



**MEETING OF THE  
TEMPLE CITY COUNCIL**

**MUNICIPAL BUILDING**

**2 NORTH MAIN STREET**

**THURSDAY, MARCH 18, 2010**

**1:30 P.M.**

**3<sup>RD</sup> FLOOR CONFERENCE ROOM**

**WORKSHOP AGENDA**

1. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, March 18, 2010.
2. Review and discuss the "*Temple Tomorrow*," the City of Temple Strategic Vision and Plan.
3. Discuss proposed ordinance changes related to off-street parking in residential neighborhoods.
4. Discuss the City's economic development agreement with Temple Economic Development Corporation.

Executive Session: Pursuant to Chapter 551, Government Code, §551.087, the City Council may enter into executive session to discuss the City's economic development incentive agreement with Temple Economic Development Corporation.

5:00 P.M.

**MUNICIPAL BUILDING**

**2 NORTH MAIN STREET  
CITY COUNCIL CHAMBERS – 2<sup>ND</sup> FLOOR**

**TEMPLE, TX**

**REGULAR MEETING AGENDA**

**I. CALL TO ORDER**

1. Invocation
2. Pledge of Allegiance

**II. PROCLAMATIONS & SPECIAL RECOGNITIONS**

3. Presentation of Proclamations:  
(A) Census Day in Temple – April 1, 2010

**III. PUBLIC APPEARANCES**

4. Receive comments from Mr. [Andrew Machuca](#) regarding oak wilt prevention.

**IV. 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 portion of the meeting. Please limit comments to 3 minutes. No discussion or final action will be taken by the City Council.

**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) [March 4, 2010 Special Called and Regular Meeting](#)

## **Contracts, Leases & Bids**

- (B) [2010-5973-R](#): Consider adopting a resolution authorizing the extension of the City's Bank Depository Contract with Bank of America for an additional two year period, through May 31, 2012.
- (C) [2010-5974-R](#): Consider adopting a resolution authorizing a Microsoft Software Enterprise Agreement with Dell Corporation of Round Rock (DIR Contract DIR-SDD-1014) in the amount of \$100,907.
- (D) [2010-5975-R](#): Consider adopting a resolution authorizing the purchase of hardware for the City's computer replacement program from Dell Corporation of Round Rock (DIR Contract 48ABO) in the not to exceed amount of \$131,000.
- (E) [2010-5976-R](#): Consider adopting a resolution granting a street use license for a French drain and accessories proposed to be located within a drainage and public utility easement at 6608 W. Adams Avenue, located in Block 1, Lot 1, Holy Trinity Catholic High School Subdivision.
- (F) [2010-5979-R](#): 1. Consider adopting a resolution authorizing an emergency construction contract with Lone Star Railroad Contractors, Inc., to perform railroad track repairs in the Temple Industrial Park in the amount of \$76,258.
- [2010-5980-R](#): 2. Consider adopting a resolution authorizing a construction contract with Lone Star Railroad Contractors, Inc., to perform railroad track repairs in the Temple Industrial Park in the amount of \$37,546.

## **Ordinances – Second and Final Reading**

- (G) [2010-4350](#): SECOND READING – Z-FY-10-22: Consider adopting an ordinance authorizing a zoning change from Agricultural District (A) to Single Family One District (SF-1) on a 0.70 ± acre tract of land being part of the Maximo Moreno Survey, Abstract Number 14, located at 216 North 36<sup>th</sup> Street.
- (H) [2010-4351](#): SECOND READING – Consider adopting an ordinance re-establishing a curfew for minors.

## **Misc.**

- (I) [2010-5977-R](#): Consider adopting a resolution authorizing budget amendments for fiscal year 2009-2010.

## **VI. REGULAR AGENDA**

### **ORDINANCES**

6. **2010-4348:** THIRD READING – Z-FY-10-18: Consider adopting an ordinance authorizing a Conditional Use Permit (CUP) to allow a package store with alcoholic beverage sales for off-premise consumption in a 6,000 square foot building, on Lot 1, Block 4, Hilltop Estates Addition VII, at 1521 Marlandwood Road.
7. **2010-4352:** FIRST READING – PUBLIC HEARING – Consider adopting an ordinance abandoning 164 feet of a 20-foot wide alley located on the north side of West Adams Avenue, between Lot 3, Block 1 and Lot 1, Block 2, Blacks Addition.

### **BOARD APPOINTMENTS**

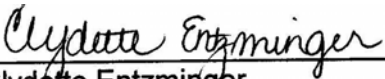
8. **2010-5978-R:** Consider adopting a resolution appointing members to the following City boards and commissions:
  - (A) Building & Standards Commission – one regular member and one alternate member to fill expiring terms through March 1, 2012
  - (B) Electrical Board – one member to fill expiring term through March 1, 2013

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

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I hereby certify that a true and correct copy of this Notice of Meeting was posted in a public place at 2:00 PM, on March 12, 2010.

  
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 \_\_\_\_\_ 2010. \_\_\_\_\_



## COUNCIL AGENDA ITEM MEMORANDUM

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03/18/10  
Item #3(A)  
Regular Agenda  
Page 1 of 1

**DEPT./DIVISION SUBMISSION & REVIEW:**

William A. Jones, III, Mayor

**ITEM DESCRIPTION:** Presentation of Proclamations:

(A) Census Day in Temple – April 1, 2010

**STAFF RECOMMENDATION:** Present proclamation as presented in item description.

**ITEM SUMMARY:** This proclamation will be presented to the 2010 Census Complete Count Committee and representatives from the U.S. Census Bureau.

**FISCAL IMPACT:** None

**ATTACHMENTS:** None



## COUNCIL AGENDA ITEM MEMORANDUM

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03/18/10  
Item #4  
Regular Agenda  
Page 1 of 1

**DEPT./DIVISION SUBMISSION & REVIEW:**

William A. Jones, III, Mayor

**ITEM DESCRIPTION:** Receive comments from Mr. Andrew Machuca regarding oak wilt prevention.

**STAFF RECOMMENDATION:** Receive comments as presented in item description.

**ITEM SUMMARY:** Andrew Machuca has filed a Request for Placement on the City Council Agenda. Please see attached form.

**FISCAL IMPACT:** None

**ATTACHMENTS:**

[Request for placement on agenda](#)

CITY OF TEMPLE, TEXAS  
CITY COUNCIL MEETINGS  
REQUEST FOR PLACEMENT ON AGENDA

\_\_\_\_\_ Priority

NAME OF PRESENTER: Andrew Machuca

ADDRESS: 2402 S. 61<sup>st</sup> St. Apt. #212B

TELEPHONE NO. (254) 624-8806

DATE REQUESTED TO APPEAR BEFORE THE COUNCIL: (Note – The City Council meets the first and third Thursdays of each month.) March 18, 2010

SUBJECT TO BE PRESENTED: (Your description must identify the subject matter of your appearance in sufficient detail to alert the public what topic you will discuss and what action you are requesting by the Council.) I would like speak to the City Council regarding

Oak wilt in our community. I will provide information about  
how it is contracted & spread. I will promote no pruning during  
the months of February through June when the disease is most likely to be spread  
I would also like to suggest ways the city can inform & educate citizens about oak wilt

Note: Separate requests must be completed for each subject presented.

I, the above identified presenter, have read the procedures for public appearances before the City Council of the City of Temple, Texas, and will abide by these procedures.

Andrew Machuca  
SIGNATURE OF PRESENTER

3/8/10  
DATE

**RECEIVED**

**MAR 8 - 2010**

**CITY OF TEMPLE, TX  
CITY SECRETARY**

For Office Use:

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## COUNCIL AGENDA ITEM MEMORANDUM

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03/18/10  
Item #5(A)  
Consent Agenda  
Page 1 of 1

**DEPT./DIVISION SUBMISSION & REVIEW:**

Clydette Entzminger, City Secretary

**ITEM DESCRIPTION:** Approve Minutes:

(A) March 4, 2010 Special Called and 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:**

March 4, 2010 Special Called and Regular Meeting

# TEMPLE CITY COUNCIL

**MARCH 4, 2010**

The City Council of the City of Temple, Texas conducted a Special Meeting on Thursday, March 4, 2010, at 3:30 pm, in the 3rd Floor Conference Room, Municipal Building, 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, March 4, 2010.**

Consent Agenda Item 5(E)- Pepper Creek Trail Change Order: Councilmember Schneider asked if this change order was bid by unit price. He also asked how the prices received compared to Alpha Construction's annual contract with the City for concrete work. Councilmember Janczak asked what else was included in the change order since the price per square foot seemed high.

Ken Cicora, Director of Parks and Leisure Services, stated this project was bid at \$5.25 per square foot and includes building a handicap accessible sidewalk, parking lot repairs, and other items. The contract with Alpha Construction is at a rate of \$9.25 per square foot. Mr. Cicora stated he would try to get additional information from David Kasberg, the engineer for the project, prior to the regular meeting.

Consent Agenda Item 5(K)-Citywide Trails Master Plan: Councilmember Schneider stated he thought this item was coming back to Council in work session before adoption. He continued to express his disagreement with the proposed width of the main trail.

Kim Foutz, Assistant City Manager, stated ordinances and specifications will come forward to Council for approval at a later date and the width of the trails can be addressed at that time. Only the plan is being presented for adoption at this time.

Consent Agenda Item 5(H)-CUP for package store: Councilmember Janczak expressed his concern with the location of this package store, noting he has not received any comments from citizens. He felt traffic would be an issue at this location.

Councilmember Jeter stated he has some concern about the location also.

Councilmember Schneider stated he has received 3 or 4 calls, expressing concern with traffic, both pedestrian and vehicles, and crime.

Mayor Pro Tem Luna stated she felt the package store would not generate any more traffic than the current video store.

Jonathan Graham, City Attorney, stated all proposed CUPs do not have to be approved by the Council. They should look at the proposed activity, surrounding uses, and determine if

the use fits in that location. Not all locations are appropriate for a package store, even if all CUP conditions can be met.

The Councilmembers discussed other locations where CUPs for package stores have been approved. They also discussed criteria that should be considered before approving a CUP, such as proximity to residential areas and traffic volumes.

## **2. Discuss the City's policy and procedures regarding the demolition of structures.**

Mrs. Foutz reviewed the City's demolition process and programs. She discussed the goals of the program, which are to ensure citizens the right to a clean, enjoyable neighborhood; ensure a safe and healthful environment; prevent neighborhood deterioration; maintain and improve property values; facilitate redevelopment and infill; and clean up gateways and the City. The guiding principles and policies include the City's Strategic Plan, Chapter 21 of the Code of Ordinances, the City's lien release program, the Strategic Investment Zone report and goals of special districts such as TMED.

The Construction Safety and Services Department has oversight of the demolition programs. There are basically three programs - code enforcement, revitalization/economic development, and SIZ/gateway improvement. Some of the demolitions are performed by City drainage crews and some are contracted out. Mrs. Foutz reviewed the factors that are considered before proceeding with demolition.

As part of the Community Development Block Grant (CDBG) Program, \$100,000 has been funded for the last three years for demolitions. Residential structures must be vacant for more than one year to be eligible for demolition. CDBG guidelines focus only on eliminating blight and no consideration is given on ability to pay for demolition costs. Liens are also not permitted. For the past three years, the General Fund has allocated between \$73,000 and \$88,000 for demolitions. If the demolition is voluntary, no lien is placed on the property. There is no consideration of ability to pay and the structure may be unoccupied or occupied, which is rarely the case. Mrs. Foutz also explained the lien release program that began in 2001 which forgives one-half of the demolition lien and the total amount of mowing liens if a new house is built on the site. The CDBG program has funded the demolition of 64 houses and 2 commercial structures during the past 3 years and 10 houses and 1 commercial structure were funded with General Funds. Mrs. Foutz showed photos of various structures, before and after demolition, noting what program was used for the demolition.

Several discussion points were presented by Mrs. Foutz including: what is the outcome we want to achieve; do we want demolitions even if imminent development or redevelopment will not take place (gateway enhancement and city clean up efforts); how do we handle buildings that are eyesores in SIZ corridors but do not qualify to be condemned or meet the health and safety threshold; who decides to proceed with demolition (administrator, Building & Standards Commission or Council); and what role, if any, does ability to pay have. Mrs. Foutz asked for direction from the Council regarding these issues.

## **3. Discuss upcoming appointments to the following City boards and commissions:**

**(A) Building & Standards Commission - three regular members and one alternate member to fill expiring terms through March 1, 2012**

**(B) Building Board of Appeals - three members to fill expiring terms through March 1, 2014**

**(C) Development Standards Advisory Board - three members to fill expiring terms through March 1, 2013 and one member to fill an unexpired term through March 1, 2012**

**(D) Electrical Board - three members to fill expiring terms through March 1, 2013**

**(E) Parks and Leisure Services Advisory Board - three members to fill expiring terms through March 1, 2013**

**(F) Temple Public Safety Advisory Board - one member to fill an unexpired term through September 1, 2010**

**(G) Tree Board - one member to fill an expiring term through March 1, 2013**

**(H) Zoning Board of Adjustment - three regular members and two alternate members to fill expiring terms through March 1, 2012**

The Councilmembers discussed the applications on file and recommendations for appointment to these board and commissions. Mayor Jones indicated he would present the consensus of the Council's recommendations during the regular meeting.

The City Council of the City of Temple, Texas conducted a Regular Meeting on Thursday, March 4, 2010 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 Shelton C. Rhodes, Greater Zion Church of God in Christ, voiced the Invocation.

**2. Pledge of Allegiance**

Girls Scouts of Central Texas led the Pledge of Allegiance.

**II. PROCLAMATIONS & SPECIAL RECOGNITIONS**

**3. (A) Girl Scout Week                      March 7 - 13, 2010**

Mayor Jones presented this proclamation to the Girl Scouts of Central Texas.

**(B) Social Work Month                      March, 2010**

This proclamation was presented to Bill and Sheila Berning, and other members of the Central Texas Branch of the National Association of Social Workers.

**(C) Project ReDirectory                      March, 2010**

This proclamation was presented to Tanya Gray, Executive Director of Keep Temple Beautiful, by Mayor Jones.

**(D) Great American Clean Up                      March 8, 2010**

Mayor Pro Tem Luna presented this proclamation to Zoe Rascoe, Keep Temple Beautiful board member.

**4. Recognize the Temple Public Library for receiving the Achievement of Excellence in Libraries Award from the Texas Municipal Library Directors Association.**

Lisa Youngblood, Texas Municipal Library Directors Association, presented the 2009 Achievement of Excellence in Libraries Award to Judy Duer, Director of the Temple Public Library, and Staff.

**III. PUBLIC COMMENTS**

Genevieve Gregg, Temple resident, addressed the Council. She stated she retired from the education field in 2007 and has implemented a reading program in Temple, with the assistance of a 24-member advisory team that assisted in identifying areas where needs are not being met. This program will bridge the gaps and collaborate with existing programs in the community. The first task will be to hold a book drive, in conjunction with the Jeff Hamilton Reading Club, and she asked for the Council's support and participation in this event by donating 2 books each.

Chester and Bobbie Thompson, 1107 South 10th Street, addressed the City Council, representing the Eastside Neighborhood Association. They requested lighting be installed at Jeff Hamilton Park prior to the National Night Out event this year. Mrs. Thompson gave the Mayor some compliment/complaint forms from the Association.

**IV. CONSENT AGENDA**

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

**(A) February 18, 2010 Special Called and Regular Meeting**

**(B) 2010-5964-R: Consider adopting a resolution authorizing a one-year renewal to a professional services agreement with City-County Benefits Services (C-CBS) for employee benefits consulting services at an annual cost of \$29,103.**

**(C) 2010-5965-R: Consider adopting a resolution authorizing a services agreement with Heart of Texas Landscape & Irrigation Co, Inc. of Belton for mowing and maintenance services in the estimated annual amount of \$62,090.**

**(D) 2010-5966-R: Consider adopting a resolution authorizing an agreement with**

the Railroad and Pioneer Museum of Temple to maintain and operate the Railroad and Heritage Museum.

**(E) 2010-5967-R: Consider adopting a resolution authorizing the construction of a 6-foot wide concrete trail from the Pepper Creek Trail to the Scott and White Parking lot located on the Scott and White West Campus, and approving a change order to the construction contract with Westar Construction, Inc. in the amount of \$36,070 to construct the trail.**

**(F) 2010-5968-R: Consider adopting a resolution granting a street use license for a private wastewater gravity main and gravity services in Gene Street right-of-way, private wastewater lift station in Gene Street and Pegasus Drive right-of-way, and private wastewater forced main in Pegasus Drive right-of-way, for the proposed Troy Subdivision located approximately 500 feet south of Hart Road.**

**(G) 2010-4347: SECOND READING - Consider adopting an ordinance authorizing the abandonment of the 20-foot wide alley in Block 14, Jones and Moore Addition, located on the east side of Jones Park, between West Avenue G and West Avenue H.**

**(H) 2010-4348: SECOND READING - Z-FY-10-18: Consider adopting an ordinance authorizing a Conditional Use Permit (CUP) to allow a package store with alcoholic beverage sales for off-premise consumption in a 6,000 square foot building, on Lot 1, Block 4, Hilltop Estates Addition VII, at 1521 Marlandwood Road.**

**(I) 2010-5969-R: P-FY-10-05: Consider adopting a resolution authorizing the Final Plat for the Dorsey Subdivision, an 8.03 ± acre, three-lot residential subdivision, located east of SH 95, on Acres Road, in Temple's East ETJ, with the applicant's requested exceptions to the Subdivision Ordinance requirements for Park Fees, Fire Hydrants, and Curb and Gutter. Misc.**

**(J) 2010-5970-R: Consider adopting a resolution amending the City's local preference policy to be applicable only on contracts with an expenditure of less than \$100,000, to comply with current legislation.**

**(K) 2010-5971-R: Consider adopting a resolution authorizing the adoption of the City of Temple Citywide Trails Master Plan.**

**(L) 2010-5972-R: Consider adopting a resolution authorizing budget amendments for fiscal year 2009-2010.**

Motion by Mayor Pro Tem Patsy E. Luna to adopt resolution approving Consent Agenda, with exception of item 5(H), seconded by Councilmember Russell Schneider.

Motion passed unanimously.

**(H) 2010-4348: SECOND READING - Z-FY-10-18: Consider adopting an ordinance authorizing a Conditional Use Permit (CUP) to allow a package store with alcoholic beverage sales for off-premise consumption in a 6,000 square foot building, on Lot 1,**

## **Block 4, Hilltop Estates Addition VII, at 1521 Marlandwood Road.**

Councilmember Janczak stated this proposed package store is located in District 3. It was approved by Council on first reading but there has been some discussion since that time, as recent as in today's work session, regarding the appropriateness of the location. The owner is out of town and Councilmember Janczak asked that the item be tabled until the March 18th Council meeting.

Motion by Councilmember Marty Janczak to table item 5(H), seconded by Councilmember Tony Jeter.

Motion passed unanimously.

## **V. REGULAR AGENDA**

### **ORDINANCES**

- 6. 2010-4349: FIRST READING - PUBLIC HEARING - Z-FY-10-17: Consider adopting an ordinance authorizing the voluntary annexation of a 1.7+ acre tract of land located west of FM 2271, north of Live Oak Ridge Road, out of the G.W. Lindsey Survey, Abstract 513 and zoning the area Planned Development General Retail District (PD-GR).**

Tim Dolan, Planning Director, presented this item to the City Council. Two required public hearings have been held and the Municipal Services Plan has been presented. The applicant is requesting Planned Development General Retail District and Mr. Dolan discussed the site plan conditions which will be adopted as part of this ordinance.

Mayor Jones declared the public hearing open with regard to agenda item 6 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 and set second reading and final adoption for March 18, 2010, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

- 7. 2010-4350: FIRST READING - PUBLIC HEARING - Z-FY-10-22: Consider adopting an ordinance authorizing a zoning change from Agricultural District (A) to Single Family One District (SF-1) on a 0.70 ± acre tract of land being part of the Maximo Moreno Survey, Abstract Number 14, located at 216 North 36th Street.**

Tammy Lyerly, Planner, presented this item to the City Council. The applicant is requesting SF-1 zoning. Ms. Lyerly showed an aerial photograph of the property proposed for rezoning, as well as photos of surrounding uses, mainly undeveloped land. The request is in conformance with Future Land Use and Character Plan. There is a septic system on the property and public water lines.

North 36th serves as the local street accessing this property. Two notices were mailed to surrounding property owners, with one returned in approval and none in opposition. The Planning & Zoning Commission unanimously recommended approval of the requested rezoning.

Mayor Jones declared the public hearing open with regard to agenda item 7 and asked if anyone wished to address this item. There being no comments, Mayor Jones closed the public hearing.

Motion by Councilmember Russell Schneider to adopt ordinance and set second reading and final adoption for March 18, 2010, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

**8. 2010-4351: FIRST READING - PUBLIC HEARING - Consider adopting an ordinance re-establishing a curfew for minors.**

Gary Smith, Chief of Police, presented this item to the City Council. A juvenile curfew ordinance has been in effect in Temple since 1994 but it must be reviewed and re-adopted by the Council every 4 years and a public hearing conducted. Chief Smith addressed the curfew hours, who is covered under the ordinance, and the defenses to arrest and prosecution outlined in the ordinance. The ordinance provides crime prevention for the community and prevents more serious violations from occurring. Chief Smith presented statistics regarding enforcement activities over the past 3 years for juveniles, adults and businesses and showed maps noting locations where violations occur.

