



**MAYOR AND COUNCIL MEETING
TUESDAY, JANUARY 04, 2022
6:00 PM
DALTON CITY HALL**

AGENDA

Call to Order

Pledge of Allegiance

Oath of Office:

1. Annalee Harlan, Ward 2
Steve Farrow, Ward 4

Approval of Agenda

Public Commentary: *(Please Complete Public Commentary Contact Card Prior to Speaking)*

Special Recognition:

2. Resolution of Hamilton Medical Center Recognizing the City of Dalton - Jeff Myers, President & CEO, and HMC Staff

Minutes:

3. Special Called Meeting Minutes of December 13, 2021
4. Special Called Meeting Minutes of December 28, 2021

New Business:

5. (3) Three New 2022 Alcohol Applications
6. Ordinance 21-26 The request of Trey Butler to rezone from Heavy Manufacturing (M-2) and General Commercial (C-2) to General Commercial (C-2) a tract of land totaling 2.15 acres located at 303 & 305 Fernwood Avenue, and 1206 & 1208 New East Morris Street, Dalton, Georgia. Parcels (12-240-20-009 and 12-240-20-007)
7. Ordinance 21-27 The request of Baltazar Hernandez seeking to rezone from General Commercial (C-2) to Limited Commercial (C-1A) a tract of land totaling .06 acres located at 601 N. Elm Street, Dalton, GA. Parcel (12-200-10-006).
8. ClearGov Service Order and Service Agreement

9. Appointments:

2022 Boards and Authority Appointments

2022 Mayoral Appointments

2022 Miscellaneous Appointments

10. Appointment of Caitlin Sharpe to position of Director, Parks and Recreation

Supplemental Business

Announcements:

11. City Government offices will be closed Monday, January 17, 2022 in observance of MLK Day. The next City Council meeting is scheduled for Tuesday, January 18, 2022.

Adjournment

OATH OF OFFICE

I, Annalee Harlan, do solemnly swear that I will, to the best of my ability, discharge the duties as Council member for the City of Dalton, during my continuance in office; so help me God.

In addition thereto, I do solemnly swear or affirm that:

- (1) I am not the holder of any unaccounted for public money due the State of Georgia, or any political subdivision or authority thereof;
- (2) I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which by the laws of the State of Georgia I am prohibited from holding;
- (3) I am otherwise qualified to hold said office according to the Constitution and laws of the State of Georgia;
- (4) I will support the Constitution of the United States and of this state;

This ____ day of _____, 202__.

Signature

Print name

ATTESTATION

The foregoing Oath of Office for the City of Dalton was read and duly sworn by the aforesaid individual on the ____ day of _____, 20__ in accordance with Georgia Code Sections 45-3-1 through 45-3-10.

Terry L. Miller
CITY ATTORNEY

OATH OF OFFICE

I, Steve Farrow, do solemnly swear that I will, to the best of my ability, discharge the duties as Council member for the City of Dalton, during my continuance in office; so help me God.

In addition thereto, I do solemnly swear or affirm that:

- (1) I am not the holder of any unaccounted for public money due the State of Georgia, or any political subdivision or authority thereof;
- (2) I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which by the laws of the State of Georgia I am prohibited from holding;
- (3) I am otherwise qualified to hold said office according to the Constitution and laws of the State of Georgia;
- (4) I will support the Constitution of the United States and of this state;

This ____ day of _____, 20__.

Signature

Print name

ATTESTATION

The foregoing Oath of Office for the City of Dalton was read and duly sworn by the aforesaid individual on the ____ day of _____, 20__ in accordance with Georgia Code Sections 45-3-1 through 45-3-10.

Terry L. Miller
CITY ATTORNEY

**RESOLUTIONS OF
HAMILTON MEDICAL CENTER, INC.
RECOGNIZING THE CITY OF DALTON**

WHEREAS, the COVID-19 pandemic caused, and continues to cause, widespread illness throughout our community that has tested the limits of our nation's healthcare delivery system; and

WHEREAS, throughout the COVID-19 pandemic THE CITY OF DALTON prioritized our community's safety and health by responding with compassion, understanding, and action to the needs of Hamilton Medical Center and its staff by issuing a state of emergency; and

WHEREAS, THE CITY OF DALTON, the Mayor, and its City Council members partnered with Hamilton Medical Center to inform the community about, and advocate for, reducing the spread of the COVID-19 virus; and

WHEREAS, THE CITY OF DALTON supplemented the services offered by Hamilton Medical Center to prevent overloading the hospital by setting up drive-through testing, drive-through vaccinations, and drive-through anti-viral treatments; and

WHEREAS, during staffing shortages at Hamilton Medical Center, THE CITY OF DALTON volunteered its medically-trained employees to temporarily staff the hospital to ensure that Hamilton Medical Center could continue operating at maximum capacity to fulfill its mission of compassionate care for all patients even during the highest peaks of the COVID-19 pandemic; and

WHEREAS, it is fitting and proper that THE CITY OF DALTON, the Mayor, and the City Council members be honored for their outstanding service and prompt actions in the face of the worst health crisis in more than a generation;

NOW, THEREFORE, BE IT RESOLVED, that Hamilton Medical Center, by unanimous vote, this the 18th day of November, 2021 does hereby recognize THE CITY OF DALTON for its support of Hamilton Medical Center and its patients, and does hereby extend to THE CITY OF DALTON and its City Council members its deepest gratitude and appreciation for the acts of service and support they have offered to Hamilton Medical Center during the COVID-19 pandemic;

BE IT FURTHER RESOLVED, that a copy of this Resolution be delivered to Mayor David Pennington and set forth in the minutes of Hamilton Medical Center so that THE CITY OF DALTON and all who now and hereafter serve as Trustees of Hamilton Medical Center may know of this Board's deep appreciation for THE CITY OF DALTON and the high esteem in which it is held as a consequence thereof.



Robert Chandler, Chairman

THE CITY OF DALTON
SPECIAL CALLED MEETING
MAYOR AND COUNCIL MINUTES
DECEMBER 13, 2021

The Mayor and Council held a meeting this evening at 6:00 p.m. in the Council Chambers of City Hall. Present were Mayor David Pennington, Council members Dennis Mock, Annalee Harlan, and Gary Crews, City Administrator Andrew Parker and City Attorney Terry Miller. Council member Tyree Goodlett was absent.

CALL TO ORDER

Mayor Pennington called the meeting of the Mayor and Council to order.

PLEDGE OF ALLEGIANCE

The audience was led in the Pledge of Allegiance.

APPROVAL OF AGENDA

On the motion of Council member Harlan, second Council member Mock, the Agenda dated December 13, 2021 was approved. The vote was unanimous in favor.

PUBLIC COMMENTARY

There were no public comments.

SERVICE AWARD

Mayor David Pennington presented Councilmember Gary Crews with an award for his service to the City of Dalton May 17, 2010 – December 31, 2021.

MINUTES

The Mayor and Council reviewed the Regular Meeting Minutes of December 6, 2021. On the motion of Council member Harlan, second Council member Mock, the minutes were approved. The vote was unanimous in favor.

RETAINER AGREEMENT WITH H2B CREATIVE

The Mayor and Council reviewed the Agreement with h2b Creative for advertising and marketing for the City of Dalton. The cost of the agreement is \$2500.00 per month. On the motion of Council member Mock, second Council member Harlan, the agreement was approved. The vote was unanimous in favor.

AMENDMENT WITH SOUTHERN JANITORIAL FOR CITY HALL JANITORIAL SERVICES

Human Resources Director Greg Batts presented an amendment with Southern Janitorial adding the entire west side of the second floor of City Hall to the janitorial and cleaning Services. Batts stated this amendment to the original contract is \$550.00 per month. On the motion of Council member Mock, second Council member Harlan, the Mayor and Council approved the amendment. The vote was unanimous in favor.

APPLICATION AND PERMIT FOR CONDITIONAL ENCROACHMENT ON CITY OF DALTON RIGHT-OF-WAY FOR A GREASE TRAP AT 301 EAST MORRIS STREET

Public Works Director Benny Dunn presented an Application and Permit for Conditional Encroachment on City of Dalton Right-of-Way for a Grease Trap at 301 East Morris Street. Dunn stated Mr. & Mrs. Ramirez requested the permit for a new restaurant in the old Boats and Motors of Dalton. Dunn further stated that the location resides within the active sidewalk improvements project. On the motion of Council member Crews, second Council member Harlan, the permit was approved. The vote was unanimous in favor.

CONSULTANT AGREEMENT AMENDMENT #3 WITH BLULYNX SOLUTIONS FOR CONSULTING SERVICES FOR THE CDBG PROGRAM

CFO Cindy Jackson presented the Consultant Agreement Amendment #3 with BLULYNX Solutions for Consulting Services for the CDBG Program in the amount of \$66,687.00 to extend the current CDBG consulting agreement through April 2022. On the motion of Council member Mock, second Council member Harlan, the Mayor and Council approved the Amendment. The vote was unanimous in favor.

ADOPTION OF FY 2022 BUDGET

CFO Cindy Jackson presented the proposed FY2022 General Fund Budget, Supplemental Schedules, and Debt Service Fund, Capital Projects Fund and the Special Revenue Funds to the Mayor and Council. On the motion of Council member Crews, second Council member Harlan, the FY2022 Budget was approved. The vote was unanimous in favor.

Note: A Public Hearing was held on December 6, 2021.

CONSULTANT AGREEMENT WITH BLULYNX SOLUTIONS

CFO Cindy Jackson presented the Consultant Agreement with BLULYNX Solutions for Administration of Coronavirus State & Local Fiscal Recovery Grant Funds. Jackson stated that the hourly rate of this agreement is \$131.00 per hour. On the motion of Council member Mock, second Council member Harlan, the Mayor and Council approved the agreement. The vote was unanimous in favor.

ANNOUNCEMENTS:

Mayor Pennington made the following announcements:

- Please join us for a Reception Honoring the Service of Councilmember Gary Crews immediately following Council Meeting in the Atrium.
- City government offices will be closed Friday, December 24 and Monday, December 27, 2021 for the Christmas Holidays and Monday, January 3, 2022 for New Years. The next Meeting of the Mayor and Council will be held Tuesday, January 4, 2022.

Mayor and Council
Minutes
Page 3
December 13, 2021

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 6:14 p.m.

