

MEETING OF THE TEMPLE CITY COUNCIL

MUNICIPAL BUILDING
2 NORTH MAIN STREET

3RD FLOOR CONFERENCE ROOM
THURSDAY, AUGUST 19, 2010

WORKSHOP AGENDA

3:30 P.M.

- 1. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, August 19, 2010.
- 2. Discuss the proposed Erosion and Sedimentation Stormwater Ordinance.
- 3. Discuss third quarter financial results for fiscal year 2010.
- 4. Discuss upcoming appointments to various City boards and commissions.

5:00 P.M.

MUNICIPAL BUILDING

2 NORTH MAIN STREET CITY COUNCIL CHAMBERS – 2ND FLOOR

TEMPLE, TX

REGULAR MEETING AGENDA

I. CALL TO ORDER

- 1. Invocation
- 2. Pledge of Allegiance

II. RECOGNITIONS

3. Presentation by Bell County ARC to the Parks and Leisure Services Department in recognition of 40 years of collaboration.

III. PUBLIC COMMENTS

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

IV. 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.

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

Minutes:

(A) August 5, 2010 Special Called and Regular Meeting

Contracts, Leases & Bids

- (B) 2010-6073-R: Consider adopting a resolution authorizing a construction contract with Wolff Construction, L.P. of Salado for construction services required to install the City of Temple 2010 Drainage Improvements for an amount not to exceed \$107,398.
- (C) 2010-6074-R: Consider adopting a resolution authorizing a construction contract with Horseshoe Construction Inc. of La Porte for the third group of the 2010 Wastewater Line Replacement Projects in the amount not to exceed \$278,560 which includes the replacement of wastewater lines along West Killen and West Welton between North Main and 3rd Street and 37th and 39th Street between Avenue H and Avenue K.
- (D) 2010-6075-R: Consider adopting a resolution authorizing the purchase of furniture for the new Central Fire Station from Perry Office Plus of Temple, utilizing Texas State Contracts (TXMAS), in an amount not to exceed \$80,000.

Ordinances - Second and Final Reading

- (E) 2010-4366: SECOND READING A-FY-10-08: Consider adopting an ordinance abandoning two alleys with one alley being approximately 21 feet in width by 343 feet in length, located between Lots 6 though 8, Block 8, Moore-Cole Addition and Block 1, Lang Addition and with the other alley being approximately 48 feet in width and 60 feet in length, located between Block 255, Original City of Temple Addition and Lot 5, Block 8, Moore-Cole Addition near the northwest corner of West Adams Avenue and North 23rd Street.
- (F) 2010-4372: SECOND READING Consider adopting an ordinance establishing school crosswalks and setting speed limits within school zones to conform to school schedules.
- (G) 1. 2010-4373: SECOND READING Consider adopting an ordinance authorizing an amendment to the Tax Increment Financing Reinvestment Zone No. 1 Financing Plan for FY 2010 to allocate \$134,601 of additional funds for general engineering services, to allocate \$39,205 to fund contract amendment #1 for the 2022 Master Plan Phase II, to allocate funds related to the 2009 bond refunding transaction, and for FY 2010-2022 to reduce debt service payments due to the 2009 bond refunding.
 - 2. 2010-6076-R: Consider adopting a resolution authorizing a contract amendment with Kasberg, Patrick & Associates, LP for the 2022 Master Plan Phase II in the amount of \$39,205.

<u>Ordinances – First Reading</u>

(H) 2010-4374: FIRST READING – SET PUBLIC HEARING - Consider adopting an ordinance establishing the City's participation in the Texas Enterprise Zone Program and nominating Wilsonart International, Inc., as a qualified enterprise project.

<u>Misc.</u>

(I) 2010-6077-R: Consider adopting a resolution amending the resolution creating the Animal Services Advisory Board.

- (J) 2010-6078-R: Consider adopting a resolution approving third quarter financial results for Fiscal Year 2010.
- (K) 2010-6079-R: Consider adopting a resolution authorizing budget amendments for fiscal year 2009-2010.

V. REGULAR AGENDA

ORDINANCES

- 5. 2010-4375: FIRST & FINAL READING PUBLIC HEARING Consider adopting an ordinance authorizing the "Third Supplemental Ordinance to the Master Ordinance Establishing the City of Temple, Texas Utility System Revenue Financing Program" related to the issuance of \$17,250,000* City of Temple, Texas Utility System Revenue Bonds, Series 2010 and the establishment of procedures for selling and delivering the Bonds.
- 6. 2010-4376: FIRST READING PUBLIC HEARING Consider adopting an ordinance designating two tracts of land consisting of approximately 6.257 and 7.755 acres located at 3410 and 3602 Lucius McCelvey Drive as City of Temple Tax Abatement Reinvestment Zone Number Sixteen for commercial/industrial tax abatement.
- 7. 2010-4377: FIRST READING PUBLIC HEARING Z-FY-10-31: Consider adopting an ordinance authorizing a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 2700 square foot building, on a portion of the south one-half of Lot 10 and a portion of the north one-half of Lot 11, Block 14, Eugenia Terrace Addition, located at 1818 South 1st Street.
- 8. 2010-4378: FIRST READING PUBLIC HEARING Z-FY-10-33: Consider adopting an ordinance authorizing a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption on the south one-half of Lot 1, Block 292-1, Temple Original at 1 North 6th Street.
- 9. 2010-4379: FIRST READING PUBLIC HEARING Z-FY-10-35: Consider adopting an ordinance authorizing a zoning change from Agriculture (A) to Neighborhood Service (NS) on a 0.72 ± acre tract of land situated in the Sarah Fitzhenry Survey, Abstract No. 312, Bell County, Texas, located east of the intersection of State Highway 36 and Moffat Road.
- 10. 2010-4380: FIRST READING PUBLIC HEARING Z-FY-10-39: Consider adopting an ordinance authorizing a Conditional Use Permit to allow the sale of alcoholic beverages, more than 50% and less than 75% of the total gross revenue, for on-premise consumption in a restaurant located in a 3519 square feet lease space on a portion of Lot 1, Block 1, Westward LTD Subdivision at 4303, South 31st Street. Suite 101.
- 11. 2010-4381: FIRST READING PUBLIC HEARING Z-FY-10-40: Consider adopting an ordinance amending the site plan approved by Conditional Use Permit Ordinance No. 2009-4296, June 4, 2009, to allow an expansion of the proposed building area for petroleum storage and collecting facilities and the management of petroleum products from 34,500 square feet to 81,400 square feet on Lot 1, Block 1, Northland Synergy Addition at 4875 Wendland Road.

- 12. 2010-4382: FIRST READING PUBLIC HEARING Z-FY-10-34: Consider adopting an ordinance authorizing a zoning change from Heavy Industrial District (HI) and Mixed Use District (MU) to Planned Development Single Family One District (PD-SF1), on a 6.76 ± acre tract of land in the Maximo Moreno Survey, Abstract No. 14, located at 1000 South Knob Street.
- 13. 2010-4383: FIRST READING PUBLIC HEARING Z-FY-10-36: Consider adopting an ordinance authorizing a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 2,190 square feet lease space on a portion of Tract 1, Albertsons Addition Replat, located at 2001 West Adams, Suite B.
- 14. FIRST READING PUBLIC HEARING Z-FY-10-37: Consider adopting an ordinance authorizing the following:
 - (A) 2010-4384: Repealing Ordinance No. 2009-4288, dated April 2, 2009 approving a Conditional use Permit to allow the sale of alcoholic beverages, less than 75% of the total gross revenue, for on premise consumption in a restaurant to be known as Kazam's Family Entertainment Center, on Tract 1, Albertson's Addition Replat, located at 2001 West Adams Avenue; and
 - (B) 2010-4385: A Conditional Use Permit to allow the sale of alcoholic beverages, 75% or more of the total gross revenue in a bingo hall for on-premise consumption in a 10,600 square feet lease space on a portion of Tract 1, Albertson's Addition Replat, located at 2001 West Adams, Suite C.

RESOLUTIONS

- 15. 2010-6080-R: Consider adopting a resolution appointing members to the following City boards and commissions:
 - (A) Airport Advisory Board five members to fill expiring terms through September 1, 2013
 - (B) Animal Services Advisory Board two members to fill expiring terms through September 1, 2013 and appoint Chair for the period of September 1, 2010 through August 31, 2011
 - (C) Civil Service Commission one member to fill expiring term through September 1, 2013
 - (D) Community Services Advisory Board three members to fill expiring terms through September 1, 2013
 - (E) Library Board three members to fill expiring terms through September 1, 2013
 - (F) Planning & Zoning Commission three members to fill expiring terms through September 1, 2013
 - (G) Reinvestment Zone No. 1 Board of Directors four members to fill expiring terms through September 1, 2012
 - (H) Temple Economic Development Corporation four members to fill expiring terms through September 1, 2013
 - (I) Temple Public Safety Advisory Board six members to fill expiring terms through September 1, 2013
 - (J) Transit Advisory Committee four members to fill expiring terms through September 1, 2012

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

I hereby certify that a true and correct copy of this Notice of Meeting was posted in a public place at 1:25 PM, on August 13, 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 aton theday of2010.



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #3 Regular Agenda Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

William A. Jones, III, Mayor

<u>ITEM DESCRIPTION:</u> Presentation by Bell County ARC to the Parks and Leisure Services Department in recognition of 40 years of collaboration.

STAFF RECOMMENDATION: Receive presentation as presented in item description.

<u>ITEM SUMMARY:</u> The Bell County ARC has collaborated with the Temple Parks and Leisure Services Department for 40 years. They have helped the special population community expand recreational horizons by utilizing many City facilities to include the Gober House, various swimming pools and the Wilson Park Recreation Center for Camp Sunshine and Fun Nights.

FISCAL IMPACT: None

ATTACHMENTS: None



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #4(A) Consent Agenda Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Clydette Entzminger, City Secretary

ITEM DESCRIPTION: Approve Minutes:

(A) August 5, 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:

August 5, 2010 Special Called and Regular Meeting Minutes

TEMPLE CITY COUNCIL

AUGUST 5, 2010

The City Council of the City of Temple, Texas conducted a Special Meeting on Thursday, August 5, 2010 at 3:30 P.M., in the Staff Conference Room, 3rd Floor, Municipal Building, 2 North Main Street.

Present:

Councilmember Danny Dunn Councilmember Marty Janczak Mayor Pro Tem Patsy E. Luna Mayor William A. Jones, III

Absent:

Councilmember Russell Schneider

1. Discuss, as may be needed, Regular Meeting agenda items for the meeting posted for Thursday, August 5, 2010.

Regular Agenda Items 3 and 4 - Budget Items: David Blackburn, City Manager, stated he would review a brief PowerPoint presentation during the regular meeting, focusing on the General Fund and Capital Improvement Program. Mr. Blackburn noted there will be no special meetings required for the tax rate hearings if the tax rate is set as indicated in the preliminary budget.

Regular Agenda Item 7 - Financing Plan amendment for Reinvestment Zone No. 1: Traci Barnard, Director of Finance, stated the item description sets out the amendments being recommended. She noted the bond refunding transaction will result in a savings of \$845,987 over the life of the bonds.

Consent Agenda Item 5(D) - Asbestos abatement at Hawn Hotel: Councilmember Janczak asked if this work is being done as planned. Mr. Blackburn replied yes, this work was planned and will allow the City to market the building for private development.

Consent Agenda Item 5(E) - HVAC replacement: Mr. Blackburn asked that this item be tabled indefinitely, as he will be working with the Parks and Leisure Services on some alternative recommendations. These units are all currently operational.

2. Discuss preliminary FY 2010-2011 budget.

Mr. Blackburn stated he was available to answer any questions from the Council.

Councilmember Janczak stated he has been approached by Keep Temple Beautiful, Inc. to discuss ways to increase funding through utility bill donations.

Mayor Jones stated KTB is currently investigating cities that solicit funds by means other than donations, such as the "opt out" approach being proposed by KTB.

Councilmember Janczak stated he is not advocating a position yet but would just like for the topic to be discussed and considered by the Council.

Mr. Blackburn also noted that Clark Pool is proposed to remain closed in the 2011 budget. He will review that recommendation based on utilization the remainder of this summer.

Mr. Blackburn stated he has started employee briefing this week to provide a mini budget update and discuss health insurance, compensation and benefits. These are being done in conjunction with the open enrollment process for insurance.

3. Discuss the City's purchasing procedures relating to annual contract renewals.

Belinda Mattke, Purchasing Director, reviewed the City's policies regarding annual and multi-year contracts. She began with a review of the Council adopted monetary guidelines, noting exceptions to those guidelines and the 5% local preference policy. The City currently has 95 annual and term contracts. The benefit of these contracts is that it eliminates the need to get bids multiple times throughout the year, the City obtains better pricing, awarded vendors know that they need to have in stock and it helps the departments budget. There are currently 15 term, or multi-year, contracts where no annual renewals are brought back to Council. The City currently as 80 annual contracts which typically have options for four one-year renewals. These contracts, if over \$25,000, come back to Council each year for award of the bid or renewal. Mrs. Mattke explained how staff determines if the annual contracts should be renewed. This year, there are 33 annual contracts currently in the bid process and 37 that staff will recommend be renewed.

4. Discuss upcoming appointments to various City boards and commissions.

Mayor Jones reviewed the board application summary form, noting the number of positions on each board with expiring terms, those eligible for reappointment and the application forms on file for each. He also discussed a proposal to make both the veterinarian position and the Councilmember position on the Animal Services Advisory Board standing positions, not subject to term limits. Dr. Crews' term is expiring on this board and he is not eligible for reappoinment since he has served six years. However, Animal Medical Care is the consulting veterinarian for the Animal Shelter and he felt that it would be beneficial for him to remain on the board due to that relationship.

The City Council of the City of Temple, Texas conducted a Regular Meeting on Thursday, August 5, 2010 at 5:00 PM in the Council Chambers, Municipal Building, 2nd Floor, 2 North Main Street.

Present:

Councilmember Marty Janczak Mayor Pro Tem Patsy E. Luna Mayor William A. Jones, III Councilmember Danny Dunn

Absent:

Councilmember Russell Schneider

I. CALL TO ORDER

1. Invocation

Rev. Shelton Rhodes, Greater Zion Temple Church of God in Christ, voiced the Invocation.

2. Pledge of Allegiance

Chief Lonzo Wallace led the Pledge of Allegiance.

II. PUBLIC COMMENTS

Evelyn Poole, 1014 South 26th Street, addressed the City Council regarding Clark Pool, which was reopened this summer. They have had a great turn out for swimming lessons. Both children and adults have benefited from this pool remaining open.

Mayor Jones introduced three students from France in attendance. These are exchange students living at the home of Jonathan and Jennifer Graham. Mayor Jones presented each with a lapel pin from the City of Temple.

III. BUDGET ITEMS

3. 2010-6062-R: PUBLIC HEARING - Conduct a final public hearing and consider adopting a resolution approving the 2010-2015 Community Development Block Grant (CDBG) Five Year Consolidated Plan, and the 2010-2011 CDBG Annual Action Plan, including the funding recommendations for public service agencies from the Community Services Advisory Board.

Traci Barnard, Director of Finance, introduced Mark Taylor, Traylor & Associates, to present the Five year Consolidated Plan and 2010-2011 CDBG Action Plan. The first public hearing was conducted on June 17, 2010 which began the 30-day comment period. The plan must be submitted to HUD by August 15th, with implementation on October 1, 2010. Mr. Taylor provided a summary of the contents of the consolidated plan. Five public forms were conducted, as well as citizen surveys and public notices. 70% of these funds must be expended to benefit low and moderate income persons, 22 census blocks in the City of Temple. He also presented the proposed allocation of funds in the consolidated plan - public facilities and improvements, public services, housing activities, and demolition activities. Next, Mr. Taylor presented the recommendation for the allocation of \$582,798 in 2010-2011. During the 30-day comment period, three comments were received and reviewed by the Community Services Advisory Board for the allocation of \$78,344 to the public service agencies and Mr. Taylor presented these recommendations, as well.

Mayor Jones declared the public hearing open with regard to agenda item 3 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 resolution, seconded by Councilmember Danny Dunn.

Motion passed unanimously.

4. (A) PUBLIC HEARING - Receive presentation by the City Manager and conduct a public hearing on the proposed 2010-2011 operating budget.

David Blackburn, City Manager, provided a brief overview of the preliminary 2010-2011 budget. He reviewed the budget calendar and process, noting that tax rate public hearings will not be necessary if the Council proposes the tax rate of \$0.5679 per \$100 valuation as recommended in the filed preliminary budget, as that rate is lower than the effective tax rate. Next, Mr. Blackburn reviewed the 'fence posts' he used as policy guidelines for the development of the budget. He displayed a revenue summary of all funds, totalling just over \$94 million, with total expenses at almost \$97 million. He also showed more detailed revenues and expenses for the General Fund. Mr. Blackburn discussed the budget challenges this year, directly related to the national recession.

Traci Barnard, Director of Finance, discussed the proposed tax rate of \$0.5679 per \$100 valuation and how it is allocated between interest and sinking and maintenance and operation.

The largest source of revenue in the General Fund is sales tax, 28% of all General Fund revenue. The proposed budget shows a decrease of 3.27% from the current year. Mr. Blackburn highlighted a few significant capital improvement projects that will occur during the upcoming year, including the Sammons Golf Links course improvements and street maintenance in the form of a year long crack sealing crew. The budget also recommends continuing a strategic hiring freeze, no compensation adjustments for general employees, continued commitment to TMRS by funding year 3 of an 8 year plan and establishing a self-insured health insurance fund. The 2011 budget will also hold the line on service level adjustments and cost containment strategies and Mr. Blackburn outlined some of these measures. He also presented the public service agencies that will be funded in the 2011 operating budget, totaling \$586,862. Economic development continues to be a strategic focus area, with emphasis on growing the tax base. The City is currently managing the largest capital improvement program in the history of the community and Mr. Blackburn noted the funding sources that are used for these projects.

Mayor Jones declared the public hearing open with regard to agenda item 4(A) and asked if anyone wished to address this item.

Evelyn Poole, 1014 South 26th Street, stated most of the revenue is not focused to east Temple and she asked why.

Mr. Blackburn thanked Ms. Pool for her comment and offered to visit with her about the investments being made in East Temple.

Mayor Jones stated there has been a significant investment in east Temple over the past few years in the form of new parks, water and sewer improvements, and street overlays. The Council and staff make every effort to ensure there is a good quality of life throughout the community.

There being no further comments, Mayor Jones closed the public hearing.

(B) 2010-6063-R: Discuss proposed tax rate and consider adopting a resolution scheduling the adoption of the proposed tax rate for September 2, 2010.

Mr. Blackburn stated the proposed tax rate in the preliminary budget is \$0.5679 per \$100 valuation, a decrease of 1.10% below the effective tax rate of 57.42¢. The current FY 2010 tax rate is 56.46¢. After the rate is set today, it can be lowered but not increased prior to adoption on September 2, 2010.

Motion by Councilmember Danny Dunn to adopt resolution setting a proposed tax rate of \$0.5679 per \$100 in value and scheduling the adoption of the proposed tax rate for the September 2, 2010 Regular City Council meeting, seconded by Councilmember Marty Janczak.

Motion passed unanimously.

IV. CONSENT AGENDA

- 5. Consider adopting a resolution approving the Consent Agenda items and the appropriate resolutions for each of the following:
 - (A) July 15, 2010 Special Called and Regular Meeting
 - (B) 2010-6064-R: Consider adopting a resolution authorizing a construction contract with Horseshoe Construction Inc., of La Porte for the second group of the 2010 Wastewater Line Replacement Projects in the amount not to exceed of \$1,044,660 which includes the replacement of wastewater lines along Valley View Drive and French Avenue to Adams Avenue from North 4th Street to North 12th Street and declaring an official intent to reimburse this expenditure made prior to the issuance of tax-exempt obligations.
 - (C) 2010-6065-R: Consider adopting a resolution authorizing a professional services agreement with Bury+Partners, Inc. for engineering services, including design, surveying, easement acquisition, bidding, and construction administration required to implement the Pea Ridge Lift Station Rehabilitation Project in an amount not to exceed \$142,000 and declaring an official intent to reimburse this expenditure made prior to the issuance of tax-exempt obligations.
 - (D) Consider adopting a resolution authorizing the following two contracts related to asbestos abatement of the Hawn Hotel:
 - 2010-6066-R: Construction contract with ARC of Waco for the removal of asbestos-containing materials in the amount of \$120,240, and

- 2. 2010-6067-R: Professional services agreement for asbestos air monitoring services with Austin Environmental, Inc. of Bryan in an amount not to exceed \$35,000.
- (E) 2010-6068-R: Consider adopting a resolution authorizing a construction contract with Temple Heat & Air for replacement HVAC units at three locations in the amount not to exceed \$93,667.13
- (F) 2010-6069-R: Consider adopting a resolution authorizing the purchase of one front loading refuse truck through the BuyBoard from Rush Truck Center in the amount of \$223,428.53.
- (G) 2010-6070-R: Consider adopting a resolution authorizing an agreement with Norman Jolly, P.C., attorney at law to provide legal services to the City of Temple.
- (H) 2010-4370: SECOND READING Consider adopting an ordinance establishing the prima facie speed limit on the US 190/LP363/SH36 frontage road, within the City limits.
- (I) 2010-4371: SECOND READING? Consider adopting an ordinance amending Section 37-108, "Parking in Residential Yards," of Chapter 37, "Traffic," of the Code of Ordinances to add several subsections to allow for enforcement by the City's Construction Safety and Services Department.
- (J) 2010-6071-R: Consider adopting a resolution abandoning 352.50 feet of a 10 foot wide utility easement on the north side of Marlandwood Road, starting at the northeast corner of Lot 2, Block 1, Deyoe Addition (990 Marlandwood Road) and extending South 72 degrees 59 minutes 10 seconds East to the intersection of Outblocks 678-E, 682-D, and 678-D.
- (K) 2010-6072-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 the exception of Item 4(E), seconded by Councilmember Marty Janczak.

Motion passed unanimously.

(E) 2010-6068-R: Consider adopting a resolution authorizing a construction contract with Temple Heat & Air for replacement HVAC units at three locations in the amount not to exceed \$93,667.13

Motion by Councilmember Marty Janczak to table resolution, seconded by Councilmember Danny Dunn.

Motion passed unanimously.

V. REGULAR AGENDA

ORDINANCES

6. 2010-4372: FIRST READING - PUBLIC HEARING - Consider adopting an ordinance establishing school crosswalks and setting speed limits within school zones to conform to school schedules.

Nicole Torralva, Interim Public Works Director, presented this item to City Council. This is an annual item for Council consideration prior to the beginning of each school year. BISD has requested that the City extend the school zone time on Tarver Road and Cedar Lane at Lake Belton Middle School from 4:00 pm to 4:30 pm. The original times were set when students were released at 3:00 pm. Students are now being released at 3:45 pm causing a need to extend school times at this location.

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, with second and final reading set for August 19, 2010, seconded by Councilmember Danny Dunn.

Motion passed unanimously.

7. 2010-4373: FIRST READING - PUBLIC HEARING - Consider adopting an ordinance authorizing an amendment to the Tax Increment Financing Reinvestment Zone No. 1 Financing Plan for FY 2010 to allocate \$134,601 of additional funds for general engineering services, to allocate \$39,205 to fund contract amendment #1 for the 2022 Master Plan Phase II, to allocate funds related to the 2009 bond refunding transaction, and for FY 2010-2022 to reduce debt service payments due to the 2009 bond refunding.

Traci Barnard, Director of Finance Director, presented this item to the City Council. She reviewed the proposed amendments, described in the item description, and noted the source of funds for each amendment. She also provided more detailed information regarding the 2009 partial bond refunding, which will result in a savings of \$845,987 over the life of the bonds.

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 Marty Janczak to adopt ordinance, with second and final reading set for August 19, 2010, seconded by Mayor Pro Tem Patsy E. Luna.

Motion passed unanimously.

City Council

ATTEST:	William A. Jones, III, Mayor
	
Clydette Entzminger City Secretary	



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #4(B) Consent Agenda Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

Nicole Torralva, P.E., Interim Director of Public Works Michael C. Newman, P.E., CFM, Assistant Director of Public Works/City Engineer

<u>ITEM DESCRIPTION:</u> Consider adopting a resolution authorizing a construction contract with Wolff Construction, L.P., of Salado for construction services required to install the City of Temple 2010 Drainage Improvements for an amount not to exceed \$107,398.

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

<u>ITEM SUMMARY:</u> The City of Temple adopted a Drainage Capital Improvement Implementation (DCIP) Plan in 2008, which addresses flood concerns from the public. The DCIP report includes results of a public survey that identifies areas of structure, yard, and street flooding from storm water. These responses were used to identify and prioritize drainage CIP's resulting in a list of projects to implement as funding becomes available. The project outlined in this proposal is one of the very high prioritized projects that can be implemented within this year's drainage CIP budget.

The Montana Drive drainage improvements will capture and convey storm water from Kiwanis Park through Montana Drive and prevent structural flooding of several dwelling units located in this project area. The project includes approximately 790 linear feet of new reinforced concrete pipe storm sewer in new public drainage easements and in the public right of way, 4 new curb inlets, 2 new junction boxes, and miscellaneous grading in Kiwanis Park. The Engineer's Opinion of Probable Cost for the work was \$163,000.

On August 3, 2010, eight bids were received for the project. Per the attached bid tabulation Wolff Construction submitted the low bid in the amount of \$107,398. References were checked by Clark & Fuller, PLLC, and recommendation is made to award the project to Wolff Construction. Construction time allotted for the project is 60 days.

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FISCAL IMPACT: Funding in the amount of \$385,000 was designated for design and construction cost related to the City of Temple 2010 Drainage Improvements in the revised FY 2010 CIP approved by Council on November 18, 2009. In February 2010, \$26,319 of Drainage Fund Balance-Designated for Capital Projects Unallocated was appropriated for engineering services. A balance of \$358,681 is available to fund construction.

A budget adjustment is presented for Council's approval appropriating Drainage Fund Balance-Designated for Capital Projects Unallocated in the amount of \$107,881 to account 292-2900-534-6312, project #100606 for this construction contract and anticipated testing fees.

ATTACHMENTS:

Bid Tabulation Engineer's Letter of Recommendation Project Map Budget Adjustment Resolution

Bid Tabulation Sheet 2010 Drainage Improvements - Montana Drive

Bid Date: August 3, 2010

Base Bid			Wolff Construct	tion L.P.	McLean Constr	uction, Inc	Patin Construc	tion, LLC	K&S Backhoe Se	ervices, Inc.	Myers Concrete	Construction, LP	Bell Contract	tors, Inc.	TTG Utilit	ies, LP	Bear Contract	ors, Inc.
No. Item Description	Est. Quan.	UOM	Unit Price To	otal Cost U	Jnit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost
1 Site R.O.W. Preparation & Clearing	8	STA	\$ 722.00 \$	5,776.00 \$	746.25 \$	5,970.00 \$	1,000.00 \$	8,000.00 \$	796.44 \$	6,371.52 \$	1,357.00 \$	10,856.00 \$	130.00 \$	\$ 1,040.00 \$	\$ 1,500.00 \$	12,000.00	2,550.00 \$	20,400.00
2 Mobilization, Bonds, Permits, & Insurance	100%	LS	\$ 6,750.00 \$	6,750.00 \$	9,525.00 \$	9,525.00 \$	12,000.00 \$	12,000.00 \$	11,401.89 \$	11,401.89 \$	7,885.00 \$	7,885.00 \$	7,100.00 \$	\$ 7,100.00 \$	\$ 4,500.00 \$	4,500.00	\$ 20,000.00 \$	20,000.00
3 Provide & Implement a Trench Safety Plan	100%	LS	\$ 2,750.00 \$	2,750.00 \$	1,408.00 \$	1,408.00 \$	1,000.00 \$	1,000.00 \$	1,470.60 \$	1,470.60 \$	1,314.00 \$	1,314.00 \$	2,700.00 \$	\$ 2,700.00 \$	950.00 \$	950.00	6,000.00 \$	6,000.00
4 Provide & Implement a Traffic Control Plan	100%	LS	\$ 7,993.00 \$	7,993.00 \$	1,858.00 \$	1,858.00 \$	1,000.00 \$	1,000.00 \$	1,254.00 \$	1,254.00 \$	3,942.00 \$	3,942.00 \$	5,000.00 \$	\$ 5,000.00 \$	\$ 1,350.00 \$	1,350.00	5,000.00 \$	5,000.00
5 Remove & Replace Ex. Chain Link Fencing	40	LF	\$ 20.00 \$	800.00 \$	19.00 \$	760.00 \$	40.00 \$	1,600.00 \$	9.12 \$	364.80 \$	41.00 \$	1,640.00 \$	21.70 \$	\$ 868.00 \$	35.00 \$	1,400.00	20.00 \$	800.00
6 Sawcut, Remove & Replace Ex.Concrete Curb & Gutter Section	68	LF	\$ 10.75 \$	731.00 \$	27.00 \$	1,836.00 \$		1,700.00 \$	22.30 \$	1,516.40 \$	36.00 \$	2,448.00 \$	18.00 \$	\$ 1,224.00 \$	45.00 \$	3,060.00		7,072.00
7 Provide New Cored Connection to Ex. Storm Sewer Inlet	1	EA	\$ 1,270.00 \$	1,270.00 \$	1,552.00 \$	1,552.00 \$	1,000.00 \$	1,000.00 \$	920.58 \$	920.58 \$	1,674.00 \$	1,674.00 \$	410.00 \$	\$ 410.00 \$	500.00 \$	500.00	\$ 4,050.00 \$	4,050.00
8 Provide 24" RCP Class III Storm Sewer Main by Open Cut	585	LF	\$ 53.00 \$	31,005.00 \$	50.40 \$	29,484.00 \$	78.00 \$	45,630.00 \$	114.77 \$	67,140.45 \$	134.00 \$	78,390.00 \$	110.00	\$ 64,350.00 \$	50.00 \$	29,250.00	93.00 \$	54,405.00
9 Provide 18" RCP Class III Storm Sewer Main by Open Cut	180	LF	\$ 45.50 \$	8,190.00 \$	42.50 \$	7,650.00 \$	73.00 \$	13,140.00 \$	82.68 \$	14,882.40 \$	83.00 \$	14,940.00 \$	88.40	\$ 15,912.00 \$	45.00 \$	8,100.00	84.00 \$	15,120.00
10 Provide 15" RCP Class III Storm Sewer Main by Open Cut	25	LF	\$ 45.00 \$	1,125.00 \$	42.00 \$	1,050.00 \$	68.00 \$	1,700.00 \$	99.39 \$	2,484.75 \$	137.00 \$	3,425.00 \$	110.00 \$	\$ 2,750.00 \$	55.00 \$	1,375.00	110.00 \$	2,750.00
11 Provide 10' Precast Concrete Curb Inlet	4	EA	\$ 2,310.00 \$	9,240.00 \$	2,535.00 \$	10,140.00 \$	3,400.00 \$	13,600.00 \$	3,989.99 \$	15,959.96 \$	4,081.00 \$	16,324.00 \$	3,400.00	\$ 13,600.00 \$	3,590.00 \$	14,360.00	4,500.00 \$	18,000.00
12 Provide 3'x3' Precast Conc. Junction Box w/ heavy duty lid	3	EA	\$ 1,405.00 \$	4,215.00 \$	1,741.00 \$	5,223.00 \$	3 2,200.00 \$	6,600.00 \$	3,573.21 \$	10,719.63 \$	3,678.00 \$	11,034.00 \$	1,800.00	\$ 5,400.00 \$	\$ 2,100.00 \$	6,300.00	3,170.00 \$	9,510.00
13 Provide 3'x3' Precast Conc. Sump Inlet	1	EA	\$ 1,455.00 \$	1,455.00 \$	1,809.00 \$	1,809.00 \$	2,000.00 \$	2,000.00 \$	3,538.56 \$	3,538.56 \$	2,932.00 \$	2,932.00 \$	1,800.00	\$ 1,800.00 \$	\$ 2,200.00 \$	2,200.00	3,160.00 \$	3,160.00
14 Provide 24" RCP 45 Degree Bend	2	EA	\$ 314.00 \$	628.00 \$	471.00 \$	942.00 \$	360.00 \$	720.00 \$	395.60 \$	791.20 \$	850.00 \$	1,700.00 \$	150.00 \$	\$ 300.00 \$	\$ 250.00 \$	500.00	\$ 400.00 \$	800.00
15 Provide 18" RCP 30 Degree Bend	1	EA	\$ 260.00 \$	260.00 \$	420.00 \$	420.00 \$	450.00 \$	450.00 \$	395.60 \$	395.60 \$	1,289.00 \$	1,289.00 \$	150.00 \$	\$ 150.00 \$	\$ 200.00 \$	200.00	300.00 \$	300.00
16 Provide New Sanitary Sewer Service & Connection	10	EA	\$ 935.00 \$	9,350.00 \$	1,473.00 \$	14,730.00 \$	1,730.00 \$	17,300.00 \$	788.00 \$	7,880.00 \$	1,263.00 \$	12,630.00 \$	1,500.00	\$ 15,000.00 \$	950.00 \$	9,500.00	\$ 800.00	8,000.00
17 Remove & Replace Existing Water Service	10	EA	\$ 935.00 \$	9,350.00 \$	2,069.00 \$	20,690.00 \$	1,800.00 \$	18,000.00 \$	780.39 \$	7,803.90 \$	1,685.00 \$	16,850.00 \$	1,400.00	\$ 14,000.00 \$	\$ 1,000.00 \$	10,000.00	900.00 \$	9,000.00
18 Sawcut, Remove & Replace Ex.Concrete Pavement Section	15	SY	\$ 50.00 \$	750.00 \$	59.00 \$	885.00 \$	90.00 \$	1,350.00 \$	75.87 \$	1,138.05 \$	158.00 \$	2,370.00 \$	62.00	\$ 930.00 \$	110.00 \$	1,650.00	315.00 \$	4,725.00
19 Sawcut, Remove & Replace Ex.HMAC Pavement Section	360	SY	\$ 16.00 \$	5,760.00 \$	45.00 \$	16,200.00 \$	15.00 \$	5,400.00 \$	17.40 \$	6,264.00 \$	22.00 \$	7,920.00 \$	20.00	\$ 7,200.00 \$	35.00 \$	12,600.00	52.00 \$	18,720.00
Total Bid 2010 Drainage Improvements - Montana Drive			\$	107.398.00	\$	132.132.00	\$	152.190.00	\$	162,298,29	\$	199.563.00	\$	\$ 159.734.00	\$	119.795.00	\$	207.812.00



2010 SW HK Dodgen Loop, Suite 105 Temple, Texas 76504 (254) 899-0899 Fax (254) 899-0901 www.clark-fuller.com Firm Registration No: F-10384

August 9, 2010

City of Temple Salvador Rodriguez, P.E. 3210 E. Ave. H, Bldg. A Temple, Texas 76501

Re: City of Temple, 2010 Drainage Improvements - Montana Drive

Dear Mr. Rodriguez,

We have reviewed the bids for the above referenced project. Wolff Construction L.P. submitted a total Bid of \$107,398.00. Please see the enclosed Bid Tabulation Sheet and Bid Schedule Breakout for detailed information.

The engineer's opinion of probable cost to construct was \$163,000.00

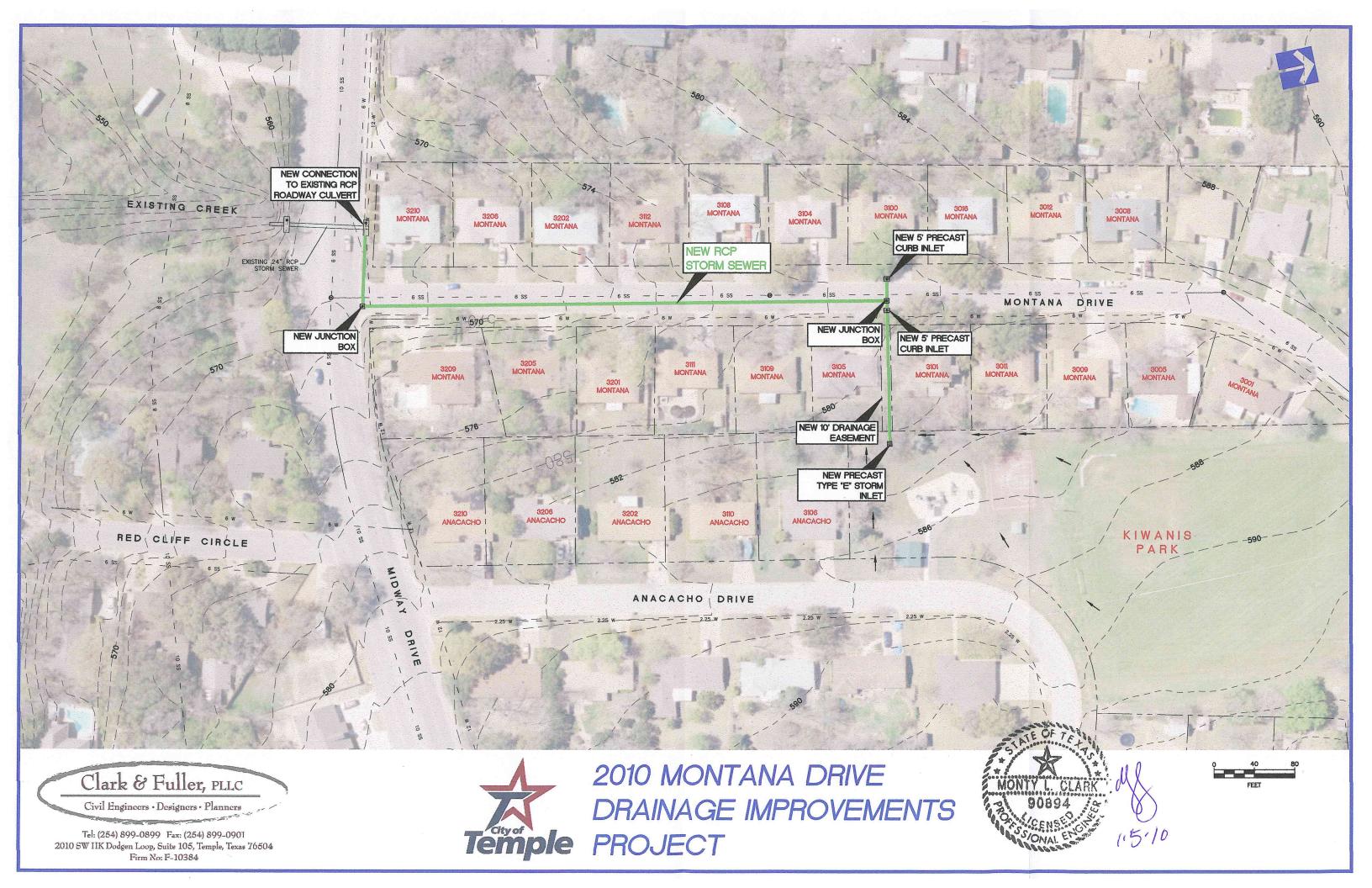
Our firm has no previous experience working with Wolff Construction L.P. Therefore, we contacted numerous entities that have worked with Wolff Construction L.P. and interviewed each as to Wolff Construction L.P.'s ability to perform timely and quality construction required for this project. In addition, we have attached to this letter, resumes of key employees currently employed by Wolff Construction, L.P. Based upon these interviews, we feel Wolff Construction L.P. is a proven company that possesses both the expertise and knowledge to provide construction of this scope and magnitude and we look forward to working with them on this project. We are recommending that you award the contract to Wolff Construction L.P.

The list of references can be provided upon request.

Please advise us as to which contractor you select.

Sincerely,

Monty Clark, P.E.



	_			FY	2010	
Liee this form to make		BUDGET ADJUSTMENT FORM ts to your budget. All adjustments must	halance with	nin a Den	artment	
Ose this form to make		ents should be rounded to the neares		шта Бер	artificit.	
			+		_	
	PROJECT					Ī
ACCOUNT NUMBER	#	ACCOUNT DESCRIPTION	INCREASE		CREASE	
292-2900-534-63-12	100605	Drainage Improvements	\$ 107,88°	i		_
292-0000-352-13-45		Design Cap Proj-2010 Drainage Impr			107,881	
		Da Nat Bast				
		Do Not Post		++-		_
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TOTAL			\$ 107,88	1 \$	107,881	
EXPLANATION OF ADJ	USTMENT	REQUEST- Include justification for increases	s AND reason v	vhy funds i	n decreased	
The budget adjustment approservices required to install the	City of Temp	palance to fund the construction contract with Wole 2010 Drainage Improvements and testing fe	es. This project			
Council as part of the FY 2010	у Сарнаі Ітр	rovement Program as revised on November 19	, 2009.			
						_
DOES THIS REQUEST REQI		CIL APPROVAL? x	Yes	No		
DATE OF COUNCIL MEETIN	G	August 19, 2010				
WITH AGENDA ITEM?		х	Yes	No		
		<u> </u>		Approve		
Department Head/Divisior	Director	Date		Disappr	oved	
				Approve	ed	

Disapproved

Approved Disapproved

Date

Date

Finance

City Manager

RESOLUTION NO.	
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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUTHORIZING TEMPLE, TEXAS, A CONSTRUCTION CONTRACT WITH WOLFF CONSTRUCTION, LP, OF SALADO, TEXAS. FOR CONSTRUCTION SERVICES REQUIRED TO **INSTALL** THE CITY OF **TEMPLE** 2010 **DRAINAGE** IMPROVEMENTS, AN AMOUNT NOT IN TO **EXCEED** \$107,398.00; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, on August 3, 2010, the City received 8 bids for construction services required to install the City of Temple 2010 Drainage Improvements;

Whereas, Staff recommends accepting the bid (\$107,398.00) from Wolff Construction, LP, of Salado, Texas;

Whereas, funds are available for this project 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:

- <u>Part 1:</u> The City Council authorizes the City Manager, or his designee, to execute a construction contract between the City of Temple and Wolff Construction, LP, after approval as to form by the City Attorney, for construction services required to install the City of Temple 2010 Drainage Improvements, for a cost not to exceed \$107,398.00
- <u>Part 2:</u> The City Council approves an amendment to the FY2009-2010 budget, substantially in the form of the copy attached as Exhibit A, for this project.
- <u>Part 3:</u> 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 19th day of August, 2010.

THE CITY OF TEMPLE, TEXAS

	WILLIAM A. JONES, III, Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #4(C) Consent Agenda Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

Nicole Torralva P.E., Interim Director of Public Works Thomas Brown, Superintendent of Distribution & Collection

<u>ITEM DESCRIPTION:</u> Consider adopting a resolution authorizing a construction contract with Horseshoe Construction Inc. of La Porte for the third group of the 2010 Wastewater Line Replacement Projects in the amount not to exceed \$278,560 which includes the replacement of wastewater lines along West Killen and West Welton between North Main and 3rd Street and 37th and 39th Street between Avenue H and Avenue K.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

ITEM SUMMARY: For many years the Utility Services Division has experienced numerous wastewater system issues as a result of deteriorating infrastructure. Wastewater lines in these neighborhoods with clay tile sanitary sewer mains are nearing the end of their useful lives. These pipes must now be replaced to improve maintenance problems and ensure continued service to these areas.

In an effort to address system needs, these two projects are part of the six projects identified in the recently updated capital improvement project list. Clark & Fuller, PLLC of Temple was retained for engineering services including design, surveying and construction administration required for the six projects. Clark & Fuller's opinion for probable cost for West Killen and West Welton between North Main and 3rd Street and 37th and 39th Street between Avenue H and Avenue K was a combined total of \$475,000.

On August 10, 2010, five bids were received for the construction work. Per the attached bid tabulation Horseshoe Construction Inc. of La Porte, TX., submitted the low bid in the combined amount of \$278,560. Total cost for West Killen and West Welton between North Main and 3rd Street portion of the project was \$220,440. Total cost for the 37th and 39th Street between Avenue H and Avenue K portion of the project was \$58,120. References were checked by Clark & Fuller PLLC and the Public Works staff has found Horseshoe Construction Inc. of La Porte, TX., to be qualified to complete these projects. Construction time allotted for the projects is 210 days.

08/19/10 Item #4(C) Consent Agenda Page 2 of 2

FISCAL IMPACT: The total estimated project cost for the wastewater line replacement along West Killen and West Welton between North Main and 3rd Street portion of this contract, which was identified in the revised FY 2010 CIP to be funded with Water & Sewer Unreserved Retained Earnings was \$400,000. In January 2010, \$47,171 was appropriated to fund engineering services leaving a balance of \$352,829 for construction.

The 37th and 39th Street between Avenue H and Avenue K project was not included in the revised FY 2010 CIP, but was identified by Public Works and included with the FY 2010 Wastewater Line Replacement Projects to minimize cost. This project will be funded through the savings of the West Killen and West Welton between North Main and 3rd Street project.

A budget adjustment is presented for Council's approval appropriating Water & Sewer Unreserved Retained Earnings in the amount of \$279,405 to account 520-5900-535-6361, projects 100597 and 100598 to fund this construction contract and other miscellaneous costs.

ATTACHMENTS:

Bid Tabulation Engineer's Letter of Recommendation Project Map Budget Adjustment Resolution

