

Bastrop, TX City Council Meeting Agenda
Bastrop City Hall City Council Chambers
1311 Chestnut Street
Bastrop, TX 78602
(512) 332-8800



February 28, 2023
Regular City Council Meeting at 6:30 PM

Executive Session 5:00 p.m.

Regular Council Meeting 6:30 p.m.

City of Bastrop City Council meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary at (512) 332-8800 or write 1311 Chestnut Street, 78602, or by calling through a T.D.D. (Telecommunication Device for the Deaf) to Relay Texas at 1-800-735-2989 at least 48 hours in advance of the meeting.

The City of Bastrop reserves the right to reconvene, recess, or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

PLEASE NOTE: ANYONE IN ATTENDANCE WISHING TO ADDRESS THE COUNCIL MUST COMPLETE A CITIZEN COMMENT FORM AND GIVE THE COMPLETED FORM TO THE CITY SECRETARY PRIOR TO THE START OF THE CITY COUNCIL MEETING. ALTERNATELY, IF YOU ARE UNABLE TO ATTEND THE COUNCIL MEETING, YOU MAY COMPLETE A CITIZEN COMMENT FORM WITH YOUR COMMENTS AT CITYOFBASTROP.ORG/CITIZENCOMMENT AT LEAST TWO HOURS BEFORE THE MEETING STARTS ON THE REQUESTED DATE. COMMENTS SUBMITTED BY THIS TIME WILL BE GIVEN TO THE CITY COUNCIL DURING THE MEETING AND INCLUDED IN THE PUBLIC RECORD, BUT NOT READ ALOUD. COMMENTS FROM EACH INDIVIDUAL IN ATTENDANCE WILL BE LIMITED TO THREE (3) MINUTES.

- 1. CALL TO ORDER - EXECUTIVE SESSION - 5:00 P.M.**
- 2. EXECUTIVE SESSION**
 - 2A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.074 to seek the advice of legal counsel and discuss potential acquisition of real estate relating to the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project.

- 2B. City Council shall convene into closed executive session pursuant to Texas Government Code section 551.071 to seek the advice of legal counsel regarding a Support Services Agreement, and Policy for the Bastrop Economic Development Corporation, and related matters.
- 2C. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.072 to seek the advice of legal counsel and discuss potential acquisitions of real estate relating to the Agnes Street and Vista Puente Drive right of ways and related infrastructure, and another miscellaneous property.
- 2D. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.072 to seek the advice of legal counsel and consider amendment to an existing development agreement concerning the Colorado Bend project.
- 2E. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.072 to seek the advice of legal counsel related to matters regarding an Interlocal Agreement with Bastrop County related to development review in the City's extraterritorial jurisdiction also known as the (1445 agreement)and other areas necessary to the city of Bastrop.
- 2F. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.072 to seek the advice of legal counsel to discuss a proposed development located at 1408 Chestnut.
- 2G. City Council shall convene into closed executive session pursuant to Texas Government Code Section 551.071 and Section 551.072 to seek the advice of legal counsel and to discuss the extension of a lease and deliberate the related terms of a new agreement for real property located in Fisherman's Park.

3. TAKE ANY NECESSARY OR APPROPRIATE ACTION ON MATTERS POSTED FOR CONSIDERATION IN CLOSED/EXECUTIVE SESSION

4. CALL TO ORDER - REGULAR MEETING - 6:30 P.M.

- 5. **PLEDGE OF ALLEGIANCE** - Hannah Knobloch and Claire Culpepper, Cedar Creek Intermediate School, Student Council

TEXAS PLEDGE OF ALLEGIANCE - *Honor the Texas Flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.*

- 6. **INVOCATION** - Bob Long, Police Chaplain

7. PRESENTATIONS

- 7A. Mayor's Report
- 7B. Council Members' Report
- 7C. City Manager's Report
- 7D. Quarterly Report

Submitted by: Sylvia Carrillo, City Manager

8. WORK SESSIONS/BRIEFINGS - NONE

9. STAFF AND BOARD REPORTS

9A. Receive presentation on the unaudited Monthly Financial Report for the period ending January 31, 2023.

Submitted by: Tracy Waldron, Chief Financial Officer

9B. Receive the Annual Comprehensive Financial Report for the period ending September 30, 2022, which includes the independent auditor's report presented by the independent audit firm of Belt Harris Pechacek, LLP.

Submitted by: Tracy Waldron, Chief Financial Officer

9C. Receive Annual Racial Profiling Report from the Bastrop Police Department.

Submitted by: Vicky Steffanic, Interim Chief of Police

10. CITIZEN COMMENTS

At this time, three (3) minute comments will be taken from the audience on any topic. Anyone in attendance wishing to address the Council must complete a citizen comment form and give the completed form to the City Secretary prior to the start of the City Council meeting. Alternately, if you are unable to attend the council meeting, you may complete a citizen comment form with your comments at www.cityofbastrop.org/citizencommentform at least two hours before the meeting starts on the requested date. Comments submitted by this time will be given to the City Council during the meeting and included in the public record, but not read aloud. In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, City Council cannot discuss issues raised or make any decision at this time. Instead, City Council is limited to making a statement of specific factual information or a recitation of existing policy in response to the inquiry. Issues may be referred to City Manager for research and possible future action.

It is not the intention of the City of Bastrop to provide a public forum for the embarrassment or demeaning of any individual or group. Neither is it the intention of the Council to allow a member of the public to slur the performance, honesty and/or integrity of the Council, as a body, or any member or members of the Council individually or collectively, or members of the City's staff. Accordingly, profane, insulting or threatening language directed toward the Council and/or any person in the Council's presence will not be tolerated.

11. CONSENT AGENDA

The following may be acted upon in one motion. A Council Member or a citizen may request items be removed from the Consent Agenda for individual consideration.

11A. Consider action to approve City Council minutes from the February 14, 2023, Regular meeting; February 21, 2023, Joint City Council and Parks Board meeting; and February 23, 2023, Special Called meeting.

Submitted by: Ann Franklin, City Secretary

11B. Consider action to approve the second reading of Ordinance No. 2023-01 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, by adding new section 1.02.005 – Termination of Inactive Campaign Treasurer Appointment; providing for repealer and severability; establishing an effective date; proper notice and meeting.

Submitted by: Ann Franklin, City Secretary

11C. Consider action to approve Resolution No. R-2023-28 of the City Council of the City of Bastrop, Texas confirming appointment by the Mayor of Isaac Merino, Place 5 of the Construction Standard Board, as required in Section 3.08 of the City's Charter, and establishing an effective date.

Submitted by: Ann Franklin, City Secretary

11D. Consider action to approve the second reading of Ordinance No. 2023-03 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Article 1.04 regarding annual verification of attendance and residency for members of boards, commissions, task forces, committees and advisory bodies; and providing for: findings of fact, adoption, repealer, severability, establishing an effective date, proper notice and meeting.

Submitted by: Sylvia Carrillo, City Manager

11E. Consider action to approve Resolution No. R-2023-29 of the City Council of the City of Bastrop, Texas to award an engineering service contract to provide engineering services for the City's 2023-2024 Community Development Fund application and project-related engineering services if funded; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

11F. Consider action to approve Resolution No. R-2023-32 of the City Council of the City of Bastrop, Texas, designating authorized signatories for contractual documents and documents for requesting funds pertaining to the Texas Community Development Block Grant Program (TxCDBG); providing for a repealing clause; and establishing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

11G. Consider action to approve Resolution No. R-2023-31 of the City Council of the City of Bastrop, Texas authorizing the submission of a Texas Community Development Block Grant Program application to the Texas Department of Agriculture for the Community Development Fund; reaffirming various policies and procedures required in conformity with the Civil Rights Act, and the Fair Housing Act, as shown in Exhibit A; providing for a repealing clause and establishing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

12. ITEMS FOR INDIVIDUAL CONSIDERATION

[12A.](#) Consider action to approve Resolution No. R-2023-30 of the City Council of the City of Bastrop, Texas, recommending designating Bastrop Post Office, 1106 Main Street, Bastrop, Texas as “Sergeant Major Billy D. Waugh Post Office”.

Submitted by: Sylvia Carrillo, City Manager

[12B.](#) Consider action to approve Resolution No. R-2023-23 approving appointment of Caroline A. McClimon, JD as Presiding Municipal Judge, Bastrop Municipal Court, City of Bastrop and approving a contract to provide services, attached as Exhibit A; providing for a repealing clause; and establishing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer

[12C.](#) Consider action to approve Resolution No. R-2023-31, of the City Council, of the City of Bastrop, Texas, approving a Request for Qualifications be issued for one or more Associate Judges; in the Municipal Court of the City of Bastrop, providing for a repeal; and providing an effective date.

Submitted by: Tracy Waldron, Chief Financial Officer.

[12D.](#) Consider action to approve Resolution No. R-2023-27 of the City Council of the City of Bastrop, Texas approving an agreement between the City of Bastrop and Bastrop River Company providing for a five year lease of a .52 acre portion of A11 Bastrop town tract, acres 5.100 (city park) located in Fisherman’s Park with an option to renew for three additional two-year term upon mutual agreement; authorizing the city manager to execute said lease agreement on behalf of the city; and declaring an effective date.

Submitted by: Trey Job, Assistant City Manager

[12E.](#) Consider action to approve Resolution No. 2023-33 revising the agreement for subdivision plat regulation in the City of Bastrop’s ETJ in Bastrop County also known as the (1445 agreement); providing for repeal; and providing an effective date.

Submitted by: Sylvia Carrillo, City Manager

[12F.](#) Consider action to approve the second reading of Ordinance No. 2023-02 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Article 1.04 regarding annual work plans for city boards, commissions, task forces, committees and advisory bodies; and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting.

Submitted by: Sylvia Carrillo, City Manager

[12G.](#) Consider action to approve amendments to the Development agreement between the City of Bastrop and Colorado Bend, LLC. Authorizing the City Manager to execute all necessary documents; providing for repeal; and providing an effective date.

Submitted by: Sylvia Carrillo, City Manager

12H. Consider action to approve Resolution No. R-2023-34 of the City Council of the City of Bastrop, Texas, authorizing the ability to enter into a wholesale wastewater agreement with Corix Utilities Texas, LLC; attached in Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Submitted by: Trey Job, Assistant City Manager

13. ADJOURNMENT

All items on the agenda are eligible for discussion and action unless specifically stated otherwise.

The Bastrop City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.087 (Economic Development), and §551.086 (Competitive Matters regarding Electric Utility).

I, the undersigned authority, do hereby certify that this Notice of Meeting as posted in accordance with the regulations of the Texas Open Meetings Act on the bulletin board located at the entrance to the City of Bastrop City Hall, a place of convenient and readily accessible to the general public, as well as to the City's website, www.cityofbastrop.org and said Notice was posted on the following date and time: Friday, February 24, 2023, at 5:00 p.m. and remained posted for at least two hours after said meeting was convened.

/s/Ann Franklin
Ann Franklin, City Secretary



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Mayor's Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, City Manager

POLICY EXPLANATION:

Texas Local Government Code, Section 551.045 – Governing Body of Municipality or County: Reports about Items of Community Interest Regarding Which No Action Will Be Taken:

(a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality or county may receive from staff of the political subdivision and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

(b) For purposes of Subsection (a), "items of community interest" includes:

- (1) expressions of thanks, congratulations, or condolence;
- (2) information regarding holiday schedules;
- (3) an honorary or salutary recognition of a public official, public employee, or other citizen, except that a discussion regarding a change in the status of a person's public office or public employment is not an honorary or salutary recognition for purposes of this subdivision;
- (4) a reminder about an upcoming event organized or sponsored by the governing body;
- (5) information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the political subdivision; and
- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.

ATTACHMENTS:

1. PowerPoint

Mayor's Report
February 28, 2023



Latest Activities

Feb 9 – Feb 24

Events in 2023: 61



Item 7A.



Planned Events

Feb 25 - 28

Item 7A.

- February 27
 - Commissioner's Court
 - BEDC Board Meeting
- February 28 - City Council Meeting

Upcoming Events & City Meetings

Item 7A.

- March 1 – 3 TML Elected Officials Conference
- March 4 – Bastrop Opera House Celebration
- March 6 – Parks and Recreation Master Plan Kick-Off Event
- March 7 – Government Affairs Committee
- March 8 – CAPCOG Executive Committee Meeting
- March 9 – Alive After Five
- March 11 – Bastrop County Emergency Food Pantry Empty Bowl Event
- March 13 – Commissioner’s Court
- March 14 – BCMA Mayor’s Prayer Luncheon
- March 16 – Bastrop County Veterans Collaborative
- March 17 – Ambassadors Committee
- March 20 – BEDC Board Meeting
- March 22 – Smithville Workforce Training Center - County Event
- March 25 – CASA Goes Country (Boots, Bingo and Casino)
- March 27
 - Commissioner’s Court
 - Diversity Board Meeting
- March 28 - City Council Meeting



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Council Members' Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, City Manager

POLICY EXPLANATION:

Texas Local Government Code, Section 551.045 – Governing Body of Municipality or County: Reports about Items of Community Interest Regarding Which No Action Will Be Taken:

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- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

City Manager's Report

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, City Manager

POLICY EXPLANATION:

Texas Local Government Code, Section 551.045 – Governing Body of Municipality or County: Reports about Items of Community Interest Regarding Which No Action Will Be Taken:

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- (6) announcements involving an imminent threat to the public health and safety of people in the political subdivision that has arisen after the posting of the agenda.



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Receive presentation on the unaudited Monthly Financial Report for the period ending January 31, 2023.

AGENDA ITEM SUBMITTED BY:

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

The Chief Financial Officer provides the City Council a monthly financial report overview for all funds to include detailed analysis for General Fund, Water-Wastewater Fund, Bastrop Power & Light and the HOT Tax Fund.

REVENUE

General Fund exceeded the forecast by 19.7%

- Sales tax is 9.8% above forecast
- Development fees are 28.5% above forecast due to Valverde subdivision Public Improvement Fees collected in advance.

Impact Fee Fund is running 12.6% short of forecast. This is due to timing of development activity.

Electric Fund is running 9.3% short of forecast. This billing month was a few days short of our normal 30 day cycle. We are analyzing all the data to better understand the variance.

Hunter's Crossing PID Fund is short of forecast by 3.7%. This is due to timing of collections on assessments.

All other funds are performing positive to forecast.

EXPENDITURES

Vehicle/Equipment Replacement Fund – this was the fund effected by the fraud transaction. This will come back to council in the future for a budget amendment.

All other funds are positive to forecast amounts.

This reporting requirement is set forth by the City of Bastrop Financial Management Policies, Chapter IV. Operating Budget, Section D. Reporting, as adopted by Resolution R-2022-73 on August 23, 2022.

ATTACHMENTS:

- Unaudited Monthly Financial Report for the period ending January 31, 2023.

CITY OF BASTROP

Comprehensive Monthly Financial Report January 2023



Performance at a Glance as of January 31, 2023



	YEAR TO DATE	REFERENCE
ALL FUNDS SUMMARY		
ALL FUNDS SUMMARY	POSITIVE	Page 3-4
SALES TAXES	POSITIVE	Page 5
PROPERTY TAXES	POSITIVE	Page 6
GENERAL FUND EXPENSE BY DEPARTMENT	POSITIVE	Page 7
WATER/WASTEWATER REVENUES	POSITIVE	Page 8
WATER/WASTEWATER EXPENDITURES BY DIVISION	POSITIVE	Page 9
ELECTRIC REVENUES	NEGATIVE	Page 10
HOTEL OCCUPANCY TAX REVENUES	POSITIVE	Page 11
HOTEL OCCUPANCY TAX EXPENDITURES BY DIVISION	POSITIVE	Page 12
LEGAL FEES BY ATTORNEY/CATEGORY	POSITIVE	Page 13
PERFORMANCE INDICATORS		
POSITIVE	= Positive variance or negative variance < 1% compared to seasonal trends	
WARNING	= Negative variance of 1-5% compared to seasonal trends	
NEGATIVE	= Negative variance of > 5% compared to seasonal trends	

COMPREHENSIVE MONTHLY FINANCIAL REPORT – January 2023

	FY2023 Approved Budget	FY2023 Forecast YTD	FY2023 Actual YTD	Variance
Revenues:				
General	\$ 16,847,515	\$ 7,142,388	\$ 8,548,177	19.7%
Designated	63,200	14,792	40,849	176.2%
General Fund One-time	382,395	382,395	385,418	0.8%
Street Maintenance	803,500	267,833	270,112	0.9%
Debt Service	3,870,175	2,520,791	3,140,994	24.6%
General Gov's Projects	3,052,000	121,667	123,416	1.4%
Water/Wastewater	7,927,692	2,334,397	2,545,440	9.0%
Water/Wastewater Debt	3,665,227	863,642	880,591	2.0%
Water/Wastewater Capital Proj	885,100	295,033	300,655	1.9%
Impact Fees	3,330,450	290,036	253,507	-12.6%
Vehicle & Equipment Replacement	1,435,490	980,912	1,029,831	5.0%
Electric	7,809,241	2,242,407	2,034,157	-9.3%
HOT Tax Fund	3,131,554	785,382	957,591	21.9%
Library Board	20,750	6,250	7,126	14.0%
Cemetery	184,700	51,567	78,113	51.5%
Capital Bond Projects	44,000	12,467	40,346,246	323524.3%
Grant Fund	4,665,330	-	-	0.0%
Park/Trail Land Dedicaiton	1,465	1,398	1,481	5.9%
Hunter's Crossing PID	575,879	507,466	488,627	-3.7%
Bastrop EDC	4,213,909	1,260,291	1,413,939	12.2%
TOTAL REVENUES	\$ 62,909,572	\$ 20,081,114	\$ 62,846,270	213.0%

POSITIVE
WARNING
NEGATIVE

= Positive variance or negative variance < 1% compared to forecast
 = Negative variance of 1-5% compared to forecast
 = Negative variance of >5% compared to forecast

BUDGET SUMMARY OF ALL FUNDS

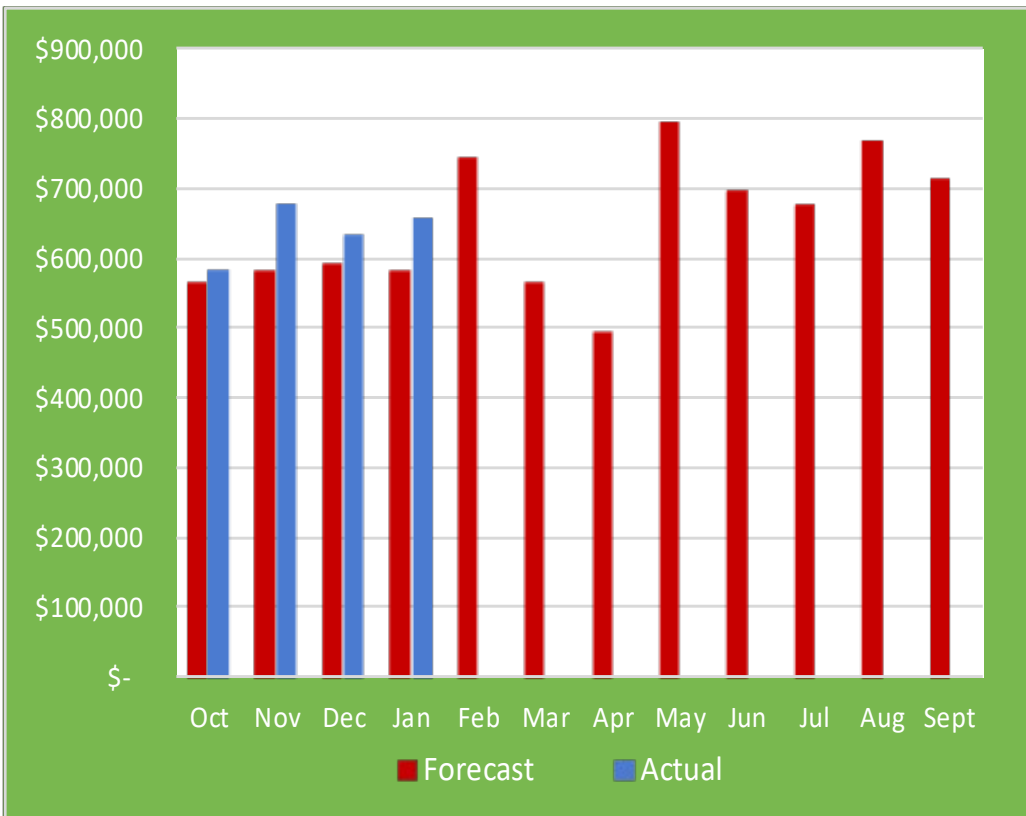
	<u>FY2023</u> <u>Approved Budget</u>	<u>FY2023</u> <u>Forecast YTD</u>	<u>FY2023</u> <u>Actual YTD</u>	<u>Variance</u>
<u>Expense:</u>				
General	\$ 19,852,982	\$ 8,306,412	\$ 7,786,809	-6.3%
Designated	323,780	35,000	32,244	-7.9%
General Fund One-time	456,200	66,000	65,697	-0.5%
Street Maintenance	807,927	75,000	72,445	-3.4%
Debt Service	3,850,699	688,105	684,289	-0.6%
General Gov't Projects	3,152,000	17,000	16,695	-1.8%
Water/Wastewater	8,592,325	3,136,051	2,971,668	-5.2%
Water/Wastewater Debt	3,823,204	1,073,896	1,073,897	0.0%
Water/Wastewater Capital Proj.	1,252,500	240,000	88,038	-63.3%
Revenue Bond, Series 2020	156,919	30,000	28,162	-6.1%
CO, Series 2021	20,450,575	7,712,000	7,726,921	0.2%
Impact Fees	7,884,300	562,250	562,023	0.0%
Vehicle & Equipment Replacement	918,623	342,760	627,949	83.2%
Electric	8,175,434	2,535,908	2,547,107	0.4%
HOT Tax Fund	3,899,827	2,044,818	1,825,758	-10.7%
Library Board	49,000	15,333	3,166	-79.4%
Cemetery	217,901	79,967	52,342	-34.5%
Hunter's Crossing PID	552,405	40,168	32,173	-19.9%
CO, Series 2013	210,791	46,000	20,277	-55.9%
CO, Series 2018	461,631	1,000	623	-37.8%
Limited Tax Note, Series 2020	149,948	30,000	28,034	-6.6%
America Rescue Plan	2,156,205	-	-	0.0%
CO, Series 2022	3,599,999	-	-	0.0%
CO, Series 2023	-	-	107,779	0.0%
Grant Fund	4,665,330	195,000	191,185	-2.0%
Bastrop EDC	9,409,248	777,157	764,268	-1.7%

POSITIVE	= Positive variance or negative variance < 1% compared to forecast
WARNING	= Negative variance of 1-5% compared to forecast
NEGATIVE	= Negative variance of >5% compared to forecast

REVENUE ANALYSIS

SALES TAX REVENUE

<u>Month</u>	<u>FY2023 Forecast</u>	<u>FY2023 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 564,594	\$ 580,268	\$ 15,674
Nov	580,384	675,521	\$ 95,137
Dec	589,203	632,136	\$ 42,933
Jan	581,720	655,945	\$ 74,225
Feb	741,498		\$ -
Mar	564,577		\$ -
Apr	491,577		\$ -
May	790,561		\$ -
Jun	694,574		\$ -
Jul	675,685		\$ -
Aug	764,669		\$ -
Sept	710,958		\$ -
Total	\$ 7,750,000	\$ 2,543,870	\$ 227,969
Cumulative Forecast	\$ 2,315,901		
Actual to Forecast	\$ 227,969	9.8%	

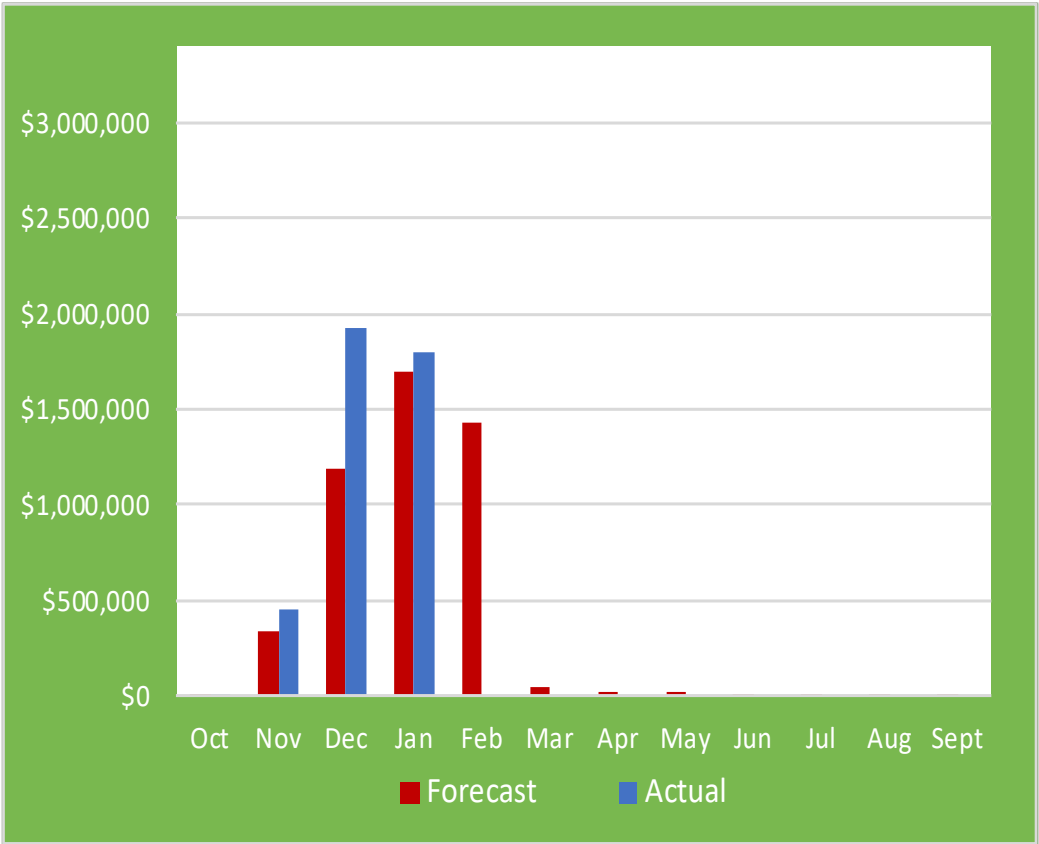


POSITIVE

Sales Tax is 46% of the total budgeted revenue for General Fund. The actual amounts for Oct. and Nov. are estimated due to the State Comptroller's two month lag in payment of these earned taxes. The actual is almost 10% greater than forecasted.

PROPERTY TAX REVENUE

<u>Month</u>	<u>FY2023 Forecast</u>	<u>FY2023 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 10,451	\$ 13,108	\$ 2,657
Nov	334,933	453,349	\$ 118,416
Dec	1,196,190	1,924,618	\$ 728,428
Jan	1,692,354	1,803,389	\$ 111,035
Feb	1,435,428		
Mar	47,848		
Apr	19,139		
May	19,138		
Jun	9,570		
Jul	9,570		
Aug	9,570		
Sept	570		
Total	\$ 4,784,761	\$ 4,194,464	\$ 960,536
Cumulative Forecast	\$ 3,233,928		
Actual to Forecast	\$ 960,536	29.70%	



POSITIVE

Property tax represents 29% of the total General Fund revenue budget. As you can see from the forecast, they are generally collected from December to February. The actual is exceeding the forecast by over almost 30%. This just means Feb. will show a negative variance.

GENERAL FUND EXPENDITURES BY DEPT.

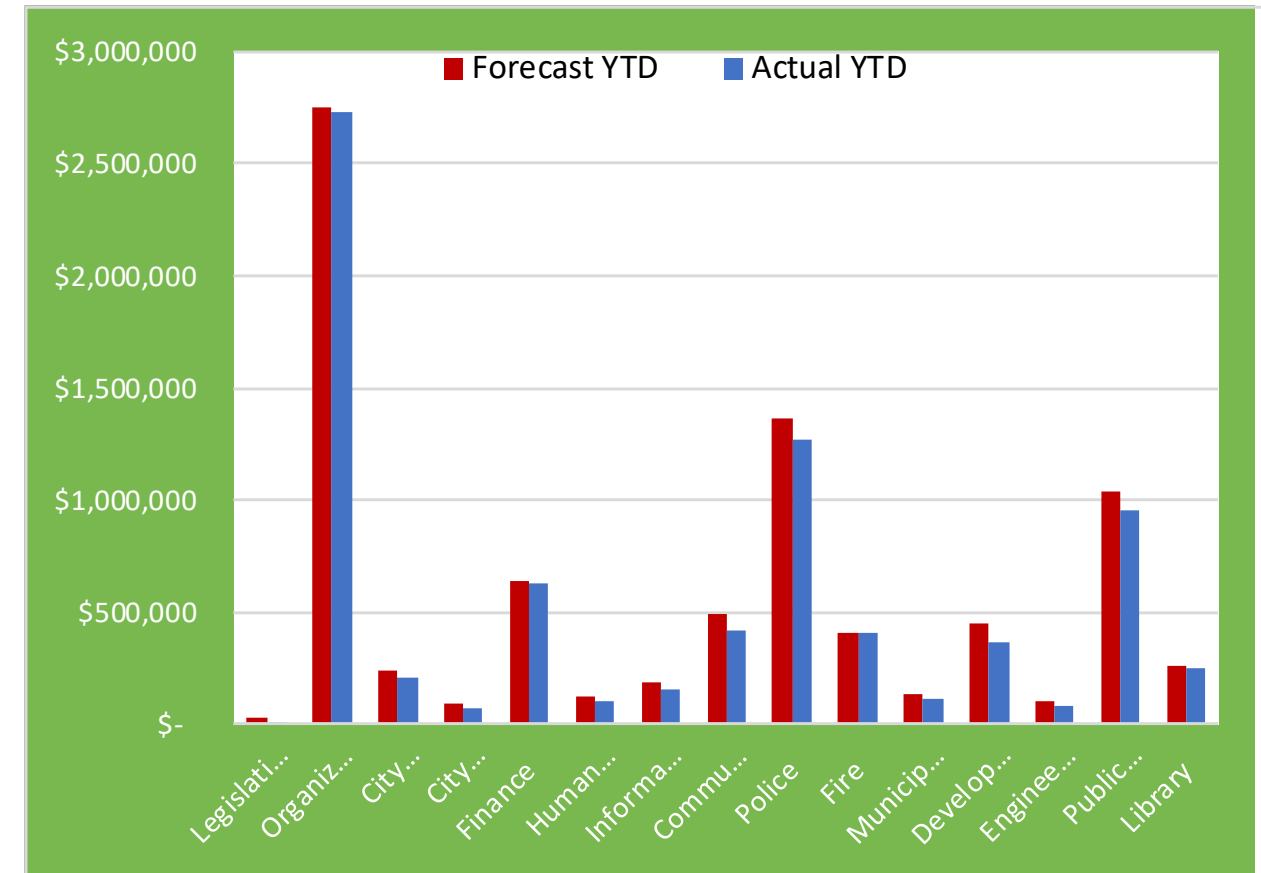
<u>Division</u>	<u>FY2023 Forecast YTD</u>	<u>FY2023 Actual YTD</u>	<u>Variance</u>
Legislative	\$ 26,368	\$ 13,656	\$ (12,712)
Organizational	2,747,467	2,734,224	\$ (13,243)
City Manager	237,215	204,042	\$ (33,173)
City Secretary	93,360	77,044	\$ (16,316)
Finance	638,241	628,568	\$ (9,673)
Human Resources	122,082	102,178	\$ (19,904)
Information Technology	190,747	152,552	\$ (38,195)
Community Engagemen	494,260	415,492	\$ (78,768)
Police	1,364,794	1,272,675	\$ (92,119)
Fire	413,313	413,148	\$ (165)
Municipal Court	131,292	115,391	\$ (15,901)
Development Services	450,050	369,688	\$ (80,362)
Engineering	99,537	80,865	\$ (18,672)
Public Works	1,038,402	957,883	\$ (80,519)
Library	259,284	249,402	\$ (9,882)
Total	\$ 8,306,412	\$ 7,786,808	\$ (519,604)

Actual to Forecast

93.7%

POSITIVE

This page compares forecast to actual by department within the General Fund. YTD the actual is almost 95% of forecast.

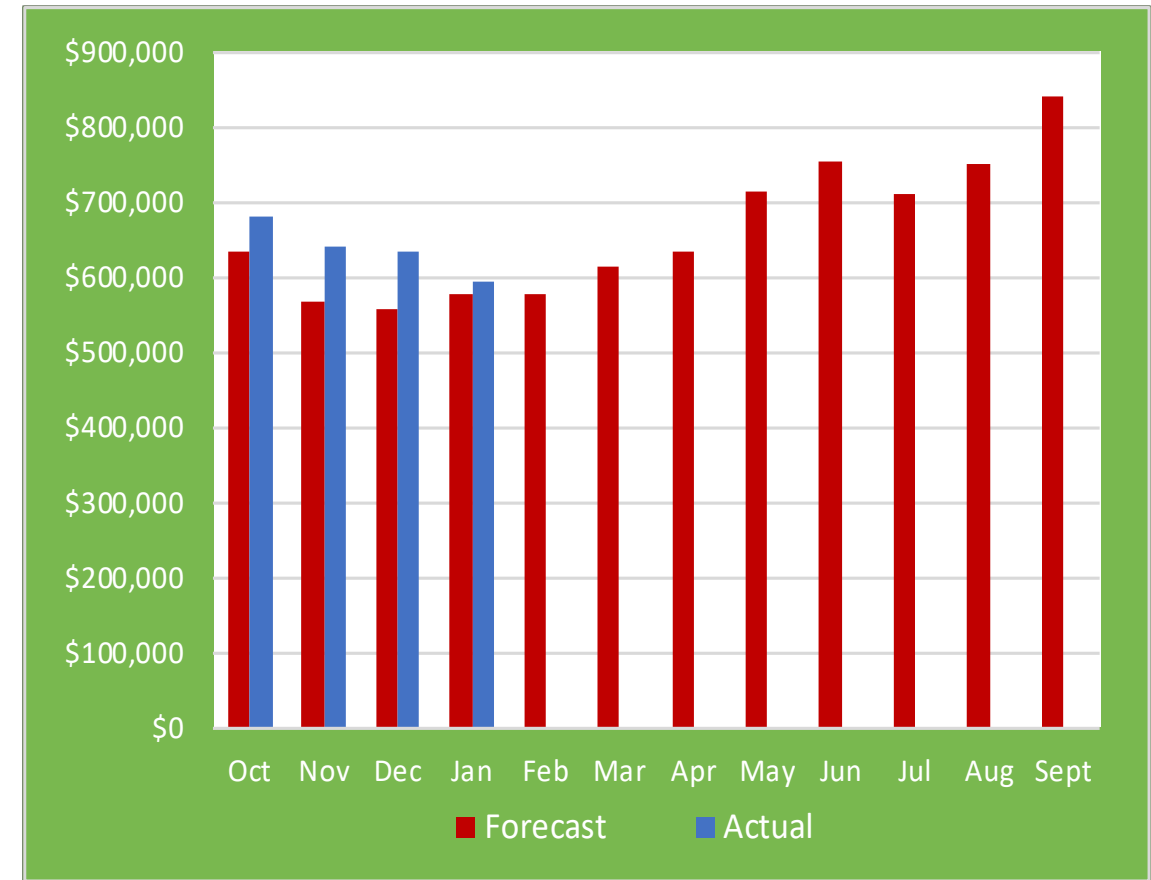


COMPREHENSIVE MONTHLY FINANCIAL REPORT – January 2023

REVENUE ANALYSIS

WATER/WASTEWATER REVENUE

Month	FY2023 Forecast	FY2023 Actual	Monthly Variance
Oct	\$ 634,316	\$ 681,114	\$ 46,798
Nov	565,847	638,648	\$ 72,801
Dec	556,864	633,214	\$ 76,350
Jan	577,369	592,464	\$ 15,095
Feb	575,847		
Mar	613,812		
Apr	634,316		
May	713,290		
Jun	752,777		
Jul	711,768		
Aug	751,255		
Sept	840,231		
Total	\$ 7,927,692	\$ 2,545,440	\$ 211,044
Cumulative Forecast	\$ 2,334,396		
Actual to Forecast	\$ 211,044	9.04%	



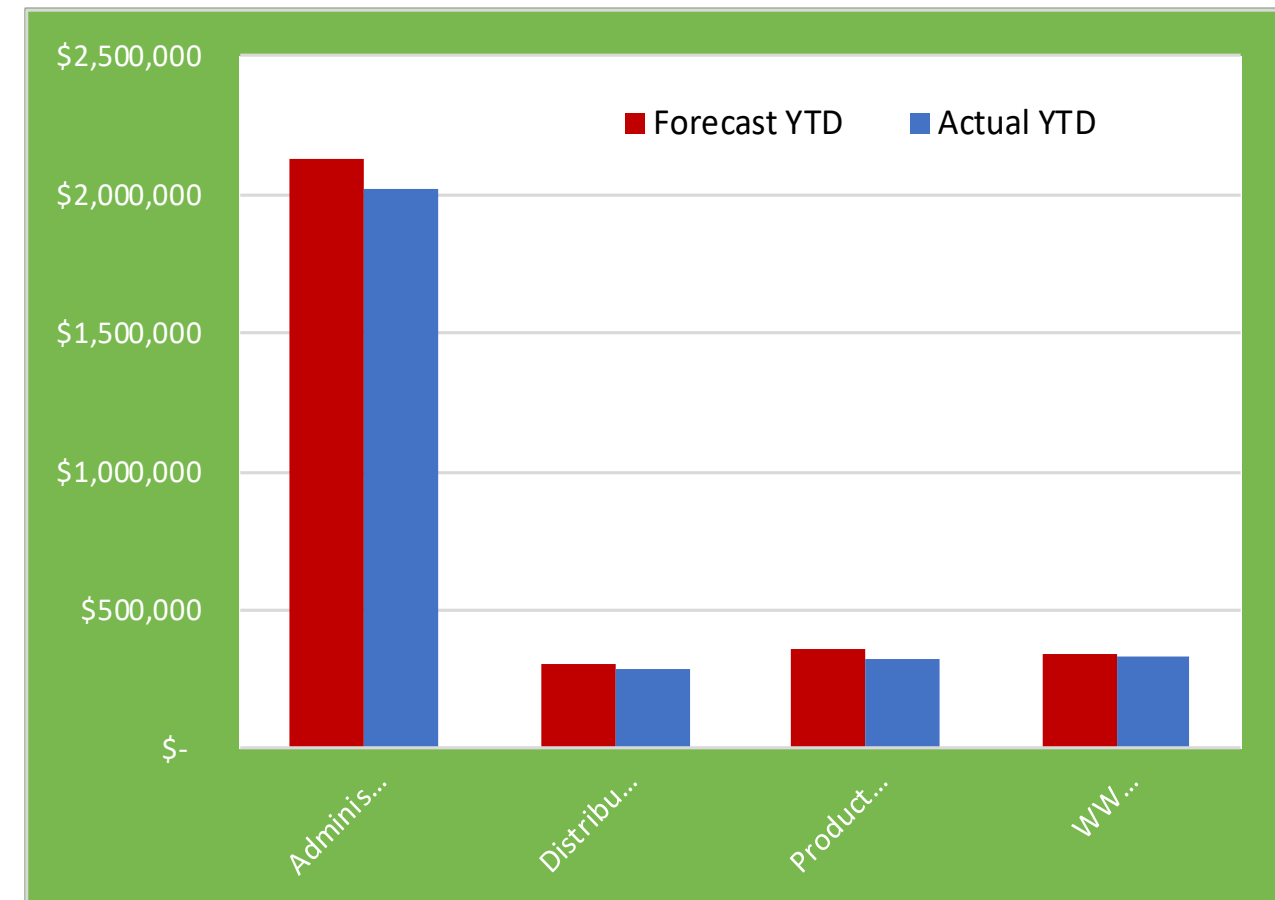
POSITIVE

The water and wastewater actual revenue is higher than forecast 9%. There were 16 new meters set this month, all residential.

