, Texas 76503

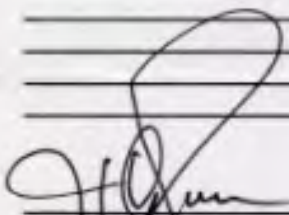
Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend (☒) approval (☐) denial of this request.

Comments:


Signature

J H Adams
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 17 2009

City of Temple
Planning & Development

Number of Notices Mailed: 41

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

William R. McGarvey
401 North 9th Street
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval ☐ denial of this request.

Comments:

my grandfather, August Kacin, built a home and raised a family on N 9th St starting in 1942. My parents, Dr. Mike Wheeler and (m) Betty Kacin were also raised on the North Side. It can be said that my roots in Temple are substantial.

I moved to the Northside in 2000, moving into and restoring the family home. The history is rich on my block and the surrounding area. I urge the planners and council to change zoning so that the vitality and richness of the neighborhood perseveres.

Brent Wheeler
Signature

Brent Wheeler
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 17 2009

City of Temple
Planning & Development

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE
CITY OF TEMPLE

Charleton & Patricia Lee
501 North 9th Street
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval () denial of this request.

Comments:

Support Rezoning to Single
Family As First Choice NSF
as SECOND CHOICE.

Signature

CHARLETON LEE

Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 17 2009

City of Temple
Planning & Development

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Ronald L. Thweatt
404 North 9th Street
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval () denial of this request.

Comments:

Ronald L. Thweatt
Signature

RONALD L. THWEATT
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 17 2009

City of Temple
Planning & Development

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Scott A. Shine
415 North 9th Street
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval () denial of this request.

Comments:

It is very clear from a quick drive through this neighborhood that it was originally intended to be a single family residence neighborhood and that is the use that continues through the present. The current zoning and the potential for the further expansion of businesses is detrimental to the everyday enjoyment of the majority of property owners who use their properties for single family purposes.

I strongly support the change of zoning to Single family Residential


Signature

Scott Shine
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 16 2009

City of Temple
Planning & Development

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Sam K. Hendler
601 North 11th Street
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval ☐ denial of this request.

Comments:

Sam K. Hendler Jr.
Signature

SAM K. HENDLER JR.
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 16 2009

City of Temple
Planning & Development

Number of Notices Mailed: 41

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE
CITY OF TEMPLE

Temple ISD
Superintendent's Office
200 North 23rd Street
Temple, Texas 76504

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend (☒) approval (☐) denial of this request.

Comments:

John Battershell
Signature

Robin Battershell
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 16 2009

City of Temple
Planning & Development

Number of Notices Mailed: 41

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

First Christian Church of Temple
300 North 5th Street
Temple, Texas 76501

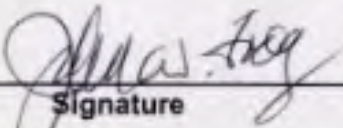
Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval () denial of this request.

Comments:


Signature

J. W. Troy, Board Chair
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 15 2009

City of Temple
Planning & Development

Number of Notices Mailed: 41

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Michael Etux Johnelle Krumnow
610 North 7th Street
Temple, Texas 76501

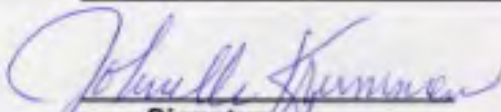
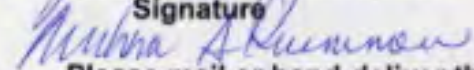
Zoning Application Number: Z-FY-09-16

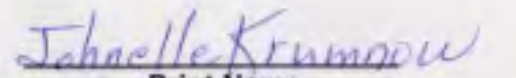
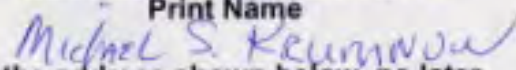
Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval ☐ denial of this request.

Comments:


Signature



Print Name


Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

RECEIVED

JUL 14 2009

City of Temple
Planning & Development

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

Number of Notices Mailed: 41

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

John A. II & Sheri Joseph
618 North 9th Street
Temple, Texas 76501

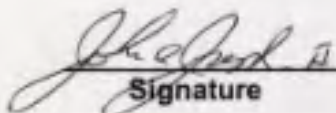
Zoning Application Number: Z-FY-09-16

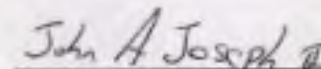
Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ approval ☐ denial of this request.

Comments:


Signature


Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 14 2009

City of Temple
Planning & Development

Number of Notices Mailed: 41

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Kevin & Wenda Elliott
417 North 9th Street
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

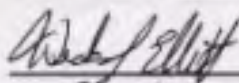
Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within the area being considered for rezoning, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend () approval

☒ denial of this request.

Comments:


Signature

Wenda J Elliott
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 14 2009

City of Temple
Planning & Development

Number of Notices Mailed: 55

Date Mailed: July 10, 2009



RESPONSE TO PROPOSED ZONING CHANGE

CITY OF TEMPLE

Dr. Raleigh R. White
619 North 9th Street
Temple, Texas 76501

Zoning Application Number: Z-FY-09-16

Project Manager: Tim Dolan

The proposed zone change is the area shown in yellow and blue marking on the attached map. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible rezoning of the property described on the attached notice, and provide any additional comments you may have.

I recommend ☒ ^{in part} approval ☒ ^{in part} denial of this request.

Comments:

- 1) Several lots in this proposed zone change lie within the HISTORIC DISTRICT, therefore NS should not be allowed there. These lots are south of French on 9th & 7th.
- 2) I support the change to SF1. However, NS included the language allowing "any residential, excluding apartments".
- 3) If the "any residential" provision could be excluded, I will support the change to SF1 and/or NS.

Raleigh R. White
Signature

Raleigh R. White
Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 20, 2009.

City of Temple
Planning Department
Room 201
Municipal Building
Temple, Texas 76501

RECEIVED

JUL 14 2009

City of Temple
Planning & Development

Number of Notices Mailed: 41

Date Mailed: July 10, 2009



PLANNING & ZONING COMMISSION MEMORANDUM

07/20/09

Item 4

Regular Agenda

Page 1 of 2

APPLICANT: Planning & Zoning Commission

DEPT. /DIVISION SUBMISSION & REVIEW: Tim Dolan, AICP, Planning Director

Z-FY-09-16: Hold a public hearing to discuss and recommend action on a zone change from Central Area District (CA) and Multiple Family Two District (MF2) to Single Family One District (SF1) and/or Neighborhood Service District (NS) for all of Blocks 1 and 26, Moore's First Addition; All of Blocks 3, 4, 7, 8, 9, & 10, L.R. Taylor Addition; and Out blocks 263- 1A, 2A, 2B, 2C, 2D, and 23, Temple Original.

STAFF RECOMMENDATION: Staff recommends the Commission conduct a public hearing, take testimony from the public, close the hearing and make a motion to consider recommending rezoning the area described above. The Commission has several options:

1. Motion to recommend approval for **Z-FY-090-16** subject to the following:
 - a. Rezone the area from CA and MF2 to NS; or
 - b. Rezone the area from CA and MF2 to SF1; or
 - c. Keep the area zoned CA and MF2; or
 - d. Reduce the area described above, keeping the similar choices described above.

ITEM SUMMARY:

The Commission called a public hearing for today's meeting to consider rezoning some lots south of the Historical District, and a small portion of the Historical District from CA and MF2 to either NS or SF-1. At the meeting July 6th, some Commissioners requested rezoning the area to SF-1, NS, or keep the area intact with the current CA zoning. The Commission conducted a special meeting Tuesday, June 9th at the First Christian Church to meet with area property owners and receive input for proposed Map amendments for rezoning some of the area from Central Area (CA) to Neighborhood Service (NS).

A zoning request should be reviewed for compliance with the Comprehensive Plan.

Future Land Use and Character

The Future Land Use and Character map designates the subject property as Neighborhood Conservation and Urban Retail. Chapter 3 of the Comprehensive Plan states that the Neighborhood Conservation designation is to keep the same residential development pattern allowing for non-conforming uses to change over time to Neighborhood Conservation. Urban retail uses are those serving the surrounding area with commercial buildings built to the property line, serving the local area. The Comprehensive Plan designates changes from Urban Retail to Neighborhood Conservation.

Thoroughfare Plan

While Nugent Street is shown as a collector sized roadway, it is north of the subject area. The remaining roads in the subject area are shown as local roads. The rezoning request from CA to NS or SF1 conforms to the road pattern and action statements of the Thoroughfare Plan requiring parking for NS or SF-1 uses. CA zoning does not require on-site parking.

Adequacy of Public Facilities

Water and sewer serve the area.

Public Notice

A total of 96 notices were sent out to the subject area and to owners 200' outside of the subject area. On Wednesday, July 15th at 2 PM, three notices favored the request and one notice opposed the request. One request was returned favoring the SF-1 request, while opposing the NS request. The newspaper printed notice of the public hearing on Friday, July 10, 2009 in accordance with state law and local ordinance.

FISCAL IMPACT: NA

ATTACHMENTS:

Future Land Use & Character Plan
Zoning Map
Aerial
Buffer

**EXCERPTS FROM THE
PLANNING & ZONING COMMISSION MEETING**

MONDAY, JULY 20, 2009

ACTION ITEMS

Item 3: Z-FY-09-16: Hold a public hearing to discuss and recommend action on a zone change from Central Area District (CA) and Multiple Family Two District (MF2) to Single Family One District (SF1) and/or Neighborhood Service District (NS) for all of Blocks 1 and 26, Moore's First Addition; All of Blocks 3, 4, 7, 8, 9, & 10, L.R. Taylor Addition; and Out blocks 263- 1A, 2A, 2B, 2C, 2D, and 23, Temple Original. (Applicant: Planning & Zoning Commission)

Mr. Dolan stated a public hearing would be held on this and if it moved forward to City Council the first reading would be August 6th and second reading would be August 20th.

Mr. Dolan gave some history for Commissioners and audience. The Commission asked Staff to look at some of the areas south of the Historical District for land uses and zoning. The Commission recommended some of the changes from the Central Area (CA) and Multi-Family Two (MF-2) to Neighborhood Services (NS) which changes were also discussed at the community meeting held on June 9th at First Christian Church.

Mr. Dolan stated there were Land Use charts located on both corners of the dais for public information for citizens in attendance which were also provided at the community meeting. These charts stated all allowed land uses within the Single Family (SF1), Neighborhood Services (NS) and Central Area (CA) zoning districts.

Mr. Dolan stated at the July 6th meeting the Commission asked Staff to also consider zoning the area as NS or SF1 which was advertised in the newspaper and property owners. A total of 16 responses have been submitted.

Mr. Dolan stated the map being shown indicated the original subject area outlined in red dashes is what was looked at from previous meetings. The Commission decided to reduce the area size to the solid red outline now indicated. The Commission also looked at including 4 lots of 516, 511, 517 and 518 into the zoning change.

Mr. Dolan stated the Future Land Use Plan shows the majority of this area for neighborhood conservation—to conserve the neighborhood, to take the Single Family awareness that is there. It would be in keeping in line with what the

Comprehensive Plan Advisory Committee and the City Council recommended for approval.

Mr. Dolan described and explained some of the uses, symbols, and abbreviations on the comparison charts. Single Family One (SF1) is more restrictive than the CA and NS areas.

Mr. Dolan stated there were a total of 96 notices mailed to property owners within the 41 lot area that is being looked at for rezoning and 55 notices mailed for the 200' buffer area. Of the 16 notices the Commission had in their documentation, seven (7) were in favor of SF1 and one was opposed to NS and SF1. The balance of the notices only stated they were in favor of the request but did not indicate any zoning type.

Mr. Dolan pointed out seven (7) non-confirming uses if the area were rezoned for SF. If the area were zoned NS, condominiums/townhomes and apartments would not be allowed but the retail uses would be. If the areas with the apartments and condos were zoned NS, those uses would become legal non-conforming uses.

Mr. Dolan stated there were several options for the Commission to consider:

- CA and MF2 to NS; or

- CA and MF2 to SF1; or

- Keep the areas zoned CA and MF2; or

- Reduce the area described earlier.

Mr. Dolan informed the Commission they could not enlarge the area geographically. If a larger area were to be considered, the public hearing should be closed without taking comments and/or action and instruct Staff to include a larger area. However, a larger area could not be allowed at this meeting.

Chair Pope asked Mr. Dolan to explain 'legal non-conforming.' Mr. Dolan stated the businesses are legal uses but non-conforming to the zoning district. For example, if an existing business were purchased as that specific business, and the purchaser decided at a later date to cease that specific business and instead used the property as a residential homestead or a Single Family use, that action will 'close the door' on the legal nonconforming use--the preceding business would be unable to reestablish itself, if the area were zoned SF1.

Chair Pope opened the public hearing and asked for public comments.

Mr. Scott Shine, 415 N. 9th Street, and has owned his home for ten (10) years. During this time a business opened next door to his home. Mr. Shine stated it is believed that commercial zoning has the effect of increasing a property's value

and always desirable. Mr. Shine disagreed and stated when commercial zoning is improperly applied it has the opposite effect and depresses property values.

Mr. Shine stated the homes located between French and Nugent that are protected by Single Family residential zoning “are on average valued at more than \$20 a square foot higher than homes that are very similar that are just a few feet away in Central Area zoning.” “On a typical home of 1800 square feet that is a difference of \$36,000.”

Mr. Shine stated that since 2006 when the business next door to his home opened, the Bell County Tax Appraisal District has continually lowered the value of his home from a “proposed value of \$156,903 in 2006 to a current value of \$88,336. That is a loss of value of over \$68,000.”

Mr. Shine stated the Tax Appraisal District is “very reluctant to lower the taxable value of a property, however, given the current zoning and proximity to a business, they could come to no other conclusion.” Mr. Shine feels the damage to his home’s value is far greater than the tax savings.

Mr. Shine stated protecting homeowners’ property values is far more important than speculating a commercial expansion. Within a few blocks of City Hall in the downtown business district, there are 17 commercial properties that are actively being advertised for lease or sale. There is no lack of appropriate commercial space in the downtown Temple area.

In July of 2002 the City of Temple issued the following statement about zoning of this area. “Staff believes all districts outside the downtown should be compatible with their potential and future land uses as in other parts of the city. The majority of the neighborhood is currently zoned Central Area zoning district. The City would like to rezone a portion of this neighborhood to a residential zoning district that doesn’t allow businesses, only single family homes. This would protect the existing family homes from a high density business use opening. The City supports the zone change.”

Mr. Shine stated there is no reason 2009 should be different than 2002. There was no infrastructure to support business then and there is no infrastructure to support business today. Mr. Shine stated this is a residential neighborhood, commercial expansion will destroy the quality of life for those who live there, it will destroy homes’ values and it will destroy the rich history of this beautiful neighborhood.

Mr. Shine stated now is the time to protect the single largest investment most people will make and urged the Commission to rezone the neighborhood single family residential.

Mr. Dolan asked Chair Pope if it was possible for anyone speaking that had written documentation to please let Staff make xerox copies of that

documentation for accuracy of taking the meeting minutes. Chair Pope agreed and asked the attending citizens to share their documentation with Staff.

Mr. Ron German, 511 N. 9th. Mr. German stated he did some investigation of this problem and tried to take a systematic approach to the question. In his unscientific survey, Mr. German had determined that “59 of the 64 properties that were in the original block were being used for family quarters” which represents “92% of that neighborhood or the shaded area in the single family residential platform.”

Mr. German stated if you go with the average of three (3) people in a family which the Census Bureau discussed, it means this decision potentially affects 177 people.

Mr. German stated it was ironic to even consider the idea of having a “stable, an electric subdivision, a transmission line, a government shop yard, a sewage pumping station, utility shops, treatment plant, off and on premise beer and wine sales, a stadium, a fitness club, cemetery, community center, halfway house, helicopter stop, gas station, convenience store, retail store, dental lab and others and temporary asphalt or cement batching plant as the gateway to the Historic District. It just didn’t seem right.”

Mr. German stated he took a drive down Avenue H and noticed the businesses in that area had designated parking. If the current designation in his neighborhood were to continue there is no requirement for parking, yet somehow they manage to impose that for the businesses along Avenue H.

Mr. German stated he is opposed to the NS when there is an option for SF1.

Ms. Barbara Boson, Executive Director of Texas Housing Authority, wanted to speak on behalf of 504 W. Calhoun for this hearing. The THA owns the Chateau Apartments located at 504 W. Calhoun and the apartments have been there since the mid-1960s. Ms. Boson asked the Commission to draw the line back and allow the apartments to remain multi-family. It is a 22 unit complex, houses the elderly and near-elderly and there is adequate parking for the residents without parking on the street. There are two buildings and if one were ever damaged, it would prevent the Texas Housing Authority from reconstructing.

Chair Pope asked Ms. Boson if her proposal was to move the line from Calhoun to behind the THA north property line and Ms. Boson replied that was correct, to take 263-1A out of the area.

Mr. Kevin Elliott, 417 N. 9th Street stated his wife owned the scrapbook store at that property. Mr. Elliott stated he looked at the downtown Temple area as an opportunity to conduct a business venture similar to what is found in Fredericksburg and Salado—taking residential homes and turning them into profitable businesses. Mr. Elliott stated his property appraised value had increased.

Mr. Elliott stated he had invested approximately \$30,000 into their business and it appeared their business would be grandfathered in as a legal non-conforming use if this zone change took effect. Mr. Elliott stated some of the suggested restrictions on the area would discourage and deny business interests and opportunities from coming into the area.

Mr. Elliott stated he opposed this zone change because he would like to see further opportunities for other like-minded people to come into the area and bring the type of quality clientele they have to the area.

Mr. Chad Lee, 501 N. 9th Street, stated he appreciated the point of view about bringing in businesses to the neighborhood but this is “a neighborhood.” Mr. Lee stated families live and have raised their families in this area.

Mr. Lee stated there were currently six businesses within the area and it is not a downtown area for redevelopment. It is an area for raising your families. Mr. Lee stated he is “offended” and does not appreciate someone entering his residential neighborhood and opening a business.

Mr. Lee asked the Commission to make the change to SF.

Ms. Hillary Shine, 415 N. 9th Street, stated she and her husband have been dealing with this issue for last three (3) years. Her home was built in 1921 and is an arts and crafts bungalow. Ms. Shine is passionate about her home and neighborhood preservation and feels there is a very real threat to her and others’ homes with the current Central Area (CA) zoning when this area was intended to be a neighborhood. Ms. Shine had a business move directly next door to her home in 2006 and was “shocked.” Ms. Shine did not believe the City would allow a business to locate right next door to her home. Ms. Shine approached the City to find out about this situation and discovered what Central Area zoning meant, or in her opinion, “no zoning.”

Ms. Shine stated almost “anything you can think of can be located right next door” to her and “unbelievably” CA zoning has been “exempted from most every commercial code.”

Ms. Shine has been pursuing this residential zone change for nearly three years through City Council, City Staff and Planning and Zoning and thanked the Commission for finally bringing it to the table.

Ms. Shine stated her goal is not to have the business closed next door to her but to prevent future business uses in this “residential” neighborhood. The predominant use is residential.

Ms. Shine stated businesses in the area lowers property values, increases traffic, destroys the historic integrity of properties and chases people like Ms. Shine away. Ms. Shine also stated the infrastructure and current uses support no

zoning other than single family or residential and there is no other way to prevent further deterioration of historic properties.

Ms. Shine asked the Commission to vote in favor of the zone change single family and do what is in the best interest for families that call this area home, to secure the future of the historic district and its surrounding areas, and improve all of the property values by disallowing inappropriate uses.

Ms. Shine addressed issues previously raised: using alleys as “creative” parking. Ms. Shine’s utilities and trash containers are located in the alley. Someone recently drove down the alley and destroyed the Shines’ gas meter and they experienced loss of power due to vehicles in the alley.

Ms. Shine also stated Neighborhood Services would require “buffers.” When a “house sits three feet off the ground, a six foot fence does nothing to buffer you from your neighbor.”

Ms. Katherine Mowbray, 418 N. 9th Street, stated she lived directly across from the scrapbook store. Ms. Mowbray purchased her home in '98 which was being used as a church and have slowly remodeled the house. Ms. Mowbray stated she feels the scrapbook store seems to be “the center viewpoint of this whole mess and that’s how it got started.”

Ms. Mowbray stated she has never had any issues with any of the scrapbook store’s customers.

Ms. Mowbray stated her property values have increased and did not understand how the Shines’ property taxes would have been lowered. Ms. Mowbray stated she did not want any zoning that would allow businesses such as a “strip club or something of that nature” but at the same time she feels small family businesses are fine.

Ms. Mowbray stated she did not welcome the idea of looking out her window and having large parking lots and asphalt or having homes torn down in order to have parking lots but she felt the businesses currently in the area were not causing any harm. Ms. Mowbray stated the businesses have not lowered her property taxes nor other neighbors she had spoken with and doesn’t understand why the Shines’ have been lowered. Ms. Mowbray felt this issue might be related to computer error.

Ms. Mowbray stated she did not want the neighborhood overrun by businesses but she didn’t feel there was any harm in it. If Ms. Mowbray were to sell her home, the increased traffic would provide more people to look at her home and other area homes for potential purchase.

Ms. Mowbray stated she did not feel this situation was so drastic and being vindictive was not the answer.

Mr. Edwin Bailey, 317 N. 9th Street, stated he would like to see the area stay single family and did not feel the area is conducive to a successful business.

Mr. William McGarvey, 401 N. 9th Street, stated there is a tendency to allow older cities to be encroached upon in areas that are contemplated to be single family. Mr. McGarvey stated “encroachment is a subtle means of deterioration” over a period of time.

Mr. McGarvey stated most inner cities desperately need businesses but the outer parts do not since “it conflicts and does not comport with overall ambience that should be preserved” and anything other than single family would be counterproductive.

Mr. James Roskey, 201 N. 9th, stated anyone who is considering the purchase of a home in this area should look at the zoning first. Mr. Roskey stated small businesses seemed to have helped some neighborhoods in surrounding areas and the property values had increased.

Mr. Roskey stated he is in favor of businesses in the area.

Ms. Patty Branson, 1101 N. 3rd Street, asked the Commission how they would feel if the property next door to them were sold and became some type of business. Ms. Branson lives just outside the subject property but is concerned about the possibility of fighting for her own neighborhood in the future. Ms. Branson asked the Commission to consider keeping this as a residential area.

Mr. Tim Norton, 1410 N. 7th Street, stated he moved to Temple to live in a residential neighborhood. Mr. Norton stated the “type of zoning currently in place is great strategy” if the area is contemplated for “revitalization” but that neighborhood “does not need to be revitalized with businesses--it needs to be kept with families.”

Mr. Norton stated he wanted people to move into Temple but to “live” in his neighborhood—not to “shop.” Mr. Norton stated the area needed to remain single family.

Chair Pope closed the public hearing since there were no more speakers.

Two motions were made on this Item:

Commissioner Barton made a motion to exclude 504 W. Calhoun and 402, 410, 412, 414 and 416 N. 5th Street from the rezoned area to be considered and Commissioner Hurd made a second.

Motion passed: (7:0)

Commissioners Dusek and Martin were absent.

Commissioner Luck made the motion to approve the zone change from Central Area (CA) and Multi-Family Two (MF2) to Single Family One (SF1) and Commissioner Talley made a second.

Motion passed: (7:0)

Commissioners Dusek and Martin were absent.

ORDINANCE NO. _____

[PLANNING NO. Z-FY-09-16]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM THE CENTRAL AREA DISTRICT (CA) AND THE MULTIPLE FAMILY TWO DISTRICT (MF2) TO THE SINGLE FAMILY ONE DISTRICT (SF1) FOR ALL OF BLOCKS 1 AND 26, MOORE'S FIRST ADDITION; ALL OF BLOCKS 4, 7, 8, 9, & 10, AND BLOCK 3, LOTS 2-4, L.R. TAYLOR ADDITION; AND OUTBLOCKS 263-2A, 2B, 2C, 2D, AND 23, TEMPLE ORIGINAL; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

Part 1: The City Council approves a zoning change from the Central Area District (CA) and the Multiple Family Two District (MF2) to the Single Family One District (SF1) for all of Blocks 1 and 26, Moore's First Addition; all of Blocks 4, 7, 8, 9 & 10, and Block 3, Lots 2-4, L.R. Taylor Addition; and Outblocks 263-2A, 2B, 2C, 2D, and 23, Temple Original, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

Part 2: The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map accordingly.

Part 3: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

Part 4: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

Part 5: It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **6th** day of **August**, 2009.

PASSED AND APPROVED on Second Reading on the **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(J)
Consent Agenda
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DEPT./DIVISION SUBMISSION & REVIEW:

Lonzo Wallace, Fire Chief

ITEM DESCRIPTION: SECOND READING — Consider adopting an ordinance amending Chapter 12, “Fire Prevention and Protection,” of the Code of Ordinances of the City of Temple, Texas, by adopting the 2006 International Fire Code.

STAFF RECOMMENDATION: Adopt ordinance as presented in item description, on second and final reading.

ITEM SUMMARY: The City is currently operating under the 1997 Standard Fire Prevention Code; this ordinance would update the City of Temple’s ordinance to the 2006 International Fire Code. The City has previously adopted the International Building and International Mechanical Codes, and by adopting the International Fire Code, the City will have a series of codes with similar terminology and the ability to cross-reference each other.

Meetings were held with stakeholders such as Temple Area Builders Association and local developers as well as the following departments: engineering, planning and development, legal and the fire department. The fire department was able to implement standards developed through these meetings, allowing a great deal of feedback from those citizens and staff members who would be most affected by the change in the code.

Though there have been several significant changes, many if not all of them are already been implemented and enforced through the adopted 2006 International Building Code.

FISCAL IMPACT: None

ATTACHMENTS:

[Ordinance](#)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AMENDING CHAPTER 12, "FIRE PREVENTION AND PROTECTION," OF THE CODE OF ORDINANCES OF THE CITY OF TEMPLE, TEXAS, BY ADOPTING THE 2006 INTERNATIONAL FIRE CODE; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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

Part 1: Chapter 12, "Fire Prevention and Protection," of the Code of Ordinances of the City of Temple, Texas, is amended to read as follows:

Chapter 12
FIRE PREVENTION AND PROTECTION

ARTICLE I. IN GENERAL

Sec. 12-1. Appointment qualifications, general powers, and duties of the fire chief.

(a) The fire chief of the fire & rescue department shall be appointed by the city manager, with approval of the city council. The fire chief shall be skilled in the management of the department and in the conduct thereof, and in the fighting and control of fires and conflagrations, and shall devote his entire time to the services of the department under such rules and regulations as may be laid down by the city manager and/or city council from time to time.