Bernadette Chattam
City Clerk

David Pennington, Mayor

Recorded
Approved: _____
Post

THE CITY OF DALTON
SPECIAL CALLED MEETING
MAYOR AND COUNCIL MINUTES
DECEMBER 28, 2021

The Mayor and Council held a meeting today at 1:00 p.m. in the Council Chambers of City Hall. Present were Mayor David Pennington, Council members Annalee Harlan, and Tyree Goodlett, City Administrator Andrew Parker and City Attorney Terry Miller. Council member Dennis Mock attended via Zoom and Council member Crews was absent.

CALL TO ORDER

Mayor Pennington called the meeting of the Mayor and Council to order. This meeting was called to review Resolution 21-15.

RESOLUTION 21-15

City Attorney Terry Miller outlined Resolution 21-15 regarding a 90-day temporary moratorium on the West Walnut Corridor for the issuance of any new Zoning, Re-Zoning, Variance, Building, Occupancy, Land Disturbance, Alcoholic Beverage, or Administrative Permits as well as all other Permits or Licenses. Miller stated the moratorium does not affect existing properties and the Resolution provides for limited exceptions.

Resolution 21-15 - A Resolution Of The City Of Dalton Directing Departments And Agents For The City As To A Temporary Moratorium On Acceptance Of Applications For Or Issuing Of Any New Zoning, Re-Zoning, Variance, Building, Occupancy, Land Disturbance, Alcoholic Beverage, Or Administrative Permits As Well As All Other Permits Or Licenses For Properties Situated In City Of Dalton Redevelopment Plan: Tax Allocation District #5 - West Walnut Avenue Corridor; To Make Findings Of Fact As To Reasonable Necessity; To Provide For Limited Exception; To Provide For Severability And Effective Date; And For Other Purposes

On the motion of Council member Mock, second Council member Harlan, the Mayor and Council approved the Resolution.

ADJOURNMENT

There being no further business to come before the Mayor and Council, the meeting was Adjourned at 1:08 p.m.

Bernadette Chattam
City Clerk

David Pennington, Mayor

Recorded
Approved: _____
Post



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting
Meeting Date: 01/04/2022
Agenda Item: 2022 New Alcohol Applications
Department: City Clerk
Requested By: Gesse Cabrera
Reviewed/Approved by City Attorney? Yes
Cost: N/A
Funding Source if Not in Budget N/A

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

(3) Three New 2022 Alcohol Application recommendations by the Public Safety Commission on their December 28, 2021 regular meeting.

2022 ALCOHOL BEVERAGE APPLICATION

PSC TUESDAY NOVEMBER 28, 2021

M&C TUESDAY JANUARY 4, 2022

(3) 2022 ALCOHOL APPLICATIONS

1. Business Owner: Mistika Enterprise Corp
d/b/a: Mistika
Applicant: Reina Trejo Trejo
Business Address: 1001 Market St. Suite 25
License Type: Pouring Beer, Pouring Wine (Bar)
Disposition: **New**

2. Business Owner: Dawg Tired Coffee Company LLC
d/b/a: Garmony House
Applicant: James Lidderdale
Business Address: 109 West Cuyler St.
License Type: Pouring Beer, Pouring Wine, Pouring Liquor (Restaurant)
Disposition: **New**

3. Business Owner: NPS Dalton, LLC
d/b/a: Nizzie Package Store
Applicant: Kantaben Patel
Business Address: 1902 Chattanooga Rd.
License Type: Package Beer, Package Wine, Package Liquor (Package Liquor)
Disposition: **New**



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 1/3/2022

Agenda Item: **The request of Trey Butler to rezone from Heavy Manufacturing (M-2) and General Commercial (C-2) to General Commercial (C-2) a tract of land totaling 2.15 acres located at 303 & 305 Fernwood Avenue, and 1206 & 1208 New East Morris Street, Dalton, Georgia. Parcels (12-240-20-009 and 12-240-20-007)**

Department: Planning and Zoning

Requested By: Ethan Calhoun

Reviewed/Approved by City Attorney? Sent for Review

Cost: N/A

Funding Source if Not in Budget N/A

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

See the attached staff analysis.

CITY OF DALTON
ORDINANCE
Ordinance No. 21-26

An Ordinance Of The City Of Dalton To Rezone Certain Property Within The City Of Dalton From Heavy Manufacturing (M-2) and General Commercial (C-2) to General Commercial (C-2). Being A Tract of Land Totaling 2.15 Acres Located At 303 and 305 Fernwood Avenue and 1206 and 1208 New East Morris Street (Parcel Nos. 12-240-20-009 and 12-240-20-007); To Provide An Effective Date; And For Other Purposes

WHEREAS, Trey Butler (Owner) has filed an application with the City to rezone property located at 303 and 305 Fernwood Avenue and 1206 and 1208 New East Morris Street (Parcel Nos. 12-240-20-009 and 12-240-20-007);

WHEREAS, the Property is currently zoned Heavy Manufacturing (M-2) and General Commercial (C-2);

WHEREAS, the Owner is requesting the Property be rezoned entirely to General Commercial (C-2);

WHEREAS, the application for rezoning appears to be in proper form and made by all owners of the Property sought to be rezoned;

WHEREAS, the rezoning is in general conformity with the City of Dalton Joint Comprehensive Plan;

WHEREAS, the Dalton-Varnell-Whitfield County Planning Commission considered the proposed rezoning of the Property at a duly noticed public hearing held on December 28, 2021 and subsequently forwarded its favorable recommendation to the Mayor and Council;

BE IT ORDAINED by the Mayor and Council of the City of Dalton in regular meeting assembled and by authority of the same it is hereby ordained as follows:

-1-

The recitals contained herein above are incorporated herein by reference and are adopted as findings and determinations of the Mayor and Council.

-2-

The Property located at 303 and 305 Fernwood Avenue and 1206 and 1208 New East

Morris Street identified as Parcel Nos. 12-240-20-009 and 12-240-20-007 is hereby rezoned from Heavy Manufacturing (M-2) and General Commercial (C-2) to General Commercial (C-2) for the entire tract.

-3-

The Unified Zoning Map of the City of Dalton shall be amended to conform to and reflect the rezoning of the Property as approved herein. City Staff is authorized and directed to take all actions necessary to effectuate the rezoning of the Property as approved herein.

-4-

Should any section or provision of this Ordinance be declared by a Court of competent jurisdiction to be unconstitutional, invalid or unlawful, such declaration shall not affect the validity of the remaining portions of the ordinance not so declared to be unconstitutional, invalid, or unlawful.

-5-

All resolutions and ordinances of the City of Dalton or parts thereof in conflict herewith are hereby repealed.

-6-

This Ordinance shall take effect and be in force from and after its adoption and publication in two public places within the City of Dalton for five (5) consecutive days, the public welfare of the City of Dalton requiring it.

ADOPTED AND APPROVED on the ____ day of _____, 20__, at the regular meeting of the Mayor and Council of the City of Dalton.

The foregoing Ordinance received its first reading on _____ and a second reading on _____. Upon second reading a motion for passage of the ordinance was made by Alderman _____, second by Alderman _____ and upon the question the vote is _____

ayes, _____ nays and the Ordinance is adopted.

CITY OF DALTON, GEORGIA

MAYOR

Attest:

CITY CLERK

A true copy of the foregoing Ordinance has been published in two public places within the City of Dalton for five (5) consecutive days following passage of the above-referenced Ordinance as of the _____ day of _____, 20__.

CITY CLERK
CITY OF DALTON

**DALTON-VARNELL-WHITFIELD COUNTY PLANNING COMMISSION
503 WEST WAUGH STREET
DALTON, GA 30720**

MEMORANDUM

TO: City of Dalton Mayor and Council
Andrew Parker
Terry Miller
Jean Garland

FROM: Jim Lidderdale
Chairman

DATE: December 29, 2021

SUBJECT: The request of Trey Butler to rezone from Heavy Manufacturing (M-2) and General Commercial (C-2) to General Commercial (C-2) a tract of land totaling 2.15 acres located at 303 & 305 Fernwood Avenue, and 1206 & 1208 New East Morris Street, Dalton, Georgia. Parcels (12-240-20-009 and 12-240-20-007) (City)

The most recent meeting of the Dalton-Varnell-Whitfield County Planning Commission was held on December 20, 2021 at 6:00 p.m. at the Edwards Park community center. A portion of the agenda included a public hearing concerning the above matter. A quorum of five members of the Planning Commission was present. All legal requirements for advertising and posting the public hearing were met. The petition was represented by Chuck and Trey Butler.

Public Hearing Summary:

Mr. Calhoun summarized the staff analysis which was in favor of the proposed C-2 rezoning. There were no further questions for Calhoun.

Chuck Butler made no additional comments following the staff analysis.

With no other comments heard for or against, this hearing closed at approximately 7:25pm.

Recommendation:

Chairman Lidderdale sought a motion on the proposed C-2 rezoning. **Eric Barr then made a motion to recommend the C-2 rezoning based on his agreement with the content of the staff analysis. Jody McClurg seconded the motion and a unanimous recommendation to approve the C-2 rezoning followed, 4-0.**

CONSIDERING FACTORS FOR A REZONING/ANNEXATION ANALYSIS

(A) Whether the proposed amendment would allow a use that is generally suitable for the site compared to other possible uses and whether the proposed change is consistent with the established land use pattern and zoning of adjacent and nearby properties.

The development and zoning in this area of the City is home to a mix of character from retail, restaurants, manufacturing, and residential. The proposed rezoning and use of the subject property is not unlike the character of the surrounding and nearby properties. If the proposed rezoning is granted, there would be little to no change in the character of the area from a land use perspective.

(B) Whether the proposed amendment would adversely affect the economic value or the uses of adjacent and nearby properties.

Staff do not anticipate any negative impact to the values of adjacent or nearby properties.

(C) Whether the subject property has a reasonable economic use as currently zoned, considering the suitability of the subject property for the proposed zoned uses.

The existing nature of the subject property is far more conducive to commercial retail and office space than the existing M-2 zoning. It is likely that the property obtained the M-2 zoning under the City's former pyramid zoning ordinance.

(D) Whether there is relative gain to the health, safety, morals, or general welfare of the public as compared to any hardship imposed upon the individual owner under the existing (C-2 and M-2) zoning.