Bid Tabulation Sheet

2010 Wastewater Line Replacement W. Killen & W. Welton between Main & 3rd Street; 37th and 39th between Ave. H & Ave. K

Bid Date: August 10, 2010

	Base Bid					struction, Inc.	Bell Contract	, and the second	TTG Utilitie	·	Patin Constr	•	PM Construction		•
No.	Item Description	Est. Quan.	UOM		Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	To	otal Cost
Sito D O W	Droparation & Clearing	12.5	QT A	\$	50 00 ¢	2 175 00	Φ 250.00 Φ	10.975.00	\$ 125.00 \$	5 427 50 ¢	500.00	¢ 21.750.00	Φ <i>55</i> 0.00	<u></u>	22 025 0
	Preparation & Clearing	43.5	STA	Φ	50.00 \$	•	·	<u> </u>	· · · · · · · · · · · · · · · · · · ·	5,437.50 \$		·	\$ 550.00	•	23,925.0
<u>_</u>	n, Bonds, Permits, & Insurance move & Replace Ex. HMAC Pavement	100%	LS SY	Φ	750.00 \$ 30.00 \$		\$ 11,700.00 \$ \$ 35.00 \$	<u> </u>	\$ 11,925.00 \$ \$ 42.40 \$	11,925.00 \$ 1,865.60 \$	30.00 30.00		\$ 11,250.00 \$ 50.00	•	11,250.0
·	move & Replace Ex. Fiviac Pavement Section	18	SY	Φ	25.00 \$	•		,	·	354.60		. ,	\$ 25.00	•	2,200.0 450.0
·	nplement a Traffic Control Plan	100%	LS	Ψ Φ	750.00 \$		·		· · · · · · · · · · · · · · · · · · ·	4,200.00 \$			\$ 9,000.00	•	9,000.0
	nplement a Trench Safety Plan	100%	LS	Ψ Φ	750.00 \$		\$ 2,400.00 \$,	·	570.00	1,875.00 1,875.00	·	\$ 9,000.00	•	9,000.0
	Remove Existing Sanitary Sewer Manhole	9	EA	Φ Φ	250.00 \$,		4,680.00 \$		·	\$ 700.00	•	6,300.0
	Remove Existing Samary Sewer Backflow Preventer	1	EA	\$	250.00 \$	· · · · · · · · · · · · · · · · · · ·		,	\$ 1,035.00 \$	1,035.00 \$		·	\$ 1,000.00	•	1,000.0
	Dia. Precast Eccentric Conc Mh w/ heavy duty lid	12	EA	\$	2,700.00 \$				\$ 3,290.00 \$	39,480.00 \$	•	·	\$ 5,000.00	•	60,000.0
	nnection to Existing Sanitary Sewer Main	7	EA	\$	100.00 \$,	· · · · · · · · · · · · · · · · · · ·	,	·	4,690.00 \$	•	•	\$ 1,500.00		10,500.0
	HDPE DR 17 Sanitary Sewer Main by bursting	4255	LF	\$	24.00 \$	102,120.00		139,989.50	· · · · · · · · · · · · · · · · · · ·	223,813.00 \$	•	\$ 170,200.00	\$ 55.00	\$ \$	234,025.0
	PVC SDR 26 "pressure rated" Sanitary Sewer Main		<u></u> LF	\$	55.00 \$	•		,		4,246.00 \$		\$ 2,750.00	\$ 59.00	\$	3,245.0
	w End of Line Clean Out	3	EA	\$	1,350.00 \$	4,050.00		1,800.00	\$ 715.00 \$	2,145.00 \$	400.00	\$ 1,200.00	\$ 1,500.00	\$	4,500.0
	Sanitary Sewer Service & Service Connection	91	EA	\$	500.00 \$	•		<u> </u>		75,530.00		\$ 91,000.00	\$ 1,100.00	•	100,100.0
	Sanitary Sewer Service & Service Connection	2	EA	\$	600.00 \$	•		1,400.00	·	1,850.00 \$	1,200.00	\$ 2,400.00	\$ 1,100.00	•	2,200.0
	c. Sanitary Sewer Service Pipe	1000	LF	\$	22.00 \$	22,000.00		,	· · · · · · · · · · · · · · · · · · ·	12,000.00 \$	•	\$ 10,000.00	\$ 50.00	\$	50,000.0
	per TCEQ & City of Temple Requirements	100%	LS	\$	750.00 \$	· · · · · · · · · · · · · · · · · · ·	\$ 3,225.00 \$	•	\$ 7,470.00 \$	7,470.00 \$,	\$ 9,000.00	\$	9,000.0
otal Bid 2010 V	Wastewater Line Replacement -														
W. Killen & W.	. Welton between Main & 3rd Street				\$	220,440.00	\$	301,992.50	\$	401,291.70		\$ 378,369.00		\$	536,695.0
Sito P O W	Preparation & Clearing	8.5	STA	\$	50.00 \$	425.00	\$ 250.00 \$	2,125.00	\$ 125.00 \$	1,062.50 \$	500.00	\$ 4,250.00	\$ 550.00	Φ	4,675.0
	n, Bonds, Permits, & Insurance	100%		Ψ	· ·		Ψ 230.00 4	2,123.00	Ψ 123.00 Ψ	1,002.30 4	500.00	Ψ,230.00	Ψ 330.00	Ψ	•
				T (C)	250.00 ± 9	250.00	Φ 3 000 00 $\mid \Phi$	3 900 00	\$ 3,075,00 \$	3 975 00 \$	8 750 00	\$ 8.750.00	\$ 3,750,00	Q	4 / 5 1
Sawout Ron	·	4 -	LS	\$	250.00 \$		\$ 3,900.00 \$	3,900.00	, ,	3,975.00 \$	•		\$ 3,750.00	\$	•
·	move & Replace Ex. HMAC Pavement	15	SY	\$ \$ ¢	30.00 \$	450.00	\$ 35.00 \$	3,900.00	\$ 42.40 \$	3,975.00 \$ 636.00 \$	30.00	\$ 8,750.00 \$ 450.00	\$ 50.00	\$	•
Sawcut, Rer	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section	15 0	SY SY	\$ \$ \$	30.00 \$ 25.00 \$	450.00	\$ 35.00 \$ 12.00 \$	525.00	\$ 42.40 \$ \$ 19.70 \$	636.00 \$	30.00	\$ 450.00 \$ -	\$ 50.00 \$ 25.00	\$	3,750.0 750.0 -
Sawcut, Rer Provide & In	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan	15 0 100%	SY SY LS	\$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$	450.00 - 250.00	\$ 35.00 \$ 12.00 \$ \$ 1,125.00 \$	525.00 - 1,125.00	\$ 42.40 \$ \$ 19.70 \$ \$ 1,400.00 \$	636.00 \$ - \$ 1,400.00 \$	30.00 18.00 625.00	\$ 450.00 \$ - \$ 625.00	\$ 50.00 \$ 25.00 \$ 3,000.00	\$ \$ \$	750.0 - 3,000.0
Sawcut, Rer Provide & In Provide & In	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan	15 0	SY SY LS LS	\$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$	450.00 - 250.00 250.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 800.00 \$	525.00 - 1,125.00 800.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$	30.00 18.00 625.00 625.00	\$ 450.00 \$ - \$ 625.00 \$ 625.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00	\$ \$ \$	750.0 - 3,000.0 3,000.0
Sawcut, Ren Provide & In Provide & In Demolish &	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole	15 0 100%	SY SY LS LS	\$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$	450.00 - 250.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ \$ 500.00 \$	525.00 - 1,125.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$	636.00 \$ - \$ 1,400.00 \$	30.00 18.00 625.00 625.00 500.00	\$ 450.00 \$ - \$ 625.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00	\$ \$ \$ \$	750.0 - 3,000.0 3,000.0
Sawcut, Ren Provide & In Provide & In Demolish & Demolish &	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer	15 0 100%	SY SY LS LS EA	\$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$	450.00 - 250.00 250.00 -	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ \$ 500.00 \$ \$ 330.00 \$	525.00 - 1,125.00 800.00 500.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$ 1,035.00 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00	\$ 450.00 \$ - \$ 625.00 \$ 625.00 \$ 500.00 \$ -	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00	\$ \$ \$ \$	750.0 - 3,000.0 3,000.0 -
Sawcut, Ren Provide & In Provide & In Demolish & Demolish & Provide 4' D	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid	15 0 100%	SY SY LS LS EA EA	\$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$	450.00 - 250.00 250.00 - 10,800.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ \$ 330.00 \$ \$ 3,000.00 \$ \$	525.00 - 1,125.00 800.00 500.00 - 12,000.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$ 1,035.00 \$ 3,290.00 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 2,500.00	\$ 450.00 \$ - \$ 625.00 \$ 625.00 \$ 500.00 \$ - \$ 10,000.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00	\$ \$ \$ \$ \$	750.0 - 3,000.0 3,000.0 - 20,000.0
Sawcut, Ren Provide & In Provide & In Demolish & Demolish & Provide 4' D Provide Con	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid nnection to Existing Sanitary Sewer Main	15 0 100% 100% 1 0 4	SY SY LS LS EA	\$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 100.00 \$	450.00 - 250.00 250.00 - 10,800.00 100.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ \$ 330.00 \$ \$ 3,000.00 \$ \$ 550.00 \$ \$	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$ 1,035.00 \$ 520.00 \$ 54 670.00 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 2,500.00 1,200.00	\$ 450.00 \$ - \$ 625.00 \$ 625.00 \$ 500.00 \$ - \$ 10,000.00 \$ 1,200.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 1,500.00	\$ \$ \$ \$ \$	750.0 - 3,000.0 3,000.0 700.0 - 20,000.0 1,500.0
Sawcut, Ren Provide & Im Provide & Im Demolish & Demolish & Provide 4' D Provide Con Provide 8" H	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid mnection to Existing Sanitary Sewer Main HDPE DR 17 Sanitary Sewer Main by bursting	15 0 100% 100% 1 0 4 1 780	SY SY LS LS EA EA	\$ \$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 24.00 \$	450.00 - 250.00 250.00 - 10,800.00 100.00 18,720.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ \$ 330.00 \$ \$ 3,000.00 \$ \$ 550.00 \$ \$ 32.90 \$ \$	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00 25,662.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$ \$ 3,290.00 \$ 52.60 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$ 41,028.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 2,500.00 1,200.00 40.00	\$ 450.00 \$ - \$ 625.00 \$ 625.00 \$ 500.00 \$ - \$ 10,000.00 \$ 1,200.00 \$ 31,200.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 1,500.00 \$ 55.00	\$ \$ \$ \$ \$ \$	750.0 3,000.0 3,000.0 700.0 - 20,000.0 1,500.0 42,900.0
Sawcut, Ren Provide & Im Provide & Im Demolish & Demolish & Provide 4' D Provide Con Provide 8" P	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid mnection to Existing Sanitary Sewer Main HDPE DR 17 Sanitary Sewer Main by bursting PVC SDR 26 "pressure rated" Sanitary Sewer Main	15 0 100% 100% 1 0 4 1 780	SY SY LS LS EA EA EA LF LF	\$ \$ \$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 24.00 \$ 55.00 \$	450.00 - 250.00 250.00 - 10,800.00 100.00 18,720.00 3,025.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ \$ 330.00 \$ \$ 330.00 \$ \$ 550.00 \$ \$ 32.90 \$ \$ 46.40 \$ \$	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00 25,662.00 2,552.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 1,000 \$ 1	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$ 41,028.00 \$ 4,246.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 2,500.00 1,200.00 40.00 50.00	\$ 450.00 \$ - \$ 625.00 \$ 500.00 \$ - \$ 10,000.00 \$ 1,200.00 \$ 31,200.00 \$ 2,750.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 1,500.00 \$ 55.00 \$ 59.00	\$ \$ \$ \$ \$ \$	750.0 3,000.0 3,000.0 700.0 - 20,000.0 1,500.0 42,900.0 3,245.0
Sawcut, Ren Provide & Im Provide & Im Demolish & Demolish & Provide 4' D Provide Con Provide 8" P Provide 8" P Provide New	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid mnection to Existing Sanitary Sewer Main HDPE DR 17 Sanitary Sewer Main by bursting PVC SDR 26 "pressure rated" Sanitary Sewer Main w End of Line Clean Out	15 0 100% 100% 1 0 4 1 780 55 1	SY SY LS LS EA EA EA LF LF EA	\$ \$ \$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 24.00 \$ 55.00 \$ 1,350.00 \$	450.00 - 250.00 250.00 - 10,800.00 100.00 18,720.00 3,025.00 1,350.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ 500.00 \$ \$ 330.00 \$ \$ 32.90 \$ \$ 46.40 \$ \$ 600.00 \$ \$	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00 25,662.00 2,552.00 600.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 1,400.00 \$ 520.00 \$ 1,035.00 \$ 52.60 \$ 52.60 \$ 77.20 \$ 715.00 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$ 41,028.00 \$ 4,246.00 \$ 715.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 2,500.00 1,200.00 40.00 50.00 400.00	\$ 450.00 \$ - \$ 625.00 \$ 500.00 \$ - \$ 10,000.00 \$ 1,200.00 \$ 31,200.00 \$ 2,750.00 \$ 400.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 1,500.00 \$ 59.00 \$ 1,500.00	\$ \$ \$ \$ \$ \$	750.0 3,000.0 3,000.0 700.0 - 20,000.0 1,500.0 42,900.0 3,245.0 1,500.0
Provide & Improvide & Improvid	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid mnection to Existing Sanitary Sewer Main HDPE DR 17 Sanitary Sewer Main by bursting PVC SDR 26 "pressure rated" Sanitary Sewer Main w End of Line Clean Out Sanitary Sewer Service & Service Connection	15 0 100% 100% 1 0 4 1 780	SY SY LS LS EA EA LF LF EA EA	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 24.00 \$ 55.00 \$ 1,350.00 \$ 500.00 \$	450.00 - 250.00 250.00 - 10,800.00 100.00 18,720.00 3,025.00 1,350.00 12,000.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ 500.00 \$ \$ 330.00 \$ \$ 32.90 \$ \$ 46.40 \$ \$ 600.00 \$ \$ 640.00 \$ \$	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00 25,662.00 2,552.00 600.00 15,360.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 1,000 \$ 5 1,000 \$ 1	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$ 41,028.00 \$ 4,246.00 \$ 715.00 \$ 19,920.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 1,200.00 40.00 50.00 400.00 1,000.00	\$ 450.00 \$ - \$ 625.00 \$ 625.00 \$ 500.00 \$ - \$ 10,000.00 \$ 1,200.00 \$ 31,200.00 \$ 2,750.00 \$ 400.00 \$ 24,000.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 5,000.00 \$ 55.00 \$ 59.00 \$ 1,500.00 \$ 1,500.00	\$ \$ \$ \$ \$ \$ \$	750.0 3,000.0 3,000.0 700.0 - 20,000.0 1,500.0 42,900.0 3,245.0 1,500.0 26,400.0
Provide & Improvide & Improvid	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid mnection to Existing Sanitary Sewer Main HDPE DR 17 Sanitary Sewer Main by bursting PVC SDR 26 "pressure rated" Sanitary Sewer Main w End of Line Clean Out Sanitary Sewer Service & Service Connection Sanitary Sewer Service & Service Connection	15 0 100% 100% 1 0 4 1 780 55 1 24 2	SY SY LS LS EA EA EA LF LF EA	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 24.00 \$ 55.00 \$ 1,350.00 \$ 500.00 \$	450.00 - 250.00 250.00 250.00 - 10,800.00 100.00 18,720.00 3,025.00 1,350.00 12,000.00 1,200.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ 500.00 \$ \$ 330.00 \$ \$ 330.00 \$ \$ 32.90 \$ \$ 46.40 \$ \$ 600.00 \$ \$ 640.00 \$ \$ 700.00 \$	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00 25,662.00 2,552.00 600.00 15,360.00 1,400.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$ 52.60 \$ 52.60 \$ 77.20 \$ 530.00 \$ 52.60	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$ 41,028.00 \$ 4,246.00 \$ 715.00 \$ 19,920.00 \$ 1,850.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 1,200.00 40.00 50.00 1,000.00 1,200.00	\$ 450.00 \$ - \$ 625.00 \$ 625.00 \$ 500.00 \$ - \$ 10,000.00 \$ 1,200.00 \$ 31,200.00 \$ 2,750.00 \$ 400.00 \$ 24,000.00 \$ 2,400.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 55.00 \$ 55.00 \$ 59.00 \$ 1,500.00 \$ 1,100.00 \$ 1,100.00	\$ \$ \$ \$ \$ \$ \$	750.0 3,000.0 3,000.0 700.0 1,500.0 42,900.0 3,245.0 1,500.0 26,400.0
Sawcut, Rer Provide & Im Demolish & Demolish & Provide 4' D Provide Con Provide 8" H Provide 8" P Provide New Provide 4" S Provide 6" S Provide Misc	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid mection to Existing Sanitary Sewer Main HDPE DR 17 Sanitary Sewer Main by bursting PVC SDR 26 "pressure rated" Sanitary Sewer Main w End of Line Clean Out Sanitary Sewer Service & Service Connection Sanitary Sewer Service & Service Connection Sc. Sanitary Sewer Service Pipe	15 0 100% 100% 1 0 4 1 780 55 1 24 2 400	SY LS LS EA EA LF LF EA EA LF EA EA	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 24.00 \$ 55.00 \$ 1,350.00 \$ 500.00 \$ 600.00 \$	450.00 - 250.00 250.00 - 10,800.00 100.00 18,720.00 3,025.00 1,350.00 12,000.00 1,200.00 8,800.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ 500.00 \$ 550.00 \$ 550.00 \$ 5640.00 \$ 500.00	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00 25,662.00 2,552.00 600.00 15,360.00 1,400.00 8,000.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$ 1,035.00 \$ 52.60 \$ 52.60 \$ 77.20 \$ 715.00 \$ 8 830.00 \$ 925.00 \$ 12.00 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$ 41,028.00 \$ 4,246.00 \$ 715.00 \$ 19,920.00 \$ 1,850.00 \$ 4,800.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 1,200.00 40.00 50.00 400.00 1,200.00 1,200.00 1,000.00 1,000.00	\$ 450.00 \$ - \$ 625.00 \$ 500.00 \$ 500.00 \$ 10,000.00 \$ 1,200.00 \$ 31,200.00 \$ 2,750.00 \$ 400.00 \$ 24,000.00 \$ 2,400.00 \$ 4,000.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 55.00 \$ 55.00 \$ 59.00 \$ 1,500.00 \$ 1,100.00 \$ 1,100.00 \$ 50.00	\$ \$ \$ \$ \$ \$ \$ \$	750.0 3,000.0 3,000.0 700.0 1,500.0 42,900.0 3,245.0 1,500.0 26,400.0 26,400.0 20,000.0
Sawcut, Rer Provide & Im Demolish & Demolish & Provide 4' D Provide Con Provide 8" H Provide 8" P Provide New Provide 4" S Provide 6" S Provide Misc	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid mnection to Existing Sanitary Sewer Main HDPE DR 17 Sanitary Sewer Main by bursting PVC SDR 26 "pressure rated" Sanitary Sewer Main w End of Line Clean Out Sanitary Sewer Service & Service Connection Sanitary Sewer Service & Service Connection	15 0 100% 100% 1 0 4 1 780 55 1 24 2	SY SY LS LS EA EA LF LF EA EA	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 24.00 \$ 55.00 \$ 1,350.00 \$ 500.00 \$	450.00 - 250.00 250.00 - 10,800.00 100.00 18,720.00 3,025.00 1,350.00 12,000.00 1,200.00 8,800.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ 500.00 \$ 550.00 \$ 550.00 \$ 5640.00 \$ 500.00	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00 25,662.00 2,552.00 600.00 15,360.00 1,400.00 8,000.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$ 1,035.00 \$ 52.60 \$ 52.60 \$ 77.20 \$ 715.00 \$ 8 830.00 \$ 925.00 \$ 12.00 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$ 41,028.00 \$ 4,246.00 \$ 715.00 \$ 19,920.00 \$ 1,850.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 1,200.00 40.00 50.00 1,000.00 1,200.00	\$ 450.00 \$ - \$ 625.00 \$ 500.00 \$ 500.00 \$ 10,000.00 \$ 1,200.00 \$ 31,200.00 \$ 2,750.00 \$ 400.00 \$ 24,000.00 \$ 2,400.00 \$ 4,000.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 55.00 \$ 55.00 \$ 59.00 \$ 1,500.00 \$ 1,100.00 \$ 1,100.00	\$ \$ \$ \$ \$ \$ \$ \$	750.0 3,000.0 3,000.0 700.0 1,500.0 42,900.0 3,245.0 1,500.0 26,400.0 26,400.0 20,000.0
Provide & Imported & I	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid mnection to Existing Sanitary Sewer Main HDPE DR 17 Sanitary Sewer Main by bursting PVC SDR 26 "pressure rated" Sanitary Sewer Main w End of Line Clean Out Sanitary Sewer Service & Service Connection Sanitary Sewer Service & Service Connection Sc. Sanitary Sewer Service Pipe Der TCEQ & City of Temple Requirements Wastewater Line Replacement -	15 0 100% 100% 1 0 4 1 780 55 1 24 2 400	SY LS LS EA EA LF LF EA EA LF EA EA	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 24.00 \$ 55.00 \$ 1,350.00 \$ 500.00 \$ 600.00 \$	450.00 - 250.00 250.00 - 10,800.00 100.00 18,720.00 3,025.00 1,350.00 12,000.00 1,200.00 8,800.00 250.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ 500.00 \$ 550.00 \$ 550.00 \$ 5640.00 \$ 500.00	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00 25,662.00 2,552.00 600.00 15,360.00 1,400.00 8,000.00 1,075.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$ 1,035.00 \$ 52.60 \$ 52.60 \$ 77.20 \$ 715.00 \$ 8 830.00 \$ 925.00 \$ 12.00 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$ 41,028.00 \$ 4,246.00 \$ 715.00 \$ 19,920.00 \$ 1,850.00 \$ 4,800.00 \$ 2,490.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 1,200.00 40.00 50.00 400.00 1,200.00 1,200.00 1,000.00 1,000.00	\$ 450.00 \$ - \$ 625.00 \$ 500.00 \$ 500.00 \$ 10,000.00 \$ 1,200.00 \$ 31,200.00 \$ 2,750.00 \$ 400.00 \$ 24,000.00 \$ 2,400.00 \$ 1,175.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 55.00 \$ 55.00 \$ 59.00 \$ 1,500.00 \$ 1,100.00 \$ 1,100.00 \$ 50.00	\$ \$ \$ \$ \$ \$ \$ \$	750.0 3,000.0 3,000.0 700.0 1,500.0 42,900.0 3,245.0 1,500.0 26,400.0 2,200.0 20,000.0 3,000.0
Provide & Imported & I	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid mnection to Existing Sanitary Sewer Main HDPE DR 17 Sanitary Sewer Main by bursting PVC SDR 26 "pressure rated" Sanitary Sewer Main w End of Line Clean Out Sanitary Sewer Service & Service Connection Sanitary Sewer Service & Service Connection Sc. Sanitary Sewer Service Pipe Der TCEQ & City of Temple Requirements	15 0 100% 100% 1 0 4 1 780 55 1 24 2 400	SY LS LS EA EA LF LF EA EA LF EA EA	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 24.00 \$ 55.00 \$ 1,350.00 \$ 500.00 \$ 600.00 \$	450.00 - 250.00 250.00 - 10,800.00 100.00 18,720.00 3,025.00 1,350.00 12,000.00 1,200.00 8,800.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ 500.00 \$ 550.00 \$ 550.00 \$ 5640.00 \$ 500.00	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00 25,662.00 2,552.00 600.00 15,360.00 1,400.00 8,000.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$ 1,035.00 \$ 52.60 \$ 52.60 \$ 77.20 \$ 715.00 \$ 8 830.00 \$ 925.00 \$ 12.00 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$ 41,028.00 \$ 4,246.00 \$ 715.00 \$ 19,920.00 \$ 1,850.00 \$ 4,800.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 1,200.00 40.00 50.00 400.00 1,200.00 1,200.00 1,000.00 1,000.00	\$ 450.00 \$ - \$ 625.00 \$ 500.00 \$ 500.00 \$ 10,000.00 \$ 1,200.00 \$ 31,200.00 \$ 2,750.00 \$ 400.00 \$ 24,000.00 \$ 2,400.00 \$ 4,000.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 55.00 \$ 55.00 \$ 59.00 \$ 1,500.00 \$ 1,100.00 \$ 1,100.00 \$ 50.00	\$ \$ \$ \$ \$ \$ \$ \$	750.0 -
Provide & Improvide & Improvid	move & Replace Ex. HMAC Pavement move & Replace Ex.Gravel Pavement Section mplement a Traffic Control Plan mplement a Trench Safety Plan Remove Existing Sanitary Sewer Manhole Remove Ex Sanitary Sewer Backflow Preventer Dia. Precast Eccentric Conc Mh w/ heavy duty lid mnection to Existing Sanitary Sewer Main HDPE DR 17 Sanitary Sewer Main by bursting PVC SDR 26 "pressure rated" Sanitary Sewer Main w End of Line Clean Out Sanitary Sewer Service & Service Connection Sanitary Sewer Service & Service Connection Sc. Sanitary Sewer Service Pipe Der TCEQ & City of Temple Requirements Wastewater Line Replacement -	15 0 100% 100% 1 0 4 1 780 55 1 24 2 400 100%	SY LS LS EA EA LF LF EA EA LF EA EA	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	30.00 \$ 25.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 250.00 \$ 24.00 \$ 55.00 \$ 1,350.00 \$ 500.00 \$ 600.00 \$	450.00 - 250.00 250.00 - 10,800.00 100.00 18,720.00 3,025.00 1,350.00 12,000.00 1,200.00 8,800.00 250.00	\$ 35.00 \$ 12.00 \$ 1,125.00 \$ 8 800.00 \$ 500.00 \$ 550.00 \$ 550.00 \$ 5640.00 \$ 500.00	525.00 - 1,125.00 800.00 500.00 - 12,000.00 550.00 25,662.00 2,552.00 600.00 15,360.00 1,400.00 8,000.00 1,075.00	\$ 42.40 \$ 19.70 \$ 1,400.00 \$ 190.00 \$ 520.00 \$ 1,035.00 \$ 52.60 \$ 52.60 \$ 77.20 \$ 715.00 \$ 8 830.00 \$ 925.00 \$ 12.00 \$	636.00 \$ - \$ 1,400.00 \$ 190.00 \$ 520.00 \$ - \$ 13,160.00 \$ 670.00 \$ 41,028.00 \$ 4,246.00 \$ 715.00 \$ 19,920.00 \$ 1,850.00 \$ 4,800.00 \$ 2,490.00 \$	30.00 18.00 625.00 625.00 500.00 1,000.00 1,200.00 40.00 50.00 400.00 1,200.00 1,200.00 1,000.00 1,000.00	\$ 450.00 \$ - \$ 625.00 \$ 500.00 \$ 500.00 \$ 10,000.00 \$ 1,200.00 \$ 31,200.00 \$ 2,750.00 \$ 400.00 \$ 24,000.00 \$ 2,400.00 \$ 1,175.00	\$ 50.00 \$ 25.00 \$ 3,000.00 \$ 3,000.00 \$ 700.00 \$ 1,000.00 \$ 5,000.00 \$ 55.00 \$ 55.00 \$ 59.00 \$ 1,500.00 \$ 1,100.00 \$ 1,100.00 \$ 50.00	\$ \$ \$ \$ \$ \$ \$ \$	750.0 3,000.0 3,000.0 700.0 1,500.0 42,900.0 3,245.0 1,500.0 26,400.0 2,200.0 20,000.0 3,000.0

Bid Tabulation Sheet

2010 Wastewater Line Replacement W. Killen & W. Welton between Main & 3rd Street; 37th and 39th between Ave. H & Ave. K

Bid Date: August 10, 2010

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	Base Bid					struction, Inc.	Bell Contr	•			ities, LP		truction, LLC	PM Constructi		•
No.	Item Description	Est. Quan.	UOM	Unit P	rice	Total Cost	Unit Price	lota	al Cost	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	10	tal Cost
1 Si	te R.O.W. Preparation & Clearing	52	STA	\$	50.00 \$	2,600.00	\$ 250.00	\$	13,000.00	\$ 125.00	\$ 6,500.00	\$ 500.00	\$ 26,000.00	\$ 550.00	\$	28,600.00
2 M	obilization, Bonds, Permits, & Insurance	100%	LS	\$ 1,	000.00 \$	1,000.00	\$ 15,600.00	\$	15,600.00	\$ 15,900.00	\$ 15,900.00	\$ 35,000.00	\$ 35,000.00	\$ 15,000.00	\$	15,000.00
3 Sa	awcut, Remove & Replace Ex. HMAC Pavement	59	SY	\$	30.00 \$	1,770.00	\$ 35.00	\$	2,065.00	\$ 42.40	\$ 2,501.60	\$ 30.00	\$ 1,770.00	\$ 50.00	\$	2,950.00
4 Sa	awcut, Remove & Replace Ex.Gravel Pavement Section	18	SY	\$	25.00 \$	450.00	\$ 12.00	\$	216.00	\$ 19.70	\$ 354.60	\$ 18.00	\$ 324.00	\$ 25.00	\$	450.00
5 Pr	ovide & Implement a Traffic Control Plan	100%	LS	\$ 1,	000.00 \$	1,000.00	\$ 4,500.00	\$	4,500.00	\$ 5,600.00	\$ 5,600.00	\$ 2,500.00	\$ 2,500.00	\$ 12,000.00	\$	12,000.00
6 Pr	ovide & Implement a Trench Safety Plan	100%	LS	\$ 1,	000.00 \$	1,000.00	\$ 3,200.00	\$	3,200.00	\$ 760.00	\$ 760.00	\$ 2,500.00	\$ 2,500.00	\$ 12,000.00	\$	12,000.00
7 D	emolish & Remove Existing Sanitary Sewer Manhole	10	EA	\$	250.00 \$	2,500.00	\$ 500.00	\$	5,000.00	\$ 520.00	\$ 5,200.00	\$ 500.00	\$ 5,000.00	\$ 700.00	\$	7,000.00
8 D	emolish & Remove Ex Sanitary Sewer Backflow Preventer	1	EA	\$	250.00 \$	250.00	\$ 330.00	\$	330.00	\$ 1,035.00	\$ 1,035.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$	1,000.00
9 Pi	ovide 4' Dia. Precast Eccentric Conc Mh w/ heavy duty lid	16	EA	\$ 2,	700.00 \$	43,200.00	\$ 3,000.00	\$	48,000.00	\$ 3,290.00	\$ 52,640.00	\$ 2,500.00	\$ 40,000.00	\$ 5,000.00	\$	80,000.00
10 Pi	ovide Connection to Existing Sanitary Sewer Main	8	EA	\$	100.00 \$	800.00	\$ 550.00	\$	4,400.00	\$ 670.00	\$ 5,360.00	\$ 1,200.00	\$ 9,600.00	\$ 1,500.00	\$	12,000.00
11 Pı	ovide 8" HDPE DR 17 Sanitary Sewer Main by bursting	5035	LF	\$	24.00 \$	120,840.00	\$ 32.90	\$ 1	65,651.50	\$ 52.60	\$ 264,841.00	\$ 40.00	\$ 201,400.00	\$ 55.00	\$	276,925.00
12 Pı	ovide 8" PVC SDR 26 "pressure rated" Sanitary Sewer Main	110	LF	\$	55.00 \$	6,050.00	\$ 46.40	\$	5,104.00	\$ 77.20	\$ 8,492.00	\$ 50.00	\$ 5,500.00	\$ 59.00	\$	6,490.00
13 Pı	ovide New End of Line Clean Out	4	EA	\$ 1,	350.00 \$	5,400.00	\$ 600.00	\$	2,400.00	\$ 715.00	\$ 2,860.00	\$ 400.00	\$ 1,600.00	\$ 1,500.00	\$	6,000.00
14 Pı	ovide 4" Sanitary Sewer Service & Service Connection	115	EA	\$	500.00 \$	57,500.00	\$ 640.00	\$	73,600.00	\$ 830.00	\$ 95,450.00	\$ 1,000.00	\$ 115,000.00	\$ 1,100.00	\$	126,500.00
15 Pı	ovide 6" Sanitary Sewer Service & Service Connection	4	EA	\$	500.00 \$	2,400.00	\$ 700.00	\$	2,800.00	\$ 925.00	\$ 3,700.00	\$ 1,200.00	\$ 4,800.00	\$ 1,100.00	\$	4,400.00
16 Pı	ovide Misc. Sanitary Sewer Service Pipe	1400	LF	\$	22.00 \$	30,800.00	\$ 20.00	\$	28,000.00	\$ 12.00	\$ 16,800.00	\$ 10.00	\$ 14,000.00	\$ 50.00	\$	70,000.00
17 AI	Testing per TCEQ & City of Temple Requirements	100%	LS	\$ 1,	000.00 \$	1,000.00	\$ 4,300.00	\$	4,300.00	\$ 9,960.00	\$ 9,960.00	\$ 4,700.00	\$ 4,700.00	\$ 12,000.00	\$	12,000.00
Total I	Bid 2010 Wastewater Line Replacement- W. Killen & W. V	Velton														
betwe	en Main & 3rd Street; 37th and 39th between Ave. H & Av	ve. K			\$	278,560.00		\$ 3	78,166.50		\$ 497,954.20		\$ 470,694.00		\$	673,315.00



2010 SW HK Dodgen Loop, Suite 105 Temple, Texas 76504 (254) 899-0899 Fax (254) 899-0901 www.clark-fuller.com Firm Registration No: F-10384

August 11, 2010

City of Temple Thomas Brown 3210 E. Ave. H, Bldg. A Temple, Texas 76501

Re: City of Temple, 2010 Wastewater Line Replacement – West Killen & West Welton between Main & 3rd Street; 37th and 39th between Ave. H & Ave. K

Dear Mr. Brown,

We have reviewed the bids for the above referenced project. Horseshoe Construction, Inc. submitted a total Bid of \$278,560.00. The Bid for the West Killen and West Welton between North Main and 3rd portion of the project was \$220,440.00 and the bid for the 37th and 39th between Avenue H and Avenue K portion of the project was \$58,120.00. *Please see the enclosed Bid Tabulation Sheet and Bid Schedule Breakout for detailed information.*

The engineer's final opinion of probable cost to construct was \$475,000.00.

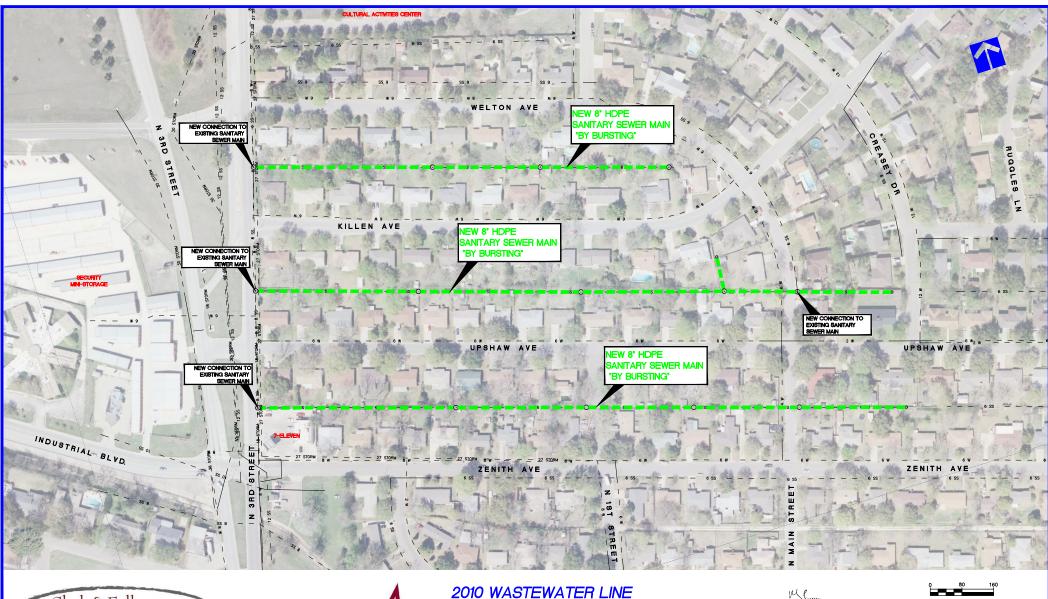
Our firm has no previous experience working with Horseshoe Construction, Inc. Therefore, we contacted numerous entities that have worked with Horseshoe Construction, Inc. and interviewed each as to Horseshoe Construction, Inc's ability to perform timely and quality construction required for this project. Based upon these interviews, we feel Horseshoe Construction, Inc. is a proven company with many successfully completed projects of this scope and magnitude and we look forward to working with them on this project. We are recommending that you award the contract to Horseshoe Construction, Inc.

The list of references can be provided upon request.

Please advise us as to which contractor you select.

Sincerely,

Monty Clark, P.E.





2010 SW HK Dodgen Loop, Suite 105, Temple, Texas 76504 Firm No: F-10384

REPLACEMENT FROM WEST KILLEN AND WEST WELTON BETWEEN Temple NORTH MAIN AND 3RD STREET





NEW SANITARY SEWER MANHOLE



NEW END OF LINE CLEANOUT NEW 8" HDPE SANITARY SEWER MAIN BY "BURSTING" METHODS

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	IN	ICREASE		DE	CREASE
520-5900-535-63-61	100597	Sewer Line Rpl- Btwn 37th & 39th	\$	58,467			
520-5900-535-63-61	100598	Sewer Line Rpl- W Killen		220,938			
520-0000-373-04-11		Water & Sewer Unreserved Ret Earnings					279,405
		Do Not Post					
TOTAL			. \$	279,405		\$	279,405
TOTAL			Ψ	279,403		φ	213,400
EXPLANATION OF ADJ	USTMENT	「 REQUEST- Include justification for increases A		·	und		
EXPLANATION OF ADJ account are available. To fund the construction contr Welton between N Main & 3rd Avenue K. The 37th & 39th str	act with Hors Street, which eet project w	REQUEST- Include justification for increases A seshoe Construction Inc. for the replacement of was included in the revised FY 2010 CIP and 37t was not included in the revised FY 2010 CIP but was projects to minimize cost. Additional funds are appropriate to the control of the cost.	ND r stewa h & 3	reason why fu ater lines alon 39th Street be entified by Pul	ng \ etwo	West	decreased Killen & Wes Avenue H & ks and
EXPLANATION OF ADJ account are available. To fund the construction contr Welton between N Main & 3rd Avenue K. The 37th & 39th str	act with Hors Street, which eet project we water Line p	reshoe Construction Inc. for the replacement of was included in the revised FY 2010 CIP and 37t was not included in the revised FY 2010 CIP but was projects to minimize cost. Additional funds are appropriately the control of the co	ND r stewa h & 3	reason why fu ater lines alon 39th Street be entified by Pul ted to each p	ng \ etwo	West	decreased Killen & Wes Avenue H & ks and
EXPLANATION OF ADJ account are available. To fund the construction contr. Welton between N Main & 3rd Avenue K. The 37th & 39th str included in the FY 2010 Waste	act with Hors Street, which eet project we water Line p	ceshoe Construction Inc. for the replacement of was in was included in the revised FY 2010 CIP and 37t was not included in the revised FY 2010 CIP but was projects to minimize cost. Additional funds are appropriately appropria	stewa h & 3 s ide opria	reason why further lines alor 39th Street be entified by Pulited to each p	ng \ etwo	West	decreased Killen & Wes Avenue H & ks and
EXPLANATION OF ADJ account are available. To fund the construction contr Welton between N Main & 3rd Avenue K. The 37th & 39th str included in the FY 2010 Waste	act with Hors Street, which reet project we water Line p	ceshoe Construction Inc. for the replacement of was in was included in the revised FY 2010 CIP and 37t was not included in the revised FY 2010 CIP but was projects to minimize cost. Additional funds are appropriately appropria	ND restewa	eason why further lines along the Street by Puriting the lines are the lines along the lines are the	ng \ etwo	s in o	Killen & Wes Avenue H & ks and or testing fees
EXPLANATION OF ADJaccount are available. To fund the construction contr. Welton between N Main & 3rd Avenue K. The 37th & 39th str. included in the FY 2010 Waste DOES THIS REQUEST REQUEST REQUEST OF COUNCIL MEETING WITH AGENDA ITEM?	act with Hors Street, which reet project we water Line p	ceshoe Construction Inc. for the replacement of was in was included in the revised FY 2010 CIP and 37t was not included in the revised FY 2010 CIP but was projects to minimize cost. Additional funds are appropriately appropria	ND restewa	eason why further lines alor systems of the systems	ng \ etwo	west west work of the control of the	Killen & Wes Avenue H & ks and or testing fees

RESOLUTION NO.	

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONSTRUCTION CONTRACT WITH HORSESHOE CONSTRUCTION, INC., OF LA PORTE, TEXAS, FOR THE THIRD GROUP OF THE 2010 WASTEWATER LINE REPLACEMENT PROJECTS, WHICH INCLUDES THE REPLACEMENT OF WASTEWATER LINES ALONG WEST KILLEN AND WEST WELTON BETWEEN NORTH MAIN AND 3RD STREET AND 37TH AND 39TH STREET BETWEEN AVENUE H AND AVENUE K, IN AN AMOUNT NOT TO EXCEED \$278,560.00; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, on August 10, 2010, the City received 5 bids for the third group of the 2010 Wastewater Line Replacement Projects, which includes the replacement of wastewater lines along west Killen and West Welton between North Main and 3rd Street and 37th and 39th Street between Avenue H and Avenue K:

Whereas, Staff recommends accepting the bid (\$278,560.00) from Horseshoe Construction, Inc., of La Porte, Texas;

Whereas, funds are available for this project 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:

- <u>Part 1:</u> The City Council authorizes the City Manager, or his designee, to execute a construction contract between the City of Temple and Horseshoe Construction, Inc., of La Porte, Texas, after approval as to form by the City Attorney, for the third group of the 2010 Wastewater Line Replacement Projects, which includes the replacement of wastewater lines along west Killen and West Welton between North Main and 3rd Street and 37th and 39th Street between Avenue H and Avenue K, for a cost not to exceed \$278,560.00.
- <u>Part 2:</u> The City Council approves an amendment to the FY2009-2010 budget, substantially in the form of the copy attached as Exhibit A, for this project.
- <u>Part 3:</u> 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 19th day of August, 2010.

THE CITY OF TEMPLE, TEXAS

ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #4(D) Consent Agenda Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Lonzo Wallace, Jr., Fire Chief Belinda Mattke, Director of Purchasing

<u>ITEM DESCRIPTION:</u> Consider adopting a resolution authorizing the purchase of furniture for the new Central Fire Station from Perry Office Plus of Temple, utilizing Texas State Contracts (TXMAS), in an amount not to exceed \$80,000.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

<u>ITEM SUMMARY:</u> Construction of the new Central Fire Station located at 210 North 3rd Street is scheduled to be complete in early November 2010. Included in the original budget for the facility was funding to acquire new furniture for the facility.

The proposed furniture purchase will furnish all areas with new furniture. A summary of the proposed furniture purchase is as follows:

Hon Desks with components - 15

Hon Storage Units - 46

Hon, Allsteel, and JSC Tables - 9

Task, Visitor, Dining Room, and Conference Room Chairs - 96

Other miscellaneous small tables and stacking chairs

Staff is recommending that the furniture purchases be made through Perry Office Plus utilizing an existing State of Texas TXMAS contract. The cost includes delivery and installation.

FISCAL IMPACT: Funding for the furniture purchase in the amount of \$80,000 is available in account 363-2200-522-6850, project #100120, for the construction of the new Central Fire station from the General Obligation bonds issued in the fall of 2009. After funding architectural services, the construction contract along with three change orders, consulting services, and miscellaneous costs related to the project, a balance of \$2,776,426 is available to fund this furniture purchase.

ATTACHMENTS:

Resolution

RESOLUTION NO.	
RESOLUTION NO.	

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING THE PURCHASE OF FURNITURE FOR THE NEW CENTRAL FIRE STATION FROM PERRY OFFICE PLUS OF TEMPLE, TEXAS, UTILIZING THE TEXAS STATE CONTRACT (TXMAS), IN AN AMOUNT NOT TO EXCEED \$80,000.00; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, construction of the new Central Fire Station is scheduled to be complete in November, 2010 – funds are budgeted to acquire new furniture for the facility;

Whereas, the Staff recommends that the furniture purchases be made through Perry Office Plus utilizing an existing State of Texas (TXMAS) contract;

Whereas, purchase of the furniture will not exceed \$80,000, and funds are available for this purchase in Account No. 363-2200-522-6850, project #100120; 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:

<u>Part 1:</u> The City Council authorizes purchasing furniture for the new Central Fire Station, for a cost not to exceed \$80,000, from Perry Office Plus of Temple, Texas, utilizing an existing State of Texas (TXMAS) contract.

<u>Part 2:</u> 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 19th day of August, 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A. JONES, III, Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger City Secretary	Jonathan Graham City Attorney
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #4(E) Consent Agenda Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

Brian Mabry, AICP, Interim Planning Director

<u>ITEM DESCRIPTION:</u> SECOND READING – A-FY-10-08: Consider adopting an ordinance abandoning two alleys with one alley being approximately 21 feet in width by 343 feet in length, located between Lots 6 though 8, Block 8, Moore-Cole Addition and Block 1, Lang Addition and with the other alley being approximately 48 feet in width and 60 feet in length, located between Block 255, Original City of Temple Addition and Lot 5, Block 8, Moore-Cole Addition near the northwest corner of West Adams Avenue and North 23rd Street.

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

ITEM SUMMARY: HEB Grocery Company requests this abandonment of approximately 0.23 acres of alley right-of-way to replat the property and incorporate the alley into a planned gas station and car wash. Originally, a permanent blanket utility easement and street use license were needed in order to accommodate the gas pumps and canopy. However, HEB has elected to pay to reroute the gas, telecommunication and electrical lines that were originally over and underneath the alley, thus negating the need for a permanent easement. A temporary utility easement for these three utilities will be in place if the City Council approves this abandonment. The temporary easement will expire once the utilities have been relocated.

Staff has been in ongoing contact all utility providers, including all divisions of the Public Works Department, regarding the proposed alley abandonment. There are no objections to the request of the abandonment or of the re-routing of utilities.

HEB Grocery Company is the owner of all property adjacent to the proposed abandonment.

<u>FISCAL IMPACT:</u> If approved, HEB may purchase the abandoned alley, which has a fair market value of \$9,286.08. (The fair market value of the alley increased from the first reading of this proposed abandonment from \$7,825 to the above stated amount due to the permanent public utility easement no longer being required.)

08/19/10 Item #4(E) Consent Agenda Page 2 of 2

ATTACHMENTS:

Application
Abandonment Exhibit
Ordinance

ABANDONMENT APPLICATION

Date:	
Property Owner: HEB Grocery Company 646 S. Main Avenue San Antonio, TX 78204 (210) 412-2	
Name Address Phone #	‡
Applicant: Jonathan R. Neslund 221 West Sixth Street, Suite 600 Austin, TX 78701 (512) 328-0 Name Address Phone #	
Capacity of applicant: ☐ Officer ☐ Broker ☐ Prospective Buyer ☒ Other Engineer	
Email:ineslund@burypartners.com	-
West Adams Avenue Address of Property: and 23rd Street Lot: N/A Block: N/A Subdivision: N/A	
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 received by the Planning Department prior to the notification of utility providers.	a
Type of Abandonment:	
Abandonment Description: Please explain why the abandonment is needed.	
The abandonment is required to finalize the proposed HEB Temple Subdivision Plat. The majority of	of
existing alley right-of-way in the area was previously abandoned.	
Use of Abandonment: Please provide the proposed use of abandoned property, if granted. We propose to use the abandoned alley area for drive aisles, parking, and a fuel pump/canopy. A Street Use License Application will accompany this Abandonment Application for the proposed fuel pump/canopy.	

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.

RECEIVED

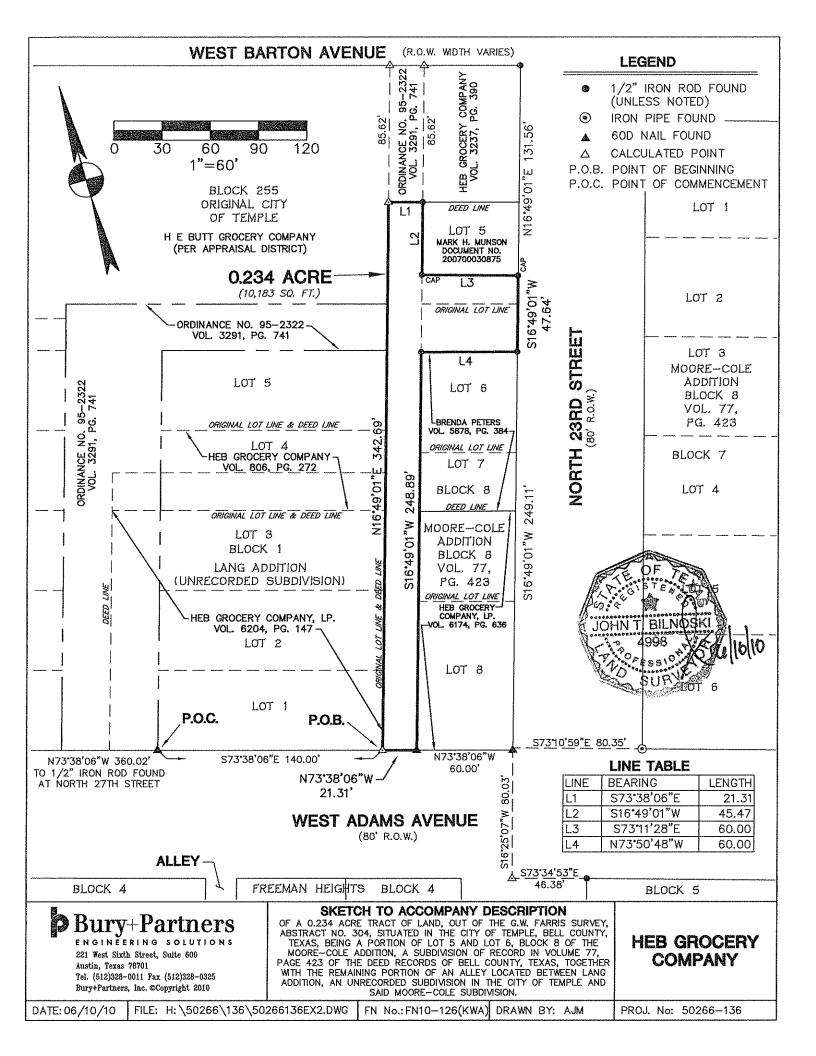
APR 23 2010

City of Temple Planning & Development **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.

	(Viopore) Owner & Signature
For Office Use Only Completed Application Case #: A-1-1-10-08 Zoning Map Page: Tentative City Council Date:	Fee Received By: Many Project Manager: Brian Amalany



ORDINANCE NO. 2010-4366

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, ABANDONING TWO ALLEYS WITH ONE ALLEY BEING APPROXIMATELY 21 FEET IN WIDTH BY 343 FEET IN LENGTH, LOCATED BETWEEN LOTS 6 THROUGH 8, BLOCK 8, MOORE-COLE ADDITION AND BLOCK 1, LANG ADDITION AND WITH THE OTHER ALLEY BEING APPROXIMATELY 48 FEET IN WIDTH AND 60 FEET IN LENGTH, LOCATED BETWEEN BLOCK 255, ORIGINAL CITY OF TEMPLE ADDITION AND LOT 5, BLOCK 8, MOORE-COLE ADDITION, NEAR THE NORTHWEST CORNER OF WEST ADAMS AVENUE AND NORTH 23RD STREET; AUTHORIZING CONVEYANCE OF SUCH PROPERTY BY A DEED WITHOUT WARRANTY: RESERVING A TEMPORARY, NON-EXCLUSIVE, PUBLIC UTILITY EASEMENT FOR PURPOSES OF REMOVING UTILITY FACILITIES THEREFROM; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the City has a request to abandon two alleys that collectively occupy approximately 0.23 acres near the northwest corner of West Adams Avenue and North 23rd Street, within a proposed replat of land by HEB Grocery Company, LP, a Texas limited partnership ("HEB");

Whereas, the Property (as defined below) 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 Property 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 and approve this action.

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

<u>Part 1</u>: The City Council abandons two alleys, with one alley being approximately 21 feet in width by 343 feet in length, located between Lots 6 through 8, Block 8, Moore-Cole Addition and Block 1, Lang Addition and with the other alley being approximately 48 feet in width and 60 feet in length, located between Block 255, Original City of Temple Addition and Lot 5, Block 8, Moore-Cole Addition, near the northwest corner of West Adams Avenue and North 23rd Street, both being more fully

described in <u>Exhibit A</u>, attached hereto and made a part hereof for all purposes (collectively, the "Property").

- 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 (in a form mutually agreed upon by the City and HEB) conveying to HEB the rights and interests of the City of Temple, Texas, in (i) the Property and (ii) the existing 2-inch water line and 6-inch wastewater line within the Property that serve the adjacent HEB property, which when done, shall be and become a binding act and deed of the City of Temple. A temporary, non-exclusive, public utility easement is reserved over those portions of the Property currently containing utility facilities, for the benefit of the Utility Providers (as defined below), for the purpose of removing the such Utility Providers' respective, existing, non-municipal utility facilities from the Property. For purposes hereof, the term "Utility Providers" shall mean: (i) Atmos Energy Corporation, (ii) Oncor Electric Delivery Company LLC, and (iii) Time Warner Cable Company. The temporary easement shall automatically expire as to each Utility Provider upon the removal of the Utility Provider's respective existing non-municipal utility facilities from the Property; provided, however, that HEB shall have the right to request that each Utility Provider execute and provide to HEB a recordable affidavit confirming the expiration of its temporary easement, which may be recorded by HEB in the Real Property Records of Bell County, Texas.
- <u>Part 3</u>: As consideration for the conveyance described in Part 2 hereof, HEB shall pay to the City of Temple the fair market value of the Property and conveyed utility lines therein, in the amount of \$9,286.08.
- <u>Part 4</u>: 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.
- <u>Part 5</u>: 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.
- <u>Part 6</u>: 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 17th day of **June**, 2010.

TABLED on Second Reading on the 1st day of July, 2010.

PASSED AND APPROVED on Second Reading the 19th day of August, 2010.

		THE CITY OF TEMPLE, TEXAS
		WILLIAM A. JONES, III, Mayor
ATTEST:		ATTEST:
Clydette Entzminger		Jonathan Graham
City Secretary		City Attorney
STATE OF TEXAS	§	
COUNTY OF BELL	§	
		efore me on the day of August f the City of Temple, Texas.

Notary Public, State of Texas



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #4(F) Consent Agenda Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Nicole Torralva, Interim Director of Public Works Kenny Henderson, Superintendent of Street Services

<u>ITEM DESCRIPTION:</u> SECOND READING – Consider adopting an ordinance establishing school crosswalks and setting speed limits within school zones to conform to school schedules.

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

<u>ITEM SUMMARY:</u> In August 2009 the City adopted an ordinance establishing school crosswalks and setting limits within school zones as agreed upon by the City, TISD and BISD. BISD has requested that the City extend the school zone time on Tarver Road and Cedar Lane at Lake Belton Middle School from 4:00 pm to 4:30 pm. The original times were set when students were released at 3:00 pm. Students are now being released at 3:45 pm causing a need to extend school times at these locations.

FISCAL IMPACT: None

ATTACHMENTS:

List of school crossings Ordinance

City of Temple School Zones

		1	
Schools	Cones	Flags	Zone Times
Bethune Elementary			
510 E Ave J			
A. Crossing guard works crosswalk	Yes	Yes	
on MLK Blvd and Ave J	163	163	
B. School Zone is on E Ave J and S 10th St.			
The front and westside of school			
C. One Way on S 10th St from E Ave I to			One Way Time as Posted
E Ave J			7:00 to 8:30
			14:00 to 15:30
Cater Elementary			
4111 Lark Trail			
A. Crossing guard works Crosswalk	Yes	Yes	
in school parking area	163	165	
B. School Zone is on Lark Trail infront of			
School			
Emerson Elementary			
1400 E Ave B			
A. Crossing Guard works Crosswalk	Yes	Yes	
Works E Ave B and S 24th ST			
Hector P. Garcia Elementary			
2525 Lavendusky Dr	No	No	
A. No Crosswalk			
Jefferson Elementary			Flashing Lights
400 W. Walker Ave		.,	00 00 (= 00 00
A. Crossing Guards (2) Works Crosswalk	Yes	Yes	06:30 to 08:30
At N 3rd St and W. Walker Ave			14:45 to 16:30
B. Crossing Guard works Crosswalk			
at N 3rd ST and Industrial Blvd this is a			
controlled signal light.			
C. Flashing lights on N 3rd St are North of			
W. Walker Ave and North of W Shell Ave.			
Kennedy-Powell Elementary			Flashing Lights
3707 W. Nugent Ave			00.001.000
A. Crossing Guard will work Crosswalks			06:30 to 08:30
W. Nugent Ave and Cearley Rd.	Yes	Yes	14:45 to 16:30
B. Flashing lights on W. Nugent Ave west			
and east of Cearley Rd			
Dickson Elementary			
1100 S 33rd St			One Way Time as Posted
A. One way south from W Ave K to W Ave			7:00 to 8:30
 L			14:00 to 15:00
Meridith-Dunbar			Flashing Lights
1717 E Ave J			00.001.000
A. Crossing Guard will work Crosswalks		,,	06:30 to 08:30
at S 30th St and E. Ave J	Yes	Yes	14:45 to 16:30
B. Flashing lights on S 30th St			
C. One Way on E Ave J from S 30th St to			One Way Time as Posted
S 34th St at posted times			7:00 to 8:30
			14:00 to 15:00

City of Temple School Zones

			<u> </u>
Schools	Cones	Flags	Zone Times
Raye Allen Elementary			Flashing Lights
5015 S 5th St			
A. Crossing Guards will work Crosswalks	Yes	Yes	06:30 to 08:30
on S 5th St			14:45 to 16:30
B. Flashing lights on S 5th St north and			
south of school			
Scott Elementary			Flashing Lights
2301 W Ave P			
A. Crossing Guard will work Crosswalk			06:30 to 08:30
on W Ave P			14:45 to 16:30
B. Crossing Guard will work Crosswalk	Yes	Yes	
on W Ave M @ S 45th St.			
C. Flashing lights on W Ave P east of			
S 49th St and west of S 39th St.			
Thornton Elementary			School Zone Signs
2900 Pin Oak Dr			07:30 to 8:30
			14:30 to 16:00
A. Crossing Guard will work Crosswalk	Yes	Yes	
on Pin Oak @ East Dr.			One Way Time as Posted
B. One way on Pin Oak from East Dr. to			7:30 to 8:30
Mesquite at posted times			14:30 to 16:00
Western Hills Elementary			Flashing Lights
600 Arapaho			3 3 4
A. Crossing Gruard will work Crosswalk			06:30 to 08:30
on Apache @ Deer Tr			14:45 to 16:30
B. Crossing Guard will work Crosswalk	Yes	Yes	
on Apache @ Gila			
C. Flashing lights on Apache North of Deer			
Tr. South of Gila.			
Bonham Middle School	1		Flashing Lights
4600 Midway Dr			
A. Flashing Lights on Midway Dr. east and			
west of school.			07:00 to 08:30
			15:00 to 16:30
Lamar Middle School	1		Flashing Lights
2120 N 1st St			<u> </u>
A. Flashing lights on N 3rd St are North of			06:30 to 08:30
W. Walker Ave and North of W Shell Ave.			14:45 to 16:30
B. One way on N 1st St from W Park Ave			One Way Time as Posted
to W. Virgina Ave at posted times			7:30 to 8:30
<u> </u>			15:00 to 16:00
	1		

City of Temple School Zones

Schools	Cones	Flags	Zone Times
Travis Middle School			
1500 S 19th St			
A. Crossing Guard will work Crosswalk			
on W Ave M @ S 19th St			
B. One way on S 19th St from W Ave R to			One Way Time as Posted
W Ave M			7:30 to 8:30
			14:30 to 16:00
Temple High School			Flashing Lights
415 N 31st St			
A. Flashing Lights on N 31st St north			07:00 to 16:00
of W Barton Ave and North of W Houston			
Ave			
Temple High School Campus			School Zone Signs
1414 W Barton Ave			07.00 / 10.00
A. School Zone on Barton from N 31st St to			07:00 to 16:30
North 27th St	-		
<u>B.I.S.D</u>			
Lakewood Elementary			Flashing Lights
11200 FM 2305			
A. Flashing lights on FM 2305 in front of			7:15 to 8:00
school			14:15 to 15:00
05.700.			1 1110 10 10100
Joe M. Pirtle Elementary			Flashing Lights
714 South Pea Ridge Rd			
A. Flashing lights on South Pea Ridge			7:15 to 8:00
in from of school			14:15 to 15:00
Tarver Elementary			School Zone Signs
7949 Shone Hollow Dr			
A. School Zone on Stone Hollow Dr in			7:00 to 8:30
front of school.			14:30 to 16:00
B. School Zone on Prairie Lark on northside			
of school			
B. School Zone on on Westfield on			
southside of school			
Lake Belton Middle School			Flashing Lights
8815 Tarver			
A. Flashing lights on Tarver in front of			7:00 to 8:30
school.			14:30 to 16:30
B. School zone on Cedar Ln from Tarver to			School Zone Signs
just north of school			7.00 / 0.00
			7:00 to 8:30
			14:30 to 16:30

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, ESTABLISHING SCHOOL CROSSWALKS IN THE CITY OF TEMPLE; PROVIDING FOR REASONABLE AND PRUDENT PRIMA FACIE MAXIMUM SPEED LIMITS IN THE SCHOOL ZONES; DECLARING FINDINGS OF FACT; PROVIDING FOR A PENALTY FOR VIOLATIONS NOT TO EXCEED \$500 FOR EACH VIOLATION; PROVIDING AN EFFECTIVE DATE; PROVIDING A REPEALER; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the City Staff and the Temple Independent School District worked together to establish recommended school crosswalk locations in the City of Temple and entered into an interlocal agreement in 1997 regarding the designation and equipping of school zones within the City;

Whereas, the Temple Independent School District and the City of Temple desire to update the crosswalk and school zone time schedule;

Whereas, an engineering and traffic investigation has been made to determine the reasonable and prudent prima facie maximum speed for motor vehicles within the school zones;

Whereas, it has been determined by these traffic and engineering investigations that the reasonable and safe prima facie maximum speed limit shall be 20 miles per hour; and

Whereas, the City Council has considered the matter and deems it in the public interest to approve the school crosswalks, including the speed limits within the school zones, for the benefit of the citizens for the promotion of the public welfare and safety.

Now, Therefore, Be It Ordained By The City Council Of The City Of Temple, Texas, That:

- <u>Part 1</u>: The City of Temple hereby establishes the school crosswalk locations, which are more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.
- <u>Part 2</u>: The Director of Public Works is authorized to proceed with installation of flashing lights and school crossing painting and signage, as needed, for the locations described in Exhibit A.
- <u>Part 3</u>: The reasonable and prudent prima facie maximum speed limit for vehicular traffic within the school zones described in Exhibit A, shall be established at 20 miles per hour on the days when school is in session.
- <u>Part 4</u>: It shall be unlawful for any person to drive or operate a motor vehicle, bicycle, or other vehicle of any kind, whether or not motor powered, on that portion of the roadways described above under the conditions described herein, at a speed greater than is reasonable and prudent under the circumstances then existing, but any speed in excess of the

reasonable and prudent prima facie maximum speed limits as set forth in Part 3 hereof shall be prima facie evidence that such speed is not reasonable or prudent and that it is unlawful.

- <u>Part 5</u>: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.
- **Part 6**: A person who violates a provision of this ordinance is guilty of a separate offense for each day or portion of a day which the offense is committed, continued, or permitted, and each offense is punishable by a fine not to exceed \$500.
- <u>Part 7</u>: 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.
- <u>Part 8</u>: This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.
- **Part 9**: It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the 5th day of **August**, 2010.

PASSED AND APPROVED on Second Reading on the 19th day of August. 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A. JONES, III, Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #4(G-1) Consent Agenda Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

Traci L. Barnard, Director of Finance

ITEM DESCRIPTION: SECOND READING - Consider adopting an ordinance authorizing an amendment to the Tax Increment Financing Reinvestment Zone No. 1 Financing Plan for FY 2010 to allocate \$134,601 of additional funds for general engineering services, to allocate \$39,205 to fund contract amendment #1 for the 2022 Master Plan Phase II, to allocate funds related to the 2009 bond refunding transaction, and for FY 2010-2022 to reduce debt service payments due to the 2009 bond refunding.

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

<u>ITEM SUMMARY:</u> Amendments to the Financing Plan are outlined below. The Reinvestment Zone No. 1 Board approved the recommendation to amend the Financing Plan at is July 28, 2010, board meeting.

The proposed amendments adjust the following line items on the Project/Financing Plan for FY 2010:

Line 50 - Professional Services: Increased professional services by \$173,806 for the following: to fund a contract amendment with Kasberg, Patrick and Associates for the 2022 Master Plan Phase II in the amount of \$39,205; to fund general engineering services currently expended in the amount of \$9,601; to fund future general engineering services in the amount of \$125,000. Funding in the amount of \$37,770 from the bond refunding and debt service payment savings was used to partially fund the increase, line 626. The remaining amount needed of \$136,036 is from general public improvements, line 500.

Line 628 - Issuance Costs: Increased by \$57,331 to cover the issuance costs related to the refunding. Proceeds from refunding covered the issuance costs, Line 629.

Line 629 – Refunding Bond Proceeds/Payment to Refunding Bond Agent: Increased to reflect transaction related to partial refunding of 2008 Bond issue. Zone received \$10,877,950 in refunding bond proceeds and paid \$10,810,887 to partially refund the 2008 Bond issue.

The proposed amendments adjust the following line items on the Project/Financing Plan for FY 2010-2022:

Line 626 – Debt Service 2008 Issue: Reduced the amount of debt service payments due to the 2009 bond refunding issue to partially refund the 2008 bonds. The savings over the life of the bonds (through FY 2022) is \$845,987 ranging from a savings of \$62,831 to \$112,011 per year.

Line 626 A – Debt Service 2009 Refunding Issue: Added the debt service payments due to the 2009 bond refunding issue.

FISCAL IMPACT: In FY 2010, there is no change to ending fund balance. Funding has been reallocated between bond refinancing savings and public improvements. In FY 2011-2022, the savings from the refunding has increased ending fund balance. Total savings due to the refunding is \$845,987, with \$37,770 of that amount being appropriated in FY 2010.

A budget adjustment is presented for Council's approval reallocating funds within the FY 2010 Financing Plan.