(b) The fire chief, under the direction of the city manager, shall have control of all fire stations and apparatus in the city, shall direct the department and preside over same in its efforts to extinguish all fires and conflagrations, and shall at all times be ready with his department for all the services which are usually expected of an efficient department.

(c) Wherever fire chief appears in this chapter, it shall mean the fire chief or his designee.

Sec. 12-2. Appointment qualifications, general powers, and duties of the fire code official.

(a) The fire prevention division is hereby created. Such division shall be in the fire & rescue department with the fire code official being a member of that division and reporting directly to the fire chief.

(b) The fire code official shall be appointed by the fire chief. The fire code official

shall be skilled in investigations, inspections, management and shall devote his time to educating the public in fire safety while enforcing federal, state, and local laws as they pertain to fire prevention. The fire code official must be a licensed peace officer, in accordance with Article 2.12 of the Texas Code of Criminal Procedure, unless otherwise approved by the fire chief.

(c) Wherever fire code official appears in this chapter, it shall mean the fire code official or his designee.

(d) When, in the opinion of the fire code official, further investigation of a fire is necessary, he shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing.

(e) The fire code official shall have the power to summons witness before him to testify in relation to any matter which is, by the provisions of this chapter, a subject of inquiry and investigation, and may require the production of any book, paper, document, or information deemed pertinent thereto. The fire code official is hereby authorized and empowered to administer oaths and affirmation to any persons appearing as witnesses before him.

(f) All investigations held by or under the direction of the fire code official may, in his discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined.

(g) Any witness who refuses to be sworn, or who refuses to appear to testify, or who disobeys any lawful order of the fire code official, or who fails or refuses to produce any book, paper, document or information touching any matter under examinations, or who commits any contemptuous conduct during an investigation or inquiry, after being summoned to give testimony in relation to any matter under investigation as provided in this article, may be charged with a misdemeanor, and it shall be the duty of the fire code official to cause all such offenders to be prosecuted.

(h) When the fire code official determines that the condition of any premises creates a serious fire hazard dangerous to human life, he may order the utility company or companies to disconnect the utility service until the hazardous condition is removed. In cases of emergency or in situations where a utility company does not respond to or comply with the order of the fire code official shall have the authority to immediately disconnect or cause the disconnection of the utility service. Any person whose property is affected by the act or order of the fire code official shall have the right of direct appeal to the city manager.

Sec. 12-3. Definitions.

In this chapter:

Fire Lane shall mean an off-street area that is accessible to the public and is to remain free and clear of parked and standing vehicles in order to provide access to commercial buildings for emergency response purposes. This term includes specifically marked areas in public parking lots.

Private Fire Apparatus Access Road shall mean a road that extends from the property line of a private property to within 150 feet of all points on a commercial building located on that property, to include private streets and access roadways.

The route that a fire hose would be laid shall mean the routing of fire hose from either a public or approved on-site fire hydrant to the fire apparatus along the length of the public roadway and/or approved private fire lanes.

Article II. Adoption of Fire Prevention Code

Sec. 12-4. Adoption of fire prevention code.

There is hereby adopted for the purpose of prescribing regulations governing conditions hazardous to life and property from fire and explosion, that certain code known as the International Fire Code 2006, International Code Council, as well as Appendices B, D, E, F, and G, as it now exists and as it may be revised from time to time, and the whole thereof, save and except:

- (a) Exclusions as noted in Article III of this chapter;
- (b) Revisions as noted in Article IV of this chapter;
- (c) Additions as noted in Article V of this chapter; and
- (d) Such portions as are hereinafter modified and amended, of which code not less than three (3) copies have been and now are filed in the office of the building official and the same are hereby adopted and incorporated as fully as if set out at length herein, and from the date of which this article shall take effect, the provisions thereof shall be controlling within the city limits.

Article III. Exclusions of International Fire Code 2006

The following provisions of the International Fire Code 2006 are excluded:

- (a) Exclude Chapter 3, "General Precautions Against Fire," Section 307, "Open Burning and Recreation Fires," but see Section 12-14, "Controlled Burning," herein.
- (b) Exclude Chapter 5, "Fire Service Features," Section 505, "Premises Identification," Subsection 505.1, "Address Numbers," but see Chapter 32, "Streets and Sidewalks," Section 32-9, "Residence and Building Address Numbering," from the city code.

(c) Exclude Chapter 33, “Explosives and Fireworks,” in its entirety, but see Section 12-13, “Fireworks,” herein.

(d) Exclude Chapter 5, “Fire Service Features,” Section 508, “Fire Protection Water Supplies,” Subsection 508.5, “Fire Hydrant Systems,” but see Section 12-16, “Fire Hydrants,” herein.

(e) Exclude Chapter 1, “Administration,” Section 105, “Permits,” Subsection 105.6, “Required operational permits,” Part 105.6.35, “Private Fire Hydrant Exception,” but see Section 12-16, “Fire Hydrants,” herein.

(f) Exclude Chapter 3, “General Precautions Against Fire,” Section 308, “Open Flames,” Subsection 308.3, “Open Flames,” Part 308.3.1, “Open-flame Cooking Devices Exception,” but see Section 12-14 b, “Recreational Fires and Outside Fires for Domestic Purposes,” herein.

(g) Exclude Chapter 9, “Fire Protection Systems,” Section 906, “Portable Fire Extinguishers,” Subsection 906.1, “Where Required Exception,” but see Section 12-9, Table 906.3 (1), “Fire Extinguishers for Fire Hazards,” and Section 12-10, Table 906.3 (2), “Flammable or Combustible Liquids with Depths of less than or equal to 0.25-inch,” herein.

Article IV. Revisions of International Fire Code 2006

Sec. 12-5. Adjustment to Chapter 1, “Administration.”

(a) Adjustment to Chapter 1, “Administration,” Section 101, “General,” Subsection 101.1, “Title,” amended to read as follows:

(1) In the title insert “The City of Temple.”

(2) Replace all references to “the ICC Electrical Code” with “the currently adopted edition of the City of Temple Electrical Code.”

(b) Adjustment Chapter 1, “Administration,” Section 105, “Permits,” Subsection 105.1, “General,” Part 105.1.1, “Permits Required,” amended to read as follows:

Permits required by this code shall be obtained from the construction safety division of the city. Permit fees, if any, shall be paid prior to issuance of the permit. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official.

(c) Adjustment to Chapter ,1 “Administration,” Section 108, “Board of Appeals,” Subsection 108.1, “Board of Appeals Established,” amended to read as follows:

Refer to Chapter 7, “Buildings,” of the City of Temple Code of Ordinances.

Sec. 12-6. Adjustment to Chapter 8, “Interior Finish, Decorative Materials and

Furnishings,” Section 806, “Decorative Vegetation in New and Existing Buildings,” subsection 806.1, “Natural Cut Trees,” amend to read as follows:

Natural cut trees shall be prohibited in all commercial occupancies as well as Group R occupancies, excluding one and two family dwellings, apartments, and townhomes.

Sec. 12-7. Replace Table 906.3(1), “Fire Extinguishers for Class A Fire Hazards,” with the following table:

Sec. 12-8. Replace Table 906.3(2), “Flammable or Combustible Liquids with Depths

Fire Extinguisher Requirement Based on Square Footage			
	LIGHT (LOW) HAZARD OCCUPANCY	ORDINARY(Moderate) HAZARD OCCUPANCY	EXTRA (High) HAZARD OCCUPANCY
Minimum Rated Single Extinguisher	5 lb. ABC	5 lb. ABC	5 lb. ABC
Maximum Floor Area Per Unit	3,000 square feet	1,500 square feet	1,000 square feet
Maximum Travel Distance to Extinguisher	75 feet	75 feet	75 feet

of Less than or Equal to 0.25-inch,” with the following table:

Fire Extinguisher Requirement Based on Travel Distance		
TYPE OF HAZARD	BASIC MINIMUM EXTINGUISHER RATING	MAXIMUM TRAVEL DISTANCE TO EXTINGUISHERS (FEET)
Light (Low)	5 lb, ABC	75 feet
Ordinary (Moderate)	5 lb, ABC	75 feet
Extra (High)	5 lb, ABC	75 feet

Sec. 12-9. Adjustment to Chapter 14, “Fire Safety During Construction and Demolition,” Section 1404, “Precautions Against Fire,” Subsection 1404.5, “Fire Watch,” amend to read as follows:

When required, as determined by the fire code official, certified firefighter(s) from the fire & rescue department shall be provided as an on-site fire watch for building construction or demolition.

Sec. 12-10. Adjustment to Chapter 33, “Explosives and Fireworks,” Section 3307 “Blasting,” Subsection 3307.1, “General,” amend to read as follows:

Blasting operations shall be conducted only by approved, competent operators familiar with the required safety precautions and the hazards involved and in accordance with the provisions of NFPA 495 and Section 12-23, “Extraction Operations Regulations.”

Sec. 12-11. Adjustment to Chapter 38, “Liquefied Petroleum Gases,” Section 3801, “General,” 3801.1 “Scope,” amend to read as follows:

Storage, handling, and transportation of liquefied petroleum gas (LP-gas) and the installation of LP-gas equipment pertinent to systems for such use shall comply with this chapter, the Texas Railroad Commission Rules governing LP-gas and NFPA 58. Properties of LP-gases shall be determined in accordance with Appendix B of NFPA 58.

Sec. 12-12. Adjustment to Appendix D, “Fire Apparatus Access Roads.”

(a) Section D103, “Minimum Specifications,” amended as follows:

- (1) Exclude Table D103.4, “Requirements for Dead-end Fire Apparatus Roads.”
- (2) Subsection D103.4, “Dead-ends,” amend to read as follows:

Public Dead-end fire apparatus access roads in excess of 150 feet (45,720 mm) in length shall be designed in accordance with the City of Temple Design and Development Standards Manual.

- (3) Subsection D103.5, “Fire apparatus road gates,” amend to read as follows:

5. Electric gates shall be equipped with a lock box of a type approved by the fire & rescue department and contain a manual release. The release will be used by fire & rescue personnel for emergency access in the event of a power failure. Any manual release devices used for emergency access to a property shall be approved by the fire code official.

- (4) Subsection D103.6, “Signs,” amend to read as follows:

Where required by the fire code official, private fire apparatus access roads shall be marked with a permanent sign reading, “NO PARKING—FIRE APPARATUS ROAD,” as depicted in Figure

D103.6. Signs shall have a minimum dimension of 18 inches (305 mm) wide by 24 inches (457 mm) high and have red letters on a white reflective background. Signs shall be posted on one or both sides of the private fire apparatus road, as required by Section D103.6.1 or D103.6.2.

(b) Section D106, “Multiple-Family Residential Developments,” amend to read as follows:

- (1) D106.1, “Projects having 1-75 dwelling units.” Multiple-family residential projects having 1-75 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the city’s Design & Development Standards Manual.
- (2) D106.2, “Projects having 76-150 dwelling units.” Multiple-family residential projects having 76-150 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City’s Design & Development Standards Manual. The exception to this sub-section is excluded. See Article II of this chapter.
- (3) D106.3, “Projects having 151-300 dwelling units.” Multiple-family residential projects having more than 151-300 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City’s Design & Development Standards Manual.
- (4) D106.4, “Projects having 301 or more dwelling units.” Multiple-family residential projects having 301 or more dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City of Temple Design & Development Standards Manual.

(c) Section D107, “One- or Two- Family Dwelling Residential Developments,” amend to read as follows:

- (1) D107.1, “Developments having 1-75 dwelling units.” One- or Two-Family residential developments having 1-75 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the city’s Design & Development Standards Manual.
- (2) D107.2, “Developments having 76-150 dwelling units.” One- or Two-Family residential having 76-150 dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City’s Design & Development Standards Manual. The exception to this sub-section is excluded. See Article II of this chapter.
- (3) D107.3, “Developments having 151-300 dwelling units.” One- or Two-Family residential having more than 151-300 dwelling units shall have

residential subdivision Entrance/Access roads designated as required by the City's Design & Development Standards Manual.

- (4) D107.4, "Developments having 301 or more dwelling units." One- or Two-Family residential having 301 or more dwelling units shall have residential subdivision Entrance/Access roads designated as required by the City of Temple Design & Development Standards Manual.

Article V. Additional Provisions Related to Fire Prevention and Protection

Sec. 12-13. Fireworks.

(a) *Definitions.*

Distributor means a person who:

- a. imports fireworks into this state; or
- b. sells fireworks to:
 1. a jobber, retailer, or other distributor for resale; or
 2. a holder of a single public display permit, a multiple public display permit, or another fireworks permit.

Fireworks means a composition or device:

- a. designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation; and
- b. defined by 49 C.F.R. Section 173.56(j)(1996).

Fireworks 1.3G means a large fireworks device:

- a. primarily designed to produce visible or audible effects by combustion, deflagration, or detonation; and
- b. classified as a 1.3G explosive by the department in 49 C.F.R. Part 173 (1996).

Fireworks 1.4G means a small fireworks device:

- a. primarily designed to produce visible or audible effects by combustion, deflagration, or detonation;
- b. that complies with the construction, labeling, and chemical composition requirements of the United States Consumer Product Safety Commission in 16 C.F.R. Part 1507 (1996), or the most recently adopted version of that rule; and
- c. that is classified by the department in 49 C.F.R. Part 173 (1996).

Illegal fireworks means a fireworks device possessed, sold, manufactured, discharged, or transported in violation of this chapter.

Jobber means a person who purchases fireworks only for resale to retailers.

Manufacturer means a person, firm, corporation, or association who makes fireworks.

Person means an individual or entity, including an owner, manager, officer, employee,

or occupant.

Public display means the igniting of Fireworks 1.3G for public or private amusement.

Pyrotechnic operator means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising public displays of Fireworks 1.3G or Fireworks 1.4G.

Pyrotechnic special effects operator means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising proximate displays of Fireworks 1.3G or Fireworks 1.4G.

Retailer means a person who purchases fireworks for resale only to the general public.

(b) *Exemptions.*

This section does not apply to:

- (1) a toy pistol, toy cane, toy gun, or other device that uses paper or plastic caps in sheets, strips, rolls, or individual caps that contain not more than an average of 25 hundredths of a grain of explosive composition per cap and that is packed and shipped under 49 C.F.R. Part 173 (1996);
- (2) a model rocket or model rocket motor designed, sold, and used to propel recoverable aero models;
- (3) the sale or use of, in emergency situations, pyrotechnic signaling devices or distress signals for marine, aviation, or highway use;
- (4) the use of a fusee or a railway torpedo by a railroad;
- (5) the sale of blank cartridges for:
 - i. use in a radio, television, film or theater production;
 - ii. a signal or ceremonial purpose in an athletic event; or
 - iii. an industrial purpose; or
- (6) the use of a pyrotechnic device by a military organization.

(c) *General prohibition against possession, sale, manufacture, discharge, or transportation.* Except as otherwise specifically provided in this section, it shall be unlawful for any person to possess, sell, manufacture, discharge, transport, or otherwise assemble, store, receive, keep, offer or have in his possession with intent to possess, sell, manufacture, transport, discharge, cause to be discharged, ignite, detonate, fire or otherwise set in action any fireworks of any description.

(d) *Permitted transportation.* It shall be lawful for any distributor, jobber, manufacturer, pyrotechnic operator, pyrotechnic special effects operator, or retailer to

transport fireworks in accordance with the interstate commerce commission regulations regarding the transportation of explosives and other dangerous articles by motor, rail, and water.

(e) *Illegal fireworks as a nuisance; seizure and destruction, etc.* The presence of any fireworks within the jurisdiction of the city in violation of this section is hereby declared to be a common and public nuisance. The fire code official is directed and required to seize and cause to be safely destroyed any fireworks found in violation of this article. Any member of the fire prevention division of the fire & rescue department or any police officer of the city or any other duly constituted peace officer is empowered to stop the transportation of and detain any fireworks found being transported illegally or to close any building where any fireworks are found stored illegally until the fire code official can be notified in order that such fireworks may be seized and destroyed in accordance with the terms of this section. Notwithstanding any penal provision of this article, the city attorney is authorized to file suit on behalf of the city or the fire code official, or both, for such injunctive relief as may be necessary to prevent unlawful storage, transportation, keeping or use of fireworks within the jurisdiction of the city and to aid the fire code official in the discharge of his duties and to particularly prevent any person from interfering with the seizure and destruction of such fireworks, but it shall not be necessary to obtain any such injunctive relief as a prerequisite to such seizure and destruction.

(f) *Section provisions to apply within five thousand feet of the city limits.* This section shall also be applicable and in force within the area immediately adjacent and contiguous to the city limits and extending for a distance outside the city limits for a total of five thousand (5,000) feet, and it shall be unlawful to do or perform any act in violation of this Article within such area of five thousand (5,000) feet outside the city limits; provided that this Article shall not apply within any portion of such five thousand (5,000) foot area which is contained within the city limits or extraterritorial jurisdiction of any city.

(g) *Right of entry to enforce section.* The fire code official is hereby authorized to enter any building where the unlawful presence of fireworks is suspected in order to inspect the same for the presence of such fireworks; but such authority does not include the right to enter a private dwelling or apartment.

(h) *Public displays; when permitted.* A public display of fireworks shall be permitted when made in compliance of the terms and conditions of this article.

(i) *Application for permit.* Any adult person or any firm, co-partnership, corporation or association planning to make a public display of fireworks shall first make written application for a permit to the fire code official at least seventy-two (72) hours in advance of the date of the proposed display. No city permit shall be issued until a permit for said purposes has been issued by the State of Texas.

(j) *Issuance or denial and term of permit; permit non-transferable.* It shall be the duty of the fire code official to make an investigation as to whether the display as proposed by the applicant for a permit under this section shall be of such a character that it may be hazardous to property or dangerous to any person, and he shall, in the exercise of reasonable

discretion, grant or deny the application, subject to the conditions prescribed in this section. In the event the application is approved, a permit shall be issued for the public display by the fire code official. The fire code official shall determine what fire protection safety measures will be required before, during and after the display and it is the responsibility of the permittee to make sure the fire protection measures are enforced. Such permit shall be valid for a period of time designated on the permit but can be extended by the fire code official. The permit is non-transferable and shall only be good for one display. In the event the permit is denied by the fire code official, he shall notify the applicant of the denial, in writing.

(k) *Insurance or bond required.* The applicant for a display permit under this section shall, at the time of making application, furnish proof that he carries compensation insurance for his employees, as provided by the laws of this state, and he shall file with the fire code official a certificate of insurance evidencing the carrying of public liability insurance in an amount not less than one million dollars (\$1,000,000) issued by an insurance carrier authorized to transact business in the state, for the benefit of the person named therein as assured, as evidence of ability to respond to damages in at least the amount of one million dollars (\$1,000,000), such policy to be approved by the city. In lieu of insurance, the applicant may file with the fire code official, a bond in the amount of one million dollars (\$1,000,000) issued by an authorized surety company approved by the city, conditioned upon the applicant's payment of all damages to persons or property which shall or may result from or be caused by such public display of fireworks, or any negligence on the part of the applicant or his agents, servants, employees, or subcontractors in the presentation of the public display. The insurance policy shall name the city as an additional insured, and the bond shall cover the city.

(l) *Only aerial displays permitted.* Any fireworks display authorized under this article shall be limited to an aerial display.

(m) *Storage of material prohibited in the city.* The material to be used for a public display authorized by this article shall not be stored within the city limits, but shall be brought in on the date of the public display and then shall be taken immediately to the place of display for further handling and storage; except that such materials may be stored within the city limits in a secured storage area designated by the fire code official.

(n) *Hazardous conditions prohibited.* Any person overseeing a display of fireworks under this article shall be a competent, adult person, an experienced pyrotechnic operator and approved by the fire code official. No person shall handle fireworks at a public display unless such person has been approved by to do so by the fire code official. The names of all experienced pyrotechnic operators shall be designated on the permit issued for the public display.

(o) *Firefighter to be present.* For each public display of fireworks under this section, not less than two (2) firefighters of the city shall be in attendance during the display. The expense of such firefighters at the display shall be borne by the applicant for the permit.

Sec. 12-14. Controlled Burning

(a) *Burning of debris and other inflammable materials, generally.*

- (1) Permit. It shall be unlawful for any person to burn trash, brush, tree limbs, grass, trees, leaves, paper, boards, planks, lumber, or any other character of debris or inflammable materials whatsoever in the city, except in an incinerator or container which has been approved, in writing, by the fire code official. An exception shall be considered by the fire code official on an individual basis when and after the Texas Commission on Environmental Quality (TCEQ) has issued, in writing, a permit to so burn debris and other inflammable materials.
 - i. A copy of the TCEQ letter of determination or permission to conduct a controlled burning must be presented to the fire code official or his designee.
 - ii. The fire code official shall inspect the location of a controlled burn and shall determine if the burn can be safely conducted before any actual burning occurs.
 - iii. The fire code official may require the following, depending on conditions found during the controlled burn site inspection:
 - a. A specified number of individuals be present with fire extinguishing devices and appliances;
 - b. Fire breaks to be cut around the area to be burned;
 - c. A trench to be dug and any burning be conducted in the trench;
 - or
 - d. Any other requirements that the fire code official may deem necessary to safely conduct the controlled burn.
- (2) A controlled burn that the TCEQ has authorized and that has been approved by the fire code official must meet criteria as outlined in the remainder of this section.
- (3) Burning shall be commenced when the wind will carry smoke and other pollutants away from the city or any residential, recreational, commercial, or industrial area, navigable water, public road, or landing strip which may be affected by the smoke. Burning shall not be conducted when a shift in wind direction is predicted which could produce adverse effects to persons, animals, or property during the burning period. If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post a flag person on affected roads in accordance with the requirements of the Department of Public Safety.
- (4) Burning must be conducted downwind of, or at least three hundred (300)

feet from any structure located on adjacent properties unless prior written approval is obtained from the adjacent occupant with possessorory control.

- (5) Burning shall be conducted in compliance with the following meteorological and timing considerations:
 - i. The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard conditions. In no case shall the extent of the burn area be allowed to increase after this time.
 - ii. Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period. This information can be obtained by contacting the Draughton-Miller Central Texas Regional Airport or the National Weather Service.
- (6) Per TCEQ Rules & Regulations, heavy oils, asphaltic materials, items containing natural or synthetic rubber, or any material which may produce an unreasonable amount of smoke must not be burned.
- (7) An incinerator or container used for burning of any material mentioned in this section (12-20) shall be located so that smoke will not become a nuisance to occupants of surrounding building and such incinerator or container shall not create a hazard to surrounding property. All incinerators must meet any regulation set forth by the TCEQ.
- (8) Any and all burning of debris and other inflammable materials will be extinguished immediately if determined by the fire code official to be unsafe or constituting a hazard to the environment or interferes with the reasonable use of any properties.
- (9) The fire code official is authorized to order the extinguishment by the permit holder, another person responsible or the fire department of an open burning that creates or adds to a hazardous or objectionable situation.
- (b) *Recreational Fires and Outside Fires for Domestic Purposes.*
 - (1) Open burning in approved containers shall be allowed without a permit at single-family homes, duplexes, and town homes, subject to the regulations contained herein.

- (2) Fires shall be limited to a maximum 3 feet diameter and 2 feet in height, must be contained in a non-combustible chimenea, barbeque pit, outdoor fireplace, fire pit, or other method approved by the fire code official.
- (3) All openings in the container or fire pit must be covered with wire mesh or other screening materials that will prevent the passage of sparks and ember.
- (4) Fires must be kept at least 10 feet from any structure or combustible exterior wall.
- (5) Fires must be constantly attended.
- (6) No such fire or container used for an open burning may be used on any porch, deck, balcony, or other portion of a building; within any room space; or under any building overhang.
- (7) The burning of yard waste, leaves, brush, vines, evergreen needles, branches smaller than 3 inches in diameter, untreated lumber, garbage, paper products, or anything other than firewood as set forth herein is prohibited.
- (8) The fire code official, police officer, or code enforcement officer may order any open fire, or use of a chimenea, outdoor fireplace, or fire pit which creates a nuisance to be extinguished.
- (9) All chimineas must be extinguished by 1:00 a.m.

(c) *Burning of garbage, petroleum products and motor vehicles prohibited.* The burning of garbage in any form, including petroleum products, automobiles, other motor vehicles or any part thereof for wrecking or salvage purposes in or on any lot or other premises within the city limits is hereby prohibited.

(d) *Fire prohibited in streets, alleys and on or in public property.* It shall be unlawful for any person to light or have lighted any fire in or on any street, alley, thoroughfare, or public property, except in designated areas or where authorized by the fire official.

Sec. 12-15. Private Fire Apparatus Access Road and Fire Lanes.

(a) *Maintenance.*

- (1) A property owner shall at all times maintain and keep in good repair all private apparatus access roads and fire lanes on the premises.
- (2) The owner shall maintain all signs and/or markings in good condition and legible at all times.

(b) *Abandonment of Private Fire Apparatus Access Roads and Fire Lanes.* No owner or person in charge of any premises served by a private fire apparatus access road shall

abandon or close any such fire apparatus access road without complying with the following procedure:

- (1) A request to the fire code official shall be made in writing by the owner stating the reason for abandonment of the private fire apparatus access road;
- (2) The fire code official shall determine if said property is no longer subject to the requirements of this code;
- (3) The fire code official shall either approve or deny the request for abandonment and notify the owner, in writing, within 10 days of receiving the request; and
- (4) No private fire apparatus access road may be abandoned until the fire code official has approved the abandonment, in writing.

(c) *Authority to Determine Location.* The locations of fire lanes and private apparatus access roads shall be determined by the fire code official in conformity with the provisions of this article.

(d) *Location of Private Fire Apparatus Access Roads and Fire Lanes.* No building, other than single-family or two-family dwellings, shall be constructed so that any part of the perimeter of the building is greater than one hundred and fifty (150) feet from a public way or public place unless the owner or property manager constructs and maintains a private apparatus access road or fire lane having a minimum width of twenty (20) feet and a minimum overhead clearance throughout of no less than thirteen (13) feet six (6) inches and terminating within one hundred and fifty (150) feet from the furthestmost point of said building. The same being reflected on the first plat of the property.

(e) *Restrictions.*

- (1) Private apparatus access road or fire lanes shall not be used as loading zones.
- (2) There shall be no parking in any private apparatus access road or fire lane at any time.

(f) *Posting of Signage and Markings for Fire Lanes and Fire Hydrants.*

- (1) All required fire lanes shall be conspicuously marked and shall have signage posted that shall read “Fire Lane—No Parking,” and all required fire hydrants on private property shall be marked “Fire Hydrant—Do Not Obstruct.”
- (2) Signage shall be rectangular signs with red striping;
 - i. Rectangular signs shall be a minimum of 18” width x 24” height. They will have a white background with red lettering and be made of reflective material.
 - ii. Striping will consist of a 5” wide red strip with 4” high white letters.
- (3) Required fire lane signage shall be placed no less than thirty (30) feet and no greater than forty (40) feet apart.
- (4) Required fire hydrant markings shall be placed on both sides of a hydrant

and at a distance of fifteen (15) feet from the hydrant.