Councilmember Janczak asked if a juvenile is cited whether parental notification is given.

Chief Smith replied yes, two notices are given to the parents or guardians before a citation is issued. He discussed the procedure followed if a juvenile is found in violation of the ordinance. These cases are handled in the City's Municipal Court.

Mayor Jones declared the public hearing open with regard 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 Councilmember Marty Janczak to adopt ordinance and set second reading and final adoption for March 18, 2010, seconded by Mayor Pro Tem Patsy E. Luna.

Motion passed unanimously.

## **RESOLUTIONS**

**9. 2010-5962-R: Consider adopting a resolution appointing members to the following City boards and commissions:**

**(A) Building & Standards Commission - three regular members and one alternate member to fill expiring terms through March 1, 2012**

Recommendation to appoint Crystal Cowen and Jeff Norwood as regular members, Scott Morrow as an alternate member, with remaining appointment of one regular member to be made at a later date.

**(B) Building Board of Appeals - three members to fill expiring terms through March 1, 2014**

Recommendation to appoint Alan Horn and Will Sears, representing the building industry, and Starky Winnett as an at-large member.

**(C) Development Standards Advisory Board - three members to fill expiring terms through March 1, 2013 and one member to fill an unexpired term through March 1, 2012**

Recommendation to reappoint Jim Howe and Byron Sinclair, appoint Monty Clark and appoint Charles Chapman to fill the unexpired term through March 1, 2012.

**(D) Electrical Board - three members to fill expiring terms through March 1, 2013**

Recommendation to reappoint John Toone (Oncor representative) and appoint Craymon Myers (master electrician), with remaining appointment to be made at a later date.

**(E) Parks and Leisure Services Advisory Board - three members to fill expiring terms through March 1, 2013**

Recommendation to reappoint David Perez-Guerra and appoint Gil Hollie and Mona Fullmer.

**(F) Temple Public Safety Advisory Board - one member to fill an unexpired term through September 1, 2010**

Recommendation to appoint Warren Smith to fill the unexpired term through September 1, 2010.

**(G) Tree Board - one member to fill an expiring term through March 1, 2013**

Recommendation to reappoint David Lockwood.

**(H) Zoning Board of Adjustment - three regular members and two alternate members to fill expiring terms through March 1, 2012**

Recommendation to reappoint Scott Morrow, Bert Pope and Brandon Tarnow as regular members and appoint Keith Odom and Omar Crisp as alternate members.

Motion by Councilmember Russell Schneider to adopt resolution appointing members as recommended, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

**10. 2010-5963-R: Consider adopting a resolution appointing one alternate member to the Bell County Public Health District Board of Directors.**

Mayor Jones recommended that Dr. Jim Madsen be appointed to serve on this board through the 2010 calendar year.

Motion by Councilmember Marty Janczak to adopt resolution as recommended, seconded by Mayor Pro Tem Patsy E. Luna.

Motion passed unanimously.

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William A. Jones, III, Mayor

ATTEST:

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Clydette Entzminger  
City Secretary



## COUNCIL AGENDA ITEM MEMORANDUM

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03/18/10  
Item #5(B)  
Consent Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Traci L. Barnard, Director of Finance

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing the extension of the City's Bank Depository Contract with Bank of America for an additional two year period, through May 31, 2012.

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

**ITEM SUMMARY:** The original depository contract with Bank of America was for a three year term, with the option to renew for an additional two year period. The initial three year period of the depository contract expires May 31, 2010. This item, if approved, would extend the City of Temple's current Bank Depository contract for an additional two year period at the current rates for service. We have had an excellent working arrangement with Bank of America for the past three years and desire to continue the current contract through May 31, 2012.

We incur average banking costs per year in the amount of \$32,000.

**FISCAL IMPACT:** \$32,000 in average banking costs per year.

### **ATTACHMENTS:**

Letter signed by Bank of America  
Resolution



February 12, 2010

Ms. Kathaleen Ford Smith  
Bank of America Merrill Lynch  
TX9-329-11-01  
515 Congress Avenue, Suite 1100  
Austin, TX 78701

**RE: Bank Depository Contract**

Dear Ms. Ford-Smith:

The City's current Bank Depository Contract with Bank of America will expire on May 31, 2010. Subject to City Council ratification, the City would like to exercise its option to extend the contract with Bank of America for a period of two years at the same terms and conditions in the current contract effective June 1, 2007. The two-year extension would continue the contract through May 31, 2012.

Please sign below and return this letter to the City to acknowledge Bank of America's acceptance of the extension. The extension will then go before the City Council for approval. I will then forward you a copy of the City's Resolution authorizing the extension of the City's Bank Depository Contract with Bank of America.

If you have any questions, you may contact me at P.O. Box 987, Temple, Texas 76503 or 254/298-5631. Thank you for attention to this matter.

Sincerely,

Traci L. Barnard  
Director of Finance

Accepted by: Kathaleen Ford Smith

Printed name / title: Kathaleen Ford Smith  
Senior Vice President

RESOLUTION NO. 2010-5973-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING THE EXTENSION OF THE CITY'S BANK DEPOSITORY CONTRACT WITH BANK OF AMERICA FOR AN ADDITIONAL TWO YEAR PERIOD, THROUGH MAY 31, 2012; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, on May 3, 2007, the City Council authorized a depository contract with Bank of America for an initial 3-year term with an option to renew the contract for an additional 2-year period;

**Whereas**, the initial 3-year term of the depository contract expires on May 31, 2010, and the Staff recommends extending the contract for an additional 2-year period, through May 31, 2012; 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 extension of the City's Bank Depository Contract with Bank of America, after approval as to form by the City Attorney, for an additional two-year period, through May 31, 2012.

**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 **18<sup>th</sup>** day of **March**, 2010.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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3/18/10  
Item #5(C)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Alan DeLoera, Information Technology Director

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing a Microsoft Software Enterprise Agreement with Dell Corporation of Round Rock (DIR Contract DIR-SDD-1014) in the amount of \$100,907.

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

**ITEM SUMMARY:** The City of Temple currently uses Microsoft for all of our office applications as well as database servers throughout the City. The software we currently use include Microsoft Word, Powerpoint, Excel, Sharepoint, Outlook, and Publisher as well as Enterprise solutions for SQL Server, Exchange Server, Operating systems and enterprise server software.

After reviewing some of the volume licensing programs that were presented, we decided to request a Microsoft Enterprise Agreement that covers Microsoft Office Professional and the Microsoft Core Client Access License (CAL) Suite—including the Windows Server® 2008 operating system, Microsoft Exchange Server, Microsoft Systems Management Server, and Microsoft Office SharePoint® Portal Server—for over 650 computers. The agreement also covers a wide variety of additional technologies including Windows Server, Exchange Server, Internet Security and Acceleration Server, SQL Server™, and Microsoft Operations Manager licenses for 25 servers.

Through the Enterprise Agreement, we are able to more effectively standardize software across all desktops and take advantage of many of the included Software Assurance benefits, including New Version Rights, Desktop Deployment Planning Services, Training Vouchers, Microsoft eLearning, Home Use Program, 24x7 Problem Resolution Support, a TechNet Plus subscription, and Extended Hotfix's.

In the past, we have purchased new licenses every 4 years through a select agreement program because we felt the Enterprise Agreement was more expensive over the 4 year period. However, the pricing now has reversed in the sense that it is less costly to go through a yearly Enterprise Agreement. We also felt that the cycle for software upgrades by Microsoft was about every

3 to 4 years but that has changed in the past 3 years in that software upgrades are on a more frequent basis. This also helps solve a problem in that we would be on the same Enterprise Agreement with many other State and local agencies that currently upgrade their software on a more frequent basis.

If we were to purchase based on the select agreement today we would have to spend about \$350,000 for all of our licensing needs on servers and the desktops and in another 4 years we would spend another \$350,000 to upgrade again. With the Enterprise Agreement being proposed, we would spend \$100,907 per year for the next three years and then years four through six would cost \$60,727 per year for a six year total of \$484,902 versus \$700,000 for the same six year period.

The proposed Enterprise Agreement would begin April 1, 2010 and be for a one-year term with the option for renewals.

**FISCAL IMPACT:** A budget adjustment is presented for Council's approval appropriating \$100,907 of General Fund Technology Replacement funds to account 351-1900-519-6221, project #100612 for the purchase of software from Dell Corporation.

**ATTACHMENTS:**

[Budget Adjustment  
Resolution](#)

FY **2010****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	
351-1900-519-62-21	100612	Computer Software	100,907			
351-0000-490-25-82		Transfer In - Desg Capital Proj Fund	100,907			
110-0000-351-09-43		Designated Capital - Technology Funds			100,907	
110-9100-591-81-51		Transfer Out - Desg Capital Proj Fund	100,907			
		Do not Post				
<b>TOTAL.....</b>			<b>\$ 302,721</b>		<b>\$ 100,907</b>	

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

This is to pay for yearly Microsoft Enterprise Agreement for the City. a Microsoft Enterprise Agreement covers Microsoft Office Professional and the Microsoft Core Client Access License (CAL) Suite—including the Windows Server® 2008 operating system, Microsoft Exchange Server, Microsoft Systems Management Server, and Microsoft Office SharePoint® Portal Server—for over 650 computers. The agreement also covers a wide variety of additional technologies including Windows Server, Exchange Server, Internet Security and Acceleration Server, SQL Server™, and Microsoft Operations Manager licenses for 25 servers.

DOES THIS REQUEST REQUIRE COUNCIL APPROVAL?

☒

Yes

☐

No

DATE OF COUNCIL MEETING

March 18, 2010

WITH AGENDA ITEM?

☒

Yes

☐

No

Department Head/Division Director

Date

☒

Approved

Disapproved

Finance

Date

☐

Approved

Disapproved

City Manager

Date

☐

Approved

Disapproved

RESOLUTION NO. 2010-5974-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A MICROSOFT SOFTWARE ENTERPRISE AGREEMENT WITH DELL CORPORATION OF ROUND ROCK, TEXAS (DIR CONTRACT DIR-SDD-1014), IN THE NOT TO EXCEED AMOUNT OF \$100,907; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, the City currently uses Microsoft for all office applications as well as database servers throughout the City;

**Whereas**, the Staff recently reviewed volume licensing programs that are available as opposed to the City's usual practice of purchasing new licenses every 4 years through a select agreement program;

**Whereas**, through the enterprise agreement, it was found that the City will be able to more effectively standardize software across all desktops and take advantage of many of the Software Assistance benefits at a much lower price;

**Whereas**, the Staff recommends that the City enter into a Microsoft Software Enterprise Agreement with Dell Corporation for a cost not to exceed \$100,907;

**Whereas**, funds are available for this purchase but an amendment to the FY2009-2010 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 Microsoft Software Enterprise Agreement, after approval as to form by the City Attorney, with Dell Corporation of Round Rock, Texas (DIR Contract DIR-SDD-1014), in an amount not to exceed \$100,907.

**Part 2:** The City Council approves an amendment to the FY2009-2010 budget, substantially in the form of the copy attached as Exhibit A, for this purchase.

**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 **18<sup>th</sup>** day of **March**, 2010.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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3/18/10  
Item #5(D)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Alan DeLoera, Information Technology Director

**ITEM DESCRIPTION:** Consider adopting a resolution authorizing the purchase of hardware for the City's computer replacement program from Dell Corporation of Round Rock ( DIR Contract 48ABO) in the not to exceed amount of \$131,000.

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

**ITEM SUMMARY:** Information Technology Department currently has a PC, Laptop and Server Replacement Program that is funded through the Information Technology CIP funding to replace obsolete computer systems. These computers are on a 4 to 5 year replacement cycle. This cycle is based on the type of use (computing power needed) and overall age of the system. This replacement program was started in 2002 to ensure that we were running applications efficiently and effectively while also ensuring desktop and software applications were being supported under maintenance contracts. The Desktop PC Replacement Program will only cover current in-service PC's. If a new position is added or a program calls for an additional PC, software license or printer, this must be a newly budgeted item.

The City of Temple has chosen to standardize all purchases with Dell PCs, laptops and servers. Our relationship with Dell has been very beneficial to the City and Dell equipment has proven to be reliable, supportable and cost competitive. Dell support offerings and service, in our experience, are unmatched by their competitors. Standardization is key for any efficient support organization. It is not possible to support hardware from any and all vendors in a timely manner. As technical staff becomes familiar with specific hardware, they are able to diagnose and resolve issues more quickly. With each varying hardware model, software varies as well. It isn't practical to maintain software drivers and technical information for any offering on the market. Additionally, large PC manufacturers offer several models within their own products. Some are intended for the home market and others are for the corporate/business market. Business PCs generally consist of more standardized components that will be offered for a longer period of time. These components are tested specifically for use in network environments, and are certified by software developers to work well in those environments.

This purchase encompasses 50 desktops, 6 additional laptops, 3 Servers, Tape Backup System, and a new Storage Area Network. The 50 desktops and laptops are currently over 5 years old as well as the servers, Tape Backup unit and Storage Area Network.

**FISCAL IMPACT:** A budget adjustment is presented for Council's approval appropriating \$86,000 of General Fund Designated for Technology Replacement funds to account 351-1900-519-6218, project #100613 for the purchase of the Servers, Storage Area Network, Tape Backup Unit and \$45,000 to account 351-1900-519-2221 for the purchase of PC's and laptops.

**ATTACHMENTS:**

[Budget Adjustment  
Resolution](#)

FY 2010**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	
351-1900-519-22-21		Computer Equipment	45,000		
351-1900-519-62-18	100613	Computer Hardware	86,000		
351-0000-490-25-82		Transfer In - Desg Capital Proj Fund	131,000		
110-0000-351-09-43		Designated Capital - Technology Funds		131,000	
110-9100-591-81-51		Transfer Out - Desg Capital Proj Fund	131,000		
		<b>Do not post</b>			
<b>TOTAL.....</b>			<b>\$ 393,000</b>	<b>\$ 131,000</b>	

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

To appropriate funds in the amount \$86,000 for the purchase of 3 Servers, Storage Area Network, and a Tape Backup System. In addition, this budget amendment appropriates \$45,000 for the purchase of approximately 50 PC's and 6 Laptops from Dell to replace obsolete Dell hardware as part of the replacement schedule for the City.

DOES THIS REQUEST REQUIRE COUNCIL APPROVAL?

☒ Yes☐ No

DATE OF COUNCIL MEETING

March 18, 2010

WITH AGENDA ITEM?

☒ Yes☐ NoDepartment Head/Division DirectorDate☒ Approved  
☐ DisapprovedFinanceDate☐ Approved  
☐ DisapprovedCity ManagerDate☐ Approved  
☐ Disapproved

RESOLUTION NO. 2010-5975-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING THE PURCHASE OF HARDWARE FOR THE CITY'S COMPUTER REPLACEMENT PROGRAM FROM DELL CORPORATION OF ROUND ROCK, TEXAS (DIR CONTRACT 48ABO), IN THE NOT TO EXCEED AMOUNT OF \$131,000; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, the Information Technology Department currently has a PC, Laptop and Server Replacement Program that is funded through the Information Technology CIP funding to replace obsolete computer systems;

**Whereas**, the Staff has chosen to standardize all purchases with Dell PC's, laptops and servers since the City's relationship with Dell has been very beneficial to the City and Dell equipment has proven to be reliable, supportable and cost competitive;

**Whereas**, the Staff recommends purchasing hardware for the City's Computer Replacement Program from Dell Corporation for a cost not to exceed \$131,000;

**Whereas**, funds are available for this purchase but an amendment to the FY2009-2010 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 purchase of hardware for the City's computer replacement program from Dell Corporation of Round Rock, Texas (DIR Contract 48ABO) in an amount not to exceed \$131,000.

**Part 2:** The City Council approves an amendment to the FY2009-2010 budget, substantially in the form of the copy attached as Exhibit A, for this purchase.

**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 18<sup>th</sup> day of **March**, 2010.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

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Clydette Entzminger  
City Secretary

APPROVED AS TO FORM:

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORADUM

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03/18/10  
Item #5(E)  
Consent Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** Consider adopting a resolution granting a street use license for a French drain and accessories proposed to be located within a drainage and public utility easement at 6608 West Adams Avenue, located in Block 1, Lot 1, Holy Trinity Catholic High School Subdivision.

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

**ITEM SUMMARY:** The school has been unable to obtain a drainage easement from adjoining property owners to build a properly sized and graded drainage ditch to drain their detention pond to the Adams Avenue right-of-way. The applicant, school principal Chris Mosmeyer, requests this street use license to locate a French drain within the 30' public utility and drainage easement along the front of the property. A sump pump will pump into the drain but it is to be located outside of the easement and does not need a street use license.

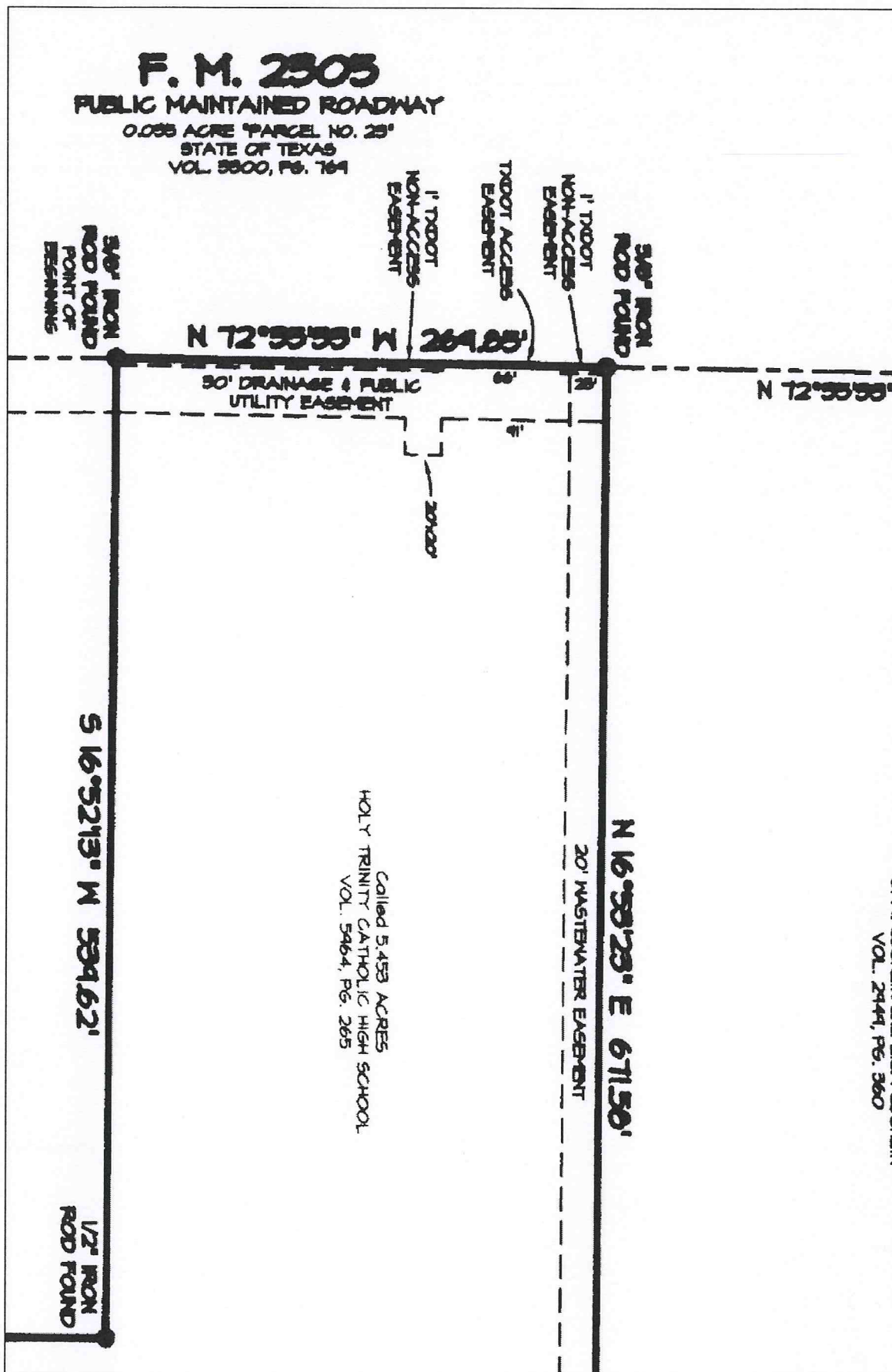
Staff notified all utility companies, including the City of Temple Public Works Department, regarding the applicant's requested street use license. There are no objections to the street use license.

**FISCAL IMPACT:** Street use licenses require a \$150.00 fee for a 15-year term. The applicant paid the \$150.00 fee with his application submittal.