N/A

(E) Whether the proposed amendment, if adopted or approved, would result in a use which would or could cause an excessive or burdensome use of existing streets, schools, sewers, water resources, police and fire protection, or other utilities, as contrasted with the impact under the existing zoning.

No impact to utilities or public infrastructure is expected based on the existing character of the site and zoning. The only factor affecting the subject property in relation to public infrastructure is the ability to create sufficient parking on the subject property for the proposed amount of retail space. Staff made approximate measurements and determined that the amount of existing square footage of leasable area exceeds the amount of existing parking spaces. As space is leased/renovated, additional parking spaces will likely be necessary in order to ensure there is adequate parking.

(F) Whether the property sought to be rezoned (or annexed) is in conformity with the policy and intent of the adopted joint comprehensive plan or equivalent. If not, has the plan already been amended, officially or unofficially, by the development of uses which are contrary to the plan recommendation, and if the plan has been amended, does this rezoning (or annexation) request allow uses which are compatible to the existing uses in the vicinity.

The Future Development Map designates this area as a Commercial character area. The proposed zoning and land use are not in conflict with the existing character of development and zoning, and there would be no conflict with the Comprehensive Plan and future development map.

(G) Whether there are any other conditions or transitional patterns affecting the use and development of the property to be rezoned or annexed, which give grounds for approval or disapproval of the proposed zoning proposal. Whether the proposed (C-1) zoning change

constitutes an “entering wedge” and is a deterrent to the use, improvement, or development of adjacent property within the surrounding zone districts or would create an isolated, unrelated district (spot zone) as interpreted by current Georgia law.

This rezoning would simply enlarge the C-2 zone district and shrink the M-2 zone district. Both M-2 and C-2 are common in this area.

(H) Whether the subject property, as currently zoned, is vacant and undeveloped for a long period of time, considered in the context of land development in the vicinity or whether there are environmental or cultural factors, like steep slopes, flood plain, storm water, or historical issues that influence the development of the subject property under any zoning designation.

N/A

CONCLUSION: The staff analysis can provide a recommendation to approve the C-2 rezoning based on the following factors:

- 1) The proposed rezoning would not be in conflict with the established pattern of zoning and commercial development in this area of the City;
- 2) There is no concern for adverse impact regarding the values of adjacent of nearby properties;
- 3) There is no conflict with the Comprehensive Plan and future development map at this location.

Butler Rezoning Request

M-2, Heavy Manufacturing/C-2, General Commercial

to

C-2, General Commercial

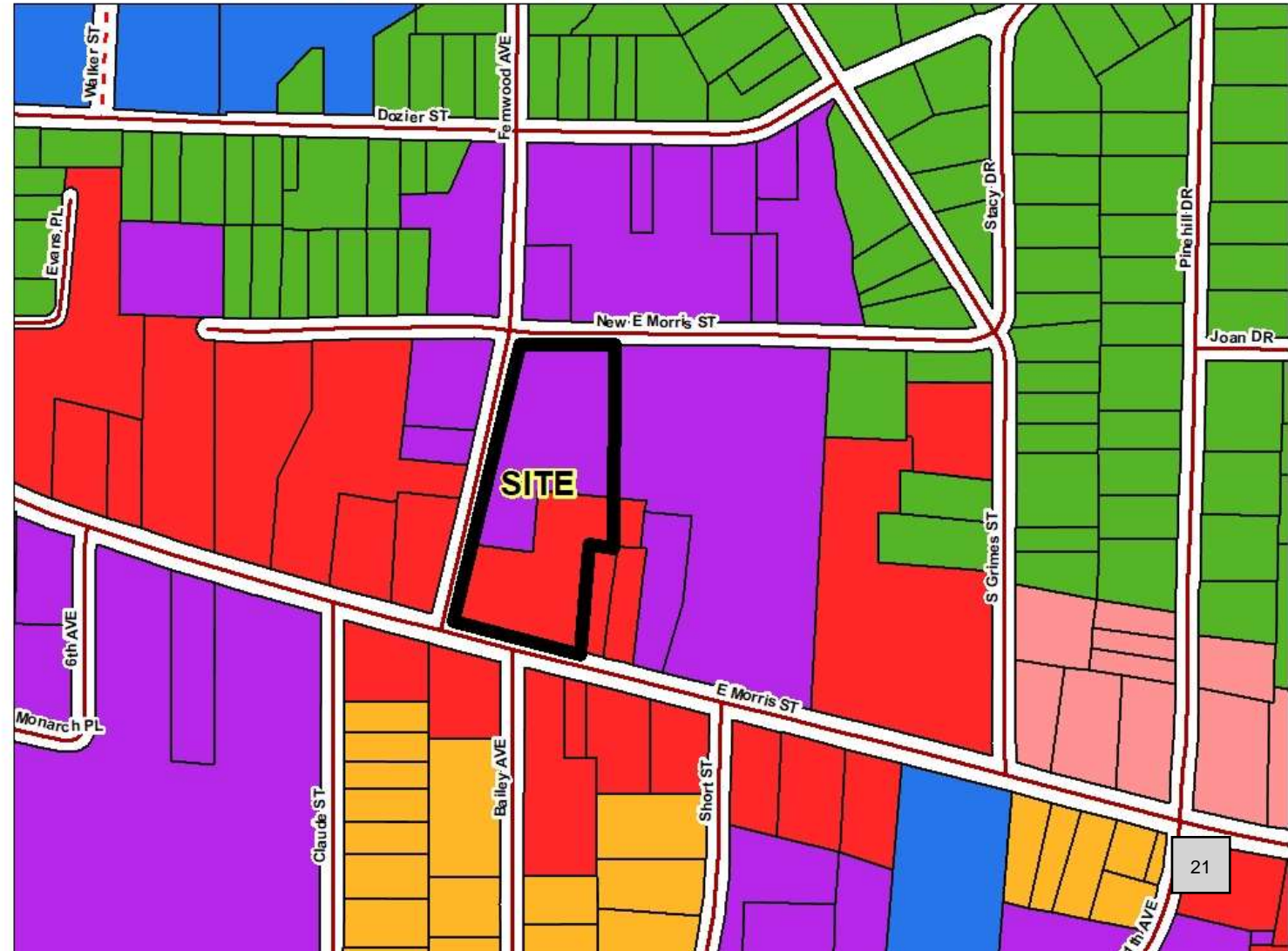
CITY OF DALTON JURISDICTION



Unified Zoning

-  Medium Density Single Family Residential (R-3)
-  Rural Residential (R-5)
-  High Density Residential (R-7)
-  Neighborhood Commercial (C-1)
-  General Commercial (C-2)
-  Heavy Manufacturing (M-2)

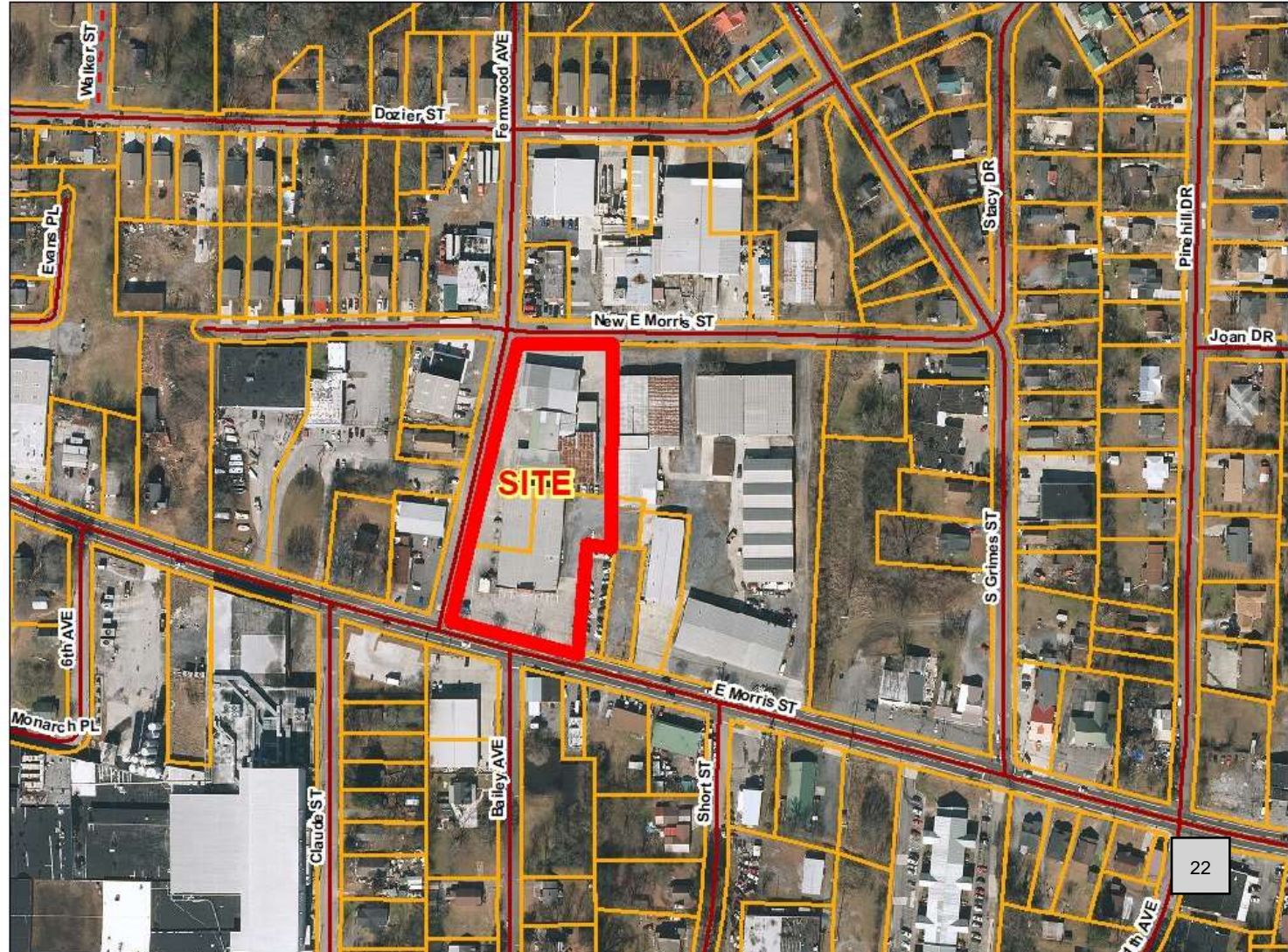
FEET
250



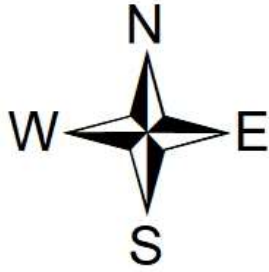
**Butler Rezoning Request
M-2, Heavy Manufacturing/C-2, General Commercial
to
C-2, General Commercial
CITY OF DALTON JURISDICTION**