(g) *Private Dead-end Fire Apparatus Access Roads.* Private dead-end fire apparatus access roads in excess of 150 feet (45,720mm) in length shall be provided with a 120 foot hammerhead, 60 foot “Y,” or 96 foot diameter cul-de-sac in accordance with figure D103.1 of the 2006 International Fire Code.

Sec. 12-16. Fire Hydrants

(a) *Authority to determine location.* The fire chief shall determine the location of fire hydrants in conformity with the provisions of this section.

(b) *Fire hydrants; location.*

- (1) As residential zoned property is developed, fire hydrants shall be located at a maximum spacing of six hundred (600) feet as measured along the length of the roadway and no part of any structure shall be farther than five hundred (500) feet from the fire hydrant as measured by the route that a fire hose would be laid.
- (2) As non-residential zoned property is developed, fire hydrants shall be located a maximum spacing of three hundred (300) feet as measured along the length of the roadway and no part of any structure shall be further than five hundred (500) feet from the fire hydrant as measured by the route that a fire hose is laid.

(c) *Restrictions.*

- (1) Type of fire hydrants. All required fire hydrants shall be of the national standard three-way breakaway type no less than five and one-fourth (5 ¼) inches in size and shall conform to the provisions of the latest American Water Works Association (AWWA) specifications C-502 and shall be placed upon approved water mains of no less than six (6) inches in size.
- (2) Gate valves shall be placed on all fire hydrant leads and within three feet of the point of connection to the water main.
- (3) Required fire hydrants shall be installed in such a manner that the breakaway point will be more than three (3) inches, and not greater than five (5) inches, above the ground surface.
- (4) A spacing of no less than eighteen (18) inches shall be provided between the center of the barrel of the large steamer connection and the finished grade surface.
- (5) No fire hydrant located on a six-inch (6 inch) dead-end water main shall be located more than one thousand eight hundred 1,800 ft. from a six-inch (6

inch) or greater main.

- (6) No six-inch looped water main shall exceed three thousand five hundred (3,500) feet in length.
 - (7) Fire hydrants shall be installed on a water main that is separate from the domestic water supply, except when it is determined by the fire code official that the required maximum one (1) hour demand plus the needed minimum fire flow of one thousand (1,000) gallons per minute will be met by alternate installation.
 - (8) Fire hydrants located on public property shall be located a minimum of two (2) feet and a maximum of four (4) feet behind the curb line, where a curb exists.
 - (9) All fire hydrants placed on private property shall be adequately protected by either curb stops, concrete posts or other methods, as approved by the fire code official. Such stops or posts shall be maintained by the property owner or manager.
 - (10) All fire hydrants shall be installed so that the steamer connection faces the fire lane or street.
 - (11) Fire hydrants, when placed at intersections or access drives to parking lots, when practical, shall be placed so that no part of a fire truck connected to the hydrant will block the intersection or parking lot access.
 - (12) Post, fences, vehicles, growth, trash, storage and other materials or objects shall not be placed or kept near fire hydrants, fire department inlet connections or fire protection system control valves in a manner that would prevent such equipment or fire hydrant from being immediately discernible. The fire department shall not be deterred or hindered from gaining immediate access to fire protection equipment or fire hydrants.
 - (13) Fire hydrants located on private property shall be accessible to the fire department at all times and free of any type of obstruction that would hinder their use (e.g., vegetation). A 3-foot clear space shall be maintained around the circumference of fire hydrants.
 - (14) The fire code official shall have the authority to approve a variance of up to ten percent (10%) of the footage requirements found at Sec. 12-16, B, parts (1) and (2).
- (d) *Maintenance.*
- (1) All fire hydrants shall be inspected, flushed and painted at least once annually and such inspections, flushing and painting shall be the responsibility of fire &

rescue. Fire hydrants shall be color coded as follows:

- i. Less than 500 gpm – Red Bonnet
- ii. 500-999 gpm – Yellow Bonnet
- iii. 1000-1499 gpm – Green Bonnet
- iv. Over 1500 gpm – Blue Bonnet

- (2) Any maintenance or repairs require to keep a fire hydrants in proper working order, other than the maintenance found at a subsection above, shall be the responsibility of the property owner or manager of the property on which the fire hydrant is located.

(e) *Use; opening and closing.* The fire chief shall prescribe the manner in which all fire hydrants shall be opened or closed. No person shall open or close any fire hydrant unless authorized to do so by the chief.

Sec. 12-17. Extraction Operations Regulations

(a) *Purpose.*

- (1) In order to promote the health, safety, and welfare of those who work or reside near extraction operations, and to protect air quality and the water resources of the city, the regulations in this section are applicable to extraction operations.
- (2) This section shall apply to all extraction operations conducted within the city or within 5000 feet of the city limits.

(b) *Definitions.*

In this section:

Blasting shall mean the practice or occupation of extracting heavy masses of rock, or other materials imbedded in the ground, by means of explosives or blasting agents.

Extraction operations shall mean the use of a lot or tract of land primarily for extraction of materials (including, but not limited to, limestone, rock, sand, gravel, or soil, but not oil or natural gas).

Extraction site shall mean the location of materials or rock removal or extraction operations as delineated by a site plan or a certificate of occupancy.

Regulatory authority shall mean the city.

(c) *Blasting.* All blasting activity that falls within the scope of this section shall comply with the following provisions;

(1) Permit required.

- i. An appropriate blasting or explosives permit must be acquired from the regulatory authority prior to any blasting activity or preparation for blasting activity at an extraction site.
- ii. A blasting or explosives permit will authorize blasting for the extraction of materials (e.g., rock or stone) only at the extraction site designated on the permit.
- iii. The extraction site operator, or designated representative, may apply for a blasting or explosives permit in accordance with the following procedures:
 - a. The applicant shall submit a completed permit application form and fee, as required by the regulations contained in the 2006 International Fire Code, as adopted and amended by the city. The permit fee shall be in an amount set by resolution of the city council.
 - b. The fire code official shall have thirty (30) days in which to approve or deny a permit application.
 - c. Any party aggrieved by the denial of a permit or inaction by the fire code official may appeal such decisions to the Building Board of Appeals, in writing. Upon receipt of an appeal notification, the Board shall take the actions required to review the appeal, in accordance with the 2006 International Fire Code.
 - d. The application shall contain the following information:
 1. Name of the operator(s) conducting the blasting;
 2. Identification of extraction site;
 3. Description of conditions, if any, which may cause possible adverse blasting effects;
 4. Normal extraction operations schedule;
 5. Type of explosives or blasting agents to be used;
 6. Type of stemming;
 7. Name(s) of licensed blasters on the job;
 8. Copy of Mine Safety Health Administration (MSHA) Certificate of Training (Form 5000-23) for all personnel involved in the extraction operations.
 9. Copy of Insurance Certificate of Blasting Liability Coverage

(2) Insurance required.

- i. Before a permit is issued, the applicant shall obtain and maintain general liability insurance having limits of not less than one million dollars (\$1,000,000) per occurrence for bodily injury and property damage combined with one million dollars (\$1,000,000) or greater annual aggregate throughout the permitted period for the purpose of the payment of all damages to persons or property which arise, or are caused by, the conduct of any act or omission authorized by the permit. The general liability insurance shall name the city as an additional insured with a waiver of subrogation in favor of the city. The policy shall contain a provision requiring the insurance company to furnish the city with thirty (30) days advance written notification on any cancellation or non-renewal of the policy.
- ii. Evidence of compliance with this requirement shall be considered as having been met when the policy, a copy thereof, or a certificate of insurance has been filed with, and approved by, the fire code official. Such policy shall include an endorsement that the fire code official shall be notified at least thirty (30) days in advance in the event the policy or policies are canceled. The city may cancel a permit for any violation of this section.

(3) Regulatory Compliance. All blasting operations located within an extraction site shall comply with the applicable provisions of the 2006 International Fire Code and with this section, as well as all applicable local, state, and federal regulations concerning industrial noise and dust levels and applicable drainage, water and air standards.

(4) Annual permit renewal required.

- i. In addition to compliance with local, state, or federal regulations, the operator shall be required to comply with the provisions of this section by renewing a permit annually before the anniversary date of the permit.
- ii. Upon renewal, the extraction site operator shall:
 - a. certify in writing that the blasting activities at the permitted extraction site are anticipated to remain materially unchanged from the activities described on the permit application; or
 - b. provide all relevant information relating to material changes at the permitted extraction site to the fire code official for review;
 - c. pay the annual permit fee; and
 - d. file a current certificate of insurance which complies with this section.

iii. A blasting permit will remain in force and effect, provided that the blasting activities at the extraction site specified in the permit are anticipated to remain materially unchanged, the permittee has complied with the requirement of this section during the preceding permit year, and the annual renewal requirements have been met.

(5) Hours of operation. The hours during which extraction operations may take place by blasting shall be at any time during the hours between 8:00 a.m. and 5:00 p.m. Extraction by blasting shall be prohibited on Saturdays, Sundays, and legal holidays unless a variance is obtained from the fire code official based upon public safety concerns or extraordinary economic considerations.

(6) Monitoring of Blasting.

i. The extraction site operator shall monitor each blast to accumulate data with respect to seismographic and air blast effects of the blasting activity, as required by state and federal law. The extraction site operator shall conduct independent monitoring of blasting events, if directed, and to the extent and frequency reasonably required by the regulatory agency.

ii. Information generated in the form of reports or other data from this monitoring shall be submitted to the fire code official within seventy-two (72) hours of each blasting event.

iii. Monitoring information shall include:

- a. actual date and time of the blast;
- b. type of explosives or blasting agents used;
- c. technical data and material safety data sheets for all explosives or blasting agents used;
- d. total pounds of explosives used in each blast;
- e. number, spacing, stemming and depth of holes;
- f. maximum pounds per delay;
- g. firing sequence, delay sequence, and typical hole load diagrams;
- h. location and distance of extraction operation from seismographs;
- i. weather conditions at time and location of blast;
- j. seismograph data;
- k. and ground vibrations or air blast records which shall include:
 1. Type of instrument, sensitivity and calibration signal of certification of annual calibration.
 2. Exact location of instrument and the date, time and distance from the blast;
 3. Name of person and firm taking the reading as well as the person analyzing the seismic record; and
 4. The vibration and air blast level recorded.

- (7) Safety Standards. The extraction site operator is responsible and required to comply with all applicable provisions of any state or federal law or applicable regulations promulgated by the Occupational Safety Health Administration (OSHA), Mine Safety Health Administration (MSHA), Alcohol, Tobacco, and Firearms (ATF), or any other executive agency of the state or federal government relating to use, handling, transportation, storage, or detonation of explosives or blasting agents.
- (8) Records and Inspections.
- i. The holder of a blasting permit shall make the extraction operations site available to the fire code official for inspection at all times during regular business hours.
 - ii. The permittee shall retain a record of blast and monitoring information for at least the past five (5) years to include date of a blast.
 - iii. All records, including monitoring records referenced in subsection (vi)(c) above, relating to blasting activities shall be made available to the fire code official during normal business hours within seventy-two (72) hours of request.
- (d) *Control of Adverse Effects.*
- 1. Air Blast (Noise) Limits. For the purpose of this section, the air overpressure and related noise generated by the use of explosives or blasting agents in extraction operations shall be measured by the air blast created thereby. Air blast shall not exceed 134 dB peak (\pm 3dB) at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in subsection (e) of this section.
 - 2. Ground vibration. In all blasting operations, except as otherwise authorized in subsection (e) below, the maximum ground vibration shall not exceed one (1) inch per second at the location of any dwelling.
 - 3. Monitoring Requirement. The operator shall conduct monitoring to ensure compliance with the air blast standards and ground vibration standards. Air blast and ground vibration measurements of blasts must be performed to the extent required this section.
 - 4. Flyrock. Flyrock traveling in the air or along the ground shall not be cast from the blasting site beyond the area under the control of the operator.
 - 5. Exception. The maximum air blast and ground-vibration standards of this section shall not apply at the following locations:

- i. At structures owned by the permittee and not leased to another person;
- ii. At structures owned by the permittee and leased to another person, if a written waiver by the lessee has been obtained.

Sec. 12-18. Business Registration.

(a) *Purpose.* Business registration is a procedure administered by fire & rescue, in conjunction with the Utilities Business Office, which assures that all businesses within the city are registered for 911 services, inspected and comply with all city codes.

(b) *Registration prerequisite to doing business in the city.* All businesses shall comply with the registration requirements of this article as a precondition of initiating or continuing any business within the city. For the purpose of this article, the term “business” includes any commercial enterprise, school, church or governmental office located within the city limits. Each occupant of a building used by a business shall have responsibility for complying with the registration requirements of this section.

(c) *Registration procedure.*

- i. When a business owner applies for utilities he or she shall fill out a business registration form and return to fire & rescue prior to the business receiving utilities or opening its doors for business.
- ii. Registration or re-registration with the city is required prior to changing the name, ownership, operator, location, or use of an existing business.

Article VI. Miscellaneous

Sec. 12-19. Establishment of limits of the fire district.

Beginning at the point of intersection of the south line of Calhoun Avenue with the east line of North 5th Street; thence in southerly direction along the east line of North 5th Street to the south line of Barton Avenue; thence in a westerly direction along said south line of Barton Avenue to the point of intersection with the east right-of-way of the Gulf, Colorado and Santa Fe Railroad; thence in a southeasterly direction along the east line of South 9th Street, if extended; thence in a southerly direction with said line to the north line of Avenue D; thence in a easterly direction with said line to the east line of South 1st Street; thence in a southerly direction along said line to the north line of Avenue E; thence in an easterly direction along said line, if extended, to the west line of 6th Street, if extended; thence in a northerly direction along said west line of 6th Street, if extended, to the north line of Avenue A; thence in an easterly direction along said line to the west line of 8th Street; thence in a northerly direction with said line to the south line of Central Avenue; thence in a westerly direction with said line to the west line of 6th Street; thence in a northerly direction along said line to the south line of Adams Avenue; thence in a

westerly direction along said line to the west line of 4th Street; thence in a northerly direction along said line to the south line of Barton Avenue; thence in a westerly direction along said line to the west line of 2nd Street; thence in a northerly direction along said line to the south line of Calhoun Avenue; thence in a westerly direction along said line to the point of beginning.

Sec. 12-20. Unauthorized use of fire apparatus.

It shall be unlawful for any person, under any pretext whatever, other than for the purposes for which they were intended in fire & rescue, to take or use any engine, truck, ladder, fire axe, or other apparatus belonging to or in possession of the department, or any member or company thereof, or to break, deface, or injure the same.

Sec. 12-21. Injuring or driving over fire hose.

It shall be unlawful for any person to cut, deface, tear or otherwise injure, or drive any vehicle over any fire hose belonging to the city or any fire department that is providing mutual aid to the city.

Sec. 12-22. Reward for arrest and conviction of arsonists.

The city hereby offers a reward of five hundred dollars (\$500) for the arrest and conviction of any person for the crime of arson committed within the city limits. The sum of five hundred (\$500) is hereby appropriated out of any funds belonging to the city not already appropriated for some other purpose for the payment of such reward.

Sec. 12-23. New materials, processes or occupancies which may require permits.

The fire chief shall act as a committee to determine and specify, after giving affected persons an opportunity to be heard, any new materials, processes or occupancies, which shall require permits, in addition to those enumerated in this chapter. The fire chief shall post such lists in a conspicuous place in their offices, and distribute copies thereof to interested persons.

Sec. 12-24. Exemptions.

Nothing contained in this ordinance shall be construed as applying to the regular military or naval forces of the United States, the duly authorized militia of the State, or the police and fire departments of the city in the proper performance of their duties.

Sec. 12-25. Permit Fees.

The city council shall, by resolution, set the amount of all permit fees required by this chapter. A copy of any resolution setting permit fees shall be maintained in the office of the fire code official.

Sec. 12-26. Enforcement.

This chapter shall be enforced by the fire chief.

Part 2: Penalties

(a) *Criminal Offenses.* Any person or persons, firm or corporation which violates any of the provisions of this chapter may be deemed guilty of a misdemeanor and, upon conviction, shall be fined an amount not exceeding two thousand (\$2,000) dollars for each offense and each violation hereof shall be deemed a separate and distinct offense for each of said days and shall be punishable as such.

(b) The city attorney may seek remedies at law or in equity to prevent a violation of this chapter

Part 3: If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Part 4: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

Part 5: The Code of Ordinances of the City of Temple, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

Part 6: It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **6th** day of **August**, 2009.

PASSED AND APPROVED on Second Reading on the **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydetta Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(K)
Consent Agenda
Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Jonathan Graham, City Attorney

ITEM DESCRIPTION: SECOND READING – Consider adopting an ordinance amending Chapter 37, "Traffic," Article IV, "Stopping, Standing and Parking," of the Code of Ordinances of the City of Temple, Texas, by amending Section 37-93, entitled, "Two-Hour Parking Zone," to provide that the City Manager may suspend by decree the fine for parking longer than two hours in the downtown area during public events or when the municipal parking lot adjacent to City Hall is closed.

STAFF RECOMMENDATION: Adopt ordinance as presented in item description, on second and final reading.

ITEM SUMMARY: Approval of this ordinance will amend Chapter 37, "Traffic," of the Code of Ordinances to provide that the City Manager may suspend by decree the fine for parking longer than two hours in the downtown area during public events or when the municipal parking lot adjacent to City Hall is closed. Since parking space in the downtown area is limited, imposing 2-hour parking fines during public events is contrary to the purpose of inviting citizens and guests to enjoy public events in the downtown area.

FISCAL IMPACT: Minor loss of revenue for parking tickets issued during the time when the municipal parking lot is closed for public events.

ATTACHMENTS:

[Ordinance](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AMENDING CHAPTER 37, "TRAFFIC," ARTICLE IV, "STOPPING, STANDING AND PARKING," OF THE CODE OF ORDINANCES OF THE CITY OF TEMPLE, TEXAS, BY AMENDING SECTION 37-93, ENTITLED, "TWO-HOUR PARKING ZONE," TO PROVIDE THAT THE CITY MANAGER MAY SUSPEND BY DECREE THE FINE FOR PARKING LONGER THAN TWO HOURS IN THE DOWNTOWN AREA DURING PUBLIC EVENTS OR WHEN THE MUNICIPAL PARKING LOT ADJACENT TO CITY HALL IS CLOSED; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, the municipal parking lot is frequently closed for public events;

WHEREAS, parking space in the downtown area is limited and imposing fines for parking longer than two hours during public events is contrary to the purpose of inviting citizens and guests to enjoy public events in the downtown area;

WHEREAS, the City Council desires to authorize the City Manager to suspend by decree the fine for parking longer than two hours in the downtown area during public events or when the municipal parking lot adjacent to City Hall is closed; and

WHEREAS, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

Part 1: The City Council amends Chapter 37, "Traffic," Article IV, "Stopping, Standing and Parking," of the Code of Ordinances of the City of Temple, Texas, by amending Section 37-93, entitled "Two-Hour Parking Zone," to read as follows:

Section 37-93. Two-Hour Parking Zone.

(a) The ~~Zone~~ **area** in the City of Temple, Texas, shown on the drawing attached hereto as Exhibit "A," a copy of which is kept on file in the City Secretary's Office, and is most particularly described as the north side of Barton Avenue (between Main and 2nd Streets), south side of Barton Avenue (between 3rd & 1st Streets), south side of Adams Avenue (between 1st & Main), north side of Central Avenue (between 1st & 4th Streets), south side of Central Avenue

(between 3rd & 4th Streets), north side of Avenue A (between 1st & 4th Streets), south side of Avenue A (Between 1st & 2nd Streets), west half of south side of Avenue A (between 2nd & 4th Streets), south side of Avenue B (between Main & 2nd Streets), east & west side of 1st Street (between Calhoun & Adams Avenue), west side of 1st Street (between Central & Avenue A), north half of the east side of 1st Street (between Central & Avenue A), south half of the east side of 1st Street (between Avenue A & B), east and west side of Main Street (between Calhoun and Avenue B), east and west side of 2nd Street (between Barton & Avenue B), is hereby designated a two-hour parking zone, except as otherwise posted, and appropriate signs shall be erected giving notice of such two-hour limitation, and, **except as provided at Subsection (b),** it shall be unlawful for any person to leave standing or parked any vehicle for a period of more than two (2) hours, and each successive two (2) hours that a vehicle shall be left continuously parked in such zone shall constitute a separate offense.

(b) The city manager is authorized to suspend this Section by decree during public events or when the municipal parking lot adjacent to City Hall is closed.

Part 2: Chapter 37, entitled, "Traffic," of the Code of Ordinances of the City of Temple, Texas, as amended, shall remain in full force and effect save and except as amended by this ordinance.

Part 3: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

Part 4: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section.

Part 5: This ordinance shall take effect from the date of its passage, in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

Part 6: Any person or persons, firm or corporation which violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty (\$50.00) dollars nor more than five hundred (\$500.00) dollars for each offense and each violation hereof shall be deemed a separate and distinct offense for each of said days and shall be punishable as such.

Part 7: It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the 6th day of August, 2009.

PASSED AND APPROVED on Second Reading on the **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(L)
Consent Agenda
Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Jonathan Graham, City Attorney

ITEM DESCRIPTION: SECOND READING – Consider adopting an ordinance extending the life of preliminary plats for single family residential subdivisions that were: (1) approved in the past 2 years; (2) extended by the approval of a final plat for a phase of the subdivision in the past 2 years; or (3) that would have expired in the past 2 years, by giving them an additional life of 2 years from the effective date of this ordinance.

STAFF RECOMMENDATION: Adopt ordinance as presented in item description, on second and final reading.

ITEM SUMMARY: The City's Subdivision Ordinance provides that a preliminary plat for a subdivision expires 2 years from the date of approval absent an extension of the life of that preliminary plat. The ordinance further provides that the life of a preliminary plat can be extended for 2 years if a final plat is approved for a phase of the subdivision and the developer begins construction of the required subdivision improvements.

The current economic recession in the United States has caused a slowdown in the build out of local residential subdivisions which could cause the preliminary plats for a number of residential subdivisions to expire, resulting in the developer having to file a new preliminary plat for those phases of existing residential subdivisions which have not been final platted.

Approval of this ordinance will allow extending the life of preliminary plats for single family residential subdivisions that were: (1) approved in the past 2 years; (2) extended by the approval of a final plat for a phase of the subdivision in the past 2 years; or (3) that would have expired in the past 2 years, by giving them an additional life of 2 years from the effective date of this ordinance.

FISCAL IMPACT: None

ATTACHMENTS:

[Affected subdivisions](#)
[Ordinance](#)

Name	Expires
Canyon Ridge	12/20/06
Ranch at Woodland Trails	11/20/08
Carriage House	03/06/09
Lago Terra	11/05/09
Aberdeen Heights	09/15/10

ORDINANCE NO. _____

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, EXTENDING THE LIFE OF PRELIMINARY PLATS FOR SINGLE FAMILY RESIDENTIAL SUBDIVISIONS THAT WERE: (1) APPROVED IN THE PAST TWO YEARS; (2) EXTENDED BY THE APPROVAL OF A FINAL PLAT FOR A PHASE OF THE SUBDIVISION IN THE PAST TWO YEARS; OR (3) THAT WOULD HAVE EXPIRED IN THE PAST TWO YEARS, BY GIVING THEM AN ADDITIONAL LIFE OF TWO YEARS FROM THE EFFECTIVE DATE OF THIS ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; DECLARING FINDINGS OF FACT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, Section 33.32(f), “Preliminary plat term,” provides that a preliminary plat for a subdivision shall expire two years from the date of approval absent an extension of the life of that preliminary plat;

Whereas, Section 33.32(g), “Extension of plat term,” provides that the life of a preliminary plat shall be extended for two years if a final plat is approved for a phase of the subdivision and the developer begins construction of the required subdivision improvements;

Whereas, the current economic recession in the United States has caused a slowdown in the build out of local residential subdivisions which could cause the preliminary plats for a number of residential subdivisions to expire, which would result in the developer having to file new preliminary plats for those phases of existing residential subdivisions which have not been final platted; and

Whereas, the Staff recommends that the City Council consider extending the life of preliminary plats for single family residential subdivisions that were: (1) approved in the past two years, (2) extended by the approval of a final plat for a phase of the subdivision in the past two years, or (3) that would have expired in the past two years, by giving them an additional life of two years from the effective date of this ordinance.

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

Part 1: Findings. The statements contained in the preamble of this ordinance are true and correct and are adopted as findings of fact hereby.

Part 2: (a) **Authority of the Planning Director to Extend the Term of Certain Single Family Residential Preliminary Plats.** The City Council finds it is in the public interest to extend the life of existing residential preliminary plats, and residential preliminary

plats that may have expired in the past two years by operation of City ordinances. According, the City Council hereby authorizes the Director of Planning to administratively extend the life of residential preliminary plats that: (1) have expired in the past two years, (2) were extended by operation of law in the past two years by the filing of a final plat on a phase of the subdivision, or (3) were approved within the past two years, so that those residential subdivision preliminary plats covered by this ordinance shall not expire until the two years after the effective date of this ordinance.

(b) **Further Extensions of the Term of Affected Preliminary Plats.** Provided that preliminary plats the term of which are extended under this ordinance may be further extended under Section 33.32(g) of the City Code by the filing of a final plat on a phase of such subdivision and the commencement of construction of the required subdivision improvements therein by the developer of such subdivision.

(c) **Process for Requesting Extension of the Term of Certain Preliminary Plats under this Ordinance.** The Director of Planning shall give written notice to the developers of single family residential subdivisions that have a preliminary plat described in Section 2(a) above notifying them that they may request an extension of the term of their plat for a term of two years, or in the case of a preliminary plat that expired in the past two years of their right to request renewal of their preliminary plat for a term of two years. The Planning Director shall approve requests for an extension or renewal of a preliminary plat that satisfies the requirements of this ordinance, and his approval shall cause such preliminary plat to have a two year term running from the effective date of this ordinance.

Part 3: Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section.

Part 4: Effective Date. This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

Part 5: Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act.

PASSED AND APPROVED on First Reading on the 6th day of August, 2009.

PASSED AND APPROVED on Second and Final Reading on the 20th day of August, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(M)(1)-(2)
Consent Agenda
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DEPT./DIVISION SUBMISSION & REVIEW:

Bruce Butscher P.E., Director of Public Works
Michael Newman P.E., Assistant Director of Public Works/City Engineer

ITEM DESCRIPTION: SECOND READING – Consider adopting ordinances establishing the prima facie speed of motor vehicles on a certain section of SH 36/LP363, within the City limits, as follows:

1. The speed limit on Loop 363 access roads will be increased from 40 mph to 45 mph from Airport Road to a point 2,375 feet south of FM 2305 and from 30 mph to 50 mph from a point 2,375 feet south of FM 2305 to South 5th Street; and
2. The speed limit on Loop 363 will be increased from 55 mph to 60 mph from Airport Road to South 5th Street.