EXPENSE ANALYSIS

WATER/WASTEWATER EXPENDITURES BY DIVISION

<u>Division</u>	<u>FY2023 Forecast YTD</u>	<u>FY2023 Actual YTD</u>	<u>Variance</u>
Administration	\$ 2,130,199	\$ 2,023,522	\$ (106,677)
Distribution/Collection	302,455	291,296	\$ (11,159)
Production/Treatment	362,455	320,979	\$ (41,476)
WW Treatment Plant	<u>340,942</u>	<u>335,871</u>	<u>\$ (5,071)</u>
Total	<u>\$ 3,136,051</u>	<u>\$ 2,971,668</u>	<u>\$ (164,383)</u>
Actual to Forecast		94.8%	



POSITIVE

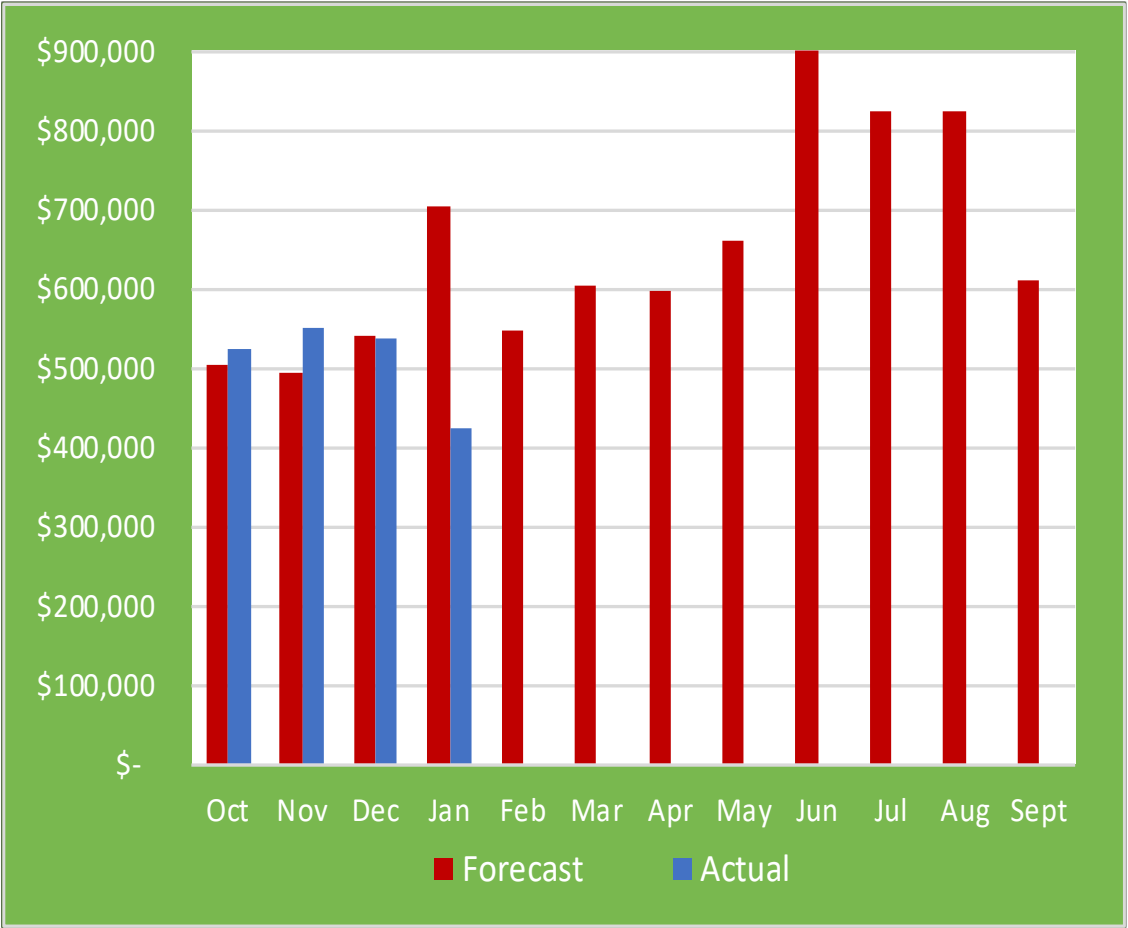
This page compares actual to forecast by the divisions within the Water/Wastewater department. The actual is almost 95% of forecast.

COMPREHENSIVE MONTHLY FINANCIAL REPORT – January 2023

REVENUE ANALYSIS

ELECTRIC FUND REVENUE

<u>Month</u>	<u>FY2023 Forecast</u>	<u>FY2023 Actual</u>	<u>Monthly Variance</u>
Oct	\$ 502,421	\$ 525,195	\$ 22,774
Nov	494,748	549,744	\$ 54,996
Dec	541,646	537,080	\$ (4,566)
Jan	703,592	422,138	\$ (281,454)
Feb	546,713		
Mar	602,275		
Apr	596,937		
May	661,009		
Jun	900,177		
Jul	824,938		
Aug	824,553		
Sept	610,232		
Total	\$ 7,809,241	\$ 2,034,157	\$ (208,250)
Cumulative Forecast	\$ 2,242,407		
Actual to Forecast	\$ (208,250)	-9.29%	



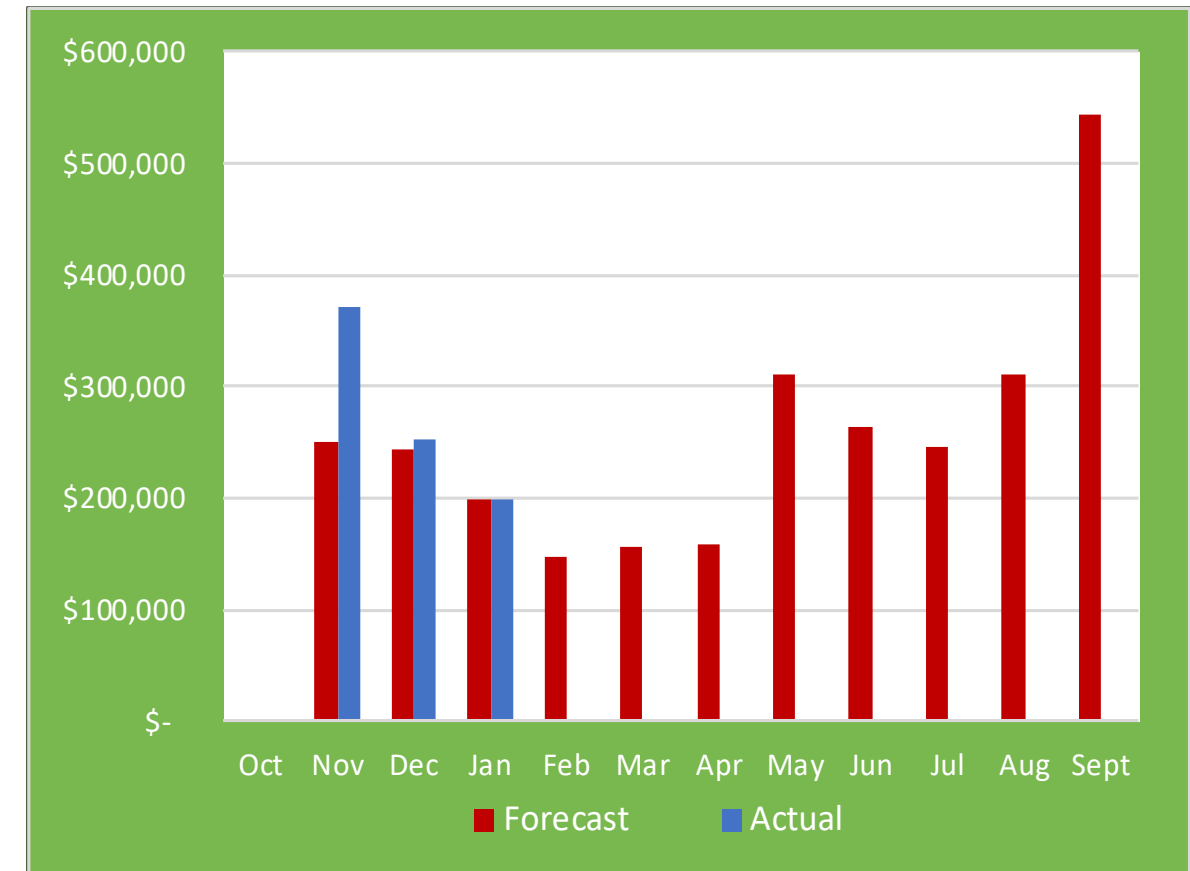
NEGATIVE

The Electric utility revenue is 9.3% below forecasted revenue. There were no new meters set this month. The large variance for January will be researched further to understand why actual is that much lower than forecast.

REVENUE ANALYSIS

HOTEL OCCUPANCY TAX REVENUE

<u>Month</u>	<u>FY2023 Forecast</u>	<u>FY2023 Actual</u>	<u>Monthly Variance</u>
Oct	\$ -	\$ -	\$ -
Nov	250,157	371,527	\$ 121,370
Dec	242,550	252,705	\$ 10,155
Jan	198,824	199,512	\$ 688
Feb	148,190		
Mar	156,848		
Apr	159,209		
May	311,172		
Jun	262,639		
Jul	245,059		
Aug	310,732		
Sept	544,620		
Total	\$ 2,830,000	\$ 823,744	\$ 132,213
Cumulative Forecast	\$ 691,531		
Actual to Forecast %	\$ 132,213	19.1%	



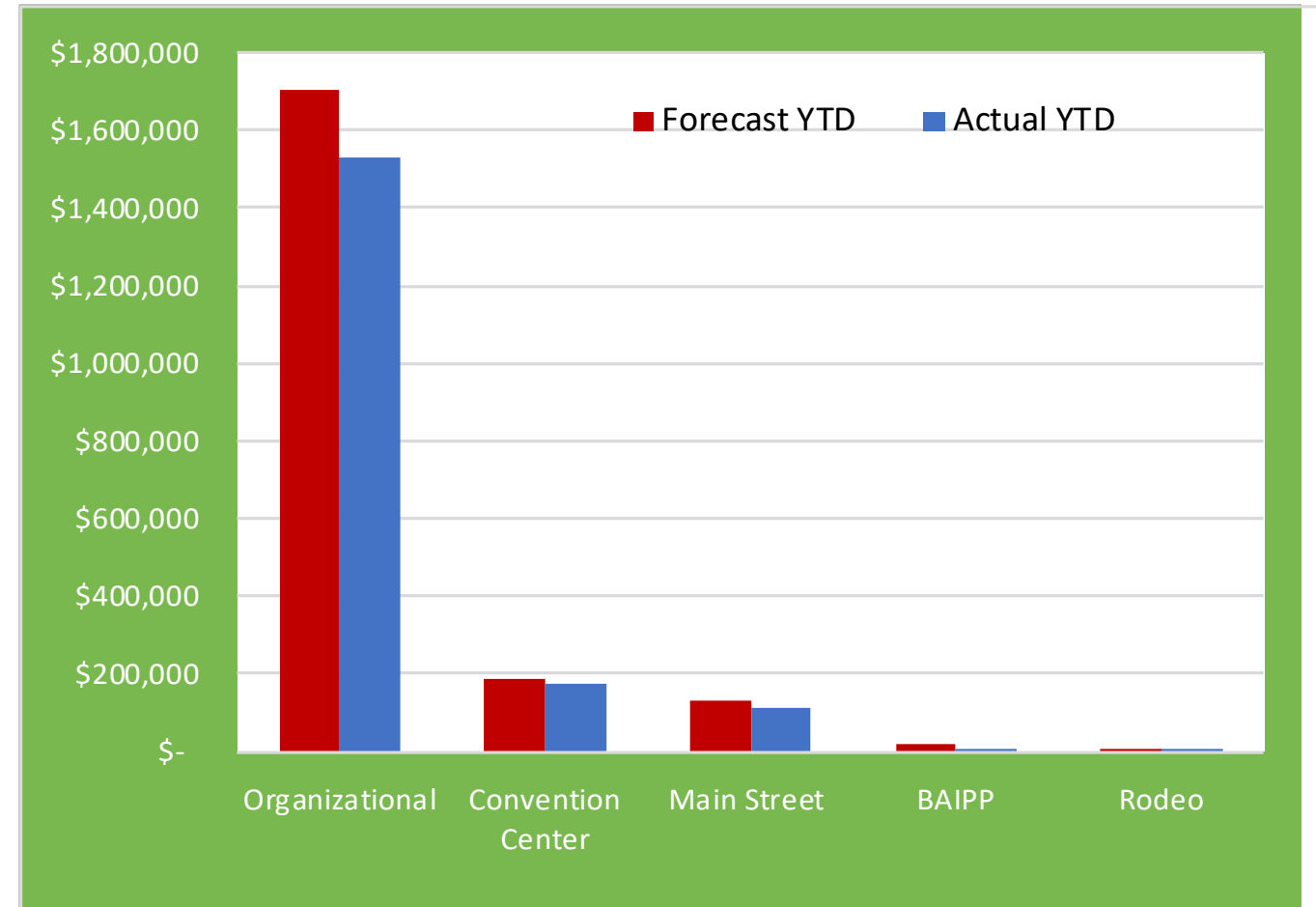
POSITIVE

This report is based on a cash method. The revenue is received by the City the month after collection. The September forecast represents the true-up of receipts for August and September. Actual is 19% over forecast.

EXPENSE ANALYSIS

HOTEL OCCUPANCY TAX EXPENDITURES BY DIVISION

<u>Division</u>	<u>FY2023 Forecast YTD</u>	<u>FY2023 Actual YTD</u>	<u>Variance</u>
Organizational	\$ 1,705,363	\$ 1,529,574	\$ (175,789)
Convention Center	187,441	175,764	\$ (11,677)
Main Street	132,614	112,697	\$ (19,917)
BAIPP	18,333	6,680	\$ (11,653)
Rodeo	1,067	1,043	\$ (24)
Total	\$ 2,044,818	\$ 1,825,758	\$ (219,060)
Actual to Forecast		89.3%	



POSITIVE

This compares actual to forecast for each division located in the Hotel Occupancy Tax Fund. YTD is reporting actual at almost 90% of forecast.

Legal fees by Attorney/Category

COMPREHENSIVE MONTHLY FINANCIAL REPORT – January 2023

FIRM	CASE	FY20-21	FY21-22	FY22-23
BUNDREN				
	Pine Forest Interlocal	\$ 944	\$ 8,946	\$ -
BOJORQUEZ				
	General Legal	\$ 166,756	\$ 275,339	\$ 68,208
	NEU Review	\$ 8,493	\$ -	\$ -
	Bastrop 552	\$ 2,810	\$ 6,571	\$ -
	Crouch Suit	\$ -	\$ 12,006	\$ -
	Cox Suit	\$ -	\$ 11,122	\$ -
	COVID-19	\$ 188	\$ -	\$ -
	Pine Forest Interlocal	\$ -	\$ 3,710	\$ 256
	Prosecutor (Municipal Court)	\$ 16,331	\$ 21,783	\$ 6,897
	Water/WW	\$ 96,362	\$ 67,910	\$ 42,645
RUSSEL RODRIGUEZ HYDE				
	Hunter's Crossing PID	\$ 10,466	\$ 3,638	\$ 1,153
MULTIPLE FIRMS				
	W/WW Contract reviews	\$ 1,425	\$ 17,836	\$ 3,920
	Crouch Suit	\$ -	\$ 11,896	\$ -
	Cox Suit	\$ -	\$ 11,994	\$ -
TAYLOR, OLSON, ADKINS, SRALLA & ELAM				
	71 Bastrop & MC Bastrop 71	\$ 7,333	\$ 18,967	\$ -
		\$ 311,106	\$ 471,716	\$ 123,079

SUMMARY OF CASE/TYPE

Row Labels	Sum of FY20-21	Sum of FY21-22	Sum of FY22-23
71 Bastrop & MC Bastrop 71	\$ 7,333	\$ 18,967	\$ -
Bastrop 552	\$ 2,810	\$ 6,571	\$ -
COVID-19	\$ 186	\$ -	\$ -
General Legal	\$ 166,756	\$ 275,339	\$ 68,208
Hunter's Crossing PID	\$ 10,466	\$ 3,638	\$ 1,153
NEU Review	\$ 8,493	\$ -	\$ -
Pine Forest Interlocal	\$ 944	\$ 12,656	\$ 256
Prosecutor (Municipal Court)	\$ 16,331	\$ 21,783	\$ 6,897
W/WW Contract reviews	\$ 1,425	\$ 17,836	\$ 3,920
Water/WW	\$ 96,362	\$ 67,910	\$ 42,645
Crouch Suit	\$ -	\$ 23,901	\$ -
Cox Suit	\$ -	\$ 23,116	\$ -
Grand Total	\$ 311,106	\$ 471,716	\$ 123,079



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Receive the Annual Comprehensive Financial Report for the period ending September 30, 2022, which includes the independent auditor's report presented by the independent audit firm of Belt Harris Pechacek, LLLP.

AGENDA ITEM SUBMITTED BY:

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

The City financial statements have been audited by Belt Harris Pechacek, LLLP, Certified Public Accountants and this Comprehensive Annual Financial Report has been prepared based upon those audited statements.

The goal of the independent audit is to provide reasonable assurance, in conformity with generally accepted accounting principles, that the financial statements of the City of Bastrop for the fiscal year ended September 30, 2022 are free of material misstatement. This independent audit involved examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used, significant estimates made by management and evaluating the overall financial statement presentation.

Belt Harris Pechacek, LLLP stated that the financial statements present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, the discretely presented component unit, each major fund and the aggregate remaining fund information of the City of Bastrop, Texas, for the fiscal year ended September 30, 2022.

The auditors have issued an unmodified audit opinion which is the best opinion that can be obtained. They have noted no recommendations for improvement over internal controls.

State law requires that every general-purpose local government publish, within six months of the close of each fiscal year, a complete set of audited financial statements. The six-month window ends March 30, 2023.

This independent audit to be made of all the accounts is also required by the City Charter and Financial Management Policies adopted by City Council.

A copy of this report will be available to review at the library and in the City Secretary's office. It will also be available on the City's website.

FISCAL IMPACT:

N/A

RECOMMENDATION:

There is no action required as this is presented for informational purposes.

ATTACHMENTS:

- Annual Comprehensive Financial Report for period ending September 30, 2022





STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Receive Annual Racial Profiling Report from the Bastrop Police Department.

AGENDA ITEM SUBMITTED BY:

Submitted by: Vicky Steffanic, Interim Chief of Police

BACKGROUND/HISTORY:

The City of Bastrop Police Department previously and is currently contracted with Alex del Carman Ph.D. of Del Carmen Consulting to assist in the preparation of the department's annual racial profiling report.

The Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted in 2001, the Texas Racial Profiling Law. During the past year, the Bastrop Police Department, in accordance with the law, has collected and reported traffic and motor vehicle-related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified, and additional requirements were implemented. Moreover, in 2017, the Sandra Bland Act was passed and signed into law (along with HB 3051 which introduced new racial and ethnic designations). The Sandra Bland Law requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. All these requirements have been met by the Bastrop Police Department and are included in this report.

This report includes statistical data relevant to contacts (as defined by the law) which were made during motor vehicle stops that took place between 1/1/22 and 12/31/22.

In accordance with Texas Code of Criminal Procedure, Article 2.134 "Compilation and Analysis of Information Collected", the chief administrator of a local law enforcement agency shall provide a Racial Profiling Report to the municipal governing body for the incident-based data compiled during the previous year no later than March 1st of each year.

The Bastrop Police Department Policy & Procedure Manual, Section 2.2 "Bias Based Policing" also requires that a Racial Profiling Report is reported to the City Council annually.

FISCAL IMPACT:

NA

RECOMMENDATION:

NA

ATTACHMENTS:

1. Power Point Presentation
2. 2022 City of Bastrop Police Department Racial Profiling Report (Del Carmen Consulting)

2022 Annual City of Bastrop Police Department Racial Profiling Report



Overview

*"The Sole Reason We Exist Is To Serve the
Citizens of Bastrop"*

On September 1st, 2001, Senate Bill 1074 was enacted and created what has become to be known as the Racial Profiling Law.

Each year, the chief administrator of a law enforcement agency is required to submit an annual report to the Texas Commission on Law Enforcement and to our City Council.

Overview

*"The Sole Reason We Exist Is To Serve the
Citizens of Bastrop"*

In 2022, the City of Bastrop Police Department conducted **3,811** traffic stops. This presentation depicts the contacts as they relate to:

- Driver's Gender
- Driver's Race / Ethnicity
- Reason for & location of the Stop
- Search conducted
- Contraband discovered during search

Overview

*"The Sole Reason We Exist Is To Serve the
Citizens of Bastrop"*

The **3,811** traffic stops resulted in either:

- a warning being issued
- a citation being issued
- a warning being issued / with arrest
- a citation being issued / with arrest

Traffic Stops

- Gender -



"The Sole Reason We Exist Is To Serve the Citizens of Bastrop"

Number of Stops	Gender	Percentage of Stops
1611	Female	42.272%
2200	Male	57.727%

3,811 Total Traffic Stops
Conducted in 2022

Traffic Stops

- Race / Ethnicity -



"The Sole Reason We Exist Is To Serve the Citizens of Bastrop"

Number of Stops	Race / Ethnicity	Percentage of Stops
37	Alaska Native Native American	0.97%
49	Asian Pacific Islander	1.285%
419	Black	10.994%
1224	Hispanic / Latino	32.117%
2082	White	54.631%

3,811 Total Traffic Stops conducted in 2022

Traffic Stops

- Race / Ethnicity Known -



"The Sole Reason We Exist Is To Serve the Citizens of Bastrop"

Number of Stops	Race / Ethnicity Known Prior to Stop	Percentage of Stops
16	Yes	0.41%
3795	No	99.58%

3,811 Total Traffic Stops conducted in 2022

Traffic Stops

- Reasons -



"The Sole Reason We Exist Is To Serve the Citizens of Bastrop"

Number of Stops	Reason for the Stop	Percentage of Stops
2431	Moving Traffic Violation	63.789%
6	Pre-Existing Knowledge	0.157%
1290	Vehicle Traffic Violation	33.849%
84	Violation of Law	2.204%

3,811 Total Traffic Stops conducted in 2022

Traffic Stops

- Location -



"The Sole Reason We Exist Is To Serve the Citizens of Bastrop"

Number of Stops	Location of Stop	Percentage of Stops
2,021	City Street	53.030%
0	County Road	0.0%
0	Private Property or Other	0.0%
1790	State Highway	46.969%

3,811 Total Traffic Stops conducted in 2022

Traffic Stops

- Searches -



"The Sole Reason We Exist Is To Serve the Citizens of Bastrop"

Number of Stops	Search Conducted	Percentage of Stops
143	Yes	3.752%
3668	No	96.247%

3,811 Total Traffic Stops conducted in 2022

Traffic Stops

- Search type -



"The Sole Reason We Exist Is To Serve the Citizens of Bastrop"

Number of Stops	Reason for Search	Percentage of Searches
21	Consent	14.685%
2	Contraband in Plain View	1.398%
6	Incident to Arrest	4.195%
5	Inventory	3.496%
109	Probable Cause	76.223%

3,811 Total Traffic Stops conducted in 2022. 143 Searches conducted.

Traffic Stops

- Search / Contraband-



"The Sole Reason We Exist Is To Serve the Citizens of Bastrop"

Number of Stops	Contraband Discovered	Percentage of Searches
120	Yes	83.916%
23	No	16.083%

3,811 Total Traffic Stops conducted in 2022. 143 Searches conducted.

Traffic Stops

- Searches

types of contraband



"The Sole Reason We Exist Is To Serve the Citizens of Bastrop"

Number of Stops	Description of Contraband	Percentage of Searches
16	Alcohol	11.188%
109	Drugs	76.223%
3	Other	2.097%
0	Currency	0%
2	Weapons / Stolen Property	1.398%

3,811 Total Traffic Stops conducted in 2022. 143 Searches conducted.

Compliments / Complaints



*"The Sole Reason We Exist Is To Serve the
Citizens of Bastrop"*

Compliments or Complaints can be made:

online : cityofbastrop.org/page/police.home

in person: at the City of Bastrop Police Department

All feedback on our customer service is welcomed!

2022 Racial Profiling Report

Bastrop Police Department



DC | **DEL CARMEN**
Consulting[®]
LAW ENFORCEMENT EXPERTS

"Dr. Alex del Carmen's work on racial profiling exemplifies the very best of the Sandra Bland Act, named after my daughter. My daughter's pledge to fight for injustice is best represented in the high quality of Dr. del Carmen's reports which include, as required by law, the data analysis, audits, findings and recommendations. I commend the agencies that work with him as it is clear that they have embraced transparency and adherence to the law."

-Quote by Geneva Reed (Mother of Sandra Bland)

January 12, 2023

Bastrop City Council
1311 Chestnut Street
Bastrop, TX 78602



Dear Distinguished Members of the City Council,

In 2001 the Texas Legislature, with the intent of addressing the issue of racial profiling in policing, enacted the Texas Racial Profiling Law. During the last calendar year, the Bastrop Police Department, in accordance with the law, has collected and reported traffic and motor vehicle related contact data for the purpose of identifying and addressing (if necessary) areas of concern regarding racial profiling practices. In the 2009 Texas legislative session, the Racial Profiling Law was modified and additional requirements were implemented. Further, in 2017 the Sandra Bland Act was passed and signed into law (along with HB 3051, which introduced new racial and ethnic designations). The Sandra Bland Law currently requires that law enforcement agencies in the state collect additional data and provide a more detailed analysis. All of these requirements have been met by the Bastrop Police Department and are included in this report.

This report consists of three sections with information on motor vehicle-related contacts. In addition, when appropriate, documentation is included which demonstrates the manner in which the Bastrop Police Department has complied with the Texas Racial Profiling Law. In section one, you will find the table of contents. Section two documents compliance by the Bastrop Police Department relevant to the requirements established in the Texas Racial Profiling Law. That is, you will find documents relevant to the training of all police personnel on racial profiling prevention and the institutionalization of the compliment and complaint processes, as required by law.

Finally, section three contains statistical data relevant to contacts (as defined by the law) which were made during the course of motor vehicle stops that took place between 1/1/22 and 12/31/22. Further, this section contains the Tier 2 form, which is required to be submitted to this particular organization and the law enforcement agency's local governing authority by March 1 of each year. The data in this report has been analyzed and compared to information derived from the U.S. Census Bureau's Fair Roads Standard. The final analysis and recommendations are also included in this report.

The last section of the report includes the original draft of the Texas Racial Profiling Law, SB1074, as well as the Sandra Bland Act (current law). Also in this section, a list of requirements relevant to the Racial Profiling Law, as established by TCOLE (Texas Commission on Law Enforcement), is included. The findings in this report support the Bastrop Police Department's commitment to comply with the Texas Racial Profiling Law.

Sincerely,

Alex del Carmen, Ph.D.

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Public Education on Responding to Compliments and Complaints

Informing the Public on the Process of Filing a Compliment or Complaint with the Bastrop Police Department

The Texas Racial Profiling Law requires that police agencies provide information to the public regarding the manner in which to file a compliment or racial profiling complaint. In an effort to comply with this particular component, the Bastrop Police Department launched an educational campaign aimed at informing the public on issues relevant to the racial profiling complaint process.

The police department made available, in the lobby area and on its web site, information relevant to filing a compliment and complaint on a racial profiling violation by a Bastrop Police Officer. In addition, each time an officer issues a citation, ticket or warning, information on how to file a compliment or complaint is given to the individual cited. This information is in the form of a web address (including in the document issued to the citizen), which has instructions and details specifics related to the compliment or complaint processes.

It is believed that through these efforts, the community has been properly informed of the new policies and the complaint processes relevant to racial profiling.

All Bastrop Police Officers have been instructed, as specified in the Texas Racial Profiling Law, to adhere to all Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements. To date, all sworn officers of the Bastrop Police Department have completed the TCOLE basic training on racial profiling. The main outline used to train the officers of Bastrop has been included in this report.

It is important to recognize that the Chief of the Bastrop Police Department has also met the training requirements, as specified by the Texas Racial Profiling Law, in the completion of the LEMIT program on racial profiling. The satisfactory completion of the racial profiling training by the sworn personnel of the Bastrop Police Department fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Law.

Racial Profiling Course 3256
Texas Commission on Law Enforcement
September 2001

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

Target Population: Licensed law enforcement personnel in Texas

Prerequisites: Experience as a law enforcement officer

Length of Course: A suggested instructional time of 4 hours

Material Requirements: Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations

Instructor Qualifications: Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling CCP 3.05

Racial profiling prohibited CCP 2.131

Law enforcement policy on racial profiling CCP 2.132

Reports required for traffic and pedestrian stops CCP 2.133

Liability CCP 2.136

Racial profiling education for police chiefs Education Code 96.641

Training program Occupations Code 1701.253

Training required for intermediate certificate Occupations Code 1701.402

Definition of "race or ethnicity" for form Transportation Code 543.202

A. Written departmental policies

1. Definition of what constitutes racial profiling
2. Prohibition of racial profiling
3. Complaint process
4. Public education
5. Corrective action
6. Collection of traffic-stop statistics
7. Annual reports

B. Not prima facie evidence

C. Feasibility of use of video equipment

D. Data does not identify officer

E. Copy of complaint-related video evidence to officer in question

F. Vehicle stop report

1. Physical description of detainees: gender, race or ethnicity
2. Alleged violation
3. Consent to search
4. Contraband
5. Facts supporting probable cause
6. Arrest
7. Warning or citation issued

G. Compilation and analysis of data

H. Exemption from reporting - audio/video equipment

I. Officer non-liability

J. Funding

K. Required training in racial profiling

1. Police chiefs
2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) - see legislation 77R-SB1074

1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)

1. Motor vehicle search exemption
2. Traffic violation acceptable as pretext for further investigation
3. Selective enforcement can be challenged

B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

1. Stop & Frisk doctrine
2. Stopping and briefly detaining a person
3. Frisk and pat down

C. Other cases

1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
6. New York v. Belton, 453 U.S. 454 (1981)



2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

- A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism.
- B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole .
- C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers.
- D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop.
- E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources.



3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially motivated traffic stop.

- A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements
- B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)
- C. A typical traffic stop resulting from racial profiling
1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
 2. The driver and passengers are questioned about things that do not relate to the traffic violation
 3. The driver and passengers are ordered out of the vehicle
 4. The officers visually check all observable parts of the vehicle
 5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
 6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)



3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

- A. Drug courier profile (adapted from a profile developed by the DEA)
1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
 2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
 3. Vehicle is rented
 4. Driver is a young male, 20-35
 5. No visible luggage, even though driver is traveling
 6. Driver was over-reckless or over-cautious in driving and responding to signals
 7. Use of air fresheners
- B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

- A. Thinking about the totality of circumstances in a vehicle stop
- B. Vehicle exterior
1. Non-standard repainting (esp. on a new vehicle)
 2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
 3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
 4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)
- C. Pre-stop indicators
1. Not consistent with traffic flow
 2. Driver is overly cautious, or driver/passengers repeatedly look at police car
 3. Driver begins using a car- or cell-phone when signaled to stop
 4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)
- D. Vehicle interior
1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
 2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074: <http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm>

*Report on
Compliments
and Racial
Profiling
Complaints*



Report on Complaints

The following table contains data regarding officers that have been the subject of a complaint, during the time period of 1/1/22-12/31/22 based on allegations outlining possible violations related to the Texas Racial Profiling Law. The final disposition of the case is also included.

A check above indicates that the Bastrop Police Department has not received any complaints, on any members of its police force, for having violated the Texas Racial Profiling Law during the time period of 1/1/22-12/31/22.

Complaints Filed for Possible Violations of The Texas Racial Profiling Law

Complaint Number	Alleged Violation	Disposition of the Case
1	Racial Profiling	Not Sustained

Additional Comments:

Tables Illustrating Motor Vehicle-Related Contacts

TIER 2 DATA

TOTAL STOPS: 3,811

STREET ADDRESS OR APPROXIMATE LOCATION OF STOP.

City Street	2,021
US Highway	0
County Road	0
State Highway	1,790
Private Property	0

WAS RACE OR ETHNICITY KNOWN PRIOR TO STOP?

Yes	16
No	3,795

RACE OR ETHNICITY

Alaska Native/American Indian	37
Asian/Pacific Islander	49
Black	419
White	2,082
Hispanic/Latino	1,224

GENDER

Female Total: 1,611

Alaska Native/American Indian	9
Asian/Pacific Islander	15
Black	150
White	976
Hispanic/Latino	461

Male Total: 2,200

Alaska Native/American Indian	28
Asian/Pacific Islander	34
Black	269
White	1,106
Hispanic/Latino	763

REASON FOR STOP?

Violation of Law Total: 84

Alaska Native/American Indian	1
Asian/Pacific Islander	0
Black	5
White	52
Hispanic/Latino	26

Pre-existing Knowledge Total: 6

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	3
Hispanic/Latino	2

Moving Traffic Violation Total: 2,431

Alaska Native/American Indian	29
Asian/Pacific Islander	45
Black	271
White	1,273
Hispanic/Latino	813

TIER 2 DATA

Vehicle Traffic Violation Total: 1,290

Alaska Native/American Indian	7
Asian/Pacific Islander	4
Black	142
White	754
Hispanic/Latino	383

Contraband (in plain view) Total: 2

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	2

WAS SEARCH CONDUCTED?