**FEET
250**



Butler Rezoning Request
M-2, Heavy Manufacturing/C-2, General Commercial
to
C-2, General Commercial
CITY OF DALTON JURISDICTION



FEET
100







303

305



Butler Rezoning Request

M-2, Heavy Manufacturing/C-2, General Commercial

to

C-2, General Commercial

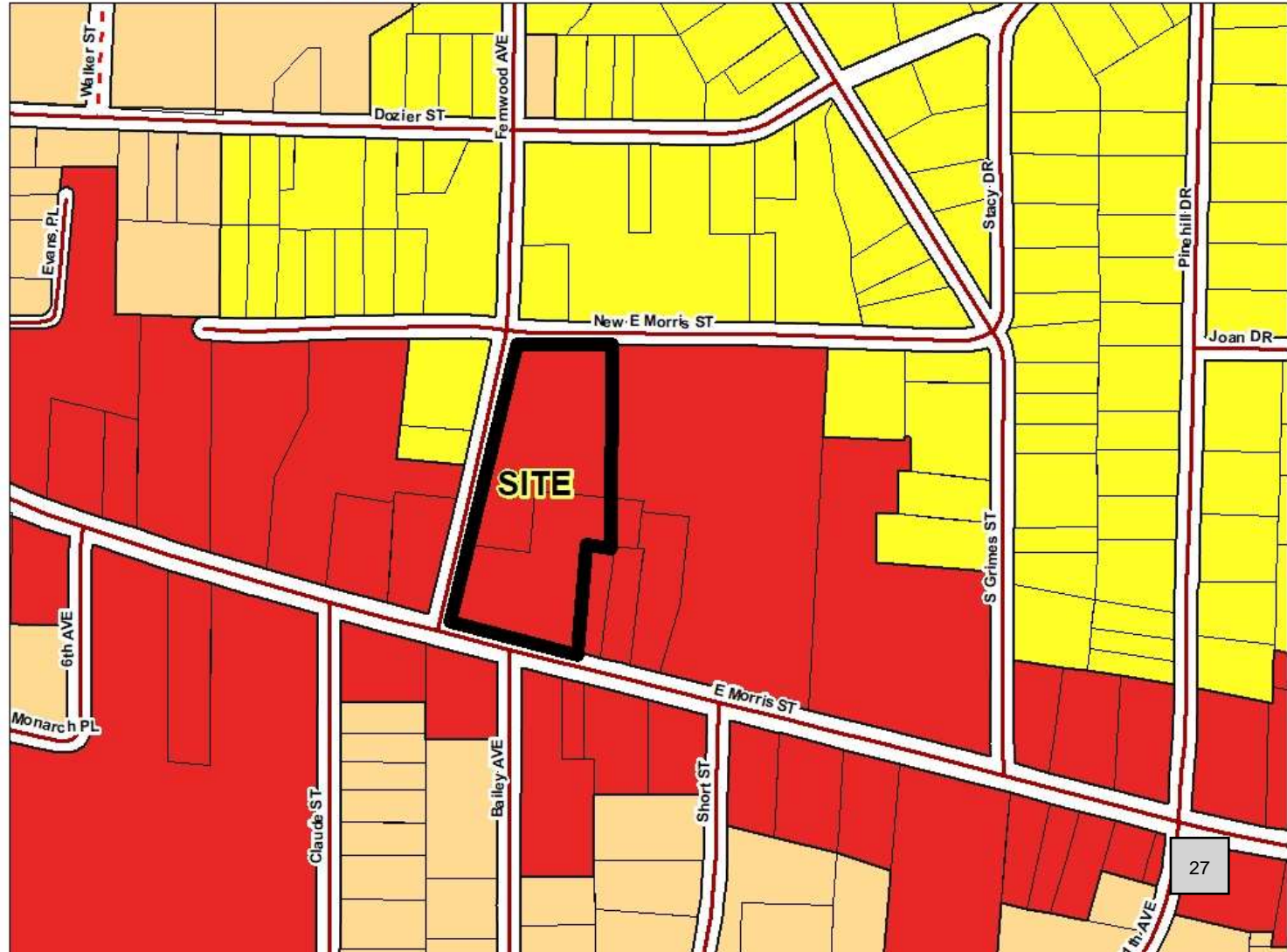
CITY OF DALTON JURISDICTION



FUTURE DEVELOPMENT MAP

-  Commercial Corridor
-  Suburban Neighborhood
-  Town Neighborhood Revitalization

FEET
250





CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 1/3/2022

Agenda Item: **The request of Baltazar Hernandez seeking to rezone from General Commercial (C-2) to Limited Commercial (C-1A) a tract of land totaling .06 acres located at 601 N. Elm Street, Dalton, GA. Parcel (12-200-10-006).**

Department: Planning and Zoning

Requested By: Ethan Calhoun

Reviewed/Approved by City Attorney? Sent for Review

Cost: N/A

Funding Source if Not in Budget N/A

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

See the attached staff analysis.

CITY OF DALTON
ORDINANCE
Ordinance No. 21-27

An Ordinance Of The City Of Dalton To Rezone Certain Property Within The City Of Dalton From General Commercial (C-2) To Limited Commercial (C-1A) Being A Tract of Land Totaling .06 Acre Located At 601 N. Elm Street (Parcel No. 12-200-10-006); To Provide An Effective Date; And For Other Purposes

WHEREAS, Baltazar Hernandez (Owner) has filed an application with the City to rezone property located at 601 N. Elm Street (Parcel No. 12-200-10-006);

WHEREAS, the Property is currently zoned General Commercial (C-2);

WHEREAS, the Owner is requesting the Property be rezoned to Limited Commercial (C-1A);

WHEREAS, the application for rezoning appears to be in proper form and made by all owners of the Property sought to be rezoned;

WHEREAS, the rezoning is in general conformity with the City of Dalton Joint Comprehensive Plan;

WHEREAS, the Dalton-Varnell-Whitfield County Planning Commission considered the proposed rezoning of the Property at a duly noticed public hearing held on December 28, 2021 and subsequently forwarded its favorable recommendation to the Mayor and Council;

BE IT ORDAINED by the Mayor and Council of the City of Dalton in regular meeting assembled and by authority of the same it is hereby ordained as follows:

-1-

The recitals contained herein above are incorporated herein by reference and are adopted as findings and determinations of the Mayor and Council.

-2-

The Property located at 601 N. Elm Street identified as Parcel No. 12-200-10-006 is hereby rezoned from General Commercial (C-2) to Limited Commercial (C-1A).

-3-

The Unified Zoning Map of the City of Dalton shall be amended to conform to and reflect

the rezoning of the Property as approved herein. City Staff is authorized and directed to take all actions necessary to effectuate the rezoning of the Property as approved herein.

-4-

Should any section or provision of this Ordinance be declared by a Court of competent jurisdiction to be unconstitutional, invalid or unlawful, such declaration shall not affect the validity of the remaining portions of the ordinance not so declared to be unconstitutional, invalid, or unlawful.

-5-

All resolutions and ordinances of the City of Dalton or parts thereof in conflict herewith are hereby repealed.

-6-

This Ordinance shall take effect and be in force from and after its adoption and publication in two public places within the City of Dalton for five (5) consecutive days, the public welfare of the City of Dalton requiring it.

ADOPTED AND APPROVED on the ____ day of _____, 20__, at the regular meeting of the Mayor and Council of the City of Dalton.

The foregoing Ordinance received its first reading on _____ and a second reading on _____. Upon second reading a motion for passage of the ordinance was made by Alderman _____, second by Alderman _____ and upon the question the vote is _____ ayes, _____ nays and the Ordinance is adopted.

CITY OF DALTON, GEORGIA

MAYOR

Attest:

CITY CLERK

A true copy of the foregoing Ordinance has been published in two public places within the City of Dalton for five (5) consecutive days following passage of the above-referenced Ordinance as of the _____ day of _____, 20__.

CITY CLERK
CITY OF DALTON

**DALTON-VARNELL-WHITFIELD COUNTY PLANNING COMMISSION
503 WEST WAUGH STREET
DALTON, GA 30720**

MEMORANDUM

TO: City of Dalton Mayor and Council
Andrew Parker
Terry Miller
Jean Garland

FROM: Jim Lidderdale
Chairman

DATE: December 29, 2021

SUBJECT: The request of Baltazar Hernandez to rezone from General Commercial (C-2) to Limited Commercial (C-1A) a tract of land totaling .06 acres located at 601 N. Elm Street, Dalton, GA. Parcel (12-200-10-006) (City)

The most recent meeting of the Dalton-Varnell-Whitfield County Planning Commission was held on December 20, 2021 at 6:00 p.m. at the Edwards Park community center. A portion of the agenda included a public hearing concerning the above matter. A quorum of five members of the Planning Commission was present. All legal requirements for advertising and posting the public hearing were met. The petition was represented by Baltazar Hernandez.

Public Hearing Summary:

Mr. Calhoun summarized the staff analysis which was in favor of the proposed C-1A rezoning. Jody McClurg confirmed with Calhoun that the C-1A rezoning would allow a single-family dwelling. There were no further questions for Calhoun.

Baltazar Hernandez was accompanied by his real estate agent. Hernandez stated that his need was simply to purchase and occupy the existing dwelling on the subject property.

With no other comments heard for or against, this hearing closed at approximately 7:30pm.

Recommendation:

Chairman Lidderdale sought a motion on the proposed C-1A rezoning. **Chris Shiflett then made a motion to recommend the C-1A rezoning based on the content of the staff analysis. Jody McClurg seconded the motion and a unanimous recommendation to approve the C-1A rezoning followed, 4-0.**

STAFF ANALYSIS
REZONING REQUEST
Unified Zoning Ordinance

ZONING CASE: Baltazar Hernandez seeking to rezone from General Commercial (C-2) to Limited Commercial (C-1A) a tract of land totaling .06 acres located at 601 N. Elm Street, Dalton, GA. Parcel (12-200-10-006). The tract is currently developed with a single-family detached dwelling. The rezoning request to C-1A is sought to serve a single purpose on the site: Create a conforming residential tract with the potential for future limited commercial use.