STAFF RECOMMENDATION: Adopt ordinances as presented in item description, on second and final reading.

ITEM SUMMARY: Based on Traffic Engineering Studies by the State, TxDOT has requested the City adopt ordinances setting the prima facie speed of motor vehicles on a certain section of SH 36/LP363 Frontage Road and main roadway as follows:

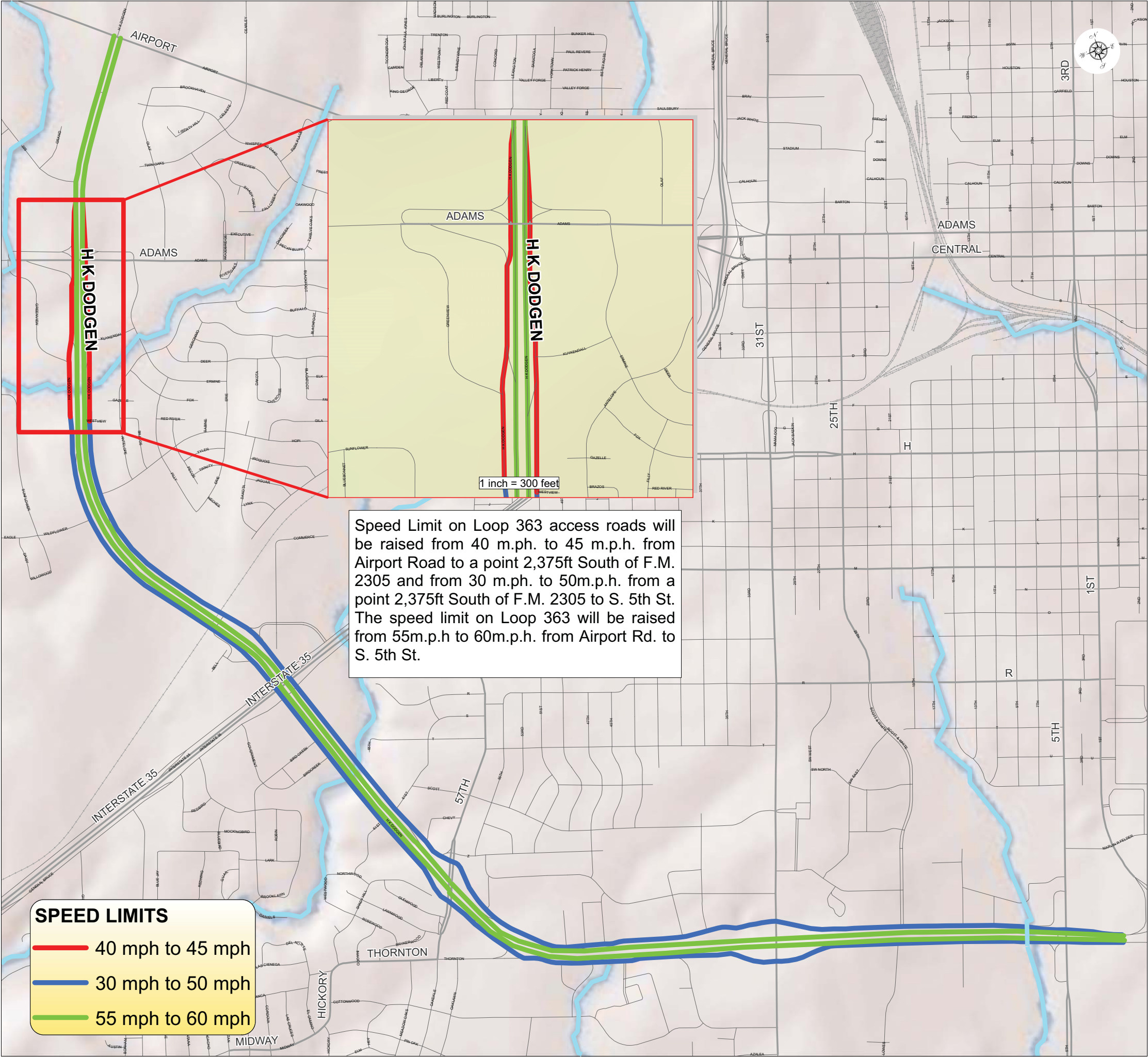
1. The speed limit on Loop 363 access roads will be increased from 40 mph to 45 mph from Airport Road to a point 2,375 feet south of FM 2305 and from 30 mph to 50 mph from a point 2,375 feet south of FM 2305 to South 5th Street.
2. The speed limit on Loop 363 will be increased from 55 mph to 60 mph from Airport Road to South 5th Street.

We are required by TxDOT to re-adopt this speed limit at this time with changes being posted.

FISCAL IMPACT: None

ATTACHMENTS:

[Map](#)
[Ordinances](#)



Drawn by:
Chris Oval
28 July 09
(254)298-5663

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, PROVIDING FOR REASONABLE AND PRUDENT PRIMA FACIE MAXIMUM SPEED LIMITS ON THE SH36/LOOP 363 FRONTAGE ROAD WITHIN THE CITY LIMITS; PROVIDING A REPEALER; PROVIDING FOR A PENALTY FOR VIOLATIONS NOT TO EXCEED \$500 FOR EACH VIOLATION; PROVIDING AN EFFECTIVE DATE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, an engineering and traffic investigation has been made to determine the reasonable and prudent prima facie maximum speed for motor vehicles on the SH36/Loop 363 frontage road within the city limits;

WHEREAS, these traffic investigations and engineering studies have determined the reasonable and safe prima facie maximum speed limits, as more fully described herein; and

WHEREAS, the City Council has considered the matter and deems it in the public interest to approve these speed limits for the benefit of the citizens for the promotion of the public health, welfare, and safety.

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

Part 1: The City Council finds that the reasonable and prudent prima facie maximum speed limit for vehicular traffic on the SH36/Loop 363 frontage road is as follows:

Starting at M.P. 02.255, the speed limit shall be 45 MPH for a distance of 0.449. The speed limit shall then be 50 MPH for a distance of 1.958 miles ending at M.P. 3.194.

Part 2: It shall be unlawful for any person to drive or operate a motor vehicle, bicycle, or other vehicle of any kind, whether or not motor powered, on that portion of the roadways described above under the conditions described herein, at a speed greater than is reasonable and prudent under the circumstances then existing, but any speed in excess of the reasonable and prudent prima facie maximum speed limits as set forth in Part 1 hereof shall be prima facie evidence that such speed is not reasonable or prudent and that it is unlawful.

Part 3: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

Part 4: A person who violates a provision of this ordinance is guilty of a separate offense for each day or portion of a day which the offense is committed, continued, or permitted, and each offense is punishable by a fine not to exceed \$500.

Part 5: If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Part 6: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

Part 7: It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading on the **6th** day of **August**, 2009.

PASSED AND APPROVED on Second Reading on the **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, PROVIDING FOR REASONABLE AND PRUDENT PRIMA FACIE MAXIMUM SPEED LIMITS ON THE SH36/LOOP 363 WITHIN THE CITY LIMITS; PROVIDING A REPEALER; PROVIDING FOR A PENALTY FOR VIOLATIONS NOT TO EXCEED \$500 FOR EACH VIOLATION; PROVIDING AN EFFECTIVE DATE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, an engineering and traffic investigation has been made to determine the reasonable and prudent prima facie maximum speed for motor vehicles on the SH36/Loop 363 within the city limits;

WHEREAS, these traffic investigations and engineering studies have determined the reasonable and safe prima facie maximum speed limits, as more fully described herein; and

WHEREAS, the City Council has considered the matter and deems it in the public interest to approve these speed limits for the benefit of the citizens for the promotion of the public health, welfare, and safety.

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

Part 1: The City Council finds that the reasonable and prudent prima facie maximum speed limit for vehicular traffic on the SH36/Loop 363 is as follows:

Starting at M.P. 0.255, the speed limit shall be 60 MPH for a distance of 2.939 miles ending at M.P. 3.194.

Part 2: It shall be unlawful for any person to drive or operate a motor vehicle, bicycle, or other vehicle of any kind, whether or not motor powered, on that portion of the roadways described above under the conditions described herein, at a speed greater than is reasonable and prudent under the circumstances then existing, but any speed in excess of the reasonable and prudent prima facie maximum speed limits as set forth in Part 1 hereof shall be prima facie evidence that such speed is not reasonable or prudent and that it is unlawful.

Part 3: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

Part 4: A person who violates a provision of this ordinance is guilty of a separate offense for each day or portion of a day which the offense is committed, continued, or permitted, and each offense is punishable by a fine not to exceed \$500.

Part 5: If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Part 6: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

Part 7: It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading on the **6th** day of **August**, 2009.

PASSED AND APPROVED on Second Reading on the **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(N)
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DEPT./DIVISION SUBMISSION & REVIEW:

Bruce Butscher, Director of Public Works
Michael Newman, Assistant Director of Public Works/City Engineer

ITEM DESCRIPTION: SECOND READING – Consider adopting an ordinance establishing school crosswalks and setting speed limits within school zones to conform to school schedules.

STAFF RECOMMENDATION: Adopt ordinance as presented in item description, on second and final reading.

ITEM SUMMARY: In August of 2008 the City adopted an ordinance establishing school crosswalks and setting limits within school zones as agreed upon by the City, TISD and BISD. TISD has requested a signalized school zone be installed at Scott Elementary on West Avenue P between South 39th Street and South 49th Street at 20 mph east and west bound from the hours of 7:00am – 8:30am and 2:00pm – 3:45pm. TISD has also requested that the two signalized school zones at Jefferson Elementary and Lamar Middle School on North 3rd Street be consolidated into one extended signalized school zone at 25mph north and south bound from the hours of 7:00am – 8:30am and 2:45pm – 4:30pm. The ordinance needs to be updated to accommodate these changes.

FISCAL IMPACT: None

ATTACHMENTS:

[List of school crossings](#)
[Ordinance](#)

**City of Temple
School Zones**

Schools	Cones	Flags	Zone Times
Bethune Elementary 510 E Ave J A. Crossing guard works crosswalk on MLK Blvd and Ave J B. School Zone is on E Ave J and S 10th St. The front and westside of school C. One Way on S 10th St from E Ave I to E Ave J	Yes	Yes	One Way Time as Posted 7:00 to 8:30 14:00 to 15:30
Cater Elementary 4111 Lark Trail A. Crossing guard works Crosswalk in school parking area B. School Zone is on Lark Trail in front of School	Yes	Yes	
Emerson Elementary 1400 E Ave B A. Crossing Guard works Crosswalk Works E Ave B and S 24th ST	Yes	Yes	
Hector P. Garcia Elementary 2525 Lavendusky Dr A. No Crosswalk	No	No	
Jefferson Elementary 400 W. Walker Ave A. Crossing Guards (2) Works Crosswalk At N 3rd St and W. Walker Ave B. Crossing Guard works Crosswalk at N 3rd ST and Industrial Blvd this is a controlled signal light. C. Flashing lights on N 3rd St are North of W. Walker Ave and North of W Shell Ave.	Yes	Yes	Flashing Lights 06:30 to 08:30 14:45 to 16:30
Kennedy-Powell Elementary 3707 W. Nugent Ave A. Crossing Guard will work Crosswalks W. Nugent Ave and Cearley Rd. B. Flashing lights on W. Nugent Ave west and east of Cearley Rd	Yes	Yes	Flashing Lights 06:30 to 08:30 14:45 to 16:30
Dickson Elementary 1100 S 33rd St A. One way south from W Ave K to W Ave L			One Way Time as Posted 7:00 to 8:30 14:00 to 15:00
Meridith-Dunbar 1717 E Ave J			Flashing Lights

A. Crossing Guard will work Crosswalks at S 30th St and E. Ave J B. Flashing lights on S 30th St C. One Way on E Ave J from S 30th St to S 34th St at posted times	Yes	Yes	06:30 to 08:30 14:45 to 16:30 One Way Time as Posted 7:00 to 8:30 14:00 to 15:00
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**City of Temple
School Zones**

Schools	Cones	Flags	Zone Times
Raye Allen Elementary 5015 S 5th St A. Crossing Guards will work Crosswalks on S 5th St B. Flashing lights on S 5th St north and south of school	Yes	Yes	Flashing Lights 06:30 to 08:30 14:45 to 16:30
Scott Elementary 2301 W Ave P A. Crossing Guard will work Crosswalk on W Ave P B. Crossing Guard will work Crosswalk on W Ave M @ S 45th St. C. Flashing lights on W Ave P east of S 49th St and west of S 39th St.	Yes	Yes	Flashing Lights 06:30 to 08:30 14:45 to 16:30
Thornton Elementary 2900 Pin Oak Dr A. Crossing Guard will work Crosswalk on Pin Oak @ East Dr. B. One way on Pin Oak from East Dr. to Mesquite at posted times	Yes	Yes	School Zone Signs 07:30 to 8:30 14:30 to 16:00 One Way Time as Posted 7:30 to 8:30 14:30 to 16:00
Western Hills Elementary 600 Arapaho A. Crossing Guard will work Crosswalk on Apache @ Deer Tr B. Crossing Guard will work Crosswalk on Apache @ Gila C. Flashing lights on Apache North of Deer Tr. South of Gila.	Yes	Yes	Flashing Lights 06:30 to 08:30 14:45 to 16:30
Bonham Middle School 4600 Midway Dr A. Flashing Lights on Midway Dr. east and west of school.			Flashing Lights 07:00 to 08:30 15:00 to 16:30
Lamar Middle School 2120 N 1st St A. Flashing lights on N 3rd St are North of W. Walker Ave and North of W Shell Ave.			Flashing Lights 06:30 to 08:30 14:45 to 16:30

B. One way on N 1st St from W Park Ave to W. Virginia Ave at posted times			One Way Time as Posted 7:30 to 8:30 15:00 to 16:00
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**City of Temple
School Zones**

Schools	Cones	Flags	Zone Times
Travis Middle School 1500 S 19th St A. Crossing Guard will work Crosswalk on W Ave M @ S 19th St B. One way on S 19th St from W Ave R to W Ave M			One Way Time as Posted 7:30 to 8:30 14:30 to 16:00
Temple High School 415 N 31st St A. Flashing Lights on N 31st St north of W Barton Ave and North of W Houston Ave			Flashing Lights 07:00 to 16:00
Temple High School Campus 1414 W Barton Ave A. School Zone on Barton from N 31st St to North 27th St			School Zone Signs 07:00 to 16:30
<u>B.I.S.D</u> Lakewood Elementary 11200 FM 2305 A. Flashing lights on FM 2305 in front of school			 Flashing Lights 7:15 to 8:00 14:15 to 15:00
Joe M. Pirtle Elementary 714 South Pea Ridge Rd A. Flashing lights on South Pea Ridge in from of school			Flashing Lights 7:15 to 8:00 14:15 to 15:00
Tarver Elementary 7949 Shone Hollow Dr A. School Zone on Stone Hollow Dr in front of school. B. School Zone on Prairie Lark on northside of school B. School Zone on on Westfield on southside of school			School Zone Signs 7:00 to 8:30 14:30 to 16:00
Lake Belton Middle School 8815 Tarver A. Flashing lights on Tarver in front of			School Zone Signs 7:00 to 8:30

school.			14:30 to 16:00
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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, ESTABLISHING SCHOOL CROSSWALKS IN THE CITY OF TEMPLE; PROVIDING FOR REASONABLE AND PRUDENT PRIMA FACIE MAXIMUM SPEED LIMITS IN THE SCHOOL ZONES; DECLARING FINDINGS OF FACT; PROVIDING FOR A PENALTY FOR VIOLATIONS NOT TO EXCEED \$500 FOR EACH VIOLATION; PROVIDING AN EFFECTIVE DATE; PROVIDING A REPEALER; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the City Staff and the Temple Independent School District worked together to establish recommended school crosswalk locations in the City of Temple and entered into an interlocal agreement in 1997 regarding the designation and equipping of school zones within the City;

Whereas, the Temple Independent School District and the City of Temple desire to update the crosswalk and school zone time schedule;

Whereas, an engineering and traffic investigation has been made to determine the reasonable and prudent prima facie maximum speed for motor vehicles within the school zones;

Whereas, it has been determined by these traffic and engineering investigations that the reasonable and safe prima facie maximum speed limit shall be 20 miles per hour; and

Whereas, the City Council has considered the matter and deems it in the public interest to approve the school crosswalks, including the speed limits within the school zones, for the benefit of the citizens for the promotion of the public welfare and safety.

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

Part 1: The City of Temple hereby establishes the school crosswalk locations, which are more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

Part 2: The Director of Public Works is authorized to proceed with installation of flashing lights and school crossing painting and signage, as needed, for the locations described in Exhibit A.

Part 3: The reasonable and prudent prima facie maximum speed limit for vehicular traffic within the school zones described in Exhibit A, shall be established at 20 miles per hour on the days when school is in session.

Part 4: It shall be unlawful for any person to drive or operate a motor vehicle, bicycle, or other vehicle of any kind, whether or not motor powered, on that portion of the roadways described above under the conditions described herein, at a speed greater than is reasonable and prudent under the circumstances then existing, but any speed in excess of the reasonable and prudent prima facie maximum speed limits as set forth in Part 3 hereof shall

be prima facie evidence that such speed is not reasonable or prudent and that it is unlawful.

Part 5: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

Part 6: A person who violates a provision of this ordinance is guilty of a separate offense for each day or portion of a day which the offense is committed, continued, or permitted, and each offense is punishable by a fine not to exceed \$500.

Part 7: If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Part 8: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

Part 9: It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **6th** day of **August**, 2009.

PASSED AND APPROVED on Second Reading on the **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydetta Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(O)
Consent Agenda
Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

Jonathan Graham, City Attorney

ITEM DESCRIPTION: Consider adopting an amendment to Resolution No. 2008-5591-R, to clarify that resolution, which authorized and approved acquisition of 11 parcels of land and one utility easement adjacent to Old Waco Road, for the Outer Loop Phase III project, from approximately 950 feet south of Jupiter Drive to FM 2305; described the tracts to be acquired; determined that such acquisitions were necessary for public road, drainage and utility purposes, and authorized exercise of eminent domain if such became necessary.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: This resolution amends Resolution No. 2008-5591-R, which Council passed and approved on November 20, 2008. Resolution No. 2008-5591-R authorized acquisition of 11 parcels of land and one utility easement for the Outer Loop Phase III project, from approximately 950 feet south of Jupiter Drive to FM 2305, described the tracts to be acquired, determined that such acquisitions were necessary for public road, drainage and utility purposes, and authorized exercise of eminent domain if such became necessary. Several minor amendments are necessary to clarify the previous resolution.

The amendment incorporates Exhibit A to the Resolution, which Exhibit consists of the surveyors' drawings of the 11 parcels of land and one permanent utility easement for water lines, a pressure reducing valve and related facilities adjacent to Old Waco Road that are the subject of Resolution No. 2008-5591-R. The amending resolution also clarifies the preceding resolution by correcting the project parcel number for Parcel #22, the page number of the deed references for Parcels #23 and #34, and the order of the first and middle names of the owner of Parcels #34 and #34U. The amending resolution specifies that acquisition of Parcel #34U, is for a permanent public utility easement for water lines, pressure reducing valve and related facilities.

FISCAL IMPACT: In FY 2007, \$ 2,000,000 was appropriated in account 361-3400-534-6813, project # 100089 from 2006 Certificates of Obligation bonds for preliminary design for phases 3-6 and ROW acquisition for phase 3. An additional \$ 5,280,000, from 2008 Certificates of Obligation bonds, was appropriated in FY 2008 for final design of phases 3-6, construction of phases 3 & 4, and ROW acquisition for phase 4.

On October 16, 2008, Council authorized the reallocation of \$1,906,612 of these funds to fund commitments between the City of Temple and the Texas Department of Transportation (TxDot) related to funding 10% of total ROW and Utility Relocation related to the FM 2305 – FM 2271 to SH 317 and the IH 35/Loop 363 projects.

After funding ROW acquisition services, the final design of phase 3, the preliminary design of phases 4-6, the purchase of nineteen parcels and two easements, and reallocating funding as mentioned above, \$ 3,186,076 is available for the remaining ROW acquisition of phases 3-4, construction of phases 3-4 (or as much as can be constructed with current funding available), and final design of phases 4-6.

ATTACHMENTS:

[Resolution including Exhibit A](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AMENDING RESOLUTION NO. 2008-5591-R, TO CLARIFY THAT RESOLUTION, WHICH AUTHORIZED AND APPROVED ACQUISITION OF 11 PARCELS OF LAND AND ONE UTILITY EASEMENT ADJACENT TO OLD WACO ROAD, FOR THE OUTER LOOP PHASE III PROJECT, FROM APPROXIMATELY 950 FEET SOUTH OF JUPITER DRIVE TO FM 2305; DESCRIBED THE TRACTS TO BE ACQUIRED; DETERMINED THAT SUCH ACQUISITIONS WERE NECESSARY FOR PUBLIC ROAD, DRAINAGE AND UTILITY PURPOSES, AND AUTHORIZED EXERCISES OF EMINENT DOMAIN IF SUCH BECAME NECESSARY; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, on November 20, 2008, the City Council passed Resolution No. 2008-5591-R which authorized the acquisition of 11 parcels of land and one utility easement for the Outer Loop Phase III project, from approximately 950 feet south of Jupiter Drive to FM 2305, described the tracts to be acquired, determined that such acquisitions were necessary for public road, drainage and utility purposes, and authorized exercise of eminent domain if such became necessary;

Whereas, several minor amendments are necessary to clarify the previous resolution;

Whereas, the Staff recommends amending Resolution No. 2008-5591-R for this purpose; and

Whereas, the City Council has considered the matter and deems it in the public interest to authorize this action.

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

Part 1: The City Council authorizes an amendment to Resolution No. 2008-5591-R to clarify that resolution by incorporating the surveyor's drawings of the 11 parcels of land and one permanent utility easement for water lines, attached hereto and made a part hereof for all purposes as Exhibit A.

Part 2: Resolution No. 2008-5591-R is further amended to correct the project parcel number for Parcel #22; the page number of the deed references for Parcels #23

and #34; and the order of the first and middle names of the owner of Parcels #34 and #34U. The acquisition of Parcel #34U is for a permanent public utility easement for water lines, pressure reducing valve and related facilities.

Part 3: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

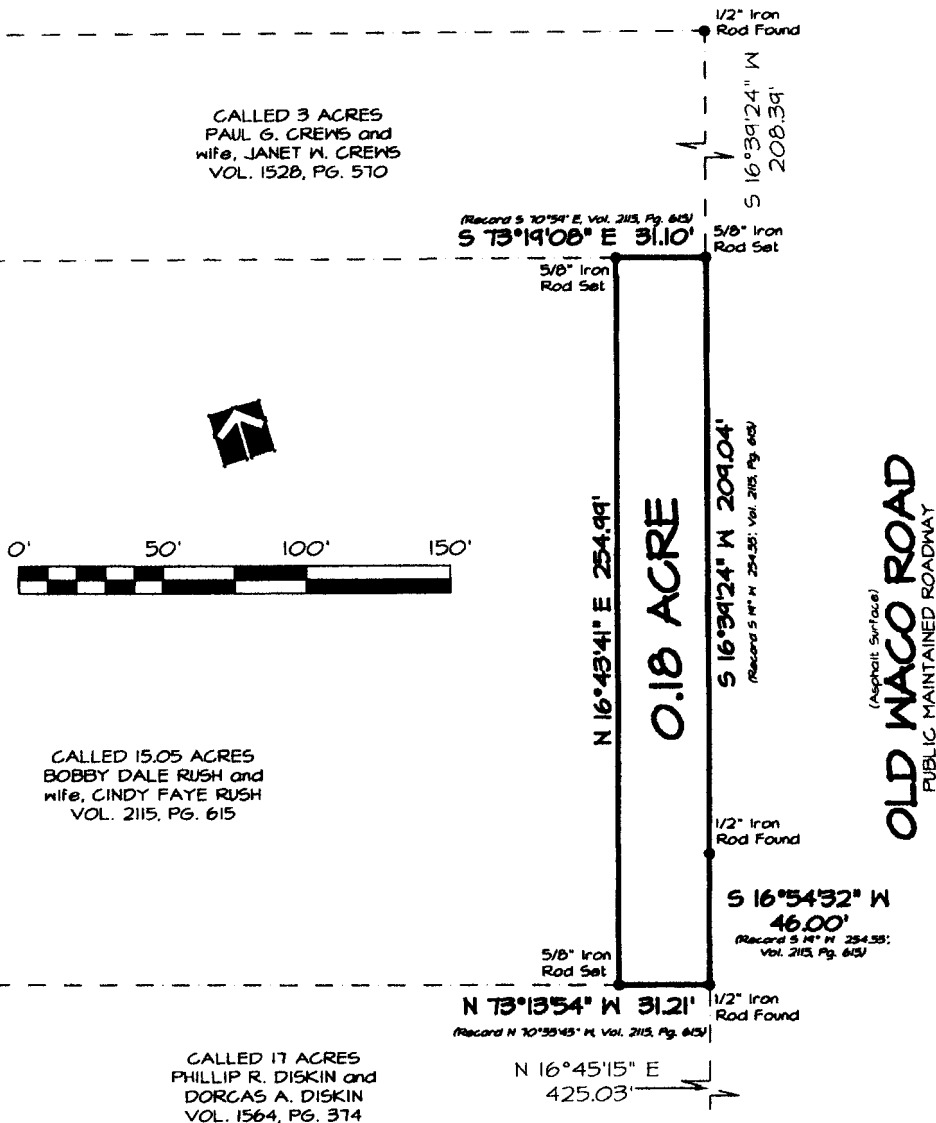
APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney

OUTER LOOP
R.O.W. PARCEL - BOBBY DALE RUSH and wife, CINDY FAYE RUSH
**Surveyor's Sketch showing 0.18 ACRE, situated in the
NANCY CHANCE SURVEY, ABSTRACT 5, City of Temple,
Bell County, Texas.**

This sketch to accompany a metes and bounds
description of the hereon shown 0.18 Acre tract.