ATTACHMENTS:

Financing Plan
Summary Financing Plan with Detailed Project Plan
Budget Adjustment
Ordinance

DESCRIPTION	Y/E 9/30/10 Year 28	Y/E 9/30/11 Year 29	Y/E 9/30/12 Year 30	Y/E 9/30/13 Year 31	Y/E 9/30/14 Year 32	Y/E 9/30/15 Year 33	Y/E 9/30/16 Year 34	Y/E 9/30/17 Year 35	Y/E 9/30/18 Year 36	Y/E 9/30/19 Year 37	Y/E 9/30/20 Year 38	Y/E 9/30/21 Year 39	Y/E 9/30/22 Year 40
Appraised Value	\$ 140,238,368 \$	144,626,499	\$ 212,822,764	\$ 233,450,991	\$ 235,785,501 \$	238,143,356	\$ 240,524,790	\$ 242,930,038 \$	245,359,338	\$ 314,562,931	\$ 336,208,561	\$ 339,570,646	\$ 342,966,353
5 FUND BALANCE, Begin	\$ 7,946,615 \$	3,730,514	\$ 3,752,916	3,004,305	\$ 3,044,080 \$	3,538,900	\$ 3,578,807	\$ 3,673,796 \$	3,331,080	\$ 3,273,128	\$ 3,617,647	\$ 3,858,993	\$ 4,173,814
SOURCES OF CASH:													
10 Tax Revenues	4,592,298	4,679,594	6,271,181	6,789,596	6,857,023	6,925,124	6,993,906	7,063,376	7,133,540	8,749,666	9,249,246	9,341,269	9,434,212
15 Allowance for Uncoll. Taxes	(112,341)	(114,517)	(115,655)	(116,801)	(117,961)	(119,132)	(120,314)	(121,509)	(122,715)	(123,934)	(125,165)	(126,408)	(127,663)
20 Interest Income-Bonds	-	-	-	-	-	-	-	-	-	-	-	-	-
25 Interest Income-Other	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	40,000	40,000	30,000	10,000
30 Other-Bond Proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-
33 Miscellaneous Reimbursements (GST)	-	-	-	-	-	-	-	-	-	-	-	-	-
34 Sale of Land	-	-	-	-	-	-	-	-	-	-	-	-	-
35 Grant Funds	-	-	-	-	-	-	=	-	-	-	-	-	-
35 Miscellaneous Income		-	-	-	-	-	-	-	-	-	-	-	-
40 TOTAL SOURCES	4,529,957	4,615,077	6,205,526	6,722,795	6,789,062	6,855,992	6,923,592	6,991,867	7,060,825	8,665,732	9,164,081	9,244,861	9,316,549
USES OF CASH:													
Operating Expenses													
50 Prof Svcs/Proj Mgmt	333,463	93,847	95,724	97,638	99,591	101,583	103,615	105,687	107,801	109,957	112,156	114,399	116,687
51 Legal/Audit	1,100	1,100	1,200	1,200	1,200	1,200	1,200	1,300	1,300	1,300	1,300	1,300	1,400
55 Zone Mtc	175,000	175,000	175,000	175,000	175,000	175,000	175,000	175,000	175,000	175,000	175,000	175,000	175,000
60 TEDC	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
62 Other Contracted Services	-	-	-	-	-	-	-	-	-	- 04 500	- 04.700	-	-
65 TISD-Joint Use facilities	152,132 761,695	22,647 392,594	22,873	23,102 396,940	23,333 399,124	23,567 401,350	23,802 403,617	24,040 406,027	24,281 408,382	24,523 410,780	24,769 413,225	25,016 415,715	25,267 418,354
90 Subtotal-Operating Expenses	761,695	392,594	394,797	396,940	399,124	401,350	403,617	406,027	408,382	410,780	413,225	415,715	418,354
Projects (2)													
199 North Zone (3)	1,338,183	-	-	800,000	-	-	-	-	2,700,000	-	-	-	-
299 Western Aviation Zone (3)	101,662	1,225,150	2,175,850	1,100,000	-	-	-	-	-	-	-	-	-
Western Bio-Science & Medical Zone (3)	909,164	-	-	-	-	-	-	-	-	-	-	-	-
400 Southeast Industrial Park Zone (3)	1,246,000	-	-	-	-	-	=	-	-	-	-	-	-
405 General Roadway Improvements	250,111	-	-	-	-	-	-	-	-	-	-	-	-
410 Major Gateway Entrances	400,000	400,000 195,747	107 601	- 100 CEE	-	-	- 205 667	-	-	-	-	-	-
415 Downtown Improvements420 Loop 363 Improvements	388,769	195,747	197,691	199,655 -	201,639	203,643	205,667	207,710	209,775	211,860	213,966	216,093	218,241
· ·	905,410 176,730	-	-	-	-	-	-	-	-	-	-	-	-
500 Zone Projects - Bond Contingency		400,000	400.000	400.000	1 000 000	2 400 000	2 400 000	2 000 000	-	2 000 000	4 400 000	4 400 000	- 6 700 700
500 Zone Projects - Public Improvements 600 Subtotal-Projects	263,964 5,979,993	400,000 2,220,897	400,000 2,773,541	400,000 2,499,655	1,900,000 2,101,639	2,400,000 2,603,643	2,400,000 2,605,667	2,900,000 3,107,710	2,909,775	3,900,000 4,111,860	4,400,000 4,613,966	4,400,000 4,616,093	6,788,783 7,007,024
Gubiotai-i Tojecis	0,070,000	2,220,007	2,770,041	2,400,000	2,101,000	2,000,040	2,000,007	5,107,710	2,300,773	4,111,000	4,010,000	4,010,000	7,007,024
<u>Debt Service</u>													
625 2003 Bond Issue	868,545	868,420	867,035	869,055	869,855	868,930	866,530	867,440	866,753	869,240	869,640	868,070	870,070
626 2008 Bond Issue-Nontaxable {\$16.010 mil}	201,960	201,960	201,960	201,960	201,960	201,960	201,960	201,960	201,960	201,960	1,786,960	1,787,292	1,784,972
626A 2009 Bond Refunding-Nontaxable	405,462	370,669	1,473,669	1,474,569	1,479,969	1,499,769	1,508,775	1,510,150	1,488,750	1,485,000	-	-	-
627 2008 Bond Issue-Taxable {\$10.365 mil}	536,935	536,935	1,241,935	1,239,641	1,240,495	1,239,233	1,240,854	1,240,096	1,241,957	1,241,173	1,237,744	1,241,670	1,242,422
628 Issuance Costs	57,331	-	-	-	-	-	-	-	-	-	-	-	-
629 Refunding Bonds Proceeds	(10,877,950)	-	-	-	-	-	-	-	-	-	-	-	-
629 Payment to Refunding Bond Agent	10,810,887	-	1 000	-	-	-	1 000	-	1 000	-	-	1 000	-
630 Paying Agent Services	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200
635 Subtotal-Debt Service	2,004,370	1,979,184	3,785,799	3,786,425	3,793,479	3,811,092	3,819,319	3,820,846	3,800,620	3,798,573	3,895,544	3,898,232	3,898,664
650 TOTAL USES	8,746,058	4,592,675	6,954,137	6,683,020	6,294,242	6,816,085	6,828,603	7,334,583	7,118,777	8,321,213	8,922,735	8,930,040	11,324,042
660 FUND BALANCE, End	3,730,514	3,752,916	3,004,305	3,044,080	3,538,900	3,578,807	3,673,796	3,331,080	3,273,128	3,617,647	3,858,993	4,173,814	2,166,321
670 Required Debt Reserve	(880,371)	(880,371)	(880,371)	(880,371)	(880,371)	(880,371)	(880,371)	(880,371)	(880,371)	(880,371)	(880,371)	(880,371)	<u> </u>
700 AVAILABLE FUND BALANCE	\$ 2,850,143 \$	2,872,545	\$ 2,123,934	2,163,709	\$ 2,658,529 \$	2,698,436	\$ 2,793,425	\$ 2,450,709 \$	2,392,757	\$ 2,737,276	\$ 2,978,622	\$ 3,293,443	\$ 2,166,321
ess FUND DALANCE D	7.040.045	0.700.514	0.750.040	0.004.005	0.044.000	0.500.000	0.570.007	0.070.700	0.004.000	0.070.400	0.047.047	0.050.000	4 470 04 4
800 FUND BALANCE, Begin	7,946,615	3,730,514	3,752,916	3,004,305	3,044,080	3,538,900	3,578,807	3,673,796	3,331,080	3,273,128	3,617,647	3,858,993	4,173,814
805 Revenue over(under)expense810 FUND BALANCE, End	(4,216,101) \$ 3,730,514 \$	22,402 3,752,916	(748,611) \$ 3,004,305	39,775 3,044,080	494,820 \$ 3,538,900 \$	39,907 3,578,807	94,989 \$ 3,673,796	(342,716) \$ 3,331,080 \$	(57,952) 3,273,128	344,519 \$ 3,617,647	241,346 \$ 3,858,993	\$ 4,173,814	\$ 2,166,321
TARZ # 1 (TIT)\Financing Plan\Financing	φ 3,730,314 φ	0,702,910	Ψ 0,004,000 (0,074,000	ψ 0,000,000 Φ	0,070,007	ψ 0,070,790	ψ 0,001,000 φ	0,270,120	ψ 0,017,0 4 7	Ψ 0,000,000	Ψ +,170,014	Ψ 2,100,021

T:\RZ # 1 (TIF)\Financing Plan\Financing Plan 07-28-10.xls

TIF Reinvestment Zone #1 Summary Financing Plan with Detailed Project Plan Project Plan - 07/28/10 - to Zone Board

		SUMMAR	Y FINANCING	PLAN			
5 B e	eginning Available Fund Balance, Oct 1	FY 2010 7,946,615	FY 2011 3,730,514	FY 2012 3,752,916	FY 2013 3,004,305	FY 2014 3,044,080	FY 2015 3,538,900
, ,	egiiiiiig Available i uliu balalice, Oct i	7,340,013	3,730,314	3,732,310	3,004,303	3,044,000	0,000,000
40 To	otal Sources (Revenue & Bonds)	4,529,957	4,615,077	6,205,526	6,722,795	6,789,062	6,855,992
	ess Required Debt Reserve		-	-	-	-	=
49 N 6	et Available for Appropriation	12,476,572	8,345,591	9,958,442	9,727,100	9,833,142	10,394,892
50 G	eneral Administrative Expenditures	334,563	94,947	96,924	98,838	100,791	102,783
	one Maintenance	175,000	175,000	175,000	175,000	175,000	175,000
60 C	ontractual Payments (TEDC)	100,000	100,000	100,000	100,000	100,000	100,000
	ther Contracted Services	-	-	=	=	=	-
	SD - Joint Use Facilities	152,132	22,647	22,873	23,102	23,333	23,567
	ebt Service - 2003 Issue ebt Service - 2008 Issue {\$16.010 mil}	869,745 201,960	869,620 201,960	868,235 201,960	870,255 201,960	871,055 201,960	870,130 201,960
	ebt Service - 2009 Issue {Refunding}	405,462	370,669	1,473,669	1,474,569	1,479,969	1,499,769
	ebt Service - 2008 Taxable Issue {\$10.365 mil}	536,935	536,935	1,241,935	1,239,641	1,240,495	1,239,230
	suance Costs	57,331	-	-	-	-	-
	efunding Bond Proceeds	(10,877,950)	-	-	-	-	-
	ayment to Refunding Bond Agent otal Operating & Committed Expenditures	10,810,887 2,766,065	2,371,778	4,180,596	4,183,365	4,192,603	4,212,442
	et Available for Projects		\$ 5,973,813			\$ 5,640,539 \$, ,
33 140	et Available for Frojects	Ψ 3,710,307	φ 5,375,015	ψ 3,777,040	Ψ 3,343,733	ψ 3,040,333 ψ	0,102,430
		PI	ROJECT PLAN				
		EV 2010	EV 2011	EV 2012	EV 2012	EV 2014	EV 001E
N	ORTH ZONE (including Enterprise Park):	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
_	ailroad Spur Improvements	667,166	_	_	-	_	_
	m Creek Detention Pond	98,227	-	-	-	-	-
	ailroad Improvements Engineering Analysis	-	-	-	-	-	-
	ailroad Repairs/Maintenance based on Analysis	254,893	-	=	=	=	-
120 Er	nterprise Park Water Tank	-	-	-	800,000	-	-
	OW Acquisition - Public Improvements	3,661	-	-	-	-	-
	and Acq-Wendland property {approx 355 acres}	-	=	=	=	=	-
	endland Road Improvements tension of Rail Service	192,686 121,550	-	-	-	-	-
199	Total North Zone (including Enterprise Park)	1,338,183	-	-	800,000	-	-
	ESTERN AVIATION ZONE:						
	etention Pond #2 including W 1-A	-	=	=	-	=	-
	ld Howard Road from Ind Blvd to SH36 ld Howard Road Gateway Entrance Project	-	-	-	-	-	-
	WIWaste Water Ext SH36 to Ind Blvd	<u>-</u>	_	_	-	_	_
	I-B, W I-BIndustrial Blvd Extension	-	-	-	-	-	-
221 Ai	rport Park Infrastructure Construction	101,662	-	-	-	-	-
225 Ai	rport Study	-	-	-	-	-	-
	rport Trail Roadway-Ind Blvd to Pepper Crk (RIII)	-	115,500	654,500	-	-	-
	rport Trail Utilities (W-V, W II, W III)	-	109,650	621,350	-	-	-
	ld Howard North (R II) rport Trail Roadway-Pepper Crk to Mouser (R V)	-	1,000,000	700,000 200,000	1,100,000	-	-
299 299	Total Western Aviation Zone	101,662	1,225,150	2,175,850	1,100,000		
		,	1,220,100	2,770,000	1,100,000		
W	ESTERN BIO-SCIENCE & MEDICAL ZONE:						
	reenbelt Development along Pepper Creek	321,723	-	-	-	-	-
	uter Loop Phase 2	245,320	-	-	-	-	-
	o-Science Park Phase 1 uter Loop	42,121 300,000	-	-	-	-	-
	uter Loop o-Science Institute	300,000	-	-	-	-	-
399	Total Western Bio-Science & Medical Zone	909,164	·-	-	-	-	-
_	THER PROJECTS:	4 040 000					
	outheast Ind Park (Lorainne Drive)	1,246,000	-	-	-	-	-
	oadway Maintenance/Improvements ateway Entrance Projects (after Old Howard)	250,111 400,000	400,000	-	-	-	-
	owntown Improvements	388,769	195,747	197,691	199,655	201,639	203,64
	pop 363 Improvements (TxDOT commitment)	905,410	,,	-	-		
	eserve for Acer facility	-	-	-	-	-	-
499	Total Other Projects	3,190,290	595,747	197,691	199,655	201,639	203,64
500 Ur	ndesignated Funding-Public Impr-nontaxable bonds	176,730	-	-	-	-	-
	ndesignated Funding-Public Impr	263,964	400,000	400,000	400,000	1,900,000	2,400,000
600 T	otal Planned Project Expenditures	5,979,993	2,220,897	2,773,541	2,499,655	2,101,639	2,603,643
660 FL	und Balance at Year End	\$ 3,730,514	\$ 3,752,916	\$ 3,004,305	\$ 3,044,080	\$ 3,538,900 \$	3,578,807
	equired Debt Reserve	(880,371)	(880,371)	(880,371)	(880,371)	(880,371)	(880,371
	VAILABLE FUND BALANCE		\$ 2,872,545	\$ 2,123,934		\$ 2,658,529 \$	

7/23/2010 T:\RZ # 1 (TIF)\Project Plan\RZ#1 - Project Plan - 07-28-10.xls



FY	20	10

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.

PROJECT ACCOUNT NUMBER ACCOUNT DESCRIPTION INCREASE DECREASE Professional-Master Plan \$ 795-9500-531-26-16 39,205 \$ 795-9500-531-26-16 Professional-General Engineering 9.601 \$ 795-9500-531-26-16 Professional-General Engineering 125,000 795-9500-531-72-11 Debt Service Interest 37.770 795-9500-531-63-17 100543 General Public Improvements 136,036 Allocate funds for engineering services (cont amend & general) 795-0000-490-15-75 Refunding Bonds \$ 10,875,000 795-0000-490-15-18 Original Issue Premium 2,950 795-9500-531-73-12 Issuance Costs 57,331 \$ 10,810,887 795-9500-531-75-50 Payment to Refunding Agent 795-9500-531-72-11 Debt Service Interest \$ 9,732 Allocate funds related to the 2009 **Bond Refunding** \$ 21,929,706 173,806 TOTAL..... EXPLANATION OF ADJUSTMENT REQUEST- Include justification for increases AND reason why funds in decreased account are available. Budget Adjustment to amend the Tax Increment Financing Reinvestment Zone No. 1 Financing Plan for FY 2010 to allocate \$39,205 to fund contract amendment #1 for the 2022 Master Plan Phase II, \$9,601 to fund general engineering services currently expended, and \$125,000 for future general engineering services. This BA also amends the Financing Plan for FY 2010 to allocate funds related to the 2009 bond refunding transaction. X Yes No DOES THIS REQUEST REQUIRE COUNCIL APPROVAL? DATE OF COUNCIL MEETING 8/19/2010 WITH AGENDA ITEM? X Yes Approved Department Head/Division Director Date Disapproved Approved Finance Date Disapproved Approved Disapproved City Manager Date

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AMENDING THE TAX INCREMENT FINANCING REINVESTMENT ZONE NO. 1 FINANCING PLAN FOR FY 2010 TO ALLOCATE \$134,601 OF ADDITIONAL FUNDS FOR GENERAL ENGINEERING SERVICES, TO ALLOCATE \$39,205 TO FUND CONTRACT AMENDMENT #1 FOR THE 2022 MASTER PLAN PHASE II, TO ALLOCATE FUNDS RELATED TO THE 2009 BOND REFUNDING TRANSACTION, AND FOR FY 2010-2022 TO REDUCE DEBT SERVICE PAYMENTS DUE TO THE 2009 BOND REFUNDING; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; DECLARING FINDINGS OF FACT; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the City Council (the "Council") of the City of Temple, Texas, (the "City") created Reinvestment Zone Number One, City of Temple, Texas (the "Zone") by Ordinance No. 1457 adopted on September 16, 1982;

Whereas, the Council adopted a Project Plan and Reinvestment Zone Financing Plan for the Zone by Ordinance No. 1525 adopted on December 22, 1983, and thereafter amended such plans by Ordinance No. 1664 adopted on June 20, 1985, Ordinance No. 1719 adopted on November 21, 1985, Ordinance No. 1888 adopted on December 21, 1987, Ordinance No. 1945 adopted on October 20, 1988; Ordinance No. 1961 adopted on December 1, 1988; Ordinance No. 2039 adopted on April 19, 1990; Ordinance No. 91-2119 adopted on December 5, 1991; Ordinance No. 92-2138 adopted on April 7, 1992; Ordinance No. 94-2260 adopted on March 3, 1994; Ordinance No. 95-2351 adopted on June 15, 1995; Ordinance No. 98-2542 adopted on February 5, 1998; Ordinance No. 98-2582 adopted on November 19, 1998; Ordinance No. 99-2619 adopted on March 18, 1999; Ordinance No. 99-2629 adopted on May 6, 1999; Ordinance No. 99-2631 adopted on May 20, 1999; Ordinance No. 99-2647 adopted on August 19, 1999; Ordinance No. 99-2678 adopted on December 16, 1999; Ordinance No. 2000-2682 adopted on January 6, 2000; Ordinance No. 2000-2729 adopted on October 19, 2000; Ordinance No. 2001-2772 adopted on June 7, 2001; Ordinance No. 2001-2782 adopted on July 19, 2001; Ordinance No. 2001-2793 adopted on September 20, 2001; Ordinance No. 2001-2807 on November 15, 2001; Ordinance No. 2001-2813 on December 20, 2001; Ordinance No. 2002-2833 on March 21, 2002; Ordinance No. 2002-2838 on April 18, 2002; Ordinance No. 2002-3847 on June 20, 2002; Ordinance No. 2002-3848 on June 20, 2002; Ordinance No. 2002-3868 on October 17, 2002; Ordinance No. 2003-3888 on February 20, 2003; Ordinance No. 2003-3894 on April 17, 2003; Ordinance No 2003-3926 on September 18, 2003; Ordinance No. 2004-3695 on July 1, 2004; Ordinance No. 2004-3975 on August 19, 2004; Ordinance No. 2004-3981 on September 16, 2004; Ordinance No. 2005-4001 on May 5, 2005; Ordinance No. 2005-4038 on September 15, 2005; Ordinance No. 2006-4051 on January 5, 2006; Ordinance No. 2006-4076 on the 18th day of May, 2006; Ordinance No. 2006-4118; Ordinance No. 2007-4141 on the 19th day of April, 2007; Ordinance No. 2007-4155 on July 19, 2007; Ordinance No. 2007-4172 on the 20th day of

September, 2007; Ordinance No. 2007-4173 on October 25, 2007; Ordinance No. 2008-4201 on the 21st day of February, 2008; and Ordinance No. 2008-4217 the 15th day of May, 2008; Ordinance No. 2008-4242 the 21st day of August, 2009; Ordinance No. 2009-4290 on the 16th day of April, 2009; Ordinance No. 2009-4294 on the 21st day of May, 2009; Ordinance No. 2009-4316 on the 17th day of September, 2009; Ordinance No. 2009-4320 on the 15th day of October, 2009; and Ordinance No. 2010-4338 on the 18th day of February, 2010;

Whereas, the Board of Directors of the Zone has adopted an additional amendment to the Reinvestment Zone Financing Plan for the Zone and forwarded such amendment to the Council for appropriate action;

Whereas, the Council finds it necessary to amend the Reinvestment Zone Financing Plan for the Zone to include financial information as hereinafter set forth;

Whereas, the Council finds that it is necessary and convenient to the implementation of the Reinvestment Zone Financing Plan, including the additional amendment, to establish and provide for an economic development program within the meaning of Article III, Section 52-a of the Texas Constitution ("Article III, Section 52-a"), Section 311.010(h) of the Texas Tax Code and Chapter 380 of the Texas Local Government Code to develop and diversify the economy of the Zone, eliminate unemployment and underemployment in the Zone and develop or expand transportation, business and commercial activity in the Zone including programs to make grants and loans of Zone assets or from the tax increment fund of the Zone in an aggregate amount not to exceed the amount of the tax increment produced by the City and paid into the tax increment fund for the Zone for activities that benefit the Zone and stimulate business and commercial activity in the Zone as further determined by the City;

Whereas, the Council further finds that the acquisition of the land and real property assembly costs as described in the additional amendment to the Reinvestment Zone Financing Plan is necessary and convenient to the implementation of the Reinvestment Zone Financing Plan and will help develop and diversify the economy of the Zone, eliminate unemployment and underemployment in the Zone and develop or expand transportation, business and commercial activity in the Zone by providing land for development of future business and commercial activity, attracting additional jobs within the City and attracting additional sales and other taxes within the City; and

Whereas, the Council finds that such amendment to the Reinvestment Zone Financing Plan is feasible and conforms to the Comprehensive Plan of the City, and that this action will promote economic development within the City of Temple.

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

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

- <u>Part 2:</u> Reinvestment Zone Financing Plan. The amendment to the Tax Increment Financing Reinvestment Zone No. One Financing Plan, heretofore adopted by the Board of Directors of the Zone and referred to in the preamble of this ordinance, is hereby approved and adopted, as set forth in the Amendment to Reinvestment Zone Number One, City of Temple, Texas, attached hereto as Exhibit A. This expenditure requires an amendment to the 2009-2010 budget, a copy of which is attached as Exhibit B.
- <u>Part 3:</u> Plans Effective. The Financing Plan for the Zone heretofore in effect shall remain in full force and effect according to the terms and provisions thereof, except as specifically amended hereby.
- <u>Part 4:</u> Copies to Taxing Units. The City Secretary shall provide a copy of the amendment to the Reinvestment Zone Financing Plan to each taxing unit that taxes real property located in the Zone.
- Part 5: Economic Development Program. The Council hereby establishes an economic development program for the Zone in accordance with Article III, Section 52-a of the Texas Constitution, Section 311.010(h) of the Texas Tax Code and Chapter 380 of the Texas Local Government Code to develop and diversify the economy of the Zone, eliminate unemployment and underemployment in the Zone and develop or expand transportation, business and commercial activity in the Zone including a program to make grants and loans of Zone assets or from the tax increment fund of the Zone in accordance with the provisions of Article III, Section 52-a, Chapter 311 of the Texas Tax Code and Chapter 380 of the Texas Local Government Code as directed and authorized by the Council. The Council hereby further directs and authorizes the Board of Directors of the Zone to utilize tax increment reinvestment zone bond proceeds to acquire the land and pay other real property assembly costs as set forth in the additional amendment attached hereto to help develop and diversify the economy of the Zone and develop or expand business and commercial activity in the Zone in accordance with Article III, Section 52-a, Chapter 311 of the Texas Tax Code and Chapter 380 of the Texas Local Government Code.
- <u>Part 6:</u> Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section.
- <u>Part 7:</u> Effective Date. This ordinance shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.
- <u>Part 8:</u> Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act.

PASSED AND APPROVED on First Reading and Public Hearing on the $\mathbf{5}^{th}$ day of **August**, 2010.

PASSED AND APPROVED on Second Reading on the 19th day of August, 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A. JONES, III, Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #4(G-2) Consent Agenda Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

Traci L. Barnard, Director of Finance

<u>ITEM DESCRIPTION:</u> Consider adopting a resolution authorizing a contract amendment with Kasberg, Patrick & Associates, LP for the 2022 Master Plan Phase II in the amount of \$39,205.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

<u>ITEM SUMMARY:</u> At the September 23, 2009, Reinvestment Zone No. 1 Board meeting, the Board recommended to the City Council to execute an agreement with Kasberg, Patrick & Associates LP for Phase II of the 2022 Master Plan in an amount of \$91,200. On October, 1, 2009, the City Council adopted a resolution authorizing a professional services agreement.

The original scope of the project consisted of producing data, information, and maps for potential growth and expansion within and adjacent to the Reinvestment Zone boundaries. Coordination efforts have occurred between the City of Temple Legal Department and the Finance Department to determine the possibilities of growth and expansion. Other deliverables included determining rail growth possibilities, projected infrastructure requirements for new growth areas, Airport development, completion of character zones for all existing parks and growth areas, trail system development for all parks, research gateways and entrance features, explore possible future Zone connections, and investigate future major transportation modes.

This contract amendment will make the following additions to the original scope of services: additional layouts, phases, cost estimates, and exhibits related to TMED, additional layouts, phasing, cost estimates, and exhibits in the Downtown Area including the Santa Fe Plaza, Rail Safety Zones, Downtown parking, lighting, etc, as well as research for history of the Tax Increment Financing Reinvestment Zone No. 1.

The Reinvestment Zone No. 1 Board recommended approval of the contract amendment at the July 28, 2010, board meeting.

<u>FISCAL IMPACT:</u> Funding in the amount of \$39,205 for contract amendment #1 is available in account 795-9500-531-2616, Line 50 of the Reinvestment Zone #1 Financing Plan, after approval of the Financing Plan amendments presented to Council for second and final reading, item #3(G-1).

08/19/10 Item #4(G-2) Consent Agenda Page 2 of 2

ATTACHMENTS:
Contract Amendment Resolution

CONTRACT AMENDMENT (Professional Service Agreements)

PROJECT: City of Temple Reinvestment Zone #1-2022 Master Plan Phase II OWNER: City of Temple ARCHITECT/ENGINEER: Kasberg, Patrick & Associates, LP AMENDMENT #: 1 Make the following additions, modifications or deletions to the work described in the Contract Documents: Additional layouts, phases, cost estimates and exhibits related to TMED, additional layouts, phasing, cost estimates and exhibits in the Downtown Area including Santa Fe Plaza, Rail Safety Zones, Downtown Parking, lighting, etc. The Compensation agreed upon in this Contract Amendment is the full, complete and final payment for all costs the Architect or Engineer may incur as a result of or relating to this amendment whether said costs are known, unknown, foreseen or unforeseen at this time, including without limitation, any cost for delay (for which only revised time is available), extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of this Contract Amendment.				
			Original Contract Amount:	\$ 91,200.00
			Previous Net Change in Contract Amount:	\$ 0.00
Amount This Amendment:	\$ 39,205.00			
Revised Contract Amount:	\$ 130,405.00			
Original Contract Completion Date: Revised Contract Completion Date:	2/08/10 9/10/10			
Recommended by:	Agreed to:			
Project Manager	Architect or Engineer			
Approved by City of Temple:	Approved as to form:			
David Blackburn, City Manager	City Attorney's Office Approved by Finance Department:			

RESOLUTION NO.	

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONTRACT AMENDMENT WITH KASBERG, PATRICK & ASSOCIATES, LP, FOR THE 2022 MASTER PLAN PHASE II, IN THE AMOUNT OF \$39,205.00; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, on October 1, 2009, the City Council approved a professional services agreement with Kasberg, Patrick & Associates, LP, for Phase II of the 2022 Master Plan in an amount of \$91,200;

Whereas, at its July 28, 2010, meeting the Reinvestment Zone No. One Board recommended approval of a contract amendment for this project for additional layouts, phases, cost estimates and exhibits related to TMED, additional layouts, phasing, cost estimates and the exhibits in the Downtown Area including Santa Fe Plaza, Rail Safety Zones, Downtown Parking, Lighting, etc.;

Whereas, funding is available for this project in Account No. 795-9500-531-2616; 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:

<u>Part 1:</u> The City Council authorizes the City Manager, or his designee, to execute a contract amendment with Kasberg, Patrick & Associates, LP, after approval as to form by the City Attorney, for the 2022 Master Plan Phase II, to include additional layouts, phases, cost estimates and exhibits related to TMED, additional layouts, phasing, cost estimates and the exhibits in the Downtown Area including Santa Fe Plaza, Rail Safety Zones, Downtown Parking, Lighting, etc., in the amount of \$39,205.00.

<u>Part 2:</u> 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 19th day of August, 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

08/19/10 Item #4(H) Consent Agenda Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Jonathan Graham, City Attorney

ITEM DESCRIPTION: FIRST READING – SET PUBLIC HEARING - Consider adopting an ordinance establishing the City's participation in the Texas Enterprise Zone Program and nominating Wilsonart International, Inc., as a qualified enterprise project.

STAFF RECOMMENDATION: Adopt ordinance on first reading and schedule second reading and public hearing for **Special Meeting on August 30, 2010, 4:30 p.m.**

<u>ITEM SUMMARY</u>: Wilsonart is a world-leading producer of decorative surfacing products for residential and commercial applications, operating 2 primary facilities in Temple – 10501 NW H.K. Dodgen Loop (manufacturing) and 2400 Wilson Place (corporate headquarters), as well as a research and product development facility at 505 North General Bruce Drive. The company employs approximately 1,000 full-time employees in Temple, and has plans for the future modernization of the company's manufacturing operations in Temple.

In accordance with the requirements of V.T.C.A., Government Code, Section 2303.4051, Wilsonart has requested the City of Temple's nomination of its company for Enterprise Zone Designation for September 1, 2010. The City must find that Wilsonart meets the criteria for incentives adopted by the City on the grounds that it will be located at a qualified business site (10501 NW H.K. Dodgen Loop and 505 North General Bruce Drive), and will create a higher level of employment, economic activity, and stability. Designated projects are eligible to apply for state sales and use tax refunds on qualified expenditures. The level and amount of refund is related to the capital investment and job created (or retained as defined under the program rules) at the qualified business site. Local communities must nominate a company as an Enterprise Project in order to participate in the Enterprise Zone Program. Communities may nominate projects, for a designation period up to five years, non-inclusive of a 90-day window prior to the application deadline. Employment and capital investment commitments must be incurred and met within this timeframe.

FISCAL IMPACT: If approved, Wilsonart's modernization project is expected to result in a \$5 million capital investment with job retention of 500 full-time employees.

ATTACHMENTS:

Ordinance

ORDINANCE NO.	

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, ESTABLISHING THE CITY'S PARTICIPATION IN THE TEXAS ENTERPRISE ZONE PROGRAM PURSUANT TO THE TEXAS ENTERPRISE ZONE ACT, CHAPTER 2303. GOVERNMENT CODE; DESCRIBING AVAILABILITY OF CERTAIN LOCAL INCENTIVES; DESIGNATING A LIAISON; NOMINATING WILSONART INTERNATIONAL, INC., AS Α OUALIFIED ENTERPRISE PROJECT THROUGH NOTICE TO THE TEXAS ECONOMIC DEVELOPMENT BANK; PROVIDING AN EFFECTIVE DATE: AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the City Council of the City of Temple, Texas desires to create the proper economic and social environment to induce the investment of private resources in productive business enterprises located in certain areas of the City, and to provide employment to residents of such areas;

Whereas, the project or activity considered herein is not located in an area designated as an enterprise zone;

Whereas, pursuant to the Texas Enterprise Zone Act, V.T.C.A., Government Code, Chapter 2303 (the "Act"), specifically in accordance with Section 2303.404, Subchapter F of the Act, Wilsonart International, Inc., has applied to the City for designation as an enterprise project;

Whereas, the City finds that Wilsonart International, Inc., meets the criteria for incentives adopted by the City on the grounds that it will be located at a qualified business site, that being 10501 Northwest H K Dodgen Loop and 505 North General Bruce Drive, Temple, Texas, and will create a higher level of employment, economic activity, and stability; and

WHEREAS, a public hearing to consider this Ordinance was held by the City Council on August 19, 2010.

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

<u>Part 1</u>: The City hereby nominates Wilsonart International, Inc., for enterprise project status.

- <u>Part 2</u>: In accordance with V.T.C.A., Government Code, Section 2303.4051, the City hereby identifies and summarizes local incentives that, at the election of the governing body, are or may be made available to Wilsonart International, Inc.:
- A. <u>Tax abatement, deferral, refunds, or other tax incentives</u>: The City may offer tax abatements for new business construction and existing industry expansions, as well as personal property tax abatements associated with real property. The level of abatement is based upon the extent to which the business receiving the abatement creates jobs for qualified employees, in accordance with the City's Tax Abatement Guidelines, with "qualified employee" being defined by the Act.
- B. <u>Programs to improve and increase value of real estate and new investment</u>: The City may provide programs to improve and increase the value of real estate and new investment, including:
 - (1) Chapter 380 grants
 - (2) Local sales tax refunds; and
 - (3) Tax Increment Financing
 - (4) Tax abatement.
- C. <u>Regulatory relief</u>: The City may provide regulatory relief to businesses, including:
 - (1) Zoning changes or variances;
 - (2) Building code exemptions
 - (3) Reduction or exemptions from inspection fees; and
 - (4) Streamlined permitting.
- D. <u>Enhanced municipal services</u>: The City may provide enhanced municipal services to businesses, including:
 - (1) Improved police and fire protection;
 - (2) Institution of community crime prevention programs; and
 - (3) Special public transportation routes or reduced fares.
- E. <u>Improvements in community facilities</u>: The City may provide improvements in community facilities, including:
 - (1) Capital improvements in water and sewer facilities;

- (2) Road repair; and
- (3) Creation and improvement of parks.
- F. <u>Improvements to housing</u>: The City may provide improvements to housing, including:
 - (1) Low-interest loans for housing rehabilitation, improvement, or new construction.
- G. <u>Business and industrial development services</u>: The City may provide business and industrial development services, including:
 - (1) Creation of special permitting processes and programs; and
 - (2) Promotion and marketing services.
- H. <u>Job training and employment skills programs</u>: The City may provide, through its funding of other agencies, job training and employment services, including:
 - (1) Job training and employment services
 - (2) Retraining programs
 - (3) Literacy and employment skills programs
 - (4) Vocational education
 - (5) Customized job training
- <u>Part 3:</u> In accordance with V.T.C.A., Government Code, Section 2303.204, the City Council hereby directs and designates its Director of Finance as the City's liaison to oversee enterprise projects it has nominated and to communicate and negotiate with the Texas Economic Development Bank or the Texas Economic Development and Tourism Office within the Office of the Governor, with the enterprise project, and with other entities in an enterprise zone or affected by an enterprise project, including a qualified business, within the jurisdiction of the City.
- <u>Part 4:</u> The City Council hereby finds that Wilsonart International, Inc., meets the criteria for designation as an enterprise project under the Act on the following grounds:
 - A. Wilsonart International, Inc., is a "qualified business" under Section 2303.402 of the Act;

- B. There has been and will continue to be a high level of cooperation between public, private, and neighborhood entities in the area;
- C. The designation of Wilsonart International, Inc., as an enterprise project will contribute significantly to the achievement of the plans of the City for development and revitalization of the area.
- <u>Part 5:</u> The enterprise project shall take effect on the date of designation of the enterprise project by the Texas Economic Development and Tourism Office within the Office of the Governor, and shall terminate on the same date five (5) years therefrom.
- **Part 6:** This Ordinance shall be and become effective immediately upon and after its proper passage and approval.
- Part 7: The City Council hereby finds and declares that written notice of the date, hour, place and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

PASSED AND APPROVED on First Reading on the 19th day of August, 2010.

PASSED AND APPROVED on Second Reading and Public Hearing on the 2^{nd} day of **September**, 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

08/19/10 Item #4(I) Consent Agenda Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Jonathan Graham, City Attorney

<u>ITEM DESCRIPTION:</u> Consider adopting a resolution amending the resolution creating the Animal Services Advisory Board.

STAFF RECOMMENDATION: Adopt resolution presented in item description.

<u>ITEM SUMMARY:</u> On January 16, 2003, the City Council adopted Resolution No. 2003-3589-R creating an Animal Services Advisory Board. The Staff recommends amending the resolution to provide that the licensed veterinarian who is under contract with the City of Temple for veterinarian services and the municipal official be appointed as standing members of the board.

FISCAL IMPACT: None

ATTACHMENTS:

Resolution

Deleted Text Added Text

RESOLUTION NO.	
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A RESOLUTION CREATING AN ANIMAL SERVICES ADVISORY BOARD, AND SETTING OUT THE MEMBERSHIP, PURPOSE AND PROCEDURES GOVERNING SAID BOARD; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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

- <u>Part 1</u>: Creation of the Board. The City Council hereby creates the Animal Services Advisory Board (ASAB) as a standing advisory board of the City to advise the City Council and the City Staff on matters relating animal services provided by the City.
- Part 2: Membership. (a) Representation. The ASAB shall consist of seven (7) members appointed by the City Council, one of whom shall be a licensed veterinarian who is under contract with the City of Temple for veterinarian services, one a municipal official (an elected official or a paid employee of the City), one a person whose duties include the daily operation of an animal shelter, and one a representative from an animal welfare organization. The other three appointees shall be residents of the City. The City Council in making their annual appointments to the Board shall designate a chairperson to preside over meetings of the Board. The Board may elect a vice-chair to preside over meetings in the absence of the designated chair.
- (b) *Term of Office*. Board members shall be appointed for three-year terms, except the licensed veterinarian and municipal official shall be appointed as standing members of the board. At the time the first members of the Board are appointed, the Council shall appoint two members of the Board to a one year term, two members to a two year term, and three members to a three-year term. Thereafter all new appointments will be for three years. Individuals may not serve more than two *consecutive* three-year terms, but may be re-appointed later. The Council shall fill any vacancy on the Board for the remainder of the unexpired term. Individuals who-served an initial term of one or two years, or whom are appointed to fill the remainder of unexpired term, shall not be deemed to have served a three-year term for purposes of reappointment.
- (c) *Orientation of Members*. All newly appointed members of the Board, and all re-appointed members of the Board shall attend an orientation by the City Staff designed to acquaint the Board member with: (1) the responsibilities of Board members under this

Resolution; (2) State law and City ordinances relating to animal services, and the operations of the City's Animal Services Division; and (3) applicable State laws relating to all advisory boards and appointed officials (including the Texas Open Meetings, conflicts of interest, and official misconduct. New members who have not previously attended an orientation session may attend Board meetings as ex officio (nonvoting members) but may not vote in such meetings until they complete the orientation and complete the oath of office administered by the City Secretary or her designee.

- Part 3: Meetings. (a) Notice and Times. The City Secretary or his/her designee shall cause meetings of the ASAB to be posted, recorded (or minutes kept) and conducted in accordance with the Texas Open Meetings Act. The Board shall meet at such times as the Chairperson shall request, or whenever any other two members of the Board request. The Board may also by a majority vote of the entire membership schedule meetings at a regular time. The Board shall meet at least three times a year or more frequently if required by a future change in State law. All meetings of the Board shall be open to the public at all times, except where a briefing or executive session is permitted under State law. The agenda for each meeting of the Board shall contain an item to receive general comments from the public or business community.
- (b) *Conduct of Meetings*. A quorum of the Board consists of four (4) members. The Board may adopt rules of procedure consistent with this resolution. A majority of the members at any meeting in which a quorum of the Board is present may approve any action authorized under this Resolution. The City Secretary or her designee shall serve as permanent secretary to the Board, and shall cause a recording of each meeting to be made and minutes to be prepared. The City Attorney or his designee shall serve as legal advisor to the Board. The Board may adopt rules of procedure relating to the conduct of their meetings that are not in conflict with this resolution.

Part 4: Purpose and Authority.

- (a) *Purpose*. The ASAB shall advise the City Council and City staff on matters relating to the City's Animal Services Division and its operations. The Board is specifically charged with ensuring that the City complies with State law requirements relating to the operation of animal shelters (currently found at Chapter 823 of the Texas Health and Safety Code).
- (b) *Annual Report*. The ASAB shall submit each March a report to the City Council describing the Board's activities during the preceding year.
- <u>Part 5</u>: It is hereby officially found and determined that the meeting at which this resolution was passed was opened 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 19th day of August, 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A JONES, III, Mayor
	WILLIAM A JONES, III, Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #4(J) Consent Agenda Page 1 of 1

DEPT./DIVISION SUBMISSION & REVIEW:

Traci L. Barnard, Director of Finance

<u>ITEM DESCRIPTION:</u> Consider adopting a resolution approving third quarter financial results for Fiscal Year 2010.

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

<u>ITEM SUMMARY:</u> This item will present in detail the third quarter ending June 30, 2010, for the General, Water & Sewer, Hotel/Motel Tax and Drainage Funds.

Included with these third quarter results will be various schedules detailing grants, sales tax, capital projects and investments.

The third quarter financial statements also include a forecast of year-end financial results for the General Fund as of September 30, 2010.

FISCAL IMPACT: N/A

ATTACHMENTS:

Quarterly Financial Statements (Hard copy)
Resolution

RESOLUTION NO.
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING THE THIRD QUARTER FINANCIAL RESULTS FOR FISCAL YEAR 2010; AND PROVIDING AN OPEN MEETINGS CLAUSE.
Whereas, the third quarter 2010 fiscal year financial results need to be approved by the City Council;
Whereas, included in the third quarter results are various schedules detailing grants sales tax, capital projects and investments; and
Whereas, the City Council deems it in the public interest to authorize this action.
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, THAT:
<u>Part 1</u> : The City Council approves the third quarter 2010 fiscal year financial results more fully described in Exhibit A, attached hereto and made a part hereof for all purposes
<u>Part 2</u> : 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 19 th day of August, 2010.
THE CITY OF TEMPLE, TEXAS

ATTEST:

Clydette Entzminger

City Secretary

WILLIAM A. JONES, III, Mayor

APPROVED AS TO FORM:

Jonathan Graham

City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #4(K) 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.

<u>ITEM SUMMARY:</u> 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 \$ 28,963.

ATTACHMENTS:

Budget amendments Resolution

CITY OF TEMPLE BUDGET AMENDMENTS FOR FY 2010 BUDGET August 19, 2010

ACCOUNT # PRO	DJECT # DESCRIPTION	APPROPE Debit	I <mark>ONS</mark> Credit
110-2000-521-2516 110-1500-515-6531	Judgments & Damages (Police Dept.) Contingency - Judgments & Damages \$ Contingency - Judgments & Damages	420	\$ 420
	Deductible reimbursement to the Texas Municipal League for settlement of a claim seeking reimbursement for alleged damage sustained by a claimant as a result of a vehicle accident on April 11, 2010, involving a vehicle driven by a police officer.		
110-2320-540-2516 110-1500-515-6531	Judgments & Damages (Solid Waste - Brush/Bulk) \$ Contingency - Judgments & Damages	2,547	\$ 2,547
	(1) Deductible reimbursement to the Texas Municipal League for settlement of a claim seeking reimbursement for damage to a vehicle after it was struck by a Solid Waste Dep brush truck on May 25, 2010, at 601 N. Twin Oaks Drive (\$2,046.21); (2) Deductible reimbursement to the Texas Municipal League for settlement of a claim seeking reimbursement for damage to a brick wall near a driveway at 2802 Kyle Drive after it was struck by a Solid Waste Dept. brush truck (\$500.00).	t.	
110-2370-540-2516 110-1500-515-6531	Judgments & Damages (Solid Waste - Rolloff) \$ Contingency - Judgments & Damages	405	\$ 405
	Settlement of a claim filed against the City seeking reimbursement for damage to a vehi by a Solid Waste Department employee on February 23, 2010, at 10751 W. Adams.	cle	
110-3400-531-2516 110-1500-515-6531	Judgments & Damages (Street Dept.) Contingency - Judgments & Damages	133	\$ 133
	Settlement of a claim filed against the City seeking reimbursement for damage to a window on a vehicle after it was struck by a rock thrown by a weedeater being operated by a Street Dept. employee on MLK Boulevard on July 28, 2010.		
110-3500-552-2516 110-1500-515-6531	Judgments & Damages (Parks Dept.) \$ Contingency - Judgments & Damages	617	\$ 617
	(1) Deductible reimbursement to the Texas Municipal League for settlement of a claim filed seeking reimbursement for damage to the window on a residence (601 S Terrace) after a mower threw a rock which went through the window on May 26, 2010 (\$410.98) (2) Deductible reimbursement to the Texas Municipal League for settlement of a claim seeking reimbursement for damage to a window on a vehicle after it was struck by a roc thrown by a weedeater being operated by a Parks employee on June 14, 2010 (\$205.68)		
110-3700-524-2516 110-1500-515-6531	Judgments & Damages (Construction Safety) \$ Contingency - Judgments & Damages	1,393	\$ 1,393
	Attorney fees for lawsuits filed against the City Centex Investments, Inc. v. City of Temple and Anderson v. City		

CITY OF TEMPLE BUDGET AMENDMENTS FOR FY 2010 BUDGET August 19, 2010

			APPROPRIATIONS			
ACCOUNT #	PROJECT #	DESCRIPTION		Debit		Credit
240-4400-551-2117		Janitorial Supplies (Mayborn Center)	\$	2,115		
240-4400-551-2210		Furniture & Fixtures	\$	1,000		
240-4400-551-2330		AC Repair	\$	3,300		
240-4400-551-2531		Other Fees	\$	3,000		
240-4400-551-2615		Equipment Rent/Lease	\$	6,050		
240-4400-551-2618		Uniform & Supply Rental	\$	1,845		
240-4400-551-2623		Other Contracted Services	\$	2,240		
240-0000-445-1021		Facility Rental Revenue			\$	10,000
240-0000-445-1022		Equipment Rental Revenue			\$	5,000
240-0000-445-1072		Alcohol Beverages			\$	3,000
240-0000-445-1063		Food Sales			\$	1,550
240-0000-443-1003		1 ood Sales			Ψ	1,550
		This budget adjustment recognizes an increase in revenues for various accounts and appropriates additional funds for expenditures projected to be over budget by fiscal year end.				
260-6100-571-6516	100485	Park Improvements - Jones Park (CDBG)	\$	2,251		
			Ф	2,231	¢	1 755
260-6100-571-6516	100441	Park Improvements - Wilson Park			\$	1,755
260-6100-571-6532		Contingency			\$	496
		To allocate additional funds to the Jones Park project. Funds are available from the Wilson Park project and program income.				
520-5200-535-2516		Judgments & Damages (Water Distribution)	\$	1,647		
520-5200-535-6532		Contingency			\$	1,647
		repair of a buried cable damaged on March 4, 2010, at the front of 1101 East Avenue during the City's repair of a water line. TOTAL AMENDMENTS	е Е \$	28,963	\$	28,963
		GENERAL FUND Beginning Contingency Balance			\$	_
		Added to Contingency Sweep Account			\$	_
		Carry forward from Prior Year			\$	_
		Taken From Contingency			\$	
		Net Balance of Contingency Account			\$	
		1.0. Zamilee of Contingency recount			Ψ	
		Reginning Judgments & Demogras Contingency			Ф	77 022
		Beginning Judgments & Damages Contingency Added to Contingency Judgments & Damages from Council Contingency			\$	77,833
		Added to Contingency Judgments & Damages from Council Contingency			\$	(77.175)
		Taken From Judgments & Damages			\$	(77,175)
		Net Balance of Judgments & Damages Contingency Account			\$	658
		Beginning Fuel Contingency			\$	125,000
		Added to Fuel Contingency			\$	_
		Taken From Fuel Contingency			\$	_
		Net Balance of Fuel Contingency Account			\$	125,000
		Beginning Solid Waste - Future Capital Replacement Contingency			\$	48,400
		Added to Solid Waste - Future Capital Replacement Contingency			\$	70,700
						_
		Taken From Solid Waste - Future Capital Replacement Contingency			\$	49 400
		Net Balance of Solid Waste - Future Capital Replacement Contingency Account			ф	48,400
		Net Balance Council Contingency			\$	174,058

CITY OF TEMPLE BUDGET AMENDMENTS FOR FY 2010 BUDGET August 19, 2010

			APPROPRIATION		IONS
ACCOUNT #	PROJECT #	DESCRIPTION	Debit		Credit
		Beginning Balance Budget Sweep Contingency		\$	-
		Added to Budget Sweep Contingency		\$	-
		Taken From Budget Sweep		\$	-
		Net Balance of Budget Sweep Contingency Account		\$	-
		WATER & SEWER FUND			
		Beginning Contingency Balance		\$	247,423
		Added to Contingency Sweep Account		\$	-
		Taken From Contingency		\$	(34,522)
		Net Balance of Contingency Account		\$	212,901
		Beginning Approach Mains Contingency		\$	-
		Added to Approach Mains Contingency		\$	488,270
		Taken From Approach Mains Contingency		\$	(488,270)
		Net Balance of Approach Mains Contingency Account	-	\$	-
		Net Balance Water & Sewer Fund Contingency	-	\$	212,901
		HOTEL/MOTEL TAX FUND			
		Beginning Contingency Balance		\$	26,336
		Added to Contingency Sweep Account		\$	-
		Taken From Contingency		\$	(26,336)
		Net Balance of Contingency Account		\$	-
		DRAINAGE FUND			
		Beginning Contingency Balance		\$	
		Added to Contingency Sweep Account		\$	
		Taken From Contingency		\$	
		Net Balance of Contingency Account		\$	-
		5 .			
		FED/STATE GRANT FUND			
		Beginning Contingency Balance		\$	15,243
		Carry forward from Prior Year		\$	51,505
		Added to Contingency Sweep Account		\$	-
		Taken From Contingency	_	\$	(49,241)
		Net Balance of Contingency Account		\$	17,507

RESOLUTION NO.	
KESULUTIUN NU.	

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.

Whereas, on the 3rd 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:

<u>Part 1</u>: 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.

<u>Part 2</u>: 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 19th day of August, 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A. JONES, III, Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #5 Regular Agenda Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

Traci L. Barnard, Director of Finance

<u>ITEM DESCRIPTION:</u> FIRST & FINAL READING – PUBLIC HEARING – Consider adopting an ordinance authorizing the "Third Supplemental Ordinance to the Master Ordinance Establishing the City of Temple, Texas Utility System Revenue Financing Program" related to the issuance of \$17,250,000* City of Temple, Texas Utility System Revenue Bonds, Series 2010 and the establishment of procedures for selling and delivering the Bonds.

STAFF RECOMMENDATION: Adopt ordinance as presented in item description.

ITEM SUMMARY: This item is to delegate authority to the Director of Finance and City Manager to finalize pricing within parameters defined in the attached ordinance for the sale of \$17,250,000* to the lowest responsive bidder of this series of bonds. This will allow the issue to price on the next best day (scheduled for August 30, 2010) and allows the underwriters to receive commitment of the issuer (City of Temple) immediately upon giving a firm bid to underwrite and setting the interest rates. In this volatile market, this type of sale can help gain the most aggressive bid on a given day.

The proceeds from the \$17,250,000* issue will be used to fund the following projects.

Replacement of 18" Waterline from WTP to Loop 363-Charter Oaks	\$ 4,750,000
Water Treatment Plant-Generator Project (Phase 2)	3,500,000
Birdcreek Wastewater Line Replacement	2,500,000
Temple Belton Regional Sewerage System-Land & Design (75%)	2,250,000
Wastewater Line Replacement-French Ave to Adams Ave;N 4th St to N 12th St	1,200,000
Rehabilitation of Pea Ridge Lift Station	1,000,000
Utility Replacement along General Bruce Drive & 57th Street	700,000
Pepper Creek Tank Rehabilitation	600,000
Taylor Tank Rehabilitation	600,000
Estimated Bond Issuance Costs (Competitive Sale)	150,000
Issue amount not to exceed	\$ 17,250,000

* THE ISSUE SIZE IS PRELIMINARY (NOT TO EXCEED \$17,250,000) AND WILL BE SIZED AT THE TIME OF PRICING.

Ratings for the bonds have been applied for with Standard & Poors. The ratings will be published on Wednesday, August 25, 2010. The bonds will be sold through a competitive sale on Monday, August 30, 2010, and finalized the same day, assuming the market is favorable that day.

Our financial advisor, Specialized Public Finance Inc., and bond counsel, McCall, Parkhurst & Horton, L.L.P, will be at the meeting to review the parameters and details of the sale with Council.

Funds are expected to be delivered to our depository for use on September 15, 2010.

FISCAL IMPACT: Average annual debt service for the \$17,250,000 issue based on an estimated interest rate of 5.0% with a maturity of 20 years is \$1,441,547.92. The FY 2011 Water and Wastewater proposed budget includes the revenue through the current rate structure and debt service to support the debt issuance.

ATTACHMENTS:

Ordinance

ORDINANCE NO. 2010-____

THIRD SUPPLEMENTAL ORDINANCE TO THE MASTER ORDINANCE ESTABLISHING THE CITY OF TEMPLE, TEXAS UTILITY SYSTEM REVENUE FINANCING PROGRAM

Adopted August 19, 2010

THIRD SUPPLEMENTAL ORDINANCE TO THE MASTER ORDINANCE ESTABLISHING THE CITY OF TEMPLE, TEXAS UTILITY SYSTEM REVENUE FINANCING PROGRAM

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EXHIBIT A - Definitions

EXHIBIT B - Form of Bonds EXHIBIT C - Description of Annual Financial Information

ORDINANCE NO. 2010-____

THIRD SUPPLEMENTAL ORDINANCE TO THE MASTER ORDINANCE ESTABLISHING THE CITY OF TEMPLE, TEXAS UTILITY SYSTEM REVENUE FINANCING PROGRAM

THE STATE OF TEXAS §

CITY OF TEMPLE §

WHEREAS, on September 21, 2006, the City Council of the City of Temple, Texas (the "City"), adopted a "Master Ordinance Establishing the City of Temple, Texas Utility System Revenue Financing Program" (referred to herein as the "Master Ordinance"); and

WHEREAS, in order to enable the City to provide for the financing of the utility system projects authorized by Chapter 1502, Texas Government Code, as amended, and any other applicable provisions of State law, the Master Ordinance establishes a revenue financing program pursuant to which the City can issue and enter into obligations, including bonds and other types of obligations, secured by and payable from a pledge of and lien on all or part of the Security, as hereinafter defined; and

WHEREAS, for such purposes, the City deems it necessary to issue Parity Debt, as hereinafter defined, pursuant to this "Third Supplemental Ordinance to the Master Ordinance establishing the City of Temple, Texas Utility System Revenue Financing Program" (the "Third Supplement"); and

WHEREAS, the City further finds and determines that all terms and conditions for the issuance of the bonds herein authorized as Parity Debt have been or can be met and satisfied; and

WHEREAS, the bonds authorized to be issued by this Third Supplement are to be issued and delivered pursuant to the Enabling Act, as hereinafter defined, and other applicable State laws.