	YES	NO
Alaska Native/American Indian	2	35
Asian/Pacific Islander	0	49
Black	38	381
White	49	2,033
Hispanic/Latino	54	1,170
TOTAL	143	3,668

Probable Cause Total: 109

Alaska Native/American Indian	2
Asian/Pacific Islander	0
Black	33
White	35
Hispanic/Latino	39

Inventory Total: 5

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	4
Hispanic/Latino	1

REASON FOR SEARCH?

Consent Total: 21

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	4
White	7
Hispanic/Latino	10

Incident to Arrest Total: 6

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	3
Hispanic/Latino	2

TIER 2 DATA

WAS CONTRABAND DISCOVERED?

	YES	NO
Alaska Native/American Indian	1	1
Asian/Pacific Islander	0	0
Black	34	4
White	42	7
Hispanic/Latino	43	11
TOTAL	120	23

Did the finding result in arrest (total should equal previous column)?

	YES	NO
Alaska Native/American Indian	0	1
Asian/Pacific Islander	0	0
Black	10	24
White	11	31
Hispanic/Latino	12	31
TOTAL	33	87

DESCRIPTION OF CONTRABAND

Drugs Total: 109

Alaska Native/American Indian	1
Asian/Pacific Islander	0
Black	33
White	37
Hispanic/Latino	38

Currency Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Weapons Total: 2

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	1
White	1
Hispanic/Latino	0

Alcohol Total: 16

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	4
White	4
Hispanic/Latino	8

TIER 2 DATA

Stolen Property Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Other Total: 3

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	1
Hispanic/Latino	2

RESULT OF THE STOP

Verbal Warning Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Written Warning Total: 2,634

Alaska Native/American Indian	27
Asian/Pacific Islander	36
Black	256
White	1,590
Hispanic/Latino	725

Citation Total: 1,125

Alaska Native/American Indian	10
Asian/Pacific Islander	13
Black	152
White	470
Hispanic/Latino	480

Written Warning and Arrest Total: 18

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	4
White	9
Hispanic/Latino	5

Citation and Arrest Total: 34

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	7
White	13
Hispanic/Latino	14

Arrest Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

TIER 2 DATA

ARREST BASED ON

Violation of Penal Code Total: 28

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	8
White	13
Hispanic/Latino	7

Violation of Traffic Law Total: 1

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	1

Violation of City Ordinance Total: 0

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	0
White	0
Hispanic/Latino	0

Outstanding Warrant Total: 23

Alaska Native/American Indian	0
Asian/Pacific Islander	0
Black	3
White	9
Hispanic/Latino	11

Was physical force used resulting in bodily injury during the stop?

	YES	NO
Alaska Native/American Indian	0	37
Asian/Pacific Islander	0	49
Black	0	419
White	0	2,082
Hispanic/Latino	0	1,224
TOTAL	0	3,811

Tables Illustrating Motor Vehicle Related Contact Data

Table 1. Citations and Warnings

Race/ Ethnicity	All Contacts	Citations	Verbal Warning	Written Warning	Contact Percent	Citation Percent	Verbal Percent	Written Percent
Alaska Native/ American Indian	37	10	0	27	1%	1%	0%	1%
Asian/ Pacific Islander	49	13	0	36	1%	1%	0%	1%
Black	419	159	0	256	11%	14%	0%	10%
White	2,082	483	0	1,590	55%	42%	0%	60%
Hispanic/ Latino	1,224	494	0	725	32%	43%	0%	28%
TOTAL	3,811	1,159	0	2,634	100%	100%	0%	100%

Table 2. Motor Vehicle Contacts and Fair Roads Standard Comparison

Comparison of motor vehicle-related contacts with households that have vehicle access.

Race/Ethnicity	Contact Percentage	Households with Vehicle Access
Alaska Native/American Indian	1%	1%
Asian/Pacific Islander	1%	4%
Black	11%	7%
White	55%	65%
Hispanic/Latino	32%	23%
TOTAL	100%	100%

Table 3. Motor Vehicle Searches and Arrests.

Race/Ethnicity	Searches	Consent Searches	Arrests
Alaska Native/American Indian	2	0	0
Asian/Pacific Islander	0	0	0
Black	38	4	11
White	49	7	22
Hispanic/Latino	54	10	19
TOTAL	143	21	52

Table 4. Instances Where Peace Officers Used Physical Force Resulting in Bodily Injury

Instances Where Peace Officers Used Physical Force that Resulted in Bodily Injury	Arrest	Location of Stop	Reason for Stop

Table 5. Search Data

Race/Ethnicity	Searches	Contraband Found Yes	Contraband Found No	Arrests	Percent Searches	Percent Contraband Found	Percent No Contraband	Percent Arrest
Alaska Native/American Indian	2	1	1	0	1%	1%	4%	0%
Asian/Pacific Islander	0	0	0	0	0%	0%	0%	0%
Black	38	34	4	11	27%	28%	17%	21%
White	49	42	7	22	34%	35%	30%	42%
Hispanic/Latino	54	43	11	19	38%	36%	48%	37%
TOTAL	143	120	23	52	100%	100%	100%	100%

Table 6. Report on Audits.

The following table contains data regarding the number and outcome of required data audits during the period of 1/1/22-12/31/22.

Number of Data Audits Completed	Date of Completion	Outcome of Audit
1	03/01/22	Data was valid and reliable
2	06/01/22	Data was valid and reliable
3	09/01/22	Data was valid and reliable
4	12/01/22	Data was valid and reliable

ADDITIONAL COMMENTS:

Table 7. Instance Where Force Resulted in Bodily Injury.

Race/Ethnicity	Number	Percent
Alaska Native/American Indian	0	0%
Asian/Pacific Islander	0	0%
Black	0	0%
White	0	0%
Hispanic/Latino	0	0%
TOTAL	0	0%

Table 8. Reason for Arrests from Vehicle Contact

Race/ Ethnicity	Violation of Penal Code	Violation of Traffic Law	Violation of City Ordinance	Outstanding Warrant	Percent Penal Code	Percent Traffic Law	Percent City Ordinance	Percent Warrant
Alaska Native/ American Indian	0	0	0	0	0%	0%	0%	0%
Asian/ Pacific Islander	0	0	0	0	0%	0%	0%	0%
Black	8	0	0	3	29%	0%	0%	13%
White	13	0	0	9	46%	0%	0%	39%
Hispanic/ Latino	7	1	0	11	25%	100%	0%	48%
TOTAL	28	1	0	23	100%	100%	0%	100%

Table 9. Contraband Hit Rate

Race/ Ethnicity	Searches	Contraband Found Yes	Contraband Hit Rate	Search Percent	Contraband Percent
Alaska Native/ American Indian	2	1	50%	1%	1%
Asian/ Pacific Islander	0	0	0%	0%	0%
Black	38	34	89%	27%	28%
White	49	42	86%	34%	35%
Hispanic/Latino	54	43	80%	38%	36%

Analysis and Interpretation of Data

In 2001, the Texas Legislature passed Senate Bill 1074, which eventually became the Texas Racial Profiling Law. This particular law came into effect on January 1, 2002 and required all police departments in Texas to collect traffic-related data and report this information to their local governing authority by March 1 of each year. This law remained in place until 2009, when it was modified to include the collection and reporting of all motor vehicle-related contacts in which a citation was issued or an arrest was made. Further, the modification to the law further requires that all police officers indicate whether or not they knew the race or ethnicity of the individuals before detaining them. In addition, it became a requirement that agencies report motor vehicle-related data to their local governing authority and to the Texas Commission on Law Enforcement (TCOLE) by March 1 of each year. The purpose in collecting and disclosing this information is to determine if police officers in any particular municipality are engaging in the practice of racially profiling minority motorists.

One of the central requirements of the law is that police departments interpret motor vehicle-related data. Even though most researchers would likely agree that it is within the confines of good practice for police departments to be accountable to the citizenry while carrying a transparent image before the community, it is in fact very difficult to determine if individual police officers are engaging in racial profiling from a review and analysis of aggregate/institutional data. In other words, it is challenging for a reputable researcher to identify specific "individual" racist behavior from aggregate-level "institutional" data on traffic or motor vehicle-related contacts.

As previously noted, in 2009 the Texas Legislature passed House Bill 3389, which modified the Racial Profiling Law by adding new requirements; this took effect on January 1, 2010. The changes included, but are not limited to, the re-definition of a contact to include motor vehicle-related contacts in which a citation was issued or an arrest was made. In addition, it required police officers to indicate if they knew the race or ethnicity of the individual before detaining them. The 2009 law also required adding "Middle Eastern" to the racial and ethnic category and submitting the annual data report to TCOLE before March 1 of each year.

More recently, in 2017 the Texas Legislators passed HB 3051 which removed the Middle Eastern data requirement while standardizing the racial and ethnic categories relevant to the individuals that came in contact with police. In addition, the Sandra Bland Act (SB 1849) was passed and became law. Thus, the most significant legislative mandate (Sandra Bland Act) in Texas history regarding data requirements on law enforcement contacts became law and took effect on January 1, 2018. The Sandra Bland Act not only currently requires the extensive collection of data relevant to police motor vehicle contacts, but it also mandates for the data to be analyzed while addressing the following:

1. A comparative analysis of the information compiled (under Article 2.133):

- a. Evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities;*
- b. Examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction;*
- c. Evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches.*

2. Information related to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

As part of their effort to comply with The Texas Racial Profiling/Sandra Bland Law, the Bastrop Police Department commissioned the analysis of its 2022 contact data. Hence, two different types of data analyses were performed. The first of these involved a careful evaluation of the 2022 motor vehicle-related data. This particular analysis measured, as required by the law, the number and percentage of Whites, Blacks, Hispanics or Latinos, Asians and Pacific Islanders, Alaska Natives and American Indians (Middle Easterners and individuals belonging to the “other” category, as optional categories), who came in contact with police in the course of a motor vehicle-related contact and were either issued a ticket, citation, or warning or an arrest was made. Also included in this data were instances when a motor vehicle contact took place for an alleged violation of the law or ordinance. The Tier 2 data analysis included, but was not limited to, information relevant to the number and percentage of contacts by race/ethnicity, gender, reason for the stop, location of stop, searches while indicating the type of search performed, result of stop, basis of an arrest, and use of physical force resulting in bodily injury.

The additional data analysis performed was based on a comparison of the 2022 motor vehicle contact data with a specific baseline. When reading this particular analysis, one should consider that there is disagreement in the literature regarding the appropriate baseline to be used when analyzing motor vehicle-related contact information. Of the baseline measures available, the Bastrop Police Department accepted our recommendation to rely, as a baseline measure, on the Fair Roads Standard. This particular baseline is established on data obtained through the U.S. Census Bureau (2020) relevant to the number of households that have access to vehicles while controlling for the race and ethnicity of the heads of households.

It should be noted that the census data presents challenges to any effort made at establishing a fair and accurate racial profiling analysis. That is, census data contains information on all residents of a particular community, regardless whether they are among the driving population. Further, census data, when used as a baseline of comparison, presents the challenge that it captures information related to city residents only, thus excluding individuals who may have come in contact with the Bastrop Police Department in 2022 but live outside city limits. In some jurisdictions the percentage of the population that comes in contact with the police but lives outside city limits represents a substantial volume of all motor vehicle-related contacts made in a given year.

In 2002, some civil rights groups in Texas expressed their concern and made recommendations to the effect that all police departments should rely, in their data analysis, on the Fair Roads Standard. This source contains census data specific to the number of “households” that have access to vehicles. Thus, proposing to compare “households” (which may have multiple residents and only a few vehicles) with “contacts” (an individual-based count). In essence this constitutes a comparison that may result in ecological fallacy. Despite this risk, as noted earlier, the Bastrop Police Department accepted the recommendation to utilize this form of comparison (i.e., census data relevant to households with vehicles) in an attempt to demonstrate its “good will” and “transparency” before the community. Thus, the Fair Roads Standard data obtained and used in this study is specifically relevant to the city of Bastrop.

Tier 2 (2022) Motor Vehicle-Related Contact Analysis

When examining the enhanced and more detailed Tier 2 data collected in 2022, it was evident that most motor vehicle-related contacts were made with Whites, followed by Hispanics. Of those who came in contact with police, most tickets or citations were issued to Hispanics and Whites; this was followed by Blacks. However, in terms of written warnings, most of these were issued to Whites, followed by Hispanics.

On searches and arrests, the data showed that most searches took place among Hispanics. When considering all searches, most were consented by Hispanics and Whites, while most custody arrests were also of Whites. Overall, most searches resulted in contraband; of those that produced contraband, most were of Hispanics; this was followed by Whites. Of the searches that did not produce contraband, most were of Hispanics. Most arrests were made of Whites. Most of the arrests that originated from a violation of the penal code involved Whites. Overall, the police department does not report any instances where force was used that resulted in bodily injury.

Comparative Analysis

A comprehensive analysis of the motor vehicle contacts to the census data relevant to the number of “households” in Bastrop who indicated in the 2020 census that they had access to vehicles, produced interesting findings. Specifically, the percentage of Whites, Asians, and American Indians who came in contact with police was the same or lower than the percentage of White, Asian, and American Indian households in Bastrop that claimed in the 2020 census to have access to vehicles. The opposite was true of Blacks and Hispanics. That is, a higher percentage of Blacks and Hispanics came in contact with police than the percentage of Black and Hispanic households in Bastrop that claimed in the 2020 census to have access to vehicles.

The comprehensive analysis of the searches resulting in contraband shows that the most significant contraband hit rate is of Blacks. This was followed by Whites and Hispanics. This means that among all searches performed in 2022, the most significant percentage of these that resulted in contraband was among Blacks. The lowest contraband hit rate was among American Indians.

Summary of Findings

As referenced earlier, the most recent Texas Racial Profiling Law requires that police departments perform data audits in order to validate the data being reported. Consistent with this requirement, the Bastrop Police Department has engaged del Carmen Consulting, LLC in order to perform these audits in a manner consistent with normative statistical practices. As shown in Table 6, the audit performed reveals that the data is valid and reliable. Further, as required by law, this report also includes an analysis on the searches performed. This analysis includes information on whether contraband was found as a result of the search while controlling for race/ethnicity. The search analysis demonstrates that the police department is engaging in search practices consistent with national trends in law enforcement.

While considering the findings produced as a result of this analysis, it is recommended that the Bastrop Police Department should continue to collect and evaluate additional information on motor vehicle contact data (i.e., reason for probable cause searches, contraband detected), which may prove to be useful when determining the nature of the contacts police officers are making with all individuals.

As part of this effort, the Bastrop Police Department should continue to:

- 1) Perform an independent analysis on contact and search data in the upcoming year.
- 2) Commission data audits in 2023 in order to assess data integrity; that is, to ensure that the data collected is consistent with the data being reported.

The comprehensive data analysis included in this report serves as evidence that the Bastrop Police Department has complied with the Texas Racial Profiling Law and all of its requirements. Further, the report demonstrates that the police department has incorporated a comprehensive racial profiling policy, currently offers information to the public on how to file a compliment or complaint, commissions quarterly data audits in order to ensure validity and reliability, collects and commissions the analysis of Tier 2 data, and ensures that the practice of racial profiling will not be tolerated.

Checklist

The following requirements were met by the Bastrop Police Department in accordance with The Texas Racial Profiling Law:

- ✔ Implement a Racial Profiling Policy citing act or actions that constitute racial profiling.
- ✔ Include in the racial profiling policy, a statement indicating prohibition of any peace officer employed by the Bastrop Police Department from engaging in racial profiling.
- ✔ Implement a process by which an individual may file a complaint regarding racial profiling violations.
- ✔ Provide public education related to the compliment and complaint process.
- ✔ Implement disciplinary guidelines for officers found in violation of the Texas Racial Profiling Law.
- ✔ Collect, report and analyze motor vehicle data (Tier 2).
- ✔ Commission Data Audits and a Search Analysis.
- ✔ Indicate total number of officers who knew and did not know, the race/ethnicity of individuals before being detained.
- ✔ Produce an annual report on police contacts (Tier 2) and present this to the local governing body and TCOLE by March 1, 2023.
- ✔ Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation.

Legislative & Administrative
Addendum



TCOLE GUIDELINES

Guidelines for Compiling and Reporting Data under Senate Bill 1074

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) for law enforcement agencies. The Commission developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement but is not binding. The commentary can serve as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;
- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person’s race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer’s best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, “the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.”

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

Senate Bill 1074 from the 77th Session of the Texas Legislature created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide an analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003. Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops

including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and
- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Senate Bill 1074 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

The Texas Law on Racial Profiling

S.B. No. 1074 - An Act relating to the prevention of racial profiling by certain peace officers.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131 through 2.138 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the

policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. (a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED.

(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled

during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and
(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT.

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Art. 2.138. RULES. The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 96.641, Education Code, is amended by adding Subsection (j) to read as follows:

(j) As part of the initial training and continuing education for police chiefs required under this section, the institute shall establish a program on racial profiling. The program must include an examination of the best practices for:

(1) monitoring peace officers' compliance with laws and internal agency policies relating to racial profiling;

(2) implementing laws and internal agency policies relating to preventing racial profiling;
and

(3) analyzing and reporting collected information.

SECTION 4. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 5. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 6. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. (a) In this section, "race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including race or ethnicity, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) [~~7~~] the date of conviction; and

(9) [~~8~~] the amount of the fine or forfeiture.

SECTION 7. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 8. A local law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 9. Not later than January 1, 2002:

(1) the Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Subsection (e), Section 1701.253, Occupations Code, as added by this Act; and

(2) the Bill Blackwood Law Enforcement Management Institute of Texas shall establish a program on racial profiling as required by Subsection (j), Section 96.641, Education Code, as added by this Act.

SECTION 10. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Subsection (e), Section 1701.253, Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 11. An individual appointed or elected as a police chief before the effective date of this Act shall complete a program on racial profiling established under Subsection (j), Section 96.641, Education Code, as added by this Act, not later than September 1, 2003.

SECTION 12. This Act takes effect September 1, 2001

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1074 passed the Senate on April 4, 2001, by the following vote: Yeas 28, Nays 2; May 21, 2001, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 22, 2001, House granted request of the Senate; May 24, 2001, Senate adopted Conference Committee Report by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1074 passed the House, with amendments, on May 15, 2001, by a non-record vote; May 22, 2001, House granted request of the Senate for appointment of Conference Committee; May 24, 2001, House adopted Conference Committee Report by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

Modifications to the Original Law

(H.B. 3389)

Amend CSHB 3389 (Senate committee report) as follows:

(1) Strike the following SECTIONS of the bill:

- (A) SECTION 8, adding Section 1701.164, Occupations Code (page 4, lines 61-66);
- (B) SECTION 24, amending Article 2.132(b), Code of Criminal Procedure (page 8, lines 19-53);
- (C) SECTION 25, amending Article 2.134(b), Code of Criminal Procedure (page 8, lines 54-64);
- (D) SECTION 28, providing transition language for the amendments to Articles 2.132(b) and 2.134(b), Code of Criminal Procedure (page 9, lines 40-47).

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly: SECTION _____. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (a),(b), (d), and (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make motor vehicle~~[traffic]~~ stops in the routine performance of the officers' official duties.

(2) "Motor vehicle stop" means an occasion in which a peace officer stops a motor vehicle for an alleged violation of a law or ordinance.

(3) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, ~~[or]~~ Native American, or Middle Eastern descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's complaint process;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;
- (6) require collection of information relating to motor vehicle ~~[traffic]~~ stops in which a citation is issued and to arrests made as a result of ~~[resulting from]~~ those ~~[traffic]~~ stops, including information relating to:
 - (A) the race or ethnicity of the individual detained; and
 - (B) whether a search was conducted and, if so, whether the individual ~~[person]~~ detained consented to the search; and
 - (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual; and
- (7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit ~~[to the governing body of each county or~~

~~municipality served by the agency]~~ an annual report of the information collected under Subdivision (6) to:

(A) the Commission on Law Enforcement Officer Standards and Education; and

(B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle ~~[traffic]~~ stops and transmitter activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle ~~[traffic]~~ stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b)(7), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.133, Code of Criminal Procedure, is amended to read as follows:

Art. 2.133. REPORTS REQUIRED FOR MOTOR VEHICLE ~~[TRAFFIC AND PEDESTRIAN]~~ STOPS. (a) In this article, "race[:

~~{(1) "Race]~~ or ethnicity" has the meaning assigned by Article 2.132(a).

~~[(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.]~~

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance ~~[regulating traffic or who stops a pedestrian for any suspected offense]~~ shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any ~~[each]~~ person operating the motor vehicle who is detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop ~~[traffic law or ordinance alleged to have been violated or the suspected offense];~~

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search and a description ~~[the type]~~ of the contraband or evidence ~~[discovered];~~

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle ~~[existed and the facts supporting the existence of that probable cause];~~

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a written warning or a citation as a result of the stop~~[, including a description of the warning or a statement of the violation charged].~~

SECTION _____. Article 2.134, Code of Criminal Procedure, is amended by amending Subsections (a) through (e) and adding Subsection (g) to read as follows:

(a) In this article:

(1) "Motor vehicle[, "pedestrian] stop" has the meaning assigned by Article 2.132(a) ~~[means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest].~~

(2) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each ~~[local]~~ law enforcement agency shall submit a report containing the incident-based data ~~[information]~~ compiled during the previous calendar year to the Commission on Law Enforcement Officer Standards and Education and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency ~~[in a manner approved by the agency].~~

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities ~~[determine the prevalence of racial profiling by peace officers employed by the agency];~~ and

(B) examine the disposition of motor vehicle ~~[traffic and pedestrian]~~ stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from ~~[the]~~ stops within the applicable jurisdiction; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a motor vehicle ~~[traffic or pedestrian]~~ stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education, in accordance with Section 1701.162, Occupations Code, shall develop guidelines for compiling and reporting information as required by this article.

(g) On a finding by the Commission on Law Enforcement Officer Standards and Education that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary procedures against the chief administrator.

SECTION _____. Article 2.135, Code of Criminal Procedure, is amended to read as follows:

Art. 2.135. PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make motor vehicle [~~traffic and pedestrian~~] stops is equipped with transmitter-activated equipment; and

(B) each motor vehicle [~~traffic and pedestrian~~] stop made by an officer employed by the agency that is capable of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each motor vehicle [~~traffic and pedestrian~~] stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a motor vehicle [~~traffic or pedestrian~~] stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

(d) In this article, "motor vehicle stop" has the meaning assigned by Article 2.132(a).

SECTION _____. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1385 to read as follows:

Art. 2.1385. CIVIL PENALTY. (a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. The attorney general may sue to collect a civil penalty under this subsection.

(b) From money appropriated to the agency for the administration of the agency, the executive director of a state law enforcement agency that intentionally fails to submit the incident-based

data as required by Article 2.134 shall remit to the comptroller the amount of \$1,000 for each violation.

(c) Money collected under this article shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION _____. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.022 to read as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) In this article, "moving violation" means an offense that:

(1) involves the operation of a motor vehicle; and

(2) is classified as a moving violation by the Department of Public Safety under Section 708.052, Transportation Code.

(b) A defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court shall pay a fee of 10 cents as a cost of court.

(c) In this article, a person is considered convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(d) The clerks of the respective courts shall collect the costs described by this article. The clerk shall keep separate records of the funds collected as costs under this article and shall deposit the funds in the county or municipal treasury, as appropriate.

(e) The custodian of a county or municipal treasury shall:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(f) A county or municipality may retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (e).

(g) If no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury shall file the report required for the quarter in the regular manner and must state that no funds were collected.

(h) The comptroller shall deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the Commission on Law Enforcement Officer Standards and Education to implement duties under Section 1701.162, Occupations Code.

(i) Funds collected under this article are subject to audit by the comptroller.

SECTION _____. (a) Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.061, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. (a) Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . \$50 [~~\$5~~]; [~~and~~]
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

(b) Section 102.081, Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, is repealed. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION _____. Section 102.101, Government Code, is amended to read as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. A clerk of a justice court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;

- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$4;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0173, Code of Criminal Procedure) . . . \$4;
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5;
- (7) a fee on conviction of certain offenses involving issuing or passing a subsequently dishonored check (Art. 102.0071, Code of Criminal Procedure) . . . not to exceed \$30; ~~and~~
- (8) a court cost on conviction of a Class C misdemeanor in a county with a population of 3.3 million or more, if authorized by the county commissioners court (Art. 102.009, Code of Criminal Procedure) . . . not to exceed \$7; and
- (9) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Section 102.121, Government Code, is amended to read as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a municipal court shall collect fees and costs on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (2) a fee for withdrawing request for jury less than 24 hours before time of trial (Art. 102.004, Code of Criminal Procedure) . . . \$3;
- (3) a jury fee for two or more defendants tried jointly (Art. 102.004, Code of Criminal Procedure) . . . one jury fee of \$3;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;
- (5) a fee for technology fund on a misdemeanor offense (Art. 102.0172, Code of Criminal Procedure) . . . not to exceed \$4; ~~and~~
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5; and
- (7) a civil justice fee (Art. 102.022, Code of Criminal Procedure) . . . \$0.10.

SECTION _____. Subchapter D, Chapter 1701, Occupations Code, is amended by adding Section 1701.164 to read as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION _____. Subsection (a), Section 1701.501, Occupations Code, is amended to read as follows:

- (a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:
 - (1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure;
or

(3) a commission rule.

SECTION _____. (a) The requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) The imposition of a cost of court under Article 102.022, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Racial and Ethnic Designations (H.B. 3051)

H.B. No. 3051 - An Act relating to the categories used to record the race or ethnicity of persons stopped for or convicted of traffic offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 2.132(a)(3), Code of Criminal Procedure, is amended to read as follows:

(3) "Race or ethnicity" means the following categories:

(A) Alaska native or American Indian;

(B) ~~[of a particular descent, including Caucasian, African, Hispanic,]~~ Asian or Pacific Islander;

(C) black;

(D) white; and

(E) Hispanic or Latino ~~[, Native American, or Middle Eastern descent]~~.

SECTION 2. Section 543.202(a), Transportation Code, is amended to read as follows:

(a) In this section, "race or ethnicity" means the following categories:

(1) Alaska native or American Indian;

(2) ~~[of a particular descent, including Caucasian, African, Hispanic,]~~ Asian or Pacific Islander;

(3) black;

(4) white; and

(5) Hispanic or Latino ~~[, or Native American descent]~~.

SECTION 3. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 3051 was passed by the House on May 4, 2017, by the following vote: Yeas 143, Nays 2, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3051 was passed by the Senate on May 19, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Sandra Bland Act

(S.B. 1849)

S.B. No. 1849

An Act relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SHORT TITLE

SECTION 1.01. SHORT TITLE. This Act shall be known as the Sandra Bland Act, in memory of Sandra Bland.

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING A MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

SECTION 2.01. Article 16.22, Code of Criminal Procedure, is amended to read as follows:

Art. 16.22. EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY [MENTAL RETARDATION]. (a)(1) Not later than 12 [72] hours after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability [mental retardation], including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, the sheriff shall provide written or electronic notice of the information to the magistrate. On a determination that there is reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability [mental retardation], the magistrate, except as provided by Subdivision

(2), shall order the local mental health or intellectual and developmental disability [mental retardation] authority or another qualified mental health or intellectual disability [mental retardation] expert to:

(A) collect information regarding whether the defendant has a mental illness as defined by Section 571.003,

Health and Safety Code, or is a person with an intellectual disability [mental retardation] as defined by Section 591.003, Health and Safety Code, including information obtained from any previous assessment of the defendant; and

(B) provide to the magistrate a written assessment of the information collected under Paragraph (A).

(2) The magistrate is not required to order the collection of information under Subdivision

(1) if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability [mental retardation] by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health or intellectual disability [mental retardation] expert described by Subdivision

(1). A court that elects to use the results of that previous determination may proceed under Subsection (c).

(3) If the defendant fails or refuses to submit to the collection of information regarding the defendant as required under Subdivision (1), the magistrate may order the defendant to submit to an examination in a mental health facility determined to be appropriate by the local mental health or intellectual and developmental disability [mental retardation] authority for a reasonable period not to exceed 21 days. The magistrate may order a defendant to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination only on request of the local mental health or intellectual and developmental disability [mental retardation] authority and with the consent of the head of the facility. If a defendant who has been ordered to a facility operated by the Department of State Health Services or the Health and Human Services Commission [Department of Aging and Disability Services] for examination remains in the facility for a period exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(b) A written assessment of the information collected under Subsection (a)(1)(A) shall be provided to the magistrate not later than the 30th day after the date of any order issued under Subsection (a) in a felony case and not later than the 10th day after the date of any order issued under that subsection in a misdemeanor case, and the magistrate shall provide copies of the written assessment to the defense counsel, the prosecuting attorney, and the trial court. The written assessment must include a description of the procedures used in the collection of information under Subsection (a)(1)(A) and the applicable expert's observations and findings pertaining to:

(1) whether the defendant is a person who has a mental illness or is a person with an intellectual disability [mental retardation];

(2) whether there is clinical evidence to support a belief that the defendant may be incompetent to stand trial and should undergo a complete competency examination under Subchapter B, Chapter 46B; and

(3) recommended treatment.

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B

or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability [mental retardation] services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code; or

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision.

(d) This article does not prevent the applicable court from, before, during, or after the collection of information regarding the defendant as described by this article: (1) releasing a defendant who has a mental illness [mentally ill] or is a person with an intellectual disability [mentally retarded defendant] from custody on personal or surety bond; or

(2) ordering an examination regarding the defendant's competency to stand trial.

SECTION 2.02. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.23 to read as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE ISSUE. (a) Each law enforcement agency shall make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if:

(1) there is an available and appropriate treatment center in the agency's jurisdiction to which the agency may divert the person;

(2) it is reasonable to divert the person;

(3) the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence; and

(4) the mental health crisis or substance abuse issue is suspected to be the reason the person committed the alleged offense.

(b) Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

SECTION 2.03. Section 539.002, Government Code, is amended to read as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) To the extent funds are appropriated to the department for that purpose, the department shall make grants to entities, including local governmental entities, nonprofit community organizations, and faith-based community organizations, to establish or expand community collaboratives that bring the public and private sectors together to provide services to persons experiencing homelessness, substance abuse issues, or [and] mental illness. [The department may make a maximum of five grants, which must be made in the most populous municipalities in this state that are located in counties with a population of more than one million.] In awarding grants, the department shall give special consideration to entities:

(1) establishing [a] new collaboratives; or

(2) establishing or expanding collaboratives that serve two or more counties, each with a population of less than 100,000 [collaborative].

(b) The department shall require each entity awarded a grant under this section to:

(1) leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; [and]

(2) provide evidence of significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and

(3) provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for the purpose of providing services to those persons.

SECTION 2.04. Chapter 539, Government Code, is amended by adding Section 539.0051 to read as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) The governing body of a county shall develop and make public a plan detailing:

(1) how local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in the county could coordinate to establish or expand a community collaborative to accomplish the goals of Section 539.002;

(2) how entities in the county may leverage funding from private sources to accomplish the goals of Section 539.002 through the formation or expansion of a community collaborative; and

(3) how the formation or expansion of a community collaborative could establish or support resources or services to help local law enforcement agencies to divert persons who have been arrested to appropriate mental health care or substance abuse treatment.

(b) The governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Two or more counties, each with a population of less than 100,000, may form a joint plan under Subsection (a).

ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. The heading to Article 17.032, Code of Criminal Procedure, is amended to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN [MENTALLY ILL] DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.02. Articles 17.032(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) A magistrate shall release a defendant on personal bond unless good cause is shown

otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or intellectual and developmental disability [mental retardation] authority or another mental health expert under Article 16.22 [of this code];

(3) applicable expert, in a written assessment submitted to the magistrate under Article 16.22:

(A) concludes that the defendant has a mental illness or is a person with an intellectual disability [mental retardation] and is nonetheless competent to stand trial; and

(B) recommends mental health treatment or intellectual disability treatment for the defendant, as applicable; and

(4) magistrate determines, in consultation with the local mental health or intellectual and developmental disability [mental retardation] authority, that appropriate community-based mental health or intellectual disability [mental retardation] services for the defendant are available through the [Texas] Department of State [Mental] Health Services [and Mental Retardation] under Section 534.053, Health and Safety Code, or through another mental health or intellectual disability [mental retardation] services provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or intellectual disability [mental retardation] treatment as recommended by the local mental health or intellectual and developmental disability [mental retardation] authority if the defendant's:

(1) mental illness or intellectual disability [mental retardation] is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

SECTION 3.03. Article 25.03, Code of Criminal Procedure, is amended to read as follows:

Art. 25.03. IF ON BAIL IN FELONY. When the accused, in case of felony, is on bail at the time the indictment is presented, [it is not necessary to serve him with a copy, but] the clerk shall [on request] deliver a copy of the indictment [same] to the accused or the accused's [his] counsel[,] at the earliest possible time.

SECTION 3.04. Article 25.04, Code of Criminal Procedure, is amended to read as follows:

Art. 25.04. IN MISDEMEANOR. In misdemeanors, the clerk shall deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial [it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible

SECTION 3.05. Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(a) The commission shall:

(1) adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2) adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3) adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4) adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5) revise, amend, or change rules and procedures if necessary;

(6) provide to local government officials consultation on and technical assistance for county jails;

(7) review and comment on plans for the construction and major modification or renovation of county jails;

(8) require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9) review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules

and procedures adopted under this chapter;

(10) adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;

(11) adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;

(12) require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;

(13) at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;

(14) require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;

(15) schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;

(16) adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:

(A) common issues concerning jail administration;

(B) examples of successful strategies for maintaining compliance with state law and the rules,

standards, and procedures of the commission; and

(C) solutions to operational challenges for jails;

(17) report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18) adopt reasonable rules and procedures establishing minimum requirements for jails to:

(A) determine if a prisoner is pregnant; and

(B) ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19) provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety; [and]

(20) adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21) [(20)] require the sheriff of each county to:

(A) investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and

(B) use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22) [(20)] adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A) allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B) require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; and

(23) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A) give prisoners the ability to access a mental health professional at the jail through a telemental health service 24 hours a day;

(B) give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C) if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals.

SECTION 3.06. Section 511.009, Government Code, is amended by adding Subsection (d) to read

as follows:

(d) The commission shall adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. The rules and procedures shall require that a qualified medical professional shall review as soon as possible any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Chapter 511, Government Code, is amended by adding Sections 511.019, 511.020, and 511.021 to read as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) The prisoner safety fund is a dedicated account in the general revenue fund.

(b) The prisoner safety fund consists of:

- (1) appropriations of money to the fund by the legislature; and
- (2) gifts, grants, including grants from the federal government, and other donations received for the fund.

(c) Money in the fund may be appropriated only to the commission to pay for capital improvements that are required under Section 511.009(a)(23).

(d) The commission by rule may establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). The commission may only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) On or before the fifth day of each month, the sheriff of each county shall report to the commission regarding the occurrence during the preceding month of any of the following incidents involving a prisoner in the county jail:

- (1) a suicide;
- (2) an attempted suicide;
- (3) a death;
- (4) a serious bodily injury, as that term is defined by

Section 1.07, Penal Code;

- (5) an assault;
- (6) an escape;
- (7) a sexual assault; and
- (8) any use of force resulting in bodily injury, as that term is defined by Section 1.07, Penal Code.

(b) The commission shall prescribe a form for the report required by Subsection (a).

(c) The information required to be reported under Subsection (a)(8) may not include the name or other identifying information of a county jailer or jail employee.

(d) The information reported under Subsection (a) is public information subject to an open records request under Chapter 552.

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATH OCCURRING IN COUNTY JAIL. (a) On the death of a prisoner in a county jail, the commission shall appoint a law enforcement agency, other

than the local law enforcement agency that operates the county jail, to investigate the death as soon as possible.

(b) The commission shall adopt any rules necessary relating to the appointment of a law enforcement agency under Subsection

(a), including rules relating to cooperation between law enforcement agencies and to procedures for handling evidence.

SECTION 3.08. The changes in law made by this article to Article 17.032, Code of Criminal Procedure, apply only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of executed, and the former law is continued in effect for that purpose.

SECTION 3.09. Not later than January 1, 2018, the Commission on Jail Standards shall:

(1) adopt the rules and procedures required by Section 511.009(d), Government Code, as added by this article, and the rules required by Section 511.021(b), Government Code, as added by this article; and

(2) prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Not later than September 1, 2018, the Commission on Jail Standards shall adopt the rules and procedures required by Section 511.009(a)(23), Government Code, as added by this article. On and after September 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under that subdivision.