This project is referenced to the City of Temple Coordinate System, an extension of the Texas Coordinate System of 1983, Central Zone. All distances are horizontal surface distances unless noted and all bearings are grid bearings. All coordinates are referenced to City Monument No. 260. The theta angle at City Monument No. 260 is $01^{\circ}29'57''$. The combined correction factor (CCF) is 0.999856. Grid distance = Surface distance \times CCF. Geodetic north = Grid north + theta angle. Reference tie from City monument No. 260 to the northeast corner of this 0.18 acre tract is $N 15^{\circ}52'12'' E, 2217.02'$ feet. Published City coordinates for project reference point 260 are $N = 10,376,015.76$ $E = 3,207,456.48$

This document is not valid for any
purpose unless signed and sealed by a
Registered Professional Land Surveyor.

ALL COUNTY SURVEYING, INC.



- Surveying
- Mapping
- Construction Layout

1303 South 21st Street
Temple, Texas 76504
254-778-2272 Killeen 254-634-4636
Fax 254-774-7608

1965-2008 20 YEARS OF EXCELLENCE



Plot Date: 02-22-2008

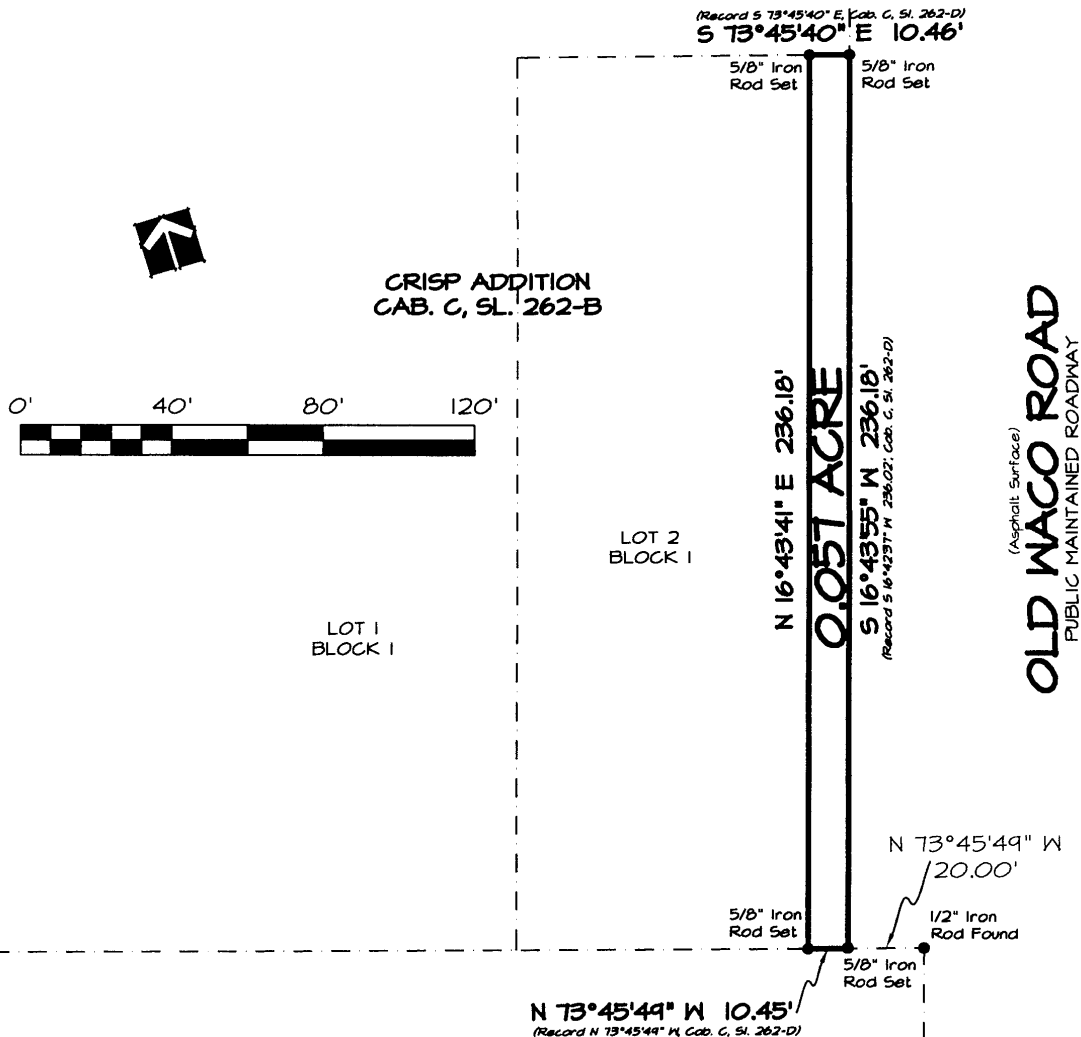
Survey
completed 04-04-2007
Scale: 1" = 50'
Job No. 997299.2
Dwg No. 997299-ROW-24
Drawn by SLW
Surveyor CCL #4636

Copyright 2007 All County Surveying, Inc.

OUTER LOOP
R.O.W. PARCEL -LOT 2, BLOCK 1, CRISP ADDITION

**Surveyor's Sketch showing 0.057 ACRE, situated in the
NANCY CHANCE SURVEY, ABSTRACT 5, City of Temple,
Bell County, Texas.**

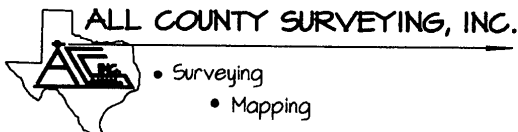
This sketch to accompany a metes and bounds
description of the hereon shown 0.057 Acre tract.



This project is referenced to the City of Temple Coordinate System, an extension of the Texas Coordinate System of 1983, Central Zone. All distances are horizontal surface distances unless noted and all bearings are grid bearings. All coordinates are referenced to City Monument No. 260. The theta angle at City Monument No. 260 is $01^{\circ}29'57''$. The combined correction factor (CCF) is 0.999856. Grid distance = Surface distance X CCF. Geodetic north = Grid north + theta angle. Reference tie from City monument No. 260 to the northeast corner of this 0.057 acre tract is N $16^{\circ}01'49''$ E, 4420.24' feet. Published City coordinates for project reference point 260 are N. = 10,376,015.76 E. = 3,207,456.98

**CALLED 5.50 ACRES
CYNTHIA JIMENEZ and
ARTURO JIMENEZ
VOL. 3363, PG. 145**

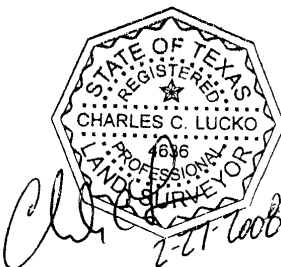
This document is not valid for any
purpose unless signed and sealed by a
Registered Professional Land Surveyor.



- Surveying
- Mapping
- Construction Layout

1303 South 21st Street
Temple, Texas 76504
254-778-2272 Killeen 254-634-4636
Fax 254-774-7608

1988-2008 20 YEARS OF EXCELLENCE



Plot Date: 02-22-2008

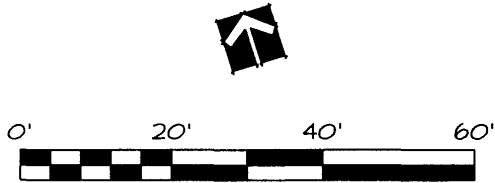
Survey
completed 04-04-2007
Scale: 1" = 40'
Job No. 997299.2
Dwg No. 997299.2-ROW-9
Drawn by SLW
Surveyor CCL #4636

Copyright 2008 All County Surveying, Inc.

OUTER LOOP
R.O.W. PARCEL - LOT 1, BLOCK 1, CRISP ADDITION

**Surveyor's Sketch showing 0.007 ACRE, situated in the
NANCY CHANCE SURVEY, ABSTRACT 5, City of Temple,
Bell County, Texas.**

This sketch to accompany a metes and bounds
description of the hereon shown 0.007 Acre tract.

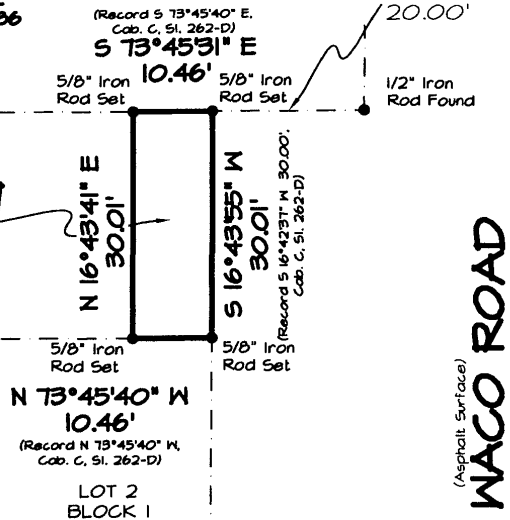


CALLLED 5.00 ACRES
CITY OF TEMPLE
VOL. 3627, PG. 206

LOT 1
BLOCK 1

**0.007
ACRE**

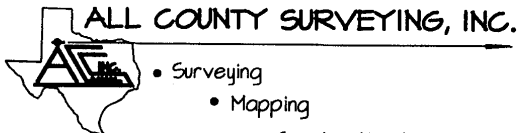
CRISP ADDITION
CAB. C, SL. 262-B



OLD WACO ROAD
PUBLIC MAINTAINED ROADWAY
(Asphalt Surface)

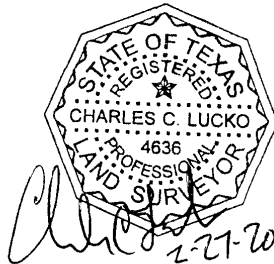
This project is referenced to the City of Temple Coordinate System, an extension of the Texas Coordinate System of 1983, Central Zone. All distances are horizontal surface distances unless noted and all bearings are grid bearings. All coordinates are referenced to City Monument No. 260. The theta angle at City Monument No. 260 is 01°29'57". The combined correction factor (CCF) is 0.999856. Grid distance = Surface distance X CCF. Geodetic north = Grid north + theta angle. Reference tie from City monument No. 260 to the northeast corner of this 0.007 acre tract is N 16° 02' 06" E, 4450.24' feet. Published City coordinates for project reference point 260 are N. = 10,376,015.76 E. = 3,207,456.98

This document is not valid for any
purpose unless signed and sealed by a
Registered Professional Land Surveyor.



- Surveying
- Mapping
- Construction Layout

1303 South 21st Street
Temple, Texas 76504
254-778-2272 Killeen 254-634-4636
Fax 254-774-7608



Plot Date: 02-22-2008

Survey
completed 04-04-2007
Scale: 1" = 20'
Job No. 997299.2
Dwg No. 997299.2-ROW-B
Drawn by SLW
Surveyor CCL #4636

1988-2008 20 YEARS OF EXCELLENCE

Copyright 2008 All County Surveying, Inc.

OUTER LOOP
R.O.W. PARCEL - WEST END JOINT VENTURE

**Surveyor's Sketch showing 0.11 ACRE, situated in the
NANCY CHANCE SURVEY, ABSTRACT 5, City of Temple,
Bell County, Texas.**

This sketch to accompany a metes and bounds
description of the hereon shown 0.11 Acre tract.



PORTION OF CALLED
6.973 ACRES
WEST END JOINT VENTURE
VOL. 3144, PG. 228

3/8" Iron
Rod Found

S 16°49'40" W 211.59'

THE MEADOWS, PHASE IV
CAB. C, SL. 196-C

TANGLEHEAD DRIVE

(Record S 73°35'58" E, Cab. C, Sl. 196-C)
S 73°44'08" E 30.89'

1/2" Iron
Rod Found

5/8" Iron
Rod Set

PORTION OF CALLED
6.973 ACRES
WEST END JOINT VENTURE
VOL. 3144, PG. 228

N 16°43'41" E 156.83'

0.11 ACRE

S 16°47'11" W 156.78'
(Record S 19°08'46" N Vol. 3144, Pg. 228)

OLD WACO ROAD
(Asphalt Surface)
PUBLIC MAINTAINED ROADWAY

5/8" Iron
Rod Set

N 73°44'01" W 30.73'
(Record N 71°25'46" W, Vol. 3144, Pg. 228)

5/8" Iron
Rod Set

**CALLED 5.00 ACRES
CITY OF TEMPLE
VOL. 3821, PG. 286**

This project is referenced to the City of Temple Coordinate System,
an extension of the Texas Coordinate System of 1983, Central Zone.
All distances are horizontal surface distances unless noted and all
bearings are grid bearings. All coordinates are referenced to City
Monument No. 260. The theta angle at City Monument No. 260 is
01°29'57". The combined correction factor (CCF) is 0.999856. Grid
distance = Surface distance X CCF. Geodetic north = Grid north +
theta angle. Reference tie from City monument No. 260 to the
northeast corner of this 0.11 acre tract is N 16° 20' 07" E, 4872.19'
feet. Published City coordinates for project reference point 260
are N. = 10,376,015.76 E. = 3,207,456.98

This document is not valid for any
purpose unless signed and sealed by a
Registered Professional Land Surveyor.

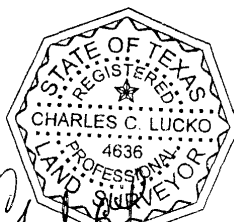
ALL COUNTY SURVEYING, INC.



- Surveying
- Mapping
- Construction Layout

1303 South 21st Street
Temple, Texas 76504
254-778-2272 Killeen 254-634-4636
Fax 254-774-7608

1988-2008 20 YEARS OF EXCELLENCE



Plot Date: 02-22-2008

Survey
completed 04-04-2007
Scale: 1" = 50'
Job No. 997299.2
Dwg No. 997299.2-ROW-6
Drawn by SLW
Surveyor CCL #4636

Copyright 2007 All County Surveying, Inc.

OUTER LOOP
R.O.W. PARCEL - WEST END JOINT VENTURE

**Surveyor's Sketch showing 0.11 ACRE, situated in the
NANCY CHANCE SURVEY, ABSTRACT 5, City of Temple,
Bell County, Texas.**

This sketch to accompany a metes and bounds
description of the hereon shown 0.11 Acre tract.

CALLED 10.33 ACRES
H. A. PROCTER
VOL. 1500, PG. 445

(Record S 71°26'04" E, Vol. 3149, Pg. 228)
S 73°49'44" E 31.26' 3/8" Iron
Rod Found



PORTION OF CALLED
6.973 ACRES
WEST END JOINT VENTURE
VOL. 3144, PG. 228

5/8" Iron
Rod Set

N 16°43'41" E 156.02'

0.11 ACRE

S 16°49'40" N 156.08'
(Record S 14°00'46" N, Vol. 3149, Pg. 228)

(Asphalt Surface)
OLD WACO ROAD
PUBLIC MAINTAINED ROADWAY

5/8" Iron
Rod Set

N 73°44'08" W 30.99'
(Record N 73°35'58" W, Cab. C, Sl. 196-C)

5/8" Iron
Rod Set

THE MEADOWS, PHASE IV
CAB. C, SL. 196-C

TANGLEHEAD DRIVE

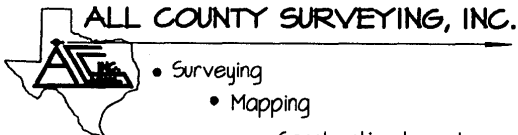
N 16°49'40" E
55.52'

1/2" Iron
Rod Found

PORTION OF CALLED
6.973 ACRES
WEST END JOINT VENTURE
VOL. 3144, PG. 228

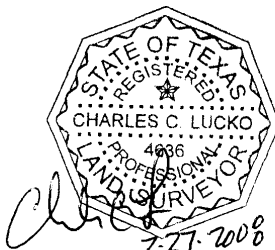
This project is referenced to the City of Temple Coordinate System, an extension of the Texas Coordinate System of 1983, Central Zone. All distances are horizontal surface distances unless noted and all bearings are grid bearings. All coordinates are referenced to City Monument No. 260. The theta angle at City Monument No. 260 is 01°29'57". The combined correction factor (CCF) is 0.999856. Grid distance = Surface distance X CCF. Geodetic north = Grid north + theta angle. Reference tie from City monument No. 260 to the northeast corner of this 0.11 acre tract is N 16° 21' 21" E, 5083.77' feet. Published City coordinates for project reference point 260 are N. = 10,376,015.76 E. = 3,207,456.98

This document is not valid for any
purpose unless signed and sealed by a
Registered Professional Land Surveyor.



- Surveying
- Mapping
- Construction Layout

1303 South 21st Street
Temple, Texas 76504
254-778-2272 Killeen 254-634-4636
Fax 254-774-7608



Plot Date: 02-22-2008

Survey
completed 04-04-2007
Scale: 1" = 50'
Job No. 997299.2
Dwg No. 997299.2-ROW-5
Drawn by SLW
Surveyor CCL #4636

1988-2008 20 YEARS OF EXCELLENCE

Copyright 2007 All County Surveying, Inc.

OUTER LOOP
R.O.W. PARCEL - H. A. PROCTER

**Surveyor's Sketch showing 0.27 ACRE, situated in the
NANCY CHANCE SURVEY, ABSTRACT 5, City of Temple,
Bell County, Texas.**

This sketch to accompany a metes and bounds
description of the hereon shown 0.27 Acre tract.

REMAINDER OF CALLED 47.01 ACRES
HAROLD L. PROCTER
VOL. 1066, PG. 249

(Record S 71° E, Vol. 1500, Pg. 445)
S 73°14'51" E 31.46'

5/8" Iron
Rod Set

5/8" Iron
Rod Set



**CALLED 10.33 ACRES
H. A. PROCTER
VOL. 1500, PG. 445**

N 16°43'41" E 371.37'

0.27 ACRE

S 16°45'34" W 371.06'
(Record S 14° W 371.04'; Vol. 1500, Pg. 445)

OLD WACO ROAD
(Asphalt Surface)
PUBLIC MAINTAINED ROADWAY

This project is referenced to the City of Temple Coordinate System, an extension of the Texas Coordinate System of 1983, Central Zone. All distances are horizontal surface distances unless noted and all bearings are grid bearings. All coordinates are referenced to City Monument No. 260. The theta angle at City Monument No. 260 is 01°29'57". The combined correction factor (CCF) is 0.999856. Grid distance = Surface distance X CCF. Geodetic north = Grid north + theta angle. Reference tie from City monument No. 260 to the northeast corner of this 0.27 acre tract is N 16° 22' 59" E, 5454.82' feet. Published City coordinates for project reference point 260 are N. = 10,376,015.76 E. = 3,207,456.98

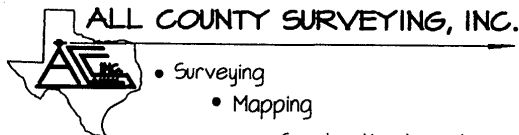
5/8" Iron
Rod Set

N 73°49'49" W 31.26'
(Record N 71°35'04" W, Vol. 1500, Pg. 445)

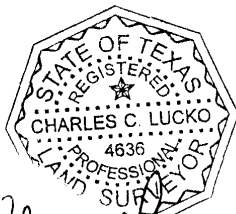
3/8" Iron
Rod Found

PORTION OF CALLED
6.973 ACRES
WEST END JOINT VENTURE
VOL. 3149, PG. 228

This document is not valid for any
purpose unless signed and sealed by a
Registered Professional Land Surveyor.



1303 South 21st Street
Temple, Texas 76504
254-778-2272 Killeen 254-634-4636
Fax 254-774-1608



Plot Date: 02-22-2008

Survey
completed 04-04-2007
Scale: 1" = 50'
Job No. 997299.2
Dwg No. 997299.2-ROW-4
Drawn by SLW
Surveyor CCL #4636

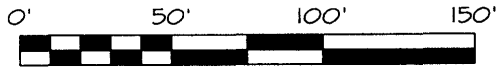
1988-2008 20 YEARS OF EXCELLENCE

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OUTER LOOP
R.O.W. PARCEL - H. A. PROCTER

**Surveyor's Sketch showing 0.06 ACRE, situated in the
NANCY CHANCE SURVEY, ABSTRACT 5, City of Temple,
Bell County, Texas.**

This sketch to accompany a metes and bounds
description of the hereon shown 0.06 Acre.



**CALLLED 5.36 ACRES
H. A. PROCTER
VOL. 2058, PG. 467**

**CALLLED 10.33 ACRES
H. A. PROCTER
VOL. 1500, PG. 445**

**L=78.10'
R=1440.00'
Δ=02°18'24"
C LEN=78.10'
BRG=N 15°34'07" E**

**N 73°14'51" W 31.54'
(Record N 71° W, Vol. 1500, Pg. 445)**

**REMAINDER OF CALLLED
47.07 ACRES
HAROLD L. PROCTER
VOL. 1066, PG. 244**

S 16°45'34" W
260.88'

1/2" Iron
Rod Found

5/8" Iron
Rod Set

5/8" Iron
Rod Set

5/8" Iron
Rod Set

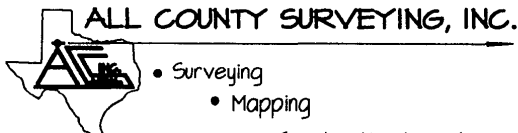
5/8" Iron
Rod Set

S 16°45'34" W
80.41'
(Record S 1st W, 8034',
Vol. 1500, Pg. 445)

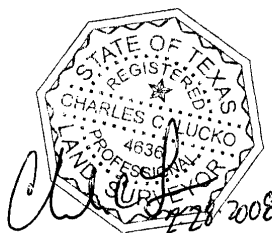
**OLD WACO ROAD
(Asphalt Surface)
PUBLIC MAINTAINED ROADWAY**

This project is referenced to the City of Temple Coordinate System, an extension of the Texas Coordinate System of 1983, Central Zone. All distances are horizontal surface distances unless noted and all bearings are grid bearings. All coordinates are referenced to City Monument No. 260. The theta angle at City Monument No. 260 is 01°29'57". The combined correction factor (CCF) is 0.999856. Grid distance = Surface distance X CCF. Geodetic north = Grid north + theta angle. Reference tie from City monument No. 260 to the northeast corner of this 0.06 acre tract is N 16° 23' 52" E, 5677.35' feet. Published City coordinates for project reference point 260 are N. = 10,376,015.76 E. = 3,207,456.48

This document is not valid for any
purpose unless signed and sealed by a
Registered Professional Land Surveyor.



1303 South 21st Street
Temple, Texas 76504
254-778-2272 Killeen 254-634-4636
Fax 254-774-7608



Plot Date: 02-22-2008

Survey
completed 04-04-2007
Scale: 1" = 50'
Job No. 997299.2
Dwg No. 997299.2-ROW-2
Drawn by SLW
Surveyor CCL #4636

1988-2008 20 YEARS OF EXCELLENCE

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OUTER LOOP
R.O.W. PARCEL - HAROLD L. PROCTER

**Surveyor's Sketch showing 0.10 ACRE, situated in the
NANCY CHANCE SURVEY, ABSTRACT 5, City of Temple,
Bell County, Texas.**

This sketch to accompany a metes and bounds
description of the hereon shown 0.10 Acre tract.

**CALLED 10.33 ACRES
H. A. PROCTER
VOL. 1500, PG. 445**

(Record S 71° E, Vol. 1500, Pg. 445)
S 73°14'51" E 31.54'
5/8" Iron Rod Set

**REMAINDER OF CALLED
41.01 ACRES
HAROLD L. PROCTER
VOL. 1066, PG. 249**

0.10 ACRE
N 16°43'41" E 142.13'

5/8" Iron Rod Set

S 16°45'34" W 142.13'
(Record S 14° W, Vol. 1500, Pg. 445)

OLD WACO ROAD
(Asphalt Surface)
PUBLIC MAINTAINED ROADWAY

5/8" Iron Rod Set

N 73°14'51" W 31.46'
(Record N 71° W, Vol. 1500, Pg. 445)

5/8" Iron Rod Set

N 16°45'34" E 371.06'

3/8" Iron Rod Found

**CALLED 10.33 ACRES
H. A. PROCTER
VOL. 1500, PG. 445**

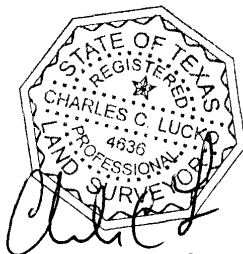


This project is referenced to the City of Temple Coordinate System, an extension of the Texas Coordinate System of 1983, Central Zone. All distances are horizontal surface distances unless noted and all bearings are grid bearings. All coordinates are referenced to City Monument No. 260. The theta angle at City Monument No. 260 is 01°29'57". The combined correction factor (CCF) is 0.999856. Grid distance = Surface distance X CCF. Geodetic north = Grid north + theta angle. Reference tie from City monument No. 260 to the northeast corner of this 1.10 acre tract is N 16° 23' 34" E, 5546.95' feet. Published City coordinates for project reference point 260 are N. = 10,376,015.76 E. = 3,207,456.98

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Temple, Texas 76504
254-778-2272 Killen 254-634-4636
Fax 254-774-7608



Charles C. Luck
2-27-2008

Plot Date: 02-22-2008

Survey completed 04-04-2007
Scale: 1" = 50'
Job No. 997299.2
Dwg No. 997299.2-ROW-3
Drawn by SLW
Surveyor CCL #4636

1988-2008 20 YEARS OF EXCELLENCE

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OUTER LOOP
R.O.W. PARCEL - H. A. PROCTER

Surveyor's Sketch showing 0.25 ACRE, situated in the
NANCY CHANCE SURVEY, ABSTRACT 5, City of Temple,
Bell County, Texas.

This sketch to accompany a metes and bounds
description of the hereon shown 0.25 Acre.

CALLLED 0.403 ACRE
TRINITY CHURCH OF TEMPLE,
TEXAS, INC.
VOL. 1844, PG. 897

(Record S 72°30'25" E, Vol. 2058, Pg. 467)
S 74°53'31" E 44.47'

5/8" Iron
Rod Set

1/2" Iron
Rod Found

CALLLED 5.36 ACRES
H. A. PROCTER
VOL. 2058, PG. 467

L=155.95'
R=2060.00'
Δ=04°20'15"
C LEN=155.91'
BRG=N 13°26'30" E

0.25 ACRE

S 16°45'34" W 260.88'
(Record S 16°00'00" W, Vol. 2058, Pg. 467)

OLD WACO ROAD
(Asphalt Surface)
PUBLIC MAINTAINED ROADWAY

5/8" Iron
Rod Set

L=106.40'
R=1940.00'
Δ=03°08'32"
C LEN=106.38'
BRG=N 12°50'39" E

5/8" Iron
Rod Set

5/8" Iron
Rod Set

N 77°15'53" W 33.24'
(Record N 75°01'02" W, Vol. 2058, Pg. 467)

CALLLED 10.33 ACRES
H. A. PROCTER
VOL. 1500, PG. 445

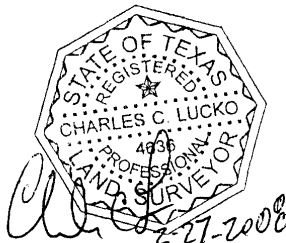


This project is referenced to the City of Temple Coordinate System,
an extension of the Texas Coordinate System of 1983, Central Zone.
All distances are horizontal surface distances unless noted and all
bearings are grid bearings. All coordinates are referenced to City
Monument No. 260. The theta angle at City Monument No. 260 is
01°29'57". The combined correction factor (CCF) is 0.999856. Grid
distance = Surface distance X CCF. Geodetic north = Grid north +
theta angle. Reference tie from City monument No. 260 to the
northeast corner of this 0.25 acre tract is N 16° 24' 50" E, 5938.23'
feet. Published City coordinates for project reference point 260
are N. = 10,376,015.76 E. = 3,207,456.98

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purpose unless signed and sealed by a
Registered Professional Land Surveyor.