### **ATTACHMENTS:**

[Exhibits A & B](#)  
[Resolution](#)

# Exhibit A



# Exhibit B

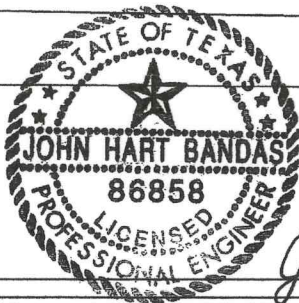
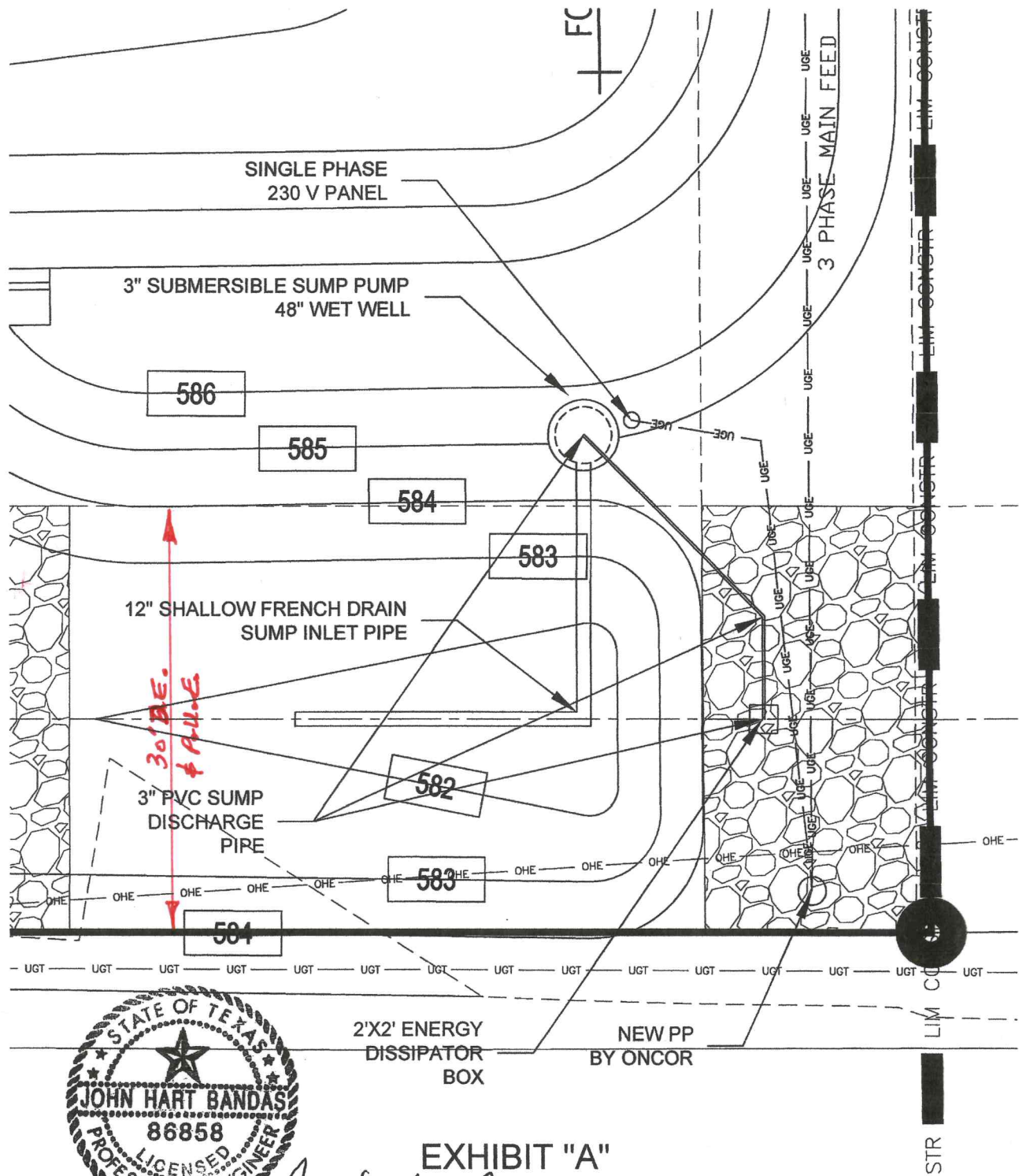


EXHIBIT "A"

HOLY TRINITY CHS  
6608 W. ADAMS AVE.  
TEMPLE, TX 76502

DATE: 01-29-10 DRAWN: JHB  
DWG: 214-GRDCMP SCALE: 1" = 10'

BANDAS ENGINEERING COMPANY  
CIVIL ENGINEERING

PO BOX 3217  
TEMPLE, TEXAS

(254) 778-8728  
bandasengineering@sbcglobal.net

RESOLUTION NO. 2010-5976-R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, GRANTING A STREET USE LICENSE TO HOLY TRINITY CATHOLIC HIGH SCHOOL FOR A FRENCH DRAIN AND ACCESSORIES PROPOSED TO BE LOCATED WITHIN A DRAINAGE AND PUBLIC UTILITY EASEMENT AT 6608 WEST ADAMS AVENUE, LOCATED IN BLOCK 1, LOT 1, HOLY TRINITY CATHOLIC HIGH SCHOOL SUBDIVISION; PROVIDING FOR THE TERMS AND CONDITIONS OF THIS LICENSE; PROVIDING FOR COMPENSATION; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, a Street Use License has been requested for a French drain and accessories proposed to be located within a drainage and public utility easement at 6608 West Adams Avenue, located in Block 1, Lot 1, Holy Trinity Catholic High School Subdivision;

**Whereas**, the use of the property is not inconsistent, nor will it interfere, with any present City use of the property; and

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

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

**Part 1:** A Street Use License is granted to the Holy Trinity Catholic High School, or any successors in interest, hereinafter "Licensee," to occupy, maintain, and utilize property to allow a French drain and accessories located within a drainage and public utility easement at 6608 West Adams Avenue, located in Block 1, Lot 1, Holy Trinity Catholic High School Subdivision, in the City of Temple, Bell County, Texas, more fully shown on Exhibits A and B, attached hereto and made a part hereof for all purposes. This Street Use License is approved in accordance with the following terms and conditions:

**I. Term**

This license is granted for a term of fifteen (15) years unless sooner terminated according to the terms and conditions herein contained. At the end of the fifteen year period, the owner may request an extension or renewal of the license.

**II. Fee**

Licensee shall pay to the City of Temple, Texas, the sum of One Hundred Fifty Dollars (\$150) for the fifteen (15) year term for the license herein granted upon the execution by Licensee and approval by the City of the agreement.

**III. Purpose**

The above-described property shall be used by the Licensee to occupy, maintain, and utilize property for a French drain and accessories located within a drainage and public utility easement at 6608 West Adams Avenue, located in Block 1, Lot 1, Holy Trinity Catholic High School Subdivision, in the City of Temple, Bell County, Texas.

#### **IV. Conditions of License**

That the above-described license is granted subject to the following conditions, terms, and reservations:

(a) **Maintenance of Encroachment Area.**

(1) Licensee shall maintain the encroachment area at all times in a neat, attractive, and orderly manner. A sufficient area of the public street, right-of-way, alley, sidewalk, or other public property shall remain open after the encroachment, unobstructed and preserved for pedestrian or vehicular traffic (including access for impaired or handicapped persons), as appropriate. No other permanent structure, building, or enclosure shall be installed within the public right-of-way. Licensee shall at all times allow access to utilities and trash receptacles located within the encroachment area. Licensee shall not interfere with the operation of existing overhead electric lines along the west side of the alley.

(2) Licensee shall restore the encroachment area to its original condition at the end of the license period, unless renewed or extended, or in the event that this license is terminated by the City as provided herein. If Licensee fails to maintain the encroachment area as provided herein, or fails to restore the encroachment area when the license is expired or terminated, the City may cause such work to be done, the costs of which shall be born by Licensee.

(3) In the event that City requests removal of the encroachment or any other physical improvement in the area of the license, Licensee shall remove said improvement at his own expense within thirty (30) days of notice thereof. In the event that Licensee fails to remove the improvements within the required thirty day period, the City reserves the right to remove the improvements, and Licensee agrees to reimburse the City for the expense of removing said improvements, and Licensee further agrees to hold the City harmless for any and all claims arising out of the removal of improvements or maintenance of the encroachment area. City shall not be required to restore the improvements, which shall be the sole responsibility of Licensee.

(b) **Right of Cancellation.**

(1) This license is made subordinate to the right of the City to use said area for a public purpose, and in addition to any other reservations made herein, it is understood and agreed that should the City of Temple deem it in the public interest to use the above area, or any portion thereof for a public purpose, or for any utility service which will require the use of said area, then in that event, the City shall give the Licensee thirty (30) days written notice of its intention to cancel this license. Licensee shall likewise have the same right of cancellation upon giving the City thirty (30) days written notice of its intention to cancel.

In either event, upon the termination or cancellation by the City or Licensee, as the case may be, this license shall become null and void, and Licensee or anyone claiming any rights under this instrument shall remove any improvements from said area at Licensee's expense.

Failure to do so shall subject Licensee to the provisions of subsection (a)(2) above. All work shall be done at the sole cost of the Licensee and to the satisfaction of the Director of Public Works. The decision of the City Council in this matter shall be final and binding upon all parties insofar as the City's determination as to the public necessity of the use of said area for public use.

(c) **Compliance with Laws.** This license is subject to all State and Federal laws, the provisions of the Charter of the City of Temple as it now exists or as it may hereafter be adopted or amended, and the ordinances of the City of Temple now in effect or those which may hereafter be passed and adopted. The City of Temple shall have the right to increase or decrease the compensation to be charged for this license upon its renewal or extension.

(d) **Hold Harmless.**

(1) As a condition hereof, Licensee agrees and is bound to hold the City whole and harmless against any and all claims for damages, costs, and expenses, to persons or property that may arise out of or be occasioned by the use, occupancy and maintenance of the above-described public property by Licensee, or from any act or omission of any representative, agent, customer, or employee of Licensee, and such indemnity provision shall also cover any personal injury or damage suffered to City property, City employees, agents or officers. This license shall also cover any claim for damages that any utility, whether publicly or privately owned, may sustain or receive by reason of Licensee's use of said license for Licensee's improvements and equipment located thereon.

(2) Licensee shall never make any claim of any kind or character against the City of Temple for damages that it may suffer by reason of the installation, construction, reconstruction, operation, and/or maintenance of any public improvement or utility, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water and/or sanitary sewer mains, and/or storm sewer facilities, and whether such damage is due to flooding, infiltration, natural causes or from any other cause of whatsoever kind or nature.

(3) It is the intention of this indemnity agreement on the part of the Licensee and a condition of this license, that it shall be a full and total indemnity against any kind or character or claim whatsoever that may be asserted against the City of Temple by reason or a consequence of having granted permission to Licensee to use and maintain the above described public property. Licensee hereby agrees to defend any and all suits, claims, or causes of action brought against the City of Temple on account of same, and discharge any judgment or judgments that may be rendered against the City of Temple in connection herewith.

## **V. Acceptance by Licensee**

Licensee may accept the provisions of this license by signing through its duly authorized officer as indicated below within thirty (30) days after this license shall have become fully effective. In the event said acceptance is not signed as provided for herein, then this license shall be of no further effect and shall be considered as having been canceled fully.

**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 on the **18<sup>th</sup>** day of **March**, 2010.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clydette Entzminger  
City Secretary

\_\_\_\_\_  
Jonathan Graham  
City Attorney's Office

STATE OF TEXAS           §

COUNTY OF BELL         §

This instrument was acknowledged before me on the \_\_\_\_\_ day of March, 2010, by  
WILLIAM A. JONES, III, Mayor of the City of Temple, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

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## AGREEMENT OF LICENSEE

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPLE,  
TEXAS:

I, \_\_\_\_\_, on behalf of the Holy Trinity Catholic High School, hereby accept the terms and conditions of Resolution No. 2010-5976-R granting a Street Use License for a French drain and accessories located within a drainage and public utility easement at 6608 West Adams Avenue, located in Block 1, Lot 1, Holy Trinity Catholic High School Subdivision in the City of Temple, Bell County, Texas.

\_\_\_\_\_  
By: Dennis J. Lynch, President  
Holy Trinity Catholic High School  
Board of Trustees

County of Bell       §

State of Texas       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2010, by -  
Dennis Lynch, President of the Board of Trustees for the Holy Trinity Catholic High School.

\_\_\_\_\_  
Notary Public, State of Texas

*Return recorded document to:*  
City Attorney's Office  
2 N Main ST, STE 308  
Temple TX 76501



## COUNCIL AGENDA ITEM MEMORANDUM

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03/18/10  
Item #5(F)  
Consent Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Bruce A. Butscher, P.E., Director of Public Works

**ITEM DESCRIPTION:** (1) Consider adopting a resolution authorizing an emergency construction contract with Lone Star Railroad Contractors, Inc., to perform railroad track repairs in the Temple Industrial Park in the amount of \$76,258.

(2) Consider adopting a resolution authorizing a construction contract with Lone Star Railroad Contractors, Inc., to perform railroad track repairs in the Temple Industrial Park in the amount of \$37,546.

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

**ITEM SUMMARY:** On March 10, 2010 the City received the attached letter from Temple & Central Texas Railway requesting assistance for track repairs to address serious hazards along the track and non compliance with FRA standards. In response, an emergency proposal in the amount of \$76,258 was acquired from Lone Star Railroad Contractors, Inc., to complete the work.

In addition to the emergency repairs, other repairs were identified to achieve Class 1 standards as outlined in the agreement between the City and Temple & Central Texas Railway. The description of the needed repairs along with the associated fee of \$37,546 is detailed in the attached letter.

The emergency portions of the repairs will be authorized by the City Manager prior to March 18, 2010.

**FISCAL IMPACT:** Funding in the amount of \$113,804 is available for this project within the Reinvestment Zone #1 Financing Plan – Account 795-9500-531-6514.

### **ATTACHMENTS:**

[Temple & Central Texas Railway Letter  
Track Repairs Proposed  
Resolutions](#)



## *Temple & Central Texas Railway*

3111 Eberhardt Rd. • Temple, TX • 76504  
Phone 254-778-2300 • Fax 254-778-2302

March 10, 2009

City of Temple  
David A. Blackburn  
City Manager  
2 North Main, Suite 306  
Temple, Texas 76501

RE: Rail Park Track Conditions

Dear Mr. Blackburn,

I am writing this letter in reference to the previously discussed issue of track repair in the Temple Industrial Park and in request of the amount of \$76,258.00 from the City of Temple for the needed emergency track repairs. This track is presently in a condition that creates a serious hazard to the safety of railway workers and the general public as well as being non compliant with FRA standards.

I have attached a summary of repairs needed to achieve Class 1 standards as outlined in our agreement. This detailed summary includes the requested emergency repairs as well as \$37,546.00 in repairs needing approval. Although these repairs are not yet considered an emergency, if not completed, they will soon become a safety hazard.

If you have any questions, concerns or require additional information, please contact me at 254-778-8300.

Sincerely,

Michael P. Rose

Michael P. Rose (via e-mail)  
General Manager

CC: David Eyermann (via e-mail)



**Track Work Needed at Central Pointe Industrial Park**

Item #	Description of Work Needed to Bring Railroad to Class 1 as of 08/26/09	Initial Bid Class I standards	Emergency Previously Approved	Current Balance	Emergency Current Request	Remaining Balance	Remarks
1	Relay high side of curve between turnout 311 and 320 with good relay 90# rail, new track bolts, and gauged and spiked with new track spikes	\$7,465.00	\$7,465.00	\$0.00		\$0.00	
2	Repair breaking frog point in turnout 318 by welding	\$682.00	\$682.00	\$0.00		\$0.00	
3	Grind all stock rails in all turnouts for switch points to align properly	\$1,277.00		\$1,277.00	\$1,277.00	\$0.00	
4	Replace 152 broken composite crosssties with new 7"x9"x8'6" treated hardwood crosssties, and spiked with new track spikes	\$0.00		\$0.00		\$0.00	Agreement with Integrigo for replacement of ties, Original bid of \$15,079.00
5	Replace 62 bad crosssties in curve between turnout 311 and 320, when rail is relayed, with new 7"x9"x8'6" treated hardwood crosssties, and spiked with new track spikes	\$6,563.00	\$6,563.00	\$0.00		\$0.00	
6	Replace two pair of broken joint bars with relay quality 90# bars and new track bolts	\$644.00		\$644.00	\$644.00	\$0.00	
7	Spray and kill all vegetation in ballast section	\$4,066.00		\$4,066.00		\$4,066.00	
8	Rehab approximately 30' of sub-grade behind turnout 311 in main lead by removing this section of track, excavating all fouled material and stockpiling on-site, installing new compacted base material for sub-ballast, installing track back through this section with all removed track material, and surfacing this track to match existing elevation using new clean crushed ballast	\$8,342.00	\$8,342.00	\$0.00		\$0.00	
9	Rehab approximately 30' of sub-grade behind turnout 320 by removing this section of track, excavating all fouled material and stockpiling this material on-site. Install new compacted base material for sub-ballast, reinstall this track section with all removed rail, OTM, and crosssties, and surface using new clean crushed ballast	\$8,342.00	\$8,342.00	\$0.00		\$0.00	
10	Rehab approximately 190' of sub-grade on the Mars Spur by removing this section of track, excavating all fouled material and stockpiling on-site. Install new compacted base material for sub-ballast and reinstall track with all removed rail, ties, and OTM. This track section will be surfaced to match existing track elevation using new clean crushed ballast	\$20,374.00	\$20,374.00	\$0.00		\$0.00	Track leased to MARS Petcare, Letter sent concerning payment for these repairs, Track currently is out of service
11	Replace 75 worn 90# rails, where flange of wheels are scarring joint bars, with good relay quality 90# rail and new track bolts and spikes	\$37,900.00		\$37,900.00	\$37,900.00	\$0.00	
12	Replace 250 bad crosssties throughout track using new 7"x9"x8'6" treated hardwood crosssties, and spiked with new track spikes for	\$21,581.00		\$21,581.00	\$21,581.00	\$0.00	
13	Replace 65 each bad switchties throughout switches using new 7"x9" various length treated hardwood switchties, and spiked with new track spikes	\$11,875.00	\$11,875.00	\$0.00		\$0.00	
14	Tighten all bolts throughout all trackage and replace any missing or broken bolts with new track bolts	\$3,557.00		\$3,557.00	\$3,557.00	\$0.00	
15	Skim surface all trackage, with a 6700 production tamper with laser line capabilities or equivalent, using new clean crushed ballast	\$33,480.00		\$33,480.00		\$33,480.00	
		\$166,148.00	\$63,643.00	\$102,505.00	\$64,959.00	\$37,546.00	

Item #	Description of Non Routine Maintenance Needed Since 08/26/09	Initial Bid	Previously Approved	Current Balance	Current Request	Remaining Balance	Remarks
16	Rehab sub-grade under and behind Switch 319.				\$9,499.00	\$0.00	
17	Concrete panels breaking in Loop Crossing				\$0.00	\$0.00	Warranty work needed to be completed by Track Works
18	Raise and tamp switch point areas in switch 320 and 319.				\$1,800.00	\$0.00	
19	Low spot over pipes on new track just north of loop.				\$0.00	\$0.00	Warranty work needed to be completed by James Construction
		\$0.00	\$0.00	\$0.00	\$11,299.00	\$0.00	

Total Bids	Total Previously Approved	Total Current Balance	Total Current Request	Total Remaining Balance
\$166,148.00	\$63,643.00	\$102,505.00	\$76,258.00	\$37,546.00

**RESOLUTION NO. 2010-5979-R**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, RATIFYING A CONSTRUCTION CONTRACT WITH LONE STAR RAILROAD CONTRACTORS, INC., TO PERFORM EMERGENCY RAILROAD TRACK REPAIRS IN THE TEMPLE INDUSTRIAL PARK, NOT TO EXCEED \$76,258; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, in March 10, 2010, the City received a request from Temple & Central Texas Railway requesting assistance for track repairs to address serious hazards along the track and non-compliance with Federal Railroad Administration (FRA) standards;

**Whereas**, in response, an emergency proposal in the amount of \$76,258 was acquired from Lone Star Railroad Contractors, Inc., to complete the work;

**Whereas**, funds are available for this project in Account No. 795-9500-531-6514; 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 ratifies and authorizes the City Manager, or his designee, to execute, a construction contract, not to exceed \$76,258, between the City of Temple, Texas, and Lone Star Railroad Contractors, Inc., after approval as to form by the City Attorney, for emergency railroad track repairs in the Temple Industrial Park.

**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 **18<sup>th</sup>** day of **March**, 2010.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Clydette Entzminger  
City Secretary

\_\_\_\_\_  
Jonathan Graham  
City Attorney

**RESOLUTION NO. 2010-5980-R**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE,  
TEXAS, AUTHORIZING A CONSTRUCTION CONTRACT WITH  
LONE STAR RAILROAD CONTRACTORS, INC., TO PERFORM  
RAILROAD TRACK REPAIRS IN THE TEMPLE INDUSTRIAL PARK,  
NOT TO EXCEED \$37,546; AND PROVIDING AN OPEN MEETINGS  
CLAUSE.

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**Whereas**, in addition to emergency track repairs in the Temple Industrial Park to address serious hazards along the track and non-compliance with FRA standards, being performed by Lone Star Railroad Contractors, additional repairs are needed to achieve Class 1 standards as outlined in an agreement between the City of Temple and Central Texas Railway;

**Whereas**, in response, a proposal in the amount of \$37,546 was acquired from Lone Star Railroad Contractors, Inc., to complete the work;

**Whereas**, funds are available for this project in Account No. 795-9500-531-6514;  
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 construction contract, not to exceed \$37,546, between the City of Temple, Texas, and Lone Star Railroad Contractors, Inc., after approval as to form by the City Attorney, for railroad track repairs in the Temple Industrial Park.