SECTION 3.11. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to non-substantive additions to and corrections in enacted codes.

ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Chapter 511, Government Code, is amended by adding Section 511.00905 to read as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED. (a) The Texas Commission on Law Enforcement shall develop and the commission shall approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) The commission shall adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. The rules must provide that a person who fails the examination may be immediately removed from the position and may not be reinstated until the person passes the examination.

(c) The sheriff of a county shall perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this

section.

(d) A person other than a sheriff may not serve in the jail administrator position of a county jail unless the person satisfies the examination requirement of this section.

SECTION 4.02. Section 1701.253, Occupations Code, is amended by amending Subsection (j) and adding Subsection (n) to read as follows: commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. An officer may not satisfy the requirements of this subsection [section] or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

SECTION 4.03. Section 1701.310(a), Occupations Code, is amended to read as follows:

(a) Except as provided by Subsection (e), a person may not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

SECTION 4.04. Section 1701.352(b), Occupations Code, is amended to read as follows:

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

- (1) topics selected by the agency; and
- (2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by the commission regarding:
 - (A) civil rights, racial sensitivity, and cultural diversity;
 - (B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments; [and]
 - (C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and
 - (D) unless determined by the agency head to be inconsistent with the officer's assigned duties:
 - (i) the recognition and documentation of cases that involve child abuse or neglect, family violence, and sexual assault; and
 - (ii) issues concerning sex offender characteristics.

SECTION 4.05. Section 1701.402, Occupations Code, is amended by adding Subsection (n) to read

as follows:

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

SECTION 4.06. Not later than March 1, 2018, the Texas Commission on Law Enforcement shall develop and the Commission on Jail Standards shall approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) Not later than March 1, 2018, the Texas Commission on Law Enforcement shall establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

(b) The minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after April 1, 2018.

SECTION 4.08. (a) Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) A person in the position of county jailer on September 1, 2017, must comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than August 31, 2021.

ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Article 2.132, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (h) to read as follows:

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

- (1) clearly define acts constituting racial profiling;
- (2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;
- (3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;
- (4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;
- (5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including information

relating to:

- (A) the race or ethnicity of the individual detained;
- (B) whether a search was conducted and, if so, whether the individual detained consented to the search; [and]
- (C) whether the peace officer knew the race or ethnicity of the individual detained before detaining that individual;
- (D) whether the peace officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop;
- (E) the location of the stop; and
- (F) the reason for the stop; and

(7) require the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit an annual report of the information collected under Subdivision (6) to:

- (A) the Texas Commission on Law Enforcement; and
- (B) the governing body of each county or municipality served by the agency, if the agency is an agency of a county, municipality, or other political subdivision of the state.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make motor vehicle stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make motor vehicle stops. The agency also shall examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651, Occupations Code. If a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(h) A law enforcement agency shall review the data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.02. Article 2.133, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of any person operating the motor vehicle who is detained as a result of the stop, including:

- (A) the person's gender; and
- (B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the initial reason for the stop;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband or other evidence was discovered in the course of the search

and a description of the contraband or evidence;

(5) the reason for the search, including whether:

(A) any contraband or other evidence was in plain view;

(B) any probable cause or reasonable suspicion existed to perform the search; or

(C) the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged;

(7) the street address or approximate location of the stop; [and]

(8) whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop; and

(9) whether the officer used physical force that resulted in bodily injury, as that term is defined by Section 1.07, Penal Code, during the stop.

(c) The chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b)

to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.03. Article 2.134(c), Code of Criminal Procedure, is amended to read as follows:

(c) A report required under Subsection (b) must be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities; [and]

(B) examine the disposition of motor vehicle stops made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction; and

(C) evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether contraband or other evidence was discovered in the course of those searches; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

SECTION 5.04. Article 2.137, Code of Criminal Procedure, is amended to read as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship,

available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)]. The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras [as described by Article 2.135(a)(1)(A)], the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency has taken the necessary actions to use and is using [installed] video and audio equipment and body worn cameras for those purposes [as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1)].

SECTION 5.05. Article 2.1385(a), Code of Criminal Procedure, is amended to read as follows:

(a) If the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in an [the] amount not to exceed \$5,000 [of \$1,000] for each violation. The attorney general may sue to collect a civil penalty under this subsection.

SECTION 5.06. Article 2.135, Code of Criminal Procedure, is repealed.

SECTION 5.07. Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.08. Not later than September 1, 2018, the Texas Commission on Law Enforcement shall:

(1) evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to enable the guidelines to better withstand academic scrutiny; and

(2) make accessible online:

(A) a downloadable format of any information submitted under Article 2.134(b), Code of Criminal

Procedure, that is not exempt from public disclosure under Chapter 552, Government Code; and
(B) a glossary of terms relating to the information to make the information readily understandable to the public. This Act takes effect September 1, 2017.

Senate Speaker of the House

President of the

I hereby certify that S.B. No. 1849 passed the Senate on May 11, 2017, by the following vote:
Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1849 passed the House on May 20, 2017, by the following vote:
Yeas 137, Nays 0, one present not voting.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Except as otherwise provided by this Act,


Approved:

Date

Governor

Chief Clerk of the House

**BASTROP
POLICE DEPARTMENT
RACIAL PROFILING POLICY**

	CITY OF BASTROP POLICE DEPARTMENT	
	Policy 2.2 Racial Profiling and Bias Based Policing Reduction	
	Effective Date: 05/01/2021	Replaces: 02/07/2014
	Approved: Chief of Police <i>C. Nagy</i>	
	Reference: Texas Best Practices 2.01	

I. POLICY

We are committed to a respect for constitutional rights in the performance of our duties. Our success is based on the respect we give to our communities, and the respect members of the community observe toward law enforcement. To this end, we shall exercise our sworn duties, responsibilities, and obligations in a manner that does not discriminate on the basis of race, sex, gender, sexual orientation, national origin, ethnicity, age, or religion. Respect for diversity and equitable enforcement of the law are essential to our mission.

All enforcement actions shall be based on the standards of reasonable suspicion or probable cause as required by the Fourth Amendment to the U. S. Constitution and by statutory authority. In all enforcement decisions, officers shall be able to articulate specific facts, circumstances, and conclusions that support probable cause or reasonable suspicion for arrests, searches, seizures, and stops of individuals. Officers shall not stop, detain, arrest, search, or attempt to search anyone based solely upon the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.

All departmental orders are informed and guided by this directive. Nothing in this order limits non-enforcement consensual contacts between officers and the public.

II. PURPOSE

The purpose of this order is to inform officers that bias-based policing is prohibited by the department. Additionally, this order will assist officers in identifying key contexts in which bias may influence these actions and emphasize the importance of the constitutional guidelines within which we operate.

III. DEFINITIONS

Most of the following terms appear in this policy statement. In any case, these terms appear in the larger public discourse about alleged biased enforcement behavior and in

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other orders. These definitions are intended to facilitate on-going discussion and analysis of our enforcement practices.

- A. Bias: Prejudice or partiality based on preconceived ideas, a person's upbringing, culture, experience, or education.
- B. Biased-based policing: Stopping, detaining, searching, or attempting to search, or using force against a person based upon an individual's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group.
- C. Ethnicity: A cluster of characteristics that may include race but also cultural characteristics or traits that are shared by a group with a common experience or history.
- D. Gender: Unlike sex, a psychological classification based on cultural characteristics or traits.
- E. Probable cause: Specific facts and circumstances within an officer's knowledge that would lead a reasonable officer to believe that a specific offense has been or is being committed, and that the suspect has committed it. Probable cause will be determined by the courts reviewing the totality of the circumstances surrounding the arrest or search from an objective point of view.
- F. Race: A category of people of a particular decent, including White, Black, Hispanic, Asian, Middle Eastern, or Native American descent. As distinct from ethnicity, race refers only to physical characteristics sufficiently distinctive to group people under a classification.
- G. Racial profiling: A law-enforcement initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.
- H. Reasonable suspicion: Specific facts and circumstances that would lead a reasonable officer to believe criminal activity is afoot and the person to be detained is somehow involved. Reasonable suspicion will be determined by the courts reviewing the totality of the circumstances surrounding the detention from an objective point of view .
- I. Sex: A biological classification, male or female, based on physical and genetic characteristics.
- J. Stop: An investigative detention of a person for a brief period of time, based on reasonable suspicion.

IV. PROCEDURES

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A. General responsibilities

1. Officers are prohibited from engaging in bias-based profiling or stopping, detaining, searching, arresting, or taking any enforcement action including seizure or forfeiture activities, against any person based solely on the person's race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group, or any other identifiable group. These characteristics, however, may form part of reasonable suspicion or probable cause when officers are seeking a suspect with one or more of these attributes. (TBP: 2.01)
2. Investigative detentions, motor vehicle contacts, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, motor vehicle contacts, subject stops, arrests, nonconsensual searches, and property seizures. Except as provided in number 3 below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.
3. Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or persons of a specific race/ethnicity to a particular unlawful incident(s). Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion. Except as provided above, reasonable suspicion or probable cause shall form the basis for any enforcement actions or decisions. Individuals shall be subjected to stops, seizures, or detentions only upon reasonable suspicion that they have committed, are committing, or are about to commit an offense. Officers shall document the elements of reasonable suspicion and probable cause in appropriate reports.
4. Officers shall observe all constitutional safeguards and shall respect the constitutional rights of all persons.
 - a. As motor vehicle contacts furnish a primary source of bias-related complaints, officers shall have a firm understanding of the warrantless searches allowed by law, particularly the use of consent. How the officer disengages from a motor vehicle contact may be crucial to a person's perception of fairness or discrimination.
 - b. Officers shall not use the refusal or lack of cooperation to justify a search of the person or vehicle, or a prolonged detention once reasonable suspicion has been dispelled.

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2. All personnel shall treat everyone with the same courtesy and respect that they would have others observe to department personnel. To this end, personnel are reminded that the exercise of courtesy and respect engenders a future willingness to cooperate with law enforcement.
 - a. Personnel shall facilitate an individual's access to other governmental services whenever possible.
 - b. And shall actively provide referrals to other appropriate agencies.
 - c. All personnel shall courteously accept, document, and forward to the Chief of Police, Assistant Chief of Police or Supervisor any compliments / complaints made by an individual against the department. Further, officers shall provide information on the compliment / complaint process and shall give copies of "How to Make a Compliment / Complaint" when requested or when it is reasonable to assume a compliment / complaint is forthcoming.
3. When feasible, personnel shall offer explanations of the reasons for enforcement actions or other decisions that bear on the individual's well-being unless the explanation would undermine an investigation or jeopardize an officer's safety.
4. When feasible, all personnel shall identify themselves by name. When a person requests the information, personnel shall give their departmental identification number, name of the immediate supervisor, or any other reasonable information.
5. All personnel are accountable for their actions. Personnel shall justify their actions when required.

B. Supervisory responsibilities

1. Supervisors shall be held accountable for the observance of constitutional safeguards during the performance of their duties and those of their subordinates. Supervisors shall identify and correct instances of bias in the work of their subordinates.
2. Supervisors shall use the disciplinary mechanisms of the department to ensure compliance with this order and the constitutional requirements of law enforcement.
3. Supervisors shall be mindful that in accounting for the actions and performance of subordinates, supervisors are critical to maintaining community trust in law enforcement. Supervisors shall continually reinforce ***"The Sole Reason We Exist Is to Serve the Citizens of Bastrop"***

the ethic of impartial enforcement of the laws, and shall ensure that personnel, by their actions, maintain the community's trust in law enforcement.

4. Supervisors are reminded that biased enforcement of the law engenders not only mistrust of law enforcement but increases safety risks to personnel as well as exposing the employee(s) and department to liability.
5. Supervisors shall be held accountable for repeated instances of biased enforcement of their subordinates if the supervisor knew, or should have known, of the subordinate's actions.
6. Supervisors shall ensure that all enforcement actions are duly documented per departmental policy. Supervisors shall ensure that all reports show adequate documentation of reasonable suspicion and probable cause, if applicable. Any enforcement action that begins as a consensual encounter will also have the circumstances of the initial encounter documented.
7. Supervisors shall facilitate the filing of any compliments / complaints about law- enforcement service.
8. Supervisors will randomly review at least three videos per officer (either body camera and/or in-car camera video) per month. Supervisors are not required to watch each incident of an entire shift; however, reviewing the footage in a manner intended to gain an understanding of that officer's performance and adherence to policy and law is required. Supervisors will document the random review of the video in their monthly report(s) and any violations of policy or law will be addressed through the use of existing internal affairs policy. (TBP: 2.01)
9. Section 8 above applies only to first-line uniformed officers and their immediate supervisors. In the absence of a first-line supervisor this responsibility will move to another supervisor.

C. Disciplinary consequences

Actions prohibited by this order shall be cause for disciplinary action, up to and including dismissal.

D. Training (TBP: 2.01)

Officers shall complete all training required by state law regarding bias-based profiling.

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II. COMPLIMENTS / COMPLAINTS

- A. The department shall publish “How to Make a Compliment / Complaint” information and make this information available at city facilities and other public locations within the city. The department’s compliment / complaint process, its bias-based profiling policy, and how to submit a compliment / complaint will be posted on the department’s website. The information shall include, but is not limited to, the email, physical address, and telephone contact information for making a compliment / complaint against an employee. Whenever possible, the media will be used to inform the public of the department’s policy and compliment / complaint processes.
- B. Complaints alleging incidents of bias-based profiling will be fully investigated as described under Policy 2.4.
- C. Complainants will be notified of the results of the investigations when the investigation is completed.
- D. The Assistant Chief of Police will maintain a log of all compliments and complaints.

III. RECORD KEEPING

- A. The department will maintain all required records on motor vehicle contacts where a citation or warning is issued or where an arrest is made subsequent to a motor vehicle contact.
- B. The Assistant Chief of Police will conduct quarterly audits that will include the following:
 - a. Racial Profiling reports from patrol first line supervisor
 - b. Individual patrol officer or shift Racial Profiling reviews
 - c. A report of all citations from motor vehicle contacts for the quarter
- C. The quarterly audits will be forwarded to the Chief of Police.
- D. The information collected above will be reported to the city council as required by law and the annual audit will be posted on the police department’s website.
- E. The information will also be reported to TCOLE in the required format.



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STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve City Council minutes from the February 14, 2023, Regular meeting; February 21, 2023, Joint City Council and Parks Board meeting; and February 23, 2023, Special Called meeting.

AGENDA ITEM SUBMITTED BY:

Submitted by: Ann Franklin, City Secretary

RECOMMENDATION:

Ann Franklin, City Secretary recommends approval of City Council minutes from the February 14, 2023, Regular meeting; February 21, 2023, Joint City Council and Parks Board meeting; and February 23, 2023, Special Called meeting.

ATTACHMENTS:

1. February 14, 2023, DRAFT Regular Meeting Minutes.
2. February 21, 2023, DRAFT Joint City Council and Parks Board Meeting Minutes.
3. February 23, 2023, DRAFT Special Called Meeting Minutes.

FEBRUARY 14, 2023

The Bastrop City Council met in a regular meeting on Tuesday, January 14, 2023, at 6:30 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present were: Mayor Schroeder and Mayor Pro Tem Rogers and Council Members Lee, Plunkett, Crouch, and Kirkland. Officers present were: City Manager, Sylvia Carrillo; City Secretary, Ann Franklin; and City Attorney, Alan Bojorquez.

CALL TO ORDER

Mayor Schroeder called the meeting to order at 6:30 p.m. with a quorum present. Council Member Plunkett was not present.

PLEDGE OF ALLEGIANCE

Skyla Hamilton and Laraine Curry, Cedar Creek Intermediate School, led the pledges.

INVOCATION

Dale Burke, Police Chaplain, gave the invocation.

PRESENTATIONS

- 4A. Mayor's Report
- 4B. Council Members' Report
- 4C. City Manager's Report

WORK SESSIONS/BRIEFINGS - NONE**STAFF AND BOARD REPORTS - NONE****CITIZEN COMMENTS - NONE****CONSENT AGENDA**

A motion was made by Council Member Kirkland to approve Items 8A, 8B, 8C, 8D, 8E, and 8F as listed on the Consent Agenda after being read into the record by City Secretary Ann Franklin. Seconded by Council Member Crouch, motion was approved on a 4-0 vote. Council Member Plunkett was not present.

- 8A. Consider action to approve City Council minutes from the January 23, 2023, Joint City Council and BEDC meeting and January 24, 2023, Regular meeting.
Submitted by: Ann Franklin, City Secretary
- 8B. Consider action to approve Resolution No. R-2023-22 of the City Council of the City of Bastrop, Texas confirming the Mayor's appointment of David Carlson, Place 2 of the Construction Standard Board, as required in Section 3.08 of the City's Charter, and establishing an effective date.
Submitted by: Ann Franklin, City Secretary

- 8C. Consider action to approve Resolution No. R-2023-18 of the City Council of the City of Bastrop, Texas approving a Public Improvement Plan Agreement with HSD Bastrop Pecan Park LP, for Pecan Park Commercial Lot 5, as attached in Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.
Submitted by: Jennifer C. Bills, Director of Planning & Development
- 8D. Consider action to approve Resolution No. R-2023-17 of the City Council of the City of Bastrop, Texas authorizing a license to encroach agreement with Bastrop Grove Residential Community, Inc. to encroach into the City right-of-way to install irrigation, landscaping, signage, and mail kiosks for a residential development, as attached in Exhibit A; authorizing the City Manager to execute necessary documents; providing for a repealing clause; and establishing an effective date.
Submitted by: Jennifer C. Bills, Director of Planning & Development
- 8E. Consider action to approve Resolution No. R-2023-19 of the City Council of the City of Bastrop, Texas, approving a construction contract with JM Pipeline, LLC. for the Riverwood Water Main (WM) Replacement – Phase I – Bastrop CDV21-0276 for a not to exceed amount of Three Hundred Fifty-Eight Thousand, Two Hundred Thirty-One Dollars (\$358,231.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.
Submitted by: Fabiola de Carvalho, AMP MIAM, Director of Engineering and Capital Project Management
- 8F. Consider action to approve Resolution No. R-2023-16 of the City Council of the City of Bastrop, Texas, supporting the application for Housing Tax Credits for the rehabilitation of the Settlement Estates, located at 149 Settlement Drive; confirming support for the application; authorizing the City Manager to grant a Two-Hundred Fifty Dollar and No Cents (\$250.00) reduction in fees for Settlement Estates to meet all program criteria; authorizing the Mayor to certify documents; and establishing an effective date.
Submitted by: Jennifer C. Bills, AICP, LEED AP, Director of Planning & Development

ITEMS FOR INDIVIDUAL CONSIDERATION

- 9A. Consider action to approve Resolution R-2023-15 approving the City of Bastrop, Texas Library Collection Development Policy, which is attached as Exhibit A; providing for a repealing clause; and establishing an effective date.
Submitted by: Bonnie Pierson, Library Director
Presentation was made by Bonnie Pierson, Library Director.

A motion was made by Council Member Lee to remove this item from the agenda and consider at a later date, seconded by Council Member Kirkland, motion was approved on a 4-0 vote. Council Member Plunkett was not present.

Council Member Plunkett arrived at 7:15 p.m.

- 9B. Consider action to approve Resolution No. R-2023-21 of the City Council of the City of Bastrop, Texas, approving a professional engineering services contract with Freese and Nichols, Inc. (FNI) for the Wastewater Treatment Plant (WWTP) # 3 – Phase II (expansion) for a not to exceed amount of Three Hundred Seventy-One Thousand,

One Hundred Eighteen Dollars (\$371,118.00);authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Submitted by: Fabiola de Carvalho, Director of Engineering

Presentation was made by Fabiola de Carvalho, Director of Engineering.

A motion was made by Council Member Kirkland to approve Resolution No. R 2023-21, seconded by Mayor Pro Tem Rogers, motion was approved on a 5-0 vote.

- 9C. Consider action to approve Resolution No. R-2023-20 of the City Council of the City of Bastrop, Texas, approving an Amendment #5 to the Task Authorization #2, of the original Professional Services Agreement with Freese and Nichols, Inc. (FNI) to provide materials testing services for the Simsboro Water Treatment Plant, Well Field, and Transmission Facilities project for a not to exceed amount of Two Hundred Fifteen Thousand, Seven Hundred Seventy-Five Dollars (\$215,775.00); authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

Submitted by: Fabiola de Carvalho, Director of Engineering

Presentation was made by Fabiola de Carvalho, Director of Engineering.

A motion was made by Council Member Lee to approve Resolution No. R 2023-20, seconded by Mayor Pro Tem Rogers, motion was approved on a 5-0 vote.

- 9D. Consider action to approve the first reading of Ordinance No. 2023-01 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, Section 1.02.005 regarding termination of inactive campaign treasurer appointment; providing for repealer and severability; establishing an effective date; proper notice and meeting; and move to include on the February 28, 2023, consent agenda for a second reading.

Submitted by: Ann Franklin, City Secretary

Presentation was made by Ann Franklin, City Secretary.

A motion was made by Mayor Pro Tem Rogers to approve the first reading of Ordinance No. 2023-01, and move to include on the February 28, 2023, consent agenda for a second reading, seconded by Council Member Kirkland, motion was approved on a 5-0 vote.

- 9E. Consider action to approve the first reading of Ordinance No. 2023-02 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Article 1.04 regarding annual work plans for city boards, commissions, task forces, committees and advisory bodies; and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting, and move to include on the February 28, 2023, agenda for a second reading.

Submitted by: Sylvia Carrillo, City Manager

Presentation was made by Sylvia Carrillo, City Manager.

A motion was made by Council Member Kirkland to approve the first reading of Ordinance No. 2023-02 with the following conditions, and move to include on the February 28, 2023, agenda for a second reading, seconded by Mayor Pro Tem Rogers.

Conditions:

1. A brief definition of a workplan which may include goals, activities, budget, etc.
2. A date appropriate for a budgeting cycle.
3. Specify who the owner is.
4. State that Council may modify the work plan during the approval process.
5. Outside of the ordinance would like staff to create a template.

A friendly amendment to the motion was made by Mayor Pro Tem Rogers to replace “Council may modify” with “Council may make suggestions”. The friendly amendment was not accepted by the maker of the motion.

The first reading of Ordinance No 2023-02 was approved with the following conditions, and to include on the February 28, 2023, agenda for a second reading, on Council Member Kirkland’s motion, Mayor Pro Tem Rogers’ second on a 5-0 vote.

Conditions:

1. A brief definition of a workplan which may include goals, activities, budget, etc.
2. A date appropriate for a budgeting cycle.
3. Specify who the owner is.
4. State that Council may modify the work plan during the approval process.
5. Outside of the ordinance would like staff to create a template.

- 9F. Consider action to approve the first reading of Ordinance No. 2023-03 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Article 1.04 regarding annual verification of attendance and residency for members of boards, commissions, task forces, committees and advisory bodies; and providing for: findings of fact, adoption, repealer, severability, establishing an effective date, proper notice and meeting, and move to include on the February 28, 2023, agenda for a second reading.

Submitted by: Sylvia Carrillo, City Manager

Presentation was made by Sylvia Carrillo, City Manager.

A motion was made by Mayor Pro Tem Rogers to approve the first reading of Ordinance No. 2023-03, and move to include on the February 28, 2023, agenda for a second reading, seconded by Council Member Crouch, motion was approved on a 5-0 vote.

EXECUTIVE SESSION

The City Council met at 7:47 p.m. in a closed/executive session pursuant to the Texas Government Code, Chapter 551, et seq, to discuss the following:

- 10A. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 and 551.074 to seek the advice of legal counsel and discuss potential acquisition of real estate relating to the Simsboro Aquifer Water Treatment Plant, Well Field and Transmission Facilities project.

- 10B. City Council shall convene into closed executive session pursuant to Texas Government Codes sections 551.071 and 551.072 to seek the advice of legal counsel regarding counteroffers for real estate acquisition for the West Side Wastewater Collection System and related real estate matters.
- 10C. City Council shall convene into closed executive session pursuant to Texas Government Code sections 551.071 (Consultation with Attorney) and 551.072 (Real Property) to discuss potential land for acquisition as identified in the recent strategic planning session.

Mayor Schroeder recessed the Executive Session at 8:36 p.m.

TAKE ANY NECESSARY OR APPROPRIATE ACTION ON MATTERS POSTED FOR CONSIDERATION IN CLOSED/EXECUTIVE SESSION

No action taken.

Adjourned at 8:36 p.m. without objection.

APPROVED:

ATTEST:

Mayor Connie Schroeder

City Secretary Ann Franklin

The Minutes were approved on February 28, 2023, by Council Member Name's motion, Council Member Name's second. The motion was approved on a 5-0 vote.

MINUTES OF JOINT MEETING WITH BASTROP CITY COUNCIL AND PARKS AND PUBLIC TREE ADVISORY BOARD

FEBRUARY 21, 2023

The Bastrop City Council and Parks and Public Tree Advisory Board met in a Joint Meeting on Tuesday, February 21, 2023, at 5:30 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas.

Members present for the Bastrop City Council were: Mayor Schroeder, Mayor Pro Tem Rogers and Council Members Lee, Plunkett, Crouch, and Kirkland. Officer present was: Deputy City Secretary, Victoria Psencik.

Members present for Parks Board were: Board Chair, Kerry Fossler and Board Members Margaret Robinson and Jamie Creacy. Officers present were: Public Works Director, Curtis Hancock and Recreation Manager, Terry Moore.

CALL TO ORDER

Mayor Schroeder called the meeting of the Bastrop City Council to order with a quorum being present at 5:30 p.m.

Chair, Kerry Fossler called the meeting of the Parks Board to order with a quorum being present at 5:30 p.m. Betty Rucker was absent, and Steven Fobert was not present.

CITIZEN COMMENTS – NONE

Parks Board Member Steven Fobert arrived at 5:35 p.m.

WORK SESSION

- 2A. Receive overview of the Parks, Recreation, and Open Space Master Plan project. **The presentation was made by Mark Maldonado, Stantec Consulting.**

ADJOURNMENT

Mayor Schroeder adjourned the Bastrop City Council meeting at 6:37 p.m. without objection.

Chair Fossler adjourned the Parks Board meeting at 6:37 p.m. without objection.

APPROVED:

ATTEST:

Mayor Connie B. Schroeder

Deputy City Secretary Victoria Psencik

The Minutes were approved on February 28, 2023, by Council Member Name motion, Council Member Name second. The motion was approved on a 5-0 vote.

MINUTES OF SPECIAL CITY COUNCIL MEETING**FEBRUARY 23, 2023**

The Bastrop City Council met on Thursday, February 23, 2023, at 4:30 p.m. at the Bastrop City Hall Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas. Members present were: Mayor Schroeder and Mayor Pro Tem Rogers and Council Members Lee, Plunkett, Crouch, and Kirkland. Officers present were: City Manager, Sylvia Carrillo and City Secretary, Ann Franklin.

CALL TO ORDER

Mayor Schroeder called the meeting to order at 4:30 p.m. with a quorum present.

CITIZEN COMMENTS**ITEMS FOR INDIVIDUAL CONSIDERATION**

- 3A. Consider action to approve Resolution No. R-2023-25 accepting the resignation of Mayor Pro Tem Drusilla Rogers for Place 2 on the Bastrop City Council; and establishing an effective date.

Submitted by: Ann Franklin, City Secretary

Presentation was made by Ann Franklin, City Secretary.

A motion was made by Council Member Plunkett to approve Resolution No. R-2023-25, seconded by Council Member Kirkland, motion was approved on a 5-0 vote.

- 3B. Consider action to approve Resolution No. R-2023-26 of the City Council of the City of Bastrop, Texas, calling for and establishing the procedures for a May 6, 2023, Special Election for Bastrop, Texas; and providing an effective date.

Submitted by: Ann Franklin, City Secretary

Presentation was made by Ann Franklin, City Secretary.

A motion was made by Council Member Kirkland to approve Resolution No. R-2023-26, seconded by Council Member Crouch, motion was approved on a 5-0 vote.

ADJOURNMENT

Adjourned at 4:38 p.m. without objection.

APPROVED:**ATTEST:**

Mayor Connie Schroeder

City Secretary Ann Franklin

The Minutes were approved on February 28, 2023, by Council Member Plunkett's motion, Mayor Pro Tem Rogers' second. The motion was approved on a 5-0 vote.



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve the second reading of Ordinance No. 2023-01 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, by adding new section 1.02.005 – Termination of Inactive Campaign Treasurer Appointment; providing for repealer and severability; establishing an effective date; proper notice and meeting.

AGENDA ITEM SUBMITTED BY:

Submitted by: Ann Franklin, City Secretary

BACKGROUND/HISTORY:

Candidates for the City of Bastrop Mayor and City Council places are required to file an Appointment of Campaign Treasurer form with the City Secretary before they are allowed to file an Application for a Place on the Ballot. The candidate is responsible for filing a final report to cause the Appointment of Campaign Treasurer form to become inactive. The Office of the City Secretary is in possession of several Appointment of Campaign Treasurer forms which are considered active due to the failure of a candidate filing a final report. The Election Code gives the governing body the authority to approve a process to allow the City Secretary the ability to terminate the forms.

Section 252.0131 of the Texas Election Code authorizes the governing body of a political subdivision by ordinance or order to adopt a process by which the city secretary of the political subdivision may terminate the campaign treasurer appointment of an inactive candidate or political committee that is required to file a campaign treasurer appointment with the secretary; and

RECOMMENDATION:

Ann Franklin, City Secretary recommends approval of the second reading of Ordinance No. 2023-01 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances, by adding new section 1.02.005 – Termination of Inactive Campaign Treasurer Appointment; providing for repealer and severability; establishing an effective date; proper notice and meeting.

ATTACHMENTS:

1. Resolution

ORDINANCE 2023-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AMENDING THE CODE OF ORDINANCES, SECTION 1.02.005 REGARDING TERMINATION OF INACTIVE CAMPAIGN TREASURER APPOINTMENT; PROVIDING FOR REPEALER; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City of Bastrop is a Home Rule municipality incorporated and operating under the Laws of the State of Texas; and

WHEREAS, the City Council of the City of Bastrop, Texas recognizes a need to add to its existing Code of Ordinances to adopt a process by which the City Secretary may terminate the campaign treasurer appointment of an inactive candidate or political committee; and

WHEREAS, Section 252.0131 of the Texas Election Code authorizes the governing body of a political subdivision by ordinance or order to adopt a process by which the city secretary of the political subdivision may terminate the campaign treasurer appointment of an inactive candidate or political committee that is required to file a campaign treasurer appointment with the secretary; and

WHEREAS, the City Council of the City of Bastrop, Texas has determined that it is necessary to adopt a termination process; and

WHEREAS, in order to enact these provisions, it is necessary to amend the Bastrop Code of Ordinances by adding a new article to the Code of Ordinances.

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

Section 1: The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

Section 2: That Chapter 1, Article 1.02, Section 1.02.005 "Termination Of Inactive Campaign Treasurer Appointment" of the Code of Ordinances of the City of Bastrop, Texas is hereby added to read as follows:

Sec. 1.02.005 - TERMINATION OF INACTIVE CAMPAIGN TREASURER APPOINTMENT.

(A) In this section, "inactive candidate" or "inactive political committee" means a candidate or political committee that:

- (1) has not filed a required report under Texas Election Code, Chapter 254 (Political Reporting), for more than one year since the last reporting deadline;
 - (2) in the case of a candidate, has not been elected to an office for which a candidate is required to file a campaign treasurer appointment with the city clerk; and
 - (3) has not filed:
 - (a) a final report under Texas Election Code, Section 254.065 (Final Report) or 254.125 (Final Report of Committee for Supporting or Opposing Candidate or Measure); or
 - (b) a dissolution report under Texas Election Code, Section 254.126 (Dissolution Report of Committee for Assisting Officeholder) or 254.159 (Dissolution Report).
- (B)The city clerk may terminate the campaign treasurer appointment of an inactive candidate or inactive political committee
- (C)Before the city clerk may terminate a campaign treasurer appointment under this section, the city council must consider and approve the proposed termination in a regularly scheduled open meeting.
- (D)Before the city clerk may terminate a campaign treasurer appointment under this section the city clerk must provide written notice to the affected candidate or committee of:
- (1)the proposed termination of the candidate's or committee's campaign treasurer appointment;
 - (2)the date, time, and place of the meeting at which the city council will consider the proposed termination; and
 - (3)the effect of termination of the candidate's or committee's campaign treasurer appointment.
- (E)The termination of a campaign treasurer appointment under this section takes effect on the 30th day after the date of the meeting at which the city council votes to terminate the appointment. Following that meeting, the city clerk shall promptly notify the affected candidate or political committee that the appointment has been terminated. The notice must state the effective date of the termination.

Section 3: All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

Section 4: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, that invalidity or unenforceability will not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision.

Section 5: This Ordinance shall be effective immediately upon passage and publication.

Section 6: It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

READ on First Reading on this the 14th day of February 2023.

READ & ADOPTED on Second Reading on this the 28th day of February 2023.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve Resolution No. R-2023-28 of the City Council of the City of Bastrop, Texas confirming appointment by the Mayor of Isaac Merino, Place 5 of the Construction Standard Board, as required in Section 3.08 of the City's Charter, and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

Ann Franklin, City Secretary

BACKGROUND/HISTORY:

Section 3.08, Mayor and Mayor Pro Tem, of the City Charter states that the Mayor shall appoint members to all City boards and commissions, subject to confirmation by the City Council.

FISCAL IMPACT:

N/A

RECOMMENDATION:

Recommend approval of Resolution No. R-2023-28 of the City Council of the City of Bastrop, Texas confirming appointment by the Mayor of Isaac Merino, Place 5 of the Construction Standard Board, as required in Section 3.08 of the City's Charter, and establishing an effective date.

ATTACHMENTS :

- Resolution

RESOLUTION NO. R-2023-28

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, CONFIRMING APPOINTMENT BY THE MAYOR OF ISAAC MERINO TO PLACE 5 OF THE CONSTRUCTION STANDARDS BOARD, AS REQUIRED IN SECTION 3.08 OF THE CITY’S CHARTER; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Section 3.08, Mayor and Mayor Pro Tem, of the City Charter states that the Mayor shall appoint members to all City boards and commissions, subject to confirmation by the City Council; and

WHEREAS, Mayor Connie Schroeder has appointed Isaac Merino to Place 5 of the Construction Standards Board; and

WHEREAS, City Council must confirm this appointment as required by the City Charter.

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

Section 1: That Mayor Connie Schroeder has appointed Isaac Merino to Place 5 of the Construction Standards Board.

Section 2: That the City Council of the City of Bastrop confirms Mayor Schroeder’s appointment of Isaac Merino to Place 5 of the Construction Standards Board.

Section 3: That this Resolution shall take effect immediately upon its passage, and it is so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 14th day of February 2023.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve the second reading of Ordinance No. 2023-03 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Article 1.04 regarding annual verification of attendance and residency for members of boards, commissions, task forces, committees and advisory bodies; and providing for: findings of fact, adoption, repealer, severability, establishing an effective date, proper notice and meeting.

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, City Manager

BACKGROUND/HISTORY:

Boards and commissions are an important tool to accomplish council goals and ensuring residents are involved in the legislative and decision making process. The importance of this is stressed in the Code of Ordinances specifying residency requirements.

Currently, a few boards have been unable to make quorum due to attendance issues and there exists no formal process for removal for attendance or residency.

This agenda item is an attempt to add clarity to the Code of Ordinances and provide for a clear internal process for verification and seamless continuity of service within the Boards and Commissions.

FISCAL IMPACT:

None

RECOMMENDATION:

Approve the second reading of Ordinances No. 2023-03 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Article 1.04 regarding annual verification of attendance and residency for members of boards, commissions, task forces, committees and advisory bodies; and providing for: findings of fact, adoption, repealer, severability, establishing an effective date, proper notice and meeting.

ATTACHMENTS:

1. Ordinance

CITY OF BASTROP, TX
ORDINANCE NO. 2023-03

ATTENDANCE & RESIDENCY FOR ADVISORY BODIES

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS AMENDING THE CODE OF ORDINANCES ARTICLE 1.04, RELATED TO THE ATTENDANCE AND RESIDENCY OF MEMBERS OF ADVISORY BODIES, BOARDS, COMMITTEES AND COMMISSIONS, AND PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, CODIFICATION, EFFECTIVE DATE, PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Bastrop has the authority to create advisory bodies such as boards, committees, commissions, and task forces; and

WHEREAS, the City Council finds it reasonable to require that city staff annually verify the attendance and residency of members of advisory bodies; and

WHEREAS, the City Council finds the attached amendments reasonable and necessary.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bastrop, TX:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. AMENDMENT

Chapter 1, Article 1.04, Section 1.04.002 of the City of Bastrop Code of Ordinances is hereby amended, and after such amendment, shall read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as stated on *Attachment A*.