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

ARTICLE I BONDS ISSUED UNDER UTILITY SYSTEM REVENUE FINANCING PROGRAM

Section 1.01. DEFINITIONS. (a) <u>Definitions</u>. The capitalized terms used herein (except in the FORM OF BONDS set forth in <u>Exhibit "B"</u> hereto) and not otherwise defined shall have the meanings given in the Master Ordinance or in <u>Exhibit "A"</u> to this Third Supplement. The recitals to this Third Supplement and the exhibits hereto are incorporated herein and made a part hereof for all purposes.

(b) <u>Construction of Terms</u>. If appropriate in the context of this Third Supplement, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, words of the masculine, feminine, or neuter gender shall be considered to include the other genders, and words importing persons shall include firms, associations, and corporations.

PARITY DEBT. (a) Third Supplement. By adoption of the Master Ordinance, the City has established the City of Temple, Texas Utility System Revenue Financing Program for the purpose of enabling the City to provide for the financing of utility system projects authorized by the Enabling Act and any other applicable provisions of State law pursuant to which, subject to the lien of Prior Obligations and the payment of maintenance and operating expenses, the City may issue and enter into obligations, including bonds and other types of obligations, secured by and payable from a pledge of and lien on all or part of the Security. This Third Supplement provides for the authorization, form, characteristics, provisions of payment and redemption, and security of the Bonds. This Third Supplement is subject to the terms of the Master Ordinance and the terms of the Master Ordinance are incorporated herein by reference and as such are made a part hereof for all purposes.

(b) <u>Bonds Are Parity Debt</u>. As required by Section 7 of the Master Ordinance governing the issuance of Parity Debt such as the Bonds, the City hereby finds that, upon the issuance of the Bonds, the Security will be sufficient to meet the financial obligations relating to the Financing Program, including Security in amounts sufficient to satisfy the Annual Debt Service Requirements of the Financing Program. The Bonds are hereby declared to be Parity Debt under the Master Ordinance.

SECURITY. In consideration of the acceptance of the Bonds by those who shall hold the same from time to time, this Third Supplement shall be deemed to be and shall constitute a contract between the City and the Owners from time to time of the Bonds, and the pledge made in this Third Supplement by the City and the covenants and agreements set forth in this Third Supplement to be performed by the City shall be for the equal and proportionate benefit, security, and protection of all Owners from time to time of the Bonds, without preference, priority, or distinction as to security or otherwise of any of the Bonds authorized hereunder over any of the other Bonds by reason of time of issuance, sale, or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this Third Supplement and the Master Ordinance.

Supplement. With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Third Supplement or the Bonds is intended or should be construed to confer upon or give to any person other than the City, the Owners, and the Paying Agent/Registrar, any legal or equitable right, remedy, or claim under or by reason of or in respect to this Third Supplement or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Third Supplement and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall

be for and inure to the sole and exclusive benefit of the City, the Owners, and the Paying Agent/Registrar as herein and therein provided.

ARTICLE II BOND AUTHORIZATION AND SPECIFICATIONS

Section 2.01. AMOUNT, PURPOSE AND DESIGNATION OF THE BONDS. The Bonds designated "CITY OF TEMPLE, TEXAS UTILITY SYSTEM REVENUE BONDS, SERIES 2008" (the "Bonds") are hereby authorized to be issued pursuant to this Third Supplement in the maximum aggregate principal amount not to exceed \$17,250,000 for the purpose of (i) paying the costs of acquiring, purchasing, constructing, improving, renovating, enlarging or equipping the City's Utility System and (ii) paying the costs associated with the issuance of the Bonds. The Bonds are authorized pursuant to authority conferred by and in conformity with State law, particularly the provisions of the Enabling Act.

The Bonds will be in the form of Current Interest Bonds as provided in Section 2.02, the Pricing Certificate and the FORM OF BONDS in <u>Exhibit "B"</u> to this Third Supplement.

Section 2.02. DATE, DENOMINATIONS, NUMBERS, MATURITIES AND TERMS OF BONDS. (a) Terms of Bonds. There initially shall be issued, sold and delivered under this Third Supplement fully registered bonds, without interest coupons, which may be in the form of Current Interest Bonds, numbered consecutively from R-1 upward (except the Initial Bond (as defined in Section 2.06 hereof) delivered to the Attorney General of the State of Texas which shall be numbered T-1) payable to the initial registered owner(s) (as designated in subsection (c) of this Section), or to the registered assignee or assignees of said Bonds or any portion or portions thereof (in each case, the "Registered Owner" or the "Owner"), in the denomination of \$5,000 or any integral multiple thereof, maturing not later than August 1, 2030, serially or otherwise on the dates, in the years and in the principal amounts, respectively, and dated, all as set forth in the Pricing Certificate pursuant to subsection (b) of this Section. The Pricing Certificate is hereby incorporated in and made a part of this Third Supplement.

In the event the Pricing Certificate shall not be executed on or before 5:00 p.m. on January 18, 2011, the delegation to the City Officers pursuant to this Third Supplement shall cease to be effective unless the City Council of the City shall act to extend such delegation.

(b) <u>Selling and Delivering the Bonds</u>. As authorized by Chapter 1371, Texas Government Code, as amended, the City Officers are hereby authorized to act on behalf of the City in selling and delivering the Bonds and carrying out the other procedures specified in this Third Supplement, the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, the price at which the Bonds will be sold, the years in which the Bonds will mature, the principal amount to mature in each of such years, the aggregate principal amount of Bonds, the rate or rates of interest to be borne by each such maturity, the interest payment periods, the dates, price, and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, procuring municipal bond insurance and approving modifications to this Third Supplement related to the procurement of such

insurance and executing such instrument, documents and agreements as may be necessary with respect thereto, if it is determined by such officers that the City procuring such insurance would be financially desirable and advantageous and all other matters relating to the issuance, sale, and delivery of the Bonds, all of which shall be specified in the Pricing Certificate; provided that (i) the price to be paid for the Bonds shall not be less than 90% of the aggregate original principal amount thereof plus accrued interest, if any, thereon from its date to its delivery and (ii) the Bonds shall not have a net effective interest rate greater than 5% percent per annum. It is further provided, however, that, notwithstanding the foregoing provisions, the Bonds shall not be delivered unless prior to delivery, the Bonds have been rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for long-term obligations, as required by Chapter 1371, Texas Government Code, as amended.

(c) <u>Sale of the Bonds</u>. To achieve advantageous borrowing costs of the City and the Financing Program, the Bonds shall be sold on a negotiated, placement or competitive basis as determined by the City Officials in the Pricing Certificate. In determining whether to sell the Bonds by negotiated, placement or competitive sale, the City Officials shall take into account the market conditions expected at the time of the sale and any other matters which, in the judgment of the City Officials, might affect the net borrowing costs on the Bonds.

If the City Officials determine that the Bonds should be sold at a competitive sale, the City Officials shall cause to be prepared a notice of sale and official statement in such manner as the City Officials deem appropriate, to make the notice of sale and official statement available to those institutions and firms wishing to submit a bid for the Bonds, to receive such bids, and to award the sale of the Bonds to the bidder submitting the best bid in accordance with the provisions of the notice of sale.

If the City Officials determine that the Bonds should be sold by a negotiated sale or placement, the City Officials shall designate the placement purchaser or the senior managing underwriter for the Bonds and such additional investment banking firms as the City Officials deem appropriate to assure that the Bonds are sold on the most advantageous terms. The City Officials, acting for and on behalf of the City, are authorized to enter into and carry out a Bond Purchase Contract or other agreement for the Bonds to be sold by negotiated sale or placement at such price, with and subject to such terms as determined by the City Officials pursuant to Section 2.02(b) above. Each Bond Purchase Contract or other agreement shall be substantially in the form and substance previously approved by the City in connection with the authorization of Outstanding Bonds with such changes as are acceptable to the City Officials.

(d). <u>Interest</u>. The Bonds shall bear interest from the dates specified in the FORM OF BOND set forth in this Third Supplement to their respective dates of maturity or redemption at the rates per annum as set forth in the Pricing Certificate. Interest shall be payable in the manner provided and on the dates stated in the FORM OF BOND set forth in this Third Supplement and the Pricing Certificate.

- (e) <u>In General</u>. The Bonds (i) may and shall be redeemed prior to the respective scheduled maturity dates, (ii) may be assigned and transferred, (iii) may be exchanged for other Bonds, (iv) shall have the characteristics, and (v) shall be signed and sealed, and the principal of and interest on the Bonds shall be payable, all as provided, and in the manner required or indicated, in the FORM OF BONDS set forth in <u>Exhibit "B"</u> to this Third Supplement and with such changes and additions as required to be consistent with the provisions contained in the Pricing Certificate.
- (f) Payments on Holidays. In the event that any date for payment of the principal of or interest on the Bonds is a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment will be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to close. Payment on such later date will not increase the amount of interest due and will have the same force and effect as if made on the original date payment was due.

Section 2.03. PAYMENT OF BONDS; PAYING AGENT/REGISTRAR. The principal of, premium, if any, and the interest on the Bonds shall be payable, without exchange or collection charges to the Owner thereof, in any coin or currency of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

The Bank of New York Mellon Trust Company, National Association is hereby appointed as Paying Agent/Registrar for the Bonds. By accepting the appointment as Paying Agent/Registrar, the Paying Agent/Registrar acknowledges receipt of copies of the Master Ordinance and this Third Supplement, and is deemed to have agreed to the provisions thereof and hereof.

The City agrees and covenants to cause to be kept and maintained at the designated office of the Paying Agent/Registrar a Security Register, all as provided herein, in accordance with the terms and provisions of the Paying Agent/Registrar Agreement and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. In addition, to the extent required by law, the City covenants to cause to be kept and maintained the Security Register or a copy thereof in the State.

The City expressly reserves the right to appoint one or more successor Paying Agent/Registrars, by filing with the Paying Agent/Registrar a certified copy of a resolution or minute order of the City making such appointment. The City further expressly reserves the right to terminate the appointment of the Paying Agent/Registrar by filing a certified copy of a resolution of the City giving notice of the City's termination of the City's agreement with such Paying Agent/Registrar and appointing a successor. The City covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution, or other entity duly qualified and legally authorized to serve as and perform the duties and services of Paying Agent/Registrar for the Bonds. If a Paying Agent/Registrar is replaced, such Paying Agent/Registrar, promptly upon the appointment of the successor, will deliver the Security Register (or a copy thereof) and all other pertinent books and records relating to the Bonds to the successor Paying Agent/Registrar. Upon

any change in the Paying Agent/Registrar, the City agrees promptly to cause a written notice thereof to be sent to each Owner by United States mail, first-class postage prepaid, which notice shall also give the address of the new Paying Agent/Registrar.

The principal of, premium, if any, and interest on the Bonds due and payable by reason of maturity, redemption, or otherwise, shall be payable only to the Owner thereof appearing on the Security Register, and, to the extent permitted by law, neither the City nor the Paying Agent/Registrar, nor any agent of either, shall be affected by notice to the contrary.

Principal of, and premium, if any, on the Bonds shall be payable only upon the presentation and surrender of said Bonds to the Paying Agent/Registrar at its designated office. Interest on the Bonds shall be paid to the Owner whose name appears in the Security Register at the close of business on the Record Date and shall be paid (i) by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, by the Paying Agent/Registrar to the address of the Owner appearing in the Security Register on the Record Date or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested in writing by, and at the risk and expense of, the Owner.

In the event of a nonpayment of interest on a scheduled payment date on a Bond, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Owner of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

Section 2.04. <u>**REDEMPTION.**</u> (a) <u>Generally</u>. The Bonds shall be subject to redemption prior to scheduled maturity at such times and with such provisions as provided in the FORM OF BONDS and the Pricing Certificate.

(b) Notices of Redemption and Defeasance. (i) Unless waived by any Owner of the Bonds to be redeemed, the Chief Financial Officer shall give notice of redemption or defeasance to the Paying Agent/Registrar at least thirty-five (35) days prior to a redemption date in the case of a redemption (unless a lesser period is acceptable to the Paying Agent/Registrar) and on the defeasance date in the case of a defeasance and the Paying Agent/Registrar shall give notice of redemption or of defeasance of Bonds by mail, first-class postage prepaid at least thirty (30) days prior to a redemption date and within thirty (30) days after a defeasance date to each Owner and to the central post office or each registered securities depository and to any national information service that disseminates such notices. In addition, in the event of a redemption caused by an advance refunding of the Bonds, the Paying Agent/Registrar shall send a second notice of redemption to the persons specified in the immediately preceding sentence at least thirty (30) days but not more than ninety (90) days prior to the actual redemption date. Any notice sent to the central post office or registered securities depositories or such national information services shall be sent

so that they are received at least two (2) days prior to the general mailing or publication date of such notice. The Paying Agent/Registrar shall also send a notice of prepayment or redemption to the Owner of any Bond who has not sent the Bonds in for redemption sixty (60) days after the redemption date.

- (ii) Each notice of redemption or defeasance shall contain a description of the Bonds to be redeemed or defeased including the complete name of the Bonds, the date of issue, the interest rate, the maturity date, the CUSIP number, the certificate numbers, the amounts called of each certificate, the publication or mailing date for the notice, the date of redemption or defeasance, the redemption price, if any, the name of the Paying Agent/Registrar, and the address at which the Bonds may be redeemed or paid, including a contact person telephone number.
- (iii) All redemption payments made by the Paying Agent/Registrar to the Owners of the Bonds shall include a CUSIP number relating to each amount paid to such Owner.

The failure of any Owner of the Bonds to receive notice given as provided in this Section 2.04, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bonds. Any notice mailed as provided in this Section 2.04 shall be conclusively presumed to have been duly given and shall become effective upon mailing, whether or not any Owner receives such notice.

So long as DTC is effecting book-entry transfers of the Bonds, the Paying Agent/Registrar shall provide the notices specified in this Section 2.04 only to DTC. It is expected that DTC shall, in turn, notify its participants and that the participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of DTC or a participant, or failure on the part of a nominee of a beneficial owner of a Bond to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bonds.

Conditional Notice of Redemption. With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Master Ordinance or this Third Supplement have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

Section 2.05. REGISTRATION; TRANSFER; EXCHANGE OF BONDS; PREDECESSOR BONDS; BOOK-ENTRY-ONLY SYSTEM; SUCCESSOR SECURITIES DEPOSITORY; PAYMENTS TO CEDE & CO. (a) Registration, Transfer, Exchange, and Predecessor Bonds. The Registrar shall obtain, record, and maintain in the Security Register the

name and address of each Owner issued under and pursuant to the provisions of this Third Supplement. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds in Authorized Denominations upon the Security Register by the Owner, in person or by his duly authorized agent, upon surrender of such Bond to the Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Owner or by his duly authorized agent, in form satisfactory to the Registrar.

Upon surrender for transfer of any Bond at the designated office of the Registrar, there shall be registered and delivered in the name of the designated transferee or transferees, one or more new Bonds, executed on behalf of, and furnished by, the City, of Authorized Denominations and having the same Maturity and of a like aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Owner, Bonds may be exchanged for other Bonds of Authorized Denominations and having the same Maturity, bearing the same rate of interest, and of like aggregate principal amount or Maturity Amount and the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the principal office of the Registrar. Whenever any Bonds are so surrendered for exchange, there shall be registered and delivered new Bonds executed on behalf of, and furnished by, the City to the Owner requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the principal office of the Registrar or sent by United States mail, first-class, postage prepaid to the Owners or the designee thereof, and, upon the registration and delivery thereof, the same shall be the valid obligations of the City, evidencing the same debt, and entitled to the same benefits under the Master Ordinance and this Third Supplement, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Owner, except as otherwise herein provided, and except that the Registrar shall require payment by the Owner requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same debt evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated Bond that is surrendered to the Paying Agent/Registrar or any Bond for which satisfactory evidence of the loss of which has been received by the City and the Paying Agent/Registrar and, in either case, in lieu of which a Bond or Bonds have been registered and delivered pursuant to Section 3.05 hereof.

Neither the City nor the Registrar shall be required to issue or transfer to an assignee of a Owner any Bond called for redemption, in whole or in part, within forty-five (45) days of the date fixed for the redemption of such Bond; provided, however, such limitation of transfer shall not be applicable to an exchange by the Owner of the unredeemed balance of a Bond called for redemption in part.

- (b) Ownership of Bonds. The entity in whose name any Bond shall be registered in the Security Register at any time shall be deemed and treated as the absolute Owner thereof for all purposes of this Third Supplement, whether or not such Bond shall be overdue, and, to the extent permitted by law, the City and the Paying Agent/Registrar shall not be affected by any notice to the contrary; and payment of, or on account of, the principal of, premium, if any, and interest on any such Bond shall be made only to such Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.
- (c) <u>Book-Entry-Only System</u>. The Bonds issued in exchange for the Initial Bond for issued as provided in Section 2.06 shall be issued in the form of a separate single fully-registered Bond for each of the maturities thereof registered in the name of Cede & Co., as nominee of DTC, and except as provided in this subsection (c) all of the Outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any DTC Participant or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Owner as shown on the Security Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than a Owner as shown on the Security Register, of any amount with respect to principal of, premium, if any, or interest on the Bonds. Notwithstanding any other provision of this Third Supplement to the contrary but to the extent permitted by law, the City and the Paying Agent/Registrar shall be entitled to treat and consider the person in whose name each Bond is registered in the Security Register as the absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest, with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Paying Agent/Registrar shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the Owners, as shown in the Security Register as provided in this Third Supplement, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Owner, as shown in the Security Register, shall receive a Bond certificate evidencing the obligation of the City to make payments of principal, premium, if any, and interest pursuant to this Third Supplement. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Third Supplement with respect to interest checks being mailed to the Owner at the close of business on the Record Date the words "Cede & Co." in this Third Supplement shall refer to such new nominee of DTC.

(d) <u>Successor Securities Depository; Transfers Outside Book-Entry-Only System.</u> In the event that the City determines to discontinue the book-entry-only system through DTC or a successor or DTC determines to discontinue providing its services with respect to the Bonds, the

City shall either (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities and Exchange Act of 1934, as amended, notify DTC and DTC Participants of the appointment of such successor securities depository, and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants having Bonds credited to their DTC accounts. In such event, the Bonds shall no longer be restricted to being registered in the Security Register in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Third Supplement.

- (e) <u>Payments to Cede & Co.</u> Notwithstanding any other provision of this Third Supplement to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the representation letter of the City to DTC.
- (f) <u>Blanket Issuer Letter of Representations.</u> The City heretofore has executed and delivered to DTC a "Blanket Issuer Letter of Representations" with respect to the utilization by the City of DTC's book-entry-only system and the City intends to utilize such book-entry-only system in connection with the Bonds.

Section 2.06. <u>INITIAL BOND</u>. The Bonds shall initially be issued as a fully registered bond, being one bond (the "Initial Bond"). The Initial Bond shall be registered in the name of the Senior Manager of the Bonds. The Initial Bond shall be submitted to the Office of the Attorney General of the State for approval and registration by the Office of the Comptroller of Public Accounts of the State and delivered to the Underwriters thereof. Immediately after the delivery of the Initial Bond on the Issuance Date, the Registrar shall cancel the Initial Bond and exchange therefor Bonds in the form of a separate single fully-registered Bond for each of the maturities thereof registered in the name of Cede & Co., as nominee of DTC and, except as provided in Section 2.05(d), all of the Outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

Section 2.07. FORM OF BONDS. The Bonds (including Initial Bond), the Registration Certificate of the Comptroller of Public Accounts of the State or the Authentication Certificate, and the form of Assignment to be printed on each of the Bonds shall be substantially in the forms set forth in <a href="Exhibit" "B" to this Third Supplement with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Third Supplement and the Pricing Certificate, may have such letters, numbers, or other marks of identification and such legends and endorsements (including any reproduction of an opinion of counsel and information regarding the issuance of any bond insurance policy) thereon as may, consistently herewith, be established by the City or determined by the officers executing such Bonds as evidenced by their execution thereof. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The Bonds shall be typewritten, photocopied, printed, lithographed, engraved, or produced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

ARTICLE III EXECUTION; REPLACEMENT OF BONDS; AND BOND INSURANCE

Section 3.01. EXECUTION AND REGISTRATION. The Bonds shall be executed on behalf of the City by the Mayor under its seal reproduced or impressed thereon and attested by the City Secretary. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the City as of their authorization shall be deemed to be duly executed on behalf of the City, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchaser(s) and with respect to Bonds delivered in subsequent exchanges and transfers, all as authorized and provided in Chapter 1201, Texas Government Code, as amended.

No Bond shall be entitled to any right or benefit under this Third Supplement, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Exhibit "B" to this Third Supplement, executed by the Comptroller of Public Accounts of the State or its duly authorized agent by manual signature, or the Paying Agent/Registrar's Authentication Certificate substantially in the form provided in Exhibit "B" to this Third Supplement executed by the manual signature of an authorized officer or employee of the Registrar, and either such certificate duly signed upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered, and delivered.

Section 3.02. CONTROL AND CUSTODY OF BONDS. The Chief Financial Officer shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation and examination by the Attorney General of the State, including the printing and supply of printed Bonds, and shall take and have charge and control of the Initial Bond pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts, and the delivery thereof to the Underwriters.

Furthermore, each Authorized Representative is hereby authorized and directed to furnish and execute such documents relating to the Utility System, the City and its financial affairs as may be necessary for the issuance of the Bonds, the approval of the Attorney General, and the registration by the Comptroller of Public Accounts and, together with the City's Bond Counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond to the underwriters and the initial exchange thereof for Bonds other than the Initial Bond.

Section 3.03. <u>PRINTED OPINION</u>. The Underwriters' obligation to accept delivery of the Bonds is subject to the Underwriters being furnished the final opinion of McCall, Parkhurst & Horton L.L.P. approving the Bonds as to their validity, said opinion to be dated and delivered as of

the date of delivery and payment for the Bonds. If bond insurance is obtained for the Bonds, the Bonds may bear an appropriate insurance legend.

Section 3.04. <u>CUSIP NUMBERS</u>. CUSIP numbers may be printed or typed on the Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the Bonds shall be of no significance or effect as regards the legality thereof and neither the City nor attorneys approving the Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the Bonds.

Section 3.05. MUTILATED, DESTROYED, LOST, AND STOLEN BONDS. If (1) any mutilated Bond is surrendered to the Paying Agent/Registrar, or the City and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss, or theft of any Bond, and (2) there is delivered to the City and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the City or the Paying Agent/Registrar that such Bond has been acquired by a bona fide purchaser, the City shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Bond, a new Bond of the same Maturity and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Bond has become or is about to become due and payable, the City in its discretion may, instead of issuing a new Bond, pay such Bond and the interest due thereon to the date of payment.

Upon the issuance of any new Bond under this Section, the City may require payment by the Owner of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the City, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Third Supplement equally and ratably with all other Outstanding Bonds.

Section 3.06. <u>BOND INSURANCE</u>. In connection with the sale of the Bonds, the City Officials may obtain a municipal bond insurance policy from a municipal bond insurer (the "Insurer") to guarantee the full and complete payment required to be made by or on behalf of the City on some or all of the Bonds as determined by the City Officials. The City Officials are hereby authorized to sign a commitment letter with the Insurer and to pay the premium for the bond insurance policies at the time of the delivery of the Bonds out of the proceeds of sale of the Bonds or from other available funds and to execute such other documents and certificates as necessary in connection with the bond insurance policies as he or she may deem appropriate. Printing on Bonds covered by the bond insurance policies a statement describing such insurance, in form and substance satisfactory to the Insurer and the City Officials, is hereby approved and authorized. The Pricing Certificate may contain provisions related to the bond insurance policies, including payment

provisions thereunder, and the rights of the Insurer or Insurers, and any such provisions shall be read and interpreted as an integral part of this Third Supplement.

ARTICLE IV PAYMENTS, REBATE FUND AND RESERVE FUND

- **Section 4.01. PAYMENTS.** (a) Accrued and Capitalized Interest. Immediately after the delivery of the Bonds the City shall deposit any accrued interest and any sale proceeds to be used to pay capitalized interest received from the sale and delivery of such Bonds to the credit of the Interest and Sinking Account to be held to pay interest on such Bonds.
- (b) <u>Debt Service Payments</u>. Semiannually on or before each principal or interest payment date while any of the Bonds are outstanding and unpaid, commencing on the first interest payment date for the Bonds, the City shall make available from the Interest and Sinking Account to the Paying Agent/Registrar, money sufficient to pay such interest on and such principal of the Bonds as will accrue or mature, or be subject to mandatory redemption prior to maturity, on such principal, redemption, or interest payment date. The Paying Agent/Registrar shall cancel all paid Bonds and shall furnish the City with an appropriate certificate of cancellation.
- **Section 4.02. REBATE ACCOUNT**. A separate and special account to be known as the Rebate Account is hereby established by the City pursuant to the requirements of Section 148(f) of the Code and the tax covenants of the City contained in Section 5.01 of this Third Supplement for the benefit of the United States of America and the City, as their interests may appear pursuant to this Third Supplement. Such amounts shall be deposited therein and withdrawn therefrom as is necessary to comply with the provisions of Section 5.01. Any moneys held within the Rebate Account shall not constitute Security under the Master Ordinance.
- Section 4.03. RESERVE ACCOUNT. (a) To accumulate and maintain a reserve for the payment of the Bonds equal to the Average Annual Debt Service Requirements of the Bonds (calculated by the City at the beginning of each Fiscal Year) (the "Required Reserve Amount"), the Reserve Account has been established and shall be maintained by the City. Earnings and income derived from the investment of amounts held for the credit of the Reserve Account shall be retained in the Reserve Account until the Reserve Account contains the Required Reserve Amount; thereafter, such earnings and income shall be deposited to the credit of the System Account. The City shall deposit and credit to the Reserve Account amounts required to maintain the balance in the Reserve Account in an amount equal to the Required Reserve Amount by making monthly deposits and credits in amounts equal to not less than 1/60th of the Required Reserve Amount or by the deposit of a Reserve Account Obligation. There shall be deposited into the Reserve Account any Reserve Account Obligations so designated by the City. All funds, investments and Reserve Account Obligations on deposit and credited to the Reserve Account shall be used solely for (i) the payment of the principal of and interest on the Bonds, when and to the extent other funds available for such purposes are insufficient, (ii) to make Reserve Account Obligation Payments and (iii) to retire the last Stated Maturity or Stated Maturities of or interest on the Bonds. The Reserve Account is solely for the benefit of this series of Bonds and is not available to pay Annual Debt Service Requirements on any other Parity Debt.

(b) When and for so long as the cash, investments and Reserve Account Obligations in the Reserve Account equal the Required Reserve Amount, no deposits need be made to the credit of the Reserve Account; but, if and when the Reserve Account at any time contains less than the Required Reserve Amount, the City covenants and agrees that the City shall cure the deficiency in the Reserve Account by resuming the deposits to such Account from the Pledged Revenues by monthly deposits and credits in amounts equal to not less than 1/60th of the Required Reserve Amount with any such deficiency payments being made on or before each interest payment date until the Required Reserve Amount has been fully restored; provided, however, that no such deposits shall be made into the Reserve Account during any six month period beginning on an interest payment date until there has been deposited into the Interest and Sinking Account the full amount required to be deposited therein by the next following semi-annual payment date, as the case may be. In addition, in the event that a portion of the Required Reserve Amount is represented by a Reserve Account Obligation, the Required Reserve Amount shall be restored as soon as possible from monthly deposits of Pledged Revenues on deposit in the System Account, but subject to making the full deposits and credits to the Interest and Sinking Account required to be made by the next following interest payment date, as the case may be. The City further covenants and agrees that, subject only to the prior deposits and credits to be made to the Interest and Sinking Account, the Pledged Revenues shall be applied and appropriated and used to establish and maintain the Required Reserve Amount, including by paying Reserve Account Obligation Payments when due, and to cure any deficiency in such amounts as required by the terms of this Third Supplement.

During such time as the Reserve Account contains the Required Reserve Amount, the obligation to maintain the Required Reserve Amount has been suspended pursuant to subsection (d) below or any cash is replaced with a Reserve Account Obligation pursuant to subsection (c) below, the City may, at its option, withdraw all surplus funds in the Reserve Account and deposit such surplus in the Interest and Sinking Account or otherwise use such amount in any manner permitted by law unless such surplus is required to be rebated in which case such event shall be deposited into the Rebate Account.

- (c) A Reserve Account Obligation issued in an amount equal to all or part of the Required Reserve Amount for the Bonds may be used in lieu of depositing cash into the Reserve Account. In addition, a Reserve Account Obligation may be substituted for monies and investments in the Reserve Account if the substitution of the Reserve Account Obligation will not, in and of itself, cause any ratings then assigned to the Bonds by any rating agency to be lowered and the ordinance authorizing the substitution of the Reserve Account Obligation for all or part of the Required Reserve Amount contains a finding that such substitution is cost effective.
- (d) Notwithstanding anything to the contrary contained herein, the requirement set forth in subsection (a) above to maintain the Required Reserve Amount in the Reserve Account shall be suspended for such time as the Net Revenues for each Fiscal Year are equal to at least 1.35 times the average Annual Debt Service Requirements. In the event that the Net Revenues for any Fiscal Year are less than 1.35 times the average Annual Debt Service Requirements, the City will be required to commence making Required Reserve Account Deposits, as provided in subsection (b) above, and to continue such Required Reserve Account Deposits until the earlier of (i) such time as the Reserve Account contains the Required Reserve Amount or (ii) the Net Revenues in each of two

consecutive years have been equal to not less than 1.35 times the average Annual Debt Service Requirements. Notwithstanding the provisions of Section 4.03(a) of this section, if the City commences deposits in the Reserve Account and later is authorized to suspend payments into the fund under this section any funds so accumulated may, at the discretion of the City: (i) remain in the Reserve Account or (ii) be used for any lawful purpose including additional projects or to pay debt service on the Bonds.

- (e) A Reserve Account Obligation permitted under (a) above, must be in the form of a surety bond or insurance policy meeting the requirements described below.
 - (1) (i) A surety bond or insurance policy issued to the Paying Agent/Registrar, as agent of the Holders, by a company licensed to issue an insurance policy guaranteeing the timely payment of debt service on the Bonds (a "municipal bond insurer") if the claims paying ability of the issuer thereof shall be rated "AAA" or "Aaa", respectively, by S&P and Moody's, or (ii) a surety bond or insurance policy issued to the Paying Agent/Registrar, as agent of the Holders, by an entity other than a municipal bond insurer, if the form and substance of such instrument and the issuer thereof shall be approved in writing by each Bond Insurer of record.
 - (2) The obligation to reimburse the issuer of a Reserve Account Obligation for any claims or draws upon such Reserve Account Obligation in accordance with its terms, including expenses incurred in connection with such claims or draws, to the extent permitted by law, (a Reserve Account Obligation Payment) shall be made from the deposits made to the Reserve Account as provided in this Section. The Reserve Account Obligation shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the issuer of the Reserve Account Obligation to reimbursement will be subordinated to the cash replenishment of the Reserve Account to an amount equal to the difference between the full original amount available under the Reserve Account Obligation and the amount then available for further draws or claims. In the event (a) the issuer of a Reserve Account Obligation becomes insolvent, or (b) the issuer of a Reserve Account Obligation defaults in its payment obligations thereunder, or (c) the claims paying ability of the issuer of the insurance policy or surety bond falls below "AAA" or "Aaa", by S&P and Moody's, respectively, the obligation to reimburse the issuer of the Reserve Account Obligation shall be subordinated to the cash replenishment of the Reserve Account.
 - (3) In the event (a) the revolving reinstatement feature described in the preceding paragraph is suspended or terminated, or (b) the rating of the claims paying ability of the issuer of the surety bond or insurance policy falls below "AAA" or "Aaa", by S&P and Moody's, respectively, the City shall either (i) deposit into the Reserve Account, in accordance with this Section, an amount sufficient to cause the cash or investments credited to the Reserve Account to accumulate to the Required Reserve Amount, or (ii) replace such instrument with a surety bond or insurance policy meeting the requirements of 1 and 2 above, within six months of such occurrence. In the event (a) the rating of the claims-paying ability of the

issuer of the surety bond or insurance policy falls below "A" by S&P and Moody's, or (b) the issuer of the Reserve Account Obligation defaults in its payment obligations hereunder, or (c) the issuer of the Reserve Account Obligation becomes insolvent, the City shall either (i) deposit into the Reserve Account, in accordance with this Section, amounts sufficient to cause the cash or investments on deposit in the Reserve Account to accumulate to the Required Reserve Amount, or (ii) replace such instrument with a surety bond or insurance policy meeting the requirements of 1 and 2 above within six months of such occurrence.

(4) The Paying Agent/Registrar shall ascertain the necessity for a claim or draw upon any Reserve Account Obligation and provide notice to the issuer of the Reserve Account Obligation in accordance with its terms not later than three days (or such appropriate time period as will, when combined with the timing of required payment under the Reserve Account Obligation, ensure payment under the Reserve Account Obligation on or before the interest payment date) prior to each date upon which the principal of or interest on the Parity Obligations will be due.

It is recognized that a Reserve Account Obligation may be issued which is payable only with respect to a part of the Bonds with the remainder of the Required Reserve Amount being satisfied by monies and investments and in that case any draws upon the Reserve Account will have to be made on a pro-rata basis. Therefore, (i) draws upon one or more such Reserve Account Obligations shall be made on a pro-rata basis with cash and investments available in the Reserve Account and (ii) deposits and credits to the Reserve Account to restore it to the Required Reserve Amount shall be utilized on a pro-rata basis to pay Reserve Account Obligation Payments to reimburse the issuers of the Reserve Account Obligations, thus restoring that part of the Required Reserve Amount, and to restore with cash and investments the balance of the Required Reserve Amount.

ARTICLE V COVENANTS REGARDING TAX EXEMPTION

Section 5.01. COVENANTS REGARDING TAX EXEMPTION. (a) Covenants. The City covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Bonds as obligations described in section 103 of the Code, the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(1) to take any action to assure that no more than ten percent (10%) of the proceeds of the Bonds or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than ten percent (10%) of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Third Supplement or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than ten percent (10%) of the debt service on the Bonds, in contravention of section 141(b)(2) of the Code;

- (2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds five percent (5%) of the proceeds of the Bonds or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of five percent (5%) is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;
- (3) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or five percent (5%) of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;
- (4) to refrain from taking any action which would otherwise result in the Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;
- (5) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;
- (6) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with --
 - (A) proceeds of the Bonds invested for a reasonable temporary period of three (3) years or less until such proceeds are needed for the purpose for which the bonds are issued,
 - (B) amounts invested in a bona fide debt service funds, within the meaning of section 1.148-1(b) of the Treasury Regulations, and
 - (C) amounts deposited in any reasonably required reserve or replacement funds to the extent such amounts do not exceed ten percent (10%) of the proceeds of the Bonds:
- (7) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings);
- (8) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds have been paid in full, 100

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percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code; and

- (9) to assure that the proceeds of the Bonds will be used solely for new money projects.
- (b) Rebate Account. In order to facilitate compliance with the above covenant in subsection (a)(8), a "Rebate Account" is hereby established by the City for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Account is established for the additional purpose of compliance with section 148 of the Code.
- (c) Proceeds. The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Bonds. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Chief Financial Officer to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.
- (d) <u>Designation as Qualified Tax-Exempt Obligations</u>. The City hereby designates the Bonds as "qualified tax-exempt bonds" as defined in section 265(b)(3) of the Code. In furtherance of such designation, the City represents, covenants and warrants the following: (a) that during the calendar year in which the Bonds are issued, the City (including any subordinate entities) has not designated nor will designate bonds, which when aggregated with the Bonds, will result in more than \$10,000,000 (\$30,000,000 for taxable years beginning after December 31, 2008 and ending prior to January 1, 2011) of "qualified tax-exempt bonds" being issued; (b) that the City reasonably anticipates that the amount of tax-exempt obligations issued, during the calendar year in which the Bonds are issued, by the City (or any subordinate entities) will not exceed \$10,000,000 (\$30,000,000 for taxable years beginning after December 31, 2008 and ending prior to January 1, 2011); and (c) that the City will take such action or refrain from such action as necessary, and as more particularly set forth in this Section, in order that the Bonds will not be considered "private activity bonds" within the meaning of section 141 of the Code.

Section 5.02. ALLOCATION OF, AND LIMITATION ON, EXPENDITURES FOR

PROJECT. The City covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section 2.01 of this Third Supplement on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (i) the expenditure is made, or (ii) the purposes for which the Bonds are issued have been accomplished. The foregoing notwithstanding, the City shall not expend sale proceeds or investment earnings thereon more than 60 days after the earlier of (i) the fifth anniversary of the delivery of the Bonds, or (ii) the date the Bonds are retired, unless the City obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

Section 5.03. DISPOSITION OF PROJECT. The City covenants that the property financed with the Bonds will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized bond counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

ARTICLE VI AMENDMENTS AND MODIFICATIONS

Section 6.01. <u>AMENDMENTS OR MODIFICATIONS WITHOUT CONSENT OF</u> <u>OWNERS OF BONDS</u>. Subject to the provisions of the Master Ordinance, this Third Supplement and the rights and obligations of the City and of the Owners of the Outstanding Bonds may be modified or amended at any time without notice to or the consent of any Owner of the Bonds or any other Parity Debt, solely for any one or more of the following purposes:

- (i) To add to the covenants and agreements of the City contained in this Third Supplement, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the City in this Third Supplement;
- (ii) To cure any ambiguity or inconsistency, or to cure or correct any defective provisions contained in this Third Supplement, upon receipt by the City of an Opinion of Counsel, that the same is needed for such purpose, and will more clearly express the intent of this Third Supplement;
 - (iii) To supplement the Security for the Bonds;

- (iv) To make such other changes in the provisions hereof, as the City may deem necessary or desirable and which shall not, in the judgment of the City, materially adversely affect the interests of the Owners of the Outstanding Bonds;
- (v) To make any changes or amendments requested by the State Attorney General's Office as a condition to the approval of the Bonds, which changes or amendments do not, in the judgment of the City, materially adversely affect the interests of the Owners of the Outstanding Bonds; or
- (vi) To make any changes or amendments requested by any bond rating agency then rating or requested to rate the Bonds, as a condition to the issuance or maintenance of a rating, which changes or amendments do not, in the judgment of the City, materially adversely affect the interests of the Owners of the Outstanding Bonds.

Section 6.02. AMENDMENTS OR MODIFICATIONS WITH CONSENT OF OWNERS OF BONDS. (a) Amendments. Subject to the other provisions of this Third Supplement, the Master Ordinance and the consent of the Bond Insurer, the Owners of Outstanding Bonds aggregating a majority in Outstanding Principal Amount shall have the right from time to time to approve any amendment, other than amendments described in Section 6.01 hereof, to this Third Supplement that may be deemed necessary or desirable by the City, provided, however, that nothing herein contained shall permit or be construed to permit, without the approval of the Owners of all of the Outstanding Bonds, the amendment of the terms and conditions in this Third Supplement or in the Bonds so as to:

- (i) Make any change in the maturity of the Outstanding Bonds;
- (ii) Reduce the rate of interest borne by Outstanding Bonds;
- (iii) Reduce the amount of the principal payable on Outstanding Bonds;
- (iv) Modify the terms of payment of principal of or interest on the Outstanding Bonds, or impose any conditions with respect to such payment;
- (v) Affect the rights of the Owners of less than all Bonds then Outstanding; or
- (vi) Change the minimum percentage of the Outstanding Principal Amount of Bonds necessary for consent to such amendment.
- (b) <u>Notice</u>. If at any time the City shall desire to amend this Third Supplement pursuant to Subsection (a), the City shall cause notice of the proposed amendment to be published in a financial newspaper or journal of general circulation in the City of New York, New York (including,

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but not limited to, <u>The Bond Buyer</u> or <u>The Wall Street Journal</u>) or in the State (including, but not limited to, <u>The Texas Bond Reporter</u>), once during each calendar week for at least two successive calendar weeks or disseminated by electronic means customarily used to convey notices of redemption. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Paying Agent/Registrar for inspection by all Owners of Bonds. Such publication is not required, however, if the City gives or causes to be given such notice in writing to each Owner of Bonds. A copy of such notice shall be provided in writing to each rating agency maintaining a rating on the Bonds and to the Bond Insurer.

- (c) Receipt of Consents. Whenever at any time the City shall receive an instrument or instruments executed by all of the Owners or the Owners of Outstanding Bonds aggregating a majority in Outstanding Principal Amount, as appropriate, which instrument or instruments shall refer to the proposed amendment described in said notice and which consent to and approve such amendment in substantially the form of the copy thereof on file as aforesaid, the City may adopt the amendatory resolution in substantially the same form.
- (d) <u>Consent Irrevocable</u>. Any consent given by any Owner pursuant to the provisions of this Section shall be irrevocable for a period of six (6) months from the date of the first publication or other service of the notice provided for in this Section, and shall be conclusive and binding upon all future Owners of the same Bond during such period. Such consent may be revoked at any time after six (6) months from the date of the first publication of such notice by the Owner who gave such consent, or by a successor in title, by filing notice thereof with the Paying Agent/Registrar and the City, but such revocation shall not be effective if the Owners of Outstanding Bonds aggregating a majority in Outstanding Principal Amount prior to the attempted revocation consented to and approved the amendment. Notwithstanding the foregoing, any consent given at the time of and in connection with the initial purchase of Bonds shall be irrevocable.
- (e) <u>Ownership</u>. For the purpose of this Section, the ownership and other matters relating to all Bonds registered as to ownership shall be determined from the Security Register kept by the Paying Agent/Registrar therefor. The Paying Agent/Registrar may conclusively assume that such ownership continues until written notice to the contrary is served upon the Paying Agent/Registrar.
- **Section 6.03. EFFECT OF AMENDMENTS.** Upon the adoption by the City of any resolution to amend this Third Supplement pursuant to the provisions of this Article, this Third Supplement shall be deemed to be amended in accordance with the amendatory resolution, and the respective rights, duties, and obligations of the City and all the Owners of Outstanding Bonds shall thereafter be determined, exercised, and enforced under the Master Ordinance and this Third Supplement, as amended.

ARTICLE VII MISCELLANEOUS

Section 7.01. <u>DISPOSITION OF BOND PROCEEDS AND OTHER FUNDS</u>. Proceeds from the sale of the Bonds shall, promptly upon receipt thereof, be applied by the Chief Financial Officer as follows:

- (i) any underwriting discount or fees and any Credit Agreement fees for the Bonds may be retained by and/or wired directly to such parties;
- (ii) any accrued interest and sale proceeds to be used to pay capitalized interest for the Bonds, if any, shall be deposited as provided in Section 4.01;
- (iii) an amount sufficient to pay the remaining costs of issuance of the Bonds and the cost of acquiring, purchasing, constructing, improving, enlarging, and equipping the improvements being financed with the proceeds of the Bonds shall be deposited in the Bond Proceeds Account to be used for such purposes.

Any sale proceeds of the Bonds remaining after making all deposits and payments provided for above shall be deposited into the Interest and Sinking Account and applied to the payment of principal of and interest on the Bonds.

Section 7.02. MAILED NOTICES. Except as otherwise required herein, all notices required or authorized to be given to the City, any Bond Insurer (as defined in, and pursuant to, Section 3.06 hereof) or the Paying Agent/Registrar pursuant to this Third Supplement shall be in writing and shall be sent by registered or certified mail, postage prepaid, to the following addresses or otherwise given in a manner deemed, in writing, acceptable to the party to receive the notice:

1. to the City:

City of Temple, Texas 2 North Main Street Temple, Texas 76501 Attn: Chief Financial Officer

Telephone: (254) 298-5453 Facsimile: (254) 298-5466

2. to the Paying Agent/Registrar:

The Bank of New York Mellon Trust Company, National Association

2001 Bryan - 8th Floor

Dallas, TX 75201

Attn: Corporate Trust

Telephone: (214) 468-6411 Facsimile: (214) 468-6322

3. to any Bond Insurer:

The address, phone number and fax number specified by the Bond Insurer

or to such other addresses as may from time to time be furnished to the parties, effective upon the receipt of notice thereof given as set forth above.

Section 7.03. <u>**DEFEASANCE OF BONDS.**</u> (a) <u>Deemed Paid</u>. The principal of and/or the interest and redemption premium, if any, on any Bonds shall be deemed to be Defeased Debt within

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the meaning of the Master Ordinance, except to the extent provided in subsections (c) and (e) of this Section, when payment of the principal of such Bonds, plus interest thereon to the due date or dates (whether such due date or dates be by reason of maturity, upon redemption, or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption or the establishment of irrevocable provisions for the giving of such notice) or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank for such payment (1) lawful money of the United States of America sufficient to make such payment, (2) Defeasance Securities, certified by an independent public accounting firm of national reputation to mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment and when proper arrangements have been made by the City with the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank for the payment of its services until all Defeased Debt shall have become due and payable or (3) any combination of (1) and (2). At such time as Bonds shall be deemed to be a Defeased Debt hereunder, as aforesaid, such Bonds and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of the Security as provided in the Master Ordinance and this Third Supplement, and such principal and interest shall be payable solely from such money or Defeasance Securities.

- (b) <u>Investments</u>. The deposit under clause (ii) of subsection (a) of this Section shall be deemed a payment of Bonds as aforesaid when proper notice of redemption of such Bonds shall have been given or upon the establishment of irrevocable provisions for the giving of such notice, in accordance with the Master Ordinance and this Third Supplement. Any money so deposited with the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank as provided in this Section may at the discretion of the City also be invested in Defeasance Securities, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Defeasance Securities in possession of the Paying Agent/Registrar for such Bonds or an eligible trust company or commercial bank pursuant to this Section which is not required for the payment of such Bonds and premium, if any, and interest thereon with respect to which such money has been so deposited, shall be remitted to the City for deposit to the General Account of the System Account.
- (c) Continuing Duty of Paying Agent and Registrar. Notwithstanding any provision of any other Section of this Third Supplement which may be contrary to the provisions of this Section, all money or Defeasance Securities set aside and held in trust pursuant to the provisions of this Section for the payment of principal of Bonds and premium, if any, and interest thereon, shall be applied to and used solely for the payment of the particular Bonds and premium, if any, and interest thereon, with respect to which such money or Defeasance Securities have been so set aside in trust. Until all Defeased Debt shall have become due and payable, the Paying Agent/Registrar for such Defeased Debt shall perform the services of Paying Agent/Registrar for such Defeased Debt the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services as required by this Third Supplement.
- (d) <u>Amendment of this Section</u>. Notwithstanding anything elsewhere in this Third Supplement, if money or Defeasance Securities have been deposited or set aside with the Paying

Agent/Registrar for such Bonds or an eligible trust company or commercial bank pursuant to this Section for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment of the provisions of this Section shall be made without the consent of the registered owner of each Bonds affected thereby.

(e) Retention of Rights. Notwithstanding the provisions of subsection (a) of this Section, to the extent that, upon the defeasance of any Defeased Debt to be paid at its maturity, the City retains the right under State law to later call that Defeased Debt for redemption in accordance with the provisions of this Third Supplemental Ordinance relating to the Defeased Debt, the City may call such Defeased Debt for redemption upon complying with the provisions of State law and upon the satisfaction of the provisions of subsection (a) of this Section with respect to such Defeased Debt as though it was being defeased at the time of the exercise of the option to redeem the Defeased Debt and the effect of the redemption is taken into account in determining the sufficiency of the provisions made for the payment of the Defeased Debt.

Section 7.04. PAYING AGENT/REGISTRAR AGREEMENT AND OFFICIAL STATEMENT. The Paying Agent/Registrar Agreement by and between the City and the Paying Agent/Registrar is hereby approved and the Mayor is hereby authorized to execute, and deliver such Paying Agent/Registrar Agreement.

Section 7.05. FURTHER PROCEDURES. Each Authorized Representative is hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Third Supplement, the Bonds, the sale and delivery of the Bonds, and fixing all details in connection therewith, and the Paying Agent/Registrar Agreement. In connection with the issuance and delivery of each the Bonds, the above-stated officers, with the advice of the City Attorney and Bond Counsel to the City, are hereby authorized to approve, subsequent to the date of the adoption of this Third Supplement, any amendments to the above named documents, and any technical amendments to this Third Supplement as permitted by Section 6.01 (v) or (vi) and a Authorized Representative is hereby authorized to execute this Third Supplement to evidence approval of such changes.

Section 7.06. <u>NONPRESENTMENT OF BONDS</u>. If any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise if moneys sufficient to pay such Bond shall have been deposited with the Paying Agent/Registrar, it shall be the duty of the Paying Agent/Registrar to hold such moneys, without liability to the City, any Owner, or any other person for interest thereon, for the benefit of the Owner of such Bond.

Any moneys so deposited with and held by the Paying Agent/Registrar due to nonpresentment of Bonds must be retained by the Paying Agent/Registrar for a period of at least two years after the final maturity date of the Bonds or advance refunding date, if applicable. Thereafter, to the extent permitted by the unclaimed property laws of the State, such amounts shall be paid by the Paying Agent/Registrar to the City, free from the trusts created by this Third Supplement and

Owners shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid by the Paying Agent/Registrar.

Section 7.07. EFFECT OF SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS.

Whenever this Third Supplement requires any action to be taken on a Saturday, Sunday, or legal holiday, such action shall be taken on the first business day occurring thereafter. Whenever in this Third Supplement the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, or legal holiday, such time shall continue to run until midnight on the next succeeding business day.

Section 7.08. PARTIAL INVALIDITY. If any one or more of the covenants or agreements or portions thereof provided in this Third Supplement on the part of the City should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements or portions thereof provided in this Third Supplement and the invalidity thereof shall in no way affect the validity of the other provisions of this Third Supplement or of the Bonds, but the Owners of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

Section 7.09. CONTINUING DISCLOSURE UNDERTAKING. (a) Annual Reports. The City shall provide annually to the MSRB, in an electronic format as prescribed by the MSRB, within six months after the end of any fiscal year, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 7 of this Ordinance, being the information described in Exhibit "C" hereto. Any financial statements to be so provided shall be (1) prepared in accordance with the accounting principles described in Exhibit "C"hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide unaudited financial statements within such period, and audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements become available.

If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB's internet web site or filed with the SEC. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

- (b) <u>Material Event Notices</u>. The City shall notify the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner, of any of the following events with respect to the Bonds, if such event is material within the meaning of the federal securities laws:
 - A. Principal and interest payment delinquencies;
 - B. Non-payment related defaults;
 - C. Unscheduled draws on debt service reserves reflecting financial difficulties;
 - D. Unscheduled draws on credit enhancements reflecting financial difficulties;
 - E. Substitution of credit or liquidity providers, or their failure to perform;
 - F. Adverse tax opinions or events affecting the tax-exempt status of the Bonds;
 - G. Modifications to rights of holders of the Bonds;
 - H. Certificate calls;
 - I. Defeasances;

and

- J. Release, substitution, or sale of property securing repayment of the Bonds;
 - K. Rating changes.

The City shall notify the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (a) of this Section by the time required by such subsection. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(c) <u>Limitations, Disclaimers, and Amendments</u>. The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with Section 7.03 of this Ordinance that causes the Bonds no longer to be outstanding.

The provisions of this Section are for the sole benefit of the holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial

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results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Should the Rule be amended to obligate the City to make filings with or provide notices to entities other than the MSRB, the City hereby agrees to undertake such obligation with respect to the Bonds in accordance with the Rule as amended.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Bonds consents to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interest of the holders and beneficial owners of the Bonds. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with paragraph (a) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The City may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds.

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Section 7.10. CREDIT AGREEMENT. To the extent permitted by law, the City reserves the right to enter into Credit Agreements in connection with the Bonds, upon the written opinion of the Chief Financial Officer that such Credit Agreements are in the best interest of the City given the market conditions at the time. The Credit Agreements will constitute a Credit Agreement as defined in the Master Ordinance. Credit Agreements and the obligations thereunder may, pursuant to their terms, constitute (i) Parity Debt secured by a pledge of the Security on parity with the Bonds and other Parity Debt, (ii) Subordinated Debt secured by a pledge of the Security subordinate to the Bonds and other Parity Debt or (iii) partially Parity Debt and partially Subordinated Debt.

Section 7.11. <u>**DEFAULT AND REMEDIES**</u>. (a) <u>Events of Default</u>. Each of the following occurrences or events for the purpose of this Third Supplement is hereby declared to be an Event of Default:

- (i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or
- (ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the Registered Owners of the Bonds, including, but not limited to, their prospect or ability to be repaid in accordance with this Third Supplement, and the continuation thereof for a period of 60 days after notice of such default is given by any Registered Owner to the City.

(b) Remedies for Default.

- (i) Upon the happening of any Event of Default, then and in every case, any Registered Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the City, or any official, officer or employee of the City in their official capacity, for the purpose of protecting and enforcing the rights of the Registered Owners under this Third Supplement, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the Registered Owners hereunder or any combination of such remedies.
- (ii) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all Registered Owners of Bonds then outstanding.

(c) Remedies Not Exclusive.

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Third Supplement, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Third Supplement.

- (ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.
- (iii) By accepting the delivery of a Bond authorized under this Third Supplement, such Registered Owner agrees that the certifications required to effectuate any covenants or representations contained in this Third Supplement do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or trustees of the City or the City Council.
- (iv) None of the members of the City Council, nor any other official or officer, agent, or employee of the City, shall be charged personally by the Registered Owners with any liability, or be held personally liable to the Registered Owners under any term or provision of this Third Supplement, or because of any Event of Default or alleged Event of Default under this Third Supplement.
- **Section 7.12.** <u>RULES OF INTERPRETATION</u>. For purposes of this Third Supplement, except as otherwise expressly provided or the context otherwise requires:
- (a) The words "herein," "hereof" and "hereunder" and other similar words refer to this Third Supplement as a whole and not to any particular Article, Section, or other subdivision.
- (b) The definitions in an Article are applicable whether the terms defined are used in the singular or the plural.
- (c) All accounting terms that are not defined in this Third Supplement have the meanings assigned to them in accordance with then applicable accounting principles.
- (d) Any pronouns used in this Third Supplement include both the singular and the plural and cover both genders.
- (e) Any terms defined elsewhere in this Third Supplement have the meanings attributed to them where defined.
- (f) The captions or headings are for convenience only and in no way define, limit or describe the scope or intent, or control or affect the meaning or construction, of any provisions or sections hereof.
- (g) Any references to Section numbers are to Sections of this Third Supplement unless stated otherwise.
- **Section 7.13. INDIVIDUALS NOT LIABLE.** All covenants, stipulations, obligations, and agreements of the City contained in this Third Supplement shall be deemed to be covenants, stipulations, obligations, and agreements of the Financing Program, the Utility System and the City to the full extent authorized or permitted by State law. No covenant, stipulation, obligation, or agreement herein contained shall be deemed to be a covenant, stipulation, obligation, or agreement

of any member of the City Council or agent or employee of the City in his or her individual capacity and neither the members of the City Council, nor any officer, employee, or agent of the City shall be liable personally on the Bonds when issued, or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 7.14. PAYMENT OF ATTORNEY GENERAL FEE. The City hereby authorizes the disbursement of a fee equal to the lesser of (i) one-tenth of one percent of the principal amount of the Bonds or (ii) \$9,500, provided that such fee shall not be less than \$750, to the Attorney General of Texas Public Finance Division for payment of the examination fee charged by the State of Texas for the Attorney General's review and approval of public securities and credit agreements, as required by Section 1202.004 of the Texas Government Code. The Authorized Representative is hereby instructed to take the necessary measures to make this payment. The City is also authorized to reimburse the appropriate City funds for such payment from proceeds of the Bonds of each Series.

	Mayor	
	City of Temple, Texas	
ATTEST:		
ATTEST.		
City Secretary		
City of Temple, Texas		
APPROVED AS TO LEGALITY:		
City Attorney City of Temple, Texas	_	

IN ACCORDANCE WITH SECTION 1201.028, Texas Government Code, finally passed, approved and effective this 19th day of August, 2010.