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Temple, Texas 76504
254-778-2272 Killeen 254-634-4636
Fax 254-774-7608



Plot Date: 02-22-2008

Survey completed 04-04-2007
Scale: 1" = 50'
Job No. 997299.2
Dwg No. 997299.2-ROW-1
Drawn by SLW
Surveyor CCL #4636

1988-2008 20 YEARS OF EXCELLENCE

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OUTER LOOP

R.O.W. PARCEL - DORIS ANN BRUGGMAN, RICHARD J. BRENEK, MARVIN BRENEK, ERNEST BRENEK, ALBERT J. BRENEK, and EDWARD E. BRENEK, JR.

Surveyor's Sketch showing 0.84 ACRE, situated in the NANCY CHANCE SURVEY, ABSTRACT 5, City of Temple, Bell County, Texas.

This sketch to accompany a metes and bounds description of the hereon shown 0.84 Acre tract.

REMAINDER OF CALLED 62.81 ACRES
CRESCENT VIEW-TEMPLE, LTD.
VOL. 4718, PG. 534

1" Iron Pipe Found
(Record S 71° E, Vol. 2688, Pg. 745)
S 73°17'11" E 30.52'

5/8" Iron Rod Set

0.84 ACRE

FIRST TRACT
DORIS ANN BRUGGMAN, RICHARD J. BRENEK,
MARVIN BRENEK, ERNEST BRENEK, ALBERT J.
BRENEK, and EDWARD E. BRENEK, JR.
VOL. 2688, PG. 745



(Record N 16° E, Vol. 2688, Pg. 745)
N 16°28'45" E 1330.80'

S 16°43'41" W 1330.82'

5/8" Iron Rod Set

5/8" Iron Rod Set
N 73°13'03" W 24.73'
(Record N 73°13'07" W, Vol. 5244, Pg. 130)

CALLED 8.986 ACRES
CITY OF TEMPLE
VOL. 5244, PG. 130

This project is referenced to the City of Temple Coordinate System, an extension of the Texas Coordinate System of 1983, Central Zone. All distances are horizontal surface distances unless noted and all bearings are grid bearings. All coordinates are referenced to City Monument No. 260. The theta angle at City Monument No. 260 is 01°29'57". The combined correction factor (CCF) is 0.999856. Grid distance = Surface distance X CCF. Geodetic north = Grid north + theta angle. Reference tie from City monument No. 260 to the northwest corner of this 0.84 acre tract is N 17° 00' 11" E, 5248.06' feet. Published City coordinates for project reference point 260 are N. = 10,376,015.76 E. = 3,207,456.98

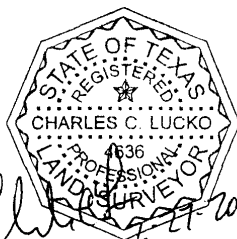
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ALL COUNTY SURVEYING, INC.



- Surveying
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Fax 254-774-7608



Plot Date: 04-16-2007

Survey completed 04-04-2007
Scale: 1" = 200'
Job No. 997299.2
Dwg No. 997299-ROW-27
Drawn by SLW
Surveyor CCL #4636

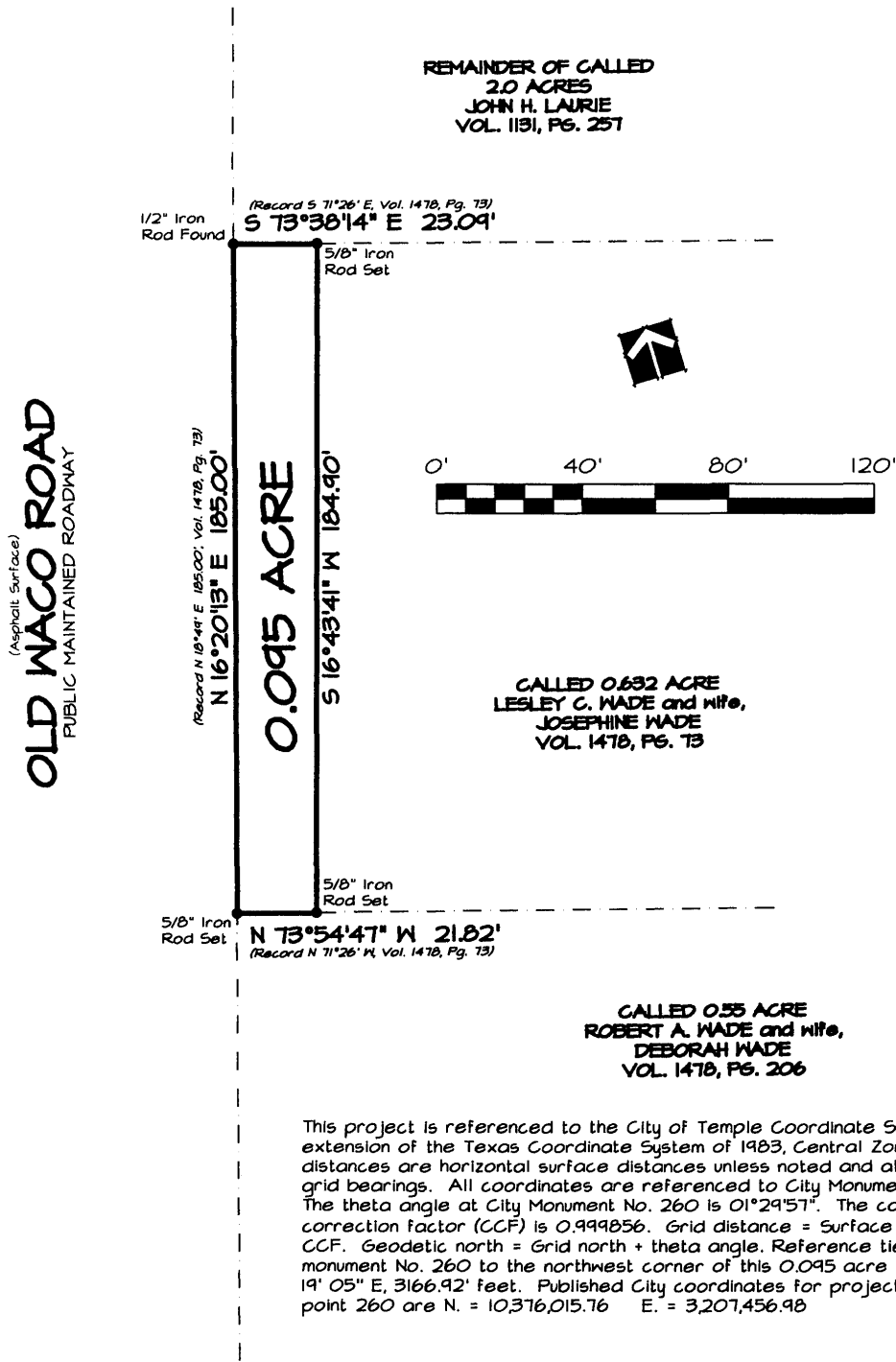
1988-2008 20 YEARS OF EXCELLENCE

Copyright 2007 All County Surveying, Inc.

OUTER LOOP
R.O.W. PARCEL - LESLEY C. WADE and wife, JOSEPHINE WADE

**Surveyor's Sketch showing 0.095 ACRE, situated in the NANCY CHANCE
SURVEY, ABSTRACT 5, City of Temple, Bell County, Texas.**

This sketch to accompany a metes and bounds
description of the hereon shown 0.095 Acre tract.

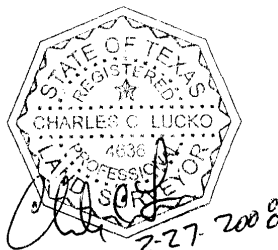


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Temple, Texas 76504
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Plot Date: 02-22-2008

Survey
completed 04-04-2007
Scale: 1" = 40'
Job No. 997299.2
Dwg No. 997299-ROW-30
Drawn by SLW
Surveyor CCL #4636

1988-2008 20 YEARS OF EXCELLENCE

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OUTER LOOP
R.O.W. PARCEL - PRENTICE RICHARD LEWIS

**Surveyor's Sketch showing 0.23 ACRE, situated in the NANCY CHANCE
SURVEY, ABSTRACT 5, City of Temple, Bell County, Texas.**

This sketch to accompany a metes and bounds
description of the hereon shown 0.23 Acre tract.

JUPITER DRIVE

NON-EXCLUSIVE EASEMENT AND RIGHT-OF-WAY
VOL. 1054, PG. 354

(Record S 71° E, Vol. 1028, Pg. 495)
S 73°20'43" E 17.86'
5/8" Iron
Rod Found

5/8" Iron
Rod Set

(Record N 19° E, Vol. 1028, Pg. 495)
N 16°34'35" E 282.26'

0.23 ACRE



CALLED 28.788 ACRES
PRENTICE RICHARD LEWIS
VOL. 1028, PG. 495

1" Iron Pipe
Found

(Record N 19° E, Vol. 1028, Pg. 495)
N 17°20'44" E 280.24'

S 16°43'41" W 564.95'

5/8" Iron
Rod Set
N 66°21'05" W 20.28'
(Record N 64° W, Vol. 1028, Pg. 495)

CALLED 5.5 ACRES
DAVID M. LUCKY, JR. and
wife, LUNELLE
VOL. 739, PG. 268

N 17°20'44" E 303.04'

3/4" Iron
Pipe Found

This project is referenced to the City of Temple
Coordinate System, an extension of the Texas
Coordinate System of 1983, Central Zone. All
distances are horizontal surface distances unless
noted and all bearings are grid bearings. All
coordinates are referenced to City Monument No.
260. The theta angle at City Monument No. 260
is 01°29'57". The combined correction factor
(CCF) is 0.999856. Grid distance = Surface
distance X CCF. Geodetic north = Grid north +
theta angle. Reference tie from City monument
No. 260 to the northwest corner of this 0.23
acre tract is N 17° 31' 50" E, 2401.90' feet.
Published City coordinates for project reference
point 260 are N. = 10,376,015.76 E. =
3,207,456.98

This document is not valid for any
purpose unless signed and sealed by a
Registered Professional Land Surveyor.

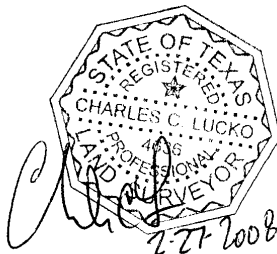
ALL COUNTY SURVEYING, INC.



- Surveying
- Mapping
- Construction Layout

1303 South 21st Street
Temple, Texas 76504
254-778-2272 Killeen 254-634-4636
Fax 254-774-7608

1988-2008 20 YEARS OF EXCELLENCE



Plot Date: 02-22-2008

Survey
completed 04-04-2007
Scale: 1" = 100'
Job No. 997299.2
Dwg No. 997299-ROW-34
Drawn by SLW
Surveyor CCL #4636

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OUTER LOOP
PERMANENT UTILITY EASEMENT - PRENTICE RICHARD LEWIS

Surveyor's Sketch showing 0.348 ACRE, situated in the NANCY CHANCE
SURVEY, ABSTRACT 5, City of Temple, Bell County, Texas.

This sketch to accompany a metes and bounds
description of the hereon shown 0.348 Acre tract.

JUPITER DRIVE
NON-EXCLUSIVE EASEMENT AND RIGHT-OF-WAY
VOL. 1054, PG. 354

● = Calculated Point
(unless otherwise noted)



CALLED 28.788 ACRES
PRENTICE RICHARD LEWIS
VOL. 1028, PG. 495

LINE	BEARING	DISTANCE
L1	S 73°22'30" E	44.88'
L2	S 16°31'30" W	66.34'
L3	N 73°16'19" W	20.00'
L4	N 66°21'05" W	25.18'
L5	S 16°43'41" W	13.75'

This project is referenced to the City of Temple
Coordinate System, an extension of the Texas
Coordinate System of 1983, Central Zone. All
distances are horizontal surface distances unless
noted and all bearings are grid bearings. All
coordinates are referenced to City Monument No.
260. The theta angle at City Monument No. 260
is 01°29'51". The combined correction factor
(CCF) is 0.999856. Grid distance = Surface
distance X CCF. Geodetic north = Grid north +
theta angle. Reference tie from City monument
No. 260 to the northwest corner of this 0.348
acre tract is N 18° 03' 51" E, 2388.52' feet.
Published City coordinates for project reference
point 260 are N. = 10,376,015.76 E. =
3,207,456.98

This document is not valid for any
purpose unless signed and sealed by a
Registered Professional Land Surveyor.

CALLLED 5.5 ACRES
DAVID M. LUCKY, JR. and
wife, LUNELLE
VOL. 739, PG. 268

ALL COUNTY SURVEYING, INC.

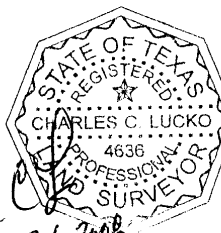
- Surveying
- Mapping
- Construction Layout

1303 South 21st Street
Temple, Texas 76504
254-778-2272 Killen 254-634-4636
Fax 254-774-7608

1988-2008 20 YEARS OF EXCELLENCE

Plot Date: 03-06-2008

Survey
completed 04-04-2007
Scale: 1" = 100'
Job No. 997299.2
Dwg No. 997299-PUE-34
Drawn by SLW
Surveyor CCL #4636



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COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(P)
Consent Agenda
Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Traci L. Barnard, Director of Finance

ITEM DESCRIPTION: Consider adopting a resolution approving third quarter financial results for Fiscal Year 2009.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: This item will present in detail the third quarter ending June 30, 2009, for the General, Water & Sewer, Drainage and Hotel/Motel Tax Funds.

Included with these third quarter results will be various schedules detailing grants, sales tax, capital projects and investments.

The third quarter financial statements also include a forecast of year-end financial results for the General Fund as of September 30, 2009.

FISCAL IMPACT: N/A

ATTACHMENTS:

Quarterly Financial Statements (Hard copy)
[Resolution](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING THE THIRD QUARTER FINANCIAL RESULTS FOR FISCAL YEAR 2009; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the third quarter 2009 fiscal year financial results need to be approved by the City Council;

Whereas, included in the third quarter results are various schedules detailing grants, sales tax, capital projects and investments; and

Whereas, the City Council deems it in the public interest to authorize this action.

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

Part 1: The City Council approves the third quarter 2009 fiscal year financial results, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

Part 2: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #5(Q)
Consent Agenda
Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Traci Barnard, Director of Finance

ITEM DESCRIPTION: Consider adopting a resolution authorizing budget amendments for fiscal year 2008-2009.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: This item is to recommend various budget amendments, based on the adopted FY 2008-2009 budget. The amendments will involve transfers of funds between contingency accounts, department and fund levels.

FISCAL IMPACT: The total amount of budget amendments is \$16,832.

ATTACHMENTS:

[Budget amendments
Resolution](#)

CITY OF TEMPLE
BUDGET AMENDMENTS FOR FY 2009 BUDGET
August 20, 2009

			APPROPRIATIONS	
ACCOUNT #	PROJECT #	DESCRIPTION	Debit	Credit
110-2000-521-2516		Judgments & Damages (Police)	\$ 205	
110-1500-515-6531		Contingency - Judgments & Damages		\$ 205
Deductible reimbursement to Texas Municipal League for attorney fees for a suit filed by Bruce Wayne Ervin against peace officers serving on a task force. Claim arises out of seizure of items in Ervin's possession when his premises were searched. Ervin is appealing a judgment for the officers.				
110-3400-531-2516		Judgments & Damages (Street)	\$ 1,017	
110-1500-515-6531		Contingency - Judgments & Damages		\$ 1,017
Deductible reimbursement to the Texas Municipal League for settlement of a claim filed against the City by Gilberto Vera seeking reimbursement for alleged damage to his vehicle by a street sweeper on May 29, 2009.				
110-3700-524-2516		Judgments & Damages (Construction Safety)	\$ 435	
110-1500-515-6531		Contingency - Judgments & Damages		\$ 435
Deductible reimbursement to the Texas Municipal League for a lawsuit filed against the City by Willis Martin, Jr., seeking reimbursement for alleged damage from purchasing a house he felt should have been demolished or repaired				
110-3700-524-2516		Judgments & Damages (Construction Safety)	\$ 675	
110-1500-515-6531		Contingency - Judgments & Damages		\$ 675
Attorney fees for lawsuit filed against the City - Centex Investments, Inc. v. City of Temple				
240-4400-551-2721		Food Products/Preparation (Mayborn Center)	\$ 14,500	
240-0000-445-1033		Catering Food Service Revenue		\$ 7,000
240-0000-445-1063		Food Sales		\$ 3,750
240-0000-445-1064		Beverage Sales		\$ 3,750
Food preparation products must be purchased above the budgeted amount in order to meet the increasing utilization of in-house catering and concession services. This increased use of in-house services will also produce an increase in associated revenue.				
TOTAL AMENDMENTS			\$ 16,832	\$ 16,832
GENERAL FUND				
Beginning Contingency Balance			\$	-
Added to Contingency Sweep Account			\$	-
Carry forward from Prior Year			\$	-
Taken From Contingency			\$	-
Net Balance of Contingency Account			\$	-
Beginning Judgments & Damages Contingency			\$	70,000
Added to Contingency Judgments & Damages from Council Contingency			\$	20,000
Taken From Judgments & Damages			\$	(85,748)
Net Balance of Judgments & Damages Contingency Account			\$	4,252

CITY OF TEMPLE
BUDGET AMENDMENTS FOR FY 2009 BUDGET
August 20, 2009

			APPROPRIATIONS	
ACCOUNT #	PROJECT #	DESCRIPTION	Debit	Credit
		Beginning SAFER Grant Match Contingency	\$	46,821
		Added to SAFER Grant Match Contingency	\$	-
		Taken From SAFER Grant Match Contingency	\$	(41,968)
		Net Balance of SAFER Grant Match Contingency Account	\$	4,853
		Beginning Compensation Contingency	\$	184,700
		Added to Compensation Contingency	\$	-
		Taken From Compensation Contingency	\$	(118,395)
		Net Balance of Compensation Contingency Account	\$	66,305
		Net Balance Council Contingency	\$	75,410
		Beginning Balance Budget Sweep Contingency	\$	-
		Added to Budget Sweep Contingency	\$	-
		Taken From Budget Sweep	\$	-
		Net Balance of Budget Sweep Contingency Account	\$	-
		WATER & SEWER FUND		
		Beginning Contingency Balance	\$	174,121
		Added to Contingency Sweep Account	\$	-
		Taken From Contingency	\$	(166,411)
		Net Balance of Contingency Account	\$	7,710
		Beginning Compensation Contingency	\$	34,334
		Added to Compensation Contingency	\$	-
		Taken From Compensation Contingency	\$	(34,334)
		Net Balance of Compensation Contingency Account	\$	-
		Beginning Approach Mains Contingency	\$	500,000
		Added to Approach Mains Contingency	\$	-
		Taken From Approach Mains Contingency	\$	(11,730)
		Net Balance of Approach Mains Contingency Account	\$	488,270
		Beginning T-BRSS Future Plant Expansion Contingency	\$	450,000
		Added to T-BRSS Future Plant Expansion Contingency	\$	-
		Taken From T-BRSS Future Plant Expansion Contingency	\$	(445,424)
		Net Balance of T-BRSS Future Plant Expansion Contingency	\$	4,576
		Net Balance Water & Sewer Fund Contingency	\$	500,556
		HOTEL/MOTEL TAX FUND		
		Beginning Contingency Balance	\$	75,221
		Added to Contingency Sweep Account	\$	-
		Taken From Contingency	\$	-
		Net Balance of Contingency Account	\$	75,221
		Beginning Compensation Contingency	\$	5,401
		Added to Compensation Contingency	\$	-
		Taken From Compensation Contingency	\$	(3,222)
		Net Balance of Compensation Contingency Account	\$	2,179
		Net Balance Hotel/Motel Tax Fund Contingency	\$	77,400
		DRAINAGE FUND		
		Beginning Contingency Balance	\$	-
		Added to Contingency Sweep Account	\$	-
		Taken From Contingency	\$	-
		Net Balance of Contingency Account	\$	-

CITY OF TEMPLE
BUDGET AMENDMENTS FOR FY 2009 BUDGET
August 20, 2009

			APPROPRIATIONS	
ACCOUNT #	PROJECT #	DESCRIPTION	Debit	Credit
		Beginning Compensation Contingency	\$	4,631
		Added to Compensation Contingency	\$	-
		Taken From Compensation Contingency	\$	(1,901)
		Net Balance of Compensation Contingency Account	\$	2,730
		Net Balance Drainage Fund Contingency	\$	2,730
		FED/STATE GRANT FUND		
		Beginning Contingency Balance	\$	7,962
		Carry forward from Prior Year	\$	99,254
		Added to Contingency Sweep Account	\$	-
		Taken From Contingency	\$	(70,458)
		Net Balance of Contingency Account	\$	36,758

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE,
TEXAS, APPROVING BUDGET AMENDMENTS TO THE 2008-2009
CITY BUDGET; AND PROVIDING AN OPEN MEETINGS CLAUSE.**

Whereas, on the 28th day of August, 2008, the City Council approved a budget for the 2008-2009 fiscal year; and

Whereas, the City Council deems it in the public interest to make certain amendments to the 2008-2009 City Budget.

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

Part 1: The City Council approves amending the 2008-2009 City Budget by adopting the budget amendments which are more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

Part 2: It is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED this the 20th day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #6
Regular Agenda
Page 1 of 2

DEPT. /DIVISION SUBMISSION & REVIEW:

Tim Dolan, Planning Director

ITEM DESCRIPTION: FIRST READING – PUBLIC HEARING - Z-FY-09-25: Consider adopting an ordinance authorizing a zoning change from Agricultural (A) to Commercial (C) District on 1± acres, situated in the Maximo Moreno Survey, Abstract No. 14, on the west side of South 5th Street, 500± feet north of Waters Dairy Road, located at 4804 South 5th Street.

P&Z COMMISSION RECOMMENDATION: At its August 3, 2009 meeting, the Planning and Zoning Commission voted 7/0 in accordance with the Staff recommendation to recommend approval of a zoning change from A to NS because the request:

1. Conforms to the Future Land Use and Character Plan for Auto Urban Commercial and NS Uses which occur mid-block, away from major intersections,
2. Conforms to the Thoroughfare Plan for access to existing Arterials for S. 5th Street, and
3. Conforms to the Adequacy of Public Facilities Plan since water and sewer are available to the subject area, with a 24" sewer to the west and a 3" water line to the east.

Commissioners Pilkington and Secrest were absent. The applicant agreed to the NS zoning since it allows professional offices in a more restrictive zoning district than Commercial.

STAFF RECOMMENDATION: Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for September 3, 2009.

ITEM SUMMARY: Please refer to the Staff Report and draft minutes of case Z-FY-09-25, from the Planning and Zoning meeting, August 3, 2009.

The applicant proposes to renovate an existing house for an insurance office.

A total of seven notices of the P&Z public hearing were sent out. Two notices have been returned; one favors the request and one opposes the request. The newspaper printed notice of the P&Z public hearing on Friday, July 23, 2009 in accordance with state law and local ordinance.

The action of the Planning and Zoning Commission is shown in the draft minutes. The Commission did not raise any issues requiring additional staff attention.