3. REPEALER

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City’s Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City’s Charter, Code of Ordinances, and the laws of the State of Texas.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ & ACKNOWLEDGED on First Reading on this, the 14th day of February 2023.

READ & APPROVED on the Second Reading on this, the 28th day of February 2023.

APPROVED:

by: _____
Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Attachment "A"

Bastrop Code of Ordinances

Chapter 1: General Provisions

Article 1.04: Boards, Committees and Commissions

Sec. 1.04.002 Membership, terms.

Unless otherwise controlled and mandated by state or federal law and/or City Charter, the following overarching provisions shall apply to the city's boards, commissions, task forces, committees and advisory bodies ("board(s)," "body" or "advisory bodies"):

- (1) Board members shall be appointed by the mayor and confirmed by the Council, for terms of three (3) years. No board member shall serve more than two (2) consecutive terms on a particular advisory body. An individual that has previously served two (2) consecutive terms on a particular advisory body, must wait one full year before being reappointed to the same advisory body. The Mayor, upon a finding of good cause, has the authority to waive this one-year waiting period.
- (2) All city advisory bodies shall consist of seven (7) members and each seat shall be assigned a "place."
- (3) Advisory body members' terms of service shall be "staggered" three-year terms, so that the entire membership of the board will not be subject to replacement at any single point in time. If necessary, to establish initial staggering of the membership Place 1 and Place 2 shall initially serve a three-year term, Place 3 and Place 4 shall initially serve a two-year term, and Place 5, Place 6 and Place 7 shall initially serve one-year terms.
- (4) In the event of a vacancy, an individual appointed to fill the vacant place will serve only the remaining term of the individual who is being replaced by the appointee, so that the staggering of terms shall remain intact.
- (5) All advisory body members shall reside within the city limits or the city's Extraterritorial Jurisdiction (ETJ). No more than two (2) members of a particular advisory body can be from the ETJ. Upon a showing of good cause, the Mayor may waive the residency requirement.
 - (a) The City Secretary shall send out notice to all members each March to verify residency and attendance requirements and upon such findings, present to the Mayor and City Council, those members who no longer qualify to serve.
- (6) Each advisory body will have a City Council Member assigned as Council Liaison. This will facilitate the transfer of information from the advisory bodies to the City Council.



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve Resolution No. R-2023-29 of the City Council of the City of Bastrop, Texas to award an engineering service contract to provide engineering services for the City's 2023-2024 Community Development Fund application and project-related engineering services if funded; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

AGENDA ITEM SUBMITTED BY

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

The City was notified of a grant funding opportunity through the Community Development Fund, the largest fund category in the Texas Community Development Block Grant program. This funding is for public facilities to include water/wastewater infrastructure, street and drainage improvements, and housing activities. The City plans to submit an application to complete the Riverwood water line project. Maximum grant amount is \$500,000.

This funding application is closely tied to the current grant we have for the Riverwood water line project phase I. The engineering request for qualifications was delayed due to the timing of issuing a contract for the current grant project and is closing Feb. 25th. This new grant application is due April 3rd, so time is of the essence. We will have the selected engineering firm information at the meeting on February 28th but did not have it for the deadline of the agenda.

FISCAL IMPACT

The funding for the project will be part of the FY 2024 budget discussion.

RECOMMENDATION:

Tracy Waldron, recommends approval of Resolution No. R-2023-29 of the City Council of the City of Bastrop, Texas to award an engineering service contract to provide engineering services for the City's 2023-2024 Community Development Fund application and project-related engineering services if funded; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution R-2023-29

RESOLUTION NO. R-2023-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS TO AWARD AN ENGINEERING SERVICE CONTRACT TO _____ TO PROVIDE ENGINEERING SERVICES FOR THE CITY'S 2023-2024 COMMUNITY DEVELOPMENT FUND APPLICATION AND PROJECT-RELATED ENGINEERING SERVICES IF FUNDED; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, certain conditions exist which represent a threat to public health and safety; and

WHEREAS, it is necessary and in the best interests of the City of Bastrop to apply for funding under the Community Development Fund;

WHEREAS, in order to identify qualified and responsive providers for these services a Request for Qualifications (RFQ) process for engineering services has been completed in accordance with Texas CDBG requirements; and

WHEREAS, the proposals received by the due date have been reviewed to determine that most qualified and responsive providers for engineering services.

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

Section 1: That the City Manager is hereby authorized to execute an agreement for Engineering Services with _____, to provide application and project-related engineering services for the 2023-2024 Community Development Fund project.

Section 2: That the city's application be placed in competition for funding under the Texas Community Development Block Grant Program from the Community Development Fund.

Section 3: That all funds will be used in accordance with all applicable federal, state, local and programmatic requirements including but not limited to procurement, environmental review, labor standards, real property acquisition, and civil rights requirements.

Section 4: That all orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 5: That this Resolution shall take effect immediately upon its passage, and it is so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop on this, the 28th day of February 2023.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve Resolution No. R-2023-32 of the City Council of the City of Bastrop, Texas, designating authorized signatories for contractual documents and documents for requesting funds pertaining to the Texas Community Development Block Grant Program (TxCDBG); providing for a repealing clause; and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

The City was notified of a grant funding opportunity through the Community Development Fund, the largest fund category in the Texas Community Development Block Grant program. This funding is for public facilities to include water/wastewater infrastructure, street and drainage improvements, and housing activities. The City plans to submit an application to complete the Riverwood water line project. Maximum grant amount is \$500,000.

It is a requirement of the grant application that a copy of the approved Resolution approving these signatories be submitted at the time of application.

FISCAL IMPACT:

NA

RECOMMENDATION:

Consider action to approve Resolution No. R-2023-32 of the City Council of the City of Bastrop, Texas, designating authorized signatories for contractual documents and documents for requesting funds pertaining to the Texas Community Development Block Grant Program (TxCDBG); providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution R-2023-32

RESOLUTION NO. R-2023-32

A RESOLUTION BY THE CITY COUNCIL OF CITY OF BASTROP DESIGNATING AUTHORIZED SIGNATORIES FOR CONTRACTUAL DOCUMENTS AND DOCUMENTS FOR REQUESTING FUNDS PERTAINING TO THE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (TXCDBG); PROVIDING FOR A REPEALING CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop desires to develop a viable community, including decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-to-moderate income; and

WHEREAS, it is necessary and in the best interests of the City to participate in the Texas Community Development Block Grant Program (TxCDBG); and

WHEREAS, the City Council of the City of Bastrop, Texas is committed to compliance with federal, state, and program rules, including the current TxCDBG Project Implementation Manual; and

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

Section 1: The City of Bastrop directs and designates the following to act in all matters in connection with any grant application and the City's participation in the Texas Community Development Block Grant Program:

- The City Manager and Mayor shall serve as the City's Chief Executive Officer and Authorized Representative to:
 - execute a grant application and any subsequent contractual documents, and
 - Certify environmental review documents between the Texas Department of Agriculture and the City, and
 - Certify the Payment Request form and/or other forms required for requesting funds to reimburse project costs, and
 - be assigned the role of Authorized Official in the TDA-GO grant management system.

- In addition to the above designated officials, should any grant be funded the Assistant City Manager and Chief Financial Officer is authorized to:
 - Certify the Payment Request form and/or forms required for requesting funds to reimburse project costs, and
 - Prepare and submit other financial documentation, and
 - be assigned the role of Project Director or Payment Processor in the TDA-GO grant management system.

Section 2: All orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3: That this Resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop, Texas this 28th day of February, 2023.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve Resolution No. R-2023-31 of the City Council of the City of Bastrop, Texas authorizing the submission of a Texas Community Development Block Grant Program application to the Texas Department of Agriculture for the Community Development Fund; reaffirming various policies and procedures required in conformity with the Civil Rights Act, and the Fair Housing Act, as shown in Exhibit A; providing for a repealing clause and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

The City was notified of a grant funding opportunity through the Community Development Fund, the largest fund category in the Texas Community Development Block Grant program. This funding is for public facilities to include water/wastewater infrastructure, street and drainage improvements, and housing activities. The City plans to submit an application to complete the Riverwood water line project. Maximum grant amount is \$500,000.

All grantees of Texas Community Development Block Grant (TxCDBG) funds are required to demonstrate compliance with all state and federal requirements to ensure equal opportunity and access to all benefits derived from the TxCDBG Program.

The State and Federal requirements include:

- Taking steps to ensure that equal opportunities are afforded to all persons and that no person shall be excluded or denied program benefits on the basis of race, color, religion, sex, national origin, age, and/or disability.
- Taking steps to provide opportunities, to the greatest extent feasible, to low and very low income (Section 3) residents and businesses in employment, training, and contracting for construction contracts.
- Taking affirmative steps to ensure minority, small business, and female-owned businesses are informed of grant funded contracts.
- Prohibiting the use of Excessive Force against individuals engaged in non-violent Civil Rights demonstrations.
- Prohibiting discrimination based on disability.
- Taking steps to Affirmatively Further Fair Housing (AFFH).
- Taking steps to assure meaningful access for persons with “Limited English Proficiency” (LEP).

This grant application requires a resolution be passed by City Council reaffirming these policies and procedures.

Exhibit A of this Resolution includes the following policies and procedures:

- Citizen Participation Plan and Grievance Procedures
- Excessive Force Policy
- Section 504 Policy and Grievance Procedures
- Code of Conduct Policy
- Fair Housing Policy

FISCAL IMPACT:

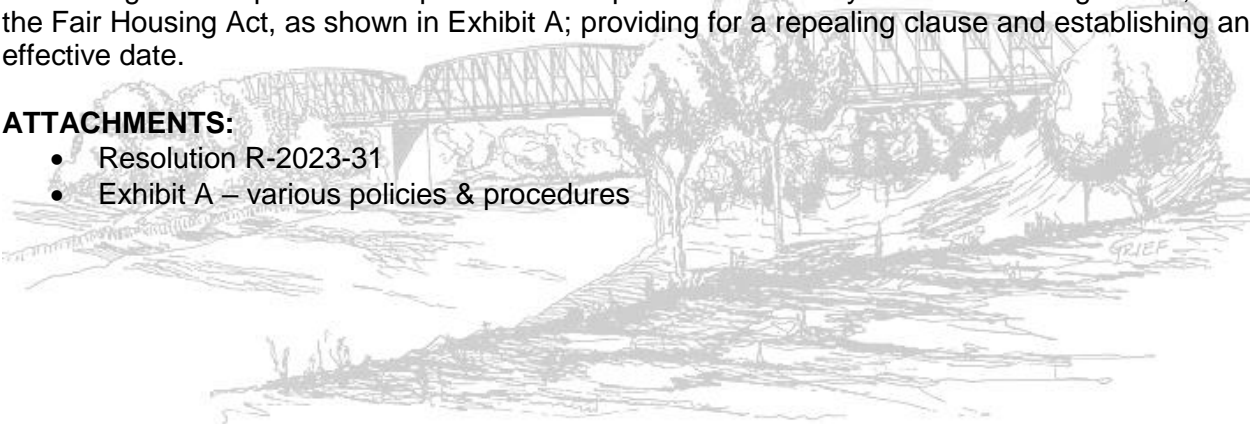
Matching funds from Water/Wastewater Fund

RECOMMENDATION:

Consider action to approve Resolution No. R-2023-31 of the City Council of the City of Bastrop, Texas authorizing the submission of a Texas Community Development Block Grant Program application to the Texas Department of Agriculture for the Community Development Fund; reaffirming various policies and procedures required in conformity with the Civil Rights Act, and the Fair Housing Act, as shown in Exhibit A; providing for a repealing clause and establishing an effective date.

ATTACHMENTS:

- Resolution R-2023-31
- Exhibit A – various policies & procedures



RESOLUTION No. R-2023-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS AUTHORIZING THE SUBMISSION OF A TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM APPLICATION TO THE TEXAS DEPARTMENT OF AGRICULTURE FOR THE COMMUNITY DEVELOPMENT FUND; REAFFIRMING VARIOUS POLICIES AND PROCEDURES REQUIRED IN CONFORMITY WITH THE CIVIL RIGHTS ACT, AND THE FAIR HOUSING ACT, AS SHOWN IN EXHIBIT A; PROVIDING FOR A REPEALING CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Bastrop desires to develop a viable community, including decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low-to-moderate income; and

WHEREAS, it is necessary and in the best interest of the City of Bastrop to apply for funding under the Texas Community Block Grant Program: and

WHEREAS, the City of Bastrop, in consideration for the receipt and acceptance of federal funding, agrees to comply with all federal rules and regulations including those rules and regulations governing citizen participation and civil rights protections as follows; and

WHEREAS, the City of Bastrop, in accordance with Section 109 of the Title I of the Housing and Community Development Act. (24 CFR 6); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and for construction contracts greater than \$10,000, must take actions to ensure that no person or group is denied benefits such as employment, training, housing, and contracts generated by the TxCDBG activity, on the basis of race, color, religion, sex, national origin, age, or disability;

WHEREAS, the City of Bastrop, in consideration for the receipt and acceptance of federal funding, agrees to comply with all federal rules and regulations including those rules and regulations governing citizen participation and civil rights protections;

WHEREAS, the City of Bastrop, in accordance with Section 3 of the Housing and Urban Development Act of 1968, as amended, and 24 CFR Part 135, is required, to the greatest extent feasible, to provide training and employment opportunities to lower income residents and contract opportunities to businesses in the TxCDBG project area;

WHEREAS, the City of Bastrop, in accordance with Section 104(1) of the Housing and Community Development Act, as amended, and State’s certification requirements at 24 CFR 91.325(b)(6), must adopt an excessive force policy that prohibits the use of excessive force against non-violent civil rights demonstrations;

WHEREAS, the City of Bastrop, in accordance with Executive Order 13166, must take reasonable steps to ensure meaningful access to services in federally assisted programs and activities by persons with limited English proficiency (LEP) and must have an LEP plan in place specific to the locality and beneficiaries for each TxCDBG project;

WHEREAS, the City of Bastrop, in accordance with Section 504 of the Rehabilitation Act of 1973, does not discriminate on the basis of disability and agrees to ensure that qualified individuals with disabilities have access to programs and activities that receive federal funds; and

WHEREAS, the City of Bastrop, in accordance with Section 808(e)(5) of the Fair Housing Act (42 USC 3608(e)(5)) that requires HUD programs and activities be administered in a manner affirmatively to further the policies of the Fair Housing Act, agrees to conduct at least one activity during the contract period of the TxCDBG contract, to affirmatively further fair housing;

WHEREAS, the City of Bastrop, agrees to maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

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

Section 1: That a Texas Community Development Block Grant Program application for the Community Development Fund is hereby authorized to be filed on behalf of the City of Bastrop with the Texas Department of Agriculture.

That the City’s application be placed in competition for funding under the Community Development Fund.

That the application be for up to \$500,000.00 of grant funds to provide water improvements.

That the funds will be used in accordance with all applicable federal, state, local, and programmatic requirements including but not limited to procurement, environmental review, labor standards, real property acquisition, and civil rights requirements.

That it further be stated that the City of Bastrop is committing at a minimum \$50,000.00 from its Water and Wastewater Fund as a cash contribution toward the administration, engineering, and/or construction activities of this water improvement project.

The City Council hereby reaffirms the following polices and procedures, as shown in the attached Exhibit A:

1. Citizen Participation Plan and Grievance Procedures (Form A1013);
2. Excessive Force Policy (Form A1003);
3. Section 504 Policy Against Discrimination Based on Handicap and Grievance Procedures (Form A1004);
4. Code of Conduct Policy (FormA1002); and
5. Fair Housing Policy (Form 1015).

The City of Bastrop reaffirms its commitment to conduct a project-specific analysis and take all appropriate action necessary to comply with program requirements for the following:

6. Section 3 economic opportunity;
7. Limited English Proficiency; and
8. Affirmatively Further Fair Housing

Section 2: All orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such

conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3: That this Resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop, Texas this 28th day of February, 2023.

SIGNATURES ON THE NEXT PAGE

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

EXHIBIT A

A1013

CITY OF BASTROP CITIZEN PARTICIPATION PLAN TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Note to Grant Recipients regarding Limited English Proficiency (LEP) requirements:

In accordance with federal law, if there is a significant number of the population who are non-English speaking residents and are affected by the TxCDBG project, such citizens should have “meaningful access” to all aspects of the TxCDBG project. To provide ‘meaningful access’, Grant Recipients may need to provide interpreter services at public hearings or provide non-English written materials that are routinely provided in English. Examples of such vital documents include Citizen Participation notices (e.g. complaint procedures, hearing notices) civil rights notices, and any other published notice that may allow an eligible person with limited English proficiency to participate in discussing proposed CDBG activities.

For more information, see LEP.gov.

COMPLAINT PROCEDURES

These complaint procedures comply with the requirements of the Texas Department of Agriculture’s Texas Community Development Block Grant (TxCDBG) Program and Local Government Requirements found in 24 CFR §570.486 (Code of Federal Regulations). Citizens can obtain a copy of these procedures at The City of Bastrop offices, 1311 Chestnut Street, Bastrop, TX 78602-0427, (512) 332-8800 during regular business hours.

Below are the formal complaint and grievance procedures regarding the services provided under the TxCDBG project.

1. A person who has a complaint or grievance about any services or activities with respect to the TxCDBG project, whether it is a proposed, ongoing, or completed TxCDBG project, may during regular business hours submit such complaint or grievance, in writing to the Mayor, at City of Bastrop at 1311 Chestnut Street or PO Box 427, Bastrop TX 78602-0427, or may call (512) 332-8800.

A copy of the complaint or grievance shall be transmitted by the Mayor to the entity that is the subject of the complaint or grievance and to The City of Bastrop

2. Attorney within five (5) working days after the date of the complaint or grievance was received.
3. The Mayor shall complete an investigation of the complaint or grievance, if practicable, and provide a timely written answer to person who made the complaint or grievance within ten (10) days.
4. If the investigation cannot be completed within ten (10) working days per 3. above, the person who made the grievance or complaint shall be notified, in writing, within fifteen (15) days where practicable after receipt of the original complaint or grievance and shall detail when the investigation should be completed.
5. If necessary, the grievance and a written copy of the subsequent investigation shall be forwarded to the TxCDBG for their further review and comment.

6. If appropriate, provide copies of grievance procedures and responses to grievances in both English and Spanish, or other appropriate language.

TECHNICAL ASSISTANCE

When requested, The City of Bastrop shall provide technical assistance to groups that are representative of persons of low- and moderate-income in developing proposals for the use of TxCDBG funds. The City of Bastrop, based upon the specific needs of the community's residents at the time of the request, shall determine the level and type of assistance.

PUBLIC HEARING PROVISIONS

For each public hearing scheduled and conducted by The City of Bastrop, the following public hearing provisions shall be observed:

1. Public notice of all hearings must be published at least seventy-two (72) hours prior to the scheduled hearing. The public notice must be published in a local newspaper. Each public notice must include the date, time, location, and topics to be considered at the public hearing. A published newspaper article can also be used to meet this requirement so long as it meets all content and timing requirements. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.
2. When a significant number of non-English speaking residents are a part of the potential service area of the TxCDBG project, vital documents such as notices should be published in the predominant language of these non-English speaking citizens.

Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries and will include accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and The City of Bastrop

3. must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to the hearing.
4. A public hearing held prior to the submission of a TxCDBG application must be held after 5:00 PM on a weekday or at a convenient time on a Saturday or Sunday.
5. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, an interpreter should be present to accommodate the needs of the non-English speaking residents.

The City of Bastrop

shall comply with the following citizen participation requirements for the preparation and submission of an application for a TxCDBG project:

At a minimum, The City of Bastrop

1. shall hold at least one (1) public hearing to prior to submitting the application to the Texas Department of Agriculture.

The City of Bastrop

2. shall retain documentation of the hearing notice(s), a listing of persons attending the hearing(s), minutes of the hearing(s), and any other records concerning the proposed use of funds for three (3) years from closeout of the grant to the state. Such records shall be made available to the public in accordance with Chapter 552, Texas Government Code.

- 3. The public hearing shall include a discussion with citizens as outlined in the applicable TxCDBG application manual to include, but is not limited to, the development of housing and community development needs, the amount of funding available, all eligible activities under the TxCDBG program, and the use of past TxCDBG contract funds, if applicable. Citizens, with particular emphasis on persons of low- and moderate-income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing.
- 4. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, an interpreter should be present to accommodate the needs of the non-English speaking residents.

The City of Bastrop
 must comply with the following citizen participation requirements in the event that the City of Bastrop receives funds from the TxCDBG program:

- The City of Bastrop
- 1. shall also hold a public hearing concerning any substantial change, as determined by TxCDBG, proposed to be made in the use of TxCDBG funds from one eligible activity to another again using the preceding notice requirements.

Upon completion of the TxCDBG project, The City of Bastrop

- 2. shall hold a public hearing and review its program performance including the actual use of the TxCDBG funds.
- 3. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, for either a public hearing concerning substantial change to the TxCDBG project or for the closeout of the TxCDBG project, publish notice in both English and Spanish, or other appropriate language and provide an interpreter at the hearing to accommodate the needs of the non-English speaking residents.

The City of Bastrop

- 4. shall retain documentation of the TxCDBG project, including hearing notice(s), a listing of persons attending the hearing(s), minutes of the hearing(s), and any other records concerning the actual use of funds for a period of three (3) years three (3) years from closeout of the grant to the state. Such records shall be made available to the public in accordance with Chapter 552, Texas Government Code.

 Signature

Connie Schroeder, Mayor
 Name, Title

 Date

**LA CIUDAD DE CITY OF BASTROP
PLAN DE PARTICIPACIÓN CIUDADANA
PROGRAMA DE TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

Nota a los receptores de subvención en relación a requisitos de Dominio Limitado del inglés:

De acuerdo con la ley federal hay un número significativo de población que son residentes y que no hablan inglés y son afectados por el proyecto TxCDBG, estos ciudadanos deben tener "acceso significativo" a todos los aspectos del proyecto TxCDBG. Para proporcionar "acceso significativo", receptores de la subvención pueden ser utilizados para proporcionar servicios de interpretación en las audiencias públicas o proporcionar materiales no escritos en inglés que se proporcionan de manera rutinaria en inglés.

Para obtener más información, consulte LEP.gov.

PROCEDIMIENTOS DE QUEJA

Estos procedimientos de queja cumplen con los requisitos del Departamento de Programa de Agricultura de Texas Community Development Block Grant (TxCDBG) y los requisitos del gobierno local de Texas se encuentran en 24 CFR §570.486 (Código de Regulaciones Federales). Los ciudadanos pueden obtener una copia de estos procedimientos en La Ciudad de dirección postal City of Bastrop, 1311 Chestnut Street, Bastrop, TX 78602-0427, (512) 332-8800, en horario de oficina.

A continuación se presentan los procedimientos formales de quejas y quejas relativas a los servicios prestados en el marco del proyecto TxCDBG.

1. Una persona que tiene una queja o reclamación sobre cualquiera de los servicios o actividades en relación con el proyecto TxCDBG, o si se trata de una propuesta, en curso o determinado proyecto TxCDBG, pueden durante las horas regulares presentar dicha queja o reclamo, por escrito a la Mayor, a City of Bastrop, 1311 Chestnut Street or PO Box 427, Bastrop, TX 78602-0427, (512) 332-8800.
2. Una copia de la queja o reclamación se transmitirá por el alcalde a la entidad que es encargada de la queja o reclamación y al Abogado de La Ciudad dentro de los cinco (5) días hábiles siguientes a la fecha de la queja o día que la reclamación fue recibida.
3. El alcalde deberá cumplir una investigación de la queja o reclamación, si es posible, y dará una respuesta oportuna por escrito a la persona que hizo la denuncia o queja dentro de los diez (10) días.
4. Si la investigación no puede ser completada dentro de los diez (10) días hábiles anteriormente, la persona que hizo la queja o denuncia será notificada, por escrito, dentro de los quince (15) días cuando sea posible después de la entrega de la queja original o quejas y detallará cuando se deberá completar la investigación.
5. Si es necesario, la queja y una copia escrita de la investigación posterior se remitirán a la TxCDBG para su posterior revisión y comentarios.
6. Se proporcionará copias de los procedimientos de queja y las respuestas a las quejas, tanto en inglés y español, u otro lenguaje apropiado.

09/01/2020
ASISTENCIA TÉCNICA

Cuando lo solicite, La Ciudad proporcionará asistencia técnica a los grupos que son representantes de las personas de bajos y moderados ingresos en el desarrollo de propuestas para el uso de los fondos TxCDBG. La Ciudad, en base a las necesidades específicas de los residentes de la comunidad en el momento de la solicitud, deberá determinar el nivel y tipo de asistencia.

DISPOSICIONES AUDIENCIA PÚBLICA

Para cada audiencia pública programada y llevada a cabo por La Ciudad, se observarán las disposiciones siguientes de audiencias públicas:

1. Aviso público de todas las audiencias deberá publicarse al menos setenta y dos (72) horas antes de la audiencia programada. El aviso público deberá publicarse en un periódico local. Cada aviso público debe incluir la fecha, hora, lugar y temas a considerar en la audiencia pública. Un artículo periodístico publicado también puede utilizarse para cumplir con este requisito, siempre y cuando cumpla con todos los requisitos de contenido y temporización. Los avisos también deben ser un lugar prominente en los edificios públicos y se distribuyen a las autoridades locales de vivienda pública y otros grupos interesados de la comunidad.
2. Cuando se tenga un número significativo de residentes que no hablan inglés serán una parte de la zona de servicio potencial del proyecto TxCDBG, documentos vitales como las comunicaciones deben ser publicados en el idioma predominante de estos ciudadanos que no hablan inglés.
3. Cada audiencia pública se llevará a cabo en un momento y lugar conveniente para los beneficiarios potenciales o reales e incluirá alojamiento para personas con discapacidad. Las personas con discapacidad deben poder asistir a las audiencias y La Ciudad debe hacer los arreglos para las personas que requieren ayudas o servicios auxiliares en caso de necesitarlo por lo menos dos días antes de la audiencia pública.
4. Una audiencia pública celebrada antes de la presentación de una solicitud TxCDBG debe hacerse después de las 5:00 pm en un día de semana o en un momento conveniente en sábado o domingo.
5. Cuando un número significativo de residentes que no hablan inglés se registra para participar en una audiencia pública, un intérprete debe estar presente para dar cabida a las necesidades de los residentes que no hablan inglés.

La Ciudad deberá cumplir con los siguientes requisitos de participación ciudadana para la elaboración y presentación de una solicitud para un proyecto TxCDBG:

1. Como mínimo, La Ciudad deberá tener por lo menos un (1) audiencia pública antes de presentar la solicitud al Departamento de Agricultura de Texas.
2. La Ciudad conservará la documentación de la convocatoria(s) audiencia, un listado de las personas que asistieron a la audiencia(s), acta de la vista(s), y cualquier otra documentación relativa a la propuesta de utilizar los fondos para tres (3) años a partir de la liquidación de la subvención para el Estado. Dichos registros se pondrán a disposición del público, de conformidad con el Capítulo 552, Código de Gobierno de Texas.

09/01/2020

- 3. La audiencia pública deberá incluir una discusión con los ciudadanos como se indica en el manual correspondiente de aplicación TxCDBG, pero no se limita a, el desarrollo de las necesidades de vivienda y desarrollo comunitario, la cantidad de fondos disponibles, todas las actividades elegibles bajo el programa TxCDBG y el uso de fondos últimos contratos TxCDBG, en su caso. Los ciudadanos, con especial énfasis en las personas de bajos y moderados ingresos que son residentes de las zonas de tugurios y tizón, se fomentará a presentar sus opiniones y propuestas sobre el desarrollo de la comunidad y las necesidades de vivienda. Los ciudadanos deben ser conscientes de la ubicación en la que podrán presentar sus puntos de vista y propuestas en caso de que no pueda asistir a la audiencia pública.
- 4. Cuando un número significativo de residentes que no hablan inglés se registra para participar en una audiencia pública, un intérprete debe estar presente para dar cabida a las necesidades de los residentes que no hablan inglés.

La Ciudad debe cumplir con los siguientes requisitos de participación ciudadana en el caso de que La Ciudad recibe fondos del programa TxCDBG:

- 1. La Ciudad celebrará una audiencia pública sobre cualquier cambio sustancial, según lo determinado por TxCDBG, se propuso que se hará con el uso de fondos TxCDBG de una actividad elegible a otro utilizando de nuevo los requisitos de notificación
- 2. Una vez finalizado el proyecto TxCDBG, La Ciudad celebrará una audiencia pública y revisará el desempeño del programa incluyendo el uso real de los fondos TxCDBG.
- 3. Cuando un número significativo de residentes que no hablan inglés se puede registra para participar en una audiencia pública, ya sea para una audiencia pública sobre el cambio sustancial del proyecto TxCDBG o para la liquidación del proyecto TxCDBG, publicará un aviso en inglés y español u otro idioma apropiado y se proporcionara un intérprete en la audiencia para dar cabida a las necesidades de los residentes.
- 4. La Ciudad conservará la documentación del proyecto TxCDBG, incluyendo aviso de audiencia(s), un listado de las personas que asistieron a la audiencia(s), acta de la vista(s), y cualquier otro registro concerniente al uso real de los fondos por un período de a tres (3) años a partir de la liquidación del proyecto al estado.

Dichos registros se pondrán a disposición del público, de conformidad con el Capítulo 552, Código de Gobierno de Texas.

Firma/Signature

Connie Schroeder, Mayor
Nombre, Título /Name, Title

Fecha/Date

A1003

Excessive Force Policy

In accordance with 24 CFR 91.325(b)(6), The City of Bastrop hereby adopts and will enforce the following policy with respect to the use of excessive force:

- 1. It is the policy of The City of Bastrop to prohibit the use of excessive force by the law enforcement agencies within its jurisdiction against any individual engaged in non-violent civil rights demonstrations;
- 2. It is also the policy of The City of Bastrop to enforce applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction; and
- 3. The City of Bastrop will introduce and pass a resolution adopting this policy.

As officers and representatives of City of Bastrop, we the undersigned have read and fully agree to this plan, and become a party to the full implementation of this program.

Signature

Connie Schroeder, Mayor
Name, Title

Date

A1004

Section 504 Policy Against Discrimination Based on Handicap and Grievance Procedures

In accordance with 24 CFR Section 8, Nondiscrimination based on Handicap in federally assisted programs and activities of the Department of Housing and Urban Development, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309), City of Bastrop hereby adopts the following policy and grievance procedures:

1. Discrimination prohibited. No otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development (HUD).
2. City of Bastrop does not discriminate on the basis of handicap in admission or access to, or treatment or employment in, its federally assisted programs and activities.
3. City of Bastrop's recruitment materials or publications shall include a statement of this policy in 1. above.
4. City of Bastrop shall take continuing steps to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipients that it does not discriminate on the basis of handicap in violation of 24 CFR Part 8.
5. For hearing and visually impaired individuals eligible to be served or likely to be affected by the TxCDBG program, City of Bastrop shall ensure that they are provided with the information necessary to understand and participate in the TxCDBG program.
6. Grievances and Complaints
 - a. Any person who believes she or he has been subjected to discrimination on the basis of disability may file a grievance under this procedure. It is against the law for City of Bastrop) to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.
 - b. Complaints should be addressed to the Mayor, PO Box 427, Bastrop, TX, 78602-0427 or call (512) 332-8800, who has been designated to coordinate Section 504 compliance efforts.
 - c. A complaint should be filed in writing or verbally, contain the name and address of the person filing it, and briefly describe the alleged violation of the regulations.
 - d. A complaint should be filed within thirty (30) working days after the complainant becomes aware of the alleged violation.
 - e. An investigation, as may be appropriate, shall follow a filing of a complaint. The investigation will be conducted by the Mayor. Informal but thorough investigations will afford all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

- f. A written determination as to the validity of the complaint and description of resolution, if any, shall be issued by Mayor, and a copy forwarded to the complainant with fifteen (15) working days after the filing of the complaint where practicable.
- g. The Section 504 coordinator shall maintain the files and records of The City of Bastrop relating to the complaint files.
- h. The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the determination/resolution as described in f. above. The request for reconsideration should be made to The City of Bastrop within ten working days after the receipt of the written determination/resolution.
- i. The right of a person to a prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the person's pursuit of other remedies such as the filing of a Section 504 complaint with the U.S. Department of Housing and Urban Development. Utilization of this grievance procedure is not a prerequisite to the pursuit of other remedies.
- j. These procedures shall be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and assure that The City of Bastrop complies with Section 504 and HUD regulations.

Signature

Connie Schroeder, Mayor
Name, Title

Date

Code of Conduct Policy of The City of Bastrop

As a Grant Recipient of a TxCDBG contract, City of Bastrop shall avoid, neutralize or mitigate actual or potential conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair the performance of the TxCDBG contract or impact the integrity of the procurement process.

For procurement of goods and services, no employee, officer, or agent of The City of Bastrop shall participate in the selection, award, or administration of a contract supported by TxCDBG funds if he or she has a real or apparent conflict of interest. Such a conflict could arise if the employee, officer or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

No officer, employee, or agent of The City of Bastrop shall solicit or accept gratuities, favors or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

For all other cases, no employee, agent, consultant, officer, or elected or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving TxCDBG funds, that has any CDBG function/responsibility, or is in a position to participate in a decision-making process or gain inside information, may obtain a financial interest or benefit from the TxCDBG activity.

The conflict-of-interest restrictions and procurement requirements identified herein shall apply to a benefitting business, utility provider, or other third-party entity that is receiving assistance, directly or indirectly, under a TxCDBG contract or award, or that is required to complete some or all work under the TxCDBG contract in order to meet the National Program Objective.

Any person or entity including any benefitting business, utility provider, or other third-party entity that is receiving assistance, directly or indirectly, under a TxCDBG contract or award, or that is required to complete some or all work under the TxCDBG contract in order to meet a National Program Objective, that might potentially receive benefits from TxCDBG awards may not participate in the selection, award, or administration of a contract supported by CDBG funding.

Any alleged violations of these standards of conduct shall be referred to The City of Bastrop Attorney. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal or transfer; where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

Signature

Connie Schroeder, Mayor
Name, Title

Date

These procedures are intended to serve as guidelines for the procurement of supplies, equipment, construction services and professional services for the Texas Community Development Block Grant (TxCDBG) Program. The regulations related to conflict of interest and nepotism may be found at the Texas Government Code Chapter 573, Texas Local Government Code Chapter 171, Uniform Grant Management Standards by Texas Comptroller, 24 CFR 570.489(g) &(h), and 2 CFR 200.318

A1015

Fair Housing Policy

In accordance with Fair Housing Act, The City of Bastrop hereby adopts the following policy with respect to the Affirmatively Furthering Fair Housing:

- 1. City of Bastrop agrees to affirmatively further fair housing choice for all seven protected classes (race, color, religion, sex, disability, familial status, and national origin).
- 2. City of Bastrop agrees to plan at least one activity during the contract term to affirmatively further fair housing.
- 3. City of Bastrop will introduce and pass a resolution adopting this policy.

As officers and representatives of City of Bastrop, we the undersigned have read and fully agree to this plan and become a party to the full implementation of this program.

Signature

Connie Schroeder, Mayor
Name, Title

Date



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve Resolution No. R-2023-30 of the City Council of the City of Bastrop, Texas, recommending designating Bastrop Post Office, 1106 Main Street, Bastrop, Texas as "Sergeant Major Billy D. Waugh Post Office".