The surrounding uses and zoning are as follows: 1) To the north, is a 3.3-acre tract of land zoned M-2 that contains a large commercial/industrial building. 2) To the east, are several tracts that make up the City of Dalton's Public Works barn. 3) To the south, is a 0.1-acre tract of land that contains a small non-conforming single-family detached dwelling zoned C-2. 4) To the west, is a continuation of the northern adjacent tract. All in all, a review of the zoning map in color shows the subject property to be at a point of convergence between the C-2 and M-2 zone districts with manufacturing and commercial development as the predominant land use character.

The subject property is within the jurisdiction of the City of Dalton Mayor and Council.

CONSIDERING FACTORS FOR A REZONING/ANNEXATION ANALYSIS

(A) Whether the proposed amendment would allow a use that is generally suitable for the site compared to other possible uses and whether the proposed change is consistent with the established land use pattern and zoning of adjacent and nearby properties.

In this area of the city, there is a consistent pattern of manufacturing and commercial development. The pattern of development in this area was a historical result of the railroad and the arterial Glenwood Ave. This area does, however, have several residential nodes that include the subject property and its southern adjacent neighbor. While the subject property and its southern adjacent neighbor are now considered non-conforming, the reason for their existence in this location is likely a result of the previous pyramid zoning ordinance. In the previous pyramid zoning ordinance residential development was permitted within both the commercial and manufacturing zone districts. While pyramid zoning protected residential areas from manufacturing and commercial spot zoning and infiltration, it did nothing to prevent residential development within heavy industrial and commercial areas. The current zoning of the subject property essentially renders the existing dwelling as useless since it has been vacant for more than 12-months. There is not a practical general commercial use for the subject property given the limited size of the dwelling and lot barring a redevelopment of the property. A C-1A rezoning would, however, allow the dwelling to be occupied for either residential or limited commercial/office use. The proposed rezoning would prevent creating an island of strictly residential zoning and land use in this heavily commercialized area.

(B) Whether the proposed (C-1A) amendment would adversely affect the economic value or the uses of adjacent and nearby properties.

The existing dwelling on the subject property appears to have had no notable impact on the surrounding commercial properties. Unlike a typical residential zone district, there would be no buffer requirement to burden the adjacent commercial and manufacturing properties since the C-1A district shares a commercial character.

(C) Whether the subject property has a reasonable economic use as currently zoned, considering the suitability of the subject property for the proposed zoned uses.

As stated previously, there is no viable use of the subject property in its current state based on the existing C-2 zoning. The only way to create conformity as the property is currently zoned would require the property be redeveloped for a commercial use, or rezone for residential use. The C-1A zone district would solve the non-conforming issue without creating an island of residential zoning.

(D) Whether there is relative gain to the health, safety, morals, or general welfare of the public as compared to any hardship imposed upon the individual owner under the existing zoning.

N/A

(E) Whether the proposed (C-1A) amendment, if adopted or approved, would result in a use which would or could cause an excessive or burdensome use of existing streets, schools, sewers, water resources, police and fire protection, or other utilities, as contrasted with the impact under the existing zoning.

The limited size of the subject property prevents any development or use that would burden any public infrastructure.

(F) Whether the property sought to be rezoned (or annexed) is in conformity with the policy and intent of the adopted joint comprehensive plan or equivalent. If not, has the plan already been amended, officially or unofficially, by the development of uses which are contrary to the plan recommendation, and if the plan has been amended, does this rezoning or annexation request allow uses which are compatible to the existing uses in the vicinity.

The Comprehensive Plan's Future Development Map shows the subject property to be within the Industrial character area. This character area is intended for commercial and industrial land use. Residential zoning is not an appropriate fit for this character area. The established development of the subject property and the other adjacent dwelling lead this planner to believe that the hybrid nature of the C-1A zone district would permits a reasonable use of the subject property without introducing an island of residential zoning in this area. While the C-1A district is not the most ideal zoning for the Industrial character area, it is the only zoning district that would be viable in this particular situation without creating a residential island.

(G) Whether there are any other conditions or transitional patterns affecting the use and development of the property to be rezoned or annexed, which give grounds for approval or disapproval of the proposed zoning proposal. Whether the proposed zoning change constitutes an “entering wedge” and is a deterrent to the use, improvement, or development of adjacent property within the surrounding zone districts or would create an isolated, unrelated district (spot zone) as interpreted by current Georgia law.

This rezoning would create an island of C-1A, but this would not be an issue of spot zoning since the C-1A and C-2 zone districts share a commercial character.

(H) Whether the subject property, as currently zoned, is vacant and undeveloped for a long period of time, considered in the context of land development in the vicinity or whether there are environmental or cultural factors, like steep slopes, flood plain, storm water, or historical issues that influence the development of the subject property under any zoning designation.

N/A.

CONCLUSION:

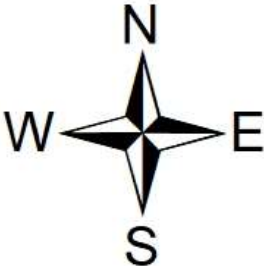
The staff can provide a recommendation for the C-1A zone at this location based on the following:

1) By rezoning the subject property to C-1A, the permitted uses are not expected to negatively impact any of the economic values or compromise integrity of the surrounding properties; and

2) The C-1A request is the best fit for the Industrial character area within the comprehensive plan while allowing the existing dwelling to be reoccupied; and

3) There is not an expectation that this location would be developed for a commercial use as it is currently zoned based on the existing single-family detached dwelling.

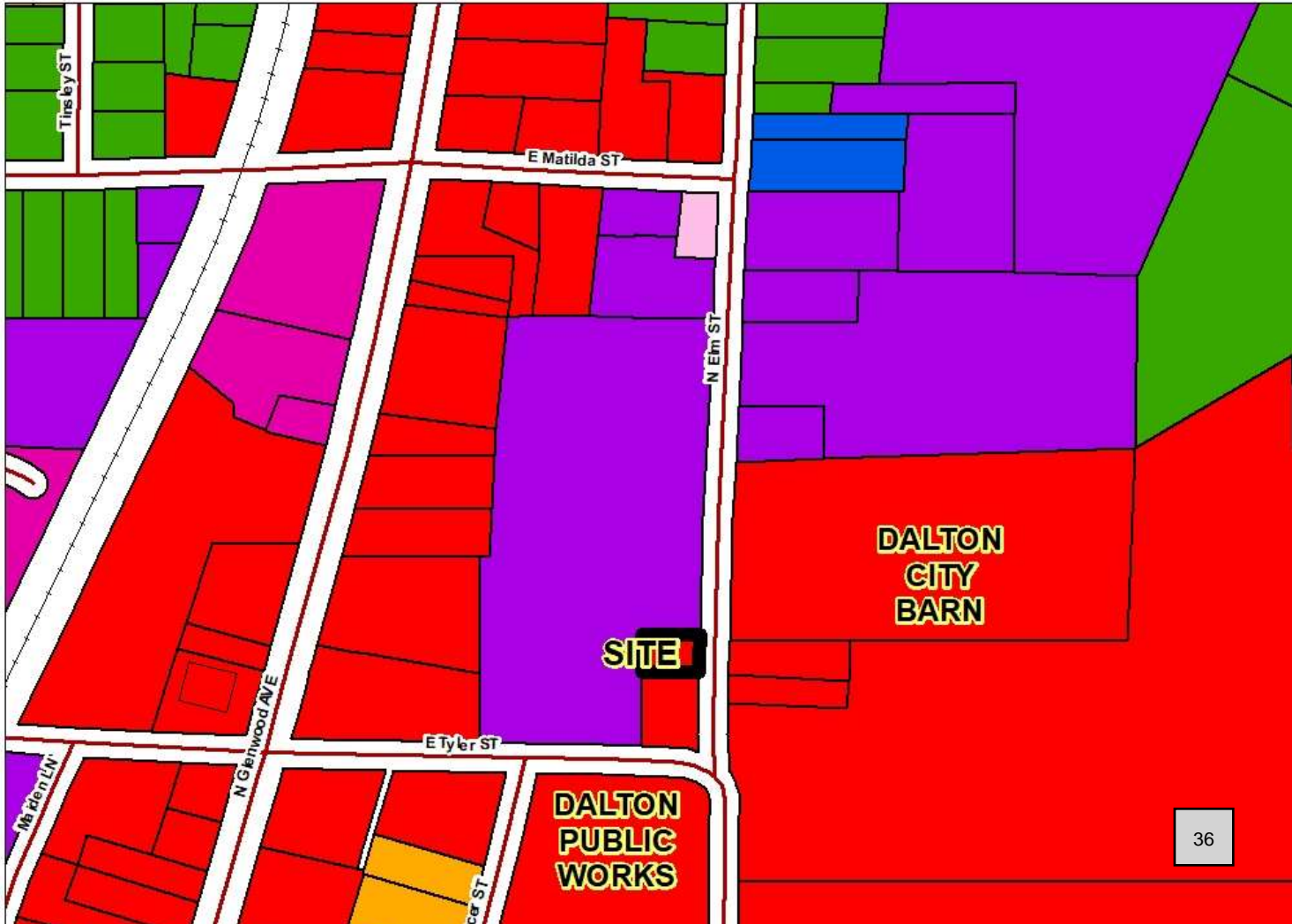
Hernandez Rezoning Request C-2, General Commercial to C-1A, Limited Commercial CITY OF DALTON JURISDICTION



Unified Zoning

- Medium Density Single Family Residential (R-3)
- Rural Residential (R-5)
- High Density Residential (R-7)
- Limited Commercial (C-1A) Cond
- General Commercial (C-2)
- Light Manufacturing (M-1)
- Heavy Manufacturing (M-2)