FISCAL IMPACT: NA

ATTACHMENTS:

Aerial

Zoning Map

Land Use and Character Map

Utility Map

Notice Map

P&Z Staff Report (Z-FY-09-25)

P&Z Minutes (August 3, 2009)

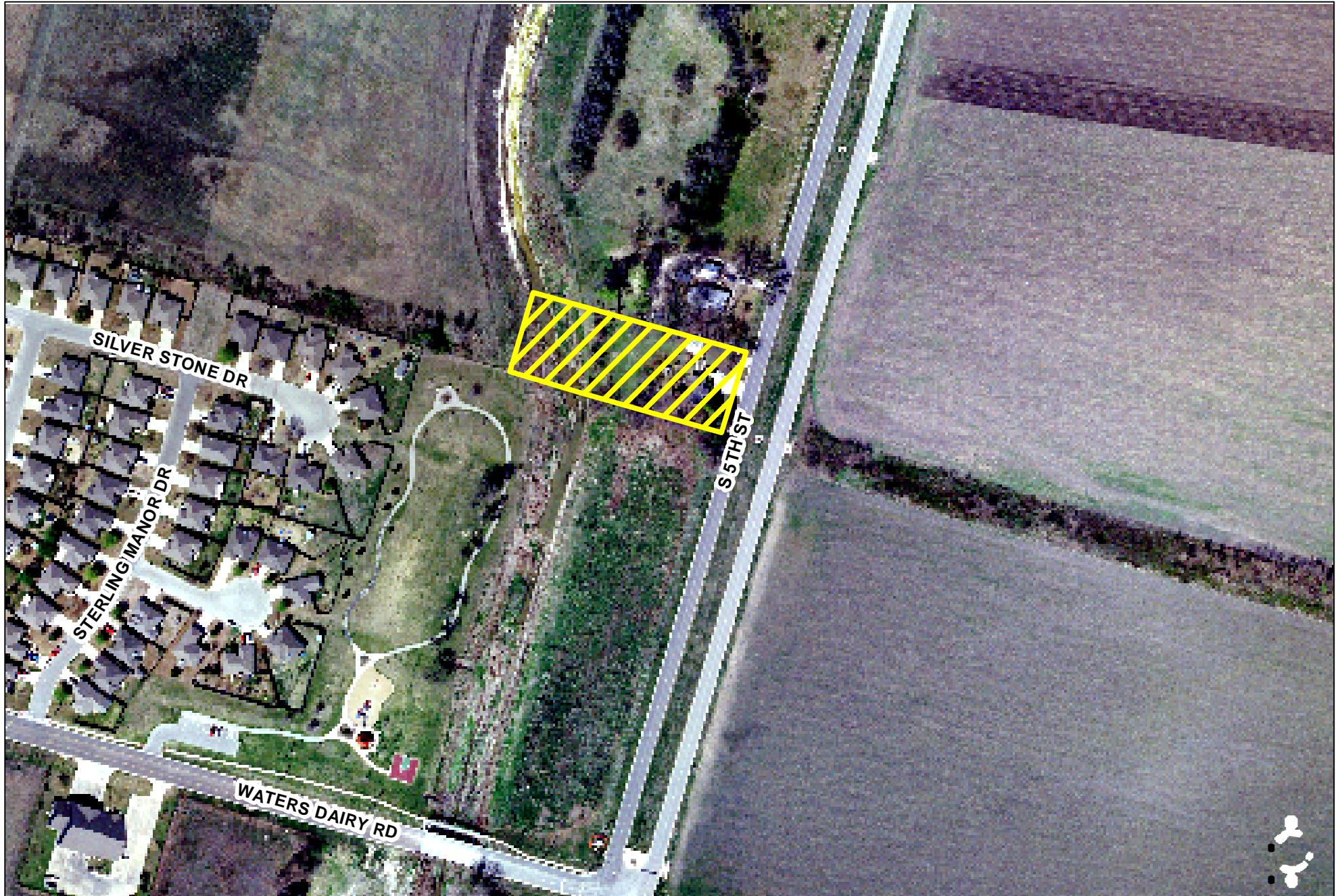
Ordinance



Z-FY-09-25

Outblock 728-A&B

4804 S 5th Street

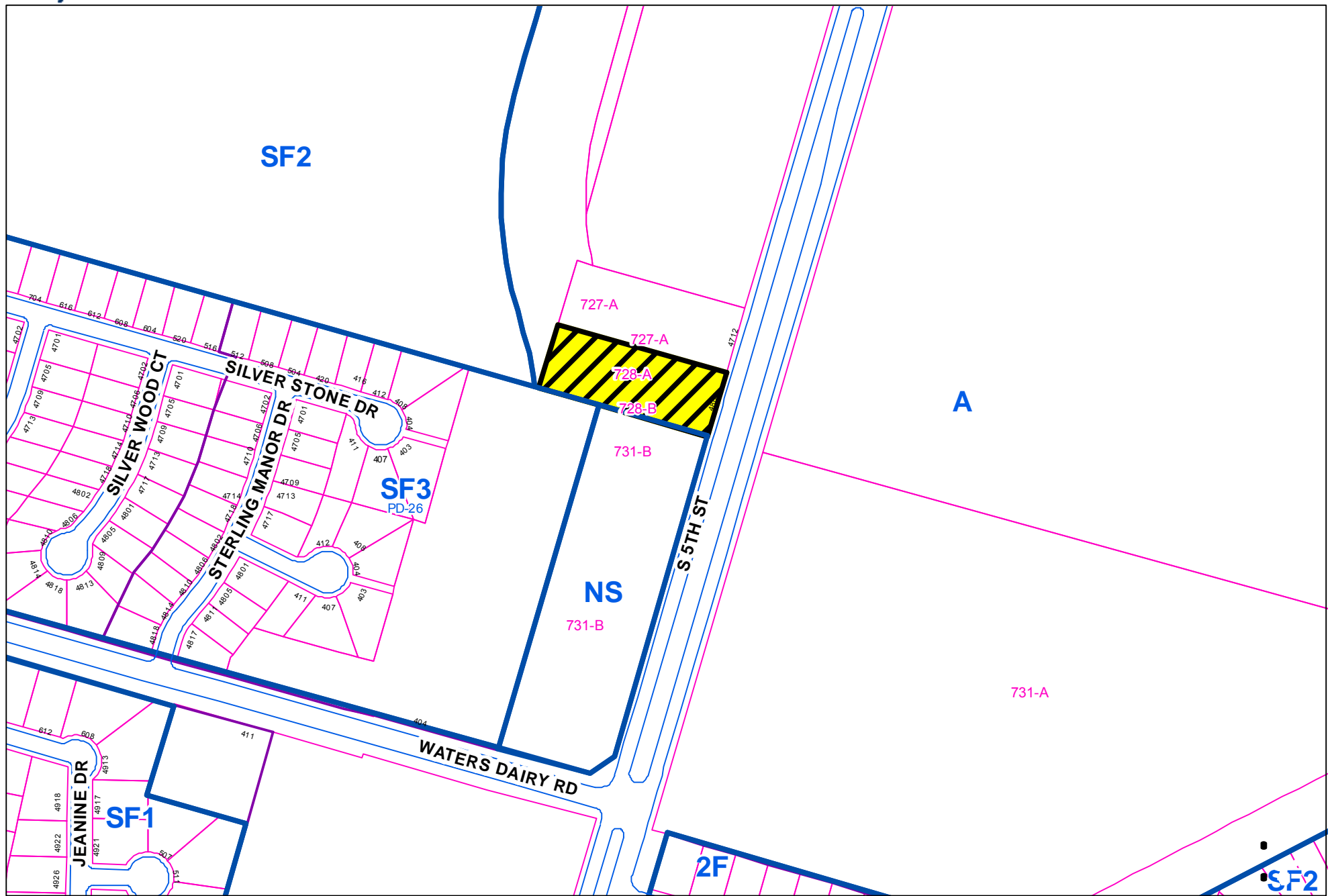


Z-FY-09-25

A to GR

1 inch = 200 feet

J Stone 6.26.09



Z-FY-09-25

A to GR

1 inch = 250 feet

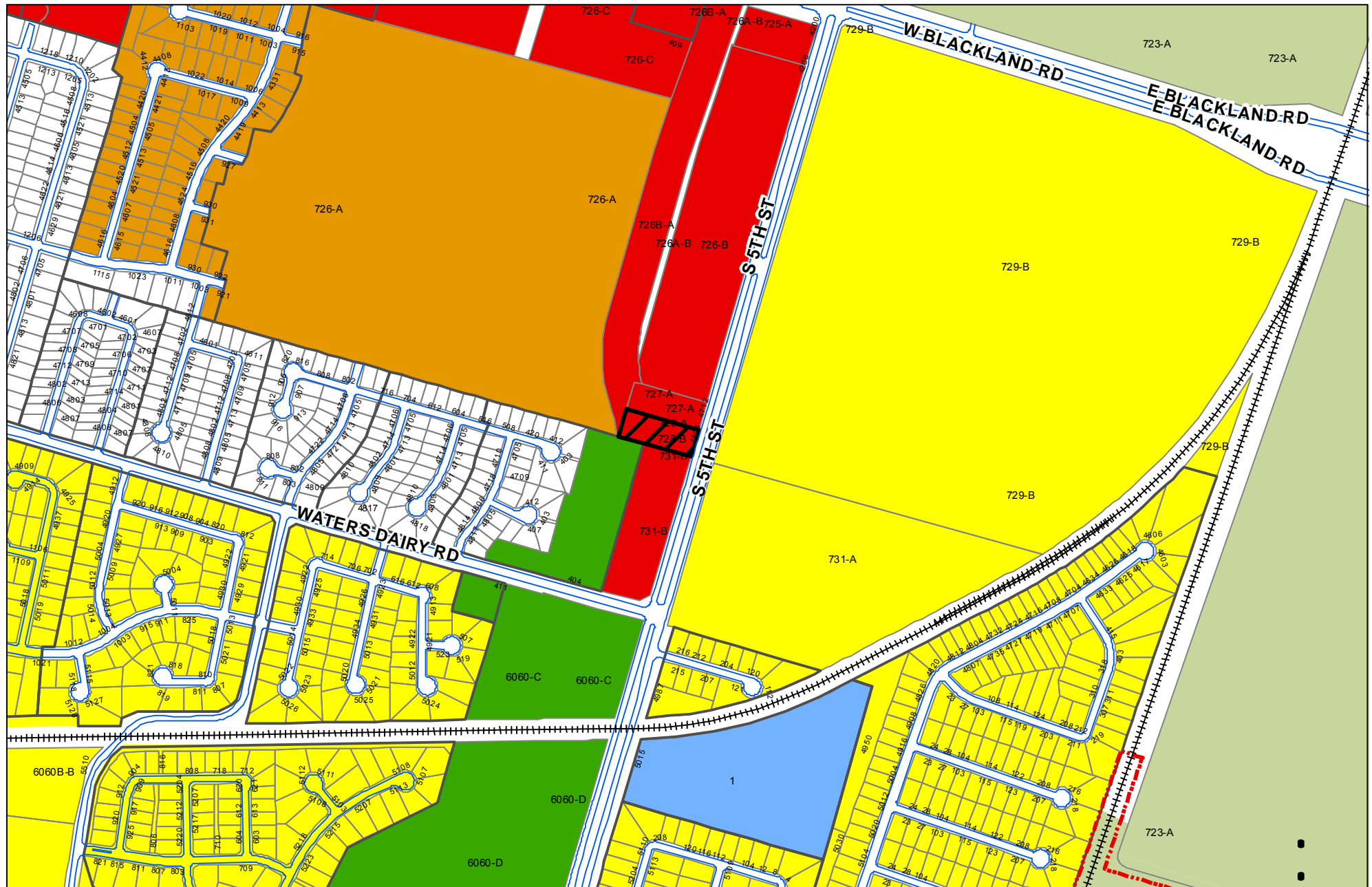
J Stone 6.26.09



Z-FY-09-25

Outblock 728-A&B

4804 S 5th Street



- | | | | | | |
|---------------------------|------------------------|-------------------------|-----------------------------------|----------------------|----------------------|
| Temple Boundary | Estate Residential | Auto-Urban Multi-Family | Suburban Commercial | Industrial | Parks and Open Space |
| Area of Proposed Zoning | Suburban Residential | Auto-Urban Mixed Use | Urban Center | Business park | Agricultural/Rural |
| Neighborhood Conservation | Auto-urban Residential | Auto-Urban Commercial | Temple Medical Education District | Public/Institutional | |

1 inch = 600 feet
J Stone 6.26.09

A to GR



Z-FY-09-25

Outblock 728-A&B

4804 S 5th Street



Z-FY-09-25



Sanitary Sewer



Water Lines

A to GR

1 inch = 200 feet

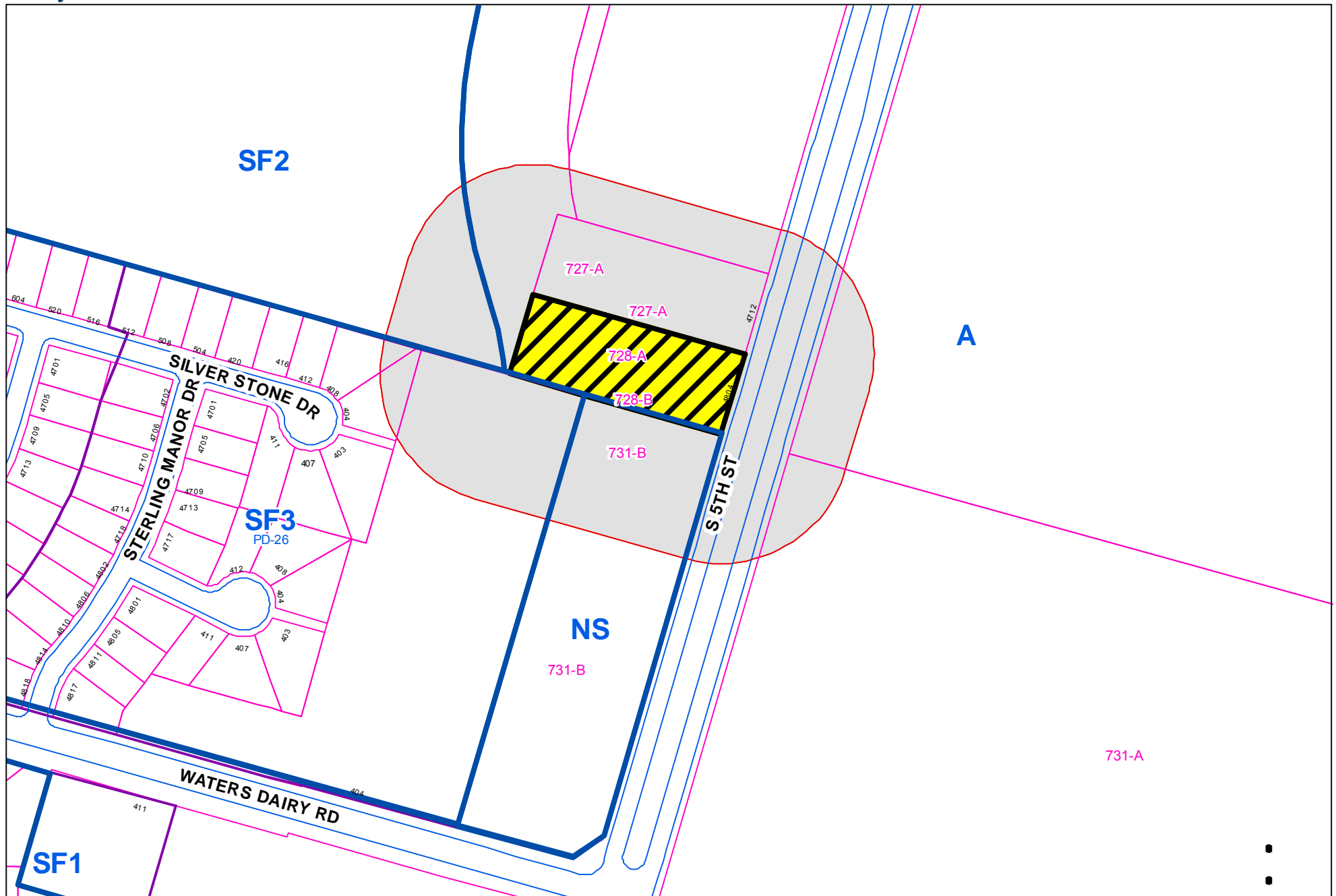
J Stone 6.26.09



Z-FY-09-25

Outblock 728-A&B

4804 S 5th Street



 Z-FY-09-25  200' Buffer

A to GR

1 inch = 200 feet
J Stone 6.26.09



PLANNING AND ZONING COMMISSION AGENDA ITEM

08/03/09

Item #2

Regular Agenda

Page 1 of 2

APPLICANT / DEVELOPMENT: Applicant: Jack & Dorothy Collier for Matthew Reinhart

CASE MANAGER: Tim Dolan, AICP, Planning Director

ITEM DESCRIPTION: Z-FY-09-25: Hold a public hearing to discuss and take action on permanent zoning from Agricultural District (A) to Commercial District (C) on 1± acres, situated in the Maximo Moreno Survey, Abstract No. 14, west side of South 5th Street, 500± feet north of Waters Dairy Road, located at 4804 South 5th Street.

BACKGROUND: The applicant requests the permanent zoning to use the current structure, a former house, for a professional insurance office. Permanent zoning is contingent upon development. The site plan will be reviewed as part of the building permit process, and the project will have to comply with landscaping and sign regulations. The existing driveway is sufficient for traffic circulation, and will require four parking spaces, of which one must be sized and striped accessible.

Surrounding Property and Uses

North	Undeveloped, Agricultural (A) holding zone
South	Undeveloped, zoned Neighborhood Service
East	Undeveloped, Agricultural (A) holding zone
West	Undeveloped, zoned SF2

A zoning request should be reviewed for compliance with the Comprehensive Plan.

Future Land Use and Character

The Future Land Use and Character Map shows the subject area planned for auto urban commercial uses, which conform to the Future Land Use and Character Map.

Thoroughfare Plan

South 5th Street is designated as a major arterial roadway and the request conforms to the Thoroughfare Plan

Adequacy of Public Facilities

Water (3") on South 5th Street and sewer (24" west of the subject tract) serve the subject area, and it conforms to the adequacy of public facilities.

Development Regulations

The Commercial (C) district allows all retail and most commercial land uses including professional offices total on-site traffic maneuvering such that traffic entering and exiting the facility should have room to turn, queue for parking areas, and park within the confines of said facility. This district should also be located on intersections of major thoroughfares or highways.

The Neighborhood Services district (NS) allows the same office use, while it is more restrictive than C regulations which allow the most intensive commercial uses, including auto repair uses.

Public Notice

A total of seven notices were sent out, with one return favoring the request, as of July 30th at 5 PM., The newspaper printed notice of the public hearing on July 23rd in accordance with state law and local ordinance.

STAFF RECOMMENDATION: Staff requests the Commission recommend approval of Z-FY-09-25 for Neighborhood Services (NS) zoning subject to the Commission finding:

1. The request conforms with the Future Land Use & Character Map for auto urban uses
2. The request conforms to the Thoroughfare Plan showing S. 5th Street as a major Arterial and
3. The request conforms to the Adequacy of Public Facilities for water and sewer.

FISCAL IMPACT: Not Applicable

ATTACHMENTS:

Aerial
Zoning Map
Land Use and Character Map
Notice Map

**EXCERPTS FROM THE
PLANNING & ZONING COMMISSION MEETING**

MONDAY, AUGUST 3, 2009

ACTION ITEMS

Item 2: Z-FY-09-25: Hold a public hearing to discuss and take action on permanent zoning from Agricultural District (A) to Commercial District (C) on 1± acres, situated in the Maximo Moreno Survey, Abstract No. 14, west side of South 5th Street, 500+ feet north of Waters Dairy Road, located at 4804 South 5th Street. (Applicant: Jack & Dorothy Collier for Matthew Reinhart)

Mr. Tim Dolan, Planning Director presented the Commission with a brief presentation and described the subject area. Mr. Dolan stated staff had discussed the idea of Neighborhood Services (NS) zoning with the property owner, instead of Commercial (C) zoning, and the owner is in agreement with the NS zoning.

Mr. Dolan stated this zoning will comply with the insurance business the owner would like to place in the area. The use conformed to the proposed land uses for General Retail (GR) or NS and the utilities are adequate to service the area.

Mr. Dolan stated seven notices were mailed out: one response was in favor and one response was opposed to the Commercial request. Mr. Dolan explained the Zoning Ordinance described it as offices, common general business and professional and are allowed in NS, GR, and Commercial (C).

Mr. Dolan stated Commercial is the most intensive retail district Temple had and there is no building height. Usually Commercial uses are located along major arterials or highways or its intersections. The NS is essentially the opposite since it is the least intensive retail district which should serve neighborhood areas and has a maximum building height of two and one-half stories and are located mid-block on collector or arterial roadways.

Commissioner Talley requested clarification on the meaning of “professional offices.” Mr. Dolan stated the Zoning Ordinance indicated businesses such as attorney, architect, accountant, etc.

Chair Pope opened the public hearing for comments.

Mr. Jack Collier approached the Commission on behalf of himself and his wife. The Colliers purchased the property in order for Mrs. Collier to open an insurance office (not real estate). Mr. Collier stated he had no problem with

the NS zoning requested as long as an insurance company is allowed. Mr. Collier asked the Commission to vote in favor of this request.

There being no further speakers Chair Pope closed the public hearing.

Commissioner Talley made a motion to recommend approval of Z-FY-09-25 for Neighborhood Services (NS) zoning subject to the Commission finding:

1. The request conforms with the Future Land Use & Character Map for auto urban uses
2. The request conforms to the Thoroughfare Plan showing S. 5th Street as a major Arterial and
3. The request conforms to the Adequacy of Public Facilities for water and sewer.

Commissioner Hurd made the second.

Motion passed: (7/0)

Vice-Chair Pilkington and Commissioner Secrest were absent

ORDINANCE NO. _____

[PLANNING NO. Z-FY-09-25]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM AGRICULTURAL DISTRICT (A) TO NEIGHBORHOOD SERVICES DISTRICT (NS) ON APPROXIMATELY 1 ACRE SITUATED IN THE MAXIMO MORENO SURVEY, ABSTRACT NO. 14, WEST SIDE OF SOUTH 5TH STREET, APPROXIMATELY 500 FEET NORTH OF WATERS DAIRY ROAD, LOCATED AT 4804 SOUTH 5TH STREET; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:

Part 1: The City Council approves a zoning change from Agricultural District (A) to Neighborhood Services District (NS) on approximately 1 acre, situated in the Maximo Moreno Survey, Abstract No. 14, west side of south 5th Street, approximately 500 feet north of Waters Dairy Road, located at 4804 South 5th Street, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

Part 2: The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map accordingly.

Part 3: It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such phrase, clause, sentence, paragraph or section.

Part 4: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

Part 5: It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the **20th** day of **August**, 2009.

PASSED AND APPROVED on Second Reading on the **3rd** day of **September**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #7
Regular Agenda
Page 1 of 3

DEPT./DIVISION SUBMISSION & REVIEW:

Jonathan Graham, City Attorney

ITEM DESCRIPTION: FIRST & FINAL READING - PUBLIC HEARING - Consider adopting an ordinance approving rate tariffs and Proof of Revenues that reflect the negotiated rate change between the City and Atmos Mid-Tex pursuant to the Rate Review Mechanism process, and approving a revision to the Atmos Mid-Tex current Gas Cost Recovery ("GCR") tariff to allow the Company to recover certain hedging costs associated with natural gas futures through the GCR tariff; to be considered on an emergency basis.

STAFF RECOMMENDATION: Conduct public hearing and adopt Ordinance as presented in item description, on first and final reading, August 20, 2009.

ITEM SUMMARY: The City, along with 150 other cities served by Atmos Energy Mid-Tex Division ("Atmos Mid-Tex" or "Company"), is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"). On March 6, 2009, Atmos Mid-Tex filed with the City an application to increase natural gas rates pursuant to the Rate Review Mechanism ("RRM") tariff approved by the City as part of the settlement of the Atmos Mid-Tex 2007 Statement of Intent to increase rates.

The Atmos Mid-Tex March RRM filing sought a \$20.2 million rate increase. The City worked with ACSC to analyze the schedules and evidence offered by Atmos Mid-Tex to support its request to increase rates. The Ordinance and attached RRM tariff are the result of negotiation between ACSC and the Company to resolve issues raised by ACSC during the review and evaluation of ACSC's RRM filing. The Ordinance and RRM tariffs approve rates that will increase the Company's revenues by \$2.6 million effective for bills rendered on or after August 1, 2009. The monthly bill impact for the average residential customer will be a \$0.15 increase (about a 0.22% increase in the total bill).

Please note that current rates contain a true-up component (\$9 million to be collected over twelve months) from the first RRM in 2008. Collection of the 2008 true-up amount is scheduled to end on November 1, 2009. The rate impact of that 2008 true-up amount for the period August 1 – October 31, 2009 is \$1,006,073. To simplify the process and to reduce rate fluctuations, the parties have agreed to eliminate collection of the 2008 true-up on August 1, 2009 rather than November 1, 2009. The remaining \$1,006,073 that is still owed from the 2008 true-up will be recovered as part of the 2009 true-up over 12 months rather than 3 months. This change related to the 2008 true-up amount is revenue and rate impact neutral.

The ACSC Executive Committee recommends that all ACSC Cities adopt the Ordinance implementing the rate change.

RRM Background:

The RRM tariff was approved by ACSC Cities as part of the settlement agreement to resolve the Atmos Mid-Tex 2007 rate increase case. Atmos Mid-Tex's current action represents the second filing pursuant to the three-year trial project known as the RRM process. The RRM process was created collaboratively by ACSC and Atmos Mid-Tex as an alternative to the GRIP surcharge process. The RRM process allows for a more comprehensive rate review and annual adjustment that will function as a substitute for future GRIP filings during the three-year trial period specified by the tariff.

There are two components to the RRM adjustment. The prospective component adjusts rates for known and measurable changes in O&M and net plant investment. Atmos Mid-Tex and ACSC agreed to cap changes to expenses and invested capital at no more than 5%. The true-up component evaluates whether the Company has over or under recovered its earnings for the previous year. For purposes of the RRM true-up component, the Atmos Mid-Tex rate of return on equity and its capital structure are frozen to avoid the parent company from manipulating the overall rate of return. Costs expressly prohibited from recovery through the RRM include first-class air fare, travel, meals or entertainment for an employee's spouse, alcohol, sports events, entertainment, arts and cultural events, sponsorship of sports, arts or cultural events, and social club membership dues.

Reasons Justifying Approval of the Negotiated Resolution:

During the time that the City has retained original jurisdiction in this case, consultants working on behalf of ACSC cities have investigated the support for the Company's requested rate increase. While the evidence does not support the \$20.2 million increase requested by the Company, ACSC consultants agree that the Company can justify a slight increase in revenues. The agreement on \$2.6 million is a compromise between the positions of the parties.

The alternative to a settlement of the RRM filing would be a contested case proceeding before the Railroad Commission of Texas ("RRC") on the Company's current application, which would take several months and cost ratepayers millions of dollars in rate case expenses and would not likely produce a result more favorable than that to be produced by the settlement. The ACSC Executive Committee recommends that ACSC members take action to approve the Ordinance authorizing new rate tariffs.

With regard to the revision to the GCR tariff, ACSC has advocated that the Company use hedging as a risk management tool to help mitigate volatile natural gas prices. The tariff change is consistent with ACSC's prior position.

As a result of the negotiations, ACSC was able to reduce the Company's requested \$20.2 million RRM increase by more than 70%. Approval of the Ordinance will result in rates that implement a \$2.6 million increase in Atmos' revenues effective August 1, 2009.

FISCAL IMPACT: None.

ATTACHMENTS:

Attachment "A" Tariffs

Attachment "B" Proposed 2009 RRM Settlement Proof of Revenues
Ordinance

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**
REVISION NO: 0

RATE SCHEDULE:	R – RESIDENTIAL SALES	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 29

Application

Applicable to Residential Customers for all natural gas provided at one Point of Delivery and measured through one meter.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and Mcf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	\$ 7.00 per month
Commodity Charge – All Mcf	\$2.2707 per Mcf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Rate Review Mechanism: Plus or Minus an amount for rates as calculated in accordance with Rider RRM.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**

REVISION NO: 0

RATE SCHEDULE:	C – COMMERCIAL SALES	
APPLICABLE TO:	All Cities designated as "Group A" on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 30

Application

Applicable to Commercial Customers for all natural gas provided at one Point of Delivery and measured through one meter and to Industrial Customers with an average annual usage of less than 3,000 Mcf.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and Mcf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	\$ 13.50 per month
Commodity Charge - All Mcf	\$ 0.9877 per Mcf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Rate Review Mechanism: Plus or Minus an amount for rates as calculated in accordance with Rider RRM.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**
REVISION NO: 0

RATE SCHEDULE:	I – INDUSTRIAL SALES	
APPLICABLE TO:	All Cities designated as “Group A” on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 31

Application

Applicable to Industrial Customers with a maximum daily usage (MDU) of less than 3,500 MMBtu per day for all natural gas provided at one Point of Delivery and measured through one meter. Service for Industrial Customers with an MDU equal to or greater than 3,500 MMBtu per day will be provided at Company's sole option and will require special contract arrangements between Company and Customer.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and MMBtu charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Meter	\$ 425.00 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.2583 per MMBtu
Next 3,500 MMBtu	\$ 0.1884 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0404 per MMBtu

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Rate Review Mechanism: Plus or Minus an amount for rates as calculated in accordance with Rider RRM.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Curtailment Overpull Fee

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**REVISION NO: 0

RATE SCHEDULE:	I – INDUSTRIAL SALES	
APPLICABLE TO:	All Cities designated as “Group A” on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 32

Replacement Index

In the event the “midpoint” or “common” price for the Katy point listed in *Platts Gas Daily* in the table entitled “Daily Price Survey” is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company’s Tariff for Gas Service.