AGENDA ITEM SUBMITTED BY:

Sylvia Carrillo, City Manager

ATTACHMENTS:

- Resolution



RESOLUTION NO. R-2023-30

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, RECOMMEND AND REQUESTS THAT CONGRESS OF THE UNITED STATES DESIGNATE BILLY WAUGH'S HOMETOWN POST OFFICE AT 1106 MAIN STREET, BASTROP, TEXAS AS THE "SERGEANT MAJOR BILLY D. WAUGH POST OFFICE"; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, William D. "Billy" Waugh is a distinguished native son of Bastrop, Texas; and

WHEREAS, Billy Waugh was born in Bastrop on December 1, 1929, and graduated from Bastrop High School in 1948; and

WHEREAS, Billy Waugh served his Country honorably and heroically in the United States Army as a paratrooper and Special Forces (Green Beret) soldier from 1948 to 1972; and

WHEREAS, Billy Waugh served with honor and distinction for over seven years in combat during wars in both Korea and Vietnam; and

WHEREAS, Billy Waugh was honored for his combat service with eight awards of the Purple Heart for his combat wounds, two awards of the Combat Infantryman Badge, a Silver Star, four Bronze Stars, an Army Commendation Medal for valor, 14 Air Medals, two United States Presidential Unit Citations, a Republic of Korea Presidential Unit Citation, a Vietnam Presidential Unit Citation, 10 wartime campaign stars, plus five gold stars and an arrowhead device for combat parachute assaults; and

WHEREAS, Billy Waugh is a United States Army and Special Operations legend whose eight Purple Hearts rank him third on the list of the most Purple Hearts ever received in military history; and

WHEREAS, Billy Waugh was part of the first high-altitude, low-opening (HALO) combat parachute assault in military history; and

WHEREAS, Billy Waugh retired from the United States Army in 1972 as a decorated veteran of 24 years with the rank of Sergeant Major; and

WHEREAS, Billy Waugh served the United States Postal Service faithfully from 1972 to 1977 after his distinguished military service; and

WHEREAS, Billy Waugh again served the United States with bravery and distinction across four decades, from 1977 to 2001, as a paramilitary operations officer in the Central Intelligence Agency (CIA); and

WHEREAS, Billy Waugh participated in paramilitary operations across Africa, Asia, and the Pacific during the Cold War with Russia, the Global War on Terrorism against al-Qaeda and Taliban forces, Operation Enduring Freedom in Afghanistan, and Operation Iraqi Freedom; and

WHEREAS, Billy Waugh successfully pursued the terrorist Ilich Ramirez Sanchez (better known as "Carlos the Jackal"), leading to his capture; and

WHEREAS, Billy Waugh successfully tracked the terrorist Osama bin Laden; and

WHEREAS, Billy Waugh is the co-author of two books on counterterrorism and irregular warfare, and is himself featured in a non-fiction book about CIA paramilitary operations; and

WHEREAS, Billy Waugh’s distinguished and illustrious fifty-year service to the United States of America richly deserves to be honored and remembered by the citizens of Bastrop.

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

Section 1: Recommends and requests that the Congress of the United States honor Billy Waugh’s faithful and selfless service by designating his hometown post office facility at 1106 Main Street, Bastrop, Texas 78602 as the “Sergeant Major Billy D. Waugh Post Office.”

Section 2: That this Resolution shall take effect immediately upon its passage, and it is so resolved.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 14th day of February 2023.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve Resolution R 2023-23 approving appointment of Caroline A. McClimon, JD as Presiding Municipal Judge, Bastrop Municipal Court, City of Bastrop and approving a contract to provide services, attached as Exhibit A; providing for a repealing clause; and establishing an effective date.

AGENDA ITEM SUBMITTED BY:

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

Judge McClimon is currently serving as Associate Municipal Court Judge since her appointment in May 2021. Her contract as Presiding Judge will begin March 10, 2023 and will run for a two-year term.

The City of Bastrop Charter states that the Presiding Judge must be nominated by the Mayor and appointed by the Council and that the salary shall be fixed.

This appointment will leave court with no appointed Associate Judge. This position is a backup to the Presiding Judge and assists with Jail Magistrations as well. Finance will issue a Request for Qualifications in March to provide recommendations for the Mayor to consider.

FUNDING SOURCE:

General Fund

RECOMMENDATION:

Tracy Waldron, CFO, recommends approval of Resolution R 2023-23 approving appointment of Caroline A. McClimon, JD as Presiding Municipal Judge, Bastrop Municipal Court, City of Bastrop and approving a contract to provide services, attached as Exhibit A; providing for a repealing clause; and establishing an effective date.

ATTACHMENTS:

- Resolution R-2023-23
- Exhibit A – Contract for Presiding Municipal Judge

RESOLUTION NO. R-2023-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING APPOINTMENT OF CAROLINE A. MCCLIMON JD AS PRESIDING MUNICIPAL JUDGE, BASTROP MUNICIPAL COURT, CITY OF BASTROP; AND APPROVING A CONTRACT TO PROVIDE SERVICES; ATTACHED AS EXHIBIT A; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Section 30.00006 of the Texas Government Code provides that the term of office for municipal judges “must be for a definite term of two or four years.”; and

WHEREAS, Section §5.02 of the City of Bastrop Home Rule Charter states that the Judge of the Municipal Court “shall be nominated by the Mayor and appointed by the Council”; and

WHEREAS, Section 7.01.003(f) of the Bastrop City Code states “each alternate judge shall be appointed for a term of two (2) years; and

WHEREAS, the City Council of the City of Bastrop, Texas has determined that it is in the best interest of the City of Bastrop and for the orderly operation of the City of Bastrop Municipal Court to appoint Caroline A. McClimon, JD as Presiding Municipal Judge.

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

Section 1: The City hereby appoints, under the authority of §5.02 of the City of Bastrop Home Rule Charter and Section 7.01.003 of the Bastrop City Code, Caroline A. McClimon, JD to the position of Presiding Municipal Judge for a term of two (2) years.

Section 2: The City Manager is hereby authorized to execute a contract for Presiding Municipal Judge services between the City of Bastrop, Texas and Caroline A. McClimon, JD (attached as Exhibit A) as well as all other necessary documents related to this contract.

Section 3: All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4: That this Resolution shall take effect immediately upon its passage, and it is so resolved.

DULY RESOLVED AND APPROVED by the City Council of the City of Bastrop, Texas
this 28th day of February 2023.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

- Preside over civil truant conduct hearings/trials.
- Maintain a central docket of all cases filed in the City of Bastrop.
- Establish and maintain Court Security panel.
- Review and/or deny requests for continuances.
- Determine innocence or culpability (when hearing cases without a jury) and levies fine commensurate with the violation in such manner to preserve equity and uniformity in the application of existing laws and ordinances.
- Supervise the administration of juror notification and direct jurors in trial cases on their role in the interpretation and application of law.
- Be available, or have adequate associate judge expertise available, on a 24/7 basis, to review and/or sign complaints, summons, subpoenas, affidavits for search and arrest warrants, appeal bonds, etc.
- Support court activities with Municipal Court Clerk and City Prosecutor and other city departments.
- Review legislation and current case law affecting offenses and the criminal justice system and implement procedures to ensure compliance. Perform legal research as needed and determine fine amounts.
- Conduct hearings (including property, emergency protective order, code enforcement, dangerous dog, etc.).
- Daily jail magistrations – rights warnings, set bonds
- Juvenile hearings.
- Indigent hearings.
- Approve/Deny Personal Recognizance (PR) Bond requests.
- Issue warrants (search, arrest, mental health), summons, magistrate warnings, etc.
- Primarily responsible for the review and signing of all paperwork prepared by court clerks.

- 2.4 The City of Bastrop's regular Municipal Court shall be held at Bastrop Municipal Court located at 104 Grady Tuck Lane, Bastrop, Texas 78602. However, the City of Bastrop reserves the right to designate days of the week, hours, and alternate locations where the Municipal Court may be held in the event that facility should not be available.
- 2.5 The City Council shall have the power to create and establish additional Municipal Courts, with the same or separate jurisdictions, and to appoint an additional Magistrate for each Court so established.
- 2.6 Judge. McClimon agrees to provide prompt, courteous, efficient, and professional services in the performance of his duties.
- 2.7 Judge McClimon shall deal with the administrative services of Municipal Court solely through the Municipal Court Clerk or the City Manager.

- 2.8 In the event Judge McClimon is unable to act for any reason, the Council may appoint an Alternate Municipal Court Judge to act in the Judge's place.
- 2.9 Judge McClimon shall meet with the City Attorney, City Manager, Director of Planning and Community Development, City Prosecutor, and the Chief of Police, or such officials' respective designees, on request, to discuss procedures within the Municipal Court.

3. SALARY AND BENEFITS

- 3.1 Judge McClimon shall be deemed an independent contractor of the City.
- 3.2 The City agrees to pay Judge McClimon annually at \$53,004, paid monthly in the amount of \$4,417 for all the duties sited in section 2.3, which equate to approximately 1,000 hours annually.
- 3.3 Judge McClimon shall pay all applicable local, state, federal taxes, including income tax, withholding tax, social security tax, and pension contributions, if any.
- 3.4 The City agrees to pay Judge McClimon. travel and expenses to attend the Texas Municipal Courts Education Center ("TMCEC") judges training, up to a maximum of three (3) days annually. Judge McClimon is required to attend the TMCEC judges training each year during the term of this contract.

4. TERMINATION

- 4.1 Judge McClimon may terminate this Agreement at any time, with or without notice.
- 4.2 Judge McClimon shall waive all claims for compensation if not claimed within thirty (30) days for the date of the termination of this Agreement.

5. GENERAL PROVISIONS

- 5.1 If any provision of this Agreement shall, for any reason, be held to violate of any applicable law, the invalidity of such a specific provision of this Agreement shall not be deemed to invalidate any other provisions of this Agreement, which shall remain in full force and effect unless removal of the invalid provisions destroy the legitimate purposes of this Agreement, in which event the parties shall deem this Agreement canceled.

- 5.2 The paragraph headings used in this Agreement are descriptive only and shall have no legal force or effect.
- 5.3 This Agreement represents the entire agreement by and between the parties, except as otherwise provided in this Agreement, and it may not be changed except by written amendment duly executed by all parties.
- 5.4 This Agreement shall be subject to and governed by the laws of the State of Texas. Any and all obligations or payments are due and payable in the City of Bastrop, Bastrop County, Texas.

IN WITNESS WHEREOF, the City Council of the City of Bastrop, by and through the Mayor, has caused this Agreement to be executed and that upon execution thereof, it shall be deemed the act and deed of the City of Bastrop.

[SIGNATURES FOLLOW ON PAGE 4]

CITY OF BASTROP, TEXAS

BY: _____
Sylvia Carrillo, City Manager

BY: _____
Caroline A. McClimon, JD Presiding Municipal Court Judge

ATTEST: _____
Ann Franklin, City Secretary



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve Resolution No. R-2023-31, of the City Council, of the City of Bastrop, Texas, approving a Request for Qualifications be issued for one or more Associate Judges; in the Municipal Court of the City of Bastrop, providing for a repeal; and providing an effective date.

AGENDA ITEM SUBMITTED BY:

Submitted by: Tracy Waldron, Chief Financial Officer

BACKGROUND/HISTORY:

Judge McClimon is currently serving as Associate Municipal Court Judge since her appointment in May 2021. Her contract as Presiding Judge will begin March 10, 2023 and will run for a two-year term.

The City of Bastrop Charter states that the Presiding Judge must be nominated by the Mayor and appointed by the Council and that the salary shall be fixed.

This appointment will leave court with no appointed Associate Judge. This position is a backup to the Presiding Judge and assists with Jail Magistrations as well. Finance will issue a Request for Qualifications in March to provide recommendations for the Mayor to consider.

FUNDING SOURCE:

General Fund

RECOMMENDATION:

Tracy Waldron, CFO, recommends approval of Resolution R 2023-31 of the City Council, of the City of Bastrop, Texas, approving a Request for Qualifications be issued for one or more Associate Judges; in the Municipal Court of the City of Bastrop, providing for a repeal; and providing an effective date.

ATTACHMENTS:

- Resolution R-2023-31

RESOLUTION NO. R-2023-31

A RESOLUTION OF THE CITY OF BASTROP, TEXAS, APPROVING A REQUEST FOR QUALIFICATIONS TO BE ISSUED FOR ONE OR MORE ASSOCIATE JUDGES; IN THE MUNICIPAL COURT OF THE CITY OF BASROP, PROVIDING FOR REPEAL; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, pursuant to Article 5 of Home Rule Charter, there is a Municipal Court of the City of Bastrop (Municipal Court), for which the City Council of the City of Bastrop (City Council) may appoint one or more qualified persons to serve as Municipal Court Judges; and

WHEREAS, the City Council of the City of Bastrop (City Council) finds it necessary and appropriate to appoint one or more Associate Judges for the Municipal Court; and

WHEREAS, the City Council finds that it is reasonable and prudent to approve the issuance of a Request for Qualifications for an Associate Judge(s) in order to identify and consider worthy candidates for appointment.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bastrop:

Section 1: All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Bastrop, Texas, and are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

Section 2: The City Council hereby approves the issuance of a Request for Qualifications for those seeking consideration for appointment as a Judge to the Municipal Court.

Section 3: This Resolution shall be in full force and effect from and after its passage.

Section 4: The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended.

DULY RESOLVED & ADOPTED by the City Council of the City of Bastrop, TX, on this, the 28th day of February, 2023.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve Resolution No. R-2023-27 of the City Council of the City of Bastrop, Texas approving an agreement between the City of Bastrop and Bastrop River Company providing for a five year lease of a .52 acre portion of A11 Bastrop town tract, acres 5.100 (city park) located in Fisherman's Park with an option to renew for three additional two-year term upon mutual agreement; authorizing the city manager to execute said lease agreement on behalf of the city; and declaring an effective date.

STAFF REPRESENTATIVE:

Trey Job, Assistant City Manager

BACKGROUND/HISTORY:

In 2020 the Bastrop City Council was approached by the Bastrop River Company requesting consideration to lease a small tract of land within Fisherman's Park as a test to determine if business within the City of Bastrop Parks system is a possible fit for the City of Bastrop. After much consideration and discussion about the subject it was determined that this met the intent of previous parks board discussions and meets the goals set forth during a previous joint Parks board and City Council meeting where the Parks Board was tasked with finding additional funding for the City of Bastrop's Parks system.

Bastrop River Company has requested a renewal of the lease. There have been some requested changes that the city manager and I have discussed with Mr. Harle and believe we have reached consensus based on the discussion with City Council in January.

POLICY EXPLANATION:

Texas Local Government Code Section 51.001 provides the City general authority to adopt an Ordinance or policy regulations that are for the good government, peace, or order of the City and is necessary or proper for carrying out a power granted by law to the City.

FUNDING SOURCE:

N/A

RECOMMENDATION:

ACM Job recommends approval of Resolution No. R-2023-27.

ATTACHMENTS:

- Resolution No. R-2023-27
- Draft Lease
- List of requested amendments

RESOLUTION NO. R-2020-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING AN AGREEMENT BETWEEN THE CITY OF BASTROP AND BASTROP RIVER COMPANY PROVIDING FOR A FIVE YEAR LEASE OF A .52 ACRE PORTION OF A11 BASTROP TOWN TRACT, ACRES 5.100 (CITY PARK) LOCATED IN FISHERMAN’S PARK WITH AN OPTION TO RENEW FOR THREE ADDITIONAL TWO-YEAR TERM UPON MUTUAL AGREEMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID LEASE AGREEMENT ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop owns a certain parcel of real property that is located at Fisherman's Park in Bastrop, Bastrop County, Texas, and more particularly shown in Exhibit "A", of the proposed lease agreement attached hereto and incorporated herein by this reference ("The Agreement"); and

WHEREAS, the City of Bastrop City Council and City of Bastrop Parks Board and Tree Advisory Committee understand the value private vendors providing recreational opportunities enhance the city of Bastrop Park’s system as a whole; and

WHEREAS, the City of Bastrop deems it advantageous to itself and to its operations to lease and demise certain rights, privileges and uses of the Premises as hereinafter contained; and

WHEREAS, the City of Bastrop Parks Board has expressed interest in finding opportunities to help fund park maintenance and improvements.

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

Section 1. The attached Lease Agreement between the City of Bastrop and Bastrop River Company, (the “Agreement”) is hereby approved.

Section 2. The City Manager is hereby authorized to execute the Agreement on behalf of the City.

Section 3. This Resolution shall become effective immediately upon adoption.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 28th day of February, 2023.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

This lease agreement ("Lease") is made as of the Effective Date set forth above, by and between the City of Bastrop, Texas, a municipal corporation (the "Lessor") and Bastrop River Co., LLC (the "Lessee"), a Texas Limited Liability Company.

WHEREAS, the Lessor owns a certain parcel of real property that is located at Fisherman's Park in Bastrop, Bastrop County, Texas, and more particularly shown in Exhibit "A", attached hereto and incorporated herein by this reference ("Premises"); and

WHEREAS, Lessee wishes to enter into a five (5) year lease with a five year renewal option for the Premises to manage and operate a River Outfitting Company; and

WHEREAS, the City of Bastrop deems it advantageous to itself and to its operations to lease and demise certain rights, privileges and uses of the Premises as hereinafter contained; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee (hereinafter "Parties") hereby agree as follows:

Article 1. Lease of Premises; Acceptance of Existing Conditions; Compliance with Regulations

1.1. Leased Premises: In consideration of the obligation of the Lessee to pay rent and in consideration of the other terms, covenants and conditions of this Lease, the Lessor leases to the Lessee, and the Lessee leases from the Lessor that approximately 22,651 square foot portion described as 0.052 ACRE PORTION OF A11 BASTROP TOWN TRACT, ACRES 5.100 (CITY PARK) LOCATED IN FISHERMAN'S PARK as shown in Exhibit "A", attached hereto and made a part hereof for all purposes (the "Leased Premises") in Bastrop County, Texas. The Lessor agrees that the Lessee shall also have access to and shared use of the public parking lot adjacent to the leased Premises and the public restrooms in the City Park, all as shown in Exhibit "A", subject to Lessor's exclusive control and management of said public facilities.

1.2. No Warranty: The Lessee acknowledges that 1) the Lessor makes no representations or warranties regarding the suitability of the Leased Premises for the Lessee's intended purposes, or the presence of environmental, geologic, or other site conditions that may affect the Lessee's use of the Leased Premises; 2) the Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; and 3) the Lessee has inspected the Leased Premises to satisfy itself as to the suitability of the Leased Premises for its intended purposes.

1.3. Compliance with Rules: In addition to other requirements in this Lease, Lessee agrees to comply with all ordinances, rules and regulations governing City Park within which the Leased Premises are located. Included herein is the limitation that Lessee's Hours of Operation are limited to the Park's Hours of Operation as established by the Lessor.

Article 2. Term and Rent

2.1. Term: Subject to and upon the terms and condition set forth in this Lease, this Lease shall be in force for a term of five (5) years, with two three (3) year renewal options upon mutual agreement of Lessor and Lessee. The renewal option shall be exercised by providing the Lessor sixty (60) days written notice of Lessee's desire to renew. Renewal shall be subject to City Council approval and be denied at Council's discretion.

2.2. Rent: The Lessee agrees to pay to the Lessor a fixed rental in the sum of one thousand dollars and zero cents (\$1,000.00) per month, The first monthly rent shall be due and payable on the Effective Date of the Lease. Subsequent monthly rental amounts shall be payable in advance on or before the first (1st) day of each respective month for the entire Lease term.

2.3. Lessee shall collect on behalf of and remit to the City any fees, assessments or charges arising by virtue of or related to its activities under this Lease as may be required by any ordinance, law, order or regulation. Additionally, the City may submit an invoice or invoices to Lessee for the above mentioned or other fees, assessments or charges due and payable to the City. Such invoice or invoices must be paid by the Lessee with the next monthly rent payment, except when earlier payment may be due under applicable ordinance, law, order or regulation.

2.4. Delinquent Rent/ Late Payment: In the event the monthly rent (including any additional rent due hereunder) is not paid on or before the fifteenth (15th) day of the month, an amount equal to five percent (5%) of that month's rent shall be added to such rent and shall be considered additional rent hereunder. The addition of such amount and the collection thereof shall not operate to waive any other rights of Lessor hereunder for nonpayment of rent or for any other reason.

2.5. Termination: Lessee shall surrender and vacate the Leased premises on the last day of the term of this Lease. Upon termination of the lease, Lessee shall also remove all personal property, equipment from the Leased premises within 14 days. Lessor may retain, destroy, or dispose of any property left on the Leased Premises at the end of the Term. In the event the Lessee is in arrears of sixty (60) days in the payment of any amount that is owed to the Lessor hereunder, the Lease shall automatically terminate unless an exception is approved in writing prior to the 60th day by the City Council of the City of Bastrop.

Article 3. Use and Care of Premises

3.1. The use of the Leased Premises by the Lessee shall be restricted to conducting a river outfitting operation (with related equipment), together with the activities of selling snacks, non-alcoholic beverages, T-shirts and other items related to river recreation. Use of the Leased Premises for any purpose other than permitted by this Lease without prior written consent of the Lessor shall constitute a default.

3.2. The Lessee shall not place or keep anything on the Leased Premises or use the Leased Premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on the Leased Premises without the Lessor's prior written consent. The Lessee agrees that the risk of loss and damage for all property kept, stored or maintained by it within the Leased Premises shall be the Lessee's.

3.3. The Lessee shall not use or permit the use of the Leased Premises in any manner that results in waste of the Leased Premises, or constitutes a nuisance, or violates any statute, ordinance, rule or regulation that applies to the Leased Premises.

3.4. The Lessee shall keep the Leased Premises used by Lessee, neat, clean, and free from spoils and trash at all times.

3.5. The Lessor shall be responsible for cleaning and maintaining the public restrooms in the City Recreation Building to be used by Lessee in connection with its authorized activities according to Lessor's usual and customary cleaning schedules and standards, as determined by Lessor in its sole discretion. Although Lessor has primary responsibility to clean and maintain the restrooms, Lessee agrees to and will clean the restrooms on an as needed basis between the Lessor's regular cleanings. The Lessor shall provide trash bin liners, paper towels, and toilet paper to the Lessee, and the Lessee shall replace these items in the public restrooms as necessary.

3.6. The Lessee shall store all equipment, materials and supplies within the confines of the Leased Premises. Outside storage is specifically prohibited without the advance written consent of the Lessor. Staging of vehicles shall be allowed within the premises for shuttle operations. When the premises is not suitable for staging due to inclement weather the lessee shall contact the Director of Public Works to coordinate a temporary solution that causes minimal disruption to the public parking areas.

3.7. Failure to use the Leased Premises for any purpose other than that permitted by this Lease shall constitute a default.

3.8. The Lessee shall give prompt notice to the Lessor of any accident on the Leased Premises, and of defects in the Leased Premises of which the Lessee is aware.

3.9. Lessee agrees to allow Lessor to enter the Leased Premises to perform Lessor's obligations, inspect the Leased Premises. When the Premises are not in use by Lessee, the Lessor may conduct activities in the Premises that do not interfere with the Permitted Uses with prior written consent from the Lessee.

Article 4. Maintenance and Repair of Premises

4.1. The Lessee shall keep the Leased Premises in good, clean condition and will maintain the personal property, removable fixtures, and equipment owned or controlled by Lessee in good repair and condition. The Lessee shall comply with all governmental laws, ordinances and regulations that apply to the Leased Premises, at its sole cost and expense. At the expiration of this Lease, the Lessee shall surrender the Leased Premises in good condition, reasonable wear and tear excepted.

4.2. Lessee shall repair and pay for any damage to the Leased Premises caused by negligence of Lessee or Lessee's directors, officers, employees, contractors, agents, invitees or guests. Lessor shall have no obligation to clean, maintain, repair, or replace any portion of the Premises or any alterations made by Lessee, and Lessee accepts the Leased Premises in its "AS IS", "WHERE-IS" condition, with all faults and without any warranty or representation (express or implied) by the Lessor as to the condition of the Leased Premises or its fitness or suitability for any purpose.

4.3. Lessee shall at its sole expense clean, maintain, replace and repair the Leased Premises, including, without limitation, any temporary structures and mowing and maintenance of the site.

Article 5. Alterations and Fixtures

5.1. The Lessee shall not make any alterations, modifications, additions, or improvements, (including, but not limited to, structural, electrical, plumbing and painting) to the Leased Premises without the prior written consent of Lessor.

5.2. The Lessee shall ensure that no lien or similar obligation is imposed upon the Leased Premises for any alteration, repair, labor performed or materials furnished to the Leased Premises, and the Lessee shall immediately discharge any lien or charge after the lien occurs or charges become due and payable. The Lessee shall hold harmless, indemnify and defend the Lessor, its officers, agents and employees from and against any claims, demands or suits related to such liens or obligations.

5.3. The Lessee shall not install any exterior lighting, shades or awnings, or any exterior decorations or paintings on the Leased Premises or erect, permanently install or change any signs, window or door lettering, placards, decorations, or advertising media of any type without the prior written approval of the Lessor. Notwithstanding temporary signage such as price boards, safety notices or rules. Temporary signage shall be taken in every day at the end of business,

Article 6. Utilities/Taxes

6.1. The Lessee shall promptly pay all charges for electricity, telephone service, and other utilities furnished to the Leased Premises. No such utilities shall be connected or installed until the Lessor approves in writing the location and specifications for such connections and installations.

6.2. The Lessor shall not be liable for any interruption or impairment whatsoever in utility services to the Leased Premises for non-payment or acts of God outside of the utility provider's control.

6.3. The Lessee shall pay when due all taxes and assessments, if any, against the Leased Premises or underlying real property attributable to the Lessee's use of the Leased Premises under this Lease. The Lessee shall pay when due all sales, excise, income and other taxes, if any, levied upon its business operations on the Leased Premises.

Article 7. Insurance and Indemnity

7.1. Insurance: Lessee shall be responsible for providing, at Lessee's own expense, insurance coverage insuring Lessee's goods, furniture or property against loss or damage from fire or other causes. Lessee's coverage shall provide a waiver of subrogation for the benefit of the Lessor.

The Lessee will purchase and maintain in full force and effect during the term of the lease insurance as provided below, proof of which will be in a form acceptable to the Lessor:

- A.** Commercial General Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, written on an occurrence form, and an annual aggregate not less than Two Million Dollars (\$2,000,000);
- B.** Commercial Automobile Liability insurance at minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage, written on an occurrence form; and
- C.** Workers compensation insurance within statutory limits, if applicable.

All of this insurance shall be primary over any other insurance coverage the Lessor may have and shall be written so that the Lessee and the Lessor will be notified in writing at least 30 calendar days in advance in the event of cancellation, restrictive amendment or non-renewal. Commercial general liability and business automobile insurance coverage will be written with the City of Bastrop, Texas as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City of Bastrop.

7.2. Approval Before Occupancy: The Lessee will submit certificates of insurance to the Lessor for approval prior to taking occupancy of the Premises.

7.3. Continuing Responsibility: In any event, the Lessee is fully responsible for all losses arising out of, resulting from or connected with operations under this Lease whether or not the losses are covered by insurance. The Lessor's acceptance of insurance certificates that do not comply with these requirements will not release the Lessee from compliance with these provisions.

7.4. Indemnity, Hold Harmless, and Waiver of Claims:

A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY OF BASTROP, TEXAS, TOGETHER WITH ITS RESPECTIVE OFFICERS, DIRECTORS, FORMER AND PRESENT ELECTED AND APPOINTED OFFICIALS, LEGAL REPRESENTATIVES, AGENTS, SERVANTS, EMPLOYEES (IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES), VOLUNTEERS, SUCCESSORS, AND ASSIGNS (HEREINAFTER COLLECTIVELY *BASTROP*), OF, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEFENSE COSTS, OR LIABILITY OF ANY KIND OR NATURE (COLLECTIVELY REFERRED TO HEREINAFTER AS "CLAIMS") ASSERTED BY ANY PERSON OR ENTITY AGAINST *BASTROP* WHETHER ARISING OUT OF, TOUCHING UPON OR IN ANY WAY RELATING TO LESSEE'S (OR LESSEE'S CONTRACTORS', SUBCONTRACTORS', AGENTS', EMPLOYEES', SERVANTS', INVITEES', OR LICENSEES') (I) ACTS, ERRORS, OR OMISSIONS, (II) PERFORMANCE OR FAILURE TO PERFORM, (III) GOODS OR SERVICES PROVIDED, (IV) WORK PERFORMED BY, OR ON BEHALF OF LESSEE, OR (V) USE OF THE LEASED PREMISES, RELATIVE TO THIS LEASE, EXCEPT ANY SUCH CLAIMS, DAMAGES, CAUSES OF ACTION, COSTS AND EXPENSES ARISING OUT OF THE SOLE NEGLIGENCE OR WILLFUL ACT OF *BASTROP*, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES.

B. The Lessee shall use the Leased Premises and use, occupy and store property on the Leased Premises at its own risk, and the Lessee agrees to hold harmless and release the Lessor, and its officers, agents and employees from all claims, suits and actions by the Lessee for loss of life, personal injury or property damage resulting therefrom.

C. In case the Lessor is made a party to any litigation commenced by or against the Lessee that is covered by this paragraph, then the Lessee shall hold the Lessor harmless from and pay all costs and expenses of the Lessor related to the litigation, including the fees of attorneys and expert witnesses.

D. Waiver of Claims. Anything in this Lease to the contrary notwithstanding and to the extent permitted by applicable law, Lessee hereby releases and waives all claims, rights of recovery and causes of action that such party or any party claiming by, through, or under such party (including Lessee's insurers), by subrogation or otherwise, may now or hereafter have against Lessor or any of Lessor's directors, officers, employees, contractors or agents for any loss or damage that may occur to the Property, or any of the contents by reason of fire, act of God, the elements, or any other cause, excluding gross negligence or willful misconduct, but including negligence of the Lessor or its directors, officers, employees, or agents, that could have been insured against under the terms of customary fire and extended coverage insurance policies. Lessor shall not be liable to Lessee for any inconvenience or loss to Lessee in connection with any repair, maintenance, damage, destruction, restoration, or replacement referred to in this Lease. Lessor shall not be obligated to insure any of Lessee's goods, furniture, or otherwise be liable for any damage to or destruction of any of the foregoing.

Article 8. Hotel Occupancy Data

Lessee agrees to record at the point of rental, in a method and on a form approved by the City Manager of the Lessor: The information collected if appropriate allows the lessee an opportunity to request Hotel Occupancy Tax funds.

Article 9. River Clean Up

The Lessee shall assist in the cleanup of the Colorado River in and around the area of the Lease premises during City of Bastrop designated river cleanup events.

Article 10. Condemnation

10.01. Total: If the whole of the Leased Premises is taken by eminent domain, then this Lease shall terminate as of the date the title vests in the proceeding.

10.2 Partial: If a portion of the Leased Premises is taken by eminent domain, and the partial taking renders the remaining portion unsuitable for the business of the Lessee, then this Lease shall terminate. If the partial taking is not extensive enough to render the premises unsuitable for the business of the Lessee, then this Lease shall continue in effect, except that the fixed monthly rent amount shall be reduced and adjusted in an appropriate manner.

10.3 Rent Payments: If this Lease is terminated as provided in this section, rent shall be paid up to the date that possession is taken by the condemning authority, and the Lessor shall make an equitable refund of any rent paid by the Lessee in advance.

10.4 Division of Award: The Lessor and the Lessee shall each be entitled to receive and retain separate awards, or portions of lump sum awards, as are allocated to their respective interests in the condemnation proceeding. The termination of this Lease under this Paragraph shall not affect the rights of the respective parties to such awards.

Article 11. Damage by Casualty

11.1. The Lessee shall give immediate verbal notice, and prompt written notice to the Lessor of any damage caused to the Leased Premises by fire or other casualty.

11.2. If the Leased Premises are damaged by casualty and can be restored within 30 days, Lessor will, at its expense, restore the Leased Premises to substantially the same condition that existed before the casualty and Lessee will, at its expense, replace any of its damaged furniture, fixtures, and personal property and restore any authorized leasehold improvements installed by Lessee. If Lessor fails or is unable to complete the portion of the restoration for which Lessor is responsible within 30 days from the date of written notification by Lessee to Lessor of the casualty, Lessee may terminate this lease by written notice delivered to Lessor before Lessor completes Lessor's restoration obligations.

11.3. To the extent the Premises are untenantable after the casualty, the Rent will be prorated for the period of time that the Premises cannot be used by Lessee. The request shall be submitted to the Public Works Director for review and approval of the adjusted monthly rate. The formula for calculating adjusted monthly rate shall be the monthly rent divided by the number of active days within the defined season as shown in exhibit B

11.4. Any insurance or risk pool coverage against casualty loss which may be carried by either the Lessor or the Lessee shall be under the sole control of the party carrying the insurance or risk pool coverage, and the other party shall have no interest in any proceeds thereof. Lessor and Lessee expressly waive any cause of action or right of recovery which either of them may have against the other for any loss or damage to the Leased Premises or to the contents caused by fire, explosion, or other risk covered by the casualty insurance or risk pool coverage.

Article 12. Assignment and Subletting

Lessee may not assign this Lease or sublet the Leased Premises without prior written consent of the Lessor. Any such unauthorized assignment or subletting shall constitute a default.

Article 13. Events of Default and Remedies

13.1. Default: The following events shall be events of default by the Lessee under this Lease:

A. The Lessee fails to pay when due any rental or any other sums or charges due under this Lease.

B. The Lessee fails to comply with any other term, provision, or covenant of this Lease, and does not cure the failure within 30 days after written notice to the Lessee. For any subsequent default by the Lessee for the same or any other reason, the Lessor may terminate the Lease if that subsequent default continues for more than three days after notice of the subsequent default.

C. The Lessee commences, or another party commences against the Lessee, proceedings in bankruptcy, for reorganization, or for the readjustment or arrangement of its debts under the bankruptcy laws of the United States or under any other law. The acceptance by the Lessor of the Lessee's monthly payments subsequent to the occurrence of this event of default, or that set forth in subparagraph E below, shall be as compensation for use and occupancy of the Leased Premises, and shall in no way constitute a waiver by the Lessor of its right to exercise any remedy provided for any event of default.

D. A receiver or trustee is appointed for all or substantially all of the assets of the Lessee.

E. The Lessee abandons or vacates all or any substantial portion of the Leased Premises for more than 30 consecutive days during the periods of conducting its authorized activities under paragraph 3.01.

13.2. Remedies: Upon the occurrence of any of the events of default, the Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

A. Terminate this Lease. In this event the Lessee shall immediately surrender the Leased Premises to the Lessor, and if the Lessee fails to do so, the Lessor may enter and take possession of the Leased Premises and remove the Lessee and any other person occupying the premises, without prejudice to any other remedy it may have for possession or arrearages in rent, and without being liable for any resulting damages. The Lessee agrees to pay to the Lessor the amount of all resulting costs, losses and damages incurred by the Lessor within 30 days of the Lessor's issuance of a statement to the Lessee.

B. Relet the Leased Premises to any lawfully approved tenant and receive the rent. The Lessee agrees to pay to the Lessor any resulting costs, and any deficiency that may arise by reason of reletting, within 30 days of the Lessor's issuance of a statement to the Lessee.

C. The Lessor's pursuit of any of these remedies will not preclude pursuit of any other remedies provided under this Lease or by law, nor will pursuit of any remedy constitute a waiver of any rent due to the Lessor or of any damages caused to the Lessor by any violation of this Lease by the Lessee. Any failure by the Lessor to enforce a remedy upon an event of default shall not be deemed to constitute a waiver of the default or of the Lessor's right to insist on strict compliance with this Lease.

13.3. Attorney Fees: If it becomes necessary for the Lessor to employ an attorney to enforce or defend any of the Lessor's rights or remedies because of any breach or default by the Lessee under this Lease, the Lessee agrees to pay all reasonable attorney's fees incurred by the Lessor, within 30 days of the Lessor's issuance of a statement for the fees to the Lessee.

Article 14. Prohibited Use

Lessee shall not use or permit any other party to use any part of the Leased Premises for any purpose not authorized in this Lease. Lessee shall not do or permit anything to be done in or about the Leased Premises, or bring or keep or permit anything to be brought to or kept therein, which is prohibited by or which will in any way conflict with City's insurance, any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated. Lessee shall not cause, maintain, or permit any nuisance in, on or about the Leased Premises or commit or suffer to be committed any waste to, in or about the Leased Premises. Lessee additionally agrees that the Leased Premises shall only be used in compliance with this Lease, and in the interest of avoidance of waste. Lessee further agrees that should Lessee for whatever reason allow the Leased Premises to remain in a state of abandonment, the penalty of such shall be rescission of this lease.

Article 15. Holding Over

If Lessee does not vacate the Leased Premises following termination of this Lease, Lessee will become a tenant at will and must vacate the Premises on receipt of notice from Lessor. No holding over by Lessee, whether with or without the consent of Lessor, will extend the Term.

During the period of holding over the Lessee shall be liable for the payment of rent on a prorated basis equal to two times the annual rent in effect as of the last lease term before the lease termination date.

Article 16. Mechanic's Liens

Lessee shall not permit a mechanic's lien or other lien to be placed upon the Leased Premises or the improvements constituting a part thereof.

Article 17. City's Access

Lessor shall have the right, at all reasonable times during the Term of the Lease or any extension to enter the Leased Premises to inspect the condition thereof, to determine if Lessee is performing its obligations, to cure any defaults of Lessee hereunder that Lessor elects to cure, and to remove any improvements or property placed on the Leased Premises in violation of this Lease.