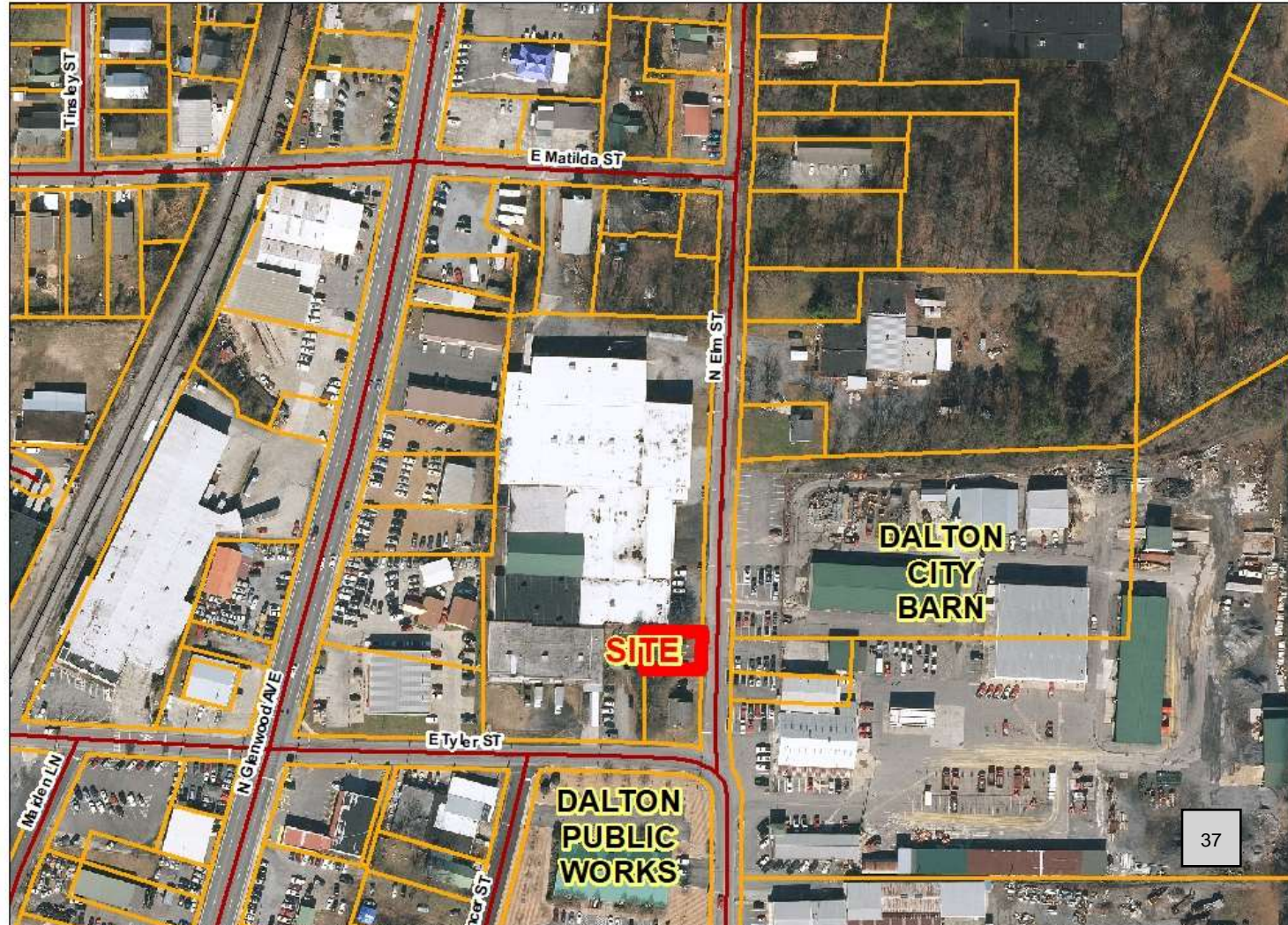
FEET
200



**Hernandez Rezoning Request
C-2, General Commercial
to
C-1A, Limited Commercial
CITY OF DALTON JURISDICTION**



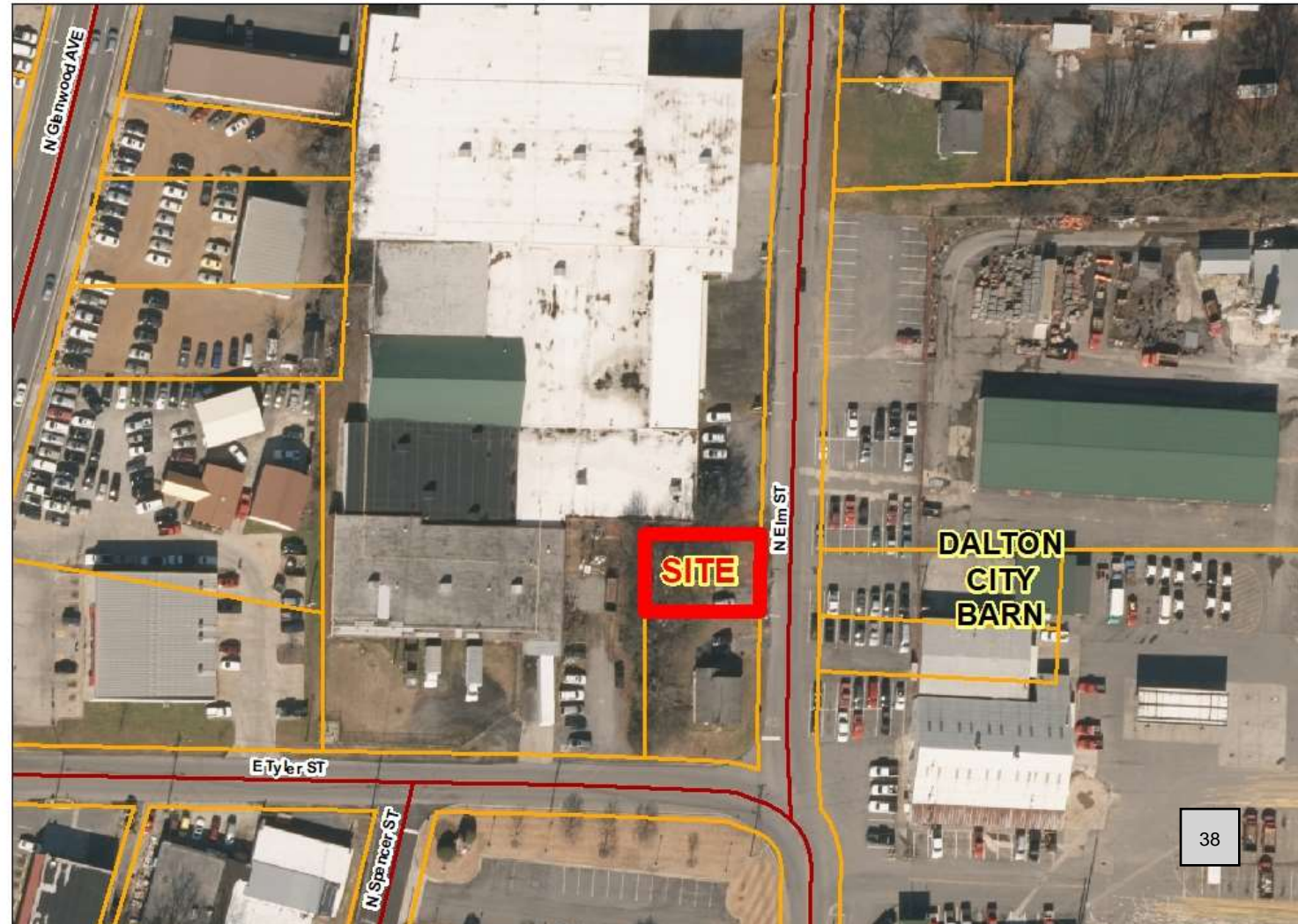
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Hernandez Rezoning Request C-2, General Commercial to C-1A, Limited Commercial CITY OF DALTON JURISDICTION

**FEET
100**



View of Subject property from Elm St.



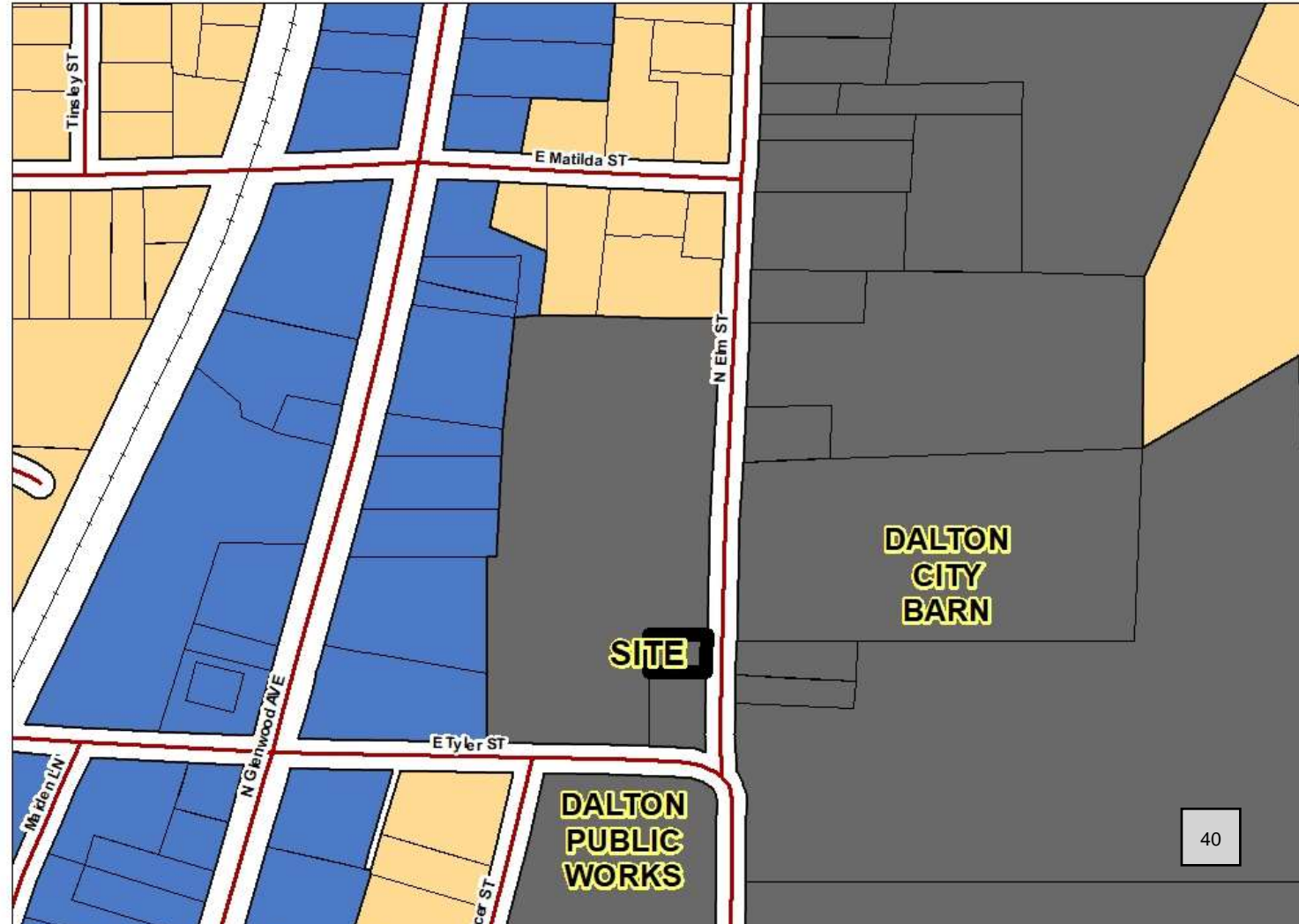


Hernandez Rezoning Request C-2, General Commercial to C-1A, Limited Commercial CITY OF DALTON JURISDICTION