The City	v has caused th	is Third Sur	polement to	be executed by	an Authorized F	Representative.
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CITY OF TEMPLE, TEXAS

By: _	
	Authorized Representative

EXHIBIT A DEFINITIONS

As used in this Third Supplement, the following terms shall have the meanings set forth below, unless the text hereof specifically indicates otherwise:

"Authorized Denominations" - Means \$5,000 or any integral multiple thereof.

"Authorized Representative" - Means the City Manager, Assistant City Manager or such other individuals so designated by the City to perform the duties of an Authorized Representative under this Third Supplement.

"Bonds" - The Bonds issued pursuant to and governed by this Third Supplement, as described in Article II hereof.

"Bond Insurer" - One or more companies, if any, insuring all or any portion of the Bonds (or any portion thereof) or any successor thereof or assignee thereof.

"City Officers" - Means the City Manager of the City and the Director of Finance of the City.

"Chief Financial Officer" - Means the Director of Finance or such other officer or employee of the City or such other individual so designated by the City to perform the duties of Chief Financial Officer under this Third Supplement.

"Current Interest Bonds" - The Bonds paying current interest and maturing in each of the years and in the aggregate principal amounts set forth in this Ordinance.

"Defeasance Securities" - Means (i) Federal Securities, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the City adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds are rated as to investment quality by a nationally recognized investment rating firm not less than "AAA" or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the City adopts or approves proceedings authorizing the issuance of refunding bonds or otherwise provide for the funding of an escrow to effect the defeasance of the Bonds, are rated as to investment quality by a nationally recognized investment rating firm no less than "AAA" or its equivalent and (iv) any other then authorized securities or obligations under applicable State law that may be used to defease obligations such as the Bonds.

"DTC" - The Depository Trust Company, New York, New York, or any successor securities depository.

"DTC Participant" - Securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations on whose behalf DTC was created to hold securities to facilitate the clearance and settlement of securities transactions among DTC Participants.

"Federal Securities" - Direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America (including Interest Strips of the Resolution Funding Corporation).

"Insurance Policy" - The insurance policy issued by the Bond Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due.

"Issuance Date" - The date of delivery of the Bonds to the initial purchaser(s) thereof against payment therefor.

"Master Ordinance" - The "Master Ordinance Establishing the Utility System Revenue Financing Program," adopted by the City on September 21, 2006, as may be amended or supplemented from time to time.

"Maturity" - When used with respect to the Bonds, the scheduled maturity of the Bonds.

"Maximum Rate" - A net effective interest rate (as defined in and calculated in accordance with the provisions of the Chapter 1204, Texas Government Code, as amended not to exceed fifteen percent (15%)).

"MSRB" - The Municipal Securities Rulemaking Board.

"Ordinance" - Collectively, the Master Ordinance and the Third Supplement.

"Owner" - The registered owners of the Bonds as shown on the Security Register and to the extent set forth in a Credit Agreement relating to the Bonds, the party contracting with the City under a Credit Agreement.

"Paying Agent" - The agent selected and appointed by the City for purposes of paying the principal of, premium, if any, and interest on the Bonds to the Owners thereof, as identified in Section 2.03 hereof and any successor to such agent.

"Paying Agent/Registrar" - Collectively, the Paying Agent and the Registrar designated in Section 2.03 of this Third Supplement or any successor to such agent.

"Paying Agent/Registrar Agreement" - The agreement having such name executed by and between the City and the Paying Agent/Registrar.

"Predecessor Bonds" - Predecessor Bonds as defined in Section 2.05(a) hereof.

"Pricing Certificate" - The pricing certificate to be executed and delivered by the City Officers pursuant to Section 2.02 of this Third Supplement relating to the Bonds.

"Prior Obligations" - As defined in the preamble to the Master Ordinance.

"Rebate Account" - The account by that name described in Section 4.02 hereof.

"Record Date" - With respect to each interest payment date of a Bond, the 15th day of the next preceding month.

"Registrar" - The agent selected and appointed by the City for purposes of keeping and maintaining books and records relating to the registration, transfer, exchange, and payment of the Bonds and interest thereon, as identified in Section 2.03 hereof and any successor to such agent.

"Reserve Account" - The account that was described in Section 4.03 hereof.

"Reserve Account Obligation" - Means a surety bond or insurance policy deposited in the Reserve Account to satisfy the Required Reserve Amount whereby the issuer is obligated to provide funds up to and including the maximum amount and under the conditions specified in such agreement or instrument.

"Rule" - SEC Rule 15c2-12, as amended from time to time.

"SEC" - The United States Securities and Exchange City.

"Section" - Unless the context clearly requires otherwise, refers to a Section of this Third Supplement.

"Security Register" - The books and records kept and maintained by the Registrar relating to the registration, transfer, exchange, and payment of the Bonds and the interest thereon.

"Third Supplement" - This Third Supplemental Ordinance, which was adopted pursuant to authority reserved by the City under the Master Ordinance.

EXHIBIT B

FORM OF BONDS

UNITED STATES OF AMERICA STATE OF TEXAS COUNTY OF BELL CITY OF TEMPLE, TEXAS UTILITY SYSTEM REVENUE BONDS, SERIES 2010

BOND DATE:	INTEREST <u>RATE:</u>	MATURITY <u>DATE:</u>	CUSIP:
REGISTERED OWN	NER:		
PRINCIPAL AMOU	NT:		DOLLARS
hereinafter identified registered assigns there above and to pay interest at the per annum rate of 30-day months; such commencing hereof, upon presental named in the registration the Registered Owner the Paying Agent/Registered Paying Agent/Registered in lawful meand interest payments appropriate date of payoner hereof at the accountries.	and as hereinafter stated reof, the Principal Amourest on the unpaid principal of interest specified above interest being payable on*. Principal of to and surrender, at the on certificate appearing head of this Bond whose namestrar at the close of busines. All payments of principal oney of the United States shall be made by the Payayment, by United States address appearing in the Secondary of the Secondar	d, to the Registered and specified above of amount hereof from a computed on the bar his Bond shall be pay the designated office of the appears on the "Seess on the "Record Dof, premium, if any, of America, without of the ing Agent/Registrar I mail, first-class postaticurity Register or by	o pay, solely from the sources Owner named above, or the n the Maturity Date specified the Bond Date specified above sis of a 360-day year of twelved* of each year, wable to the Registered Owner of the Paying Agent/Registrar or. Interest shall be payable to curity Register" maintained by ate," which is the* day of and interest on this Bond shall exchange or collection charges, by check sent on or before the age prepaid, to the Registered such other method, acceptable ense of, the Registered Owner

B-1

No. R-____

^{*}As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

This Bond is one of a duly authorized issue of bonds designated as "City of Temple, Texas Utility System Revenue Bonds, Series 2010" (the "Bonds"), in the aggregate principal amount of \$

______* issued pursuant to the laws of the State of Texas, including specifically the Enabling Act (the "Act"), and initially under and pursuant to an ordinance of the City adopted on August 19, 2010, and entitled Third Supplemental Ordinance to the Master Ordinance establishing the City of Temple, Texas Utility System Revenue Financing Program (the "Third Supplement") for the purpose of (i) paying the costs of acquiring, purchasing, constructing, improving, renovating, enlarging or equipping the City's Utility System and (ii) paying the costs associated with the issuance of the Bonds. The Bonds are secured by a first lien on and pledge of the Security as defined in the Master Ordinance adopted on September 21, 2006 (the "Master Ordinance"), on a parity with all other Parity Debt (as defined in the Master Ordinance and the Third Supplement) which lien and pledge is subordinate to the Prior Obligations.

The Master Ordinance, as supplemented by the Third Supplement, is referred to in this Bond as the "Ordinance." Terms used herein and not otherwise defined shall have the meanings given in the Ordinance.

The Bonds are issued as "Current Interest Bonds," which total in principal amount \$_____*, and which pay accrued interest at stated intervals to the Registered Owners.

Redemption Provisions

[Redemption provisions as provided in the Pricing Certificate.*]

At least 30 days prior to the date fixed for any redemption of Bonds or portions thereof prior to maturity, a written notice of such redemption shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, at least 30 days prior to the date fixed for any such redemption to the Registered Owner of each Bond to be redeemed at its address as it appeared on the Registration Books maintained by the Paving Agent/Registrar on the day such notice of redemption is mailed. By the date fixed for any such redemption, due provision shall be made with the Paying Agent/Registrar for the payment of the required redemption price for the Bonds or portions thereof which are to be so redeemed. If such written notice of redemption is mailed and if due provision for such payment is made, all as provided above, the Bonds or portions thereof which are to be so redeemed thereby automatically shall be treated as redeemed prior to their scheduled maturities, and they shall not bear interest after the date fixed for redemption, and they shall not be regarded as being outstanding except for the right of the Registered Owner to receive the redemption price from the Paying Agent/Registrar out of the funds provided for such payment. If a portion of any Bond shall be redeemed a substitute Bond or Bonds having the same maturity date, bearing interest at the same rate, in any denomination or denominations in any integral multiple of \$5,000, at the written request of the Registered Owner, and in an aggregate principal amount equal to the unredeemed portion

^{*}As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

thereof, will be issued to the Registered Owner upon the surrender thereof for cancellation, at the expense of the City, all as provided in the Bond Ordinance.

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Bond Ordinance have been met and moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice shall state that said redemption may, at the option of the City, be conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption, or upon any prerequisite set forth in such notice of redemption. If a conditional notice of redemption is given and such prerequisites to the redemption and sufficient moneys are not received, such notice shall be of no force and effect, the City shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

Notice of redemption shall be given at the times and in the manner provided in the Third Supplement.

If this Bond is in a denomination in excess of \$5,000, portions of the principal sum hereof in principal amount of \$5,000 or any integral multiple thereof may be redeemed, and, if less than all of the principal sum hereof is to be redeemed, there shall be issued, without charge therefor, to the Registered Owner hereof, upon the surrender of this Bond at the principal office of the Paying Agent/Registrar, a new Bond or Bonds of like maturity, series and interest rate in any authorized denominations provided by the Resolution for the then unredeemed balance of the principal amount hereof. If this Bond is selected for redemption, in whole or in part, neither the City nor the Paying Agent/Registrar shall be required to transfer this Bond to an assignee of the Registered Owner within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to any exchange by the Registered Owner of the unredeemed balance hereof in the event of its redemption in part.

The Bonds are special obligations of the City, subject to the provisions of ordinances authorizing Prior Obligations, payable solely from and equally secured by a lien on and pledge of the Security. The Bonds do not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the City, except with respect to the Security.

The pledge of the Security and the other obligations of the City under the Ordinance may be discharged at or prior to the maturity of the Bonds upon the making of provision for their payment on the terms and conditions set forth in the Ordinance.

Subject to satisfying the terms and conditions stated in the Ordinance, the City has reserved the right to issue additional Parity Debt payable solely from and equally and ratably secured by a parity lien on and pledge of the Security and other moneys and securities pledged under the Ordinance to the payment of the Bonds.

Reference is hereby made to the Ordinance, a copy of which is on file in the designated office of the Paying Agent/Registrar, and to all of the provisions of which any Registered Owner of this Bond by his acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the Bonds; the Security; the nature and extent and manner of enforcement of the pledge; the terms and conditions for the issuance of additional Parity Debt; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Registered Owners of the Bonds; the rights and remedies of the Registered Owner hereof with respect hereto and thereto; the rights, duties and obligations of the City; the terms and provisions upon which the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity or redemption of this Bond and this Bond thereafter no longer to be secured by the Ordinance or be deemed to be outstanding thereunder; and for the other terms and provisions thereof.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred only upon its presentation and surrender at the designated office of the Paying Agent/Registrar named below, or its successor with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the Registered Owner hereof, or his duly authorized agent, and such transfer is noted on the Security Register by the Paying Agent/Registrar. When a transfer occurs, one or more new fully-registered Bonds of the same Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the Registered Owner whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the City nor the Paying Agent/Registrar, nor any agent of either, shall be affected by notice to the contrary. In the event of nonpayment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Registered Owner appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented, and declared that the City is a duly organized and legally existing home-rule city, organized under and by virtue of the Constitution and laws of the State of Texas; that the issuance of this Bond and the series of which it is a part are duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done, have happened, and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas and the Ordinance; that this series of bonds does not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of this Bond and the Series of which it is a part as aforestated. In case any provision in this Bond shall be

invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas. The holder of this Bond is not entitled to demand payment of this Bond out of any money raised by taxation.

IN TESTIMONY WHEREOF, the City has caused its seal to be impressed or a facsimile thereof to be printed hereon and this Bond to be executed in the name of and on behalf of the City with the manual or facsimile signatures of its Mayor, and attested by the City Secretary.

CITY OF TEMPLE, TEXAS

By:		By:	
City Se	ecretary	Mayor	
(SEAL)			
	[INSERT	TIONS FOR THE INIT	IAL BOND]
The	Initial Bond shall be in t	the form set forth in this	exhibit, except that:
A.	"MATURITY DATE		the headings "INTEREST RATE" and d with the words "As shown below", and
В.		bracketed items to be co	eted and the following will be inserted empleted with information contained in
hereinafter registered a	identified and as herein ssigns thereof, on	nafter stated, to the Re	omises to pay, solely from the sources egistered Owner named above, or the years, in the principal installments and ving schedule:
	Amount (Information f	Year from the Pricing Certification	Rate ate to be inserted)
specified ab of a 360-da	pove at the respective pe y year of twelve 30-day	r annum rate of interest s months; such interest be	l amount hereof from the Bond Date specified above computed on the basis ing payable on* and al of this Bond shall be payable to the
-			rtificate relating to the Bonds is inconsistent plete missing information in this Form of

B-5

Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

Registered Owner hereof, upon presentation and surrender, at the principal office of the Paying Agent/Registrar named in the registration certificate appearing hereon, or its successor. Interest shall be payable to the Registered Owner of this Bond whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date," which is the _____* day of the next preceding month. All payments of principal of, premium, if any, and interest on this Bond shall be payable in lawful money of the United States of America, without exchange or collection charges, and interest payments shall be made by the Paying Agent/Registrar by check sent on or before the appropriate date of payment, by United States mail, first-class postage prepaid, to the Registered Owner hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner hereof."

C. The Initial Bond shall be numbered "T-1."

Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Bond only.

REGISTRATION CERTIFICATE OF COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER OF PUBLIC ACCOUNTS THE STATE OF TEXAS	& & &	REGISTER NO
I HEREBY CERTIFY that this approved by the Attorney General of the St Public Accounts of the State of Texas.		examined, certified as to validity and and duly registered by the Comptroller of
WITNESS my signature and seal of office	this	·
		Comptroller of Public Accounts of the State of Texas
(SEAL)		

AUTHENTICATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered under the provisions of the within-mentioned Resolution; the bond or bonds of the above titled and designated series originally delivered having

^{*}As provided in the Pricing Certificate. To the extent that the Pricing Certificate relating to the Bonds is inconsistent with any provisions in this Form of Bond or contains information to complete missing information in this Form of Bond, the language in the Pricing Certificate shall be used in the executed Bonds.

been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, as Paying Agent/Registrar

Registered this date:	
$\overline{\mathrm{By}}$:Authorized Signature
Form of Assig	
ASSIGNM	ENT
FOR VALUE RECEIVED, the undersigned h	nereby sells, assigns, and transfers unto
(Please insert Social Security or Taxpayer I	Identification Number of Transferee)
(Please print or typewrite name and addres	s, including zip code, of Transferee)
the within Bond and all rights thereunder, and hereby attorney, to transfer the within thereof, with full power of substitution in the premise	Bond on the books kept for registration
DATED: Signature guaranteed by:	NOTICE: The signature on this assignment must correspond with the name of the Registered Owner as it appears on the face of the within Bond in every particular.

[INSURANCE LEGEND IF APPLICABLE]

EXHIBIT "C"

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 7.09 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

- (1) Table 1 Water Usage;
- (2) Table 2 Ten Largest Water Customers;
- (3) Table 3 Monthly Water Rates;
- (4) Table 4 Ten Largest Wastewater Customers;
- (5) Table 5 Monthly Wastewater Rates;
- (6) Table 6 Wastewater and Sewer System Condensed Statement of Operations;
- (7) Table 7 Coverage and Fund Balances
- (8) Table 8 Current Investments;
- (9) Table 9 Revenue Debt Service Requirements; and
- (10) Appendix B

Accounting Principles

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in paragraph 1 above.



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #6 Consent Agenda Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

Jonathan Graham, City Attorney

<u>ITEM DESCRIPTION:</u> FIRST READING – PUBLIC HEARING – Consider adopting an ordinance designating two tracts of land consisting of approximately 6.257 and 7.755 acres located at 3410 and 3602 Lucius McCelvey Drive as City of Temple Tax Abatement Reinvestment Zone Number Sixteen for commercial/industrial tax abatement.

STAFF RECOMMENDATION: Conduct public hearing and adopt ordinance as indicated in item description, on first reading, and schedule second reading and final adoption for September 2, 2010.

<u>ITEM SUMMARY:</u> The proposed ordinance designates the area consisting of approximately 6.257 and 7.755 acres located at 3410 and 3602 Lucius McCelvey Drive as a commercial/industrial tax abatement reinvestment zone. The designation of a tax abatement reinvestment zone lasts for five years and is a prerequisite for entering into a tax abatement agreement with a future economic development prospect.

Chapter 312 of the Texas Tax Code requires that property be within a tax abatement reinvestment zone (or an enterprise zone) to be eligible for tax abatement. The designation of a tax abatement reinvestment zone requires an ordinance, two readings and a public hearing. We are also required to give seven days prior notice to the other taxing entities before final approval of the ordinance, which will be done.

The proposed tax abatement reinvestment zone covers approximately 14.012 acres (two tracts containing 6.257 and 7.755 acres), and is proposed for commercial or industrial tax abatement (the property is currently zoned Commercial). Chapter 312 requires that the City make the following findings when it adopts an ordinance creating a tax abatement reinvestment zone: (1) that the creation of the tax abatement reinvestment zone will result in benefits to the City and to the land included in the zone after the term of any agreement, and that the improvements being sought are feasible; and (2) that the tax abatement reinvestment zone meets the criteria for creation of a zone under State law and the City's own criteria and guidelines for tax abatement. I have reviewed both the

08/19/10 Item #6 Consent Agenda Page 2 of 2

State law and our criteria and guidelines, and believe that the creation of the proposed reinvestment zone and subsequent approval of a tax abatement agreement with the property owner will lead to the retention of primary employment in the area, and the creation of new real and personal property improvements in the area—as contemplated by our State and local criteria. The Staff recommends approval of the ordinance for the above reasons.

FISCAL IMPACT: None at this time.

ATTACHMENTS:

Ordinance

ORDINANCE NO.	
---------------	--

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, DESIGNATING A CERTAIN AREA AS TAX ABATEMENT REINVESTMENT ZONE NUMBER SIXTEEN FOR COMMERCIAL/INDUSTRIAL TAX ABATEMENT; ESTABLISHING THE BOUNDARIES THEREOF AND OTHER MATTERS RELATING THERETO; DECLARING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, the City Council of the City of Temple, Texas (the "City"), desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by creation of a reinvestment zone for commercial/industrial tax abatement, as authorized by Section 312.201 of the Texas Tax Code (hereinafter the "Code");

WHEREAS, the City held such public hearing after publishing notice of such public hearing, and giving written notice to all taxing units overlapping the territory inside the proposed reinvestment zone;

WHEREAS, the City at such hearing invited any interested person, or his attorney, to appear and contend for or against the creation of the reinvestment zone, the boundaries of the proposed reinvestment zone, whether all or part of the territory described in the ordinance calling such public hearing should be included in such proposed reinvestment zone, the concept of tax abatement; and

WHEREAS, the proponents of the reinvestment zone offered evidence, both oral and documentary, in favor of all of the foregoing matters relating to the creation of the reinvestment zone, and opponents of the reinvestment zone appeared to contest creation of the reinvestment zone.

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

- <u>Part 1:</u> The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct.
- <u>Part 2:</u> The City, after conducting such hearings and having heard such evidence and testimony, has made the following findings and determinations based on the testimony presented to it:
- A. That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone;
- B. That the boundaries of the reinvestment zone (hereinafter "REINVESTMENT ZONE NUMBER SIXTEEN") should be the **two tracts of land consisting of approximately 6.257 and**

- **7.755** acres located at 3410 and 3602 Lucius McCelvey Drive, Temple, Bell County, Texas, as described in the drawing attached as Exhibit "A."
- C. That creation of REINVESTMENT ZONE NUMBER SIXTEEN will result in benefits to the City and to the land included in the zone after the term of any agreement executed hereunder, and the improvements sought are feasible and practical;
- D. That REINVESTMENT ZONE NUMBER SIXTEEN meets the criteria for the creation of a reinvestment zone as set forth in Section 312.202 of the Code in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City;" and
- E. That REINVESTMENT ZONE NUMBER SIXTEEN meets the criteria for the creation of a reinvestment zone as set forth in the City of Temple Guidelines and Criteria for granting tax abatement in reinvestment zones.
- <u>Part 3:</u> Pursuant to Section 312.201 of the Code, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing the **two tracts of land consisting of approximately 6.257 and 7.755 acres located at 3410 and 3602 Lucius McCelvey Drive,** described by the drawing in Exhibit "A" attached hereto and such REINVESTMENT ZONE is hereby designated and shall hereafter be officially designated as Tax Abatement Reinvestment Zone Number Sixteen, City of Temple, Texas.
- <u>Part 4:</u> The REINVESTMENT ZONE shall take effect on September 2, 2010, or at an earlier time designated by subsequent ordinance.
- <u>Part 5:</u> To be considered for execution of an agreement for tax abatement the commercial/industrial project shall:
 - A. Be located wholly within the Zone as established herein;
- B. Not include property that is owned or leased by a member of the City Council of the City of Temple, Texas, or by a member of the Planning and Zoning Commission;
- C. Conform to the requirements of the City's Zoning Ordinance, the CRITERIA governing tax abatement previously adopted by the City, and all other applicable laws and regulations; and
- D. Have and maintain all land located within the designated zone, appraised at market value for tax purposes.
- <u>Part 6:</u> Written agreements with property owners located within the zone shall provide identical terms regarding duration of exemption and share of taxable real property value exempted from taxation.
- <u>Part 7:</u> Written agreements for tax abatement as provided for by Section 312.205 of the Code shall include provisions for:
 - A. Listing the kind, number and location of all proposed improvements of the property;

- B. Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specification and conditions of the agreements;
- C. Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and
- D. Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements as provided by the agreement.
- <u>Part 8:</u> 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.
- <u>Part 9:</u> 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.
- <u>Part 10:</u> Sunset provision. The designation of Tax Abatement Reinvestment Zone Number Sixteen shall expire five years from the effective date of this ordinance. The designation of a tax abatement reinvestment zone may be renewed for periods not exceeding five years. The expiration of a reinvestment zone designation does not affect an existing tax abatement agreement authorized by the City Council.
- **Part 11:** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act.

PASSED AND APPROVED on First Reading and Public Hearing on the 19th day of February, 2010.

PASSED AND APPROVED on Second Reading on the 2nd day of **September**, 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A. JONES, III, Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #7 Regular Agenda Page 1 of 3

DEPT./DIVISION SUBMISSION & REVIEW:

Brian Mabry, Interim Planning Director

<u>ITEM DESCRIPTION:</u> FIRST READING – PUBLIC HEARING - Z-FY-10-31: Consider adopting an ordinance authorizing a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 2700 square foot building, on a portion of the south one-half of Lot 10 and a portion of the north one-half of Lot 11, Block 14, Eugenia Terrace Addition, located at 1818 South 1st Street.

P&Z COMMISSION RECOMMENDATION: At its August 2, 2010 meeting, the Planning and Zoning Commission voted 4/3 in accordance with staff recommendation to recommend approval of a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption subject to the following conditions:

- 1. General Conditional Use Permit provisions in Sec. 7-611 of the Zoning Ordinance apply to the property;
- 2. Specific Conditional Use Permit provisions for package stores in Sec. 7-611.5 of the Zoning Ordinance apply to the property;
- 3. Burglar bars are prohibited on the building; and
- 4. Street trees and grates along South 1st Street must abut the back-of-curb, rather than be placed along the centerline of the sidewalk.

Commissioners Pope and Barton and Vice-Chair Talley voted against the recommendation. Chair Pilkington and Commissioner Hurd were absent.

STAFF RECOMMENDATION: Conduct public hearing and adopt ordinance as presented in item description, with the above conditions, on first reading, and schedule second reading and final adoption for September 2, 2010.

<u>ITEM SUMMARY:</u> Please refer to the Staff Report and draft minutes of case Z-FY-10-31, from the Planning and Zoning meeting, August 2, 2010. The applicant requests a Conditional Use Permit (CUP) to establish a package store of approximately 3,000 square feet in area in a portion of the new vacant building that has never been occupied on the subject property. In addition, in order to make

room for parking, the applicant proposes to demolish the older building on the property that was formerly a Mexican restaurant. The applicant has received grant money from the City Council in order to provide enhanced private and public amenities related to the site.

Package stores are not a permitted use in the current TMED form based code draft. If this package store is allowed to open, it would most likely be the only one within the TMED area.

<u>COMPREHENSIVE PLAN COMPLIANCE:</u> The proposed CUP relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
	Map 3.1 - Future Land Use and Character	Y*
СР	Land Use Policy 14 - Smaller-scale neighborhood retail and service uses should be located at intersections of collector and arterial streets	Υ
	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Υ*
	Map 5.2 - Thoroughfare Plan	Y*
STP	Spine Trail Map	Υ*

^{* =} See Comments Below CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

The request, with its enhanced public amenities described below, conforms to the Future Land Use and Character Map which designates the property as Temple Medical and Education District (TMED).

Thoroughfare Plan (CP Map 5.2)

This request conforms to the Thoroughfare Plan since the subject tract has access to South 1st Street and W. Avenue R, designated as a Arterial and Collector streets, respectively.

Availability of Public Facilities (CP Goal 4.1)

A six-inch water line and a six-inch sewer line serve the site.

<u>Citywide Sidewalk and Trails Master Plan (Spine Trail Map)</u>

The Citywide Sidewalk and Trails Master Plan calls for a spine trail, which may be composed of concrete that is 10 to 12 feet in width along the South 1st Street Corridor. The proposed sidewalk conforms with such recommendation.

PUBLIC NOTICE:

Eleven notices of the Planning and Zoning Commission public hearing were sent out. As of Monday, August 10 at 5 PM, two notices was returned in favor of and four notices were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance.

FISCAL IMPACT: NA

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
CUP Site Plan
Veterans Administration Statistics
Notice Map
Response Letters
P&Z Staff Report (Z-FY-10-31)
P&Z Minutes (08/02/10)
Ordinance

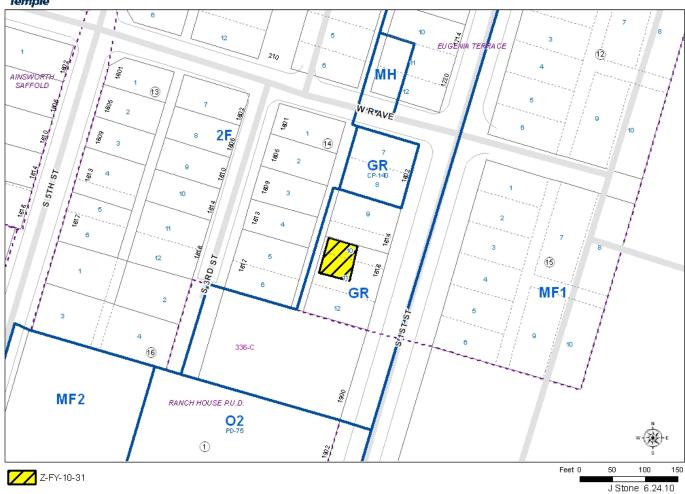


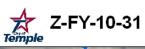


J Stone 6.24.10

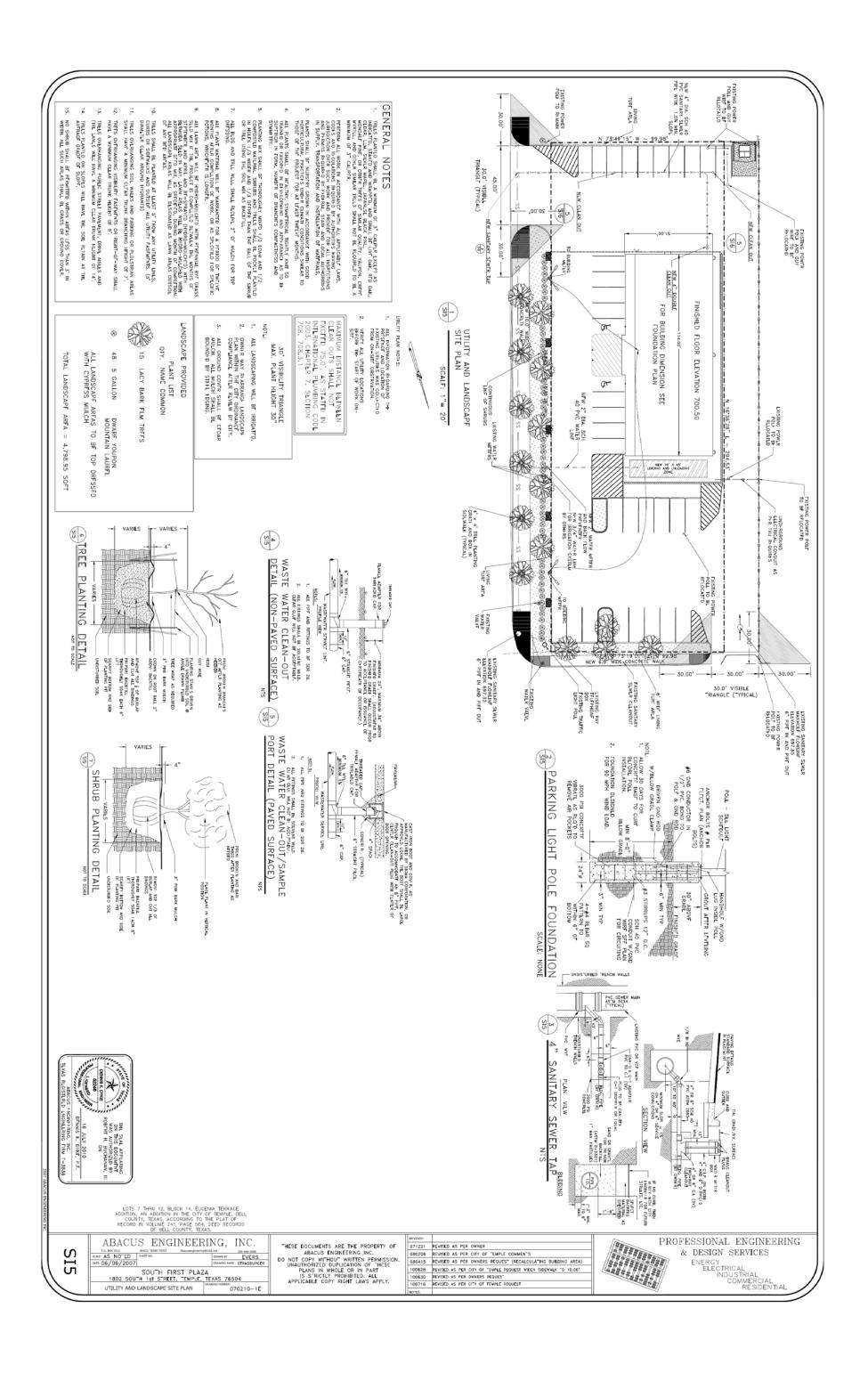
Z-FY-10-31











Veterans Administration Statistics

Mental Health

Substance Use Disorder

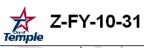
Unique Patients, Visits for (V17) (674) Temple, TX Stop Code 513

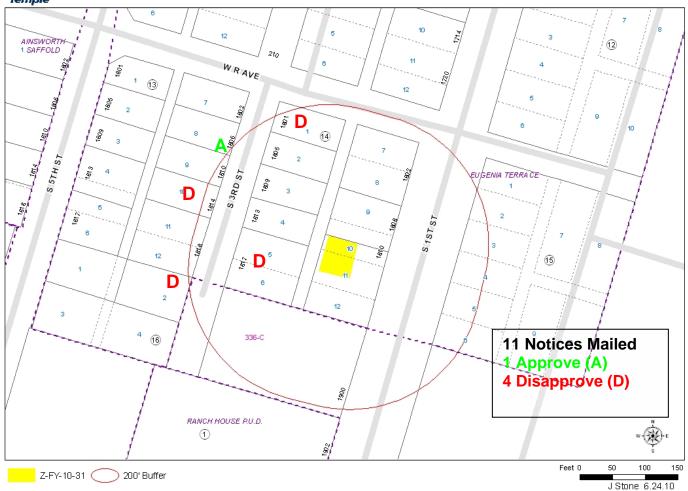
FY07	FY07	FY07	FY07
Unique SUD Patients	Visits	Total Pts	% of Total Pts
<mark>1,353</mark>	<mark>16,186</mark>	<mark>65639</mark>	2.1%

FY08	FY08	FY08	FY08
Unique SUD Patients	Visits	Total Pts	% of Total Pts
<mark>1,951</mark>	22,690	68375	<mark>2.9%</mark>

FY09	FY09	FY09	FY09
Unique SUD Patients	Visits	Total Pts	% of Total Pts
<mark>2,361</mark>	26,360	73182	<mark>3.2%</mark>

FY10	FY10	FY10	FY10
thru April	thru April	thru April	thru April
Unique SUD Patients	Visits	Total Pts	% of Total Pts
<mark>2,771</mark>	30,030	<mark>67773</mark>	<mark>4.1%</mark>







RESPONSE TO PROPOSED CONDITIONAL USE PERMIT CITY OF TEMPLE

Bruce Allen McQueen 1817 South 3rd Street Temple, Texas 76502

Zoning Application Number: Z-FY-10-31 Project Manager: Brian Mabry

The proposed request for a Conditional Use Permit is the area shown in hatched marking on the attached map. The Conditional Use Permit will allow the sale of distilled liquors, wines and beers in unbroken original containers in a package store for off-premise consumption. Because you own property within 200 feet of this request, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible Conditional Use Permit for the property described on the attached notice, and provide any additional comments you may have.

I recommend () appr	roval denial of this request.
Contributed to an incre	here for many years. It only some getting drunk & passing
area of a hospital that	Vaving lighor Stores in the
O play this will -	not hoppen.
1	
Burea M-Lun Signature	Bruce A. Millineen Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 19, 2010.

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

JUL 13 2010

City of Temple Planning & Development

Number of Notices Mailed: 11

Date Mailed:

July 8, 2010



RESPONSE TO PROPOSED CONDITIONAL USE PERMIT CITY OF TEMPLE

Maria G. Vasquez 1814 South 3rd Street Temple, Texas 76504

Number of Notices Mailed: 11

Zoning Application Number: <u>Z-FY-</u>	10-31 Project Mar	nager: <u>Brian Mabry</u>
The proposed request for a Condition on the attached map. The Condition wines and beers in unbroken origin consumption. Because you own proposed welcomed. Please use this form to Conditional Use Permit for the proper additional comments you may have.	nal Use Permit will allow the inal containers in a packate of this packate of this indicate whether you are try described on the attached	e sale of distilled liquors, age store for off-premise request, your opinions are in favor of the possible of notice, and provide any
I recommend () appro	val (denial of this re	equest.
Comments:		
/1		
Maria A Vargory Signature	MARTA	G, VASQUEZ- Print Name
Please mail or hand-deliver this con than July 19, 2010.	nment form to the address	shown below, no later
	City of Temple	RECEIVED
	Planning Department Room 201	JUL 13 2010
	Municipal Building Temple, Texas 76501	City of Temple Planning & Development

Date Mailed:

July 8, 2010



2nd RESPONSE TO PROPOSED CONDITIONAL USE PERMIT CITY OF TEMPLE

Billy C. Etux Lana Kennedy 1801 South 3rd Street Temple, Texas 76504

Zoning Application Number: <u>Z-FY-10-31</u> Project Manager: <u>Brian Mabry</u>

This 2nd notice of a public hearing is being sent to you because the Planning and Zoning Commission did not have enough members to conduct a meeting on July 19, 2010. The Planning and Zoning Commission will consider this request for a Conditional Use Permit on August 2, 2010.

The proposed request for a Conditional Use Permit is the area shown in hatched marking on the attached map. The Conditional Use Permit will allow the sale of distilled liquors, wines and beers in unbroken original containers in a package store for off-premise consumption. Because you own property within 200 feet of this request, your opinions are welcomed. Please use this form to indicate whether you are in favor of the <u>possible</u> Conditional Use Permit for the property described on the attached notice, and provide any additional comments you may have.

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

We do not meed a ligion stare fright behind walking the alley. We do not need more.

Alease Please do not do this to us mr.

Atrachinger may be a rich man light we are not and girl house tralies with your forward of the print Name

Lance Kennely

Signature

Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than August 2, 2010.

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

Planning & Development

Number of Notices Mailed: 11

Date Mailed:

July 22, 2010



RESPONSE TO PROPOSED CONDITIONAL USE PERMIT CITY OF TEMPLE

M. L. Hill 1818 South 3rd Street Temple, Texas 76504

Zoning Application Number: Z-FY-10-31 Project Manager: Brian Mabry

The proposed request for a Conditional Use Permit is the area shown in hatched marking on the attached map. The Conditional Use Permit will allow the sale of distilled liquors, wines and beers in unbroken original containers in a package store for off-premise consumption. Because you own property within 200 feet of this request, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible Conditional Use Permit for the property described on the attached notice, and provide any additional comments you may have.

	I recommend		() denial of t	his request.	
Star star	diether sound	Dent and sound of the sent of any	terisla rom tem for 10 mg of rometto tin of care	edea , a Ila rom the VA ! ger Cellage ! I m tool lanner man tool lanner talher	teres)
Maye a Signat Please mail than July 19	l or hand-deliv	ver this commen	t form to the add	Print Name	

City of Temple

Room 201

Planning Department

Municipal Building Temple, Texas 76501

Number of Notices Mailed: 11 Date Mailed:

July 8, 2010



NAUTILUS HOLDINGS LP

BOOKED WITH TO DEALERWARD BUTTON BY WENT

R. A. (Andy) Olsen Principal

July 26, 2010

City of Temple
Attn: Mr. Brian Mabry
Planning Department
Room 201, Municipal Building
Temple, TX 76501

By Fax: 254.298.5624

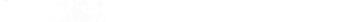
Re: Zoning Appl #Z-FY-10-31 Package Store for 1818 S. 3rd St

Gentlemen:

We feel that the proposed zoning change for a package store should be approved. Our property is at 1806 S. 3rd and the zoning change will improve this area of Temple for the following reasons:

- The neighborhood has an image problem; attracting investors to rehab properties like the subject property will help
- Turning vacant buildings into vibrant customer activity attracts new investments
- Keeping sales tax dollars in Temple rather than letting folks drive past to outlying stores is to Temple's advantage
- Improving property tax appraisals with more valuable real estate contributes to the city's revenues

Thanks for considering this recommendation. If questions, please call me at 947.7300.



PO Box 1364 * Salado * Texas 76571 * Ofc 254.947.7300 * andy@oksen.lvz.



2nd RESPONSE TO PROPOSED CONDITIONAL USE PERMIT CITY OF TEMPLE

RECEIVED

Sonjia Kindred 701 Olde Oaks Drive Temple, Texas 76502

AUG 04 2010

City of Temple Planning & Development

Zoning Application Number: <u>Z-FY-10-31</u> Project Manager: <u>Brian Mabry</u>

This 2nd notice of a public hearing is being sent to you because the Planning and Zoning Commission did not have enough members to conduct a meeting on July 19, 2010. The Planning and Zoning Commission will consider this request for a Conditional Use Permit on August 2, 2010.

The proposed request for a Conditional Use Permit is the area shown in hatched marking on the attached map. The Conditional Use Permit will allow the sale of distilled liquors, wines and beers in unbroken original containers in a package store for off-premise consumption. Because you own property within 200 feet of this request, your opinions are welcomed. Please use this form to indicate whether you are in favor of the <u>possible</u> Conditional Use Permit for the property described on the attached notice, and provide any additional comments you may have.

	I recommend	(✓) approval	() denial of this r	request.
Comments:				
,				
	7-W02-1			
Signat	ure	_	<u>Son</u>	Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than August 2, 2010.

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

Number of Notices Mailed: 11

Date Mailed:

July 22, 2010



PLANNING AND ZONING COMMISSION AGENDA ITEM

08/02/10 Item #6 Regular Agenda Page 1 of 4

APPLICANT / DEVELOPMENT: Dennis Johnson/Kork's Wine & Spirits for Strasburger Partnership

CASE MANAGER: Brian Mabry, AICP, Interim Planning Director

<u>ITEM DESCRIPTION:</u> Z-FY-10-31 Hold a public hearing to discuss and recommend action on a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 2700 square foot building, on a portion of the South One-Half of Lot 10 and a portion of the North One-Half of Lot 11, Block 14, Eugenia Terrace Addition, located at 1818 South 1st Street. Zoning: General Retail District

BACKGROUND: The applicant requests a Conditional Use Permit (CUP) to establish a package store of approximately 3,000 square feet in area in a portion of the new vacant building that has never been occupied on the subject property. In addition, in order to make room for parking, the applicant proposes to demolish the older building on the property that was formerly a Mexican restaurant. The applicant has received grant money from the City Council in order to provide enhanced private and public amenities related to the site. See the Enhanced Amenities section below for more detail.

Package stores are not a permitted use in the current TMED form based code draft. If this package store is allowed to open, it would most likely be the only one within the TMED area.

Surrounding Property and Uses

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

Direction	Zoning	Current Land Use	Photo
Subject	GR	New vacant building	
Property	GK	Old vacant building	PATE LESS AND A STATE OF THE PATE AND A STATE OF THE P

Double Sided

Direction	Zoning	Current Land Use	Photo
North	GR	Convenience store	
South	GR	Medical equipment sales	
East	MF-1	Hospital (across S. 1 st St)	
West	2F	Single-family residential (across from alley and wood fence)	

<u>COMPREHENSIVE PLAN COMPLIANCE:</u> The proposed CUP relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
	Map 3.1 - Future Land Use and Character	Υ*
	Land Use Policy 14 - Smaller-scale neighborhood retail	
	and service uses should be located at intersections	Υ
СР	of collector and arterial streets	
CF	Goal 4.1 - Growth and development patterns should be	
	consistent with the City's infrastructure and public service	Y*
	capacities	
	Map 5.2 - Thoroughfare Plan	Υ*
STP	Spine Trail Map	Υ*

^{* =} See Comments Below CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

The request, with its enhanced public amenities described below, conforms to the Future Land Use and Character Map which designates the property as Temple Medical Educational District (TMED).

Thoroughfare Plan (CP Map 5.2)

This request conforms to the Thoroughfare Plan since the subject tract has access to S. 1st Street and W. Avenue R, designated as a Arterial and Collector streets, respectively.

Availability of Public Facilities (CP Goal 4.1)

A six-inch water line and a six-inch sewer line serve the site.

<u>Citywide Sidewalk and Trails Master Plan (Spine Trail Map)</u>

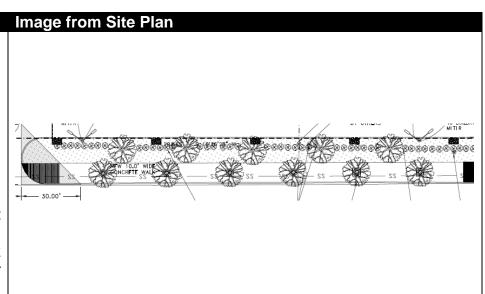
The Citywide Sidewalk and Trails Master Plan calls for a spine trail, which may be composed of concrete that is 10 to 12 feet in width along the S. 1st Street Corridor. The proposed sidewalk conforms with such recommendation.

ENHANCED AMENITIES: On July 1, 2010, the City Council approved a grant of \$25,400 in matching funds to go toward enhanced public amenities for the subject property. These amenities bring the property more closely into compliance with the proposed standards for TMED. Since the TMED standards are not yet adopted, grant funding is a mechanism the City has used to encourage other properties in the area to come closer to meeting the proposed standards. The following enhanced public amenities are provided on the site.

Amenities Landscaping and irrigation with: • 3" caliper trees planted 25' on center

- tree wells
- grates
- continuous hedge with 10' wide sidewalks
- curb and gutter
- islands, and
- handicap ramps along 1st Street.

Demolition of existing sidewalk that is of inadequate width for TMED.



The submitted CUP site plan currently shows the street trees and grates along the center line of the 10' sidewalk. In order to further provide for walkability and to more closely match the proposed TMED standards, Staff recommends that the trees and grates be moved to the back-of-curb, closer to the street. Although this movement places the trees on top of a sewer line, the Public Works Director is in agreement with this placement in order to both set the tone for future development in the area and because future public infrastructure improvements in the area will likely involve replacing and rerouting water and sewer lines.

<u>CUP APPROVAL CRITERIA:</u> Some surrounding property owners have raised concern as to whether the subject property is a good location for a package store or not. Part of the CUP process is

for the P&Z and City Council to utilize their discretionary abilities in making a recommendation and taking final action. As a guide, the Zoning Ordinance establishes seven general criteria for evaluation of all CUPs. They are listed below the P&Z's consideration:

- 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;
- 2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided;
- 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;
- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

Many of the comments of the adjacent property owners relate to criterion #1. In addition, City Staff has received statistics from the Veterans Administration regarding alcohol treatment at the hospital. The statistics are attached to this staff report for the information of the Commission. In summary, the hospital saw 2,361 individual patients for substance abuse disorders and had 26,361 visits from these patients in Fiscal Year 2009. These individual patients represent 3.2% of the hospital's total patients in Fiscal Year 2009.

<u>PUBLIC NOTICE:</u> Eleven notices of the Planning and Zoning Commission public hearing were sent out. As of Wednesday, July 28 at 5 PM, one notice was returned in favor of and four notices were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance

STAFF RECOMMENDATION: NA (per direction of the Package Store Subcommittee); however, if approved, burglar bars are prohibited on the building and street trees and grates along S. 1st Street must abut the back-of-curb, rather than be placed along the centerline of the sidewalk.

FISCAL IMPACT: Not Applicable

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
CUP Site Plan
Veterans Administration Statistics
Notice Map
Response Letters

EXCERPTS FROM THE

PLANNING & ZONING COMMISSION MEETING

MONDAY, AUGUST 2, 2010

ACTION ITEMS

Item 6: Z-FY-10-31: Hold a public hearing to discuss and recommend action on a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 2700 square foot building, on a portion of the South One-Half of Lot 10 and a portion of the North One-Half of Lot 11, Block 14, Eugenia Terrace Addition, located at 1818 South 1st Street. Zoning: General Retail District (Applicant: Dennis Johnson/Kork's Wine & Spirits for Strasburger Partnership)

Mr. Brian Mabry, Interim Planning Director, stated if the item were approved the case would go to City Council for first reading on August 19th and second reading and final action on September 2nd. This request was for a package store CUP and the property was zoned GR. This would be located in a new vacant building and grant money had been approved by City Council to provide enhanced amenities to bring the subject property closer to projected TMED standards which are proposed as part of the TMED form based code. Within the current proposed draft of the TMED form based code, package stores are contemplated to be a prohibited use in the TMED district. If this package store were approved, it would most likely be the only one in the TMED area.

The package store would be located approximately 400 feet from the VA Hospital across 1st Street. Surrounding properties included medical equipment sales to the south, the VA Hospital to the east, single family residential uses to the west across the alley, and a convenience store to the north across Avenue R.

The property sits at the corner of Avenue R, a collector street, and South 1st Street, an arterial street and complied with the land use policy and Thoroughfare Plan.

There was a 6" water and 6" sewer line to serve the property.

The submitted CUP site plan currently showed the street trees and grates along the center line of the 10' sidewalk. In order to further provide for walkability and to more closely match the proposed TMED standards, Staff recommended that the trees and grates be moved to the back-of-curb, closer to the street. Although this movement placed the trees on top of a sewer line, the Public Works Director was in agreement with this placement in order to both set the tone for future development in the area and because future public infrastructure improvements in the area will likely involve replacing and rerouting water and sewer lines. The

applicant was in agreement with this recommendation. Mr. Mabry gave several other landscaping details.

Some surrounding property owners raised concern as to whether the subject property is a good location for a package store or not. Part of the CUP process is for the P&Z and City Council to utilize their discretionary abilities in making a recommendation and taking final action. The Zoning Ordinance establishes seven general criteria for evaluation of all CUPs:

- 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;
- 2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided;
- 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;
- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

Many of the comments of the adjacent property owners related to criterion #1. In addition, City Staff received statistics from the Veterans Administration regarding alcohol treatment at the hospital. In summary, the hospital saw 2,361 individual patients for substance abuse disorders and had 26,361 visits from these patients in Fiscal Year 2009. These individual patients represent 3.2% of the hospital's total patients in Fiscal Year 2009.

Four notices were returned in opposition and one was in favor.

Staff does not have a recommendation per direction of the Package Store Subcommittee; however, if approved, burglar bars are prohibited on the building and street trees and grates along S. 1st Street must abut the back-of-curb, rather than be placed along the centerline of the sidewalk.

Commissioner Barton asked if the letters of approval or disapproval would go into the record and Mr. Mabry stated yes.

Commissioner Staats stated Ms. Margaret Hill recommended approval but her comments seemed negative. Mr. Mabry counted this response as a denial due to the written comments.

Commissioner Secrest asked if the City was required to demolish the old building and Mr. Mabry stated in order to have enough room for parking, the old building would need to be demolished.

Vice-Chair Talley opened the public hearing.

Mr. Dennis Johnson, owner of Kork's on S. General Bruce approached. Mr. Johnson stated a rehab center was currently located down from their present location. After speaking with the rehab, there have been no issues. Mr. Johnson stated he was also a veteran and the statistics from the VA were alarming, but also stated they were not all just from Temple. Mr. Johnson stated there was room for other businesses to be located within the TMED district to prosper.

Mr. Rick Hughes, representative of the Strasburger Family, approached. Mr. Hughes gave some background on the subject property and stated it used to be a convenience store that sold beer and had a bar. Mr. Hughes felt perhaps this was why some of the neighbors had complaints in the past. Over the years the two residences and the bar have been demolished and now the Strasburgers were considering demolishing the other building. A six foot fence was put up along the alley to shield anything.

Mr. Hughes stated the community voted for package stores in Temple and was rather surprised there had been talk of now restricting certain areas. He did not feel that was part of the original vote. Mr. Hughes stated the TMED committee was recently appointed and would like to have an opportunity to speak with them. They have worked very hard with the City to agree to TMED guidelines. Mr. Hughes asked for the Commission's support on the existing regulations and not something that may happen in the future.

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

Commissioner Staats asked what the nearest location was to purchase beer and wine from the subject property and someone stated a block away at a convenience store.

Commissioner Martin commented on the presence these businessmen already had in the community. They have complied with the City in every way, have taken a building and put money into it to enhance the appearance, the grant money would assist with the landscaping and would make the presence of the building look very nice. Commissioner Martin stated this was a good start for development in the area.

Vice-Chair Talley stated he was surprised to learn that people did not want a package store in certain areas of the City and wanted to clarify he disagreed with that opinion/comment. Vice-Chair Talley also stated he had worked with chemically dependent people in the past and to put a temptation right across the street was questionable for him as to whether this was a wise place to put a package store.

Commissioner Barton stated the TMED district would be coming before City Council to be approved or disapproved. Commissioner Barton felt it would be approved and part of that approval would be not to allow package/liquor stores in the TMED district which he was in agreement with.

Commissioner Staats stated the current request before the Commission complied with all existing conditions required and felt it would be difficult to turn down the request.

Commissioner Barton stated the first condition, "...will not be injurious to the use and enjoyment of the property...," one of the statements made earlier was the substance abuse patients that come and go are domiciliary patients. When they get their payments at the end of the month they tend to spend their money freely which included buying alcohol. This was a personal opinion the Commissioners were allowed to make. Commissioner Staats agreed with the comment. Commissioner Martin stated it is a personal opinion and he felt the applicant would help raise property values.

Commissioner Staats stated if this request were not approved, it would be easy for anyone to go a block down and secure beer and/or wine.

Commissioner Secrest stated he did not feel one could look at substance abuse with vicinity to a package store. People with alcohol problems would be within a half mile of any liquor store wherever you put it within any city, anywhere.

Vice-Chair Talley asked Commissioner Martin how increased value of homes would occur and Commissioner Martin stated it would be a long process but you had to start somewhere. He felt it was a nice building along with the proposed landscaping, demolition of an old unsightly building, and enhancements for the new building made the area nicer and Commissioner Martin considered it a starting point. It was his opinion the appraised values would begin to increase. Vice-Chair Talley asked about the homes behind the store. Commissioner Martin stated the subject property value would increase but would be a very slow snowball effect. Commissioner Barton asked Commissioner Martin if someone built a liquor store behind the house he was living in right now, would his property value would go up. Commissioner Martin stated he would not answer the question since he did not live on 1st Street or one street over from a major arterial road.

Commissioner Martin made a motion to approve Z-FY-10-31 and Commissioner Williams made a second.

Motion passed: (4:3)

Commissioners Staats, Williams, Secrest and Martin voted Aye Commissioners Pope, Barton and Vice-Chair Talley voted Nay; Chair Pilkington and Commissioner Hurd absent.

ORDINANCE NO	

[PLANNING NO. Z-FY-10-31]

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 2,700 SQUARE FOOT BUILDING, ON A PORTION OF THE SOUTH ONE-HALF OF LOT 10 AND A PORTION OF THE NORTH ONE-HALF OF LOT 11, BLOCK 14, EUGENIA TERRACE ADDITION, LOCATED AT 1818 SOUTH 1ST STREET; DECLARING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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 2,700 square foot building, on a portion of the south one-half of Lot 10 and a portion of the north one-half of Lot 11, Block 14, Eugenia Terrace Addition, located at 1818 South 1st Street, 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:

<u>Part 1:</u> The City Council approves a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 2,700 square foot building, on a portion of the south one-half of Lot 10 and a portion of the north one-half of Lot 11, Block

14, Eugenia Terrace Addition, located at 1818 South 1st Street, more fully shown on Exhibit A, attached hereto and made a part of for all purposes.

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

General:

- (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 bears the burden of showing that the establishment does not exceed the limitation on gross receipts from sales of alcoholic beverages applicable to its conditional use permit. The permittee must maintain accounting records of the sources of its gross revenue and allow the City to inspect such records during reasonable business hours. (Not applicable for package stores).
- (d) The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.
- (e) The permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior. The permittee shall consult with the Chief of Police, who shall act in an advisory capacity to determine the number of qualified employees necessary to meet the obligations hereunder.
- (f) 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.
- (g) 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.
- (h) The City Council may deny or revoke this conditional use permit if it affirmatively determines that the issuance of the permit is incompatible with the surrounding uses of property, or detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.
- (i) A conditional use permit issued under this section runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.
- (j) All conditional use permits issued under this section will be further conditioned that the same may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-609.

Specific to Package Stores:

- (k) Such use must comply with Chapter 4, "Alcoholic Beverages," of the City Code
- (l) Outdoor lighting must comply with the standards in Section 7.566 (G) of the Zoning Ordinance.
- (m) If applicable, a pick-up window must be visible from the public right-of-way, and may not be placed in alleys.
- (n) The drive-through lane must provide a minimum of 60 feet of stacking space from the pick-up window to the beginning.
- (o) An escape (bypass) lane must be provided parallel to the drive-through lane, if applicable, from the beginning of the drive-through lane.
- (p) Parking (in any zoning district including the 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).
- (q) Window signs are prohibited.
- (r) Lighted advertising signs must be turned off at closing time.

Specific to this CUP:

- (s) Burglar bars are prohibited on the building.
- (t) Street trees and grates along South 1st Street must abut the back-of-curb, rather than be placed along the centerline of the sidewalk.
- (u) 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.