Article 18. Legal Interpretation and Severability

Each paragraph and provision hereof is severable from the entire Lease and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect. Any clause or provision of this Lease found to be illegal, invalid, or unenforceable; under the present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable. All obligations of either party requiring any performance after the expiration of the Term shall survive the expiration of the Term and shall be fully enforceable in accordance with those provisions pertaining thereto. Section titles are for convenient reference only and shall not be used to interpret or limit the meaning of any provision of this lease.

Article 19. Miscellaneous

19.1. Words and Phrases: When the singular number is used in this Lease, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.

19.2. Amendment: This Lease may be amended only by an instrument in writing signed by both parties.

19.3. Waiver: Either party's failure to insist at any time on the strict performance of any covenant or agreement, or such party's failure to exercise any option, right, power or remedy contained in this Lease, shall not be construed as a waiver or a relinquishment thereof for the future. The waiver of or failure to seek redress for any violation of any term, covenant, or condition contained in this Lease shall not prevent a subsequent act from being a violation. A party shall be considered to have waived a provision of this Lease only if specifically expressed in writing signed by such party. No expressed waiver shall affect any matter other than the one specified in the waiver and only for the time and in the manner specifically stated.

19.4. Force Majeure: Whenever a period of time is prescribed for action to be taken by the Lessor, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of the Lessor shall be excluded from the computation of any such period of time.

19.5. No Joint Venture: This Lease shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is only that of Lessor and Lessee.

19.6. Law and Venue: The parties agree that the laws of the State of Texas shall govern this Lease and that exclusive venue for enforcement of this Lease shall lie in Bastrop County, Texas.

19.7. Notice: Each notice required or permitted to be given hereunder by one party to the other shall be in writing with a statement therein to the effect that notice is given pursuant to this Lease, and the same shall be given and shall be deemed to have been delivered, served and given if placed in the United States mail. Postage prepaid, by United States registered or certified mail, return receipt requested, addressed to such party at the address provided for such party herein. Wherever any notice is required or permitted under this Lease, the notice shall be in writing and sent by certified mail, return receipt requested, addressed to the respective party at the following addresses. The Lessee shall provide the Lessor with advance written notice of any change in its address.

Lessor:

City of Bastrop Attention:
City Manager 1311
Chestnut Street
Bastrop, Texas 78602

Lessee:

EXECUTED to be effective as of ----- 2023

Point of Contact for the City of Bastrop:

Director of Public Works or Designee

1311 Chestnut Street Bastrop, Texas 78602

Phone # 512 332-8920.

Point of Contact for Bastrop River Co.,LLC



EXHIBIT "A"

Exhibit B

Winter Hours (December – February ... 7 days a week)
Open by reservation / appointment

Regular Season (March – November)

Saturday & Sunday

8AM to 5PM

Monday thru Friday

Open by reservation / appointment

DRAFT

LEASE OF BASTROP PARK PREMISES

This lease agreement ("Lease") is made as of the Effective Date set forth above, by and between the City of Bastrop, Texas, a municipal corporation (the "Lessor") and Bastrop River Co., LLC (the "Lessee"), a Texas Limited Liability Company.

WHEREAS, the Lessor owns a certain parcel of real property that is located at Fisherman's Park in Bastrop, Bastrop County, Texas, and more particularly shown in Exhibit "A", attached hereto and incorporated herein by this reference ("Premises"); and

WHEREAS, Lessee wishes to enter into a five (5) year lease with a five year renewal option for the Premises to manage and operate a River Outfitting Company; and

WHEREAS, the City of Bastrop deems it advantageous to itself and to its operations to lease and demise certain rights, privileges and uses of the Premises as hereinafter contained; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee (hereinafter "Parties") hereby agree as follows:

Article 1. Lease of Premises; Acceptance of Existing Conditions; Compliance with Regulations

1.1. Leased Premises: In consideration of the obligation of the Lessee to pay rent and in consideration of the other terms, covenants and conditions of this Lease, the Lessor leases to the Lessee, and the Lessee leases from the Lessor that approximately 22,651 square foot portion described as 0.052 ACRE PORTION OF A11 BASTROP TOWN TRACT, ACRES 5.100(CITY PARK) LOCATED IN FISHERMAN'S PARK as shown in Exhibit "A", attached hereto and made a part hereof for all purposes (the "Leased Premises") in Bastrop County, Texas. The Lessor agrees that the Lessee shall also have access to and shared use of the public parking lot adjacent to the leased Premises and the public restrooms in the City Park, all as shown in Exhibit "A", subject to Lessor's exclusive control and management of said public facilities.

1.2. No Warranty: The Lessee acknowledges that 1) the Lessor makes no representations or warranties regarding the suitability of the Leased Premises for the Lessee's intended purposes, or the presence of environmental, geologic, or other site conditions that may affect the Lessee's use of the Leased Premises; 2) the Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; and 3) the Lessee has inspected the Leased Premises to satisfy itself as to the suitability of the Leased Premises for its intended purposes.

1.3. Compliance with Rules: In addition to other requirements in this Lease, Lessee agrees to comply with all ordinances, rules and regulations governing City Park within which the Leased Premises are located. Included herein is the limitation that Lessee's Hours of Operation are limited to the Park's Hours of Operation as established by the Lessor.

Article 2. Term and Rent

2.1. Term: Subject to and upon the terms and condition set forth in this Lease, this Lease shall be in force for a term of five (5) years, with two three (3) year renewal options upon mutual agreement of Lessor and Lessee. The renewal option shall be exercised by providing the Lessor sixty (60) days written notice of Lessee's desire to renew. Renewal shall be subject to City Council approval and be denied at Council's discretion.

2.2. Rent: The Lessee agrees to pay to the Lessor a fixed rental in the sum of one thousand dollars and zero cents (\$1,000.00) per month, The first monthly rent shall be due and payable on the Effective Date of the Lease. Subsequent monthly rental amounts shall be payable in advance on or before the first (1st) day of each respective month for the entire Lease term.

2.3. Lessee shall collect on behalf of and remit to the City any fees, assessments or charges arising by virtue of or related to its activities under this Lease as may be required by any ordinance, law, order or regulation. Additionally, the City may submit an invoice or invoices to Lessee for the above mentioned or other fees, assessments or charges due and payable to the City. Such invoice or invoices must be paid by the Lessee with the next monthly rent payment, except when earlier payment may be due under applicable ordinance, law, order or regulation.

2.4. Delinquent Rent/ Late Payment: In the event the monthly rent (including any additional rent due hereunder) is not paid on or before the fifteenth (15th) day of the month, an amount equal to five percent (5%) of that month's rent shall be added to such rent and shall be considered additional rent hereunder. The addition of such amount and the collection thereof shall not operate to waive any other rights of Lessor hereunder for nonpayment of rent or for any other reason.

2.5. Termination: Lessee shall surrender and vacate the Leased premises on the last day of the term of this Lease. Upon termination of the lease, Lessee shall also remove all personal property, equipment from the Leased premises within 14 days. Lessor may retain, destroy, or dispose of any property left on the Leased Premises at the end of the Term. In the event the Lessee is in arrears of sixty (60) days in the payment of any amount that is owed to the Lessor hereunder, the Lease shall automatically terminate unless an exception is approved in writing prior to the 60th day by the City Council of the City of Bastrop.

Article 3. Use and Care of Premises

3.1. The use of the Leased Premises by the Lessee shall be restricted to conducting a river outfitting operation (with related equipment), together with the activities of selling snacks, non-alcoholic beverages, T-shirts and other items related to river recreation. Use of the Leased Premises for any purpose other than permitted by this Lease without prior written consent of the Lessor shall constitute a default.

3.2. The Lessee shall not place or keep anything on the Leased Premises or use the Leased Premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on the Leased Premises without the Lessor's prior written consent. The Lessee agrees that the risk of loss and damage for all property kept, stored or maintained by it within the Leased Premises shall be the Lessee's.

3.3. The Lessee shall not use or permit the use of the Leased Premises in any manner that results in waste of the Leased Premises, or constitutes a nuisance, or violates any statute, ordinance, rule or regulation that applies to the Leased Premises.

3.4. The Lessee shall keep the Leased Premises used by Lessee, neat, clean, and free from spoils and trash at all times.

3.5. The Lessor shall be responsible for cleaning and maintaining the public restrooms in the City Recreation Building to be used by Lessee in connection with its authorized activities according to Lessor's usual and customary cleaning schedules and standards, as determined by Lessor in its sole discretion. Although Lessor has primary responsibility to clean and maintain the restrooms, Lessee agrees to and will clean the restrooms on an as needed basis between the Lessor's regular cleanings. The Lessor shall provide trash bin liners, paper towels, and toilet paper to the Lessee, and the Lessee shall replace these items in the public restrooms as necessary.

3.6. The Lessee shall store all equipment, materials and supplies within the confines of the Leased Premises. Outside storage is specifically prohibited without the advance written consent of the Lessor. Staging of vehicles shall be allowed within the premises for shuttle operations. When the premises is not suitable for staging due to inclement weather the lessee shall contact the Director of Public Works to coordinate a temporary solution that causes minimal disruption to the public parking areas.

3.7. Failure to use the Leased Premises for any purpose other than that permitted by this Lease shall constitute a default.

3.8. The Lessee shall give prompt notice to the Lessor of any accident on the Leased Premises, and of defects in the Leased Premises of which the Lessee is aware.

3.9. Lessee agrees to allow Lessor to enter the Leased Premises to perform Lessor's obligations, inspect the Leased Premises. When the Premises are not in use by Lessee, the Lessor may conduct activities in the Premises that do not interfere with the Permitted Uses with prior written consent from the Lessee.

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4.2. Lessee shall repair and pay for any damage to the Leased Premises caused by negligence of Lessee or Lessee's directors, officers, employees, contractors, agents, invitees or guests. Lessor shall have no obligation to clean, maintain, repair, or replace any portion of the Premises or any alterations made by Lessee, and Lessee accepts the Leased Premises in its "AS IS", "WHERE-IS" condition, with all faults and without any warranty or representation (express or implied) by the Lessor as to the condition of the Leased Premises or its fitness or suitability for any purpose.

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5.3. The Lessee shall not install any exterior lighting, shades or awnings, or any exterior decorations or paintings on the Leased Premises or erect, permanently install or change any signs, window or door lettering, placards, decorations, or advertising media of any type without the prior written approval of the Lessor. Notwithstanding temporary signage such as price boards, safety notices or rules. Temporary signage shall be taken in every day at the end of business,

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6.2. The Lessor shall not be liable for any interruption or impairment whatsoever in utility services to the Leased Premises for non-payment or acts of God outside of the utility provider's control.

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- B.** Commercial Automobile Liability insurance at minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage, written on an occurrence form; and
- C.** Workers compensation insurance within statutory limits, if applicable.

All of this insurance shall be primary over any other insurance coverage the Lessor may have and shall be written so that the Lessee and the Lessor will be notified in writing at least 30 calendar days in advance in the event of cancellation, restrictive amendment or non-renewal. Commercial general liability and business automobile insurance coverage will be written with the City of Bastrop, Texas as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City of Bastrop.

7.2. Approval Before Occupancy: The Lessee will submit certificates of insurance to the Lessor for approval prior to taking occupancy of the Premises.

7.3. Continuing Responsibility: In any event, the Lessee is fully responsible for all losses arising out of, resulting from or connected with operations under this Lease whether or not the losses are covered by insurance. The Lessor's acceptance of insurance certificates that do not comply with these requirements will not release the Lessee from compliance with these provisions.

7.4. Indemnity, Hold Harmless, and Waiver of Claims:

A. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY OF BASTROP, TEXAS, TOGETHER WITH ITS RESPECTIVE OFFICERS, DIRECTORS, FORMER AND PRESENT ELECTED AND APPOINTED OFFICIALS, LEGAL REPRESENTATIVES, AGENTS, SERVANTS, EMPLOYEES (IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES), VOLUNTEERS, SUCCESSORS, AND ASSIGNS (HEREINAFTER COLLECTIVELY *BASTROP*), OF, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEFENSE COSTS, OR LIABILITY OF ANY KIND OR NATURE (COLLECTIVELY REFERRED TO HEREINAFTER AS "CLAIMS") ASSERTED BY ANY PERSON OR ENTITY AGAINST *BASTROP* WHETHER ARISING OUT OF, TOUCHING UPON OR IN ANY WAY RELATING TO LESSEE'S (OR LESSEE'S CONTRACTORS', SUBCONTRACTORS', AGENTS', EMPLOYEES', SERVANTS', INVITEES', OR LICENSEES') (I) ACTS, ERRORS, OR OMISSIONS, (II) PERFORMANCE OR FAILURE TO PERFORM, (III) GOODS OR SERVICES PROVIDED, (IV) WORK PERFORMED BY, OR ON BEHALF OF LESSEE, OR (V) USE OF THE LEASED PREMISES, RELATIVE TO THIS LEASE, EXCEPT ANY SUCH CLAIMS, DAMAGES, CAUSES OF ACTION, COSTS AND EXPENSES ARISING OUT OF THE SOLE NEGLIGENCE OR WILLFUL ACT OF *BASTROP*, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES.

B. The Lessee shall use the Leased Premises and use, occupy and store property on the Leased Premises at its own risk, and the Lessee agrees to hold harmless and release the Lessor, and its officers, agents and employees from all claims, suits and actions by the Lessee for loss of life, personal injury or property damage resulting therefrom.

C. In case the Lessor is made a party to any litigation commenced by or against the Lessee that is covered by this paragraph, then the Lessee shall hold the Lessor harmless from and pay all costs and expenses of the Lessor related to the litigation, including the fees of attorneys and expert witnesses.

D. Waiver of Claims. Anything in this Lease to the contrary notwithstanding and to the extent permitted by applicable law, Lessee hereby releases and waives all claims, rights of recovery and causes of action that such party or any party claiming by, through, or under such party (including Lessee's insurers), by subrogation or otherwise, may now or hereafter have against Lessor or any of Lessor's directors, officers, employees, contractors or agents for any loss or damage that may occur to the Property, or any of the contents by reason of fire, act of God, the elements, or any other cause, excluding gross negligence or willful misconduct, but including negligence of the Lessor or its directors, officers, employees, or agents, that could have been insured against under the terms of customary fire and extended coverage insurance policies. Lessor shall not be liable to Lessee for any inconvenience or loss to Lessee in connection with any repair, maintenance, damage, destruction, restoration, or replacement referred to in this Lease. Lessor shall not be obligated to insure any of Lessee's goods, furniture, or otherwise be liable for any damage to or destruction of any of the foregoing.

Article 8. Hotel Occupancy Data

Lessee agrees to record at the point of rental, in a method and on a form approved by the City Manager of the Lessor: The information collected if appropriate allows the lessee an opportunity to request Hotel Occupancy Tax funds.

Article 9. River Clean Up

The Lessee shall assist in the cleanup of the Colorado River in and around the area of the Lease premises during City of Bastrop designated river cleanup events.

Article 10. Condemnation

10.01. Total: If the whole of the Leased Premises is taken by eminent domain, then this Lease shall terminate as of the date the title vests in the proceeding.

10.2 Partial: If a portion of the Leased Premises is taken by eminent domain, and the partial taking renders the remaining portion unsuitable for the business of the Lessee, then this Lease shall terminate. If the partial taking is not extensive enough to render the premises unsuitable for the business of the Lessee, then this Lease shall continue in effect, except that the fixed monthly rent amount shall be reduced and adjusted in an appropriate manner.

10.3 Rent Payments: If this Lease is terminated as provided in this section, rent shall be paid up to the date that possession is taken by the condemning authority, and the Lessor shall make an equitable refund of any rent paid by the Lessee in advance.

10.4 Division of Award: The Lessor and the Lessee shall each be entitled to receive and retain separate awards, or portions of lump sum awards, as are allocated to their respective interests in the condemnation proceeding. The termination of this Lease under this Paragraph shall not affect the rights of the respective parties to such awards.

Article 11. Damage by Casualty

11.1. The Lessee shall give immediate verbal notice, and prompt written notice to the Lessor of any damage caused to the Leased Premises by fire or other casualty.

11.2. If the Leased Premises are damaged by casualty and can be restored within 30 days, Lessor will, at its expense, restore the Leased Premises to substantially the same condition that existed before the casualty and Lessee will, at its expense, replace any of its damaged furniture, fixtures, and personal property and restore any authorized leasehold improvements installed by Lessee. If Lessor fails or is unable to complete the portion of the restoration for which Lessor is responsible within 30 days from the date of written notification by Lessee to Lessor of the casualty, Lessee may terminate this lease by written notice delivered to Lessor before Lessor completes Lessor's restoration obligations.

11.3. To the extent the Premises are untenantable after the casualty, the Rent will be prorated for the period of time that the Premises cannot be used by Lessee. The request shall be submitted to the Public Works Director for review and approval of the adjusted monthly rate. The formula for calculating adjusted monthly rate shall be the monthly rent divided by the number of active days within the defined season as shown in exhibit B

11.4. Any insurance or risk pool coverage against casualty loss which may be carried by either the Lessor or the Lessee shall be under the sole control of the party carrying the insurance or risk pool coverage, and the other party shall have no interest in any proceeds thereof. Lessor and Lessee expressly waive any cause of action or right of recovery which either of them may have against the other for any loss or damage to the Leased Premises or to the contents caused by fire, explosion, or other risk covered by the casualty insurance or risk pool coverage.

Article 12. Assignment and Subletting

Lessee may not assign this Lease or sublet the Leased Premises without prior written consent of the Lessor. Any such unauthorized assignment or subletting shall constitute a default.

Article 13. Events of Default and Remedies

13.1. Default: The following events shall be events of default by the Lessee under this Lease:

A. The Lessee fails to pay when due any rental or any other sums or charges due under this Lease.

B. The Lessee fails to comply with any other term, provision, or covenant of this Lease, and does not cure the failure within 30 days after written notice to the Lessee. For any subsequent default by the Lessee for the same or any other reason, the Lessor may terminate the Lease if that subsequent default continues for more than three days after notice of the subsequent default.

C. The Lessee commences, or another party commences against the Lessee, proceedings in bankruptcy, for reorganization, or for the readjustment or arrangement of its debts under the bankruptcy laws of the United States or under any other law. The acceptance by the Lessor of the Lessee's monthly payments subsequent to the occurrence of this event of default, or that set forth in subparagraph E below, shall be as compensation for use and occupancy of the Leased Premises, and shall in no way constitute a waiver by the Lessor of its right to exercise any remedy provided for any event of default.

D. A receiver or trustee is appointed for all or substantially all of the assets of the Lessee.

E. The Lessee abandons or vacates all or any substantial portion of the Leased Premises for more than 30 consecutive days during the periods of conducting its authorized activities under paragraph 3.01.

13.2. Remedies: Upon the occurrence of any of the events of default, the Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

A. Terminate this Lease. In this event the Lessee shall immediately surrender the Leased Premises to the Lessor, and if the Lessee fails to do so, the Lessor may enter and take possession of the Leased Premises and remove the Lessee and any other person occupying the premises, without prejudice to any other remedy it may have for possession or arrearages in rent, and without being liable for any resulting damages. The Lessee agrees to pay to the Lessor the amount of all resulting costs, losses and damages incurred by the Lessor within 30 days of the Lessor's issuance of a statement to the Lessee.

B. Relet the Leased Premises to any lawfully approved tenant and receive the rent. The Lessee agrees to pay to the Lessor any resulting costs, and any deficiency that may arise by reason of reletting, within 30 days of the Lessor's issuance of a statement to the Lessee.

C. The Lessor's pursuit of any of these remedies will not preclude pursuit of any other remedies provided under this Lease or by law, nor will pursuit of any remedy constitute a waiver of any rent due to the Lessor or of any damages caused to the Lessor by any violation of this Lease by the Lessee. Any failure by the Lessor to enforce a remedy upon an event of default shall not be deemed to constitute a waiver of the default or of the Lessor's right to insist on strict compliance with this Lease.

13.3. Attorney Fees: If it becomes necessary for the Lessor to employ an attorney to enforce or defend any of the Lessor's rights or remedies because of any breach or default by the Lessee under this Lease, the Lessee agrees to pay all reasonable attorney's fees incurred by the Lessor, within 30 days of the Lessor's issuance of a statement for the fees to the Lessee.

Article 14. Prohibited Use

Lessee shall not use or permit any other party to use any part of the Leased Premises for any purpose not authorized in this Lease. Lessee shall not do or permit anything to be done in or about the Leased Premises, or bring or keep or permit anything to be brought to or kept therein, which is prohibited by or which will in any way conflict with City's insurance, any law, statute, ordinance or governmental rule or regulation now in force or hereafter enacted or promulgated. Lessee shall not cause, maintain, or permit any nuisance in, on or about the Leased Premises or commit or suffer to be committed any waste to, in or about the Leased Premises. Lessee additionally agrees that the Leased Premises shall only be used in compliance with this Lease, and in the interest of avoidance of waste. Lessee further agrees that should Lessee for whatever reason allow the Leased Premises to remain in a state of abandonment, the penalty of such shall be rescission of this lease.

Article 15. Holding Over

If Lessee does not vacate the Leased Premises following termination of this Lease, Lessee will become a tenant at will and must vacate the Premises on receipt of notice from Lessor. No holding over by Lessee, whether with or without the consent of Lessor, will extend the Term.

During the period of holding over the Lessee shall be liable for the payment of rent on a prorated basis equal to two times the annual rent in effect as of the last lease term before the lease termination date.

Article 16. Mechanic's Liens

Lessee shall not permit a mechanic's lien or other lien to be placed upon the Leased Premises or the improvements constituting a part thereof.

Article 17. City's Access

Lessor shall have the right, at all reasonable times during the Term of the Lease or any extension to enter the Leased Premises to inspect the condition thereof, to determine if Lessee is performing its obligations, to cure any defaults of Lessee hereunder that Lessor elects to cure, and to remove any improvements or property placed on the Leased Premises in violation of this Lease.

Article 18. Legal Interpretation and Severability

Each paragraph and provision hereof is severable from the entire Lease and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect. Any clause or provision of this Lease found to be illegal, invalid, or unenforceable; under the present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable. All obligations of either party requiring any performance after the expiration of the Term shall survive the expiration of the Term and shall be fully enforceable in accordance with those provisions pertaining thereto. Section titles are for convenient reference only and shall not be used to interpret or limit the meaning of any provision of this lease.

Article 19. Miscellaneous

19.1. Words and Phrases: When the singular number is used in this Lease, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.

19.2. Amendment: This Lease may be amended only by an instrument in writing signed by both parties.

19.3. Waiver: Either party's failure to insist at any time on the strict performance of any covenant or agreement, or such party's failure to exercise any option, right, power or remedy contained in this Lease, shall not be construed as a waiver or a relinquishment thereof for the future. The waiver of or failure to seek redress for any violation of any term, covenant, or condition contained in this Lease shall not prevent a subsequent act from being a violation. A party shall be considered to have waived a provision of this Lease only if specifically expressed in writing signed by such party. No expressed waiver shall affect any matter other than the one specified in the waiver and only for the time and in the manner specifically stated.

19.4. Force Majeure: Whenever a period of time is prescribed for action to be taken by the Lessor, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of the Lessor shall be excluded from the computation of any such period of time.

19.5. No Joint Venture: This Lease shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is only that of Lessor and Lessee.

19.6. Law and Venue: The parties agree that the laws of the State of Texas shall govern this Lease and that exclusive venue for enforcement of this Lease shall lie in Bastrop County, Texas.

19.7. Notice: Each notice required or permitted to be given hereunder by one party to the other shall be in writing with a statement therein to the effect that notice is given pursuant to this Lease, and the same shall be given and shall be deemed to have been delivered, served and given if placed in the United States mail. Postage prepaid, by United States registered or certified mail, return receipt requested, addressed to such party at the address provided for such party herein. Wherever any notice is required or permitted under this Lease, the notice shall be in writing and sent by certified mail, return receipt requested, addressed to the respective party at the following addresses. The Lessee shall provide the Lessor with advance written notice of any change in its address.

Lessor:

City of Bastrop
Attention: City Manager
1311 Chestnut Street
Bastrop, Texas 78602

Lessee:

Bastrop River Co., LLC
Attention: _____
P.O. Box 752
Bastrop, Texas 78602

EXECUTED to be effective as of _____ 2023.

Point of Contact for the City of Bastrop:
Director of Public Works or Designee
1311 Chestnut Street Bastrop, Texas 78602
Phone # 512 332-8920

Point of Contact for Bastrop River Co., LLC:



EXHIBIT "A"

Exhibit B

Winter Hours (December – February ... 7 days a week)

Open by reservation / appointment

Regular Season (March – November)

Saturday & Sunday

8AM to 5PM

Monday thru Friday

Open by reservation / appointment



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve Resolution No. 2023-33 revising the agreement for subdivision plat regulation in the City of Bastrop's ETJ in Bastrop County also known as the (1445 agreement); providing for repeal; and providing an effective date

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, City Manager

BACKGROUND/HISTORY:

In 2001, the Texas Legislature approved HB 1445 which required municipal and county governments to enter into an interlocal agreement regarding development regulations in the City's extra territorial jurisdiction (ETJ). The agreements are commonly referred to as 1445 agreements.

In 2018, the City and County approved and entered into such an interlocal agreement. The agreement divided the County into 4 areas, statutory ETJ, Area A, Area B, and Voluntary.

The City's statutory ETJ is 1 mile as defined by state statute in Sec. 42.021 of the Texas Local Government Code.

Attachment 3 in this document shows the prior boundaries of Area A, Area B, and Area V.

Attachment 4 in this document shows the proposed boundaries of the revised areas.

The revised areas include the following:

- 1) The City will continue to review and have jurisdiction over areas where the following exists:
 - a. The area is in the City's Water or Wastewater Certificate of Convenience and Necessity (CCN)
 - b. The area is covered by a development agreement between the City and the developer
 - c. Areas where the City has entered into or is currently negotiating a wholesale agreement for water and wastewater
- 2) The County will review all other areas of the county where the conditions above do not apply.
- 3) The County and City will enter into tri-party agreements in areas where City or County needs necessitate an agreement to cover the interests of either.

FISCAL IMPACT:

None

RECOMMENDATION:

City Manager Carrillo recommends approval of Resolution No. R-2023-33.

ATTACHMENTS:

1. Resolution R-2023-33
2. Proposed draft agreement.
3. 2018 Interlocal Agreement Map.
4. Proposed 2023 Interlocal Agreement Map.

RESOLUTION NO. R-2023-33

A RESOLUTION OF THE CITY OF BASTROP, TEXAS, APPROVING THE ATTACHED AGREEMENT AS EXHIBIT A, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS RELATED TO THE AGREEMENT FOR SUBDIVISION PLAT REGULATION IN THE CITY OF BASTROP'S ETJ IN BASTROP COUNTY; PROVIDING FOR REPEAL; AND PROVIDING AN EFFECTIVE DATE.

- WHEREAS,** the City has properly identified its incorporated municipal boundary ("City Limits") and its Extraterritorial Jurisdiction ("ETJ") within the County; and
- WHEREAS,** the County has adopted and is enforcing subdivision and property development regulations pursuant to Texas Local Government Code Chapter 232; and
- WHEREAS,** the City has adopted and is enforcing subdivision and property development regulations pursuant to Texas Local Government Code Chapter 212; and
- WHEREAS,** the Parties are governmental entities authorized to enter into an interlocal cooperation agreement pursuant to Texas Government Code Chapter 791 ("Chapter 791"); and
- WHEREAS,** Texas Local Government Code Chapter 242 ("Chapter 242", commonly referred to as *House Bill 1445*) mandates that a municipality and a county enter into an agreement providing for the regulation of the subdivision of land and approving of related permits in the ETJ; and
- WHEREAS,** pursuant to Chapter 242, the City and the County may apportion the area within the ETJ and each entity may regulate subdivision plats and approve related permits; and
- WHEREAS,** the Parties intend implementation of this Agreement to ensure fair, reasonable, effective, and efficient administration of development regulations and procedures related to subdivision plats and infrastructure, which the Parties agree are worthwhile and important public objectives that will be accomplished through this Agreement; and
- WHEREAS,** the Parties concur that this Agreement is reasonable, prudent, and necessary for the public health, safety, and general welfare, and provides for safe, orderly, and responsible development.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bastrop:

Section 1: All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Bastrop, Texas, and are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

Section 2: The City Council hereby approves the Agreement for Subdivision Plat Regulation in the City of Bastrop’s ETJ in Bastrop County.

Section 3: The City Council hereby authorizes the City Manager to execute all necessary documents related to the Agreement for Subdivision Plat Regulation in the City of Bastrop’s ETJ in Bastrop County.

Section 4: This Resolution shall be in full force and effect from and after its passage.

Section 5: The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended.

DULY RESOLVED & ADOPTED by the City Council of the City of Bastrop, TX, on this, the 28th day of February 2023.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

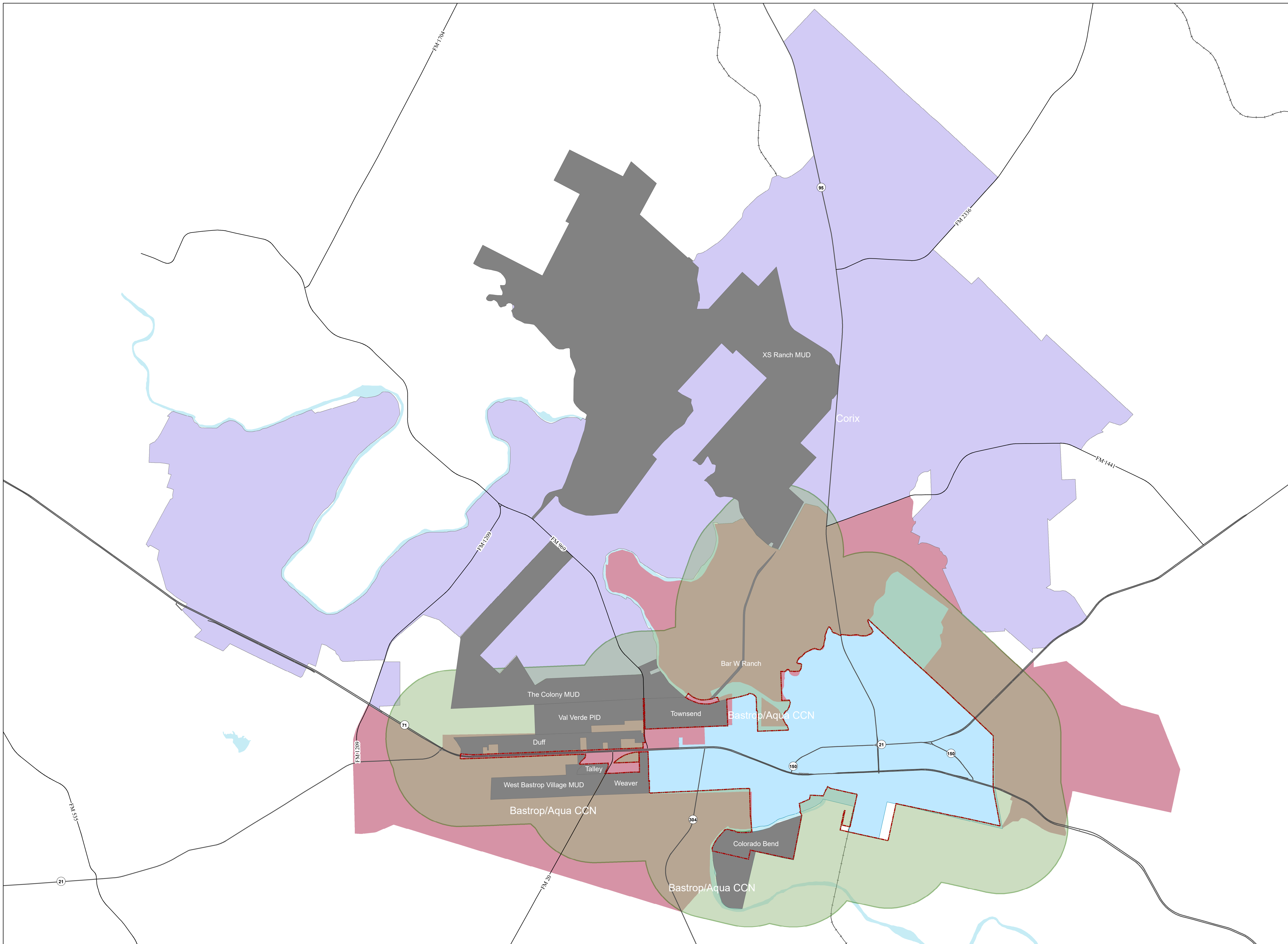
Alan Bojorquez, City Attorney



City of Bastrop Development & CCN Agreements

Legend

-  City Limit
-  Development Agreements
-  Statutory (one-mile)
-  Corix Wastewater CCN
-  Bastrop WW CCN in Aqua Water CCN
-  City of Bastrop Water CCN



0 1,125 2,250 4,500
Feet

1 inch = 3,200 feet Date: 2/22/2023

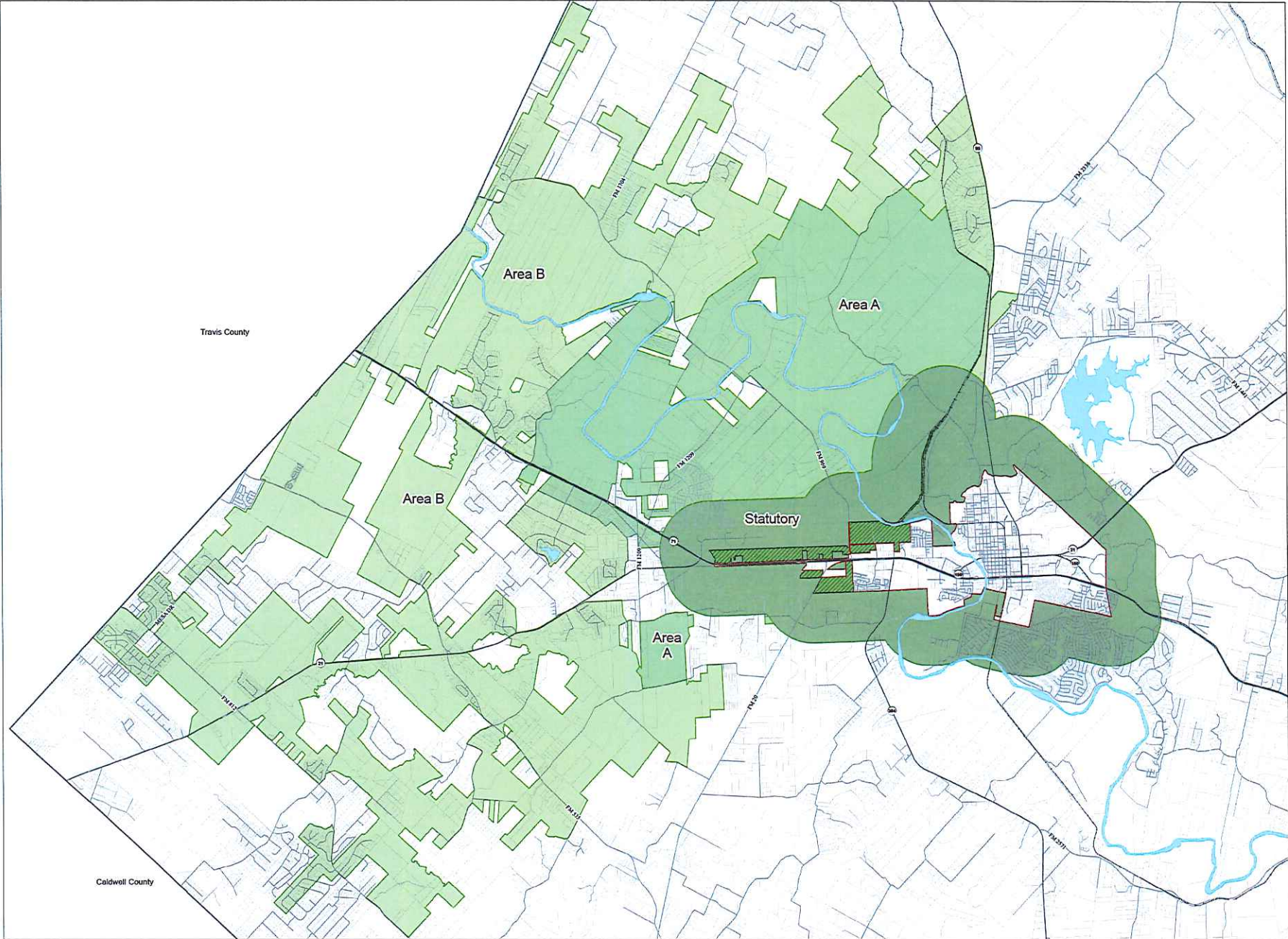
The accuracy and precision of this cartographic data is limited and should be used for information planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness or usefulness of any such information, nor does it represent that its use would not infringe upon privately owned rights.