**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 **18<sup>th</sup>** day of **March**, 2010.

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

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03/18/10  
Item #5(G)  
Consent Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** SECOND READING – Z-FY-10-22: Consider adopting an ordinance authorizing a zoning change from Agricultural District (A) to Single Family One District (SF-1) on a 0.70 ± acre tract of land being part of the Maximo Moreno Survey, Abstract Number 14, located at 216 North 36<sup>th</sup> Street.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:** At its February 15, 2010, meeting, the Planning and Zoning Commission voted 6/0 in accordance with staff recommendation to recommend approval of a zone change from A to SF-1. Commissioners Pope, Secrest, and Barton 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-10-22, from the Planning and Zoning meeting, February 15, 2010. Although the property's Agricultural District (A) allows a single family home, the property owner wants to obtain a Single Family One District (SF-1) for her existing home.

The property owner is currently going through the platting process for this property, but does not propose any development changes. The property is located on North 36<sup>th</sup> Street, a local street, and is served by public (6" and 24" water lines) and private facilities (septic system).

This request conforms to the area and use requirements for the Single Family One District.

### **Public Notice**

Staff mailed notices to two property owners within 200 feet of the subject property. As of Tuesday, February 16, 2010 at 10:00 AM, staff received one notice in favor of the request and none in opposition. The newspaper printed notice of the Planning and Zoning Commission public hearing on February 4, 2010 in accordance with state law and local ordinance.

**FISCAL IMPACT:** None

**ATTACHMENTS:**

Aerial  
Land Use and Character Map  
Zoning Map  
Utility Map  
Notice  
P&Z Staff Report (Z-FY-10-22)  
P&Z Minutes (2-15-2010)  
Ordinance



**Z-FY-10-22**


Rezoning for Proposed Hamby Subdivision

0.70 Acres



Feet 0 50 100 150 200

J Stone 1.28.10

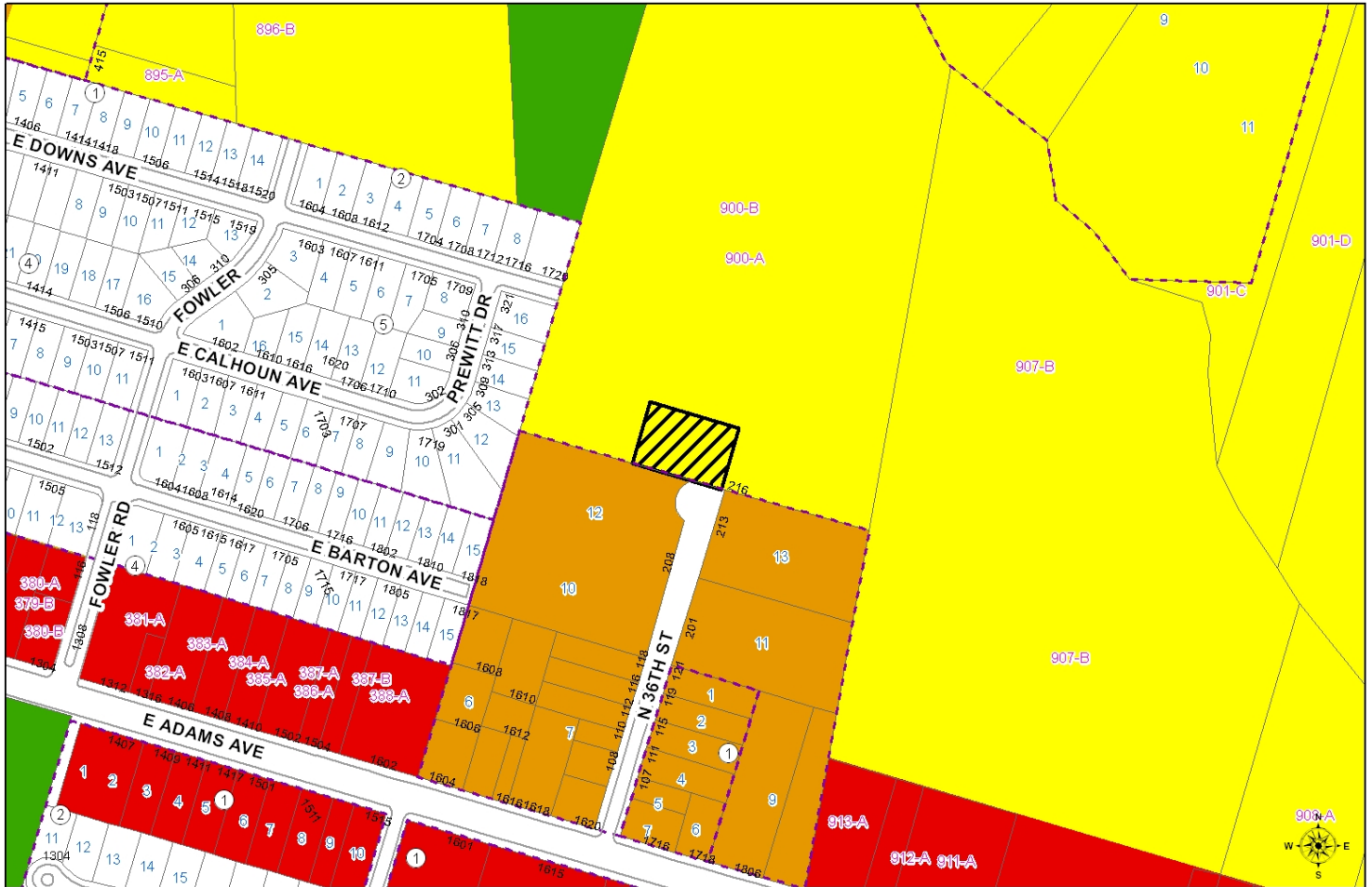
 Z-FY-10-22



Z-FY-10-22

Rezoning for Proposed Hamby Subdivision

0.70 Acres



- |                           |                         |                       |                                   |                      |                    |
|---------------------------|-------------------------|-----------------------|-----------------------------------|----------------------|--------------------|
| Z-FY-10-22                | 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 |                    |
| Estate Residential        | Auto-Urban Multi-Family | Suburban Commercial   | Industrial                        | Parks and Open Space |                    |

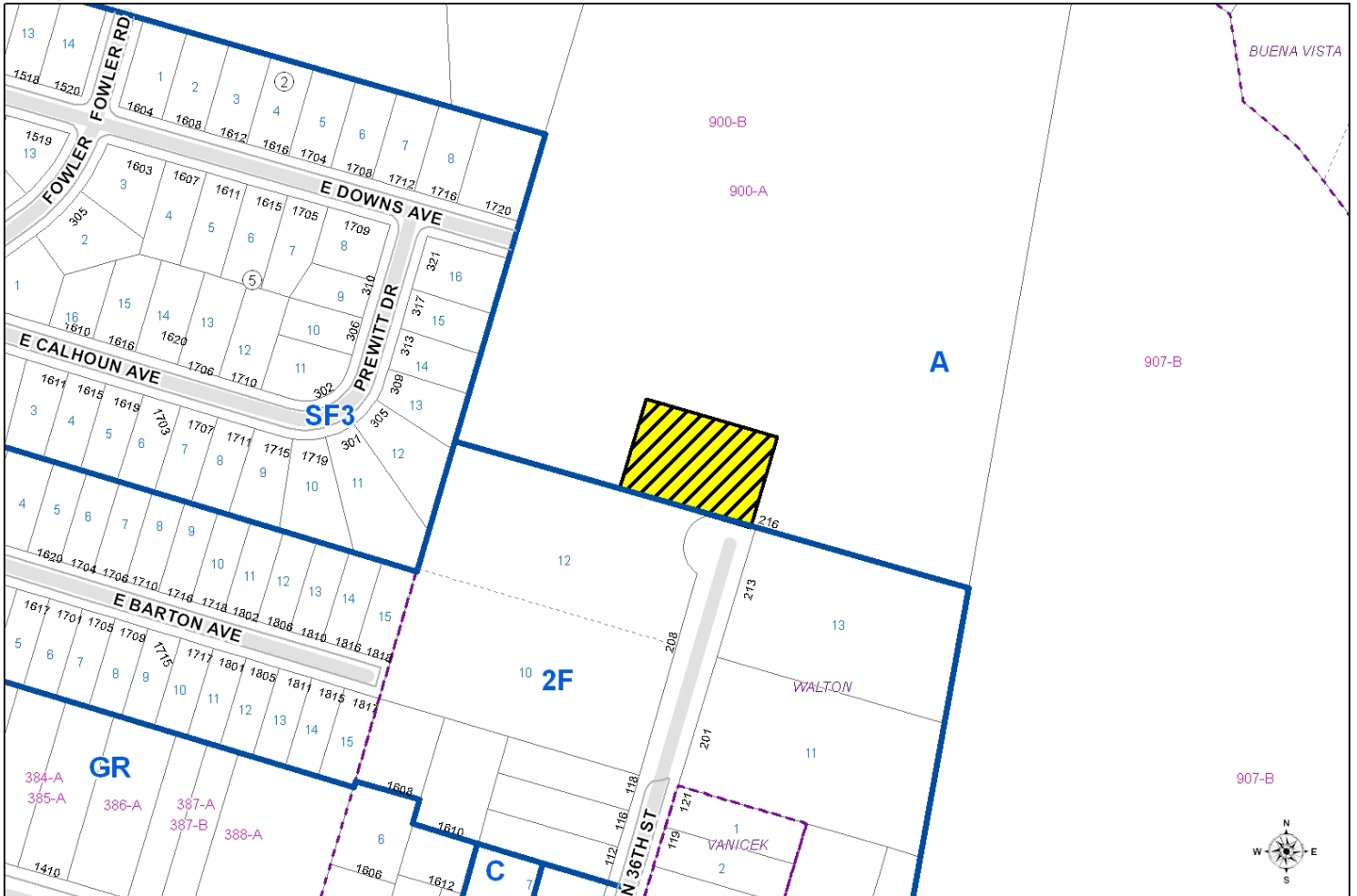
1 inch = 300 feet  
J Stone 2.3.10



**Z-FY-10-22**

Rezoning for Proposed Hamby Subdivision

0.70 Acres



 Z-FY-10-22

Feet 0 50 100 150 200

J Stone 1.28.10




**Z-FY-10-22**

Rezoning for Proposed Hamby Subdivision

0.70 Acres



 Z-FY-10-22

Feet 0 50 100 150 200

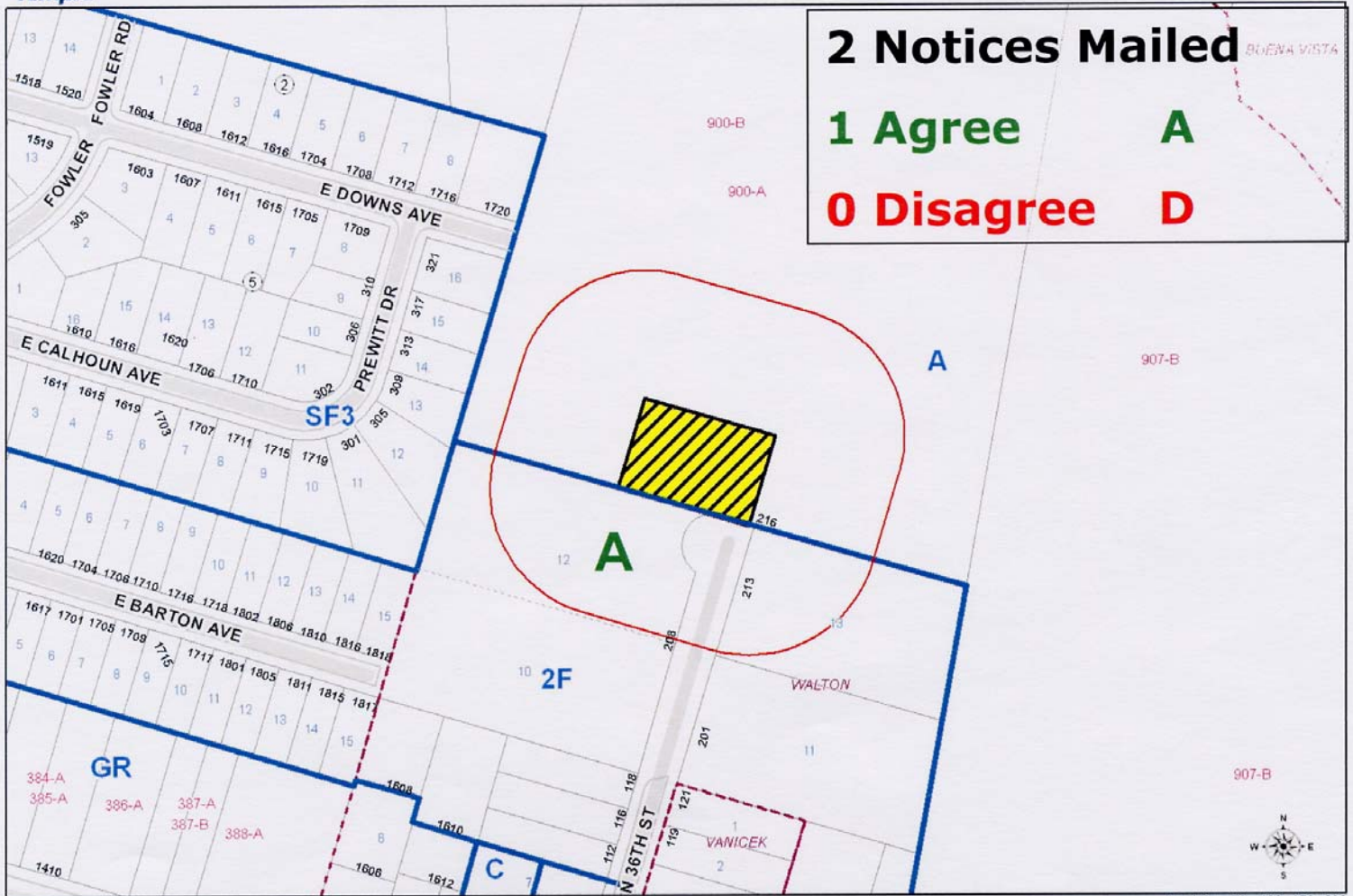
J Stone 1.28.10



**Z-FY-10-22**

Rezoning for Proposed Hamby Subdivision

0.70 Acres



**2 Notices Mailed**

**1 Agree**

**A**

**0 Disagree**

**D**



Z-FY-10-22



200' Buffer

Feet 0 50 100 150 200

J Stone 1.28.10



# PLANNING AND ZONING COMMISSION AGENDA ITEM

02/15/10  
Item #2  
Regular Agenda  
Page 1 of 3

**APPLICANT / DEVELOPMENT:** Ronald Carroll c/o Sue Hamby



**CASE MANAGER:** Tammy Lyerly, Planner

**ITEM DESCRIPTION:** Z-FY-10-22 Hold a public hearing to discuss and recommend action on a zoning change from Agricultural District (A) to Single Family One District (SF-1) on a 0.70 ± acre tract of land being part of the Maximo Moreno Survey, Abstract Number 14, located at 216 North 36<sup>th</sup> Street. (Applicant: Ronald Carroll for Carolyn Sue Hamby)

**BACKGROUND:** The property's Agricultural District allows a single family home, but the property owner wants to secure her existing home with a Single Family One District. The property owner is currently going through the platting process for this property, but does not propose any development changes.

## Surrounding Property and Uses

The following table shows the subject property, existing zoning and current land uses:

Direction	Zoning	Current Land Use	Photo
Subject Property	A (SF-1 proposed)	Residential	
North	A	Undeveloped Land	

Direction	Zoning	Current Land Use	Photo
South	2F	Residential	
East	A	Residential and Undeveloped Land	
West	SF3 and A	Residential and Undeveloped Land	

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

Future Land Use and Character – This request conforms to the Future Land Use and Character Map's designation of Suburban Residential for the property. The property is adjacent to an Auto-Urban Residential Designated area to the south, and a Neighborhood Conservation Designated area to the west.

Thoroughfare Plan – This request conforms to the Thoroughfare Plan with access from South 36<sup>th</sup> Street.

Adequacy of Public Facilities –A 6-inch water line and a septic system serve this property.

Development Regulations – The purpose of the SF-1 zoning district is to develop average or standard single-family lots that serve as a transition between larger and smaller lot single-family districts.

The existing property exceeds the following minimum lot area and setback requirements for the SF-1 zoning district.

<b>SF-1, Single-Family 1</b>	
<b>Min. Lot Area (sq. ft.)</b>	7,500
<b>Min. Lot Width (ft.)</b>	60
<b>Min. Lot Depth (ft.)</b>	100
<b>Max. Height (stories)</b>	2 ½ stories
<b>Min. Yard (ft)</b>	
Front	25
Side	10% width of lot - 6 min & 7.5 max
Rear	10

#### Public Notice

Staff mailed notices to two property owners within 200 feet of the subject property. As of Wednesday, February 10, 2010 at 10:00 AM, staff received one response notice returned in favor of the request and none in opposition. The newspaper printed notice of the Planning and Zoning Commission public hearing on February 4, 2010 in accordance with state law and local ordinance

**STAFF RECOMMENDATION:** Staff recommends approval of **Z-FY-10-22** because the zoning request:

1. Conforms to the Future Land Use and Character Plan for a single-family residence;
2. Conforms to the Thoroughfare Plan for access to the property; and
3. It conforms to the Availability of Public Facilities Plan.

**FISCAL IMPACT:** Not Applicable

#### **ATTACHMENTS:**

Aerial  
Land Use and Character Map  
Zoning Map  
Notice Map  
Response Letter

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

**MONDAY, FEBRUARY 15, 2010**

**ACTION ITEMS**

**Item 3: Public Hearing, Discussion and Action Z-FY-10-22:** Discuss and recommend action on a zoning change from Agricultural District (A) to Single Family One District (SF-1) on a 0.70 ± acre tract of land being part of the Maximo Moreno Survey, Abstract Number 14, located at 216 North 36th Street. (Applicant: Ronald Carroll for Carolyn Sue Hamby)

Ms. Tammy Lyerly, Planner, presented the information and stated this case would go forward to City Council on March 4<sup>th</sup> and 18<sup>th</sup> for first reading and second reading, respectively.

The subject property was currently zoned Agricultural (A) and proposed for a Single Family One (SF1) zoning district and the request conformed with SF1 regulations. The property was located at the north end of North 36th Street with undeveloped land surrounding it and an existing subdivision to the west.

The Future Land Use and Character Map showed the area as Suburban/Residential and was compatible with surrounding residential uses. It exceeded the SF1 zoning regulations of lot width and depth and had access from North 36<sup>th</sup>, a local street. The property currently had a septic system and would remain septic. A 6-inch and 24-inch water line served the property. This property complied with the Thoroughfare Plan and public and private facilities were available to serve the site.

Two notices were sent to property owners and one was received back in favor of the request. There were no notices received in opposition

Staff recommended approval of this zone change from A to SF1 because it complied with the Future Land Use and Character Map, the Thoroughfare Plan, adequate public and private facilities were available to serve the property, and complied with the Single Family One regulations.

Commissioner Staats asked if 36th Street would ever go any further northward and Ms. Lyerly stated no, not at this time that she was aware of.

Vice-Chair Talley asked about the sewer line and if the property owner had any right to hook up to it. Ms. Lyerly stated it was a considerable distance but was available for extension to the property in the future. Staff's understanding was there were no plans to connect to the sewer.

Chair Pilkington opened the public hearing.

Mr. Ronald Carroll, 5302 S. 31st Street, Temple, was the applicant's agent and available to answer any questions.

There being no questions or further speakers, Chair Pilkington closed the public hearing.

Commissioner Martin made a motion to approve the zone request from A to SF1 as recommended and Commissioner Hurd made a second.

*Motion passed: (6:0)*

Commissioners Pope, Barton and Secrest absent.

ORDINANCE NO. \_\_\_\_\_

[PLANNING NO. Z-FY-10-22]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM AGRICULTURAL DISTRICT (A) TO SINGLE FAMILY ONE DISTRICT (SF-1) ON AN APPROXIMATELY 0.70 ACRE TRACT OF LAND BEING PART OF THE MAXIMO MORENO SURVEY, ABSTRACT NUMBER 14, LOCATED AT 216 NORTH 36<sup>TH</sup> STREET; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**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 Single Family One District (SF-1) on an approximately 0.70 acre tract of land being part of the Maximo Moreno Survey, Abstract Number 14, located at 216 North 36<sup>th</sup> 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 **4<sup>th</sup>** day of **March**, 2010.

PASSED AND APPROVED on Second Reading on the **18<sup>th</sup>** day of **March**, 2010.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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03/18/10  
Item #5(H)  
Consent Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Gary O. Smith, Chief of Police

**ITEM DESCRIPTION:** SECOND READING: Consider adopting an ordinance re-establishing a curfew for minors.

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

**ITEM SUMMARY:** The Temple Police Department seeks Council approval for a renewed juvenile curfew ordinance. The original curfew ordinance was enacted in September 1994. Without Council action the current ordinance will expire on April 5, 2010. The ordinance will allow the Temple Police Department to continue to intervene when police officers encounter curfew violations. This intervention will be in the best interests of the health, safety and welfare of the general public. The curfew is a valuable tool that helps the community in several ways. First, it helps provide for the protection of minors, both from each other and from other persons. Next, it helps to promote parental control and responsibility for their children. Finally, it is intended to reduce the incidence of juvenile criminal activities. In the past three years, the Temple Police Department cited 689 curfew violations.