Special Conditions

In order to receive service under Rate I, Customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**
REVISION NO: 0

RATE SCHEDULE:	T – TRANSPORTATION	
APPLICABLE TO:	All Cities designated as “Group A” on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 33

Application

Applicable, in the event that Company has entered into a Transportation Agreement, to a customer directly connected to the Atmos Energy Corp., Mid-Tex Division Distribution System (Customer) for the transportation of all natural gas supplied by Customer or Customer's agent at one Point of Delivery for use in Customer's facility.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's bill will be calculated by adding the following Customer and MMBtu charges to the amounts and quantities due under the riders listed below:

Charge	Amount
Customer Charge per Meter	\$ 425.00 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.2583 per MMBtu
Next 3,500 MMBtu	\$ 0.1884 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0404 per MMBtu

Upstream Transportation Cost Recovery: Plus an amount for upstream transportation costs in accordance with Part (b) of Rider GCR.

Rate Review Mechanism: Plus or Minus an amount for rates as calculated in accordance with Rider RRM.

Retention Adjustment: Plus a quantity of gas as calculated in accordance with Rider RA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Imbalance Fees

All fees charged to Customer under this Rate Schedule will be charged based on the quantities determined under the applicable Transportation Agreement and quantities will not be aggregated for any Customer with multiple Transportation Agreements for the purposes of such fees.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**
REVISION NO: 0

RATE SCHEDULE:	T – TRANSPORTATION	
APPLICABLE TO:	All Cities designated as “Group A” on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 34

Monthly Imbalance Fees

Customer shall pay Company the greater of (i) \$0.10 per MMBtu, or (ii) 150% of the difference per MMBtu between the highest and lowest “midpoint” price for the Katy point listed in *Platts Gas Daily* in the table entitled “Daily Price Survey” during such month, for the MMBtu of Customer’s monthly Cumulative Imbalance, as defined in the applicable Transportation Agreement, at the end of each month that exceeds 10% of Customer’s receipt quantities for the month.

Curtailment Overpull Fee

Upon notification by Company of an event of curtailment or interruption of Customer’s deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled “Daily Price Survey.”

Replacement Index

In the event the “midpoint” or “common” price for the Katy point listed in *Platts Gas Daily* in the table entitled “Daily Price Survey” is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

Agreement

A transportation agreement is required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company’s Tariff for Gas Service.

Special Conditions

In order to receive service under Rate T, customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**
REVISION NO: 0

RIDER:	WNA – WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	All Cities designated as “Group A” on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 45

Provisions for Adjustment

The base rate per Mcf (1,000,000 Btu) for gas service set forth in any Rate Schedules utilized by the cities of the Mid-Tex Division service area for determining normalized winter period revenues shall be adjusted by an amount hereinafter described, which amount is referred to as the "Weather Normalization Adjustment." The Weather Normalization Adjustment shall apply to all temperature sensitive residential, and commercial bills based on meters read during the revenue months of November through April. The five regional weather stations are Abilene, Austin, Dallas, Waco, and Wichita Falls.

Computation of Weather Normalization Adjustment

The Weather Normalization Adjustment Factor shall be computed to the nearest one-hundredth cent per Mcf by the following formula:

$$WNAF_i = R_i \frac{(HSF_i \times (NDD-ADD))}{(BL_i + (HSF_i \times ADD))}$$

Where

i = any particular Rate Schedule or billing classification within any such particular Rate Schedule that contains more than one billing classification

$WNAF_i$ = Weather Normalization Adjustment Factor for the i^{th} rate schedule or classification expressed in cents per Mcf

R_i = base rate of temperature sensitive sales for the i^{th} schedule or classification approved by the entity exercising original jurisdiction.

HSF_i = heat sensitive factor for the i^{th} schedule or classification calculated as the slope of the linear regression of average sales per bill (Mcf) and actual heating degree days by month for the test year by schedule or classification and weather station as part of the RRM filing.

NDD = billing cycle normal heating degree days calculated as the simple ten-year average of actual heating degree days.

ADD = billing cycle actual heating degree days.

BL_i = base load sales for the i^{th} schedule or classification calculated as the y-intercept of the linear regression of average sales per bill (Mcf) and actual heating degree days by month for the test year by schedule or classification and weather station as part of the RRM filing.

The Weather Normalization Adjustment for the j^{th} customer in i^{th} rate schedule is computed as:

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**
REVISION NO: 0

RIDER:	WNA – WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	All Cities designated as “Group A” on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 46

$$WNA_i = WNAF_i \times q_{ij}$$

Where q_{ij} is the relevant sales quantity for the j th customer in i th rate schedule.

Filings with Entities Exercising Original Jurisdiction

As part of its annual RRM filing the Company will file (a) a copy of each computation of the Weather Normalization Adjustment Factor, (b) a schedule showing the effective date of each such Weather Normalization Adjustment, (c) a schedule showing the factors of values used in calculating such Weather Normalization Adjustment and (d) a random sample and audit of thirty (30) actual customer bills, with customer information deleted, for each rate schedule or classification to which the WNA was applied in the preceding 12 month period. To the extent that source data is needed to audit the WNA application, such data will be provided by the Company as part of the annual RRM filing.

If the RRM is discontinued, as provided in the Rider RRM tariff, the information required herein to be filed with the entities exercising original jurisdiction shall be filed on March 1 of each year.

Base Use/Heat Use Factors

<u>Weather Station</u>	<u>Residential</u>		<u>Commercial</u>	
	<u>Base use Mcf</u>	<u>Heat use Mcf/HDD</u>	<u>Base use Mcf</u>	<u>Heat use Mcf/HDD</u>
Abilene	0.98	.0140	9.64	.0629
Austin	1.30	.0161	20.00	.0815
Dallas	1.60	.0212	20.12	.1018
Waco	1.12	.0139	11.69	.0608
Wichita Falls	1.12	.0159	11.67	.0649

Sample WNAF_i Calculation:

$$.3393 \text{ per Mcf} = 2.2707 \times \frac{(.0140 \times (30-17))}{(0.98 + (.0140 \times 17))}$$

Where

i = Residential Single Block Rate Schedule

R_i = 2.2707 per MCF

HSF_i = .0140 (Residential - Abilene Area)

Issued By: David J. Park

Vice President, Rates and Regulatory Affairs

Date Issued:

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**REVISION NO: 0

RIDER:	WNA – WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	All Cities designated as “Group A” on the Cities Served List	
EFFECTIVE DATE:	Bills Rendered on or after 08/01/2009	PAGE: 47

NDD = 30 HDD (Simple ten-year average of Actual HDD for Abilene Area – 9/15/06 – 10/14/06)

ADD = 17 HDD (Actual HDD for Abilene Area – 9/15/06 – 10/14/06)

Bl_i = 0.98 Mcf (Residential - Abilene Area)

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**
REVISION NO: 0

RIDER:	GCR – GAS COST RECOVERY	
APPLICABLE TO:	All Cities Except Dallas	
EFFECTIVE DATE:	Bills Rendered on or after 8/1/2009	PAGE: 68

Applicable to Rate R, Rate C, and Rate I for all gas sales made by Company, and applicable to Rate R, Rate C, Rate I, and Rate T for recovery of Pipeline System costs. The total gas cost recovery amount due is determined by adding the gas cost calculated in Section (a) below and the pipeline cost calculated in Section (b) below.

The amount due for gas cost (Section (a)) is determined by multiplying the Gas Cost Recovery Factor (GCRF) by the Customer's monthly volume. For Customers receiving service under Rate R and Rate C, monthly volume will be calculated on a Mcf basis. For Customers receiving service under Rate I, monthly volume will be calculated on an MMBtu basis and the quantities will be adjusted as necessary to recover actual gas costs.

The amount due for pipeline cost (Section (b)) is determined by multiplying the Pipeline Cost Factor (PCF) by the Customer's monthly volume. For Customers receiving service under Rate R and Rate C, monthly volume will be calculated on an Mcf basis. For Customers receiving service under Rate I and Rate T, monthly volume will be calculated on an MMBtu basis and the quantities will be adjusted as necessary to recover actual gas costs.

(a) Gas Cost
Method of Calculation

The monthly gas cost adjustment is calculated by the application of a Gas Cost Recovery Factor (GCRF), as determined with the following formula:

$$\text{GCRF} = \text{Estimated Gas Cost Factor (EGCF)} + \text{Reconciliation Factor (RF)} + \text{Taxes (TXS)}$$

EGCF = Estimated cost of gas, including lost and unaccounted for gas attributed to residential, commercial, and industrial sales, and any reconciliation balance of unrecovered gas costs, divided by the estimated total residential, commercial, and industrial sales. Lost and unaccounted for gas is limited to 5%.

RF = Calculated by dividing the difference between the Actual Gas Cost Incurred, inclusive of interest over the preceding twelve-month period ended June 30 and the Actual Gas Cost Billed over that same twelve-month period by the estimated total residential, commercial, and industrial sales for the succeeding October through June billing months. The interest rate to be used is the annual interest rate on overcharges and under charges by a utility as published by the Public Utility Commission each December. The interest rate for calendar year 2009 is 2.09%.

Actual Gas Cost Incurred = The sum of the costs booked in Atmos Energy Corp., Mid-Tex Division account numbers 800 through 813 and 858 of the FERC Uniform System of Accounts, including the net impact of injecting and withdrawing gas from storage. Also includes a credit or debit for any out-of-period adjustments or unusual or nonrecurring costs typically considered gas costs and a credit for amounts received as Imbalance Fees or Curtailment Overpull Fees. Also includes any

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**
REVISION NO: 0

RIDER:	GCR – GAS COST RECOVERY	
APPLICABLE TO:	All Cities Except Dallas	
EFFECTIVE DATE:	Bills Rendered on or after 8/1/2009	PAGE: 69

prudently incurred transaction-related fees, gains or losses and other transaction costs associated with the use of various financial instruments that are executed by the Company for the purpose of price volatility mitigation.

Actual Gas Cost Billed = EGCF multiplied by the monthly volumes billed to Residential, Commercial and Industrial Sales customers, less the total amount of gas cost determined to have been uncollectible and written off which remain unpaid for each month of the reconciliation period.

Any amount remaining in the reconciliation balance after the conclusion of the period of amortization will be maintained in the reconciliation balance and included in the collection of the next RF.

Atmos Energy shall file annual reports with the Commission, providing by month the following amounts: Gas Cost Written Off, Margin Written Off, Tax and Other Written Off, Total Written Off, Gas Cost Collected and Margin Collected.

TXS = Any statutorily imposed assessments or taxes applicable to the purchase of gas divided by the estimated total residential, commercial, and industrial sales.

ADJ = Any surcharge or refund ordered by a regulatory authority, inclusive of interest, divided by the estimated total residential, commercial, and industrial sales is to be included as a separate line item surcharge.

(b) Pipeline Cost
Method of Calculation

Each month, a Pipeline Cost Factor (PCF) is calculated separately for each Pipeline Cost Rate Class listed below. The formula for the PCF is:

$PCF = PP / S$, where:

$PP = (P - A) \times D$, where:

P = Estimated monthly cost of pipeline service calculated pursuant to Rate CGS

D = Pipeline service allocation factor for the rate class as approved in the Company's most recent rate case, as follows:

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**
REVISION NO: 0

RIDER:	GCR – GAS COST RECOVERY	
APPLICABLE TO:	All Cities Except Dallas	
EFFECTIVE DATE:	Bills Rendered on or after 8/1/2009	PAGE: 70

Pipeline Cost Rate Class	Allocation Factor (D)
Rate R - Residential Service	.634698
Rate C - Commercial Service	.302824
Rate I - Industrial Service and Rate T - Transportation Service	.062478

A = Adjustment applied in the current month to correct for the difference between the actual and estimated pipeline cost revenue of the second preceding month, calculated by the formula:

$A = R - (C - A2)$, where:

R = Actual revenue received from the application of the PP component in the second preceding month.

C = Actual pipeline costs for the second preceding month.

A2 = The adjustment (A) applied to the PP component in the second preceding month.

S = Estimated Mcf or MMBtu for the rate class for the current billing month.

The PCF is calculated to the nearest 0.0001 cent.

The Pipeline Cost to be billed is determined by multiplying the Mcf or MMBtu used by the appropriate PCF. The Pipeline Cost is determined to the nearest whole cent.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION**
REVISION NO: 0

RIDER:	CEE – CONSERVATION & ENERGY EFFICIENCY	
APPLICABLE TO:	All Cities except Dallas	
EFFECTIVE DATE:	Bills Rendered on or after 8/1/2009	PAGE: 84

Purpose

Atmos Energy Mid-Tex is proposing to institute a complete Conservation & Energy Efficiency program which will offer assistance to qualified customer segments in reducing energy consumption and lowering energy utility bills. The proposal is one where Atmos Energy shareholders will fund a percentage of the allowable expenses incurred annually, with a customer rate component providing the remainder of the funding. Following is a high-level, concept summary of the proposal. Atmos Energy Mid-Tex Division proposes to work with the communities it serves to develop the details of a new tariff and programs addressing conservation and energy efficiency.

Synopsis:

Voucher system to provide free energy savings materials and supplies to qualifying customers of Atmos Mid-Tex. Qualified Customers will receive up to one thousand five hundred dollars (\$1,500.00) worth of caulking, weather-stripping, sheathing, sealing, water heater blankets, related gas plumbing, and like materials, other energy saving devices such as clock-thermostats, set-back devices ("covered items") from approved suppliers / retailers including necessary labor.

Company will undertake efforts to enlist support from community groups, including its own Employee Action Program, to assist customers with installation. If it is determined that professional installation capabilities are necessary, the parties will agree on labor assistance amounts.

Eligibility

Low Income – Low-income rate-payers that qualify for heating bill assistance through LIHEAP and other government energy efficiency program agencies and all agencies that distribute Atmos "Share the Warmth" funds. Agencies that allocate assistance funds denote customer as Low Income, a status that lasts for one year.

Senior Citizen – Primary account holder can request eligibility through ATM call center or web-site. Customer provides primary SSN which is verified through Social Security Administration. And account holder that is or turns 65 years old in that year becomes eligible.

Funding

Initial annual program funding will be at two million dollars (\$2,000,000). Atmos Energy shareholders will contribute one million dollars (\$1,000,000.00) to this initiative annually with ratepayers providing one million dollars (\$1,000,000.00) per year. It is proposed that the program operate on an October 1 through September 30 year, with regulatory asset/liability accounting employed by Atmos to track the difference between program funding and qualifying program expenditures. No Atmos employee labor will be charged as a program expenditure.

Administration:

A third-party administrator will coordinate qualification of customers, voucher distribution, subsequent verification and reimbursement of eligible expenditures and general program administration. Program administration expenses will be funded from the annual approved budget.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

**ATMOS ENERGY CORPORATION
MID-TEX DIVISION****REVISION NO: 0**

RIDER:	CEE – CONSERVATION & ENERGY EFFICIENCY	
APPLICABLE TO:	All Cities except Dallas	
EFFECTIVE DATE:	Bills Rendered on or after 8/1/2009	PAGE: 85

Audits will be provided all interested parties within 120 days of the end of each program year to determine effectiveness.

Report

Atmos shall file an annual report detailing cost to administer the program including the amounts paid out of the program for energy conversation assistance. The report shall also detail the number of applicants and expenditures by geographic location, including the numbers of applications rejected and accepted and reason if rejected. The report shall be filed with the Director of the Gas Services Division of the Railroad Commission within 120 days of the end of each program year and with counsel of record for municipalities served by the Mid-Tex Division.

Issued By: David J. Park
Date Issued:

Vice President, Rates and Regulatory Affairs

ATMOS ENERGY CORP., MID-TEX DIVISION
PROOF OF REVENUES
TEST YEAR ENDING DECEMBER 31, 2008
(2009 RRM SETTLEMENT PROPOSAL)

Line No.	Description	Prospective Rate Increase	2008 True-up	Total change from current rates
	(a)	(b)	(c)	(d)
1	Rate R			
2	Consumption Charge per MCF			
3	Change from Current Rate	\$0.1047	\$0.0060	\$0.0297
4	Billing Units for Specified Period	82,321,960	82,321,960	82,321,960
5	Total Change in Base Revenue	\$8,619,109	\$493,932	\$2,444,962
6	Associated Revenue Taxes	<u>\$532,144</u>	<u>\$30,495</u>	<u>\$150,952</u>
7	Total Rate Impact	\$9,151,253	\$524,427	\$2,595,914
8	Number of Bills for Specified Period	17,244,058	17,244,058	17,244,058
9	Average Impact per Bill	\$0.53	\$0.03	\$0.15
10	Rate C			
11	Consumption Charge per MCF			
12	Change from Current Rate	\$0.0383	\$0.0052	\$0.0068
13	Billing Units for Specified Period	52,439,100	52,439,100	52,439,100
14	Total Change in Base Revenue	\$2,008,418	\$272,683	\$356,586
15	Associated Revenue Taxes	<u>\$124,000</u>	<u>\$16,835</u>	<u>\$22,016</u>
16	Total Rate Impact	\$2,132,417	\$289,519	\$378,601
17	Number of Bills for Specified Period	1,452,943	1,452,943	1,452,943
18	Average Impact per Bill	\$1.47	\$0.20	\$0.26
19	Rates I&T - 1st block			
20	Consumption Charge per MCF			
21	Change from Current Rate	\$0.0144	\$0.0087	(\$0.0150)
22	Billing Units for Specified Period	9,681,181	9,681,181	9,681,181
23	Total Change in Base Revenue	\$139,409	\$84,226	(\$145,218)
24	Associated Revenue Taxes	<u>\$8,607</u>	<u>\$5,200</u>	<u>(\$8,966)</u>
25	Total Rate Impact	\$148,016	\$89,426	(\$154,183)
26	Rates I&T - 2nd block			
27	Consumption Charge per MCF			
28	Change from Current Rate	\$0.0105	\$0.0064	(\$0.0109)
29	Billing Units for Specified Period	10,782,882	10,782,882	10,782,882
30	Total Change in Base Revenue	\$113,220	\$69,010	(\$117,533)
31	Associated Revenue Taxes	<u>\$6,990</u>	<u>\$4,261</u>	<u>(\$7,257)</u>
32	Total Rate Impact	\$120,210	\$73,271	(\$124,790)
33	Rates I&T - 3rd block			
34	Consumption Charge per MCF			
35	Change from Current Rate	\$0.0023	\$0.0014	(\$0.0023)
36	Billing Units for Specified Period	19,798,632	19,798,632	19,798,632
37	Total Change in Base Revenue	\$45,537	\$27,718	(\$45,537)
38	Associated Revenue Taxes	<u>\$2,811</u>	<u>\$1,711</u>	<u>(\$2,811)</u>
39	Total Rate Impact	\$48,348	\$29,429	(\$48,348)
40	Rates I&T - Total			
41	Total Rate Impact	\$316,575	\$192,127	(\$327,322)
42	Number of Bills for Specified Period	11,571	11,571	11,571
43	Average Impact per Bill	\$12.79	\$7.73	(\$13.32)
44				
45	Total Change in Base Revenue	\$10,925,693	\$947,570	\$2,493,260
46	Total Rate Impact (Inc. Rev. Taxes)	\$11,600,245	\$1,006,073	\$2,647,194

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, ("CITY") APPROVING A NEGOTIATED RESOLUTION BETWEEN THE ATMOS CITIES STEERING COMMITTEE ("ACSC" OR "STEERING COMMITTEE") AND ATMOS ENERGY CORP., MID-TEX DIVISION ("ATMOS MID-TEX" OR "COMPANY") REGARDING THE COMPANY'S RATE REVIEW MECHANISM FILING IN ALL CITIES EXERCISING ORIGINAL JURISDICTION; DECLARING EXISTING RATES TO BE UNREASONABLE; REQUIRING THE COMPANY TO REIMBURSE CITIES' REASONABLE RATEMAKING EXPENSES; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT AND FINDING THE RATES TO BE SET BY THE ATTACHED TARIFFS TO BE JUST AND REASONABLE; APPROVING ATMOS' PROOF OF REVENUES; ADOPTING A SAVINGS CLAUSE; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE STEERING COMMITTEE'S LEGAL COUNSEL.

WHEREAS, the City of Temple, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division ("Atmos Mid-Tex" or "Company"), and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex;

WHEREAS, the City is a member of the Atmos Cities Steering Committee ("ACSC" or "Steering Committee"), a coalition of more than 150 similarly situated cities served by Atmos Mid-Tex that have joined together to facilitate the review and response to natural gas issues affecting rates charged in the Atmos Mid-Tex service area (such participating cities are referred to herein as "ACSC Cities");

WHEREAS, pursuant to the terms of the agreement settling the Company's 2007 Statement of Intent to increase rates, ACSC Cities and the Company worked collaboratively to develop the Rate Review Mechanism ("RRM") tariff that allows for an expedited rate review process controlled in a three year experiment by ACSC Cities as a substitute to the current GRIP process instituted by the Legislature;

WHEREAS, the City took action in 2008 to approve a Settlement Agreement with Atmos Mid-Tex resolving the Company's 2007 rate case and authorizing the RRM Tariff;

WHEREAS, the 2008 Settlement Agreement contemplates reimbursement of ACSC Cities' reasonable expenses associated with RRM applications;

WHEREAS, on or about March 6, 2009, Atmos Mid-Tex filed with the City its second application pursuant to the RRM tariff to increase natural gas rates by approximately \$20.2 million, such increase to be effective in every municipality that has adopted the RRM tariff within its Mid-Tex Division;

WHEREAS, ACSC Cities coordinated its review of Atmos' RRM filing and designated a Settlement Committee made up of ACSC representatives and assisted by ACSC attorneys and consultants to resolve issues identified by ACSC in the Company's RRM filing;

WHEREAS, the Company has filed evidence that existing rates are unreasonable and should be changed;

WHEREAS, independent analysis by ACSC's rate expert concluded that Atmos Mid-Tex is able to justify a slight rate increase over current rates;

WHEREAS, the Steering Committee has advocated in other proceedings that Atmos Mid-Tex hedge natural gas futures in order to mitigate the volatility of natural gas prices, which are a flow through to customers;

WHEREAS, the ACSC Executive Committee, as well as ACSC lawyers and consultants, recommend that ACSC members approve the attached rate tariffs ("Attachment A" to this Ordinance), which will increase the Company's revenue requirement by \$2.6 million;

WHEREAS, the attached tariffs implementing new rates and Atmos' Proof of Revenues ("Attachment B" to this Ordinance) are consistent with the negotiated resolution reached by ACSC Cities and are just, reasonable, and in the public interest;

WHEREAS, it is the intention of the parties that if the City determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in the Company's RRM filing would be more beneficial to the City than the terms of the attached tariff, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the City; and

WHEREAS, the negotiated resolution of the Company's RRM filing and the resulting rates are, as a whole, in the public interest.

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

Part 1: The findings set forth in this Ordinance are hereby in all things approved.

Part 2: The City Council finds that the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable and new tariffs and Atmos' Proof of Revenues, which are attached hereto and incorporated herein as Attachments A and B, are just and reasonable and are hereby adopted.

Part 3: The Atmos Mid-Tex shall reimburse the reasonable rate making expenses of the ACSC Cities in processing the Company's rate application.

Part 4: The to the extent any resolution or ordinance previously adopted by the Council is inconsistent with this Ordinance, it is hereby repealed.

Part 5: The meeting at which this Ordinance was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Part 6: If any one or more sections or clauses of this Ordinance is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance and the remaining provisions of the Ordinance shall be interpreted as if the offending section or clause never existed.

Part 7: If the City determines any rates, revenues, terms and conditions, or benefits resulting from a Final Order or subsequent negotiated settlement approved in any proceeding addressing the issues raised in the Company's RRM filing would be more beneficial to the City than the terms of the attached tariff, then the more favorable rates, revenues, terms and conditions, or benefits shall additionally accrue to the City.

Part 8: The Company's Gas Cost Recovery tariff is revised to permit recovery of certain costs associated with hedging natural gas futures.

Part 9: This Ordinance shall become effective from and after its passage with rates authorized by attached Tariffs to be effective for bills rendered on or after August 1, 2009.

Part 10: A copy of this Ordinance shall be sent to Atmos Mid-Tex, care of David Park, Vice President Rates and Regulatory Affairs, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, General Counsel to ACSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

PASSED AND APPROVED this **20th** day of **August**, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

Clydette Entzminger
City Secretary

Jonathan Graham
City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/20/09
Item #8
Regular Agenda
Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

William A. Jones, III, Mayor

ITEM DESCRIPTION: Consider adopting a resolution appointing members to the following City boards and commissions:

- (A) Airport Advisory Board – two members to fill expiring terms through September 1, 2012
- (B) Animal Services Advisory Board – three members to fill expiring terms through September 1, 2012 and appoint Chair for the period of September 1, 2009 through August 31, 2010
- (C) Civil Service Commission - one member to fill expiring term through September 1, 2012
- (D) Community Services Advisory Board – three members to fill expiring terms through September 1, 2012
- (E) Library Board – three members to fill expiring terms through September 1, 2012; and one member to fill an unexpired term through September 1, 2010
- (F) Planning & Zoning Commission – three members to fill expiring terms through September 1, 2012
- (G) Reinvestment Zone No. 1 Board of Directors – five members to fill expiring terms through September 1, 2011, and appoint Chair for the period of September 1, 2009 through December 31, 2009
- (H) Temple Economic Development Corporation – four members to fill expiring terms through September 1, 2012; and one member to fill an unexpired term through September 1, 2011
- (I) Temple Public Safety Advisory Board – four members to fill expiring terms through September 1, 2012; and two members to fill unexpired terms through September 1, 2010
- (J) Transit Advisory Committee – three members to fill expiring terms through September 1, 2011

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: The City Council adopted a resolution in June, 2003, establishing policies governing the appointment and training of citizens to City boards. In accordance with that resolution, appointments to the above stated boards are to be made at the second regular meeting in August, with an effective date of September 1, 2009.

Please see the attached board summary forms, which list current board members, purpose, membership requirements, term and meeting time/place for the boards. Also attached is an update summary listing of all applications received for board appointments.

FISCAL IMPACT: N/A

ATTACHMENTS:

Updated Board Application Summary w/
Board Summary Forms – hard copy