City Limits & ETJ

Legend

- Parcels
- City Limit
- City Boundary
- County
- ETJ Areas**
- Statutory
- Area A
- Area B
- Development Agreements



The accuracy and precision of the cartographic data is limited and should be used for information purposes only. The data does not replace surveys conducted by registered surveyors. The data is provided as a courtesy and is not intended to be used for legal purposes. The City of Bastrop, Louisiana, and its employees, do not make any warranty of merchantability and fitness for particular purposes, or assume any legal liability or responsibility for the accuracy, completeness or usefulness of any such information, nor does it represent that its use would not infringe upon privately owned rights.

AGREEMENT FOR SUBDIVISION PLAT REGULATION IN THE CITY OF BASTROP'S ETJ IN BASTROP COUNTY

PREAMBLE & RECITALS

THIS AGREEMENT for Subdivision Plat Regulation in the City of Bastrop's ETJ in Bastrop County ("Agreement"), is by and between **Bastrop County**, Texas ("County"), a duly organized and operating county of the State of Texas, and the **City of Bastrop**, Texas ("City"), a duly organized Home-Rule municipality of the State of Texas. The County and City may be referred to jointly as "Parties" and individually as a "Party".

WHEREAS, the City has properly identified its incorporated municipal boundary ("City Limits") and its Extraterritorial Jurisdiction ("ETJ") within the County; and

WHEREAS, the County has adopted and is enforcing subdivision and property development regulations pursuant to Texas Local Government Code Chapter 232; and

WHEREAS, the City has adopted and is enforcing subdivision and property development regulations pursuant to Texas Local Government Code Chapter 212; and

WHEREAS, the Parties are governmental entities authorized to enter into an interlocal cooperation agreement pursuant to Texas Government Code Chapter 791 ("Chapter 791"); and

WHEREAS, Texas Local Government Code Chapter 242 ("Chapter 242", commonly referred to as *House Bill 1445*) mandates that a municipality and a county enter into an agreement providing for the regulation of the subdivision of land and approving of related permits in the ETJ; and

WHEREAS, pursuant Chapter 242, the City and the County may apportion the area within the ETJ each entity may regulate subdivision plats and approve related permits; and

WHEREAS, the Parties intend implementation of this Agreement to ensure fair, reasonable, effective, and efficient administration of development regulations and procedures related to subdivision plats and infrastructure, which the Parties agree are worthwhile and important public objectives that will be accomplished through this Agreement; and

WHEREAS, the Parties concur that this Agreement is reasonable, prudent, and necessary for the public health, safety, and general welfare, and provide for safe, orderly, and responsible development.

NOW, THEREFORE, in consideration of the representations, obligations, promises, warranties, and conditions of this Agreement, and the consideration herein described, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

TERMS & CONDITIONS

1. INTRODUCTION

1.1 Definitions

City Limits: The "City Limits" shall mean the incorporated municipal boundary.

City's Area: The "City's Area" shall mean the following:

- (a) Statutory ETJ; or
- (b) Area of the Voluntary ETJ covered by a Development Agreement in which the City is a party; or
- (c) Area of the Voluntary ETJ in which the City holds a Certificate of Convenience and Necessity ("CCN") for Water or Wastewater service; or
- (d) Area of the Voluntary ETJ in which the City is a party to a Wholesale agreement for Water or Wastewater service (e.g., with a MUD, WCID, Aqua, Corix, etc.); or

Area of the Voluntary ETJ within three hundred feet (300') of a City utility connection. Or in accordance with Chapter 13 Sec 13.04.008- Development of organized disposal systems latest approved version.

County's Area: The "County's Area" shall mean the remainder of the City's ETJ that is not encompassed by the "City's Area".

Developer: A "Developer" shall mean the owner of real property for which subdivision plats or related permits are sought in the City's ETJ. The term shall also include any agent, prospective buyer, or builder acting on behalf of the owner or the real property pursuant to a lawful Power of Attorney filed with the City.

Development Agreement: A "Development Agreement" shall mean a contract authorized under Texas Local Government Code Chapter 43 and/or 212.

Extraterritorial Jurisdiction (ETJ): The ETJ shall mean the unincorporated area that is contiguous to the City Limits of the City in which the City has certain regulatory authority, including the regulation of subdivision plats.

- (a) **Statutory ETJ:** The City's ETJ determined by Texas Local Government Code Chapter 42 ("Statutory ETJ"), that is located within one mile of the City Limits, as shown on the attached Exhibit "A" ("ETJ Map").

- (b) **Voluntary ETJ:** The unincorporated areas of the County outside of the City's Statutory ETJ that have been designated by the City as ETJ upon request of the property owners ("Voluntary ETJ").

1.2 Purpose. It is the general objective of the Parties to detail their roles and responsibilities and to identify the applicable regulations that will be applied by each,

to all subdivisions that are developed in the City's ETJ. The purpose of this Agreement is to ensure consistent regulation, clarity of applicability, and governmental responsibility and oversight of landowners and developers in the City's ETJ regarding the platting of subdivisions and the approval of related permits. This Agreement is intended to promote the public health, safety, and general welfare, and provide for safe, orderly, and responsible development.

1.3 Public Benefits. In addition to providing for the orderly and healthful layout and development of land, this Agreement fosters the responsible planning and construction of vital infrastructure, including drainage, recreation, transportation, and utility improvements.

1.4 Applicability. This Agreement shall apply to the unincorporated land located in Bastrop County, Texas, that is within the City's ETJ, as now existing or hereafter expanded or diminished as allowed by law. In the event that the City's ETJ changes during the term of the Agreement, the City will promptly notify the County of such change providing documentation related to same.

2. IN CITY'S AREA

2.1. Assignment, Delegation & Acknowledgment. The County hereby assigns, delegates, and acknowledges that the City has exclusive regulatory authority and responsibility to administer subdivision plats and related authorizations for land in the City's Area, except as provided by this Agreement.

2.2. Standards. The City shall be responsible for performing its standard review for acceptance and approval of subdivision plat applications and related plat documentation pursuant to applicable state, federal and City regulations set forth in the Bastrop Code of Ordinances, as amended, except as specifically otherwise noted herein. All required documents for a plat application and related plat approval for subdivisions shall be filed with the City, unless exempted from filing by the proper application of a federal or state statute, or authorized local regulation.

2.3. Infrastructure. For all subdivisions that will be annexed into the City, the City shall require Owners to comply with the City's public road, drainage and other public infrastructure development standards and subdivision standards and requirements. For all subdivisions that not scheduled to be annexed into the City, the City shall require Developers to comply with the City's public road, drainage and other public infrastructure development standards and subdivision standards and requirements.

2.4. Maintenance. When the City's ordinances or regulations require a Developer to dedicate, construct, install, or improve public road, drainage, or other public infrastructure (including but not limited to lighting, signage, traffic lights, sidewalks, parking areas, storm sewers or other drainage infrastructure), and when the subdivision infrastructure will require future maintenance by a governmental entity after acceptance, the City shall require an expressly worded 'plat note' to be shown

- on the final, approved plat documentation stating that all public infrastructure shall be maintained by the Developer, until such time that it is accepted, if at all, by a governmental entity for maintenance. The City shall provide for the administration of all required forms of fiscal security (e.g., fees, certificates of deposit, letters of credit, warranty or bonds, etc.) for infrastructure covered by this Agreement.
- 2.5. Address for Submittals.** Developers shall submit all subdivision applications and construction plans subdivisions and plats for land in the City's Area to the City of Bastrop's Department of Planning and Development, at 1311 Chestnut Street, Bastrop, Texas 78602, for review and processing by the City.
- 2.6. Copies to County.** The City shall deliver a courtesy copy of same to the County, complete with copies of all attached or related documents within 10 calendar days of its receipt of a subdivision plat application or related permit.
- 2.7. County Comments.** The City shall include any written recommendations or comments received from the County in the agenda backup materials and administrative record for plat or related permit approvals.
- 2.8. Notice of City Action.** The City shall deliver written notice of the action to the County, complete with copies of all documents which memorialize that action within 10 calendar days from its action on a subdivision plat application or related permit.
- 2.9. Application Fees.** The City shall provide for the administration of all required fees and deposits from the Developer, and the remittance of the County's funds to the County as applicable. Applicable fees shall be in accordance with the City and County's most recently approved fee schedules.
- 2.10. Inspections.** The City shall be responsible for scheduling all inspections on the subdivision construction, retaining all inspection fees paid by the Developer related to the subdivision, and providing the County with copies of inspection reports. These inspections include those performed by the County for infrastructure intended for public dedication to the County. The City shall allow County inspectors access to constructions sites as necessary.
- 2.11. Administration of Ancillary Agreements.** The City shall provide for the administration and completion of any required subdivision construction agreement, phasing agreement and other planning and construction issues.
- 2.12. Fiscal Assurances.**
- 2.12.1. Fiscal Security Deposits.** The City shall be responsible for any requisite fiscal security deposits made by developers and for holding any applicable escrow fees deposited by developers for same, for the joint benefit of the Parties, as applicable.

2.12.2. Performance Bonding & Assurance. Unless otherwise approved as an exception to the City's standard fiscal assurance process, the City shall require, as a condition for plat approval, that Developers who construct public road, utility, drainage, or other public infrastructure required for a subdivision shall post fiscal assurance in a form and amount approved by the City, to assure final and complete construction of all required subdivision infrastructure. As appropriate and applicable, such fiscal assurance shall conform to the standards of the City's subdivision regulations.

2.12.3. Infrastructure Warranty & Maintenance Guaranty. The City shall require, as a condition for plat approval, that Developers who construct public road, utility, drainage, or other public infrastructure required for a subdivision shall provide to the City a post-inspection/post-acceptance infrastructure warranty and maintenance guarantees, made to the City and County as co-beneficiaries, as set forth in the City's Code of Ordinances. As appropriate and applicable, such fiscal assurance shall conform to the standards of the City's subdivision regulations.

3. IN THE COUNTY'S AREA

3.1. Assignment, Delegation & Acknowledgment. The City hereby assigns, delegates, and acknowledges that the County has exclusive regulatory authority and responsibility to administer subdivision plats and related authorizations for land in the County's Area, except as provided by this Agreement.

3.2. Standards. The County shall be responsible for performing its standard review for acceptance and approval of subdivision plat applications and related plat documentation pursuant to applicable state, federal and County regulations, as amended, except as specifically otherwise noted herein. All required documents for a plat application and related plat approval for subdivisions shall be filed with the County, unless exempted from filing by the proper application of a federal or state statute, or authorized local regulation.

3.3. Infrastructure. The County shall require Owners to comply with the County's public road, drainage and other public infrastructure development standards and subdivision standards and requirements. The County shall require Developers to comply with the County's public road, drainage and other public infrastructure development standards and subdivision standards and requirements.

3.4. Maintenance. When the Counties orders or regulations require a Developer to dedicate, construct, install, or improve public road, drainage, or other public infrastructure (including but not limited to lighting, signage, traffic lights, sidewalks, parking areas, storm sewers or other drainage infrastructure), and when the subdivision infrastructure will require future maintenance by a governmental entity after acceptance, the County shall require an expressly worded 'plat note' to be shown on the final, approved plat documentation stating that all public infrastructure

- shall be maintained by the Developer, until such time that it is accepted, if at all, by a governmental entity for maintenance. The County shall provide for the administration of all required forms of fiscal security (e.g., fees, certificates of deposit, letters of credit, warranty or bonds, etc.) for infrastructure covered by this Agreement.
- 3.5. Address for Submittals.** Developers shall submit all subdivision applications and construction plans subdivisions and plats for land in the County's Area to the Bastrop County Engineer, 211 Jackson Street, Bastrop, Texas 78602, for review and processing by the City.
- 3.6. Copies to City.** The County shall deliver a courtesy copy of same to the City, complete with copies of all attached or related documents within 10 calendar days of its receipt of a subdivision plat application or related permit.
- 3.7. City Comments.** The County shall include any written recommendations or comments received from the City in the agenda backup materials and administrative record for plat or related permit approvals.
- 3.8. Notice of County Action.** The County shall deliver written notice of the action to the City, complete with copies of all documents which memorialize that action within 10 calendar days from its action on a subdivision plat application or related permit.
- 3.9. Application Fees.** The County shall provide for the administration of all required fees and deposits from the Developer, and the remittance of the City's funds to the City as applicable. Applicable fees shall be in accordance with the County and City's most recently approved fee schedules.
- 3.10. Inspections.** The County shall be responsible for scheduling all inspections on the subdivision construction, retaining all inspection fees paid by the Developer related to the subdivision, and providing the County with copies of inspection reports. These inspections include those performed by the City for infrastructure intended for public dedication to the City. The County shall allow City inspectors access to constructions sites as necessary.
- 3.11. Administration of Ancillary Agreements.** The County shall provide for the administration and completion of any required subdivision construction agreement, phasing agreement and other planning and construction issues.
- 3.12. Fiscal Assurances.**
- 3.12.1. Fiscal Security Deposits.** The County shall be responsible for any requisite fiscal security deposits made by developers and for holding any applicable escrow fees deposited by developers for same, for the joint benefit of the Parties, as applicable.

3.12.2. Performance Bonding & Assurance. Unless otherwise approved as an exception to the County's standard fiscal assurance process, the County shall require, as a condition for plat approval, that Developers who construct public road, utility, drainage, or other public infrastructure required for a subdivision shall post fiscal assurance in a form and amount approved by the County, to assure final and complete construction of all required subdivision infrastructure. As appropriate and applicable, such fiscal assurance shall conform to the standards of the County subdivision regulations.

3.12.3. Infrastructure Warranty & Maintenance Guaranty. The County shall require, as a condition for plat approval, that Developers who construct public road, utility, drainage, or other public infrastructure required for a subdivision shall provide to the City a post-inspection/post-acceptance infrastructure warranty and maintenance guarantees, made to the City and County as co-beneficiaries, as set forth in the County's regulations. As appropriate and applicable, such fiscal assurance shall conform to the standards of the County's subdivision regulations.

4. TRI-PARTY AGREEMENTS

4.1. Requirement. The Parties shall be required to mutually enter into negotiations with a Developer in a good faith effort to draft and execute the appropriate agreement covering the subdivision plat, or related permits, in the following instances:

- (a) The subdivision is in the City's Area, but public infrastructure will be dedicated to the County; or
- (b) The subdivision is in the County's Area, but:
 - (1) Developer intends to utilize on-site sewage facilities (OSSFs); and
 - (2) City or the City's wholesale customer has water and/or wastewater utilities in proximity to the subdivision.

5. ADMINISTRATIVE PROVISIONS

5.1. Entire Agreement. This instrument is intended by the Parties as the final, complete and exclusive statement of the terms and conditions of this Agreement and is intended to supersede all previous agreements and understandings between the Parties relating to its specific subject matter. No prior stipulation, agreement, understanding or course of dealing between the Parties with respect to the specific subject matter of this Agreement shall be valid or enforceable unless embodied in this Agreement. No amendment, modification or waiver of any provision of this Agreement shall be valid or enforceable unless in writing and signed by all Parties. Each of the Parties shall pay all of its own costs and expenses (including travel expenses and attorney's fees) incurred in negotiating and preparing this Agreement and carrying out the transactions contemplated by this Agreement.

- 5.2. Severability.** If any provision of this Agreement is held to be illegal, unenforceable or invalid, it shall be severed and the remaining provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.
- 5.3. Attorney Fees, Interest & Expenses.** In the event a Party commits a default of this Agreement, and litigation is filed regarding this Agreement, the prevailing Party in the litigation shall be entitled to recover its reasonable and necessary attorney's fees, court costs, interest, and expenses allowed by law and incurred by said Party in that litigation.
- 5.4. No Waiver & Assignment.** The failure of a Party in any one or more instances to insist upon the performance of any provision of this Agreement shall not be construed as a waiver of that Party's rights with respect to that or any continuing or subsequent default of the Agreement, and the Agreement shall remain in full force and effect. This Agreement is not assignable without the express written consent of all Parties.
- 5.5. Governing Law & Venue.** This Agreement shall be construed and interpreted in accordance with the law of the State of Texas, with venue being in Bastrop County.
- 5.6. Signatory Authority, Representations & Warranties.** This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives, successors and permitted assigns, subject to the proper application of the doctrine of governmental immunity which protects both Parties. Each Party warrants and represents to each other the following:
- (a) The Party has read the Agreement in its entirety and understands all of its terms and provisions.
 - (b) The person signing this Agreement on behalf of the Party has the authority and power to execute it on behalf of the Party.
 - (c) This Agreement was approved by the governing body of the Party at a public meeting properly noticed and conducted pursuant to Texas Government Code Chapter 551 (the Texas Open Meetings Act).
 - (d) Pursuant to Texas Government Code Chapter 791 (the Interlocal Cooperation Act), as amended, this Agreement:
 - (1) is an authorized inter-local governmental contract;
 - (2) provides for a governmental function and service that each Party is authorized to perform for the other Party; and
 - (3) all monetary payment required by this Agreement to be paid from one Party to the other Party:
 - (a) shall constitute payment for the performing Party's performance of a governmental function and service to the paying Party,
 - (b) shall be paid from current revenues available to the paying Party, and
 - (c) are for an amount that fairly compensates the performing Party for said governmental function and service.
- 5.7. Notices.** All notices required by this Agreement shall be in writing, correctly

addressed to the required addressee, and delivered by: (a) certified United States mail, return receipt requested; or (b) courier or hand-delivery. No notice required by this Agreement shall be effective if delivered only by facsimile, e-mail, or other electronic transmission. The addresses and designated notice representatives of the Parties for notice under this Agreement are as follows, and a Party may revise this information by giving the other Party 3 days advance written notice of the change:

If to the County:

County Judge
Bastrop County Courthouse
804 Pecan Street
Bastrop, Texas 78602

If to the City:

City Manager
City Hall
1311 Chestnut Street
Bastrop, Texas 78602

Any notice required by this Agreement must be correctly addressed to the required addressee, and shall be deemed to have been given on the day the notice is delivered to the addressee by: (a) hand-delivery or courier service; or (b) United States certified mail, return receipt requested.

5.8. Document Creation, Usage & Preamble Interpretation. The rule of construction that ambiguities in a document are construed against the Party who drafted it shall not apply in interpreting this Agreement. As used in this Agreement, singular nouns and pronouns shall include the plural, and the masculine gender shall include the feminine gender, and vice versa, where necessary for a correct meaning. If not specifically defined in this Agreement, words and phrases used in this Agreement shall have their ordinary meaning as defined by common usage. All statements made in the preamble and preliminary recitals of this Agreement, and all attached documents, are incorporated by reference for all purposes. The Parties agree that to the full extent possible, each has a duty to mitigate damages.

6. TERM, TERMINATION & DEFAULT

6.1. Term. The term of this Agreement shall begin on the Effective Date and shall run for a 2- year term unless otherwise terminated by the Parties, and shall *automatically renew* on its anniversary date every 2 years, unless otherwise amended or terminated by the Parties.

6.2. Termination. This Agreement may be terminated as follows:

6.2.1. The Parties may unilaterally or mutually agree to terminate this Agreement, for cause or no cause, by giving the other party a minimum of 90 days written notice of the desire to terminate. During the period prior to the termination the Parties shall work together to wind-up any then-existing subdivision matters and pending issues. However, because an agreement of this type is required by State law to be in place between the Parties, in the event either or both Parties provide notice of termination, both Parties agree that they will voluntarily initiate good faith discussions to negotiate the provisions of a new

agreement to take the place of the terminated contract, if such is required by law at that time, within 30 days of the termination date of the then existing Agreement, or as soon as is feasible thereafter.

- 6.2.2.** Should a Party commit a default of this Agreement, the Parties shall communicate with each other in good faith to resolve the default. Should resolution not occur, the non-defaulting Party may terminate this Agreement by giving written default/termination notice to the defaulting Party at least 90 days prior to the termination date chosen by the non-defaulting Party. During that 90 day period, the Parties shall reasonably work together to wind-up and conclude all pending issues related to the Agreement.
- 6.3. Mediation.** This Agreement shall be performed in Bastrop County, Texas, The Parties agree that prior to initiating the mandatory dispute resolution remedy set forth in Chapter 242 of the Texas Local Government Code, as amended, the Parties shall jointly participate in non-binding mediation to resolve any disputes related to this Agreement. In the event of such mediation, each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties; however, should the Parties fail to agree on a mediator, the dispute shall be submitted to the Center for Public Policy Dispute Resolution, School of Law, University of Texas at Austin, 727 East Dean Keeton Street, Austin, Texas 78705, for mediated resolution. Notwithstanding the above, a Party may file suit solely for injunction or mandamus relief regarding this Agreement without first submitting that dispute to mediation.
- 6.4. Counterparts & Captions.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. Signed counterparts of this Agreement may be delivered by facsimile or by scanned pdf image, each of which shall have the same force and effect as an original signed counterpart. Copies of signatures to this Agreement are effective as original signatures. The captions of the paragraphs or subparagraphs of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect the provisions of this Agreement.
- 6.5. Default Survives Termination.** Notwithstanding anything to the contrary stated in this Agreement, and subject to the proper application of the doctrine of governmental immunity which protects both Parties, should a Party commit a default regarding any obligation, promise, representation, or warranty contained in this Agreement, including the payment or use of funds, that default event, any related default claim, and this provision, shall survive the termination of this Agreement and can be asserted in litigation against the defaulting Party. A defaulted payment amount or other monetary default shall accrue prejudgment interest in favor of the non-defaulting Party at the highest amount allowed by law until the default is paid in full.

6.6. Time. Time is of the essence. Unless otherwise designated in this Agreement, all references in this Agreement to "days" shall mean calendar days. Business days, if used in this Agreement, shall exclude Saturdays, Sundays, and legal public holidays as then recognized and observed by the County. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday as then recognized and observed by the County, the date for performance will be the next following regular business day.

6.7. No Immunity Waiver. By signing this Agreement, neither Party waives or relinquishes any protection afforded by the proper application of the doctrine of governmental immunity. Nothing in this Agreement shall be construed or interpreted as waiving or attempting to waive any protection afforded a Party by the proper application of the doctrine of governmental immunity.

6.8. No Third Party Beneficiaries. This Agreement is not intended to confer any rights on any third parties, and it shall not be construed as doing so.

6.9. No Special Relationships. There are no third-party beneficiaries regarding this Agreement. The Parties' relationship is that of an ordinary, arms-length contractual relationship, and the Parties do not intend by this Agreement or otherwise to create the relationship of principal and agent, partner(s), joint venture(s), or any other special relationship.

6.10. Ratification & Validation. The County and City hereby ratify all plats approved by the County and the City pursuant to, and in accordance with, the Interlocal Agreement effective on January 10, 2006, executed by the City and the County for the review of subdivision applications in Bastrop County and in the City's ETJ ("2006 Interlocal Agreement"). A plat approved since January 11, 2011, is conclusively presumed valid, and in full force and effect, and to have been approved in accordance with all applicable statutes, orders and ordinances, if a lawsuit to annul or invalidate the plat was not filed on or before the Effective Date of this Agreement.

THIS AGREEMENT is executed by the Parties and will become effective on the later of the dates shown below (the "Effective Date").

BASTROP COUNTY:

CITY OF BASTROP:

by: _____
Gregory Klaus, County Judge
Bastrop County, Texas
_____, 2023

by: _____
Connie Schroeder, Mayor
City of Bastrop, Texas
_____, 2023

**EXHIBIT A
(ETJ Map)**

DRAFT



STAFF REPORT

MEETING DATE: February 14, 2023

TITLE:

Consider action to approve the second reading of Ordinance No. 2023-02 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Article 1.04 regarding annual work plans for city boards, commissions, task forces, committees and advisory bodies; and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting.

AGENDA ITEM SUBMITTED BY:

Sylvia Carrillo, City Manager

BACKGROUND/HISTORY:

In order to gain efficiencies in service delivery to our residents, the Council develops an annual work plan and establishes goals each year. In order to create an effective local government as a whole, it is important that the advisory bodies appointed by the City Council and advising the City Council on matters of importance to the residents, also establish an annual work plan. It is important for the Council to fully understand the level of support each body will need to accomplish their goals, from financial to staff resources, and fully budget for such support.

The Diversity, Equity, and Inclusion board is the only board that is currently tasked with developing such a plan and informing the Council, but not required to have approval.

FISCAL IMPACT:

None

RECOMMENDATION:

Approve the second reading of Ordinances No. 2023-02 of the City Council of the City of Bastrop, Texas, amending the Bastrop Code of Ordinances Article 1.04 regarding annual work plans for city boards, commissions, task forces, committees and advisory bodies; and providing for findings of fact, repealer, severability, codification, effective date, proper notice and meeting.

ATTACHMENTS:

1. Ordinance

CITY OF BASTROP, TX
ORDINANCE NO. 2023-02

WORK PLANS FOR ADVISORY BODIES

AN ORDINANCE OF THE CITY OF BASTROP, TEXAS AMENDING THE CODE OF ORDINANCES ARTICLE 1.04, RELATED TO ADVISORY BODIES, BOARDS, COMMITTEES AND COMMISSIONS, REQUIRING ANNUAL WORK PLANS, AND PROVIDING FOR FINDINGS OF FACT, REPEALER, SEVERABILITY, CODIFICATION, EFFECTIVE DATE, PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Bastrop has the authority to create advisory bodies such as boards, committees, commissions, and task forces; and

WHEREAS, the City Council finds it reasonable to require advisory bodies to annually develop work plans to guide their activities; and

WHEREAS, the City Council finds the attached amendments reasonable and necessary.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Bastrop, TX:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. AMENDMENT

Chapter 1, Article 1.04, Section 1.04.003 of the City of Bastrop Code of Ordinances is hereby amended, and after such amendment, shall read in accordance with *Attachment "A"*, which is attached hereto and incorporated into this Ordinance for all intents and purposes. Any underlined text shall be inserted into the Code and any struck-through text shall be deleted from the Code, as stated on *Attachment A*.

3. REPEALER

To the extent reasonably possible, ordinances are to be read together in harmony. However, all ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. CODIFICATION

The City Secretary is hereby directed to record and publish the attached rules, regulations and policies in the City’s Code of Ordinances as authorized by Section 52.001 of the Texas Local Government Code.

6. EFFECTIVE DATE

This ordinance shall take effect upon the date of final passage noted below, or when all applicable publication requirements, if any, are satisfied in accordance with the City’s Charter, Code of Ordinances, and the laws of the State of Texas.

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

READ & ACKNOWLEDGED on First Reading on this, the 14th day of February 2023.

READ & APPROVED on the Second Reading on this, the 28th day of February 2023.

APPROVED:

by: _____
Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

Bastrop Code of Ordinances

Chapter 1: General Provisions

Article 1.04: Boards, Committees and Commissions

Sec. 1.04.003 Procedures.

- (a) Each advisory body will follow the rules and procedures set forth by City Council in accordance with section 3.13 of this code, including agenda order, unless specifically addressed by this chapter.
- (b) The staff Liaison will be responsible for preparing and posting the agenda but will provide the advisory body chair an opportunity to review and comment on the agenda prior to posting.
- (c) All advisory bodies appointed by the City Council shall develop an annual work plan to be submitted for approval to the City Council by February 1st of that year. Or, if February 1st is not a business day, the last business day before February 1st. The City Council may offer suggestions or modify a work plan prior to approving it.
- (d) Under this subsection, a work plan is defined as a "document that establishes and outlines an advisory body's goals for the year." The intent of such a plan is to help the City Council understand the support needed to accomplish its own goals for the year and shall consist of the following information on a template provided by staff:
 - 1. Adopted Council Goals and Focus Areas
 - 2. Advisory Body goals for the calendar year with a narrative on how those goals advance the Council Goals and Focus Areas.
 - 3. Timeline for accomplishing the goals or objectives
 - 4. Member responsibility for each goal or objective
 - 5. Any budgetary or staff resource impact envisioned in the advisory body goals.
 - 6. The Council liaison, in conjunction with staff support, shall ensure the advisory body goals are met each year and report to Council where goals were not accomplished and any barriers to completion.
 - 7. Council reserves the right to add additional items to the workplan.

(e) City staff shall create a template work plan and provide it to advisory bodies in anticipation of their development. Further, City staff shall review the template each year to ensure that it is achieving its intent outlined in Subsection (d). The staff Liaison will be responsible for guiding advisory bodies through the process of drafting the work plan and ensuring the template is provided to the body in a manner that provides reasonable time to create and submit to the City Council by the deadline in Subsection (c).



STAFF REPORT

MEETING DATE: February 28, 2023

TITLE:

Consider action to approve amendments to the Development agreement between the City of Bastrop and Colorado Bend, LLC. Authorizing the city Manager to execute all necessary documents; providing for repeal; and providing an effective date.

AGENDA ITEM SUBMITTED BY:

Submitted by: Sylvia Carrillo, City Manager

BACKGROUND/HISTORY:

Council will convene in executive session to discuss the amendment and any proposed impacts. They will then convene in open session for discussion and possible action.



STAFF REPORT

MEETING DATE: February 28, 2023,

TITLE:

Consider action to approve Resolution No. R-2023-34 of the City Council of the City of Bastrop, Texas, authorizing the ability to enter into a wholesale wastewater agreement with Corix Utilities Texas, LLC; attached in Exhibit A; authorizing the City Manager to execute all necessary documents; providing for a repealing clause; and establishing an effective date.

STAFF REPRESENTATIVE:

Trey Job, Assistant City Manager for Community Development

BACKGROUND/HISTORY:

The City of Bastrop is currently building a new wastewater treatment plant west of the Colorado River along SH 304. The current WWTP located on the east side of the river has been in operation well past its projected useful life. The cost of the new plant is approximately thirty million dollars, and with other necessary ancillary components such as wastewater trunk mains, force mains and lift station improvements the cost is approximately an addition twelve million. The increased cost and the fact that the city's wastewater service territory is approximately three times larger than the city limits the city has always planned to serve customers outside of the incorporated city limits.

With that in mind the City of Bastrop Community Development Team and City Council has been planning for regionalization whenever the opportunity presents itself. The ability to add customers outside of the City of Bastrop's service territory allows for multiple opportunities such as:

- Provide the current rate payer with a stabilized and potentially lower rate as more customers tie on to an organized wastewater system.
- Higher quality development by connecting to an organized wastewater system.
- Additional customers to help pay the debt being issued by the City of Bastrop.
- Provides for a stronger community by stabilizing residential neighborhoods by adding important things for parents like trust, cohesion and a sense of social control that develop when populations are less transient.

Understanding the aforementioned benefits City Staff have been negotiating a wholesale wastewater agreement with Corix Utilities Texas. Corix has expressed a great deal of interest and has agreed to ensure the City with an amount of wastewater flow, assistance with future capital expenses and maintaining the system within the Corix service territory in a manner that is not harmful to the City of Bastrop's wastewater system. The attached resolution provides for the general terms and the ability for the City Manager to execute the Wholesale Wastewater Agreement.

FUNDING SOURCE:

N/A

RECOMMENDATION:

Assistant City Manager Job recommends approval of Resolution R-2023-xx

ATTACHMENTS:

- Resolution
- Term sheet

RESOLUTION NO. R-2020-34

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, AUTHORIZING THE ABILITY TO ENTER INTO A WHOLESALE WASTEWATER AGREEMENT WITH CORIX UTILITIES TEXAS, LLC; ATTACHED IN EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City and Corix Utilities Texas, LLC. Wish to enter into a Wholesale Wastewater Agreement, to provide an opportunity for organized wastewater service within the City of Bastrop’s ETJ and Corix Utilities Texas LLC’s Certificate of Convenience and Necessity; and

WHEREAS, The City of Bastrop City Council understands the importance and value organized wastewater systems bring to the advancement of public health and higher value development; and

WHEREAS, the City of Bastrop deems it advantageous to itself and to its operations to enter this agreement to provide fiscally responsibility growth and the opportunity to stabilize the rate structures for its existing citizenry and wastewater customers is an important part of utility planning.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. The attached Lease Agreement between the City of Bastrop and Bastrop River Company, (the “Agreement”) is hereby approved.

Section 2. The City Manager is hereby authorized to execute the Agreement on behalf of the City.

Section 3. This Resolution shall become effective immediately upon adoption.

DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop this 28th day of February, 2023.

APPROVED:

Connie B. Schroeder, Mayor

ATTEST:

Ann Franklin, City Secretary

APPROVED AS TO FORM:

Alan Bojorquez, City Attorney

TERM SHEET

ARTICLE I. DEFINITIONS

Section 1.01 Definitions of Terms.

ARTICLE II. PROVISION OF WHOLESALE WASTEWATER SERVICE

Section 2.01 Wholesale Wastewater Service Commitment.

Minimum 1,000,000 GPD

Section 2.03 Wastewater Strength Limitations.

Domestic strength wastewater & Limits in line with City of Bastrop's WW permit.

Section 2.04 Sole Provider; Waste Disposal Permit Application.

City to be the sole treatment provider in certain geographic areas.

Section 2.05 Transferability of Wholesale Service Commitment.

Ability for Corix to transfer with City Council approval.

Section 2.07 Retail Billing and Collection.

Billing thru 3rd party meter of a wholesale metered connection

Section 2.08 Curtailment of Service.

Limit capacity when needed for cause.

Section 2.09 Cooperation during Maintenance or Emergency.

Limit flow if an emergency such as a power loss or flood etc..

Section 2.10 Retail Service and CCN.

Allows us to provide retail service in eth CCN if necessary.

ARTICLE III. DESIGN AND CONSTRUCTION OF FACILITIES

Section 3.01 Design and Construction of the Internal Facilities.

Approval of plans within a subdivision.

Section 3.02 Design and Construction of the Connecting Facilities.

Approval of plans for facilities connecting to the City Infrastructure.

Wholesale Wastewater Agreement
Bastrop-West Bastrop Village, West Bastrop Village MUD

Section 3.04 Inspection and Acceptance of a Portion or All of the Connecting Facilities.

Section 3.05 Agreement to Submit as Built or Record Drawings and Final Plats.

Section 3.06 Ownership and Operation of Connecting Facilities.

Section 3.07 Design and Construction of Interceptors.

Section 3.08 Design and Construction of Improvements to the Bastrop System and WWTP#3

Section 4.01 Wastewater Meter.

Meter Specs.

Section 4.02 Wastewater Flow Meter Calibration and Testing.

Annual testing required.

Section 4.03 Ownership, Operating and Maintenance of the Wastewater Flow Meters.

Owned by City paid for by Corix.

Section 4.04 Billing Adjustments.

How billing adjustments are settled if infiltration and inflow or winter averaging.

Section 4.05 Wastewater Flow Monitoring.

City has ability to monitor and review records.

ARTICLE V. WASTEWATER RATES AND CHARGES

Section 5.01 Wholesale Wastewater Rate Fees and Charges.

Current wholesale rates or in accordance with most recent approved rates.

Section 5.05 Wastewater Impact Fees.

Current Impact fee or in accordance with most recent approved fee.

Section 5.06 Reasonableness of Rates and Right of Appeal.

Section 5.07 Other Service Fees.

ARTICLE VI. WASTEWATER WHOLESALe BILLING METHODOLOGY

Wholesale Wastewater Agreement
Bastrop-West Bastrop Village, West Bastrop Village MUD

Section 6.01 Monthly Statement.

Formula to be established when all cost is determined.

Section 7.01 Condition of Wastewater Delivered.

WW quality (200MGL BOD) etc..

Section 7.02 Remedies for Delivery of Prohibited Wastes or Exceedances of Wastewater Quality.

Additional fee for exceeding 200 MGL BOD.

Section 7.03 Sampling and Testing.

City has the ability to test wastewater strength and review sampling data.

Section 8.01 Corix Prevention of Infiltration and Inflow.

Corix required to smoke test lines annually.

Section 8.02 Construction and Testing Criteria for Corix Sewer Connections.

Following plumbing code and inspection if in an area connecting to the City System.

ARTICLE X. REGULATORY COMPLIANCE

Section 10.01 Agreement Subject to Applicable Law.

Section 10.02 Cooperation to Assure Regulatory Compliance.

ARTICLE XI. TERM, TERMINATION, DEFAULT, REMEDIES

Section 11.01 Term and Termination.

Section 12.01 Assignability.

Section 12.02 Amendment.

Section 12.03 Necessary Documents and Actions.

Section 12.04 Entire Agreement.

Section 12.05 Applicable Law.

Section 12.06 Venue.

Section 12.07 Third Party Beneficiaries.

Section 12.08 Duplicate Originals.

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Section 12.13 State Approval; Compliance with TCEQ Rules and Applicable Federal Regulations.

Section 12.14 Force Majeure.

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Section 12.16 Authority of Parties Executing Agreement, Validity.

Section 12.17 Exhibits.

Section 12.18 Effective Date and Counterparts.