The current curfew hours are proposed for continuation:

(A) 11:00 P.M. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 A.M. of the following day; and

(B) 12:01 A.M. until 6:00 A.M. on any Saturday or Sunday.

**FISCAL IMPACT:** There is no direct fiscal impact with regard to expenditures for this ordinance. However, fines will be assessed to violators that may result in revenue through Municipal Court.

### **ATTACHMENTS:**

[Ordinance](#)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ADOPTING CURFEW HOURS FOR MINORS; DEFINING TERMS; CREATING OFFENSES FOR MINORS, PARENTS AND GUARDIANS OF MINORS, AND BUSINESS ESTABLISHMENTS PROVIDING FOR ENFORCEMENT BY THE POLICE DEPARTMENT; PROVIDING FOR WAIVER BY THE MUNICIPAL COURT OF JURISDICTION OVER A MINOR WHEN REQUIRED UNDER THE TEXAS FAMILY CODE; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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WHEREAS, on April 5, 2007, the City Council adopted Ordinance No. 2007-4133 adopting curfew hours for minors due to the increase in juvenile violence, juvenile gang activity, and crime by and against persons under the age of 17 in the City of Temple

WHEREAS, persons under the age of 17 are particularly susceptible by their lack of maturity and experience to participation in unlawful and gang-related activities or are likely to be victims of crime committed by adults or other youths;

WHEREAS, the ordinance will expire on April 5, 2010;

Whereas, Section 370.002, "Review of Juvenile Curfew Order or Ordinance," of the Texas Local Government Code, requires:

- (a) before the third anniversary of the date of adoption of a juvenile curfew ordinance by a general-law municipality or a home-rule municipality or an order of a county commissioners court, and every third year thereafter, the governing body of the general-law municipality or home-rule municipality or the commissioners court of the county shall:
  - (1) review the ordinance or order's effects on the community and on problems the ordinance or order has intended to remedy;
  - (2) conduct public hearings on the need to continue the ordinance or order; and
  - (3) abolish, continue, or modify the ordinance or order.
- (b) Failure to act in accordance with Subsections (a)(1)-(3) shall cause the ordinance or order to expire;

WHEREAS, the Staff recommends readopting the curfew for minors;

WHEREAS, the City of Temple desires to continue to provide for the protection of minors from each other and from other persons, to promote parental control over and responsibility for children, in order to protect the general public, and reduce the incidence of juvenile criminal activities; and

WHEREAS, a curfew for those under the age of 17 is in the interest of the public health, safety, and general welfare and will help to attain the foregoing objectives and to diminish the undesirable impact of such conduct on the citizens of the City of Temple.

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

**Part 1:** The City Council of the City of Temple, Texas, finds that it is in the interest of the public health, safety, and general welfare of the general public, to readopt the curfew hours for minors in an effort to continue to provide for the protection of minors from each other and from other persons, to promote parental control over and responsibility for children, in order to protect the general public, and to reduce the incident of juvenile criminal activities.

**Part 2:** The following curfew requirements for minors are hereby adopted:

## **CURFEW HOURS FOR MINORS**

(a) **Definitions.** In this ordinance, the words and phrases listed below have the meanings provided herein:

(1) CURFEW HOURS means:

(A) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and

(B) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

(2) EMERGENCY means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

(3) ESTABLISHMENT means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

(4) GUARDIAN means:

(A) a person who, under court order, is the guardian of the person of a minor; or

(B) a public or private agency with whom a minor has been placed by court.

(5) MINOR means any person under 17 years of age.

(6) OPERATOR means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of, an association or partnership and the officers of a corporation.

(7) PARENT means a person who is:

(A) a natural parent, adoptive parent, or step-parent of another person; or

(B) at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

(8) PUBLIC PLACE means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(9) REMAIN means to:

(A) linger or stay; or

(B) fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(10) SERIOUS BODILY INJURY means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

b. Offenses.

(1) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city curfew hours.

(2) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of the establishment during curfew hours.

(3) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

c. Defenses.

(1) It is a defense to prosecution under Subsection (b) that the minor was:

(A) accompanied by the minor's parent or guardian;

(B) on an errand at the direction of the minor's parent or guardian, without any detour or stop;

(C) in a motor vehicle involved in interstate or intrastate travel;

(D) engaged in an employment activity, or going to or returning home from an employment activity, without detour or stop;

(E) involved in an emergency;

(F) on the sidewalk abutting the minor's residence or abutting the residence of next door neighbor if the neighbor did not complain to the police department about the minor's presence;

(G) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the City of Temple, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious or other recreational activity supervised by adults and sponsored by the City of Temple, a civic organization, or another similar entity that takes responsibility for the minor;

(H) exercising first amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right to assembly; or

(I) married or had been married or had disabilities of minority removed in accordance with Chapter 31 of the Texas Family Code.

(2) It is a defense to prosecution under Subsection (b)(3) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during the curfew hours and refused to leave.

d. Enforcement.

Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that based, on any response and other circumstances, no defenses in Subsection (c) is present. In assessing punishment for either a minor or a parent, the Municipal Court Judge may consider a community service or teen court program.

e. Penalties.

(1) A person who violates a provision of this ordinance is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.

(2) When required by Section 51.08 of the Texas Family Code, as amended, the municipal court shall waive original jurisdiction over a minor who violates Subsection (b)(1) of this section and shall refer the minor to juvenile court.

**Part 3:** The declarations, determinations, and findings declared, made and found in the preamble of this ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

**Part 4:** 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 5:** 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 6:** This ordinance will expire on **March 18, 2013.**

**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 **4<sup>th</sup>** day of **March**, 2010.

PASSED AND APPROVED on Second Reading on the **18<sup>th</sup>** day of **March**, 2010.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

---

Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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03/18/10  
Item #5(I)  
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 2009-2010.

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

**ITEM SUMMARY:** This item is to recommend various budget amendments, based on the adopted FY 2009-2010 budget. The amendments will involve transfers of funds between contingency accounts, department and fund levels.

**FISCAL IMPACT:** The total amount of budget amendments is \$64,013.

**ATTACHMENTS:**

Budget Amendments  
Resolution

**CITY OF TEMPLE**  
**BUDGET AMENDMENTS FOR FY 2010 BUDGET**  
**March 18, 2010**

			<b>APPROPRIATIONS</b>	
<b>ACCOUNT #</b>	<b>PROJECT #</b>	<b>DESCRIPTION</b>	<b>Debit</b>	<b>Credit</b>
110-2000-521-2514		Travel & Training (Police Dept.)	\$ 9,283	
110-0000-442-0720		Police Revenue		\$ 9,283
Annual allocation payment from the Law Enforcement Officer Standards and Education (LEOSE) account for expenses related to continuing education.				
110-2000-521-2114		Animal Food & Supplies (Police Dept.)	\$ 10	
110-0000-442-0722		Police Donation		\$ 10
110-2000-521-2533		DARE CJD Expenses	\$ 1,300	
110-0000-442-0723		DARE Donations		\$ 1,300
Donations allocated for purchase of dog vest - \$10, and funds from poster proceeds to go toward DARE Camps.				
110-2000-521-2514		Travel & Training (Police Dept.)	\$ 200	
110-0000-317-0000		<b>Fund Balance Reserved/Municipal Court Restricted Fees - Court Security</b>		<b>\$ 200</b>
Appropriate funding for Warrant Officer, Haydee Sheen to attend the local security training presented by Texas Municipal Courts Education Center (TMCEC). Specifically listed as an allowable expense from the restricted funds.				
110-2200-522-2516		Judgments & Damages (Fire Dept.)	\$ 1,750	
110-1500-515-6531		<b>Contingency - Judgments &amp; Damages</b>		<b>\$ 1,750</b>
Deductible reimbursement to the Texas Municipal League for settlement of a claim filed against the City of Temple by Jessie George seeking reimbursement for damage to his vehicle after it was struck by a Fire Department vehicle on April 9, 2009, in the 300 Block of South General Bruce Drive.				
110-2200-522-2516		Judgments & Damages (Fire Dept.)	\$ 7,440	
110-0000-461-0554		Insurance Claims		\$ 7,440
Insurance claim to cover costs of repairs to the Training Captain's truck.				
110-2800-532-2516		Judgments & Damages (Traffic Signal Maintenance)	\$ 5,000	
110-1500-515-6531		<b>Contingency - Judgments &amp; Damages</b>		<b>\$ 5,000</b>
Deductible reimbursement to the Texas Municipal League for settlement of a claim filed against the City by David & Rhonda Cluck seeking reimbursement for damage to their vehicle on November 25, 2009, at Marlandwood & Lowes Drive when a concrete/ water mixture splattered on both sides of their vehicle after a Traffic Signal crew poured signal pole foundations.				
260-6000-515-2110		Office Supplies (Community Development)		\$ 200
260-6000-515-2111		Computer Supplies		\$ 600
260-6000-515-2128		Postage		\$ 500
260-6000-515-2511		Printing/Publications		\$ 200
260-6000-515-2610		Telephone		\$ 500
260-6000-515-2616		Professional		\$ 7,755
260-6000-515-6532		<b>Contingency</b>		<b>\$ 4,206</b>
260-6100-571-2641		Public Service Agencies		\$ 5,822
260-6100-571-6315	100506	Sidewalk/Curb Gutter	\$ 39,030	
260-6100-571-6317	100178	Streets/Alleys		\$ 28
260-6100-571-6516	100370	Park Improvements - Ferguson		\$ 2

**CITY OF TEMPLE**  
**BUDGET AMENDMENTS FOR FY 2010 BUDGET**  
**March 18, 2010**

ACCOUNT #	PROJECT #	DESCRIPTION	APPROPRIATIONS	
			Debit	Credit
260-6100-571-6532	Contingency		\$	4,879
260-6100-571-6530	Special Project Contingency		\$	14,338

Adjust the amounts carried forward for CDBG to reflect the approved annual action plan. Some funds were reallocated and program income from prior years (in the Contingency account) was programmed.

<b>TOTAL AMENDMENTS</b>	<b>\$ 64,013</b>	<b>\$ 64,013</b>
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**GENERAL FUND**

Beginning <b>Contingency</b> Balance	\$ -
Added to Contingency Sweep Account	\$ -
Carry forward from Prior Year	\$ -
Taken From Contingency	\$ -
Net Balance of Contingency Account	\$ -
Beginning <b>Judgments &amp; Damages</b> Contingency	\$ 77,833
Added to Contingency Judgments & Damages from Council Contingency	\$ -
Taken From Judgments & Damages	\$ (28,822)
Net Balance of Judgments & Damages Contingency Account	\$ 49,011
Beginning <b>Fuel</b> Contingency	\$ 125,000
Added to Fuel Contingency	\$ -
Taken From Fuel Contingency	\$ -
Net Balance of Fuel Contingency Account	\$ 125,000
Beginning <b>Solid Waste - Future Capital Replacement</b> Contingency	\$ 48,400
Added to Solid Waste - Future Capital Replacement Contingency	\$ -
Taken From Solid Waste - Future Capital Replacement Contingency	\$ -
Net Balance of Solid Waste - Future Capital Replacement Contingency Account	\$ 48,400
<b>Net Balance Council Contingency</b>	<b>\$ 222,411</b>
Beginning Balance <b>Budget Sweep</b> Contingency	\$ -
Added to Budget Sweep Contingency	\$ -
Taken From Budget Sweep	\$ -
Net Balance of Budget Sweep Contingency Account	\$ -

**WATER & SEWER FUND**

Beginning <b>Contingency</b> Balance	\$ 247,423
Added to Contingency Sweep Account	\$ -
Taken From Contingency	\$ (28,875)
Net Balance of Contingency Account	\$ 218,548
Beginning <b>Approach Mains</b> Contingency	\$ -
Added to Approach Mains Contingency	\$ 488,270
Taken From Approach Mains Contingency	\$ (488,270)
Net Balance of Approach Mains Contingency Account	\$ -
<b>Net Balance Water &amp; Sewer Fund Contingency</b>	<b>\$ 218,548</b>

**HOTEL/MOTEL TAX FUND**

Beginning <b>Contingency</b> Balance	\$ 26,336
Added to Contingency Sweep Account	\$ -
Taken From Contingency	\$ (19,000)
Net Balance of Contingency Account	\$ 7,336

**CITY OF TEMPLE**  
**BUDGET AMENDMENTS FOR FY 2010 BUDGET**  
**March 18, 2010**

		APPROPRIATIONS		
ACCOUNT #	PROJECT #	DESCRIPTION	Debit	Credit
DRAINAGE FUND				
		Beginning <b>Contingency</b> Balance	\$	-
		Added to Contingency Sweep Account	\$	-
		Taken From Contingency	\$	-
		Net Balance of Contingency Account	\$	-
FED/STATE GRANT FUND				
		Beginning <b>Contingency</b> Balance	\$	15,243
		Carry forward from Prior Year	\$	51,505
		Added to Contingency Sweep Account	\$	-
		Taken From Contingency	\$	(43,423)
		Net Balance of Contingency Account	\$	23,325

**RESOLUTION NO. 2010-5977-R**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING BUDGET AMENDMENTS TO THE 2009-2010 CITY BUDGET; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, on the 3<sup>rd</sup> day of September, 2009, the City Council approved a budget for the 2009-2010 fiscal year; and

**Whereas**, the City Council deems it in the public interest to make certain amendments to the 2009-2010 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 2009-2010 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 18<sup>th</sup> day of **March**, 2010.

THE CITY OF TEMPLE, TEXAS

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WILLIAM A. JONES, III, Mayor

ATTEST:

APPROVED AS TO FORM:

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Clydette Entzminger  
City Secretary

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Jonathan Graham  
City Attorney



## COUNCIL AGENDA ITEM MEMORANDUM

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03/18/10  
Item #6  
Regular Agenda  
Page 1 of 2

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** THIRD READING – Z-FY-10-18: Consider adopting an ordinance authorizing a Conditional Use Permit (CUP) to allow a package store with alcoholic beverage sales for off-premise consumption in a 6,000 square foot building, on Lot 1, Block 4, Hilltop Estates Addition VII, at 1521 Marlandwood Road.

**PLANNING AND ZONING COMMISSION RECOMMENDATION:** At its February 1, 2010, meeting, the Planning and Zoning Commission voted 7/0, in accordance with staff recommendation, to recommend approval of the Conditional Use Permit request for an off-premise consumption package store, subject to CUP regulations; and with a condition that the existing dumpster shown on the CUP site plan be screened on three sides and have a gate enclosure on the fourth side. The applicant agrees with the conditions of the CUP. Commissioner Secrest abstained and Commissioner Martin was absent.

**STAFF RECOMMENDATION:** Adopt ordinance as presented in item description on third reading

**ITEM SUMMARY:** The item was tabled at the March 4, 2010 City Council meeting. The applicant was not present for that meeting and Council expressed the desire to have further discussion with the applicant prior to taking action. Please see attached letter from Mr. Thrower.

Please refer the Staff Report and draft minutes of case Z-FY-10-18, from the Planning and Zoning meeting, February 1, 2010. This Conditional Use Permit (CUP) request is to allow a package store with alcoholic beverage sales for off-premise consumption in a 6,000 square foot building located at 1521 Marlandwood Road. Blockbuster Video currently leases the existing building, but Twin Liquors will become the new leaseholder if City Council approves this request. The applicant will not have a drive-through window. Retail customers will use the front door for ingress/egress.

This request conforms to the area and use requirements for a CUP required for an off-premise package store in the General Retail District. The property is at the intersection of two arterials and conforms to the Thoroughfare Plan. Available public facilities serve this site.

During the Planning and Zoning meeting on February 1, 2010, the Commission, staff, and the applicant discussed several aspects of the required CUP site plan. The applicant agreed to amend the site plan to include the required 6' wide sidewalks along South 31<sup>st</sup> Street and Marlandwood Road, both arterials. The Commission also discussed increasing the sidewalk width from 6 feet to 8 feet along South 31<sup>st</sup> Street, because of its inclusion in the Citywide Trails Master Plan. The Commission discussed TxDOT's control of the property's shared access with the adjacent convenience store along South 31<sup>st</sup> Street. The applicant also agreed to screen the existing dumpster on three sides and include a gate enclosure facing Marlandwood Road, at the Commission's request.

Staff sent out five notices. As of Monday, February 8, 2010, at 11:30 am, staff had not received any returned responses from notified property owners. The newspaper printed notice of the public hearing for the Planning and Zoning Commission meeting on January 21, 2010 in accordance with state law and local ordinance.

**FISCAL IMPACT:** Funding for the additional two feet of sidewalk width along South 31<sup>st</sup> Street, due to the Trails Master Plan, is estimated to cost \$2,925 and will come from the Public Works Street Department operating budget. The applicant will be reimbursed upon submission of receipts for the actual cost of the additional two feet of sidewalk.

**ATTACHMENTS:**

[Letter from Applicant-Response to Concerns](#)  
[Aerial](#)  
[Land Use and Character Map](#)  
[Zoning Map](#)  
[Applicant's Letter](#)  
[CUP Site Plan](#)  
[Notice Map](#)  
[P&Z Staff Report \(Z-FY-10-18\)](#)  
[P&Z Minutes \(2/1/10\)](#)  
[Ordinance](#)

# *Thrower Design*

4608-A South Lamar Boulevard  
Austin, Texas 78745  
(512) 476-4456 • Fax (512) 476-4454

March 12, 2010

Mr. Tim Dolan, Director  
Planning Department  
City of Temple  
2 North Main Street,  
Temple, Texas 76501

RE: 1521 Marlandwood Road – Conditional Use Permit

Dear Mr. Dolan,

Thanks for providing me with some concerns that were raised about the CUP we have filed for 1521 Marlandwood. I will address these concerns in the following statements to attempt to further clarify the proposed CUP.

Traffic is not anticipated to be an issue with this Twin Liquors store. Typical customer usage is between 150-175 cars per day. This equates to a trip rate of 300-350 vehicle trips per day. As a comparison, the vehicle trips associated with the same size store as Shopping Center would generate 1,091 vehicle trips per day. As a Walk-in Bank, 939 vehicle trips per day would be generated. While there is not comparable data associated with the existing video store for a 24-hour count, it is likely that the video store generates more vehicle trips per day than the proposed use of the building. The site enjoys access with two driveways to two different roads that abut the property. One of these driveways is a joint use driveway with access to S. 31<sup>st</sup> Street. This joint use driveway is in conjunction with the convenience store / gas station / car wash facility to the south. This abutting use generates far more traffic than the existing use or proposed use of the 6,000 s.f. building covered under the application for this Conditional Use Permit. There are a total of 3 driveways that serve the abutting convenience store / gas station / car wash operation that provides more than adequate ingress / egress to that site. The driveway characteristics for the 2 driveways serving the Twin Liquors site are very likely to remain unchanged, and

perhaps, may even be noticeably better, under a comparison of the existing use versus the proposed use of the site.

Security measures for all stores is 24/7 monitoring with 12-16 cameras in each store. These are remotely accessed and are recorded and kept for 90 days. Any suspicious activity is downloaded to permanent files and acted upon accordingly. This internet based system is a significant factor in the very low criminal activity associated with the Twin Liquors operations. Additional security measures with the stores is the contracted alarm system which is triggered by break-ins of all types (motion sensors, glass breaking sensors, etc.) and register panic buttons which signal directly with the local Police Departments. Twin Liquors spends a great deal of time and money maintaining all aspects of security at all the stores.

Twin Liquors is a long standing company that has many stores and many years of experience in the market. They understand that the existing residential development is a concern primarily due to the proximity and Twin Liquors is very cognizant of the social conditions relating to that proximity to their business. Twin Liquors has a company-wide policy to not cash checks of any type at their stores. As such, there is not an option of someone purchasing an item and gaining any cash back to their pocket. If a patron pays with a check, then the check is immediately run through an on-line check verification system that electronically informs the employee if the patron is on a "bad check" list. If so, the purchase is denied. If a patron's check is returned as NSF, then it is immediately forwarded from the bank to CheckRite for electronic check collection. This is normal and customary to the industry and for the vast majority of commercial retail operations. Twin Liquors is and remains very aggressive on this matter.

The purchase of smaller quantities of product is discouraged with a selection that is significantly smaller than the balance of the product portfolio found in the stores. The focus for Twin Liquors is on fine wine and spirits based on their extensive experience in the industry. All of the stores are constantly monitored so that adjustments can be made to reflect the social matters that may be arise. This includes, but is not limited to, the pulling of the lowest end market items of inexpensive products to help discourage transient traffic. It is important to understand that Twin Liquors is a company that strives to protect not only their own interests but also the interests of the area which they have

stores. As much as Twin Liquors wants to keep their stores as inviting as possible, Twin Liquors must also continue to be welcomed in the area and markets which they serve. Accordingly, Twin Liquors makes every effort to keep up the stores to current standards in every way and fully recognizes the community desire to provide a store that maintains viability in the area.

Twin Liquors has many stores that are located in similar proximity to residential developments and has continued to address any concerns that may arise and remains a good neighbor to the communities which they serve. As a given, smaller stores serve smaller areas and larger stores serve larger areas. If a market warrants the location of a store in a strip retail building, then typically, that stores' market capture area is typically larger than if the store is located in a stand-alone building. It is anticipated that this store, with excess parking available, meets the needs of the market which it serves and provides a more welcoming format versus a strip retail development.