FUTURE DEVELOPMENT MAP

-  Commercial
-  Industrial
-  Town Neighborhood Revitalization

FEET
200





CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: 01/04/2022

Agenda Item: ClearGov Service Order Agreement

Department: City Administration

Requested By: Andrew Parker

Reviewed/Approved by City Attorney? Yes

Cost: Initial Setup (\$1,880.00) + Annual Subscription (\$11,840.00)

Funding Source if Not in Budget Operating Budget

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

The subject Service Order Agreement would provide the ClearGov Capital Budgeting and Budget Book cloud-based software modules for use by the City in 2022. The ongoing expense would be \$11,840.00 annually with a 3% increase per year.

The capital budgeting module will create a platform for Department Heads to submit their ongoing capital budget requests. The budget book module will be utilized by the City to create a user friendly, public-facing budget book that will be published on the City website.



2 Mill & Main; Suite 630; Maynard, MA 01754

Service Order

Created by	Gabby Yetten
Contact Phone	(646) 715-5529
Contact Email	gyetten@cleargov.com

Order Date	Dec 30, 2021
Order valid if signed by	Jan 5, 2022

Customer Information			
Customer	City of Dalton	Contact	Andrew Parker
Address	300 W Waugh Street, PO Box 1205	Title	City Administrator
City, St, Zip	Dalton, Georgia 30722	Email	aparker@daltonga.gov
Phone	706-529-2404	Billing Contact	
		Title	
		Email	
		PO # (If any)	

To be clear, you will be billed as follows...		
Billing Date(s)	Amount(s)	Notes
Dec 30, 2021	\$1,880.00	ClearGov Setup Services
Jan 5, 2022	\$11,840.00	ClearGov Subscription Services

Additional subscription years and/or renewals will be billed annually in accordance with pricing and terms set forth herein.

ClearGov will provide your Services according to this schedule...			
Period	Start Date	End Date	Description
Setup	Jan 5, 2022	Jan 5, 2022	ClearGov Setup Services
Initial	Jan 5, 2022	Jan 4, 2023	ClearGov Subscription Services

The Services you will receive and the Fees for those Services are...		
Set up Services	Tier/Rate	Service Fees
ClearGov Setup: Includes activation, onboarding and training for ClearGov solutions.	Tier 2	\$ 3,600.00
ClearGov Setup Bundle Discount: Discount for bundled solutions.	Tier 2	\$ (1,720.00)
Total ClearGov Setup Service Fee - Billed ONE-TIME		\$ 1,880.00
Subscription Services	Tier	Service Fees
ClearGov Capital Budgeting - Civic Edition	Tier 2	\$ 7,400.00
ClearGov Digital Budget Book - Civic Edition	Tier 2	\$ 7,400.00
ClearGov Budget Cycle Management Bundle Discount: Discount for bundled solutions.	Tier 2	\$ (2,960.00)
Total ClearGov Subscription Service Fee - Billed ANNUALLY IN ADVANCE		\$ 11,840.00
Billing Terms and Conditions		
Valid Until	Jan 5, 2022	Pricing set forth herein is valid only if ClearGov Service Order is executed on or before this date.
Payment	Net 30	All invoices are due Net 30 days from the date of invoice.
Rate Increase	3% per annum	After the Initial Service Period, the Annual Subscription Service Fee shall automatically increase by this amount.

General Terms & Conditions	
Customer Satisfaction Guarantee	During the first thirty (30) days of the Service, Customer shall have the option to terminate the Service, by providing written notice. In the event that Customer exercises this customer satisfaction guarantee option, such termination shall become effective immediately and Customer shall be eligible for a full refund of the applicable Service Fees.
Statement of Work	ClearGov and Customer mutually agree to the ClearGov Service activation and onboarding process set forth in the attached Statement of Work.
Taxes	The Service Fees and Billing amounts set forth above in this ClearGov Service Order DO NOT include applicable taxes. In accordance with the laws of the applicable state, in the event that sales, use or other taxes apply to this transaction, ClearGov shall include such taxes on applicable invoices and Customer is solely responsible for such taxes, unless documentation is provided to ClearGov demonstrating Customer's exemption from such taxes.

Term & Termination	Subject to the termination rights and obligations set forth in the ClearGov Service Agreement, this ClearGov Service Order commences upon the Order Date set forth herein and shall continue until the completion of the Service Period(s) for the Service(s) set forth herein. Each Service shall commence upon the Start Date set forth herein and shall continue until the completion of the applicable Service Period.
Auto-Renewal	After the Initial Period, the Service Period for any ClearGov Annual Subscription Services shall automatically renew for successive annual periods (each an "Annual Term"), unless either Party provides written notice of its desire not to renew at least sixty (60) days prior to the end of the then current Annual Term.
Agreement	This ClearGov Service Order shall become binding upon execution by both Parties. The signature herein affirms your commitment to pay for the Service(s) ordered in accordance with the terms set forth in this ClearGov Service Order and also acknowledges that you have read and agree to the terms and conditions set forth in the attached ClearGov Service Agreement. This Service Order incorporates by reference the terms of such ClearGov Service Agreement.

Customer	
Signature	
Name	Andrew Parker
Title	City Administrator

ClearGov, Inc.	
Signature	
Name	Bryan A. Burdick
Title	President

Please e-mail signed Service Order to Orders@ClearGov.com or Fax to (774) 759-3045

Statement of Work

This Statement of Work outlines the roles and responsibilities by both ClearGov and Customer required for the activation and onboarding of the ClearGov Service. ClearGov will begin this onboarding process upon execution of this Service Order. All onboarding services and communications will be provided through remote methods - email, phone and web conferencing.

ClearGov Responsibilities

- ClearGov will activate ClearGov Service subscription(s) as of the applicable Start Date(s). ClearGov will create the initial Admin User account, and the Customer Admin User will be responsible for creating additional User accounts.
- ClearGov will assign a Client Success Manager (CSM) responsible for managing the activation and onboarding process. ClearGov CSM will coordinate with other ClearGov resources, as necessary.
- ClearGov CSM will provide a Kickoff Call schedule to Customer's Primary Contact - to be scheduled within two weeks after the Service Order has been executed.
- ClearGov will provide Customer with financial data requirements and instructions, based on the ClearGov Service subscription(s). If necessary, ClearGov will set up a Data Discovery call to assist with such requirements/instructions.
- ClearGov will review financial data files and confirm that data is complete, or request additional information, if necessary. Once complete financial data files have been received, ClearGov will format the data, upload it to the ClearGov platform and complete an initial mapping of the data.
- After initial mapping, ClearGov will schedule a Data Review call with a ClearGov Data Onboarding Consultant (DOC), who will present how the data was mapped, ask for feedback and get answers to open questions. Depending upon Customer feedback and the complexity of data mapping requests, there may be additional follow up calls or emails required to complete the data onboarding process.
- ClearGov will make Customer aware of all training, learning and support options. ClearGov recommends all Users attend training sessions and/or read Support Center articles before using the ClearGov Service to ensure a quick ramp and success. As needed, ClearGov will design and deliver one customized remote training session for Admins and one for End Users - via video conference - and these sessions will be recorded for future reference.
- ClearGov will make commercially reasonable efforts to complete the onboarding process in a timely fashion, provided Customer submits financial data files and responds to review and approval requests by ClearGov in a similarly timely fashion. Any delay by Customer in meeting these deliverable requirements may result in a delayed data onboarding process. Any such delay shall not affect or change the Service Period(s) as set forth in the applicable Service Order.

Customer Responsibilities

- Customer's Primary Contact will coordinate the necessary personnel to attend Kickoff Call within two weeks after the Service Order has been executed. If Customer needs to change the date/time of the Kickoff Call, the Primary Contact will notify the ClearGov CSM at least one business day in advance.
- Customer will provide requested financial data files (revenue, expense, chart of accounts, etc.) to ClearGov in accordance with the requirements provided by ClearGov.
- Customer's Primary Contact will coordinate the necessary personnel to attend the Data Review call. It is recommended that all stakeholders with input on how data should be mapped should attend. Based on the Data Review call and any subsequent internal review, Customer shall provide a detailed list of requested changes in a timely manner, and Customer will approve the final data mapping, once completed to Customer's satisfaction.
- Customer shall be solely responsible for inputting applicable text narrative, custom graphics, performance metrics, capital requests and personnel data and other such information for budget books, projects, dashboards, etc.

This ClearGov Service Agreement (the "**Agreement**") is made and entered into by and between ClearGov, Inc. ("**ClearGov**"), a Delaware corporation with its principal offices at 2 Mill & Main; Suite 630, Maynard, MA 01754 and **Customer** (as defined in the applicable ClearGov Service Order) (each a "**Party**" and collectively the "**Parties**"). This Agreement governs the terms and conditions under which Customer may utilize the ClearGov Service as set forth herein and as specified in one or more applicable ClearGov Service Order(s) executed by Customer in connection herewith and incorporated herein (the "**ClearGov Service Order(s)**").