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

<u>Part 4:</u> 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.

<u>Part 6:</u> 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.

<u>Part 7:</u> 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 **19th** day of **August**, 2010.

PASSED AND APPROVED on Second Reading on the 2nd day of **September**, 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A. JONES, III Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #8 Regular Agenda Page 1 of 3

DEPT./DIVISION SUBMISSION & REVIEW:

Brian Mabry, Interim Planning Director

<u>ITEM DESCRIPTION:</u> FIRST READING – PUBLIC HEARING - Z-FY-10-33: Consider adopting an ordinance authorizing a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption on the south one-half of Lot 1, Block 292-1, Temple Original at 1 North 6th Street.

P&Z COMMISSION RECOMMENDATION: At its August 2, 2010 meeting, the Planning and Zoning Commission voted 7/0 to recommend denial of a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption on the subject property.

Chair Pilkington and Commissioner Hurd were absent.

<u>Due to the recommendation for denial from the Planning and Zoning Commission, in order for the City Council to approve this CUP, a minimum of four favorable votes is required.</u>

STAFF RECOMMENDATION: Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for September 2, 2010.

<u>ITEM SUMMARY:</u> Please refer to the Staff Report and draft minutes of case Z-FY-10-33, from the Planning and Zoning Commission meeting, August 2, 2010.

This case was originally presented to the Planning and Zoning Commission on May 17, 2010. The Planning and Zoning Commission voted 5/3 to deny approval of the Conditional Use Permit (CUP) for a package store at the subject property. Among the expressed concerns at the Planning and Zoning Commission and City Council public hearings were:

- **Parking:** The legitimacy and usefulness of the off-street parking on a lot across the alley behind the proposed package store;
- **Parking:** The potential for patrons of the proposed store to park in the right-of-way public parking in front of the adjacent duplex;

- **Trespassing:** The possibility of patrons trespassing through the narrow space between the proposed package store and the adjacent duplex; and
- **Policy:** Appropriateness of allowing a package store at this location east of downtown.

As a result, the original proposal was not approved at City Council due to a lack of a second of a Councilmember's motion for approval.

See the CONCERNS section of the Planning and Zoning Commission staff report for details on how the current proposal attempts to address some of these concerns.

One issue that remains unaddressed as of the writing of this report, however, is the off-street parking for the store. The applicant had originally entered into a lease for 10 additional parking spaces on the property across the alley from the subject property. Just before the most recent Planning and Zoning Commission meeting, that lease was canceled, leaving the proposed package store with no off-street parking as required in the specific use standards for a package store in the Zoning Ordinance. The applicant has since proposed buying a property one lot to the north, demolishing the burned up, vacant building on the property and building a parking lot there. Thus far, Staff has received no confirmation that this proposal will take place.

<u>COMPREHENSIVE PLAN COMPLIANCE:</u> The proposed CUP relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
	Map 3.1 - Future Land Use and Character	Υ*
	Goal 4.1 - Growth and development patterns should	
CP	be consistent with the City's infrastructure and public	Y*
	service capacities	
	Map 5.2 - Thoroughfare Plan	Y*
STP	NA	NA

^{* =} See Comments Below CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

The request conforms to the Future Land Use and Character Map which designates the property as Auto Urban Commercial.

Thoroughfare Plan (CP Map 5.2)

This request conforms to the Thoroughfare Plan since the subject tract has access to North 6th Street, a local street on the Thoroughfare Plan and Central Avenue, designated an Arterial street.

Availability of Public Facilities (CP Goal 4.1)

A six-inch water line and a six-inch sewer line serve the site.

<u>CUP APPROVAL CRITERIA:</u> Part of the CUP process is for the P&Z and City Council to utilize their discretionary abilities in making a recommendation and taking final action. As a guide, the Zoning Ordinance establishes seven general criteria for evaluation of all CUPs. They are listed below the Council's consideration:

- 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;
- 2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided;
- 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;
- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

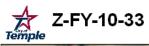
Many of the comments of the adjacent property owners relate to criterion #1. The lack of on-site or off-premises private parking should be considered when evaluating criterion #4 above.

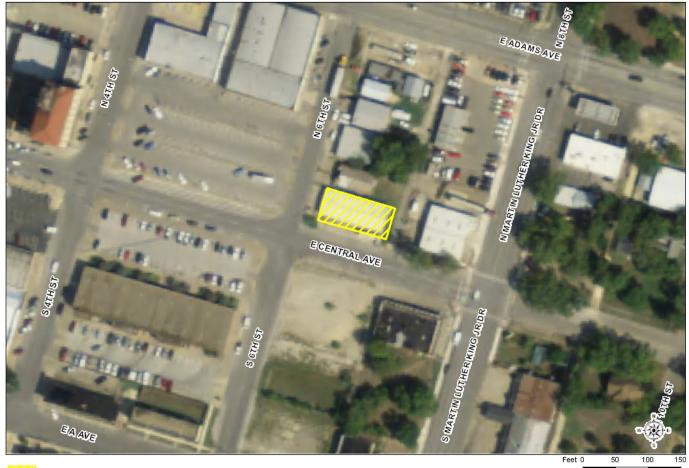
<u>PUBLIC NOTICE:</u> Ten notices of the Planning and Zoning Commission public hearing were sent out. As of Monday, August 9 at 5 PM, four notices were returned in favor of and three notices were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance

FISCAL IMPACT: NA

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
CUP Site Plan
Notice Map
Response Letters
P&Z Staff Report (Z-FY-10-33)
P&Z Minutes (08/02/10)
Ordinance





ZFY1033

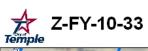
J Stone 5.25.10



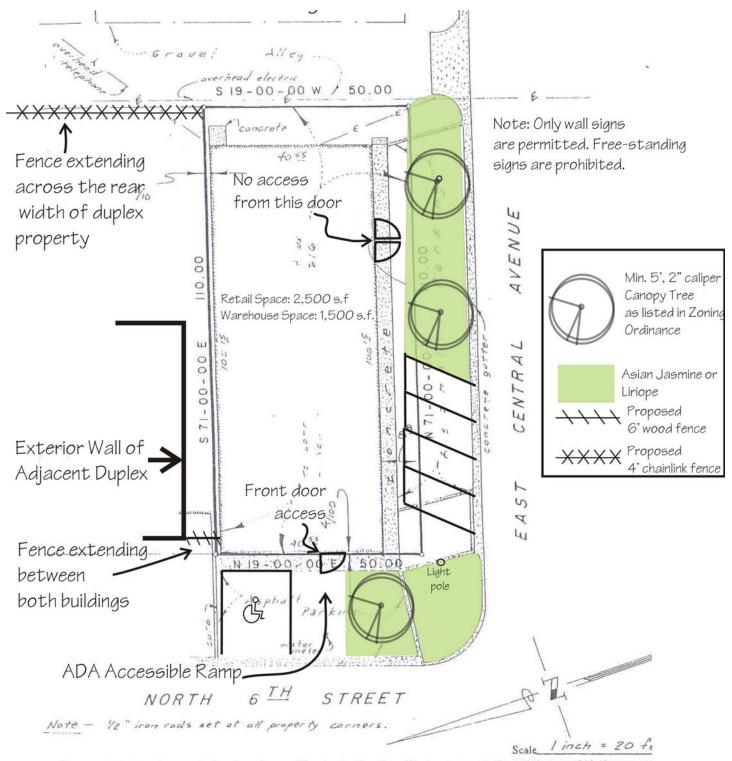






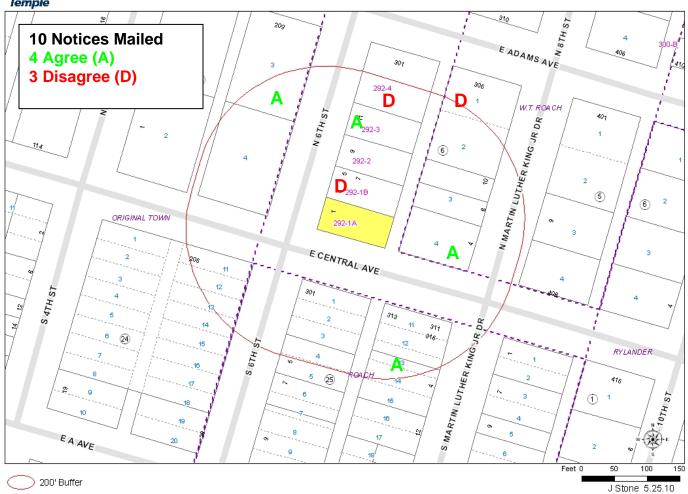






The boundaries have been marked as shown hereon. The physical location of the improvements situated along or within the property shown. To the best of my knowledge there are no other apparent easements or visible encroachments concerning this property, exci







RESPONSE TO PROPOSED CONDITIONAL USE PERMIT CITY OF TEMPLE

Central Texas Mortuary LLC 11 North 6th Street Temple, Texas 76701

Zoning Application Number: Z-FY	<u>'-10-33</u> Project Manag	ger: <u>Brian Mabry</u>
Proponent/Applicant: Mike Grisha	am for Carmela Thomas	
This 2 nd notice of a public hearin Commission did not have enough m and Zoning Commission will conside	embers to conduct a meeting	on July 19, 2010. The Planning
The proposed request for a Conditional Use attached map. The Conditional Use in unbroken original containers in a own property within 200 feet of the this form to indicate whether you property described on the attached not be attached in the conditional content of the conditional content of the conditional conditional content of the conditional content of the conditional cond	Permit will allow the sales of a package store for off-premis requested change, your opini are in favor of the possible notice, and provide any additional provide and provide any additional provide and provide	distilled liquors, wines and beers ses consumption. Because you ons are welcomed. Please use Conditional Use Permit for the
I recommend () approval ()	denial of this request.	
Comments:		
xucil	. Z.	W. Andersoy (Print Name)
		(Print Name)
Please mail or hand-deliver this co	omment form to the address	shown below, no later than
	City of Temple	RECEIVED
	Planning Department Room 201	HECEIVED
o	Municipal Building Temple, Texas 76501	JUL 27 2010
Number of Notices Mailed: 10	Date Mailed:	July 22, 2010



RESPONSE TO PROPOSED CONDITIOAL USE PERMIT CITY OF TEMPLE

Michael T. Etux Cody Cramer, Jr. 40 Market Loop Belton, Texas 76513

Zoning Application Number: Z-FY-10-33 Project Manager: Brian Mabry

Proponent/Applicant: Mike Grisham for Carmela Thomas

The proposed request for a Conditional Use Permit is the area shown in hatched marking on the attached map. The Conditional Use Permit will allow the sales of distilled liquors, wines and beers in unbroken original containers in a package store for off-premises consumption. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the <u>possible</u> Conditional Use Permit for the property described on the attached notice, and provide any additional comments you may have.

I recommend () approval	() denial of this request.	
Comments:		
- A ()		
(Signature)	Cody Cramer (Print Name	

Please mail or hand-deliver this comment form to the address shown below, no later than <u>July 19, 2010</u>.

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

RECEIVED

JUL 15 2010

Date Mailed: July 8, 2010



RESPONSE TO PROPOSED CONDITIOAL USE PERMIT CITY OF TEMPLE

Jon Mark Etux Guadalupe Johnson 4005 Robinhood Drive Temple, Texas 76502

Zoning Application Number: Z-FY-10-33 Project Manager: Brian Mabry

Proponent/Applicant: Mike Grisham for Carmela Thomas

The proposed request for a Conditional Use Permit is the area shown in hatched marking on the attached map. The Conditional Use Permit will allow the sales of distilled liquors, wines and beers in unbroken original containers in a package store for off-premises consumption. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the <u>possible</u> Conditional Use Permit for the property described on the attached notice, and provide any additional comments you may have.

I recommend () approval () denial of this re	equest.
Comments: No other Business As A dro	ıw
ONLY Reason TO go To would be for a Liquum Ru	This Location
in chose Area	
	me about Fence on fence and survey
for Property Line By Prone	JON MARK JOHNSON
(Signature)	(Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than July 19, 2010.

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

Number of Notices Mailed: 10 Date Mailed: July 8, 2010



2nd RESPONSE TO PROPOSED CONDITIONAL USE PERMIT CITY OF TEMPLE

Amanda Krcha 8817 Oak Hills Drive Temple, Texas 76502

Zoning Application Number: Z-FY-10-33 Project Manager: Brian Mabry

Proponent/Applicant: Mike Grisham for Carmela Thomas

This 2nd notice of a public hearing is being sent to you because the Planning and Zoning Commission did not have enough members to conduct a meeting on July 19, 2010. The Planning and Zoning Commission will consider this request for a Conditional Use Permit on August 2, 2010.

The proposed request for a Conditional Use Permit is the area shown in hatched marking on the attached map. The Conditional Use Permit will allow the sales of distilled liquors, wines and beers in unbroken original containers in a package store for

off-premises consumption. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the <u>possible</u> Conditional Use Permit for the property described on the attached notice, and provide any additional comments you may have.

recommend () approval () denial of this re	equest.
Comments:	
this neighborhood without a	1:
this would be a parrible	addition to the
I am not in favor of to	is request & this is the
(Signature)	AMANDA KRCHA (Print Name

Please mail or hand-deliver this comment form to the address shown below, no later than August 2, 2010.

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

JUL 26 2010

City of Temple

Number of Notices Mailed: 10 Date Mailed: July 22, 2010



RESPONSE TO PROPOSED CONDITIONAL USE PERMIT CITY OF TEMPLE

ORO Holdings Ltd P.O. Box 449 Temple, Texas 76503-449

Proponent/Applicant: Mike Grisham for Carmela Thomas

The proposed request for a Conditional Use Permit is the area shown in hatched marking on the attached map. The Conditional Use Permit will allow the sales of distilled liquors, wines and beers in unbroken original containers in a package store for off-premises consumption. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the possible Conditional Use Permit for the property described on the attached notice, and provide any additional comments you may have.

I recommend (approval () denial of this request.

Comments:

| Brian Mabry | B

City of Temple

Room 201

Planning Department

Municipal Building Temple, Texas 76501

Number of Notices Mailed: 10

later than July 19, 2010.

Date Mailed: July 8, 2010



2nd RESPONSE TO PROPOSED CONDITIONAL USE PERMIT CITY OF TEMPLE

Southwest Federated Inc. 1150 North Loop 1604 W San Antonio, Texas 78248

August 2, 2010.

Hey! 2m running out of Stamps (i)

Zoning Application Number: Z-FY-10-33 Project Manager: Brian Mabryi

Proponent/Applicant: Mike Grisham for Carmela Thomas

This 2nd notice of a public hearing is being sent to you because the Planning and Zoning Commission did not have enough members to conduct a meeting on July 19, 2010. The Planning and Zoning Commission will consider this request for a Conditional Use Permit on August 2, 2010.

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I recommend Mapproval	() denial of this request.
Comments:	
11	(Print Name
(Signature)	(Print Name
Places mail or hand-deliver	this comment form to the address shown below, no later than

City of Temple RECEIVED

Planning Department Room 201 Municipal Building Temple, Texas 76501

JUL 29 2010

City of Temple

Number of Notices Mailed: 10 Date Mailed: July 22, 2010



RESPONSE TO PROPOSED CONDITIOAL USE PERMIT CITY OF TEMPLE

David & Randy Sodek 909 West Park Temple, Texas 76501

Zoning Application Number: <u>Z-FY-10-33</u> Project Manager: <u>Brian Mabry</u>

Proponent/Applicant: Mike Grisham for Carmela Thomas

The proposed request for a Conditional Use Permit is the area shown in hatched marking on the attached map. The Conditional Use Permit will allow the sales of distilled liquors, wines and beers in unbroken original containers in a package store for off-premises consumption. Because you own property within 200 feet of the requested change, your opinions are welcomed. Please use this form to indicate whether you are in favor of the <u>possible</u> Conditional Use Permit for the property described on the attached notice, and provide any additional comments you may have.

I recommend () approval Comments:	denial of this request.
(Signature)	DAGD SODEK (Print Name
Please mail or hand-deliver later than <u>July 19, 2010</u> .	City of Temple Planning Department Room 201 City of Temple Planning Department Room 201

Number of Notices Mailed: 10 Date Mailed: July 8, 2010

Municipal Building

Temple, Texas 76501

City of Temple



PLANNING AND ZONING COMMISSION AGENDA ITEM

08/02/10 Item #7 Regular Agenda Page 1 of 5

APPLICANT: Mike Grisham for Carmella Thomas

CASE MANAGER: Brian Mabry, AICP, Interim Planning Director

<u>ITEM DESCRIPTION:</u> Hold a public hearing to discuss and recommend action on a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption on the South one-half of Lot 1, Block 292-1, Temple Original at 1 North 6th Street. Zoned Central Area District (CA).

BACKGROUND: This case was originally presented to the Planning and Zoning Commission (P&Z) on May 17, 2010. The P&Z voted 5/3 to deny approval of the Conditional Use Permit (CUP) for a package store at the subject property. Among the expressed concerns at the P&Z and City Council public hearings were:

- **Parking:** The legitimacy and usefulness of the off-street parking on a lot across the alley behind the proposed package store;
- **Parking:** The potential for patrons of the proposed store to park in the right-of-way public parking in front of the adjacent duplex;
- **Trespassing:** The possibility of patrons trespassing through the narrow space between the proposed package store and the adjacent duplex; and
- **Policy:** Appropriateness of allowing a package store at this location east of downtown.

As a result, the proposal was not approved at City Council due to a lack of a second of a Council member's motion for approval.

The current submittal attempts to address the previous concerns that were raised at P&Z and City Council. See the CONCERNS section below.

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	CA	Vacant building	
North	CA	Duplex	
South	CA	Public parking lot	
East	CA	Alley/vacant building	
West	CA	Public parking lot	

<u>COMPREHENSIVE PLAN COMPLIANCE:</u> The proposed CUP relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
	Map 3.1 - Future Land Use and Character	Y*
СР	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Υ*
	Map 5.2 - Thoroughfare Plan	Υ*
STP	NA	NA

^{* =} See Comments Below CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

The request conforms to the Future Land Use and Character Map which designates the property as Auto Urban Commercial.

Thoroughfare Plan (CP Map 5.2)

This request conforms to the Thoroughfare Plan since the subject tract has access to North 6th Street, a local street on the Thoroughfare Plan and Central Avenue, designated an Arterial street.

Availability of Public Facilities (CP Goal 4.1)

A six-inch water line and a six-inch sewer line serve the site.

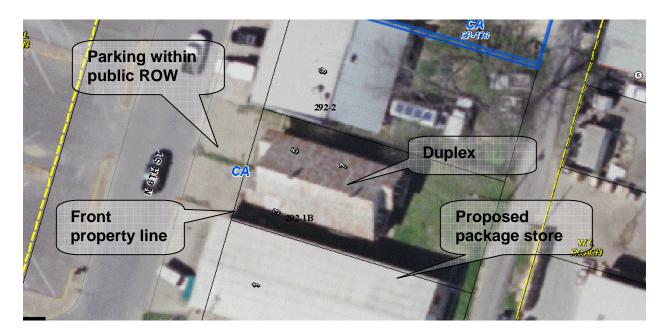
CONCERNS:

Parking

The specific use standards for package stores, adopted by City Council and codified in Sec. 7-611.5 of the Zoning Ordinance, requires that a package store have one on-site parking space per 250 square feet of retail area. Sec. 10-100 of the Zoning Ordinance states that parking is required on a "lot or tract or on an immediately contiguous lot or tract, or on a lot or tract within 150 feet of such building or structure." Therefore Staff's interpretation of the two provisions is that parking a maximum of 150 away from the subject building satisfies the "on-site" parking requirement.

At the time of the original P&Z and City Council public hearings, the applicant had secured a parking agreement for 10 spaces for a duration of 20 years. This would have satisfied the on-site parking requirement described above. However, since that time, the person leasing the spaces to the potential package store operator has canceled the lease. The applicant approached the City about leasing 10 spaces from a nearby public parking lot, but the City Manager declined the offer. At this time, no on-site or off-premises private parking is in place for the proposed package store.

One final parking concern that the owner of the adjacent duplex raised at previous meetings was that the parking in front of the duplex might be used by patrons of the package store, rather than his tenants. As demonstrated in the picture below, the parking in front of the duplex is in the public right-of-way and is therefore available to the general public, regardless of destination. The duplex owner could apply for a street use license to reserve the adjacent right-of-way parking spaces for the duplex. This is a solution consistent with previous similar situations in which a private property owner wanted to reserve adjacent public right-of-way parking spaces for his or her own use.



On the attached site plan, staff additionally recommends four spaces along E. Central Avenue to not be landscaped over in order to discourage parking directly in front of the duplex.

Trespassing

The owner of the duplex, Jon Johnson, expressed concern about trespassing and loitering in the space between the duplex and the proposed package store. The space between the two buildings belongs to Mr. Johnson. As shown on the attached site plan, the package store applicant proposes a fence at the front property line between the two structures and along the rear property line as a preventative measure. Of course, the duplex owner would need to give his permission for this to occur. At the time of writing this staff report, Staff is unaware of such permission being given, but Staff does know that the applicant and duplex owner are in conversation on the matter.

Such trespass was not a Staff concern originally because in the original submittal, the entrance to the building was proposed along E. Central Avenue. Due to the impracticality of building a properly sloped ADA-compliant ramp at this entrance, the applicant has elected to use the entrance along N. 6th Street instead. This location makes it more likely that patrons may walk between the two buildings if they parked across the alley, so Staff thinks that the fences should be required.

Policy

Various stakeholders have raised concern as to whether the subject property is a good location for a package store or not. Part of the CUP process is for the P&Z and City Council to utilize their discretionary abilities in making a recommendation and taking final action. As a guide, the Zoning Ordinance establishes seven general criteria for evaluation of all CUPs. They are listed below the P&Z's consideration:

- 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;
- 2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided;
- 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;

- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

Many of the comments of the adjacent property owners relate to criterion #1. The lack of on-site or off-premises private parking should be considered when evaluating criterion #4 above.

PUBLIC NOTICE:

Ten notices of the Planning and Zoning Commission public hearing were sent out. As of Wednesday, July 28 at 5 PM, four notices were returned in favor of and three notices were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance

STAFF RECOMMENDATION: NA (per direction of the Package Store Subcommittee)

FISCAL IMPACT: Not Applicable

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
CUP Site Plan
Parking Agreement
Notice Map
Response Letters

EXCERPTS FROM THE

PLANNING & ZONING COMMISSION MEETING

MONDAY, AUGUST 2, 2010

ACTION ITEMS

Item 7: Z-FY-10-33: Hold a public hearing to discuss and recommend action on a Conditional Use Permit to allow a package store with alcoholic beverage sales in a for off-premise consumption on the South one-half of Lot 1, Block 292-1, Temple Original at 1 North 6th Street. Zoning: Central Area District. (Applicant: Mike Grisham for Carmela Thomas)

Mr. Brian Mabry stated the applicant for this item was Mr. Mike Grisham for Ms. Carmela Thomas. If approved, this item would go to City Council on August 19th for first reading and September 2nd for second reading and final action.

This item had been before the P&Z Commission previously, but there are some new changes to the request. This proposal was for a package store and the property is zoned Central Area (CA). This case was originally presented to the Planning and Zoning Commission (P&Z) on May 17, 2010 and P&Z voted 5/3 to deny approval of the Conditional Use Permit (CUP) for a package store at the subject property. Among the expressed concerns at the P&Z and City Council public hearings were:

- Parking: The legitimacy and usefulness of the off-street parking on a lot across the alley behind the proposed package store;
- Parking: The potential for patrons of the proposed store to park in the right-of-way public parking in front of the adjacent duplex;
- Trespassing: The possibility of patrons trespassing through the narrow space between the proposed package store and the adjacent duplex; and
- Policy: Appropriateness of allowing a package store at this location east of downtown.

As a result, the proposal was not approved at City Council due to a lack of a second of a Council member's motion for approval.

The Future Land Use and Character Map designated the property auto/urban and the proposal conformed to the Thoroughfare Plan due to the location at the intersection of a local and arterial street. A 6" water and 6" sewer line would serve the property.

Surrounding uses included a parking lot across Central Avenue, a parking lot across 6th Street, a duplex to the north, and a vacant building across the alley to the east which was where the original parking agreement was located but had since been canceled by the building's property owners.

Package store standards in the Zoning Ordinance:

- 1. Such use much comply with Chapter 4, "Alcoholic Beverages," of the City Code;
- 2. Outdoor lighting must comply with the standards in Zoning Ordinance, Section 7-566(G);
- 3. If applicable, a pick-up window must be visible from the public right-of-way, and may not be placed in the alley;
- 4. The drive-through lane must provide a minimum of 60 feet of stacking space from the pick-up window to the beginning;
- 5. An escape (bypass) lane must be provided parallel to the drive-through lane, if applicable, from the beginning of the drive-through lane;
- 6. Parking (in any zoning district include in CA) must be provided onsite, 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);
- 7. Window signs are prohibited; and
- 8. Lighted advertising signs must be turned off at closing time.

With particular interest to No. 6, parking must be provided on-site which counted as either on-site, adjacent to the property, or within 150 feet of the subject property, for one space per 250 square feet and this was currently not in effect and no parking agreement was currently in effect.

Concerns from the previous P&Z, City Council, and stakeholder meetings were the legitimacy and usefulness of the parking across the alley [which was now moot since the parking agreement had been withdrawn], the potential for customers of the proposed store to park in the right-of-way public parking in front of the adjacent duplex, trespassing through the narrow space between the duplex and store, and the appropriateness of allowing a package store at this location.

The owner of the adjacent duplex had voiced concern that the parking in front of the duplex might be used for package store customers instead of the residents of the duplex; however, the parking in front of the duplex is public right-of-way and available to any member of the general public. The duplex owner could potentially apply for a street use license to reserve the adjacent right-of-way for parking spaces for the duplex and this would require City Council approval.

Another concern was trespassing between the two buildings, the proposed package store and the duplex. The property line was right at the wall of the proposed package store so anything between the wall of the duplex and the package store is the duplex owner's property. To try and address that, due to ADA requirements, the applicant would make the only entrance to the building oriented toward 6th Street rather than Central Avenue. The proposed plan showed a fence between the package store and the duplex, however, the duplex owner had not shown any interest in having the fence installed.

Various stakeholders have raised concern as to whether the subject property was a good location for a package store or not. Part of the CUP process was for the P&Z and City Council to utilize their discretionary abilities in making a recommendation and taking final action. As a guide, the Zoning Ordinance established seven general criteria for evaluation of all CUPs:

- 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;
- 2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided;
- 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;
- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

Many of the comments of the adjacent property owners related to criterion #1. The lack of on-site or off-premises private parking should be considered when evaluating criterion #4 above.

Four property owners were in favor of this proposal and three were opposed.

Per the Package Store Subcommittee, no Staff recommendation had been made.

Commissioner Barton asked about the parking requirements for Central Area (CA) district being clearly stated that the parking requirement was one space for every 250 feet of the building and now that the parking agreement had been nullified, the applicant no longer met that requirement. Mr. Mabry agreed. Mr. Mabry also stated the applicant informed him the property owner was looking at buying a nearby property within 150 feet, demolishing the building, and using it for parking but had not heard anything final regarding this.

Commissioner Secrest asked if the P&Z and City Council approved this request, the package store would not be able to open until appropriate parking were in place. Mr. Mabry confirmed.

Vice-Chair Talley opened the public hearing.

Mr. John Mark Johnson, owner of the duplex, approached and stated this particular plan looked to be the plan that was not seconded at City Council. Since the parking lot was across the street parking was not an issue. His concern was what it would do to the area. Currently, the area had several vagrants and debris and trash are a problem.

Mr. Johnson stated he was told that if the CUP were not approved, a wine and beer bar would be put there, which was allowed in the CA, and would operate from 8 a.m. to 2 p.m.

Mr. Johnson stated the fence proposed was a 4 foot chain link fence in the back and a 6 foot wooden fence in the front.

Mr. Mike Grisham, representative of the property owner, stated the second property from the proposed building was for sale and the subject property owner was interested in purchasing it. The building on the property had burned and once demolished, the space would provide a nice parking lot which would also be within the 150 foot requirement. Mr. Grisham asked for a proposal to make that a condition of approval if that property could be used for the parking area.

Mr. Richard Lewis, 6819 Jupiter, potential purchaser of the building, stated he already made a proposal for purchase and Mr. Hal Dunn was working on closing the deal on the property so there would be plenty of parking for the proposed package store.

Mr. Grisham stated Mr. Lewis had owned a package store for 25 years at Morgan's Point and had experience. Mr. Lewis would provide jobs, improvements to the building, and provide adequate parking.

Mr. Johnson stated to the Commission that he received a letter and email from Mr. Lewis and then asked Mr. Lewis if the CUP were not approved, would Mr. Lewis still intend to put a bar there and Mr. Lewis stated he had no comment.

Vice-Chair Talley closed the public hearing.

Commissioner Martin stated he made a mistake on this since he did not go by the property and originally look at it. Commissioner Martin felt the way the City presented the case, there was ample parking to satisfy the CUP permits. When Commissioner Martin went to look at the property, he stated he would not park his car where the parking was intended. Commissioner Martin stated he looked more closely at the regulations for the store and parking and did not feel they were appropriate.

Commissioner Secrest asked if he would vote for this if there were parking available because even if this request were approved, the parking would have to be in place before opening the business. Commissioner Secrest stated that if P&Z and City Council passed this request, they would not open until the parking were in place.

Commissioner Barton stated he had concerns about where the parking would be located, even if it met the 150 foot requirement. It was an obvious inconvenience. Commissioner Staats stated it was injurious to the party who had the property between the two and Commissioner Barton agreed.

Mr. Grisham stated there were parking spaces partially owned by the property where the building is currently, and asked the Commission why that parking could not be used. Commissioner Barton stated he could not answer that question but even if it could be used, it was only 4 or 5 parking spaces which did not meet the requirements for a 2500 square foot building--10 spaces were required. Mr. Grisham stated there were 10 existing spaces currently there and Commissioner Barton stated if the required landscaping were done required by the site plan, there would only be 5 parking spaces, one being a handicapped space.

Mr. Mabry tried to clarify that the majority of the parking area was not controlled by the property owner.

Vice-Chair Talley stated the parking, in one respect, was not a problem, people could park anyplace. Vice-Chair Talley stated he felt this was an ethical issue; there were residents right next to the property. Vice-Chair Talley went to look at the area and spoke to the convenience store owner and asked if there a lot of individuals were taking beer and going off into the property next door, which is owned by the City, and he stated this was a problem. Vice-Chair Talley stated he spoke with the Police and they confirmed it was a problem. The neighbors have stated it was a problem. Vice-Chair Talley stated he knew and liked the

applicant, was pro-business for the area, and did not want to see empty buildings but this request did not make any sense to him.

Commissioner Staats stated he did not feel the Commission had yet seen the best proposal for use of this building.

Mr. Richard Lewis stated he had spoken with TABC and was told that if anyone were drinking anywhere around that property, they (TABC) will put them in jail on the spot. You cannot drink around a package store. If Mr. Lewis were running the place and people were drinking on City property, he would call the police or TABC to haul them off.

Mr. Mabry asked the Commission should anyone make a motion regarding parking on the other property two lots down, to tie that parking into the CUP approval by requesting submission of a parking site plan to the City Council as part of the package for the CUP. The description would be Lot 9, Block 7 of Original Town Addition.

Commissioner Martin made a motion for denial of **Z-FY-10-33** and Commissioner Barton made a second.

Motion passed for denial: (7:0)

Chair Pilkington and Commissioner Hurd absent.

[PLANNING NO. Z-FY-10-33]

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 ON THE SOUTH ONE-HALF OF LOT 1, BLOCK 292-1, TEMPLE ORIGINAL AT 1 NORTH $6^{^{\text{TH}}}$ STREET; DECLARING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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 1 North 6th Street, recommends that the City Council deny 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 on the south one-half of Lot 1, Block 292-1, Temple Original at 1 North 6th Street, more fully shown on Exhibit A, attached hereto and made a part of for all purposes.

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

General:

- (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 bears the burden of showing that the establishment does not exceed the limitation on gross receipts from sales of alcoholic beverages applicable to its conditional use permit. The permittee must maintain accounting records of the sources of its gross revenue and allow the City to inspect such records during reasonable business hours. (Not applicable for package stores).
- (d) The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.
- (e) The permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior. The permittee shall consult with the Chief of Police, who shall act in an advisory capacity to determine the number of qualified employees necessary to meet the obligations hereunder.
- (f) 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.
- (g) 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.
- (h) The City Council may deny or revoke this conditional use permit if it affirmatively determines that the issuance of the permit is incompatible with the surrounding uses of property, or detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.
- (i) A conditional use permit issued under this section runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.
- (j) All conditional use permits issued under this section will be further conditioned that the same may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-609.

Specific to Package Stores:

- (k) Such use must comply with Chapter 4, "Alcoholic Beverages," of the City Code.
- (l) Outdoor lighting must comply with the standards in Section 7.566 (G) of the Zoning Ordinance.
- (m) If applicable, a pick-up window must be visible from the public right-of-way, and may not be placed in alleys.
- (n) The drive-through lane must provide a minimum of 60 feet of stacking space from the pick-up window to the beginning.
- (o) An escape (bypass) lane must be provided parallel to the drive-through lane, if applicable, from the beginning of the drive-through lane.
- (p) Parking (in any zoning district including the 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).
- (q) Window signs are prohibited.
- (r) Lighted advertising signs must be turned off at closing time.

Specific to this CUP:

(s) 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.

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

<u>Part 4:</u> 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.

<u>Part 6:</u> 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.

<u>Part 7:</u> 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 **19**th day of **August**, 2010.

PASSED AND APPROVED on Second Reading on the 2nd day of **September**, 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A. JONES, III Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #9 Regular Agenda Page 1 of 3

DEPT./DIVISION SUBMISSION & REVIEW:

Brian Mabry, Interim Planning Director

<u>ITEM DESCRIPTION:</u> FIRST READING – PUBLIC HEARING - Z-FY-10-35: Consider adopting an ordinance authorizing a zoning change from Agriculture (A) to Neighborhood Service (NS) on a 0.72 ± acre tract of land situated in the Sarah Fitzhenry Survey, Abstract No. 312, Bell County, Texas, located east of the intersection of State Highway 36 and Moffat Road.

P&Z COMMISSION RECOMMENDATION: At its August 2, 2010 meeting, the Planning and Zoning Commission voted 7/0 in accordance with staff recommendation to recommend approval of a zone change from A to NS for the following reasons:

- 1. The Comprehensive Plan recommends the NS zoning district to complement rural and urban residential areas since it is the most restrictive and least intense commercial zoning district.
- 2. Land Use Policy 14 of the Comprehensive Plan recommends that small scale neighborhood retail and service uses be located at the intersections of collector and arterial streets.
- 3. The request complies with the Thoroughfare Plan.
- 4. Public and private facilities serve the property.

Chair Pilkington and Commissioner Hurd were absent.

STAFF RECOMMENDATION: Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for September 2, 2010.

<u>ITEM SUMMARY:</u> Please refer to the Staff Report and draft minutes of case Z-FY-10-35, from the Planning and Zoning meeting, August 2, 2010. The applicant proposes to establish a small retail and office center on the subject property.

<u>COMPREHENSIVE PLAN COMPLIANCE:</u> The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
	Map 3.1 - Future Land Use and Character	Yes*
СР	Land Use Policy 14 - Smaller-scale neighborhood retail and service uses should be located at intersections of collector and arterial streets	Yes
	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Yes*
	Map 5.2 - Thoroughfare Plan	Yes*
STP	NA	NA

^{* =} See Comments Below CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

The Future Land Use and Character Map designates the subject property as Rural. The Comprehensive Plan recommends the NS zoning district to complement rural and urban residential areas since it is the most restrictive and least intense commercial zoning district. The proposal conforms to the Future Land Use and Character Plan. Planning Staff will recommend this area be part of the semi-annual update to the Map, since this area will accommodate existing and future commercial activity near the intersection of Highway 36 and Moffat Road. The semi-annual update is projected to take place in Summer 2010.

Thoroughfare Plan (CP Map 5.2)

The Thoroughfare Plan designates State Highway 36 as a Major Arterial and the nearby Moffat Road as a Collector Street. The zone change request complies with the Thoroughfare Plan.

Availability of Public Facilities (CP Goal 4.1)

Moffat Water Supply, the area's water provider, states that a 1 ½" water line serves the property. An on-site septic facility is proposed for the property. Public and private facilities are available.

<u>PUBLIC NOTICE:</u> Three notices of the Planning and Zoning Commission public hearing were sent out. As of Wednesday, July 28 at 5 PM, one notice was returned in favor of and no notices were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance.

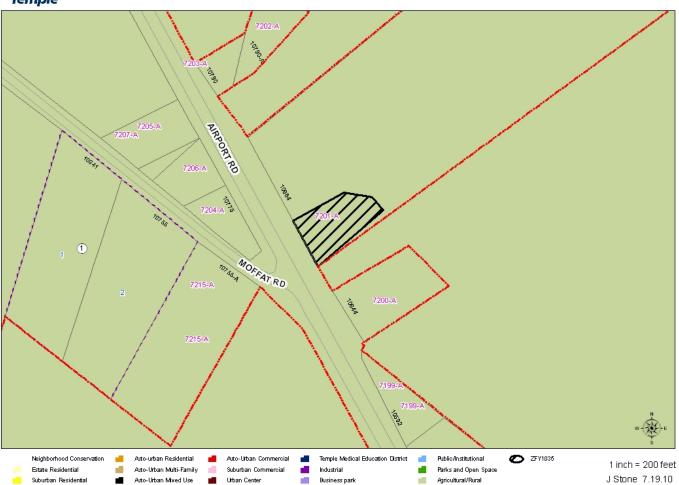
FISCAL IMPACT: NA

08/19/10 Item #9 Regular Agenda Page 3 of 3

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Notice Map
Response Letter
P&Z Staff Report (Z-FY-10-35)
P&Z Minutes (08/02/10)
Ordinance





ZFY1035

Feet 0 100 200 300 400

J Stone 6.16.10

J Stone 6.16.10

ZFY1035 ZFY1035



2nd RESPONSE TO PROPOSED REZONING CITY OF TEMPLE

Sheran Lewis 5796 Cedar Ridge Park Road Temple, Texas 76502

Zoning Application Number: Z-FY-10-35 Project Manager: Brian Mabry This 2nd notice of a public hearing is being sent to you because the Planning and Zoning

Commission did not have enough members to conduct a meeting on July 19, 2010. The Planning and Zoning Commission will consider this rezoning request on August 2, 2010.

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

I reco	ommend ∰ approv	val () denial of this req	uest.
Comments:	1		
Signature	Leuis		RANLEWIS int Name
Please mail or har than <u>August 2, 20</u>		nment form to the address s	shown below, no later
	<u> </u>	City of Temple	RECEIVED

Room 201

Number of Notices Mailed: 3

Date Mailed:

Planning Department

Municipal Building Temple, Texas 76501

July 22, 2010

JUL 27 2010

City of Temple Planning & Development



PLANNING AND ZONING COMMISSION AGENDA ITEM

08/02/10 Item #8 Regular Agenda Page 1 of 3

APPLICANT: Christopher Bean

CASE MANAGER: Brian Mabry, AICP, Interim Planning Director

<u>ITEM DESCRIPTION:</u> Z-FY-10-35 – Hold a public hearing to discuss and recommend action on a rezoning from Agriculture (A) to Neighborhood Service (NS) on a 0.72 ± acre tract of land situated in the Sarah Fitzhenry Survey, Abstract No. 312, Bell County, Texas, located east of the intersection of State Highway 36 and Moffat Road.

BACKGROUND: The applicant proposes to establish a small retail and office center on the subject property.

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 (NS proposed)	Undeveloped	
North	A with ETJ in the distance	Undeveloped with storage in the distance	

Direction	Zoning	Current Land Use	Photo
South	ETJ with A	Undeveloped with	
East	in the distance	manufactured home in the distance	
West	NS with CUP for off- premise beer & wine consumption	Convenience store and fuel sales	

<u>COMPREHENSIVE PLAN COMPLIANCE:</u> The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
	Map 3.1 - Future Land Use and Character	Yes*
СР	Land Use Policy 14 - Smaller-scale neighborhood retail and service uses should be located at intersections of collector and arterial streets	Yes
	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Yes*
	Map 5.2 - Thoroughfare Plan	Yes*
STP	NA	NA

^{* =} See Comments Below CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

The Future Land Use and Character Map designates the subject property as Rural. The Comprehensive Plan recommends the NS zoning district to complement rural and urban residential areas since it is the most restrictive and least intense commercial zoning district. The proposal conforms to the Future Land Use and Character Plan. Planning Staff will recommend this area be part of the semi-annual update to the Map, since this area will accommodate existing and future commercial activity near the intersection of Highway 36 and Moffat Road. The semi-annual update is projected to take place in Summer 2010.

Thoroughfare Plan (CP Map 5.2)

The Thoroughfare Plan designates State Highway 36 as a Major Arterial and the nearby Moffat Road as a Collector Street. The zone change request complies with the Thoroughfare Plan.

Availability of Public Facilities (CP Goal 4.1)

Moffat Water Supply, the area's water provider, states that a 1 ½" water line serves the property. An on-site septic facility is proposed for the property. Public and private facilities are available.

<u>DEVELOPMENT REGULATIONS:</u> The purpose of the NS zoning district is to provide day-to-day retail and service needs for residential areas. This district should be located convenient to residential areas in locations such as the corner of a local road and a collector that serves the neighborhood.

Typical permitted uses include limited retail services such as a convenience store without fuel sales, bank, barber or beauty shop, cleaners or flower shop. Typical prohibited uses include a drive-in restaurant or car wash.

The minimum lot area and setback requirements for NS zoning district are as follows.

NS, Neighborhood Service	
Min. Lot Area (sq. ft.)	NA
Min. Lot Width (ft.)	NA
Min. Lot Depth (ft.)	NA
Max. Height (stories)	2 ½ stories
Min. Yard (ft)	
Front	15
Side	10
Rear	0

<u>PUBLIC NOTICE:</u> Three notices of the Planning and Zoning Commission public hearing were sent out. As of Wednesday, July 28 at 5 PM, one notice was returned in favor of and no notices were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance.

STAFF RECOMMENDATION: Staff recommends approval of the rezoning for case Z-FY-10-35 for the following reasons:

- 1. The Comprehensive Plan recommends the NS zoning district to complement rural and urban residential areas since it is the most restrictive and least intense commercial zoning district.
- 2. Land Use Policy 14 of the Comprehensive Plan recommends that small scale neighborhood retail and service uses be located at the intersections of collector and arterial streets.
- 3. The request complies with the Thoroughfare Plan.
- 4. Public and private facilities serve the property.

FISCAL IMPACT: Not Applicable

ATTACHMENTS:

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

EXCERPTS FROM THE

PLANNING & ZONING COMMISSION MEETING

MONDAY, AUGUST 2, 2010

ACTION ITEMS

Item 8: Z-FY-10-35: Hold a public hearing to discuss and recommend action on a rezoning from Agriculture (A) to Neighborhood Service (NS) on a 0.72 ± acre tract of land situated in the Sarah Fitzhenry Survey, Abstract No. 312, Bell County, Texas, located east of the intersection of State Highway 36 and Moffat Road. (Applicant: Christopher Bean)

Commissioner Staats stated he would need to abstain from this case.

Mr. Mabry stated this request was for a proposed small retail office building. The area was annexed in 2008 and this was the first proposed rezoning for the area and located on Airport Road near Moffat Road.

A convenience store lay to the west, undeveloped land with some storage facilities to the north (owned by the applicant), and undeveloped land to the south and east with one manufactured home.

The Future Land Use and Character Map designated this property as agricultural and rural, however, toward the end of summer a Future Land Use amendment would be submitted to the Commission which would propose the area as suburban/commercial to accommodate the existing commercial activity taking place in the area. Airport Road is a major arterial and Moffat is a collector on the Thoroughfare Plan. Moffat Water Supply would be the water supplier with a 1.5" water line serve the property and on-site septic facilities are available.

Three notices were mailed: one was returned in favor of the request and zero were opposed.

Staff recommended approval of this rezoning request for the following reasons:

- 1. The Comprehensive Plan recommended the NS zoning district to complement rural and urban residential areas since it is the most restrictive and least intense commercial zoning district.
- 2. Land Use Policy 14 of the Comprehensive Plan recommended that small scale neighborhood retail and service uses be located at the intersections of collector and arterial streets.
- 3. The request complied with the Thoroughfare Plan.
- 4. Public and private facilities serve the property.

Vice-Chair Talley opened the public hearing. There being no speakers, Vice-Chair Talley closed the public hearing.

Commissioner Barton made a motion to approve Z-FY-10-35 with the Staff recommendations and Commissioner Pope made a second.

Motion passed: (6:0)

Commissioner Staats abstained; Chair Pilkington and Commissioner Hurd absent.

ORDINANCE NO	

[PLANNING NO. Z-FY-10-35]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM AGRICULTURAL DISTRICT (A) TO NEIGHBORHOOD SERVICE (NS) ON AN APPROXIMATELY 0.72 ACRE TRACT OF LAND SITUATED ON THE SARAH FITZHENRY SURVEY, ABSTRACT NO. 312, BELL COUNTY, TEXAS, LOCATED EAST OF THE INTERSECTION OF STATE HIGHWAY 36 AND MOFFAT ROAD; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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

<u>Part 1</u>: The City Council approves a zoning change from Agricultural District (A) to Neighborhood Service (NS) on an approximately 0.72 acre tract of land situated on the Sarah Fitzhenry Survey, Abstract No. 312, Bell County, Texas, located east of the intersection of State Highway 36 and Moffat Road, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

- <u>Part 2:</u> 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.
- <u>Part 4</u>: 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.
- <u>Part 5</u>: 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 **19**th day of **August**, 2010.

PASSED AND APPROVED on Second Reading on the 2nd day of September, 2010. THE CITY OF TEMPLE, TEXAS WILLIAM A. JONES, III, Mayor APPROVED AS TO FORM:

Clydette Entzminger Jonathan Graham
City Secretary City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #10 Regular Agenda Page 1 of 3

DEPT./DIVISION SUBMISSION & REVIEW:

Brian Mabry, Interim Planning Director

<u>ITEM DESCRIPTION:</u> FIRST READING – PUBLIC HEARING - Z-FY-10-39: Consider adopting an ordinance authorizing a Conditional Use Permit to allow the sale of alcoholic beverages, more than 50% and less than 75% of the total gross revenue, for on-premise consumption in a restaurant located in a 3519 square feet lease space on a portion of Lot 1, Block 1, Westward LTD Subdivision at 4303, South 31st Street. Suite 101.

P&Z COMMISSION RECOMMENDATION: At its August 2, 2010 meeting, the Planning and Zoning Commission voted 7/0 in accordance with staff recommendation to recommend approval of a Conditional Use Permit to allow the sale of alcoholic beverages, more than 50% and less than 75% of the total gross revenue, for on-premise consumption in a restaurant with the following conditions:

- 1. General Conditional Use Permit provisions in Sec. 7-611 of the Zoning Ordinance apply to the property.
- 2. The applicant's site plan and floor plan are exhibits to the ordinance that grants CUP.

Chair Talley and Commissioner Hurd were absent.

STAFF RECOMMENDATION: Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for September 2, 2010.

<u>ITEM SUMMARY:</u> Please refer to the Staff Report and draft minutes of case Z-FY-10-39, from the Planning and Zoning meeting, August 2, 2010. The applicant requests the Conditional Use Permit in order to sell beer, wine and mixed drinks for on-premise consumption with more than 50% and less than 75% of total gross revenue coming from alcohol sales. The restaurant, Camino Real, just recently opened in lease space in the shopping center on the subject property.

The nearest "protected use" (e.g. church, school or hospital) is approximately 400 feet away, measured front door to front door. The minimum separation distance between a business with onpremise alcohol consumption and a protected use is 300 feet.

<u>COMPREHENSIVE PLAN COMPLIANCE:</u> The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
CP	Map 3.1 - Future Land Use and Character	Y*
СР	Map 5.2 - Thoroughfare Plan	Y*
СР	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public	Y*
STP	service capacities Map F4- Local connector trail/sidewalk along S. 31 st	N*
	St.	

CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

The request conforms to the Future Land Use and Character Map which designates the property as Auto-Urban Commercial.

Thoroughfare Plan (CP Map 5.2)

This request conforms to the Thoroughfare Plan since the subject property has access to South 31st Street, which is designated as an Arterial street.

Availability of Public Facilities (CP Goal 4.1)

A 12-inch water line and a 15-inch sewer line serve the site.

Citywide Sidewalk and Trails Master Plan (Spine Trail Map)

The Citywide Trails Master Plan calls for a Community-Wide Connector Trail or Sidewalk that is 8 to 10 feet wide and which may be composed of concrete or other materials, along this portion of South 31st Street. The existing sidewalk, which is in good condition and installed in late 2000, is 6 feet in width. While it does not meet the plan's recommendation, requesting an additional 2' in sidewalk width along the 360 feet of frontage for the entire shopping center would not be in proportion with the fairly simple, small-scale request that the applicant is making to serve alcohol in the lease space.

<u>PUBLIC NOTICE:</u> Three notices of the Planning and Zoning Commission public hearing were sent out. As of Wednesday, July 28 at 5 PM, no notices were returned in favor of and no were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance

FISCAL IMPACT: NA

08/19/10 Item #10 Regular Agenda Page 3 of 3

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
CUP Site Plan
CUP Floor Plan
Notice Map
P&Z Staff Report (Z-FY-10-39)
P&Z Minutes (August 2, 2010)
Ordinance

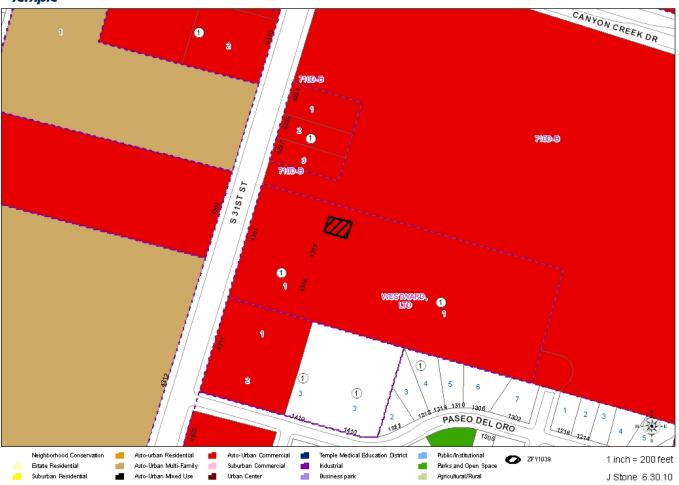


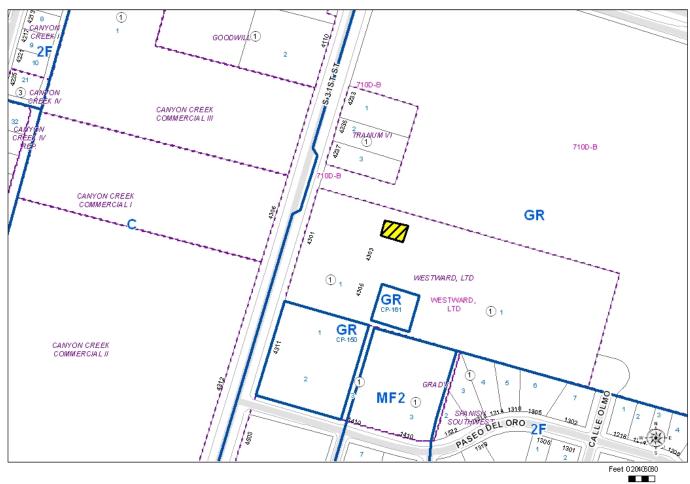


JStone 6.30.10

ZFY1 039



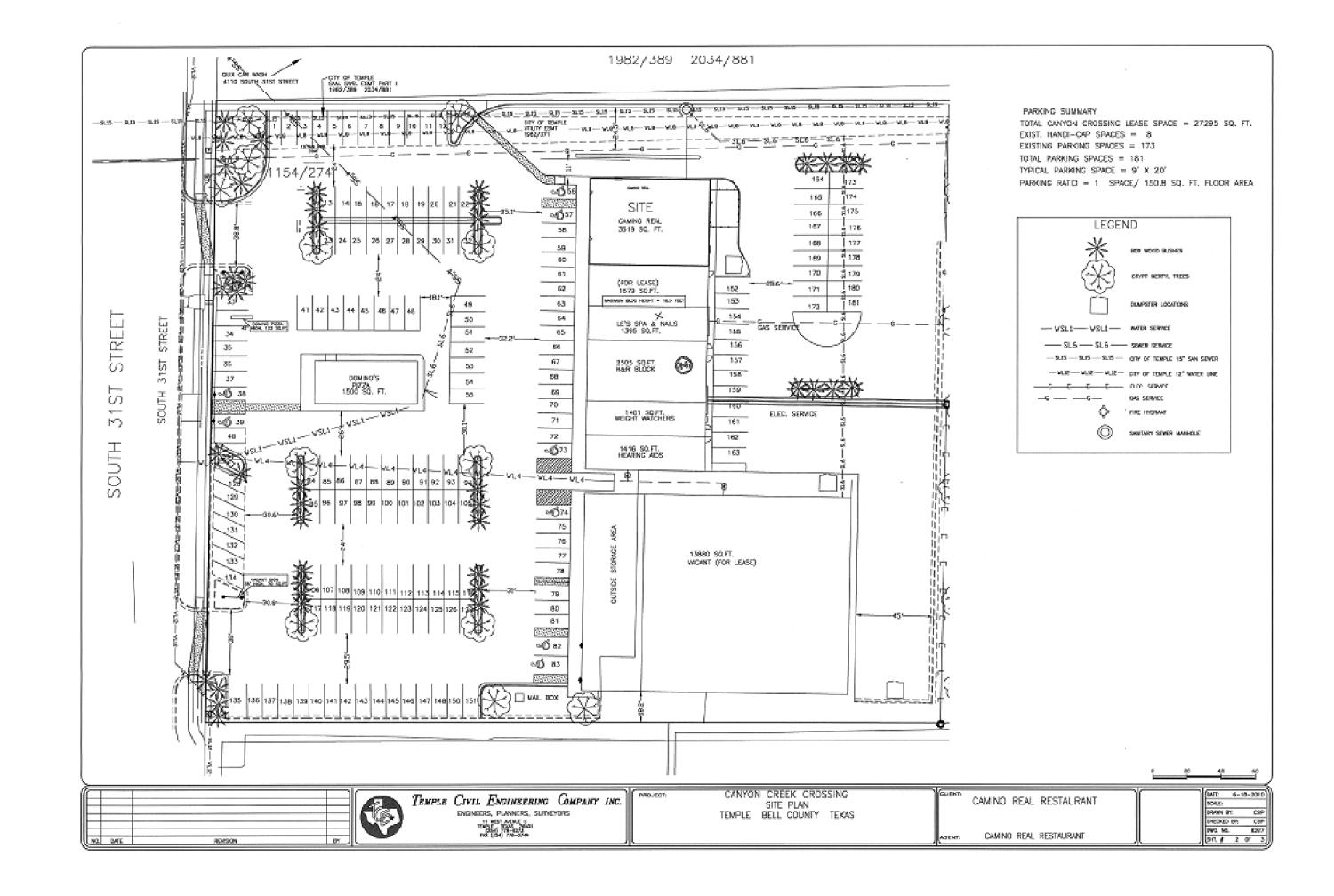


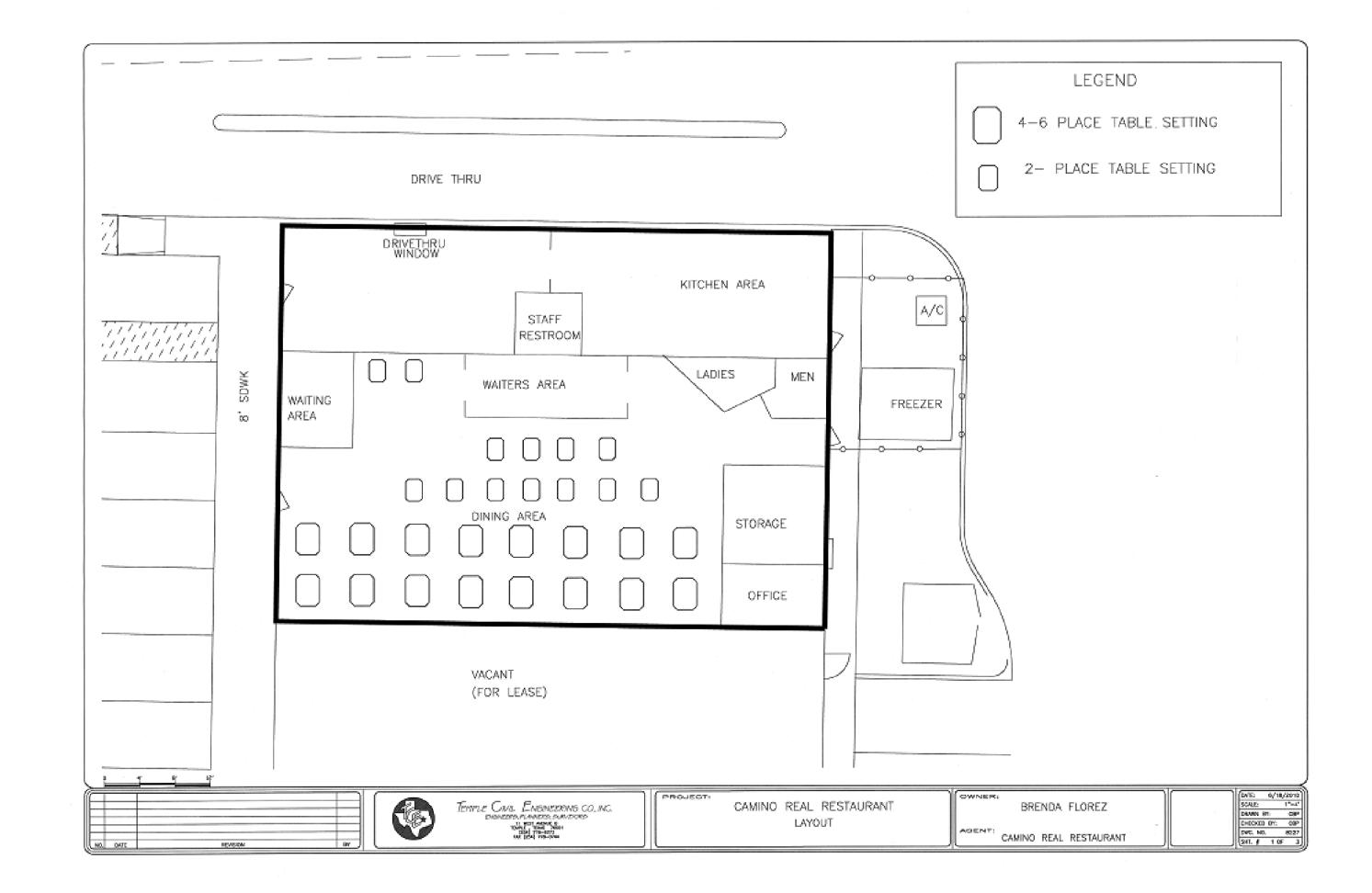


JStone 6.30.10

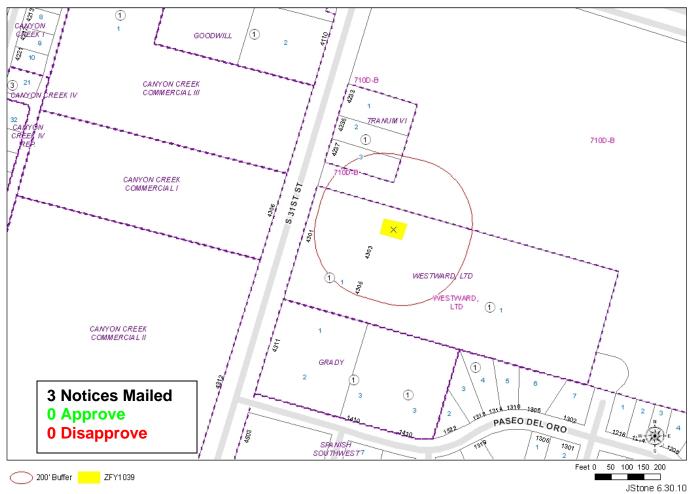














PLANNING AND ZONING COMMISSION AGENDA ITEM

08/02/10 Item #9 Regular Agenda Page 1 of 4

APPLICANT / DEVELOPMENT: Juan Flores for Eagle Eye Investments, LLC

CASE MANAGER: Brian Mabry, AICP, Interim Planning Director

ITEM DESCRIPTION: Z-FY-10-39 Hold a public hearing to discuss and recommend action on a Conditional Use Permit to allow the sale of alcoholic beverages, more than 50% and less than 75% of the total gross revenue, for on-premise consumption in a restaurant located in a 3519 square feet lease space on a portion of Lot 1, Block 1, Westward LTD Subdivision at 4303, South 31st Street. Suite 101.