I am not at liberty to discuss, and have limited knowledge of, the current lease situation of the current tenant and the property owner. That is a private matter between private parties which I am not in that loop of negotiations.

In regards to the application to TABC, Twin Liquors is not able to begin the process until they have approval from the City of Temple and possession (through lease) of the property. It is anticipated to take approximately 60 days to complete the construction necessary for occupancy.

This proposed Conditional Use Permit is exceeding the standard City of Temple Code requirements to add extensive landscaping to the property. Additionally, the proposed plan will add an 8' sidewalk to S. 31<sup>st</sup> Street in accordance to the Trail Plan for the City, add a 6' sidewalk to Marlandwood Road, to fully enclose the dumpster to be relocated to the SE corner of the building, and to locate a loading space on the property. All without removing any of the parking spaces on-site. There is not any anticipation that the excess parking on the site would ever be full, and, therefore, there will not be any impact on adjoining properties or streets.

Twin Liquors is excited to be a part of the City of Temple community and looks forward to a long relationship. The approval of the pending application for a Conditional Use Permit is an important first step to this long relationship which has benefits for all parties involved.

Should you have any questions, please contact me at my office.

Sincerely,

A handwritten signature in cursive script that reads "A. Ron Thrower".

A. Ron Thrower




**Z-FY-10-18**

Hilltop Estates, Section VII

1521 Marlandwood Dr

Proposed Package Store



 Z-FY-10-18



Feet 0 25 50 75 100

J Stone 1.13.10

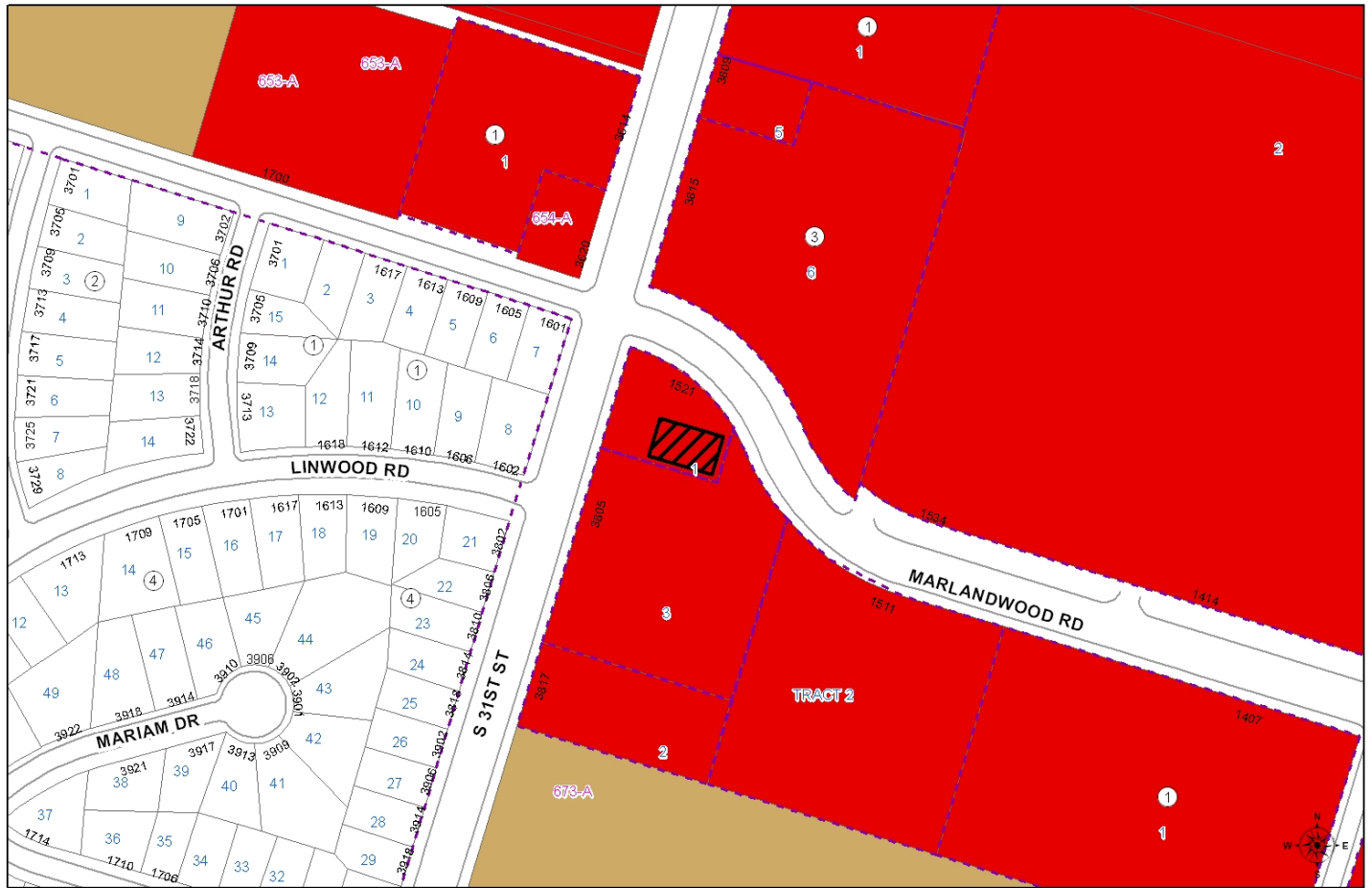


**Z-FY-10-18**

Hilltop Estates, Section VII

1521 Marlandwood Dr

Proposed Package Store



Lot Numbers	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	
Estate Residential	Auto-Urban Multi-Family	Suburban Commercial	Industrial	Parks and Open Space	

1 inch = 200 feet

J Stone 1.13.10

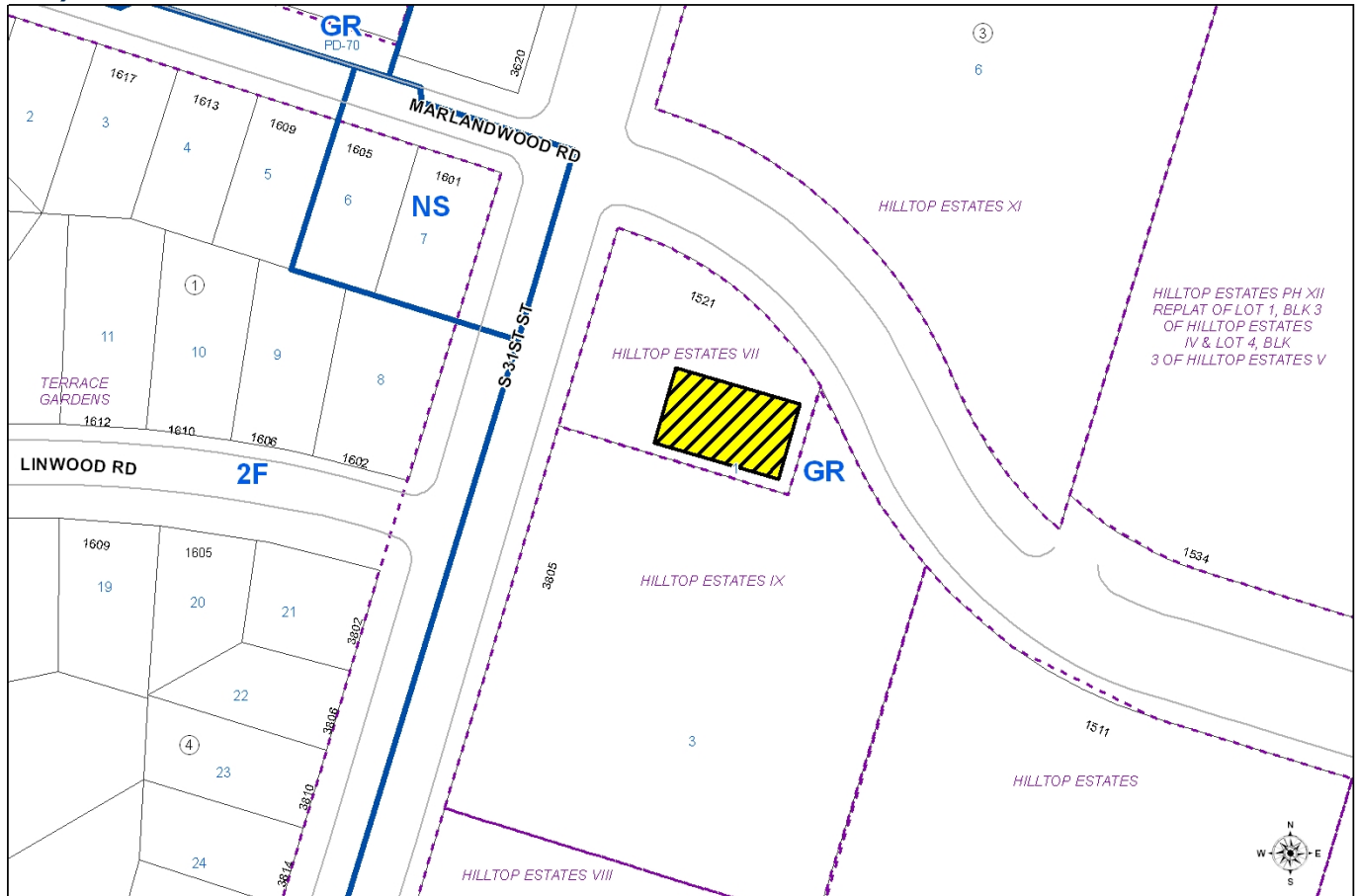


**Z-FY-10-18**

Hilltop Estates, Section VII

1521 Marlandwood Dr

Proposed Package Store



Z-FY-10-18

Feet 0 25 50 75 100  
J Stone 1.13.10

## Thrower Design

4608-A South Lamar Boulevard  
Austin, Texas 78745  
(512) 476-4456 • Fax (512) 476-4454

January 5, 2010

Mr. Tim Dolan, Director  
Planning Department  
City of Temple  
2 North Main Street,  
Temple, Texas 76501

RE: 1521 Marlandwood Road – Conditional Use Permit

Dear Mr. Dolan,

This firm is representing Mr. Peter Daniels, the landowner, in a request for a Conditional Use Permit application for the above referenced property.

The subject property is located at the intersection of Marlandwood Road and Linwood Road and is fully developed with a 6,000 s.f. retail building oriented to Marlandwood Road. The current zoning of the property is "GR", General Retail District and the previous occupant of the building located on the subject property was for a Blockbuster Video Store which is defined as a Retail Shop Use.

The request for a Conditional Use Permit is to allow for the existing building to be used with an Alcohol Beverage Sales Off-Premise Consumption, Package Store Use which is a Conditional Use within the "GR" zoning district. The business operator for the proposed use is Twin Liquors, which is a Texas owned business started in Austin and has expanded to other markets through the years. The nearest Twin Liquors store closest to Temple is in Harker Heights. Twin Liquors strives themselves on customer service and satisfaction which has been a part of their business model from day one and has led to their success.

Please find attached with this letter, the application and site plan for the Conditional Use Permit. The site plan contains all of the necessary plan information associated with the

**RECEIVED**

JAN 07 2010

L A N D P L A N N E R S

City of Temple  
Planning & Development

Conditional Use Permit process and believe is adequate for review and processing with the City of Temple.

Specific conditions for Conditional Use Permits as found in Section 7-606 are addressed as follows:

1) *The conditional use permit will be compatible with and not injurious to the use and enjoyment of the property, nor significantly diminish or impair property values within the immediate vicinity.*

The proposed use of the site is compatible with surrounding uses and often is found in similar locations with similarly situated properties. The hours of operation for this store is Monday through Saturday 10:00 a.m. to 9:00 p.m..

2) *The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property.*

The surrounding properties are fully developed.

3) *Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be improved.*

This site is fully developed and all infrastructure is in place for the continued use of the site as a retail operation. No other support facilities are necessary.

4) *The design, location, and arrangement of all driveways and parking spaces provide for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent development.*

Two driveways currently serve the property. The primary driveway is to Marlandwood Road and is located +/-175' from the intersection of Marlandwood and Linwood. A joint use driveway to Linwood serves the subject property and the commercial property to the south. This driveway is +/-160' from the intersection. A total of 40 parking spaces are found on-site which equates to 1 space per 150 s.f. of building area. The existing parking on site is well above the minimum requirements of the code. Both of the driveways and parking arrangements are adequate for the intended use of the subject property and will not adversely affect the general public or adjacent development.

5) *Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration.*

These nuisances are not typically associated with the proposed use of the property.

6) *Directional lighting will be provided so as not to disturb or adversely affect neighboring properties.*

All lighting will be evaluated and, if necessary, brought into compliance to the code.

7) *There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.*

The only adjacent property is to the south and both sites are currently developed. No additional screening is necessary for compatibility purposes. The remaining property is right-of-way and the proposed use of the subject property is not intended to be any more or less harmonious and compatible than the previous use of the property.

In addition to the above, the following standards are required for the proposed use as follows:

1) *Such use must comply with Chapter 4, "Alcoholic Beverages," of the City Code.*

To our knowledge the proposed use is not within the proximate distances of a school, church or hospital.

2) *Outdoor lighting must comply with the standards in Section 7-566(G) of the Zoning Ordinance.*

As stated earlier, all site lighting will be evaluated and brought into compliance with current code requirements.

3) *If applicable, a pick-up window must be visible from the public right-of-way, and may not be placed in alleys.*

There is not a drive-through facility proposed with this application.

4) *The drive-through lane must provide a minimum of 60 feet of staking space from the pick-up window to the beginning.*

There is not a drive-through facility proposed with this application.

5) *An escape (bypass) lane must be provided parallel to the drive-through lane, if applicable, from the beginning of the drive-through lane.*

There is not a drive-through facility proposed with this application.

6) *Parking must be provided on-site, not less than one space for each 250 square feet of retail space (plus the number of parking spaces required for non-retail space as specified by other City ordinances).*

The entire 6,000 s.f. building enjoys 40 parking spaces on-site which equates to 1 space per 150 s.f. of building.

7) *Window signs are prohibited.*

The operator will comply with this requirement.

8) *Lighted advertising signs must be turned off at closing time.*

The operator will comply with this requirement.

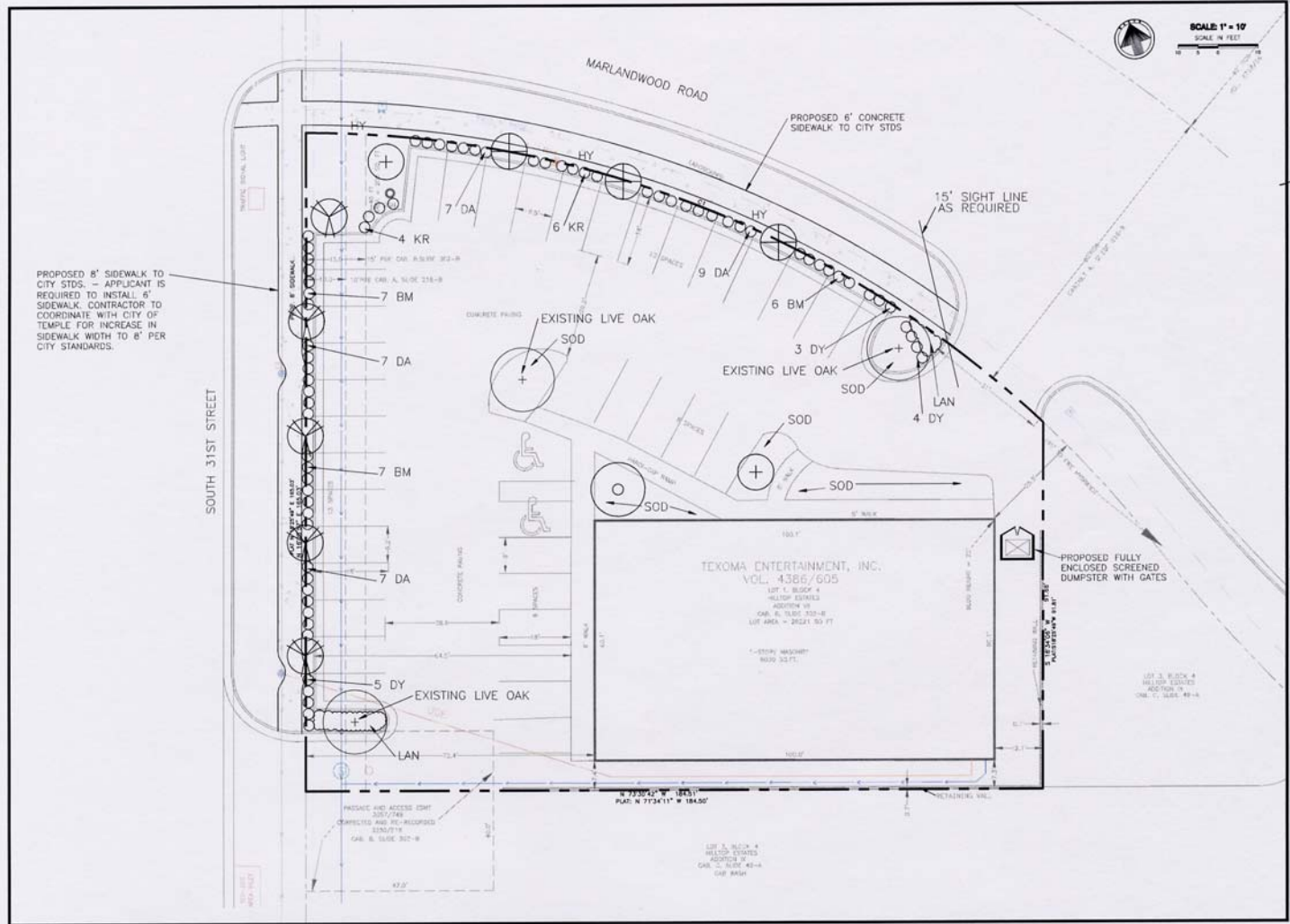
We believe that this proposed Conditional Use Permit application for the subject property meets or exceeds all of the defined standards for Conditional Use Permits. Therefore, we respectfully request positive consideration for the application contained with this letter.

Should you have any comments, concerns or questions, please contact me at my office, or by email at [ront@throwerdesign.com](mailto:ront@throwerdesign.com) .

Sincerely,

A handwritten signature in cursive script that reads "A. Ron Thrower".

A. Ron Thrower





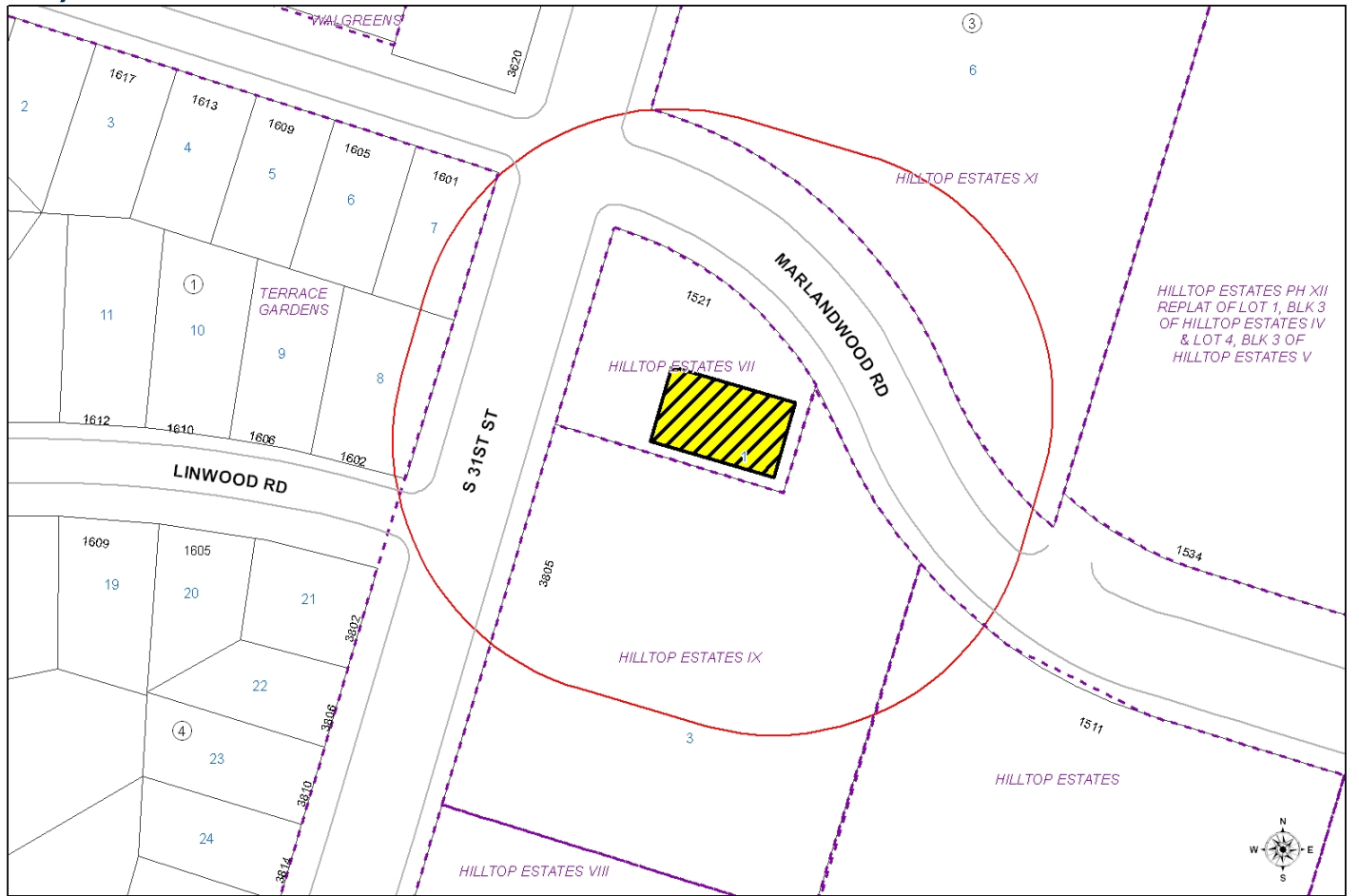




**Z-FY-10-18**

Hilltop Estates, Section VII

1521 Marlandwood Dr

Proposed Package Store



 Z-FY-10-18  200' Buffer

Feet 0 25 50 75 100  
J Stone 1.13.10



# PLANNING AND ZONING COMMISSION AGENDA ITEM

02/01/10  
Item #3  
Regular Agenda  
Page 1 of 4

**APPLICANT / DEVELOPMENT:** Ron Thrower/Peter Daniels and David Jabour c/o Twin Liquors

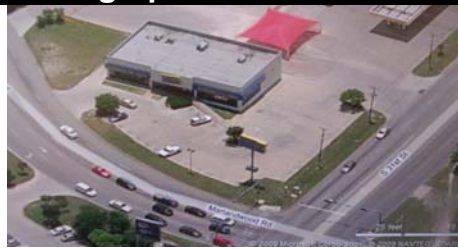


**CASE MANAGER:** Tammy Lyerly, Planner



**ITEM DESCRIPTION:** Z-FY-10-18 Hold a public hearing to discuss and recommend action on a Conditional Use Permit (CUP) to allow a package store with alcoholic beverage sales for off-premise consumption in a 6,000 square foot building, on Lot 1, Block 4, Hilltop Estates Addition VII, at 1521 Marlandwood Road. Zoned: General Retail District.