BACKGROUND: The applicant requests the Conditional Use Permit (CUP) in order to sell beer, wine and mixed drinks for on-premise consumption with more than 50% and less than 75% of total gross revenue coming from alcohol sales. The restaurant, Camino Real, just recently opened in lease space in the shopping center on the subject property.

The nearest "protected use" (e.g. church, school or hospital) is approximately 400 feet away, measured front door to front door. The minimum separation distance between a business with onpremise alcohol consumption and a protected use is 300 feet. A CUP for on-premise consumption of alcohol was granted in 2003 for what was recently "Hank's Town" when that building was proposed to be a movie theater with food and beverages.

A total of 124 parking spaces are required for the shopping center (1 space per 250 sq ft retail; 1 space per 3 seats in a restaurant). A total of 181 spaces are provided on the site. The existing landscaping and screening on the property meets or exceeds the requirements of the Zoning Ordinance.

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	GR (CUP proposed)	Restaurant in shopping center lease space	

Direction	Zoning	Current Land Use	Photo
North	GR	Car wash	
South	GR	Nail shop in shopping center lease space	Let Equi S'init
East	GR	Undeveloped	
West	С	Church (across S. 31 st St.)	AGE

<u>COMPREHENSIVE PLAN COMPLIANCE:</u>
The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
CP	Map 3.1 - Future Land Use and Character	Υ
CP	Map 5.2 - Thoroughfare Plan	Υ
СР	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Y
STP	Map F4- Local connector trail/sidewalk along S. 31 st St.	Υ

CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)
The request conforms to the Future Land Use and Character Map which designates the property as Auto-Urban Commercial.

Thoroughfare Plan (CP Map 5.2)

This request conforms to the Thoroughfare Plan since the subject property has access to S. 31st Street, which is designated as an Arterial street.

Availability of Public Facilities (CP Goal 4.1)

A 12-inch water line and a 15-inch sewer line serve the site.

Citywide Sidewalk and Trails Master Plan (Spine Trail Map)

The Citywide Sidewalk and Trails Master Plan calls for a local connector trail/sidewalk, which may be composed of concrete that is 6 to 8 feet in width along the S. 31st Street Corridor. The existing sidewalk that is 6 feet in width meets this requirement.

CUP APPROVAL CRITERIA

Part of the CUP process is for the P&Z and City Council to utilize their discretionary abilities in making a recommendation and taking final action. As a guide, the Zoning Ordinance establishes seven general criteria for evaluation of all CUPs. They are listed below the P&Z's consideration:

- 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;
- 2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided;
- 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;
- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

PUBLIC NOTICE:

Three notices of the Planning and Zoning Commission public hearing were sent out. As of Wednesday, July 28 at 5 PM, no notices were returned in favor of and no were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance

STAFF RECOMMENDATION: Staff recommends approval of Z-FY-10-39, a CUP to allow the sale of alcoholic beverages, more than 50% and less than 75% of the total gross revenue, for on-premise consumption in a restaurant subject to the following conditions:

- 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 bears the burden of showing that the establishment does not exceed the limitation on gross receipts from sales of alcoholic beverages applicable to its CUP. The permittee must maintain accounting records of the sources of its gross revenue and allow the City to inspect such records during reasonable business hours.
- 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 permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior.
- 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, cancel, suspend or revoke this CUP in accordance with the revocation clause set forth in Section 7-608 of the Zoning Ordinance 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. The CUP runs with the property. Changes in the owner or lessee of a permitted establishment do not affect the permit.
- 8. The applicant's site plan and floor plan are exhibits to the ordinance that grants CUP.

FISCAL IMPACT: Not Applicable

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
CUP Site Plan
CUP Floor Plan
Notice Map
Response Letters

EXCERPTS FROM THE

PLANNING & ZONING COMMISSION MEETING

MONDAY, AUGUST 2, 2010

ACTION ITEMS

Item 9: Z-FY-10-39: Hold a public hearing to discuss and recommend action on a Conditional Use Permit to allow the sale of alcoholic beverages, more than 50% and less than 75% of the total gross revenue, for onpremise consumption in a restaurant located in a 3519 square feet lease space on a portion of Lot 1, Block 1, Westward LTD Subdivision at 4303 South 31st Street. Suite 101. (Applicant: Juan Flores for Eagle Eye Investments LLC.)

Mr. Mabry stated this request was for on-premise consumption of beer, wine and mixed drinks in a restaurant. If approved, this item would go to City Council on August 19th for first reading and September 2nd for second reading and final action. This was a standard request for a restaurant to serve all three types of alcohol.

Surrounding properties have a nail shop to the south, undeveloped land to the east, a church to the west, and a car wash to the north. The Future Land Use and Character Map showed the property as auto/urban/commercial. The Thoroughfare Plan showed South 31st as an arterial and a 12" water line, an 8" water line, and a 15" sewer line would serve the property.

The nearest "protected use" (e.g. church, school or hospital) was approximately 400 feet away, measured front door to front door. The minimum separation distance between a business with on-premise alcohol consumption and a protected use is 300 feet.

A total of 124 parking spaces are required for the shopping center (1 space per 250 sq ft retail; 1 space per 3 seats in a restaurant). A total of 181 spaces are provided on the site. The existing landscaping and screening on the property met or exceeded the requirements of the Zoning Ordinance.

The Citywide Sidewalk and Trails Master Plan called for a local connector trail/sidewalk, which may be composed of concrete that is 6 to 8 feet in width along the S. 31st Street Corridor. The existing sidewalk that is 6 feet in width met this requirement.

Three notices were mailed: zero were return in favor or in opposition.

Staff recommended approval of Z-FY-10-39, a CUP to allow the sale of alcoholic beverages, more than 50% and less than 75% of the total gross revenue, for onpremise consumption in a restaurant subject to the following conditions:

- 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.
- The permittee bears the burden of showing that the establishment does not exceed the limitation on gross receipts from sales of alcoholic beverages applicable to its CUP. The permittee must maintain accounting records of the sources of its gross revenue and allow the City to inspect such records during reasonable business hours.
- 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 permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior.
- 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, cancel, suspend or revoke this CUP in accordance with the revocation clause set forth in Section 7-608 of the Zoning Ordinance 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. The CUP runs with the property. Changes in the owner or lessee of a permitted establishment do not affect the permit.
- 8. The applicant's site plan and floor plan are exhibits to the ordinance that grants CUP.

Commissioner Staats asked if Eagle Eye owned other restaurants in the area and who was the applicant. Mr. Mabry stated they owned the entire shopping center and were out of California. He was not certain what other properties they owned. The restaurant owner made the application but a representative of the property owner signed off on the application.

Vice-Chair Talley opened the public hearing. There being no speakers, Vice-Chair Talley closed the public hearing.

Commissioner Staats stated he was quite familiar with this area and this looked to be a thriving business.

Commissioner Pope made a motion to approve Z-FY-10-39 CUP to include with Staff conditions and Commissioner Secrest made a second.

Motion passed: (7:0)

Chair Pilkington and Commissioner Hurd absent.

ORDINANCE NO.	

[PLANNING NO. Z-FY-10-39]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES, MORE THAN 50% AND LESS THAN 75% OF THE TOTAL GROSS REVENUE, FOR ON-PREMISE CONSUMPTION IN A RESTAURANT LOCATED IN A 3,519 SQUARE FEET LEASE SPACE ON A PORTION OF LOT 1, BLOCK 1, WESTWARD LTD SUBDIVISION AT 4303 SOUTH 31ST STREET, SUITE 101; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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 location and zoning classification of the establishment, has recommended that the City Council approve this application; 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 concerning the establishment at 4303 South 31st Street, Suite 101, and has heard the comments and evidence presented by all persons supporting or opposing this matter at said public hearing, and after examining the location and the zoning classification of the 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:

<u>Part 1</u>: The City Council approves a Conditional Use Permit to allow the sale of alcoholic beverages, more than 50% and less than 75% of the total gross revenue, for on-premise consumption in a restaurant located in a 3,519 square feet lease space on a portion of Lot 1, Block 1, Westward LTD Subdivision at 4303 South 31st Street, Suite 101, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

- <u>Part 2</u>: The owners/applicants, their employees, lessees, agents or representatives, hereinafter called "permittee" shall comply with the following developmental standards and conditions of operation:
 - (a) The sale and consumption of alcoholic beverages shall occur only within the designated area, in accordance with the site plan attached as Exhibit B.
 - (b) 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.
 - (c) The permittee must comply with applicable licensing and permit provisions of the Alcoholic Beverage Code within six (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.
 - (d) The permittee bears the burden of showing that the establishment does not exceed the limitation on gross receipts from sales of alcoholic beverages applicable to its conditional use permit. The permittee must maintain accounting records of the sources of its gross revenue and allow the City to inspect such records during reasonable business hours.
 - (e) The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.
 - (f) The permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior. The permittee shall consult with the Chief of Police, who shall act in an advisory capacity to determine the number of qualified employees necessary to meet his obligations hereunder.
 - (g) 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.
 - (h) 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.
 - (i) The City Council may deny or revoke a conditional use permit if it affirmatively determines that the issuance of the same is (a) incompatible with the surrounding uses of

property, or (2) detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.

- (j) A conditional use permit issued under this section runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.
- (k) All conditional use permits issued under this section will be further conditioned that the same may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-609.

<u>Part 3</u>: 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.

<u>Part 4</u>: 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.

<u>Part 5</u>: 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.

<u>Part 6</u>: 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 **19th** day of **August**, 2010.

PASSED AND APPROVED on Second Reading on the 2nd day of September, 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

08/19/10 Item #11 Regular Agenda Page 1 of 4

DEPT./DIVISION SUBMISSION & REVIEW:

Brian Mabry, Interim Planning Director

<u>ITEM DESCRIPTION:</u> FIRST READING – PUBLIC HEARING - Z-FY-10-40: Consider adopting an ordinance amending the site plan approved by Conditional Use Permit Ordinance No. 2009-4296, June 4, 2009, to allow an expansion of the proposed building area for petroleum storage and collecting facilities and the management of petroleum products from 34,500 square feet to 81,400 square feet on Lot 1, Block 1, Northland Synergy Addition at 4875 Wendland Road.

P&Z COMMISSION RECOMMENDATION: At its August 2, 2010 meeting, the Planning and Zoning Commission voted 6/0 in accordance with staff recommendation to recommend approval of an amendment to the site plan approved by Conditional Use Permit Ordinance No. 2009-4296, June 4, 2009, to allow an expansion of the proposed building area for petroleum storage and collecting facilities and the management of petroleum products. The original conditions of Ordinance No. 2009-4296 continue to apply to the subject property. They are:

- 1. The development of the property shall conform to the site plan, attached hereto as Exhibit B.
- 2. The permittee is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
- 3. All operations will be conducted in a manner which conforms to the maximum permissible environmental noise levels specified of 75 decibels received stated in the Zoning Ordinance, Section 7-300 (Noise).
- 4. Site illumination shall be designed and located so that lighting sources are not directly visible from Wendland Road lighting shall not cast glare on adjacent properties.
- 5. A commercial building permit will be required for concrete foundations related to stabilization of equipment and containment devices, and scale house
- 6. An emergency spill response plan shall be established for the new site prior to the commencement of operation. In the event of a spill or waste generated during the move, the company shall designate the waste as per state or federal regulations.
- 7. Prior to building permit issuance the City of Temple Fire Department shall verify that storage of combustible and flammable liquids shall comply with applicable Fire Code and Building Code regulations.
- 8. Final "as built" drawings shall be delivered to the City of Temple Construction Services Department upon completion.

- 9. The permittee shall be responsible for preventing mud, dirt, dust and debris from leaving the site, including storm water runoff from being tracked or otherwise discharging onto the public right-of-way or adjacent properties.
- 10. The internal circulation plan shall be approved by the City of Temple Fire Marshal as part of the construction plan review/acceptance process.
- 11. Prior to building occupancy, the engineer of record shall provide written certification that the above improvements have been completed in conformance with City Code requirements.
- 12. The conditional use permit runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.
- 13. The City Council may revoke, suspend or modify a conditional use permit after notice to property owner and hearing before the City Council if the City Council finds evidence of fraud or deception, violation of conditions of the conditional use permit, or as provided in Sections 7-609 and 7-610 of the Zoning Ordinance.

Commissioner Staats abstained. Chair Pilkington and Commissioner Hurd were absent.

STAFF RECOMMENDATION: Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for September 2, 2010.

<u>ITEM SUMMARY:</u> Please refer to the Staff Report and draft minutes of case Z-FY-10-40, from the Planning and Zoning meeting, August 2, 2010. The applicant requests the Conditional Use Permit (CUP) in order to expand upon a previously approved CUP site plan. Construction on-site has not yet occurred. The original CUP was approved June 4, 2009. The following table shows the differences between the approved CUP site plan and the proposed plan.

Approved CUP Site Plan	Proposed Amended CUP Site Plan
Trailer parking on gravel: 31 spaces	Trailer parking on gravel: 41 spaces
Manufacturing and dist. space: 25,500 sq ft	Manufacturing and dist. space: 76,900 sq ft
Loading docks: 8	Loading docks: 15
Dumpster location: rear of building	Dumpster location: rear and to the side of bldg

The number of parking spaces is unchanged from the original submittal to the current one, but the number of spaces is still adequate. The Planning and Zoning Commission staff report shows other elements of the site plan that remain unchanged.

The conditions in the Planning and Zoning Commission Recommendation above are the City Councilapproved conditions from the original submittal.

<u>COMPREHENSIVE PLAN COMPLIANCE:</u> The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
CP	Map 3.1 - Future Land Use and Character	Υ*
CP	Map 5.2 - Thoroughfare Plan	Y*
СР	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Y*
СР	Land Use Policy 15 - Industrial activities should be conducted within enclosed structures whenever possible and outdoor activities and storage should be properly screened from public view.	Υ
СР	Objective 7.3.2 - Promote investment in the North Temple Industrial Park	Υ
STP	NA	NA

CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

The request conforms to the Future Land Use and Character Map which designates the property as Industrial.

Thoroughfare Plan (CP Map 5.2)

This request conforms to the Thoroughfare Plan since the subject property has access to Wendland Road, which is designated as a Minor Arterial street.

Availability of Public Facilities (CP Goal 4.1)

A 12-inch water line and an 8-inch sewer line serve the site.

<u>PUBLIC NOTICE:</u> One notice of the Planning and Zoning Commission public hearing were sent out. As of Monday, August 9 at 5 PM, no notices were returned in favor of and no notices were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance

FISCAL IMPACT: NA

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
Proposed CUP Site Plan
Originally Approved CUP Site Plan
CUP Ordinance No. 2009-4296

08/19/10 Item #11 Regular Agenda Page 4 of 4

Notice Map P&Z Staff Report (Z-FY-10-40) P&Z Minutes (08/02/10) Ordinance



ZFY1040

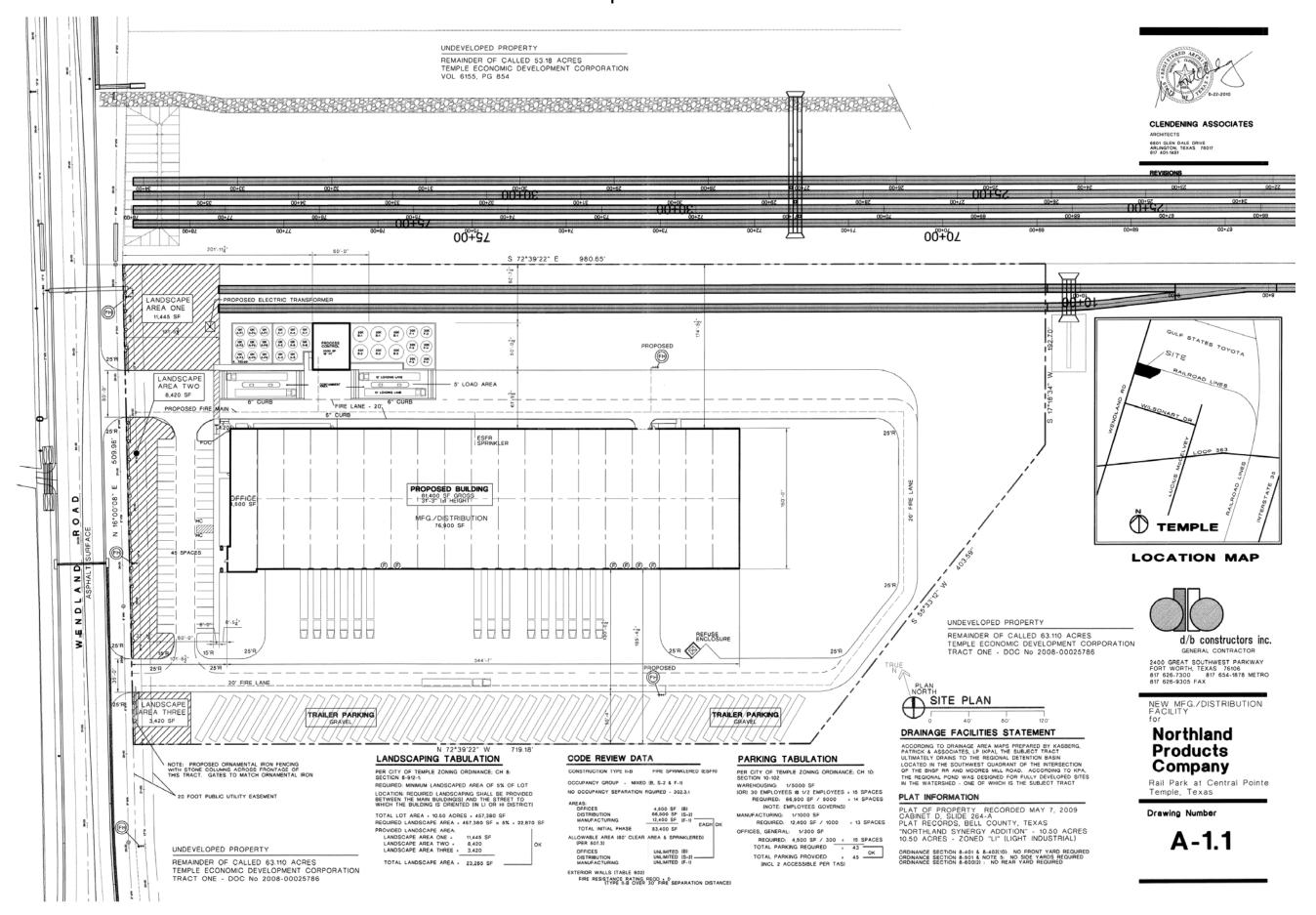
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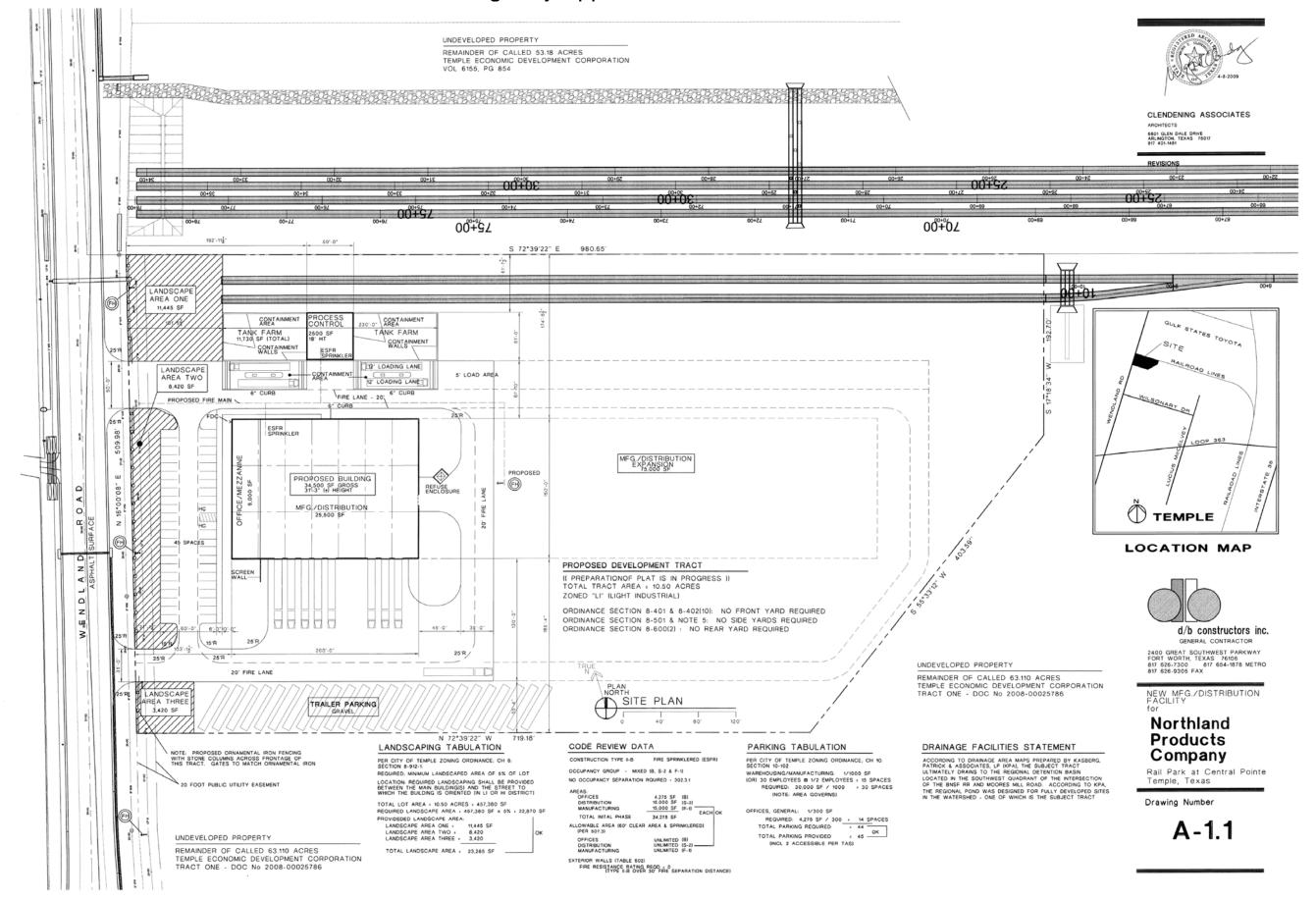
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Proposed CUP Site Plan



Originally Approved CUP Site Plan



[PLANNING NO. Z-FY-09-21]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AUTHORIZING A CONDITIONAL USE PERMIT FOR PETROLEUM STORAGE AND COLLECTING FACILITIES AND THE MANAGEMENT OF PETROLEUM PRODUCTS ON A TRACT OF LAND CONSISTING OF APPROXIMATELY 10.5 ACRES LOCATED ON THE EAST SIDE OF WENDLAND ROAD BETWEEN MOORE'S MILL ROAD AND WILSONART DRIVE; DECLARING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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 land consisting of approximately 10.5 acres located on the east side of Wendland Road between Moore's Mill Road and Wilsonart Drive, recommends that the City Council approve the application for this Conditional Use Permit for petroleum storage and collecting facilities and for the management of petroleum products; 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:

- <u>Part 1:</u> The City Council approves a Conditional Use Permit for petroleum storage and collecting facilities and the management of petroleum products on a tract of land consisting of approximately 10.5 acres located on the east side of Wendland Road between Moore's Mill Road and Wilsonart Drive, more fully shown on Exhibit A, attached hereto and made a part of for all purposes.
- <u>Part 2:</u> 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 development of the property shall conform to the site plan, attached hereto as Exhibit B.
 - B. The permittee is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
 - C. All operations will be conducted in a manner which conforms to the maximum permissible environmental noise levels specified of 75 decibels received stated in the Zoning Ordinance, Section 7-300 (Noise).
 - D. Site illumination shall be designed and located so that lighting sources are not directly visible from Wendland Road lighting shall not cast glare on adjacent properties.
 - E. A commercial building permit will be required for concrete foundations related to stabilization of equipment and containment devices, and scale house
 - F. An emergency spill response plan shall be established for the new site prior to the commencement of operation. In the event of a spill or waste generated during the move, the company shall designate the waste as per state or federal regulations.
 - G. Prior to building permit issuance the City of Temple Fire Department shall verify that storage of combustible and flammable liquids shall comply with applicable Fire Code and Building Code regulations.
 - H. Final "as built" drawings shall be delivered to the City of Temple Construction Services Department upon completion.
 - I. The permittee shall be responsible for preventing mud, dirt, dust and debris from leaving the site, including storm water runoff from being tracked or otherwise discharging onto the public right-of-way or adjacent properties.
 - J. The internal circulation plan shall be approved by the City of Temple Fire Marshal as part of the construction plan review/acceptance process.
 - K. Prior to building occupancy, the engineer of record shall provide written certification that the above improvements have been completed in conformance with City Code requirements.

- L. The conditional use permit runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.
- M. The City Council may revoke, suspend or modify a conditional use permit after notice to property owner and hearing before the City Council if the City Council finds evidence of fraud or deception, violation of conditions of the conditional use permit, or as provided in Sections 7-609 and 7-610 of the Zoning Ordinance.

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 21st day of May, 2009.

PASSED AND APPROVED on Second Reading on the 4th day of May, 2009.

THE CITY OF TEMPLE, TEXAS

WILLIAM A. JONES, III Mayor

ATTEST: APPROVED AS TO FORM:

Clydette Entzminger Jonathan Graham

City Secretary City Attorney

200' Buffer ZFY1040

Feet 0 100 200 300 400

JStone 6.30.10



PLANNING AND ZONING COMMISSION AGENDA ITEM

08/02/10 Item #10 Regular Agenda Page 1 of 4

APPLICANT / DEVELOPMENT: Jeffrey L. Toon for Northland Synergy

CASE MANAGER: Brian Mabry, AICP, Interim Planning Director

ITEM DESCRIPTION: Z-FY-10-40 Hold a public hearing to discuss and recommend action to amend the site plan approved by Conditional Use Permit Ordinance No. 2009-4296, June 4, 2009, to allow an expansion of the proposed building area for petroleum storage and collecting facilities and the management of petroleum products from 34,500 square feet to 81,400 square feet on Lot 1, Block 1, Northland Synergy Addition at 4875 Wendland Road. Zoning: LI

BACKGROUND: The applicant requests the Conditional Use Permit (CUP) in order to expand upon a previously approved CUP site plan. Construction on-site has not yet occurred. The original CUP was approved June 4, 2009. The following table shows the differences between the approved CUP site plan and the proposed plan.

Approved CUP Site Plan	Proposed Amended CUP Site Plan
Trailer parking on gravel: 31 spaces	Trailer parking on gravel: 41 spaces
Manufacturing and dist. space: 25,500 sq ft	Manufacturing and dist. space: 76,900 sq ft
Loading docks: 8	Loading docks: 15
Dumpster location: rear of building	Dumpster location: rear and to the side of bldg

Parts of the proposed site plan that remain the same as their counterparts on the originally approved site plan include:

- A single-story process control center with a height of 18' and floor area of 2,500 square feet
- An office and administration building with a height of 31' and floor area of 9,000 square feet
- 23,285 square feet of landscaping along Wendland Road
- Vehicular ingress and egress from two points along Wendland Road
- An ornamental iron fence with stone columns to screen the truck dock and parking from Wendland Road
- All buildings 100% fire sprinklered
- 45 off-street parking spaces

The original submittal provided much more parking than was required, 45 spaces. This proposed CUP site plan provides exactly the number of off-street parking spaces required according to the gross floor aera of the building, which is, again, 45 spaces. Masonry exterior standards do not apply for industrial buildings.

The conditions in the Staff Recommendation below are the City Council-approved conditions from the original submittal.

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	LI (CUP for petroleum storage and management)	Undeveloped	
East	LI	Undeveloped (across railroad tracks)	
North	LI	Undeveloped (across railroad tracks)	
South	LI	Undeveloped	
West	LI	Distribution facility (across Wendland Rd)	

COMPREHENSIVE PLAN COMPLIANCE:

The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
СР	Map 3.1 - Future Land Use and Character	Υ
СР	Map 5.2 - Thoroughfare Plan	Υ
СР	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Y
СР	Land Use Policy 15 - Industrial activities should be conducted within enclosed structures whenever possible and outdoor activities and storage should be properly screened from public view.	Y
СР	Objective 7.3.2 - Promote investment in the North Temple Industrial Park	Y
STP	NA	NA

CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

The request conforms to the Future Land Use and Character Map which designates the property as Industrial.

Thoroughfare Plan (CP Map 5.2)

This request conforms to the Thoroughfare Plan since the subject property has access to Wendland Road, which is designated as a Minor Arterial street.

Availability of Public Facilities (CP Goal 4.1)

A 12-inch water line and an 8-inch sewer line serve the site.

PUBLIC NOTICE:

One notice of the Planning and Zoning Commission public hearing were sent out. As of Wednesday, July 28 at 5 PM, no notices were returned in favor of and no notices were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance

STAFF RECOMMENDATION: Staff recommends approval of Z-FY-10-40, an amendment to the site plan approved by Conditional Use Permit Ordinance No. 2009-4296, June 4, 2009, to allow an expansion of the proposed building area for petroleum storage and collecting facilities and the management of petroleum products. The original conditions of Ordinance No. 2009-4296 continue to apply to the subject property. They are:

- 1. The development of the property shall conform to the site plan, attached hereto as Exhibit B.
- 2. The permittee is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
- 3. All operations will be conducted in a manner which conforms to the maximum permissible environmental noise levels specified of 75 decibels received stated in the Zoning Ordinance, Section 7-300 (Noise).
- 4. Site illumination shall be designed and located so that lighting sources are not directly visible from Wendland Road lighting shall not cast glare on adjacent properties.
- 5. A commercial building permit will be required for concrete foundations related to stabilization of equipment and containment devices, and scale house

- 6. An emergency spill response plan shall be established for the new site prior to the commencement of operation. In the event of a spill or waste generated during the move, the company shall designate the waste as per state or federal regulations.
- 7. Prior to building permit issuance the City of Temple Fire Department shall verify that storage of combustible and flammable liquids shall comply with applicable Fire Code and Building Code regulations.
- 8. Final "as built" drawings shall be delivered to the City of Temple Construction Services Department upon completion.
- 9. The permittee shall be responsible for preventing mud, dirt, dust and debris from leaving the site, including storm water runoff from being tracked or otherwise discharging onto the public right-of-way or adjacent properties.
- 10. The internal circulation plan shall be approved by the City of Temple Fire Marshal as part of the construction plan review/acceptance process.
- 11. Prior to building occupancy, the engineer of record shall provide written certification that the above improvements have been completed in conformance with City Code requirements.
- 12. The conditional use permit runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.
- 13. The City Council may revoke, suspend or modify a conditional use permit after notice to property owner and hearing before the City Council if the City Council finds evidence of fraud or deception, violation of conditions of the conditional use permit, or as provided in Sections 7-609 and 7-610 of the Zoning Ordinance.

FISCAL IMPACT: Not Applicable

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
Proposed CUP Site Plan
Originally Approved CUP Site Plan
CUP Ordinance No. 2009-4296
Notice Map

EXCERPTS FROM THE

PLANNING & ZONING COMMISSION MEETING

MONDAY, AUGUST 2, 2010

ACTION ITEMS

Item 10: Z-FY-10-40: Hold a public hearing to discuss and recommend action to amend the site plan approved by Conditional Use Permit Ordinance No. 2009-4296, June 4, 2009, to allow an expansion of the proposed building area for petroleum storage and collecting facilities and the management of petroleum products from 34,500 square feet to 81,400 square feet on Lot 1, Block 1, Northland Synergy Addition at 4875 Wendland Road.

Commissioner Staats stated he needed to abstain from this item.

Mr. Mabry stated the applicant requested the CUP to expand upon a previously approved CUP site plan. The HEB distribution center was on the opposite side of Wendland, railroad tracks to the north and east, and to the south lay undeveloped property. The Future Land Use and Character Map showed the area to be industrial, and Wendland Road was designated as a minor arterial. There was a 6" water line and 8" sewer line to serve the property.

Staff recommends approval of Z-FY-10-40, an amendment to the site plan approved by Conditional Use Permit Ordinance No. 2009-4296, June 4, 2009, to allow an expansion of the proposed building area for petroleum storage and collecting facilities and the management of petroleum products. The original conditions of Ordinance No. 2009-4296 continue to apply to the subject property. They are:

- 1. The development of the property shall conform to the site plan, attached hereto as Exhibit B.
- 2. The permittee is responsible for compliance with all applicable local, state and federal rules and regulations, and must obtain all appropriate permits and approvals.
- 3. All operations will be conducted in a manner which conforms to the maximum permissible environmental noise levels specified of 75 decibels received stated in the Zoning Ordinance, Section 7-300 (Noise).
- 4. Site illumination shall be designed and located so that lighting sources are not directly visible from Wendland Road lighting shall not cast glare on adjacent properties.

- 5. A commercial building permit will be required for concrete foundations related to stabilization of equipment and containment devices, and scale house
- 6. An emergency spill response plan shall be established for the new site prior to the commencement of operation. In the event of a spill or waste generated during the move, the company shall designate the waste as per state or federal regulations.
- 7. Prior to building permit issuance the City of Temple Fire Department shall verify that storage of combustible and flammable liquids shall comply with applicable Fire Code and Building Code regulations.
- 8. Final "as built" drawings shall be delivered to the City of Temple Construction Services Department upon completion.
- 9. The permittee shall be responsible for preventing mud, dirt, dust and debris from leaving the site, including storm water runoff from being tracked or otherwise discharging onto the public right-of-way or adjacent properties.
- 10. The internal circulation plan shall be approved by the City of Temple Fire Marshal as part of the construction plan review/acceptance process.
- 11. Prior to building occupancy, the engineer of record shall provide written certification that the above improvements have been completed in conformance with City Code requirements.
- 12. The conditional use permit runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.
- 13. The City Council may revoke, suspend or modify a conditional use permit after notice to property owner and hearing before the City Council if the City Council finds evidence of fraud or deception, violation of conditions of the conditional use permit, or as provided in Sections 7-609 and 7-610 of the Zoning Ordinance.

Vice-Chair Talley opened the public hearing.

Mr. Wayne Klemdenning, Architect, 2400 Great SW Parkway, Ft. Worth, stated he was available to answer any questions.

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

Commissioner Pope made a motion to approve amendments to Z-FY-10-40 to include the Staff conditions; Commissioner Barton made a second.

Motion passed: (6:0)

Commissioner Staats abstained; Chair Pilkington and Commissioner Hurd absent.

ORDINANCE NO.	
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[PLANNING NO. Z-FY-10-40]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, AMENDING THE SITE PLAN APPROVED BY CONDITIONAL USE PERMIT ORDINANCE NO. 2009-4296, JUNE 4, 2009, TO ALLOW AN EXPANSION OF THE PROPOSED BUILDING AREA FOR PETROLEUM STORAGE AND COLLECTING FACILITIES AND THE MANAGEMENT OF PETROLEUM PRODUCTS FROM 34,500 SQUARE FEET TO 81,400 SQUARE FEET ON LOT 1, BLOCK 1, NORTHLAND SYNERGY ADDITION AT 4875 WENDLAND ROAD; DECLARING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, on June 4, 2009, the City Council approved Conditional Use Permit Ordinance No. 2009-4296 for petroleum storage and collecting facilities and the management of petroleum products on a tract of land consisting of approximately 10.5 acres located on the east side of Wendland Road between Moore's Mill Road and Wilsonart Drive;

Whereas, the applicant requested an amendment to the Conditional Use Permit site plan to allow for the expansion of the proposed building area for petroleum storage and collecting facilities and the management of petroleum products from 34,500 square feet to 81,400 square feet;

Whereas, at its August 2, 2010 meeting, the Planning & Zoning Commission voted to approve the request to amend the site plan approved by the Conditional Use Permit Ordinance No. 2009-4296; and

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

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

<u>Part 1:</u> The City Council approves an amendment to the site plan approved by Conditional Use Permit Ordinance No. 2009-4296, June 4, 2009, to allow for the expansion of the proposed building area for petroleum storage and collecting facilities and the management of petroleum products from 34,500 square feet to 81,400 square feet, more fully described in the new site plan, attached hereto as Attachment A.

Part 2: The original conditions of Ordinance No. 2009-4296 continue to apply to the subject property.

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

<u>Part 4:</u> 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.

<u>Part 6:</u> 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.

<u>Part 7:</u> 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 **19**th day of **August**, 2010.

PASSED AND APPROVED on Second Reading on the **2nd** day of **September**, 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

08/19/10 Item #12 Regular Agenda Page 1 of 3

DEPT./DIVISION SUBMISSION & REVIEW:

Brian Mabry, Interim Planning Director Tammy Lyerly, Planner

<u>ITEM DESCRIPTION:</u> FIRST READING – PUBLIC HEARING - Z-FY-10-34: Consider adopting an ordinance authorizing a zoning change from Heavy Industrial District (HI) and Mixed Use District (MU) to Planned Development Single Family One District (PD-SF1), on a 6.76 ± acre tract of land in the Maximo Moreno Survey, Abstract No. 14, located at 1000 South Knob Street.

<u>P&Z COMMISSION RECOMMENDATION:</u> At its August 2, 2010, meeting, the Planning and Zoning Commission voted 6/0 (Commissioner Staats abstained; Commissioner Hurd and Chair Pilkington were absent) to recommend approval of a zone change from Heavy Industrial District (HI) and Mixed Use District (MU) to Planned Development Single Family One District (PD-SF1) with the following conditions:

- 1. No housing construction or disturbance of vegetation other than periodic maintenance may take place within the 50 foot wide buffer zone along the west property line adjacent to the railroad;
- 2. Development must be based on the PD-SF1 site plan; and
- 3. Development and land use must follow SF1 District regulations

STAFF RECOMMENDATION: Conduct public hearing and adopt ordinance as presented in item description, with above conditions, on first reading, and schedule second reading and final adoption for September 2, 2010.

<u>ITEM SUMMARY:</u> Please refer to the Staff Report and draft minutes of case Z-FY-10-34, from the Planning and Zoning meeting, August 2, 2010. The applicant, Ratchnee France, is pursuing this zone change request to allow her to build a log cabin for her family and possibly additional log cabins in the future. Since the SF1 District only allows one single-family home per lot, any future residential development will require the establishment of additional residential lots through the platting process.

The applicant agreed to pursue a PD-SF1 because of staff's concerns of homes adjacent to the railroad. The attached Planned Development site plan shows a 50-foot wide "no housing construction" buffer from the west property line along the railroad right-of-way, as well as potential future homes out of the 100-year flood plain along the east property line adjacent to the concrete channel that borders her east property line.

The applicant addressed the Planning and Zoning Commission, but no else spoke at the public hearing.

<u>COMPREHENSIVE PLAN COMPLIANCE:</u> The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
	Map 3.1 - Future Land Use and Character	Yes
CP	Map 5.2 - Thoroughfare Plan	Yes
	Goal 4.1 - Growth and development patterns should	
	be consistent with the City's infrastructure and public	Yes
	service capacities.	
	Land Use Policy 9 - New development or	
	redevelopment on infill parcels in developed areas should maintain compatibility with existing uses and	Yes
		163
	the prevailing land use pattern in the area.	
STP	Page F4- Local connector trail along adjacent	Yes
	concrete channel to the east	

CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (Cp Map 3.1)

Although the Future Land Use and Character Map designates the subject property as Parks and Open Space, the Parks and Leisure Department currently has no plans to turn the applicant's property into a park. The applicant's intent is to keep an open space or woodsy environment with log cabins. Since the Comprehensive Plan recommends the use of Auto-Urban and Suburban residential districts for a range of development options with the incorporation of open space, the proposal conforms to the Future Land Use and Character Plan. Planning Staff will recommend this area be part of the semi-annual update to the Map, which is projected to take place in late Summer 2010.

Thoroughfare Plan (CP Map 5.2)

South Knob Street is a local street, which is appropriate for SF1 development.

Availability of Public Facilities (CP Goal 4.1)

Several 2-inch water mains, as well as 16-inch and 12-inch sewer mains are available to provide services to the property.

Sidewalk and Trails Plan (STP pg. F3)

The Citywide Trails Master Plan shows a local connector trail along the concrete creek channel that separates the applicant's property from the adjacent neighborhood. The Parks and Leisure Department has no plans to purchase the eastern edge of the applicant's property for the local connector trail shown below. If the property is platted in the future for additional houses, the City could acquire an easement for the local connector trail.



<u>PUBLIC NOTICE:</u> Forty-eight notices of the Planning and Zoning Commission's public hearing were sent out. As of Monday, August 9, 2010 at 3 PM, four notices were returned in favor of and two were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on Friday, July 23, 2010 in accordance with state law and local ordinance.

FISCAL IMPACT: NA

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
Flood Plain Map
Thoroughfare Map
Notice Map
Planned Development Site Plan
P&Z Staff Report (Z-FY-10-34)
P&Z Minutes (August 4, 2010)
Ordinance

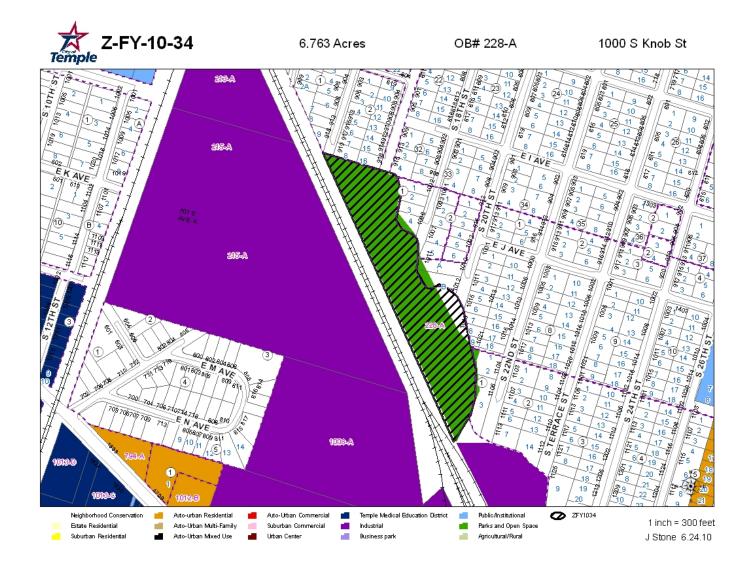
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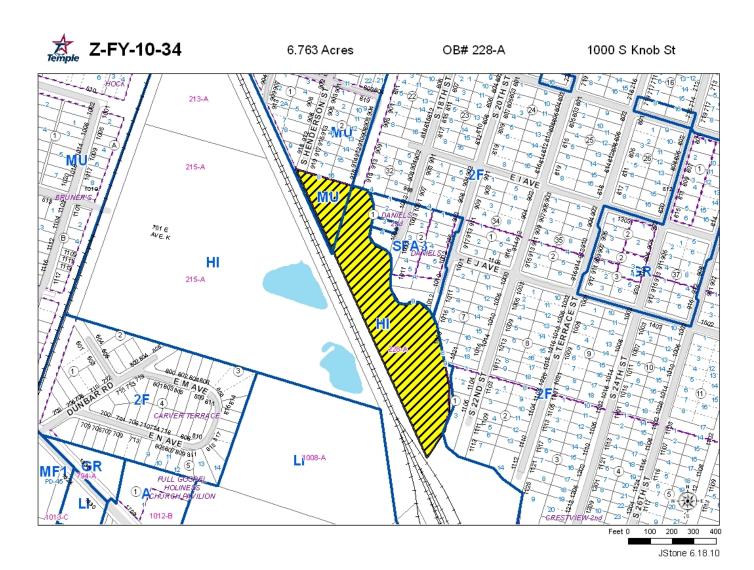
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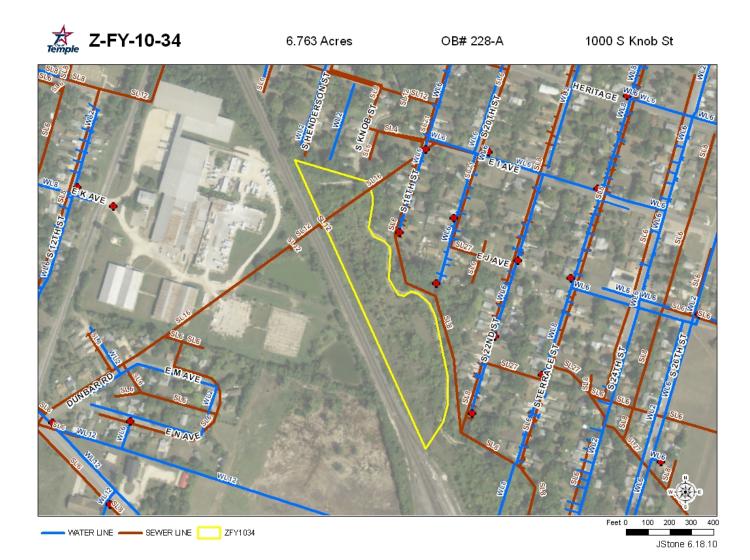


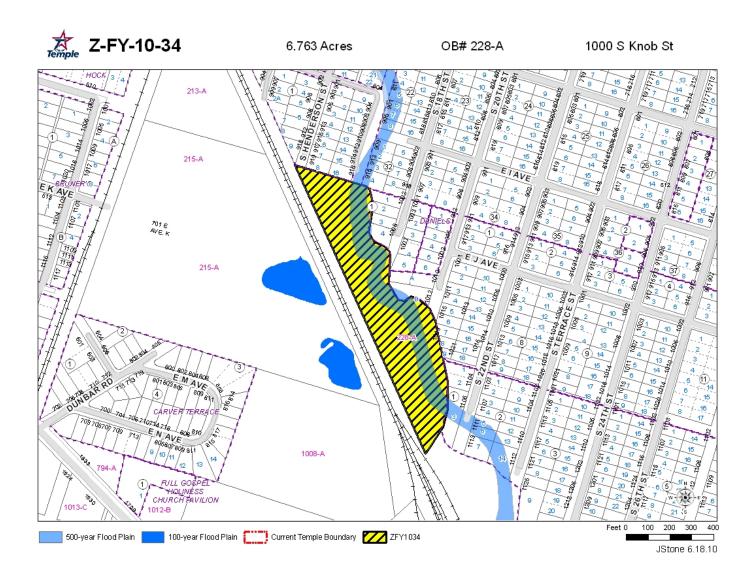
ZFY1034

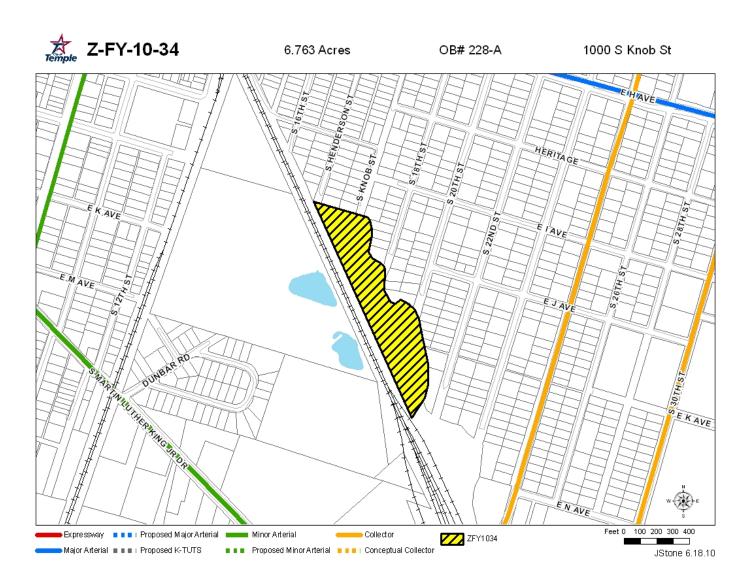
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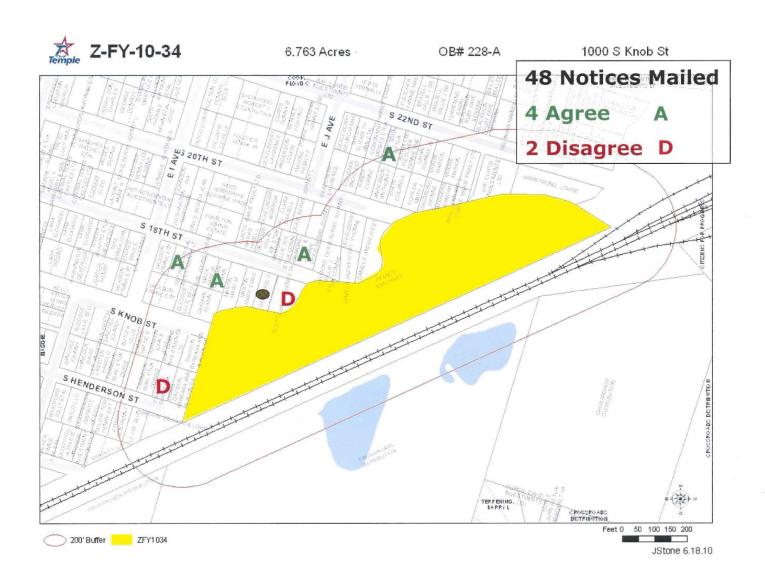














 $6.76 \pm acre tract$ of land in the Maximo Moreno Survey, Abstract No. 14 located at 1000 South Knob Street

In the event of a conflict between this development plan and the text of the PD ordinance for this project, the stricter standard applies.

All standards of the Zoning and Subdivision Ordinance apply unless this development plan or the text of the PD ordinance for this project specifically modifies such standards.

PLANNING AND ZONING COMMISSION AGENDA ITEM

08/02/10 Item #2 Regular Agenda Page 1 of 5

APPLICANT / DEVELOPMENT: Ratchnee France

CASE MANAGER: Tammy Lyerly, Planner

<u>ITEM DESCRIPTION:</u> Z-FY-10-34 — Hold a public hearing to discuss and recommend action on a rezoning from Heavy Industrial District (HI) and Mixed Use District (MU) to Planned Development Single Family One District (PD-SF1), on a 6.76 ± acre tract of land in the Maximo Moreno Survey, Abstract No. 14, located at 1000 South Knob Street. (Applicant: Ratchnee France)

BACKGROUND: The applicant, Ratchnee France, wants to build herself a log cabin on this property. She also wants to build additional log cabins in the future. Since the SF1 District only allows one single-family home per lot, any future residential development will require the establishment of additional residential lots through the platting process.

The applicant agreed to pursue a PD-SF1 because of staff's concerns of homes adjacent to the railroad. The attached Planned Development site plan shows a 50-foot wide "no housing construction" buffer from the west property line along the railroad right-of-way. The site plan also shows potential future homes out of the 100-year flood plain along the east property line adjacent to the concrete channel.

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	HI and MU (PD-SF1)	Undeveloped	

Direction	Zoning	Current Land Use	Photo
North	MU, SFA3, and 2F	Undeveloped and Residential	
South	НІ	Railroad	
East	SFA3 and 2F	Residential and Undeveloped	
West	НІ	Railroad and Industrial	

<u>COMPREHENSIVE PLAN COMPLIANCE:</u>
The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
	Map 3.1 - Future Land Use and Character	Yes
CP	Map 5.2 - Thoroughfare Plan	Yes
	Goal 4.1 - Growth and development patterns should be	
	consistent with the City's infrastructure and public service	Yes
	capacities.	
	Land Use Policy 9 – New development or redevelopment on infill parcels in developed areas should maintain compatibility with existing uses and the prevailing land use pattern in the area.	Yes
STP	Page F4- Local connector trail along adjacent concrete channel to the east	Yes

CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (Cp Map 3.1)

Although the Future Land Use and Character Map designates the subject property as Parks and Open Space, the Parks and Leisure Department currently has no plans to turn the applicant's property into a park. The applicant's intent is to keep an open space or woodsy environment with log cabins. Since the Comprehensive Plan recommends the use of Auto-Urban and Suburban residential districts for a range of development options with the incorporation of open space, the proposal conforms to the Future Land Use and Character Plan. Planning Staff will recommend this area be part of the semi-annual update to the Map, which is projected to take place in late Summer 2010.

Thoroughfare Plan (CP Map 5.2)

South Knob Street is a local street, which is appropriate for SF1 development.

Availability of Public Facilities (CP Goal 4.1)

Several 2-inch water mains, as well as 16-inch and 12-inch sewer mains are available to provide services to the property.

Sidewalk and Trails Plan (STP pg. F3)

The Citywide Trails Master Plan shows a local connector trail along the concrete creek channel that separates the applicant's property from the adjacent neighborhood. The Parks and Leisure Department has no plans to purchase the eastern edge of the applicant's property for the local connector trail shown below. If the property is platted in the future for additional houses, the City could acquire an easement for the local connector trail.



DEVELOPMENT REGULATIONS:

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

Typical uses permitted are detached single-family residences and related accessory structures. Typical prohibited uses include secondary homes, duplexes, apartments, and non-residential uses.

The minimum lot area and setback requirements for the SF-1 zoning district are as follows.

SF-1, Single-Family 1					
Min. Lot Area (sq. ft.)	7,500				
Min. Lot Width (ft.)	60				
Min. Lot Depth (ft.)	100				
Max. Height (stories)	2 ½ stories				
Min. Yard (ft)					
Front	25				
Side	25 10% width of lot - 6 min 8				
Side	7.5 max				
Rear	10				

PD-SF1:

The purpose of the Planned Development Single Family One District (PD-SF1) is to allow a 50-foot wide "no construction" buffer adjacent to the west property line adjacent to the railroad. The PD-SF1 site plan also shows potential homes to not only be built out of the 50' rear buffer zone but also out of the 100-year flood plain along the east property line. All other SF1 "base zoning district" regulations will apply.

The PD site plan shows the applicant's house plus five other potential home sites. Addition of more than six total homes would require an amendment to the PD with Planning and Zoning Commission recommendation and City Council approval.

PUBLIC NOTICE:

Forty-eight notices of the Planning and Zoning Commission's public hearing were sent out. As of Friday, July 30, 2010 at 9 AM, no notices were returned in favor of and one was returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on Friday, July 23, 2010 in accordance with state law and local ordinance

STAFF RECOMMENDATION:

Staff recommends approval of Planned Development Single Family One District for Z-FY-10-34 subject to the following conditions:

- No housing construction or disturbance of vegetation other than periodic maintenance may take place within the 50 foot wide buffer zone along the west property line adjacent to the railroad:
- 2. Development must be based on the PD-SF1 site plan; and
- 3. Development and land use must follow SF1 District regulations

FISCAL IMPACT: Not Applicable

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
Flood Plain Map
Thoroughfare Map
Notice Map
Response Letter
Application
Planned Development Site Plan

EXCERPTS FROM THE

PLANNING & ZONING COMMISSION MEETING

MONDAY, AUGUST 2, 2010

ACTION ITEMS

Item 2. Z-FY-10-34: Hold a public hearing to discuss and recommend action on a rezoning from Heavy Industrial District (HI) and Mixed Use District (MU) to Planned Development Single Family One District (PD-SF1), on a 6.76 ± acre tract of land in the Maximo Moreno Survey, Abstract No. 14 located at 1000 South Knob Street. (Applicant: Ratchnee France) Vice-Chair Talley opened the public hearing.

Ms. Tammy Lyerly, Planner, stated, if this were approved, it was scheduled for City Council first reading on August 19, 2010 and second reading and final action on September 2, 2010.

Commissioner Staats informed the Commission he needed to abstain from this item.

Ms. Lyerly stated this property was zoned Heavy Industrial (HI) and Mixed Use (MU) district and the request did conform to the SF1 zoning regulations. The MU district extended into the top portion of the property only and the rest was designated HI. The property was surrounded by Single Family Attached 3 (SFA3) and Two Family (2F) to the east. To the west was HI district.

The entire property had a concrete drainage channel that bordered the entire east property line. Undeveloped land lay to the south of the property and the railroad lay to the west.

The Future Land Use and Character Map showed this whole area as parks and open space next to a designated neighborhood conservation area. The Parks and Leisure Department currently have no plans to turn this property into a park. In the City wide trail plan there was a proposed local connector trail along the concrete channel but currently there are no plans in place to develop that connector trail. If the property went through the platting process then discussion would be held regarding the trail.

The transportation map showed this property to be surrounded by local streets and South Knob is classified as a local street. There are several water lines and a sewer line running through the property. If the property went through future platting process, that sewer line would have to be secured with a utility easement.

With the property being over $6 \pm$ acres, it exceeded the SF1 zoning district lot requirements, lot width, and lot depth. The reason for the zone request was to allow the applicant to build a Single Family log cabin and presently the HI district does not allow any homes to be built. The applicant would also like to build more log cabins in the future. Since the SF1 District only allowed one single-family home per lot, any future residential development would require the establishment of additional residential lots through the platting process.

This particular Planned Development site plan required a 50 foot wide buffer along the railroad on the west property line to prevent homes from being built within 50 feet of the railroad. Along the creek channel is a 100 year flood plan area. The applicant would like to build her log cabin near the entrance of the property from S. Knob Street which is the only entrance to the property.

Two response letters had been received in favor of this request and two responses were in opposition.

Staff recommended approval of the Planned Development Single Family One District for Z-FY-10-34 subject to the following conditions:

- 1. No housing construction or disturbance of vegetation other than periodic maintenance may take place within the 50 foot wide buffer zone along the west property line adjacent to the railroad;
- 2. Development must be based on the PD-SF1 site plan; and
- 3. Development and land use must follow SF1 District regulations

Vice-Chair Talley opened the public hearing.

Ms. Ratchnee France, property owner, approached the lecturn and stated she would like to build a Single Family home in order to relocate to Temple.

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

Commissioner Martin made a motion to approve Z-FY-10-34 along with the exceptions specified by the City and Commissioner Barton made a second.

Motion passed: (6:0)

Commissioner Staats abstained; Chair Pilkington and Commissioner Hurd absent.

ORDINANCE NO	
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[PLANNING NO. Z-FY-10-34]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A ZONING CHANGE FROM HEAVY INDUSTRIAL DISTRICT (HI) AND MIXED USE DISTRICT (MU) TO PLANNED DEVELOPMENT SINGLE FAMILY ONE DISTRICT (PD-SF1), ON AN APPROXIMATELY 6.76 ACRE TRACT OF LAND IN THE MAXIMO MORENO SURVEY, ABSTRACT NO. 14, LOCATED AT 1000 SOUTH KNOB STREET, IN ACCORDANCE WITH SECTIONS 7-500 THROUGH 7-509 OF THE COMPREHENSIVE ZONING ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, the owner of the property consisting of approximately 6.76 acres located at 1000 South Knob Street, has requested that the property be rezoned from Heavy Industrial District (HI) and Mixed Use District (MU) to Planned Development District Single-Family 1 (PD-SF1); and

Whereas, the City Council, after notice and a public hearing, finds that it is in the public interest to authorize this action.

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

<u>Part 1</u>: The City Council approves a zoning change from Heavy Industrial District (HI) and Mixed Use District (MU) to Planned Development District Single-Family 1 (PD-SF1) on a tract of land consisting of approximately 6.76 acres located at 1000 South Knob Street more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

<u>Part 2</u>: In accordance with Sections 7-500 through 7-509 of the Comprehensive Zoning Ordinance of the City of Temple, Texas, Ordinance No. 91-2101, is amended by changing the zoning classification of the property described in Part 1 above, to Planned Development District Single-Family 1, and shall comply with all applicable sections of the Code of Ordinances of the City of Temple, Texas, and all local, State and Federal laws and regulations as they may now read or hereafter be amended, including but not limited to the following conditions:

- (a) No housing construction or disturbance of vegetation other than periodic maintenance may take place within the 50 foot wide buffer zone along the west property line adjacent to the railroad.
- (b) Development must be based on the PD-SF1 site plan, attached hereto as Exhibit B.
- (c) Development and land use must follow SF-1 District regulations.

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.

<u>Part 4:</u> The City Council directs the Director of Planning to make the necessary changes to the City Zoning Map accordingly.

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.

<u>Part 6:</u> 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.

<u>Part 7:</u> 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 **19**th day of **August**, 2010.

PASSED AND APPROVED on Second Reading on the 2nd day of September, 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A. JONES, III, Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #13 Regular Agenda Page 1 of 3

DEPT./DIVISION SUBMISSION & REVIEW:

Brian Mabry, Interim Planning Director Tammy Lyerly, Planner

<u>ITEM DESCRIPTION:</u> FIRST READING – PUBLIC HEARING - Z-FY-10-36: Consider adopting an ordinance authorizing a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 2,190 square feet lease space on a portion of Tract 1, Albertsons Addition Replat, located at 2001 West Adams, Suite B.

P&Z COMMISSION RECOMMENDATION: At its August 2, 2010, meeting, the Planning and Zoning Commission voted 6/0 to recommend approval of a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption at 2001 West Adams, Suite B, subject to the following conditions:

- 1. General Conditional Use Permit provisions in Sec. 7-611 of the Zoning Ordinance apply to the property; and
- 2. Specific Conditional Use Permit provisions for package stores in Sec. 7-611.5 of the Zoning Ordinance apply to the property;

Commissioner Martin abstained. Chair Pilkington and Commissioner Hurd were absent.

STAFF RECOMMENDATION: Conduct public hearing and adopt ordinance as presented in item description, with the above conditions, on first reading, and schedule second reading and final adoption for September 2, 2010.

<u>ITEM SUMMARY:</u> Please refer to the Staff Report and draft minutes of case Z-FY-10-36, from the Planning and Zoning meeting, August 2, 2010. The applicant requests a Conditional Use Permit (CUP) to establish a package store in a new 2,190 square foot lease space within the former Albertson's Grocery Store. Access to the lease space is at the north end of the building. The property's Commercial District allows a package store with approval of a Conditional Use Permit.

The site exceeds the CUP distance requirement of 300 feet from a church, public school, or public hospital.

No one spoke at the public hearing.

<u>CUP APPROVAL CRITERIA:</u> Part of the CUP process is for the Planning and Zoning Commission and City Council to utilize their discretionary abilities in making a recommendation and taking final action based on the following seven general criteria established by Zoning Ordinance Section 7-600 for evaluation of all CUPs:

- 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;
- 2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided
- 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;
- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

<u>Package Store Standards:</u> In addition to the general Conditional Use Permit standards in Zoning Ordinance, Section 7-600, 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 will comply with the Zoning Ordinance. The applicant will not have a drive-through window; customers will use the front door at the north side of the building for access. There are no internal customer doorways into or out of the proposed lease space.

<u>PUBLIC NOTICE:</u> Two notices of the Planning and Zoning Commission public hearing were sent out. As of Friday, July 30, 2010 at 9 AM, no notices were returned in favor of and none were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance.

FISCAL IMPACT:

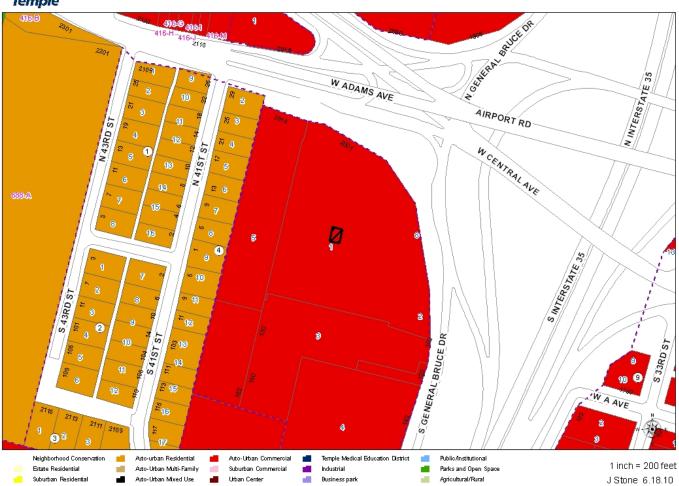
ATTACHMENTS:

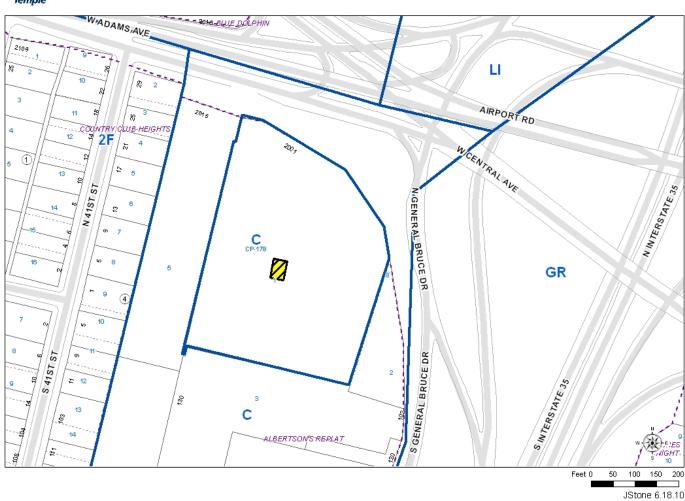
Aerial
Land Use and Character Map
Zoning Map
Utility Map
Applicant's CUP Site Plan Exhibits
Notice Map
P&Z Staff Report (Z-FY-10-36)
P&Z Minutes (August 2, 2010)
Ordinance

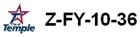


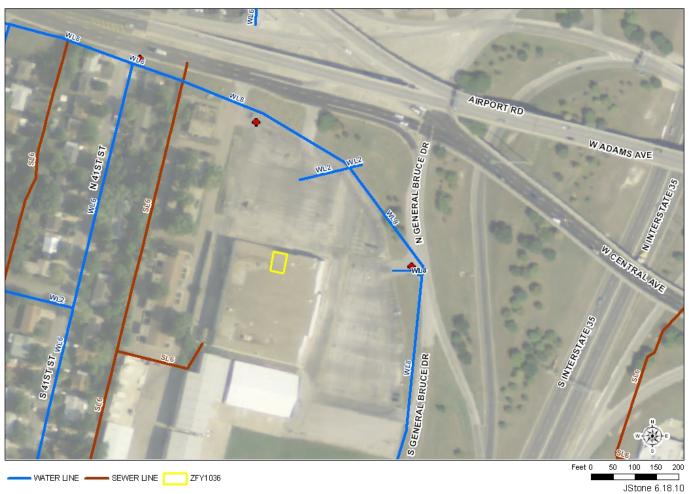
ZFY1 036

JStone 6.18.10

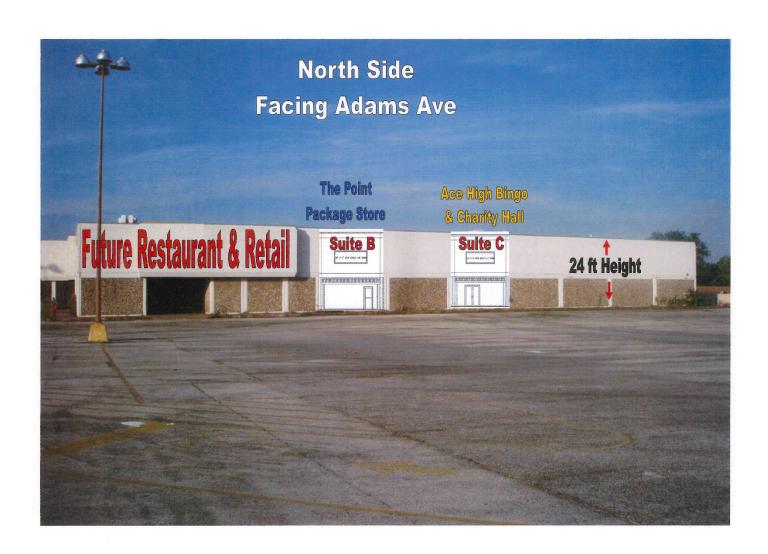






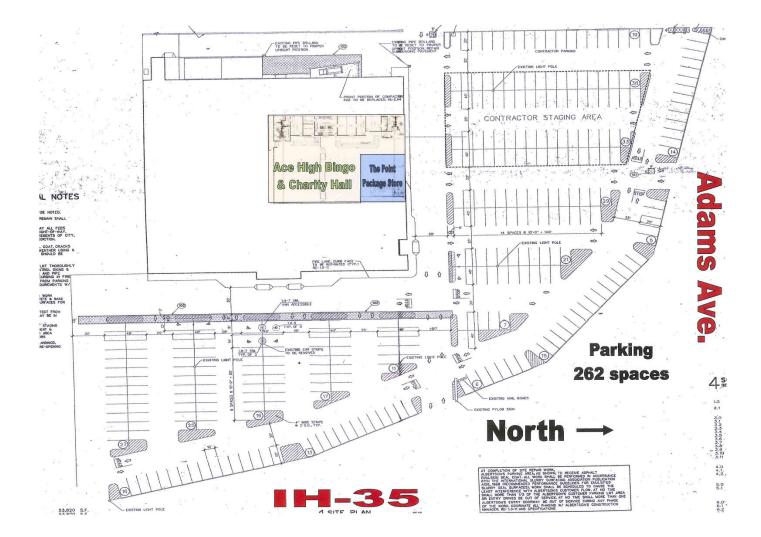


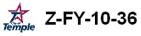


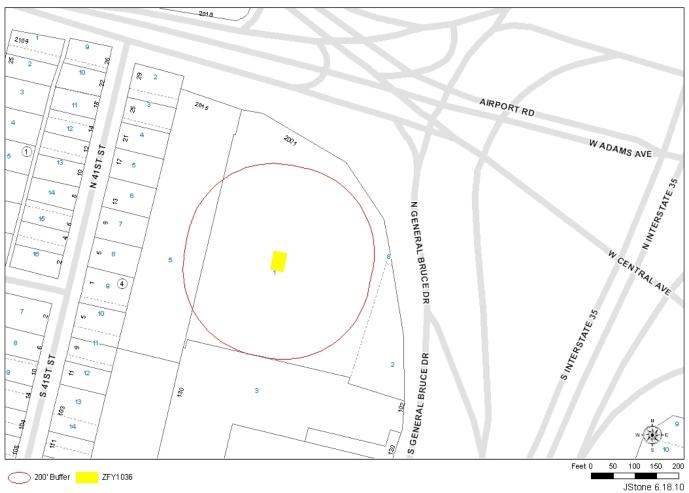




The Point Package Store 2,190sf 10,600sf









PLANNING AND ZONING COMMISSION AGENDA ITEM

08/02/10 Item #3 Regular Agenda Page 1 of 5

APPLICANT / DEVELOPMENT: Brittany Williams for Salabay Inc.

CASE MANAGER: Tammy Lyerly, Planner

<u>ITEM DESCRIPTION:</u> Z-FY-10-36 - Hold a public hearing to discuss and recommend action on a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 2,190 square feet lease space on a portion of Tract 1, Albertsons Addition Replat, located at 2001 W. Adams, Suite B. Zoning: Commercial (Applicant: Brittany Williams for Salabay Inc.)

BACKGROUND: The applicant requests a Conditional Use Permit (CUP) to establish a package store in a new 2,190 square foot lease space within the former Albertson's Grocery Store. Access to the lease space is at the north end of the building. The property's Commercial District allows a package store with approval of a Conditional Use Permit.

The site exceeds the CUP distance requirement of 300 feet from a church, public school, or public hospital.

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	Commercial (CUP for package store)	Abandoned Grocery Store	

Direction	Zoning	Current Land Use	Photo
North	Light Industrial and General Retail	Expressway and Food Pantry Distribution Center	
South	Commercial	Commercial Lease Space	
East	Commercial and General Retail	I-35	
West	Commercial and Two Family	Apartment Complex	

<u>COMPREHENSIVE PLAN COMPLIANCE:</u>
The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
CP	Map 3.1 - Future Land Use and Character	Yes
СР	Map 5.2 - Thoroughfare Plan	Yes
СР	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Yes
STP	N/A	N/A

CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

This application conforms to the Future Land Use and Character Map's designation of Auto-Urban Commercial Uses for this property.

Thoroughfare Plan (CP Map 5.2)

This application conforms to the Thoroughfare Plan for access to West Adams Avenue, South General Bruce Drive, and I-35, designated as Major Arterials and Freeway.

Availability of Public Facilities (CP Goal 4.1)

Adequate public facilities serve this site with water and sewer.

I-35 Corridor Overlay District

I-35 Corridor Overlay District standards are triggered according to the following table:

Development Type	Site Plan Review	Tree Preservation	Parking	Screening and Wall Standards	Architectural Design	Landscape	Signage	Lighting	Utilities
New construction	✓	✓	✓	✓	✓	✓	✓	✓	✓
Increase in gross floor area of 50% or more or improvement resulting in 50% or more increase in value per tax role	✓	✓	✓	✓	✓	√	✓	✓	✓
Increase in gross floor area of 25%-49% or improvement resulting in 25%-49% increase in value per tax role	✓	✓	✓	✓		√		✓	
Increase in gross floor area of 10%-24% or improvement resulting in 10%-24% increase in value per tax role	✓	✓		✓		√			

If proposed interior and exterior improvements increase the appraised value of the property by 10%, then screening & wall standards and landscaping standards will apply with any subsequent building permit.

CUP APPROVAL CRITERIA:

Part of the CUP process is for the Planning and Zoning Commission and City Council to utilize their discretionary abilities in making a recommendation and taking final action based on the following seven general criteria established by Zoning Ordinance Section 7-600 for evaluation of all CUPs:

- 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;
- 2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided
- 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;
- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

<u>Package Store Standards:</u> In addition to the general Conditional Use Permit standards in Zoning Ordinance, Section 7-600, 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 pickup 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; customers will use the front door at the north side of the building for access. There are no internal customer doorways into or out of the proposed lease space.

PUBLIC NOTICE:

Two notices of the Planning and Zoning Commission public hearing were sent out. As of Friday, July 30, 2010 at 9 AM, no notices were returned in favor of and none were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance.

STAFF RECOMMENDATION: N/A (per direction from the Package Store Subcommittee)

FISCAL IMPACT: N/A

ATTACHMENTS:

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

EXCERPTS FROM THE

PLANNING & ZONING COMMISSION MEETING

MONDAY, AUGUST 2, 2010

ACTION ITEMS

Item 3: Z-FY-10-36: Hold a public hearing to discuss and recommend action on a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 2,190 square feet lease space on a portion of Tract 1, Albertson's Addition Replat, located at 2001 W. Adams, Suite B. Zoning: Commercial (Applicant: Brittany Williams for Salabay Inc.)

Commissioner Martin stated he needed to abstain from item 3.

Ms. Lyerly stated this matter was scheduled for City Council first reading on August 19, 2010 and second reading and final action on September 2, 2010.

The applicant had requested a Conditional Use Permit (CUP) to establish a package store in a new 2,190 square foot lease space within the former Albertson's Grocery Store. Access to the lease space was at the north end of the building. The property's Commercial District allowed a package store with approval of a Conditional Use Permit.

The site exceeded the CUP distance requirement of 300 feet from a church, public school, or public hospital.

Central Avenue bridge was to the north of the site, I35 lay to the east and wrapped around south along with some commercial lease space, and apartments were to the west.

The Future Land Use and Character Map recommended auto/urban commercial for this property. Adams Avenue and Central Avenue were both major arterials and I35 was an expressway giving a lot of circulation to the property. Utilities are provided for the site.

The only entrance to the package store would be on the north side facing Adams Avenue and located in Suite B. This suite would not be connected to any other suites within the building and the parking area would provide access to Adams Avenue, General Bruce Drive, and I35.

Ms. Lyerly stated the Package Store Standards, in addition to the general Conditional Use Permit standards in Zoning Ordinance, Section 7 600, 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 rightof-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 drivethrough 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; customers will use the front door at the north side of the building for access. There are no internal customer doorways into or out of the proposed lease space.

Part of the CUP process is for the Planning and Zoning Commission and City Council to utilize their discretionary abilities in making a recommendation and taking final action based on the following seven general criteria established by Zoning Ordinance Section 7-600 for evaluation of all CUPs:

- 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 establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided
- 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;

- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

Ms. Lyerly stated the I35 Corridor Overlay District requirements would also apply and pointed out highlights which would trigger some of the regulations, which included issues such as landscaping, architectural standards, lighting, etc.

Two notices were sent out and no notices were received back.

According to directions from the Package Store Subcommittee, Staff had no recommendation for this package store request.

Vice-Chair Talley asked who received the notices and Ms. Lyerly stated Tejas Oso, Ltd., and Derek Commercial Ltd.

Vice-Chair Talley opened the public hearing. There being no speakers, Vice-Chair Talley closed the public hearing.

Commissioner Staats made a motion to approve Z-FY-10-36 and Commissioner Barton made a second.

Vice-Chair Talley asked whether the person who owned the package store was responsible for any problems or issues that arise on the property especially since the property was basically a parking lot. Ms. Trudi Dill, Deputy City Attorney, stated she did not know precisely what area the responsibility would extend to, however, the TABC licensing process involved an area of the premises which hold the licensee responsible. The TABC had drawings which are part of the application that show where the alcohol can be stored and/or served and conditions are available for the parking lot.

Motion passed: (6:0)

Commissioner Martin abstained; Chair Pilkington and Commissioner Hurd absent.

ORDINANCE NO	

[PLANNING NO. Z-FY-10-36]

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 2,190 SQUARE FOOT LEASE SPACE ON A PORTION OF TRACT 1, ALBERTSONS ADDITION REPLAT, LOCATED AT 2001 WEST ADAMS, SUITE B; DECLARING FINDINGS OF FACT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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 2,190 square foot lease space on a portion of Tract 1, Albertsons Addition Replat, located at 2001 W. Adams, Suite B, 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:

<u>Part 1:</u> The City Council approves a Conditional Use Permit to allow a package store with alcoholic beverage sales for off-premise consumption in a 2,190 square foot lease space on a portion of Tract 1, Albertsons Addition Replat, located at 2001 West Adams, Suite B, more fully shown on Exhibit A, attached hereto and made a part of for all purposes.

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

General:

- (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 bears the burden of showing that the establishment does not exceed the limitation on gross receipts from sales of alcoholic beverages applicable to its conditional use permit. The permittee must maintain accounting records of the sources of its gross revenue and allow the City to inspect such records during reasonable business hours. (Not applicable for package stores).
- (d) The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.
- (e) The permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior. The permittee shall consult with the Chief of Police, who shall act in an advisory capacity to determine the number of qualified employees necessary to meet the obligations hereunder.
- (f) 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.
- (g) 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.
- (h) The City Council may deny or revoke this conditional use permit if it affirmatively determines that the issuance of the permit is incompatible with the surrounding uses of property, or detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.
- (i) A conditional use permit issued under this section runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.
- (j) All conditional use permits issued under this section will be further conditioned that the same may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-609.

Specific to Package Stores:

- (k) Such use must comply with Chapter 4, "Alcoholic Beverages," of the City Code.
- (l) Outdoor lighting must comply with the standards in Section 7.566 (G) of the Zoning Ordinance.
- (m) If applicable, a pick-up window must be visible from the public right-of-way, and may not be placed in alleys.
- (n) The drive-through lane must provide a minimum of 60 feet of stacking space from the pick-up window to the beginning.
- (o) An escape (bypass) lane must be provided parallel to the drive-through lane, if applicable, from the beginning of the drive-through lane.
- (p) Parking (in any zoning district including the 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).
- (q) Window signs are prohibited.
- (r) Lighted advertising signs must be turned off at closing time.

Specific to this CUP:

(s) 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.

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

<u>Part 4:</u> 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.

<u>Part 5:</u> 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.

<u>Part 6:</u> 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.

<u>Part 7:</u> 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 **19**th day of **August**, 2010.

PASSED AND APPROVED on Second Reading on the 2nd day of **September**, 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A. JONES, III Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	 Jonathan Graham
City Secretary	City Attorney
City Decretary	



COUNCIL AGENDA ITEM MEMORANDUM

08/19/10 Item #14 Regular Agenda Page 1 of 3

DEPT./DIVISION SUBMISSION & REVIEW:

Brian Mabry, Interim Planning Director Tammy Lyerly, Planner

<u>ITEM DESCRIPTION:</u> FIRST READING – PUBLIC HEARING - Z-FY-10-37: Consider adopting an ordinance authorizing the following:

- (A) Repealing Ordinance No. 2009-4288, dated April 2, 2009 approving a Conditional use Permit to allow the sale of alcoholic beverages, less than 75% of the total gross revenue, for on premise consumption in a restaurant to be known as Kazam's Family Entertainment Center, on Tract 1, Albertson's Addition Replat, located at 2001 West Adams Avenue; and
- (B) A Conditional Use Permit to allow the sale of alcoholic beverages, 75% or more of the total gross revenue in a bingo hall for on-premise consumption in a 10,600 square feet lease space on a portion of Tract 1, Albertson's Addition Replat, located at 2001 West Adams, Suite C.

<u>P&Z COMMISSION RECOMMENDATION:</u> At its August 2, 2010 meeting, the Planning and Zoning Commission voted 6/0 (Commissioner Martin abstained; Commissioner Hurd and Chair Pilkington were absent) to recommend approval of repealing Ordinance No.2009-4288 and approval of a Conditional Use Permit to allow the sale of alcoholic beverages, 75% or more of the total gross revenue in a bingo hall, for on-premise consumption at 2001 West Adams, Suite C.

STAFF RECOMMENDATION: Conduct public hearing and adopt ordinance as presented in item description, on first reading, and schedule second reading and final adoption for September 2, 2010.

<u>ITEM SUMMARY:</u> Please refer to the Staff Report and draft minutes of case Z-FY-10-37, from the Planning and Zoning meeting, August 2, 2010. This Conditional Use Permit request is to allow the sale of alcoholic beverages, 75% or more of the total gross revenue in a bingo hall, for on-premise consumption in Suite C, a 10,600 square feet lease space within the former Albertson's Grocery Store, located at 2001 West Adams. The only access into and out of the lease space is at the north end of the building.

The property's Commercial District allows a bingo hall (indoor amusement) by right.

If approved, the applicants will be subject to TABC and Texas Lottery Commission regulations. The applicants plan to operate a commercial bingo hall licensed to lease premises to charitable non-profit organizations that are licensed by the State of Texas and regulated by the Texas Lottery Commission. (House rules will be that all customers will need to play to stay) Under-aged customers will not be allowed in the proposed bar area. After 7 PM, management will check customer IDs and under-aged customers will not be allowed in the bingo hall.

If approved, this request would replace the previously approved Ordinance No. 2009-4288 granting a Conditional Use Permit to allow the sale of alcoholic beverages, less than 75% of the total gross revenue, for on premise consumption in a restaurant.

The site exceeds the CUP distance requirement of 300 feet from a church, public school, or public hospital.

No one spoke at the public hearing.

<u>CUP APPROVAL CRITERIA:</u> Part of the CUP process is for the Planning and Zoning Commission and City Council to utilize their discretionary abilities in making a recommendation and taking final action based on the following seven general criteria established by Zoning Ordinance Section 7-600 for evaluation of all CUPs:

- 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;
- 2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided
- 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;
- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

<u>COMPREHENSIVE PLAN COMPLIANCE:</u> The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
CP	Map 3.1 - Future Land Use and Character	Yes
CP	Map 5.2 - Thoroughfare Plan	Yes
СР	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Yes
STP	N/A	N/A

CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

This application conforms to the Future Land Use and Character Map's designation of Auto-Urban Commercial Uses for this property.

Thoroughfare Plan (CP Map 5.2)

This application conforms to the Thoroughfare Plan for access to West Adams Avenue, South General Bruce Drive, and I-35, designated as Major Arterials and Freeway.

Availability of Public Facilities (CP Goal 4.1)

Adequate public facilities serve this site with water and sewer.

<u>PUBLIC NOTICE:</u> Two notices of the Planning and Zoning Commission public hearing were sent out. As of Monday, August 9, 2010 at 11 AM, no notices were returned in favor of and none were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance.

FISCAL IMPACT: N/A

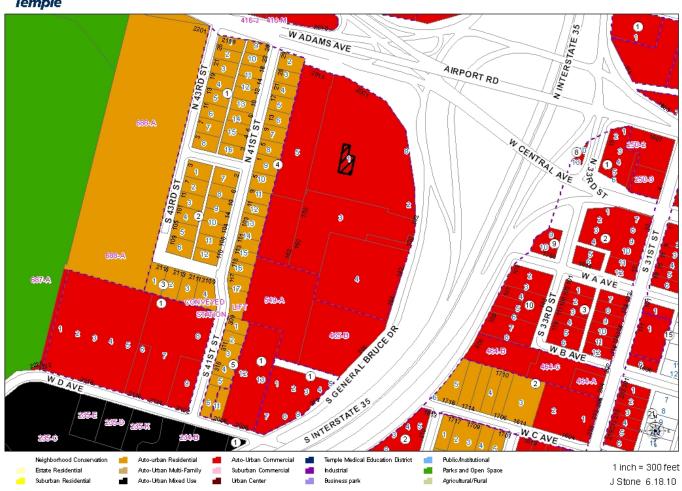
ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
CUP Site Plan Exhibits
Notice Map
P&Z Staff Report (Z-FY-10-37)
P&Z Minutes (August 2, 2010)
Ordinance

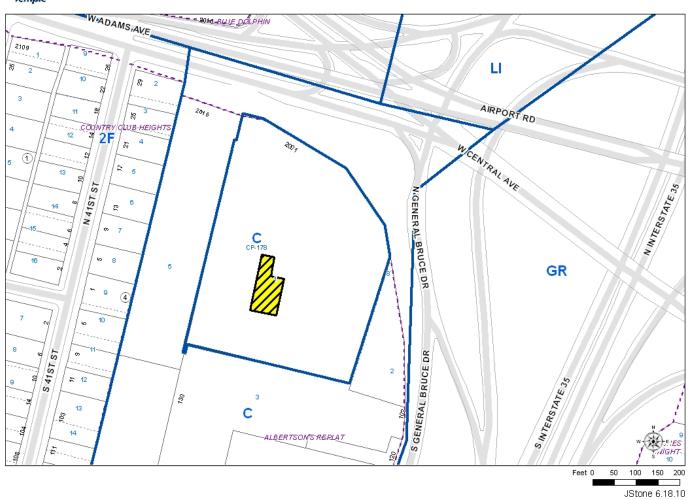


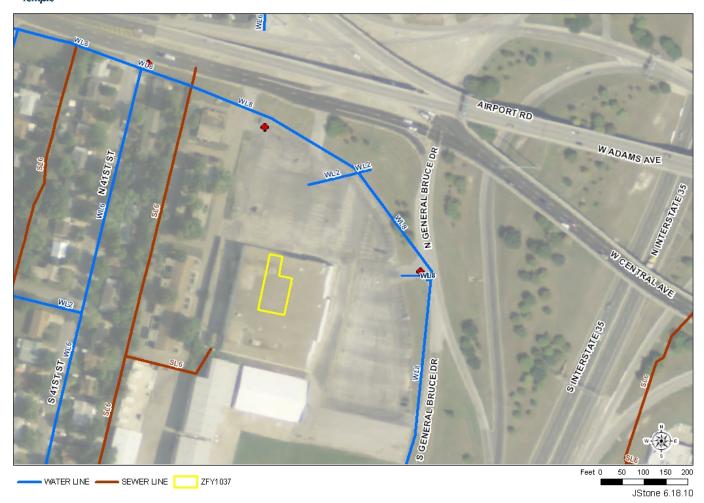


ZFY1 037

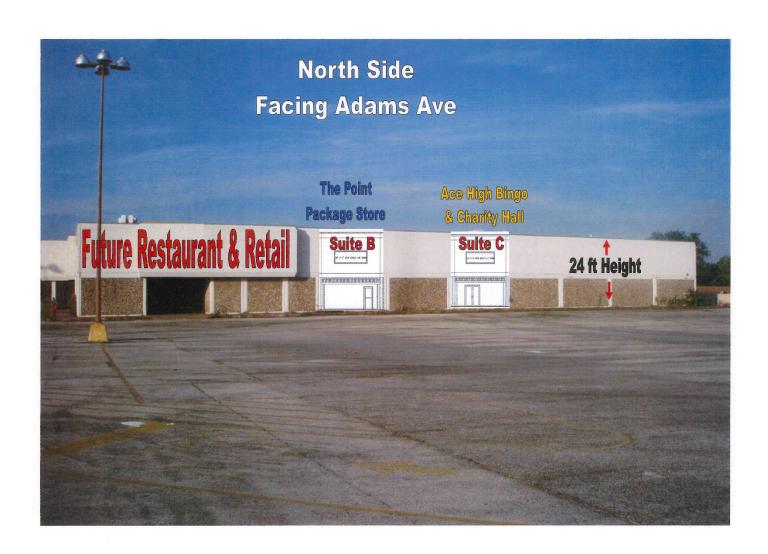






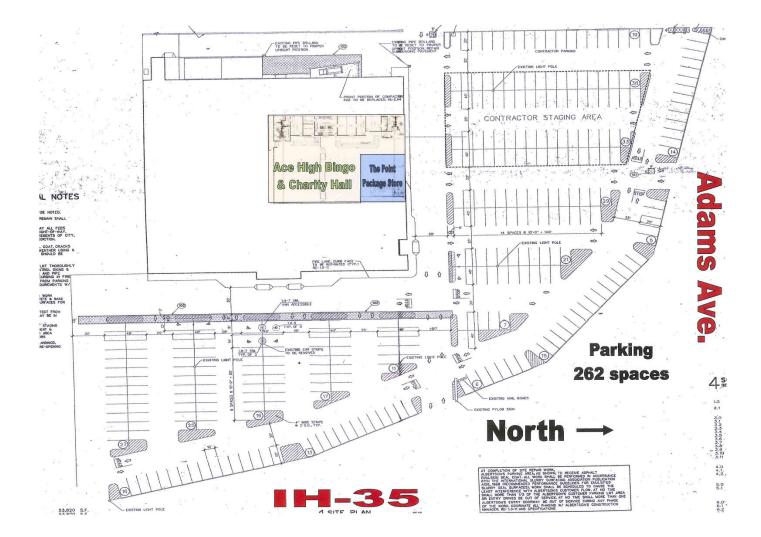




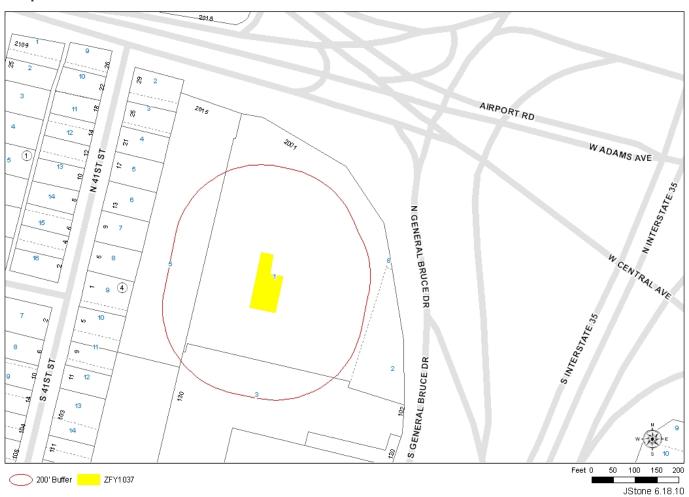




The Point Package Store 2,190sf 10,600sf







10,600 SF of Albertsons Replat Addition, Lot 1

08/02/10 Item #4 Regular Agenda Page 1 of 5

APPLICANT / DEVELOPMENT: Brittany Williams for Salabay Inc.

CASE MANAGER: Tammy Lyerly, Planner

ITEM DESCRIPTION: Z-FY-10-37 - Hold a public hearing to discuss and recommend action on:

- a. Repealing Ordinance No. 2009-4288, dated April 2, 2009 approving a Conditional use Permit to allow the sale of alcoholic beverages, less than 75% of the total gross revenue, for on premise consumption in a restaurant to be known as Kazam's Family Entertainment Center, on Tract 1, Albertson's Addition Replat, located at 2001 West Adams Avenue; and
- b. A Conditional use Permit to allow the sale of alcoholic beverages, more than 75% of the total gross revenue in a bingo hall, for on-premise consumption in a 10,600 square feet lease space on a portion of Tract 1, Albertson's Addition Replat, located at 2001 W. Adams, Suite C. Zoning: Commercial (Applicant: Brittany Williams for Salabay Inc.)

BACKGROUND: The applicants request a Conditional use Permit to allow the sale of alcoholic beverages, more than 75% of the total gross revenue in a bingo hall, for on-premise consumption in a new 10,600 square foot lease space within the former Albertson's Grocery Store. Access to the lease space is at the north end of the building. The property's Commercial District allows a bingo hall (indoor amusement) by right.

If approved, the applicants will be subject to TABC and Texas Lottery Commission regulations. The applicants plan to operate a commercial bingo hall licensed to lease premises to charitable non-profit organizations that are licensed by the State of Texas and regulated by the Texas Lottery Commission. House rules will be that all customers will need to play to stay. No under-aged customers will be allowed in the proposed bar area. After 7 PM, management will check customer IDs and no under-aged customers will not be allowed in the bingo hall.

If approved, this request would replace the previously approved Ordinance No. 2009-4288 granting a Conditional use Permit to allow the sale of alcoholic beverages, less than 75% of the total gross revenue, for on premise consumption in a restaurant.

The site exceeds the CUP distance requirement of 300 feet from a church, public school, or public hospital.

<u>SURROUNDING PROPERTY AND USES:</u>
The following table shows the subject property, existing zoning and current land uses:

Direction	Zoning	Current Land Use	Photo
Subject Property	Commercial (CUP for Bingo Hall with on- premise alcoholic beverage sales)	Abandoned Grocery Store	
North	Light Industrial and General Retail	Expressway and Food Pantry Distribution Center	
South	Commercial	Commercial Lease Space	
East	Commercial and General Retail	I-35	

Direction	Zoning	Current Land Use	Photo
West	Commercial and Two Family	Apartment Complex	

COMPREHENSIVE PLAN COMPLIANCE:

The proposed rezoning relates to the following goals, objectives or maps of the Comprehensive Plan and Sidewalk and Trails Plan:

Document	Policy, Goal, Objective or Map	Compliance?
CP	Map 3.1 - Future Land Use and Character	Yes
СР	Map 5.2 - Thoroughfare Plan	Yes
СР	Goal 4.1 - Growth and development patterns should be consistent with the City's infrastructure and public service capacities	Yes
STP	N/A	N/A

CP = Comprehensive Plan STP = Sidewalk and Trails Plan

Future Land Use and Character (CP Map 3.1)

This application conforms to the Future Land Use and Character Map's designation of Auto-Urban Commercial Uses for this property.

Thoroughfare Plan (CP Map 5.2)

This application conforms to the Thoroughfare Plan for access to West Adams Avenue, South General Bruce Drive, and I-35, designated as Major Arterials and Freeway.

Availability of Public Facilities (CP Goal 4.1)

Adequate public facilities serve this site with water and sewer.

I-35 Corridor Overlay District

I-35 Corridor Overlay District standards are triggered according to the following table:

Development Type	Site Plan Review	Tree Preservation	Parking	Screening and Wall Standards	Architectural Design	Landscape	Signage	Lighting	Utilities
New construction	✓	✓	✓	✓	✓	✓	✓	✓	✓
Increase in gross floor area of 50% or more or improvement resulting in 50% or more increase in value per tax role	√	√	√	√	√	√	✓	√	√
Increase in gross floor area of 25%-49% or improvement resulting in 25%-49% increase in value per tax role	√	√	√	√		√		√	
Increase in gross floor area of 10%-24% or improvement resulting in 10%-24% increase in value per tax role	✓	✓		✓		✓			

If proposed interior and exterior improvements increase the appraised value of the property by 10%, then screening & wall standards and landscaping standards will apply with any subsequent building permit.

CUP APPROVAL CRITERIA:

Part of the CUP process is for the Planning and Zoning Commission and City Council to utilize their discretionary abilities in making a recommendation and taking final action based on the following seven general criteria established by Zoning Ordinance Section 7-600 for evaluation of all CUPs:

- 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;
- 2. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided
- 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;
- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

PUBLIC NOTICE:

Two notices of the Planning and Zoning Commission public hearing were sent out. As of Friday, July 30, 2010 at 8 AM, no notices were returned in favor of and none were returned in opposition to the request. The newspaper printed notice of the Planning and Zoning Commission public hearing on July 22, 2010 in accordance with state law and local ordinance

STAFF RECOMMENDATION: Staff recommends approval of the CUP for a bingo hall with the sale of alcoholic beverages for on-premise consumption for case Z-FY-10-37 subject to the following conditions:

- 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. The conditional use permit runs with the property. Changes in the owner or lessee of a permitted establishment do not affect the permit.
- 8. The applicant's CUP site plan is an exhibit to the ordinance granting the CUP.

FISCAL IMPACT: Not Applicable

ATTACHMENTS:

Aerial
Land Use and Character Map
Zoning Map
Utility Map
CUP Site Plan Exhibits
Notice Map

EXCERPTS FROM THE

PLANNING & ZONING COMMISSION MEETING

MONDAY, AUGUST 2, 2010

ACTION ITEMS

Item 4: Z-FY-10-37: Hold a public hearing to discuss and recommend action on:

- a. Repealing Ordinance No. 2009-4288, dated April 2, 2009 approving a Conditional Use Permit to allow the sale of alcoholic beverages, less than 75% of the total gross revenue, for on-premise consumption in a restaurant to be known as Kazam's Family Entertainment Center, on Tract 1, Albertson's Addition Replat, located at 2001 West Adams Avenue; and
- b. A Conditional Use Permit to allow the sale of alcoholic beverages more than 75% of the total gross revenue in a bingo hall for onpremise consumption in a 10,600 square feet lease space on a portion of Tract 1, Albertson's Addition Replat, located at 2001 W. Adams, Suite C. Zoning: Commercial (Applicant: Brittany Williams for Salabay Inc.)

Commissioner Martin stated he needed to abstain from Item 4.

Ms. Lyerly stated the first half of this request is to repeal Ordinance 2009-4288 because a proposal was previously approved that never developed. In order to pursue the new zone change request, the prior request would need to be repealed. The current CUP was for a bingo hall with the sale of alcoholic beverages.

This bingo hall would be in the same building as the previous item, however, this would be proposed for Suite C. If approved, the City Council would hold the first reading on August 19th and second reading and final action would be September 2nd.

Ms. Lyerly gave the Commission a very similar presentation to the previous item and stated the area was zoned Commercial (C) district. The property had water and sewer available for the facilities. There would be no interconnection between the two suites; they would be completely separate. Suite C is located on the north side of the building and only one access was available.

If approved, the applicants will be subject to TABC and Texas Lottery Commission regulations. The applicants plan to operate a commercial bingo hall licensed to leased premises to charitable non-profit organizations that are licensed by the State of Texas and regulated by the Texas Lottery Commission. House rules would be that all customers will need to play to stay. No under-aged

customers will be allowed in the proposed bar area. After 7 PM, management would check customer IDs and under-aged customers will not be allowed in the bingo hall.

Part of the CUP process was for the Planning and Zoning Commission and City Council to utilize their discretionary abilities in making a recommendation and taking final action based on the following seven general criteria established by Zoning Ordinance Section 7-600 for evaluation of all CUPs:

- 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 establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding vacant property;
- 3. Adequate utilities, access roads, drainage, and other necessary support facilities have been or will be provided
- 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;
- 5. Adequate nuisance prevention measures have been or will be taken to prevent or control offensive odors, fumes, dust, noise, and vibration;
- 6. Directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and
- 7. There is sufficient landscaping and screening to insure harmony and compatibility with adjacent property.

Two notices were sent out and no notices were received back.

Staff recommended approval of this CUP with the conditions since it complied with the CUP regulations and the site plan served as an exhibit to the request.

Commissioner Pope asked about proposed exterior and interior improvements increasing value of property by 10%, along with the screening and landscaping standards which were part of the I35 Corridor Overlay district, and if any building permits were issued at this time. Ms. Lyerly stated permits for any renovations would need to be submitted which would allow one way of monitoring any improvements. As far as appraisal value, those would be obtained from Bell County on an annual basis.

Some discussion about property valuation, processes, and permitting.

Vice-Chair Talley opened the public hearing. There being no speakers, Vice-Chair Talley closed the public hearing.

Commissioner Staats made a motion to approve **Z-FY-10-37**, both A and B, and Commissioner Secrest made a second.

Motion passed: (6:0)

Commissioner Martin abstained; Chair Pilkington and Commissioner Hurd absent.

ORDINANCE NO

[PLANNING NO. Z-FY-10-37 (A)]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, REPEALING ORDINANCE NO. 2009-4288, DATED APRIL 2, 2009, APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISE CONSUMPTION WHERE THE GROSS REVENUE FROM THE SALE OF ALCOHOLIC BEVERAGES IS LESS THAN 75% OF THE TOTAL GROSS REVENUE IN A RESTAURANT TO BE KNOWN AS "KAZAM'S FAMILY ENTERTAINMENT CENTER" LOCATED AT 2001 WEST ADAMS AVENUE ON TRACT 1, ALBERTSON'S ADDITION REPLAT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

Whereas, on April 2, 2009, the City Council passed Ordinance No. 2009-4288 which approved a conditional use permit to allow the sale of alcoholic beverages for on- premises consumption in a restaurant to be known as Kazam's Family Entertainment Center, located at 2001 West Adams Avenue;

Whereas, the applicant was not successful in establishing the restaurant, and the Staff recommends that Ordinance No. 2009-4288 be repealed since there is a new plan for development of the building; and

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

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

<u>Part 1</u>: The City Council repeals Ordinance No. 2009-4288, dated April 2, 2010, approving a Conditional Use Permit to allow the sale of alcoholic beverages for on-premise consumption where the gross revenue from the sale of alcoholic beverages is less than 75% of the total gross revenue in a restaurant to be known as "Kazam's Family Entertainment Center," located at 2001 West Adams on Tract 1, Albertson's Addition Replat.

<u>Part 2</u>: 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.

<u>Part 3</u>: 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.

<u>Part 4</u>: 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.

<u>Part 5</u>: 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 **19**th day of **August**, 2010.

PASSED AND APPROVED on Second Reading on the 2nd day of September, 2010.

	THE CITY OF TEMPLE, TEXAS
	WILLIAM A. JONES, III, Mayor
ATTEST:	APPROVED AS TO FORM:
Clydette Entzminger	Jonathan Graham
City Secretary	City Attorney

ORDINANCE NO

[PLANNING NO. Z-FY-10-37 (B)]

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS, APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES, 75% OR MORE OF THE TOTAL GROSS REVENUE IN A BINGO HALL, FOR ON-PREMISE CONSUMPTION IN A 10,600 SQUARE FEET LEAST SPACE ON A PORTION OF TRACT 1, ALBERTSON'S ADDITION REPLAT, LOCATED AT 2001 WEST ADAMS, SUITE C; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

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 location and zoning classification of the establishment, has recommended that the City Council approve this application; 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 concerning the establishment at 2001 West Adams Avenue, and has heard the comments and evidence presented by all persons supporting or opposing this matter at said public hearing, and after examining the location and the zoning classification of the 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:

<u>Part 1</u>: The City Council approves a Conditional Use Permit to allow the sale of alcoholic beverages, 75% or more of the total gross revenue in a bingo hall, for on-premise consumption in a 10,600 square feet lease space on a portion of Tract 1, Albertson's Addition Replat, located at 2001 West Adams, Suite C, more fully described in Exhibit A, attached hereto and made a part hereof for all purposes.

- <u>Part 2</u>: The owners/applicants, their employees, lessees, agents or representatives, hereinafter called "permittee" shall comply with the following developmental standards and conditions of operation:
 - (a) The sale and consumption of alcoholic beverages shall occur only within the designated area, in accordance with the site plan attached as Exhibit B.
 - (b) 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.
 - (c) The permittee must comply with applicable licensing and permit provisions of the Alcoholic Beverage Code within six (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.
 - (d) The permittee bears the burden of showing that the establishment does not exceed the limitation on gross receipts from sales of alcoholic beverages applicable to its conditional use permit. The permittee must maintain accounting records of the sources of its gross revenue and allow the City to inspect such records during reasonable business hours.
 - (e) The permittee must demonstrate that the granting of the permit would not be detrimental to the public welfare of the citizens of the City.
 - (f) The permittee must, at all times, provide an adequate number of employees for security purposes to adequately control the establishment premises to prevent incidents of drunkenness, disorderly conduct and raucous behavior. The permittee shall consult with the Chief of Police, who shall act in an advisory capacity to determine the number of qualified employees necessary to meet his obligations hereunder.
 - (g) 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.
 - (h) 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.
 - (i) The City Council may deny or revoke a conditional use permit if it affirmatively determines that the issuance of the same is (a) incompatible with the surrounding uses

- of property, or (2) detrimental or offensive to the neighborhood or contrary to the health, safety, and general welfare of the City and its inhabitants.
- (j) A conditional use permit issued under this section runs with the property and is not affected by a change in the owner or lessee of a permitted establishment.
- (k) All conditional use permits issued under this section will be further conditioned that the same may be canceled, suspended or revoked in accordance with the revocation clause set forth in Section 7-609.
- <u>Part 3</u>: 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.
- <u>Part 4</u>: 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.
- <u>Part 5</u>: 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.
- <u>Part 6</u>: 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 19th day of August, 2010.

PASSED AND APPROVED on Second Reading on the 2nd day of September, 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

08/19/10 Item #15 Regular Agenda Page 1 of 2

DEPT./DIVISION SUBMISSION & REVIEW:

William A. Jones, III, Mayor

<u>ITEM DESCRIPTION:</u> Consider adopting a resolution appointing members to the following City boards and commissions:

- (A) Airport Advisory Board five members to fill expiring terms through September 1, 2013
- (B) Animal Services Advisory Board two members to fill expiring terms through September 1, 2013 and appoint Chair for the period of September 1, 2010 through August 31, 2011
- (C) Civil Service Commission one member to fill expiring term through September 1, 2013
- (D) Community Services Advisory Board three members to fill expiring terms through September 1, 2013
- (E) Library Board three members to fill expiring terms through September 1, 2013
- (F) Planning & Zoning Commission three members to fill expiring terms through September 1, 2013
- (G) Reinvestment Zone No. 1 Board of Directors four members to fill expiring terms through September 1, 2012
- (H) Temple Economic Development Corporation four members to fill expiring terms through September 1, 2013
- (I) Temple Public Safety Advisory Board six members to fill expiring terms through September 1, 2013
- (J) Transit Advisory Committee four members to fill expiring terms through September 1, 2012

STAFF RECOMMENDATION: Adopt resolution as presented in item description.

<u>ITEM SUMMARY:</u> The City Council adopted a resolution in June, 2003, establishing policies governing the appointment and training of citizens to City boards. In accordance with that resolution, appointments to the above stated boards are to be made at the second regular meeting in August, with an effective date of September 1, 2010.

08/19/10 Item #15 Regular Agenda Page 2 of 2

Please see the revised summary listing which has been updated since the August 5th meeting to include all applications received for board appointments.

FISCAL IMPACT: N/A

ATTACHMENTS:

Board Application Summary with Board Applications Forms – hard copy