**BACKGROUND:** This Conditional Use Permit (CUP) request is for a package store allowing alcoholic beverage sales for off-premise consumption at 1521 Marlandwood Road, located at the corner of South 31<sup>st</sup> Street and Marlandwood Road. The applicants will have customers park and use the front door and will not use a pick-up window. The site is the location of a video store and the leasehold will change. Access comes from both Marlandwood Road and South 31<sup>st</sup> Street. The applicants will install 6' wide sidewalks along South 31<sup>st</sup> Street and Marlandwood Road, both Arterial Designated Roadways on the Thoroughfare Plan; and will also replant trees which meet the requirements of the Landscape Ordinance. The applicants are aware of the ordinance requirements.

## Surrounding Property and Uses

The following table shows the subject property, existing zoning and current land uses:

Direction	Zoning	Current Land Use	Photograph
Subject	GR	Retail	
North	GR	Bank	
South	GR	Convenience Store with Car Wash	

East	GR	Assisted Living Facility and Retail	
West and Northwest	2F, NS, and GR	Residential Lot, Undeveloped Lot, and Retail	

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

Future Land Use Plan and Character Map – This request conforms to the Future Land Use and Character Map's designation of Auto Urban Commercial for the property.

Thoroughfare Plan – This request conforms to the Thoroughfare Plan since the retail site has access to the major and minor arterials of South 31<sup>st</sup> Street and Marlandwood Road, respectfully.

Availability of Public Facilities – Available public facilities serve this site.

#### Development Regulations

There are seven general criteria for the Planning and Zoning Commission and City Council to consider when reviewing a CUP. (Section 7-600).

Criteria	Proposal Meets Criteria?
The conditional use permit will be compatible with and not injurious to the use and enjoyment of the property, nor significantly diminish or impair property values within the immediate vicinity	Yes. The property is a retail use. The surrounding properties contain commercial uses.
The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property	Yes.
Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided	Yes.
The design, location, and arrangement of all driveways and parking spaces provide for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent development	Yes. 35' wide driveways for this corner lot are from South 31 <sup>st</sup> Street and Marlandwood Drive. The applicant will install 6' wide sidewalks along S. 31 <sup>st</sup> Street and Marlandwood Road, both Arterial Designated Roadways.
Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration	Yes.
Directional lighting will be provided so as not to disturb or adversely affect neighboring properties	Yes. Lighting conforms to the cutaway or 'night-sky' lights.
There is sufficient landscaping and screening to	Yes. The applicant will replant trees to comply

Criteria	Proposal Meets Criteria?
insure harmony and compatibility with adjacent property.	with the landscaping requirements along S. 31 <sup>st</sup> Street and Marlandwood Road.

CUP Standards In addition to the general Conditional Use Permit standards in Zoning Ordinance, Section 7-600, and the following conditions apply to Conditional Use Permits allowing an off-premise consumption package store:

- Such use must comply with Chapter 4, “Alcoholic Beverages,” of the City Code;
- Outdoor lighting must comply with the standards in Zoning Ordinance, Section 7-566 (G);
- If applicable, a pick-up window must be visible from the public right-of-way, and may not be placed in alleys;
- The drive-through lane must provide a minimum of 60 feet of stacking space from the pick-up window to the beginning;
- An escape (bypass) lane must be provided parallel to the drive-through lane, if applicable, from the beginning of the drive-through lane;
- Parking (in any zoning district including in CA) must be provided on-site, not less than one space for each 250 square feet of retail space (plus the number of parking spaces required for non-retail space as specified by other City ordinances);
- Window signs are prohibited; and
- Lighted advertising signs must be turned off at closing time.

The outdoor lighting and parking comply with the Zoning Ordinance. The applicant will not have a drive-through window; retail customers will use the front door for ingress/egress. The applicant will start the process with the TABC after approval of a CUP. This application conforms to the area and use requirements for a CUP required for an off-premise package store in the GR District. Condition #11 below is based on Section 7-604 providing for the site plan and application to become part of the CUP.

#### Public Notice

Staff sent out five notices. As of Thursday, January 28, 2010, at 9:00 am, staff had not received any returned responses from notified property owners. The newspaper printed notice of the public hearing on January 21, 2010 in accordance with state law and local ordinance

**STAFF RECOMMENDATION:** Staff recommends approval of Z-FY-10-18, a CUP for a package store allowing alcoholic beverage sales for off-premise consumption at 1521 Marlandwood Road with the following conditions in accordance with Zoning Ordinance, Section 7-611:

1. The permittee must design and operate the establishment in such a manner that the proposed use or actual use of the premises shall not substantially increase traffic congestion or create overcrowding in the establishment or the immediately surrounding area.
2. The permittee must comply with applicable licensing and permit provisions of the Alcoholic Beverage Code within 6 months from the date of the issuance of the conditional use permit by the City Council, such limitation in time being subject to review and possible extension by the City.
3. The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.

4. The establishment must provide adequate parking spaces to accommodate its members and their guests provided, however, the number of parking spaces shall never be less than those required for similar uses in that zoning district where the establishment is located.
5. The permittee must operate the establishment in such a manner as to prevent excessive noise, dirt, litter and odors in the establishment or in the surrounding area and operate the establishment in such a manner as to minimize disturbance to surrounding property owners.
6. The City Council may deny or revoke this conditional use permit if it affirmatively determines that the issuance of the permit is (a) incompatible with the surrounding uses of property, or (b) detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.
7. Window signs are prohibited
8. Lighted advertising signs must be turned off at closing time.
9. The conditional use permit runs with the property. Changes in the owner or lessee of a permitted establishment do not affect the permit.
10. The conditional use permit may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-608 of the Zoning Ordinance.
11. The applicant's site plan and application are exhibits to the conditional use permit.

**FISCAL IMPACT:** Not Applicable

**ATTACHMENTS:**

Aerial  
Land Use and Character Map  
Zoning Map  
Notice Map  
Applicant's Letter  
CUP Site Plan

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

**MONDAY, FEBRUARY 1, 2010**

**ACTION ITEMS**

**Item 3: Z-FY-10-18: Public Hearing, Discussion and Action:** Discuss and recommend action on a Conditional Use Permit (CUP) to allow a package store with alcoholic beverage sales for off-premise consumption in a 6,000 square foot building, on Lot 1, Block 4, Hilltop Estates Addition VII, at 1521 Marlandwood Road. Zoned: General Retail District.

Ms. Tammy Lyerly, Planner, stated this was a request for a package store Conditional Use Permit (CUP). This would be scheduled for City Council first reading on February 18th and second reading on March 4, 2010.

The subject property was currently the Blockbuster Video Store located on the corner of Marlandwood and 31st Street. If this request were approved, Blockbuster would vacate the premises and Twin Liquors would become the new leaseholder.

The Land Use and Character Map for this site showed auto/urban commercial. Marlandwood was shown as a minor arterial and 31st Street was a major arterial. The current zoning showed General Retail (GR) and to the west was a Two Family district and directly west was a Neighborhood Service district. This request complied with the Thoroughfare Plan since Marlandwood Road and S. 31st Street were both arterials and public facilities were available to serve the site.

Staff recommended the dumpster at the present site be screened per Zoning Ordinance requirements. Although the site plan currently had some existing trees, it would require an upgrade to comply with any landscaping requirements. Also, since Marlandwood and S. 31st Street were arterials, the Subdivision Ordinance required a 6 foot wide sidewalk along all arterials. Ms. Lyerly stated the applicant recently submitted a revised site plan which showed upgrades in the landscaping and the requested sidewalks along S. 31st Street and Marlandwood Road.

Since the subject property was located on S. 31st Street which was part of the new Master Trail Plan previously presented, the sidewalk along S. 31st Street would become part of the Trail Plan and due to the required size of 8 feet, the City would work with the applicant/owner to upgrade the sidewalk from 6 feet to 8 feet.

Ms. Lyerly stated a CUP must meet seven (7) criteria and be compatible with surrounding elements such as safe traffic flow through the parking lot area, access to utilities and drainage, nuisance prevention measures, directional lighting and non-interference of areas, and sufficient landscaping and screening. Staff felt all of these requirements have complied with applicable City regulations.

Section 7-611.5 cites specific requirements for off-premise package stores, such as pick up windows. In this case the applicant had not proposed a pick up window. Any lighted advertising signs must be turned off at closing and window signs are prohibited.

Five notices were mailed to surrounding property owners and zero were returned.

Staff recommended adoption of this CUP for an off-premise consumption package store because the request complied with the Land Use and Character Map, the Thoroughfare Plan, had available public facilities to serve the property. and the applicant would comply with and continue to be subject to the CUP regulations. As part of the requirements for a CUP, a site plan was required to serve as Exhibit A of this request.

Commissioner Secrest recused himself from this case.

Commissioner Staats asked about the dumpster screening and Ms. Lyerly stated the requirement was for 3 sides of screening. Commissioner Staats also asked about a large sign separate from the building and whether that sign would remain on and Ms. Lyerly stated that was correct.

Commissioner Pope asked if this sign was on 31st Street and if it met all sign ordinances. Ms. Lyerly stated Staff was not aware of any changes but when Twin Liquors came in, if approved, they would have to submit a permit for a new sign and at that time Staff would make sure it met all requirements.

Commissioner Barton voiced concern about the entrance and exit off of 31st Street and whether it met all requirements and Ms. Lyerly stated it did; it was a shared access easement for both businesses. Commissioner Barton stated the car wash traffic and liquor store traffic would be coming and going out of that entrance and his recommendation was to make that an exit a right turn only.

Mr. Dolan stated South 31st Street was a controlled street from the Texas Department of Transportation (TxDOT) and when the properties were developed in the late '90s, that was why there was only one point of ingress and egress for a shared driveway. Mr. Dolan would have to ask TxDOT for an egress only and typically, since they (TxDOT) try to limit the amount of driveways along South 31st Street, they have allowed the two-way traffic. Mr. Dolan stated Staff had not consulted TxDOT for the CUP, which is the norm,

but they would have a chance to respond if something came in for a building permit.

Acting Chair Talley asked about the possibility of whether the Commissioner could make a motion asking for a change in the entrance and Mr. Dolan stated the Commission might not be able to get the acquiescence from TxDOT since that is a state road in that area.

Some discussion about the entrance/exit situation, traffic management, possibility of traffic signs, delivery trucks and space, and TxDOT responsibilities.

Acting Chair Talley opened the public hearing.

Mr. Ron Thrower, 4608 S. Lamar, Austin, Texas 78745, approached and stated he represented the landowner and future tenant for the building. Mr. Thrower stated the amount of landscaping proposed was 65 5-gallon shrubs and another 12 trees added to the site. Mr. Thrower was in complete agreement that a front gate is necessary for the dumpster as well as providing the additional sidewalks on both streets.

Acting Chair Talley asked about delivery of products to the store and Mr. Thrower stated there were no plans for adding a dock facility to accommodate an 18-wheeler so it would probably be a bobtail, drop down tailgate in the back.

There being no further speakers, Acting Chair Talley closed the public hearing.

Commissioner Staats made a motion to approve Z-FY-10-18 with the addition that the dumpster be screened on all four sides from public view for aesthetics of the site and Commissioner Hurd made a second.

*Motion passed: (7:0)*

Commissioner Secrest abstained and Commissioner Martin absent.

ORDINANCE NO. \_\_\_\_\_

[PLANNING NO. Z-FY-10-18]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONDITIONAL USE PERMIT TO ALLOW A PACKAGE STORE WITH ALCOHOLIC BEVERAGE SALES FOR OFF-PREMISE CONSUMPTION IN A 6,000 SQUARE FOOT BUILDING, ON LOT 1, BLOCK 4, HILLTOP ESTATES ADDITION VII, AT 1521 MARLANDWOOD ROAD; DECLARING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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WHEREAS, the Comprehensive Zoning Ordinance of the City of Temple, Texas, provides for the issuance of conditional use permits under certain conditions and authorizes the City Council to impose such developmental standards and safeguards as the conditions and locations indicate to be important to the welfare or protection of adjacent property and for the protection of adjacent property from excessive noise, vibration, dust, dirt, smoke, fumes, gas, odor, explosion, glare, offensive view or other undesirable or hazardous conditions, and for the establishment of conditions of operation, time limits, location, arrangement and construction for any use for which a permit is authorized;

WHEREAS, the Planning and Zoning Commission of the City of Temple, Texas, after due consideration of the conditions, operation and location of a 6,000 square foot building, on Lot 1, Block 4, Hilltop Estates Addition VII, at 1521 Marlandwood Road, recommends that the City Council approve the application for this Conditional Use Permit for an off-premise consumption package store; and

WHEREAS, the City Council of the City of Temple, Texas, after public notice as required by law, has at a public hearing, carefully considered all the evidence submitted by the applicant concerning the proposed plans for operation of said establishment and has heard the comments and evidence presented by all persons supporting or opposing this application at said public hearing, and after examining the conditions, operation and the location of said establishment, finds that the proposed use of the premises substantially complies with the comprehensive plan and the area plan adopted by the City Council.

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

**Part 1:** The City Council approves a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 6,000 square foot building, on Lot 1, Block 4, Hilltop Estates Addition VII, at 1521 Marlandwood Road , more fully shown on Exhibit A, attached hereto and made a part of for all purposes.

**Part 2:** The owner/applicant, his employees, lessees, agents or representatives, hereinafter called "permittee" shall comply with the following developmental standards and conditions of operation;

- (a) The permittee must design and operate the establishment in such a manner that the proposed use or actual use of the premises shall not substantially increase traffic congestion or create overcrowding in the establishment or the immediately surrounding area.
- (b) The permittee must comply with applicable licensing and permit provisions of the Alcoholic Beverage Code within 6 months from the date of the issuance of the conditional use permit by the City Council, such limitation in time being subject to review and possible extension by the City.
- (c) The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.
- (d) The establishment must provide adequate parking spaces to accommodate its members and their guests provided, however, the number of parking spaces shall never be less than those required for similar uses in that zoning district where the establishment is located.
- (e) The permittee must operate the establishment in such a manner as to prevent excessive noise, dirt, litter and odors in the establishment or in the surrounding area and operate the establishment in such a manner as to minimize disturbance to surrounding property owners.
- (f) The City Council may deny or revoke this conditional use permit if it affirmatively determines that the issuance of the permit is (a) incompatible with the surrounding uses of property, or (b) detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.
- (g) Window signs are prohibited.
- (h) Lighted advertising signs must be turned off at closing time.
- (i) The conditional use permit runs with the property. Changes in the owner or lessee of a permitted establishment do not affect the permit.
- (j) The conditional use permit may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-608 of the Zoning Ordinance.
- (k) The permittee's site plan is an exhibit to the conditional use permit, attached hereto as Exhibit B.

These conditions shall be expressed conditions of any building permit issued for construction on the property which may be enforced by the City of Temple by an action either at law or in equity, including the right to specifically enforce the requirements of the ordinance, and these requirements shall run with the land.

**Part 3:** The Director of Planning is hereby directed to make the necessary changes to the City Zoning Map accordingly.

**Part 4:** The declarations, determinations and findings declared, made and found in the preamble of this ordinance are hereby adopted, restated and made a part of the operative provisions hereof.

**Part 5:** 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 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 and Public Hearing on the **18<sup>th</sup>** day of **February**, 2010.

PASSED AND APPROVED on Second Reading on the **4<sup>th</sup>** day of **March**, 2010.

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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03/18/10  
Item #7  
Regular Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Tim Dolan, Planning Director

**ITEM DESCRIPTION:** FIRST READING – PUBLIC HEARING – Consider adopting an ordinance abandoning 164 feet of a 20-foot wide alley located on the north side of West Adams Avenue, between Lot 3, Block 1 and Lot 1, Block 2, Blacks Addition.

**STAFF RECOMMENDATION:** Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for April, 1, 2010.

**ITEM SUMMARY:** The applicant, James D. Dean, requests this abandonment to add square footage to the open area of his existing car wash and to allow him to complete the fence along his rear property line. The applicant hopes the fence will reduce vandalism and theft from foot traffic through his business property.

Staff contacted all utility providers, including all divisions of the Public Works Department, regarding the proposed alley abandonment. There are no objections to the request.

The applicant and the owners of the adjacent Taco Bell property are the only abutting property owners along this portion of the subject alley. Staff notified the owners of the Taco Bell property of this alley abandonment request.

**FISCAL IMPACT:** If approved, both abutting property owners will be allowed to purchase their half of the abandoned alley, which has a fair market value of \$4,900.

### **ATTACHMENTS:**

[Application](#)  
[Survey](#)  
[Plat](#)  
[Aerial](#)  
[Abandonment Exhibit](#)  
[Ordinance](#)

### **ABANDONMENT APPLICATION**

Date: 12/16/2009

Property Owner: JAMES D. DEAN 409 VAN DYKE DR. 254.721.9929  
Name Address Phone #

Applicant: JAMES D. DEAN 409 VAN DYKE DR. 254.721.9929  
Name Address Phone #

Capacity of applicant: ☐ Officer ☐ Broker ☐ Prospective Buyer ☒ Other OWNER

Email: jdeanod@yahoo.com Fax Number: —

Address of Property: 1506 W. ADAMS Lot: 1 Block: 2 Subdivision: BLACK ADD.

Outblock (if not platted): —

**Filing Fee:** The abandonment application requires a filing fee of \$100 plus the broker's opinion of the value of the property to be abandoned (if applicable). The fee is not refundable, except that a refund of \$25 and the value of the property will be made if an application is withdrawn in writing and received by the Planning Department prior to the notification of utility providers.

Type of Abandonment: ☒ Alley ☐ Street ☐ Drainage or utility easement ☐ Other —

**Abandonment Description:** Please explain why the abandonment is needed.

POLICE RECOMMENDS TO HELP STOP VANDALISM AND TRAFFIC TO COMPLETE  
EXISTING FENCE ALL THE WAY ACROSS BACK OF PROPERTY, TO STOP FOOT  
TRAFFIC OF HOMELESS AND STREET PEOPLE FROM HAVING WALK THROUGH  
ALLEYS AS NOW.

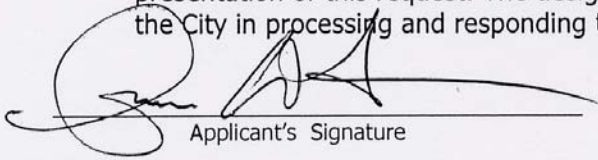
**Use of Abandonment:** Please provide the proposed use of abandoned property, if granted.

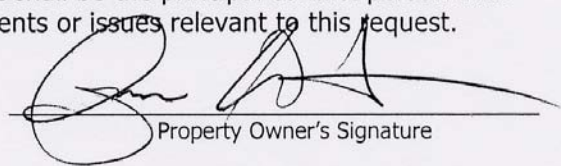
TO COMPLETE FENCE ACROSS BACK OF PROPERTY AND ADD 50 FEET AREA  
TO OPEN AREA OF EXISTING CAR WASH. NO INTENDED USE  
FOR BUILDING ON.

**Thoroughfare Plan Streets:** Any abandonment of a street reflected on the City's Thoroughfare Plan may be presented to Planning and Zoning Commission and the City Council.

**Certification:** You as the property owner certify with your signature that all of the following statements are true:

- This application is complete and all of the information provided is accurate.
- The person signing below as applicant may act as my agent for the processing and presentation of this request. The designated agent shall be the principal contact person with the City in processing and responding to requirements or issues relevant to this request.

  
Applicant's Signature

  
Property Owner's Signature

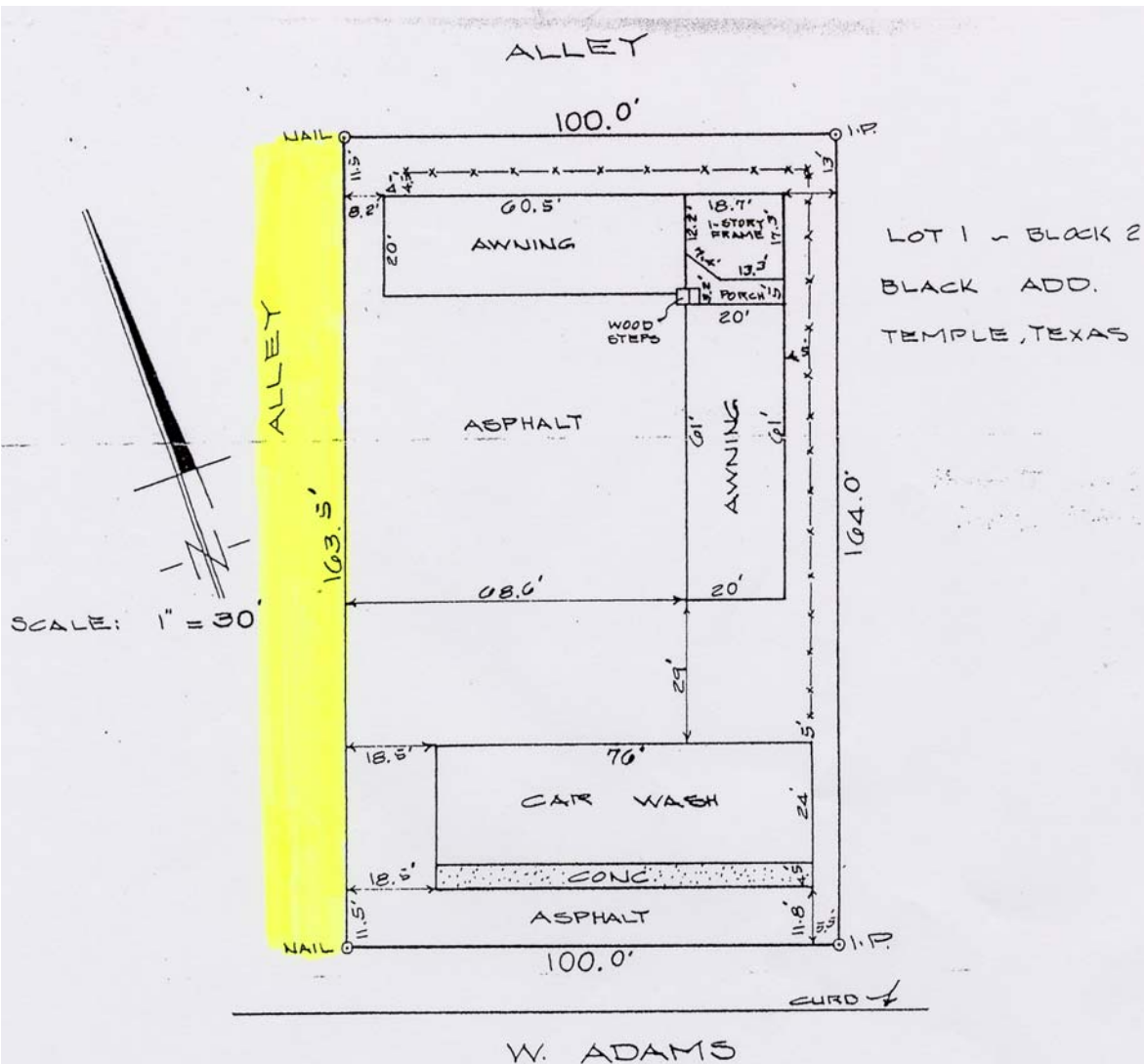
**For Office Use Only**

☒ Completed Application

Fee Received By: M. Maxwell

Case #: A-FV-10-04 Zoning Map Page: \_\_\_\_\_ Project Manager: Tammy Lyenky

Tentative City Council Date: \_\_\_\_\_



STATE OF TEXAS)

) KNOW ALL MEN BY THESE PRESENTS,

COUNTY OF BELL)

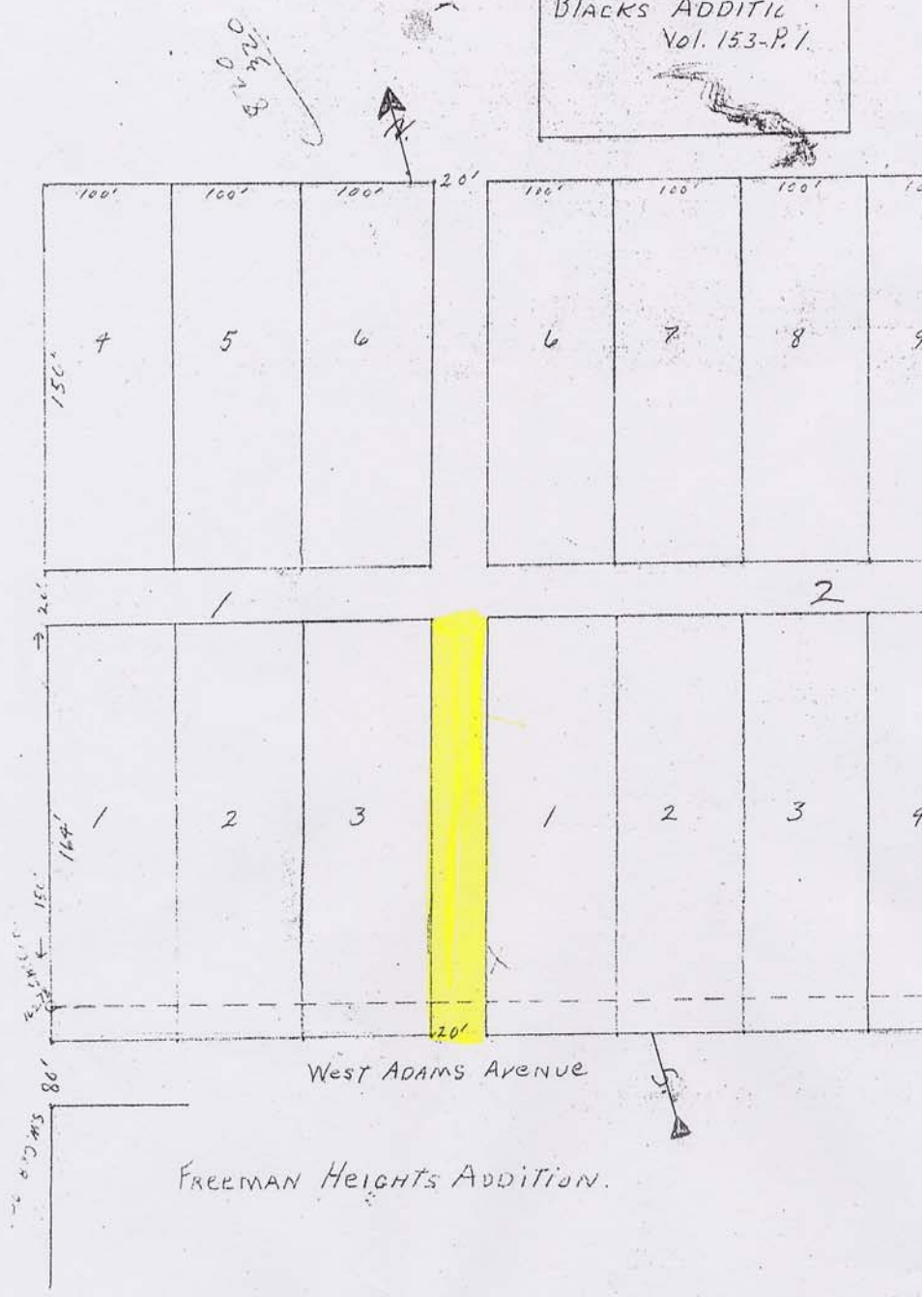
That I, Frank G. Martin Jr., a Registered Public Surveyor in the State of Texas, do hereby certify that the plat hereon is a true and accurate representation as determined by a survey made on the ground of Lot 1 Block 2 of Black Addition to the City of Temple, Texas, and the improvements erected thereon. There are no other easements. This lot is not in a flood hazard area.

December 9, 1981



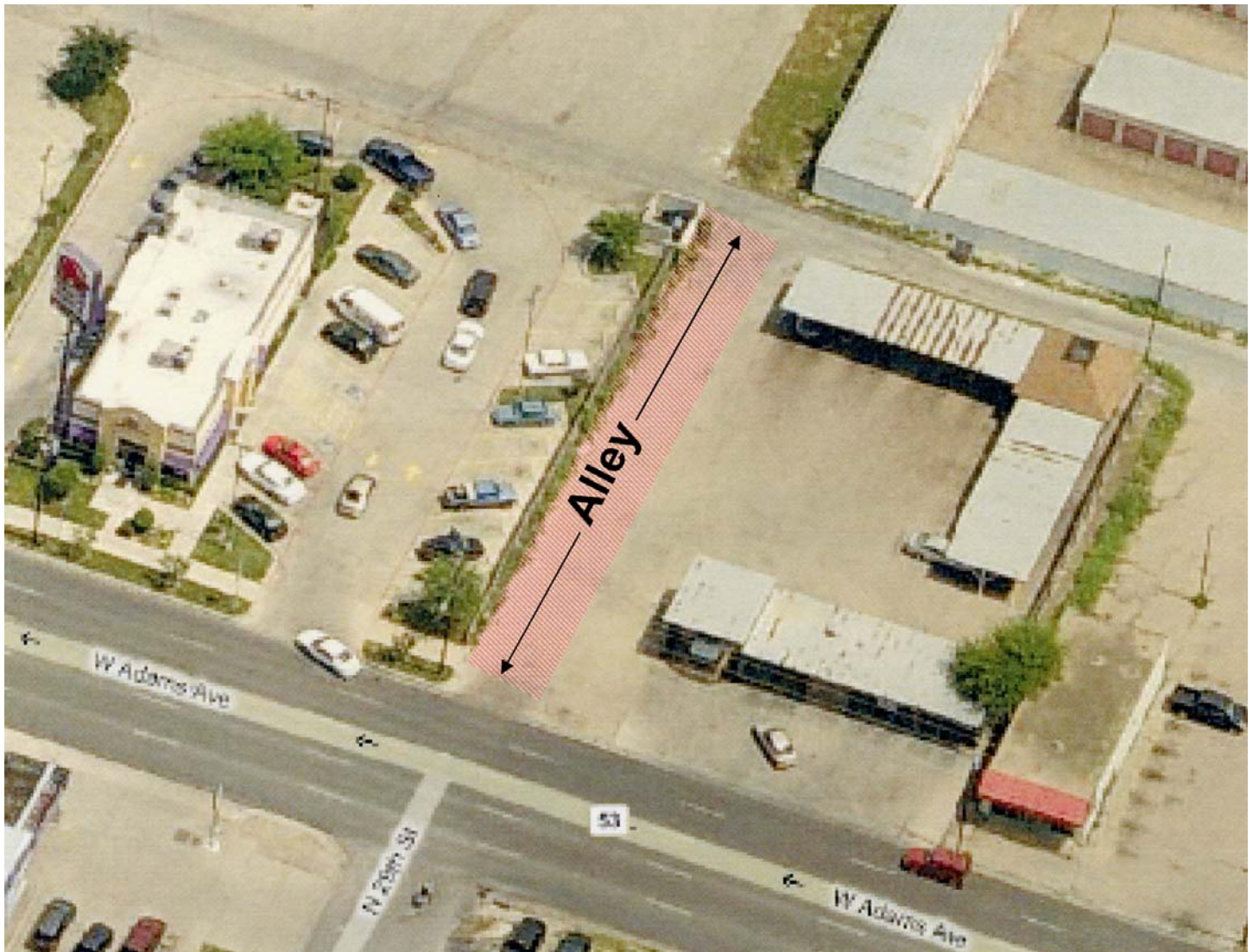
*Frank G. Martin Jr.*  
Frank G. Martin Jr.  
Registered Public Surveyor

BLACKS ADDITION  
Vol. 153-P. 1.



FREEMAN HEIGHTS ADDITION.

N.W. COR. AVE. D. & 31ST. ST.  
IRON BOLT.





**Proposed Alley Abandonment  
20' wide x 164' long**

ORDINANCE NO. 2010-4352

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, ABANDONING 164 FEET OF A 20-FOOT WIDE ALLEY LOCATED ON THE NORTH SIDE OF WEST ADAMS AVENUE, BETWEEN LOT 3, BLOCK 1 AND LOT 1, BLOCK 2, BLACKS ADDITION; AUTHORIZING CONVEYANCE OF SUCH PROPERTY BY A DEED WITHOUT WARRANTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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**Whereas**, the City has a request to abandon 164 feet of a 20-foot wide alley located on the north side of West Adams Avenue, between Lot 3, Block 1 and Lot 1, Block 2, Blacks Addition;

**Whereas**, the land is not necessary for the purpose of serving the general public or landowners adjacent thereto for any public purposes;

**Whereas**, the Staff recommends that the tract be abandoned in exchange for the fair market value of the property; and

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

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

**Part 1:** The City Council abandons 164 feet of a 20-foot wide alley located on the north side of West Adams Avenue, between Lot 3, Block 1 and Lot 1, Block 2, Blacks Addition, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

**Part 2:** The City Council authorizes the Mayor of the City of Temple, Texas, for the consideration set out in Part 3, to execute a Deed Without Warranty conveying the rights and interests of the City of Temple, Texas, to the abutting property owners, which when done, shall be and become a binding act and deed of the City of Temple.

**Part 3:** As consideration for the conveyance described in Part 2 hereof, the abutting property owners shall each pay to the City of Temple the fair market value amount of \$2,450, for a total of \$4,900.

**Part 4:** 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 5:** 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 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 **18<sup>th</sup>** day of **March**, 2010.

PASSED AND APPROVED on Second Reading the **1<sup>st</sup>** day of **April**, 2010.

THE CITY OF TEMPLE, TEXAS

\_\_\_\_\_  
WILLIAM A. JONES, III, Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
Clydette Entzminger  
City Secretary

\_\_\_\_\_  
Jonathan Graham  
City Attorney

STATE OF TEXAS           §

COUNTY OF BELL           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of **April**, 2010, by WILLIAM A. JONES, III, Mayor of the City of Temple, Texas.

\_\_\_\_\_  
Notary Public, State of Texas



## COUNCIL AGENDA ITEM MEMORANDUM

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03/18/10  
Item #8  
Regular Agenda  
Page 1 of 1

### **DEPT./DIVISION SUBMISSION & REVIEW:**

Clydette Entzminger, City Secretary

**ITEM DESCRIPTION:** Consider adopting a resolution appointing members to the following City boards and commissions:

- (A) Building & Standards Commission – one regular member and one alternate member to fill expiring terms through March 1, 2012
- (B) Electrical Board – one member to fill expiring term through March 1, 2013

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

**ITEM SUMMARY:** The City Council made appointments to various board and commissions at its March 4<sup>th</sup> meeting. These are remaining appointments that need to be made at this time.

At the last meeting, the Council appointed Jeff Norwood and Crystal Cowen as regular members, left one regular position open and appointed Scott Morrow as an alternate member on the Building & Standards Commission. Scott is already serving as an alternate on the board, with a term to expire March 1, 2011. Therefore, the Council should allow Scott (who lives on West Welton in north Temple) to remain in his current alternate position and appoint one regular member and one alternate member to fill the terms expiring in 2012. Application forms on file for this board include: Kevin Bonner; Rayford Brown (currently serving on Airport Advisory Board); Jeff Byrd (currently serving on Electrical Board); Lee Crossley; Tonya Degges; Ruth Freeman; Alan Horn; Timothy Weedle.

The remaining position on the Electrical Board must be filled with a member representing someone from the architecture, engineering or insurance industry. No applications have been received to date from qualified persons.

Please see the attached summary forms for these two boards, which list current board members, purpose, membership requirements, term and meeting time/place for the boards.

**FISCAL IMPACT:** N/A

**ATTACHMENTS:**  
[Board Summary Forms](#)

# BUILDING AND STANDARDS COMMISSION

TERM EXPIRATION MARCH - 2 YEAR TERMS

APPOINTED BY: MAYOR/COUNCIL

MEMBER	DATE APPOINTED	EXPIRATION YEAR	ADDRESS	PHONE NUMBER
Jeff Norwood <a href="mailto:jeffn@intonline.com">jeffn@intonline.com</a>	03/10	2012	256 Eagle Landing Belton, TX 76502	493-4600 W/C
Crystal Cowen <a href="mailto:ccowen@archedge.com">ccowen@archedge.com</a> (moved to reg. member 3/10)	03/08	2012	1017 North 11 <sup>th</sup> Street Temple, TX 76501	771-2054 W 773-2144 F 721-5104 C
*				
Jonathan (Tony) Gallagher <a href="mailto:Tonygallagher3@yahoo.com">Tonygallagher3@yahoo.com</a> OMA	02/09	2011	6121 FM 439 Belton, TX 76513	939-6795 W 718-5360 C
Derek Martin <a href="mailto:derekmartin@templeproventures.com">derekmartin@templeproventures.com</a>	02/05	2011	3010 Ira Young Dr. #506 P O Box 310 Temple, TX 76503	771-2084 W 541-9173 C 771-4120 F
*Ed Laughlin <a href="mailto:Ed@edlaughlin.com">Ed@edlaughlin.com</a>	02/09	2011	3114 Sleepy Hollow Lane Temple, TX 76502	773-8399 W 718-3786 C
* Alan Brown	03/07	2011	4201 Spanish Oak Temple, TX 76502	773-0535 H 773-4823 W 760-5928 C
* Scott Morrow <a href="mailto:scott@bmipest.com">scott@bmipest.com</a>	02/09	2011	10 West Welton Temple, TX 76501	771-9933 W 931-0211 H

## \* ALTERNATES

Created October 18, 1990 under the authority of Chapter 54, Subchapter C of the Local Government Code of the State of Texas, Ordinance #2060.

**Purpose:** The Board has the authority to hear and determine cases concerning alleged violations of City ordinances related to building codes, including the minimum housing code; conditions covered by accumulation of matter that creates unsanitary and unhealthy conditions; functions of the Historic Preservation ordinance; and serves as a screening committee for the rental rehabilitation and the owner-occupied housing rehabilitation program. The Building & Standards Commission's final decisions may be appealed to any district court in Bell County within 30 days of the date of final decision.

**Membership:** 5 regular members ; 4 alternate members

**Terms:** 2 years **City Staff:** Supt. Of Construction Safety & Services

**Meeting Time/Place:** 1st Monday of each month, at 2:00 p.m. in the Council Chambers in the Municipal Building.

REVISED 03/04/10

# ELECTRICAL BOARD

TERM EXPIRATION MARCH - 3 YEAR TERMS

APPOINTED BY: MAYOR/COUNCIL

MEMBER	DATE APPOINTED	EXPIRATION YEAR	ADDRESS	PHONE NUMBER
John Toone TXU Delivery Representative	12/06	2013	P.O. Box 688 Temple, Texas 76503	770-6204 W
Craymon Myers Master Electrician <a href="mailto:rmyers@hot.rr.com">rmyers@hot.rr.com</a>	03/10	2013	4003 Wendy Oaks Drive Temple, TX 76502	534-3572 W/C 773-0185 F
Jack Brown Insurance OMA	03/04	2010	PO Box 3768, Temple 76502 3320 Thornton Lane Temple, TX 76502	778-0304 W
Alan Brown Brown Electric Contractors Master Electrician OMA	03/05	2011	4201 Spanish Oak Temple, Texas 76502	773-4823 W 760-5928 C 773-1225 F
Melissa Tyroch Attorney	02/08	2011	110 Arbor Drive Little River, TX 76554	774-8333 W 624-5606 C/H
Jeff Byrd <a href="mailto:jeff@bccgeneralcontractor.com">jeff@bccgeneralcontractor.com</a>	03/09	2011	11212 Inverness Road Belton, TX 76513	563-6633 W/C
Kenneth Malina Journeyman Electrician OMA	02/09	2012	2006 North 13 <sup>th</sup> Street Temple, TX 76501	778-4271 W 534-0176 C

Created March 18, 1976 by Ordinance #869.

**Purpose:** Hear and rule on appeals of application of the Electrical Code; provide recommendations for changes and additions to the Code; review and upgrade license examinations.

**Membership:** 7 members to include the following:  
 2 master electricians  
 1 journeyman electrician  
 1 representative of TU Electric  
 1 representative from construction industry  
 1 architect, engineer or insurance industry  
 1 attorney

\* Members which require licenses must be licensed to perform work in the City of Temple. No 2 members shall be appointed from the same firm or business organization.

**Term:** 3 years

**Meeting Time/Place:** Called basis; Council Chambers, Municipal Building.

**City Staff:** Director of Construction Safety & Services

REVISED 03/04/10