WHEREAS, ClearGov owns and operates the ClearGov Service, a Web-based SaaS solution that includes a variety of ClearGov Apps and provides various features and functionality via such ClearGov Apps; and

WHEREAS, Customer wishes to utilize the ClearGov Service in order to convey fiscal budget, key metrics and other information to the public as well as to leverage the functionality of such ClearGov Apps;

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ClearGov and Customer hereby agree as follows:

- 1) **Definitions.** Capitalized terms used in this Agreement, and not otherwise defined herein, shall have the following meanings:
 - 1.1) "**Account**" means a registered user access point for the ClearGov Service.
 - 1.2) "**ClearGov API**" means an application programming interface that provides access to specified content and functionality within certain ClearGov Apps.
 - 1.3) "**ClearGov Apps**" means collectively all of the Web applications hosted by ClearGov and available via the ClearGov Service, including but not limited to:
 - a) Capital Budgeting: An application that enables capital requests, budgeting and planning and the public display of capital project pages;
 - b) Digital Budget Book: An application that enables the development and public delivery of an online, digital budget presentation.
 - c) Operational Budgeting: An application that enables fiscal budgeting, forecasting and benchmarking;
 - d) Personnel Budgeting: An application that enables that personnel budgeting and planning;
 - e) Transparency: An application that enables the development and public delivery of fiscal budget information, transparency widgets, limited project pages and departmental dashboards.All features, functionality, reports, etc. for each ClearGov App are included as material elements of the applicable ClearGov App. ClearGov may modify, combine, add or delete ClearGov Apps from the ClearGov Service from time to time at its sole discretion, provided that in the event that ClearGov terminates or deletes any ClearGov App to which Customer is actively subscribing, ClearGov shall provide a pro-rata refund for applicable portion of the Subscription Service Fee for the remainder of the then current Service Period.
 - 1.4) "**ClearGov Data**" means any aggregated and normalized key metrics and benchmarking data collected by ClearGov for the delivery of the ClearGov Service.
 - 1.5) "**ClearGov Service**" means the complete set ClearGov software and related materials including but not limited to the ClearGov Apps, ClearGov Data, ClearGov Web Site, the Documentation and the Software.
 - 1.6) "**ClearGov Web Site**" means the Web site owned and operated by ClearGov and made available at the following

- URL: <http://www.ClearGov.com> and/or any successor site(s).
- 1.7) "**Customer Budget Book .PDF**" means one or more .PDF files of Customer's annual budget book created by customer using the ClearGov Apps.
- 1.8) "**Customer Data**" means any data provided to ClearGov by or on behalf of Customer pursuant to this Agreement. Customer Data specifically excludes ClearGov Data as well as any anonymized, customized, modified or derivative works related to the Customer Data.
- 1.9) "**Customer State**" means the state, commonwealth or territory in which the Customer is located.
- 1.10) "**Customer Web Site**" means any Web site owned and operated by Customer.
- 1.11) "**Documentation**" means any accompanying proprietary documentation made available to Customer by ClearGov for use with the ClearGov Service, including any documentation available online or otherwise.
- 1.12) "**Software**" means the source code and/or other code which are material elements of the ClearGov Apps and ClearGov Service.

2) Service Usage & Licenses.

- 2.1) Account Password and Security. Customer shall protect its passwords and take full responsibility for Customer's own as well as any third-party use of the Customer Account(s). Customer is solely responsible for any and all activities that occur under such Customer Account(s), except for any activities performed by ClearGov as set forth herein. Customer agrees to notify ClearGov immediately upon learning of any unauthorized use of a Customer Account or any other breach of security. From time to time, ClearGov's support staff may log in to the Customer Account in order to maintain or improve service, including providing Customer assistance with technical or billing issues. Customer hereby acknowledges and consents to such access.
- 2.2) ClearGov License. Subject to the terms and conditions of this Agreement and as specifically set forth in the applicable ClearGov Service Order(s), ClearGov grants Customer a limited, revocable, non-exclusive, non-transferable, non-distributable, worldwide license to utilize the ClearGov Service for the following functionality:
 - a) Content Delivery. Customer may integrate, link and publish applicable public-facing content from the applicable ClearGov Apps within one or more Customer Web Site(s);
 - b) Application Access. Customer may access the ClearGov Apps via Customer's Account to utilize the functionality provided within such ClearGov Apps; and
 - c) API Access. Customer may access the ClearGov API to distribute and display public-facing content from the ClearGov Apps within one or more Customer Web Site(s).

3) Term and Termination.

- 3.1) Term. The duration of this Agreement shall be defined in accordance with the Term set forth in all applicable Service Order(s). The Term shall commence upon the Start Date set forth in the first ClearGov Service Order executed between the Parties and shall continue in full force and effect until the termination or expiration of all applicable ClearGov Service Order(s) (the "**Term**").
- 3.2) Termination. This Agreement and/or any applicable ClearGov Service Order may be terminated as follows:
 - a) Either Party may terminate this Agreement if the other Party fails to cure a material breach of the Agreement within fifteen (15) days after receipt of written notice thereof.
 - b) Either Party may terminate this Agreement if the other

- Party is involved in insolvency proceedings, receivership, bankruptcy, or assignment for the benefit of creditors.
- 3.3) **Obligations.** Upon expiration or termination of this Agreement:
- a) Each Party shall promptly return to the other all of the Confidential Information of the other Party in its possession or control;
 - b) Customer shall cease use of the ClearGov Service and shall remove all links from the Customer Site(s) to any content provided by the ClearGov Apps, provided that Customer may continue to provide access to any Customer Budget Book .PDF(s). Customer shall be solely responsible hosting and delivering such Customer Budget Book .PDF(s) as well as any ongoing costs for doing so.
 - c) Any outstanding fees shall become immediately due and payable, and termination of this Agreement shall not relieve Customer from its obligation to pay to ClearGov any such fees;
- 3.4) **Survival.** Sections 3.3, 3.4 and 4 through 8 inclusive shall survive any termination or expiration of this Agreement.

4) Fees and Billing.

- 4.1) **Fees.** Customer shall pay the Fees in accordance with the terms set forth in the applicable ClearGov Service Order.
- 4.2) **Interest and Collections.** Customer will be charged \$50 for payments by checks that are returned due to insufficient funds. Any late payments will accrue interest equal to one and one-half percent (1.5%) per month, or the maximum amount allowable under law, whichever is less, compounded monthly. ClearGov shall be entitled to recover all reasonable costs of collection (including agency fees, attorneys' fees, in-house counsel costs, expenses and costs) incurred in attempting to collect payment from Customer.
- 4.3) **Taxes.** Customer is solely responsible for all applicable sales, use and other taxes and similar charges based on or arising from this Agreement or any ClearGov Service Order. In the event that Customer is exempt from sales tax, Customer will provide ClearGov with a tax-exempt certificate upon request.

5) Intellectual Property.

- 5.1) **General.** Both Parties may only use the other Party's intellectual property as expressly set forth herein. Nothing in this Agreement shall be construed in any manner to affect or modify either Party's ownership rights in any preexisting or future works, trademarks, copyrights or technologies developed or created by either Party, including without limitation, their respective proprietary software used in connection with the development and provision of their respective Web sites, databases, systems, products and/or services. Unless specifically agreed by the Parties in writing, all intellectual property, including without limitation information that could become the subject of a patent, copyright or trade secret, developed by a Party in the context of performing its obligations under this Agreement shall be exclusively owned by that Party and the other Party shall cooperate with any reasonable requests to execute documents confirming such ownership.
- 5.2) **Data Ownership; License and Sensitive Data.**
 - a) Customer represents and warrants that it has obtained all data subjects' consent or otherwise has the full legal right necessary to provide the Customer Data to ClearGov for ClearGov's use as contemplated by this Agreement. Customer acknowledges that ClearGov shall have no legal liability for its use and/or the display of the Customer Data as contemplated by this Agreement.
 - b) Customer represents and warrants that the Customer Data provided by Customer to ClearGov shall NOT include

- data that may reasonably be deemed sensitive and/or personal in nature ("**Sensitive Data**"), including but not limited to personal wage garnishments, individual healthcare-related expenses, etc. In the event that Customer Data includes such Sensitive Data, Customer shall assume full responsibility for the disclosure of such Sensitive Data and shall hold harmless and defend ClearGov against any cost, loss or expense resulting from any claims by third parties for loss, damage or injury arising out of or relating to the disclosure of such Sensitive Data. ClearGov is under no obligation to review and/or verify that all Sensitive Data has been excluded from the Customer Data.
- c) Customer Data shall remain the property of Customer, and Customer hereby grants ClearGov a limited, perpetual, irrevocable and royalty-free right to use, copy, modify, and display the Customer Data within any ClearGov App(s) and for the purpose of providing the ClearGov Service.

- 5.3) **Proprietary Rights Notice.** The ClearGov Service and all intellectual property rights in the ClearGov Service are, and shall remain, the property of ClearGov. All rights in and to the ClearGov Service not expressly granted to Customer in this Agreement are hereby expressly reserved and retained by ClearGov without restriction, including, without limitation, ClearGov's right to sole ownership of the ClearGov API, ClearGov Apps, ClearGov Data, ClearGov Web Site, Documentation and Software. Without limiting the generality of the foregoing, Customer agrees not to (and to not allow any third party to): (a) sublicense, distribute, or use the ClearGov Service outside of the scope of the license granted herein; (b) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the ClearGov Service or otherwise attempt to discover any source code or trade secrets related to the ClearGov Service; (c) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the ClearGov Service for any purpose without the express written consent of ClearGov; (d) register, attempt to register, or assist anyone else to register any trademark, trade name, service marks, logos, domain names and other distinctive brand features, copyrights or other proprietary rights associated with ClearGov other than in the name of ClearGov; or (e) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the ClearGov Service. If the use of the ClearGov Service is being purchased by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the Government's rights in the ClearGov Service, including its rights to use, modify, reproduce, release, perform, display or disclose any elements of the ClearGov Service, will be subject in all respects to the commercial license rights and restrictions provided in this Agreement.

6) Representations, Warranties, Indemnification and Liability.

- 6.1) **By ClearGov.** ClearGov represents and warrants that: (i) the ClearGov Service shall be provided in accordance with, and shall not violate applicable laws, rules or regulations; and (ii) by using the ClearGov Service, Customer will not violate or in any way infringe upon the personal or proprietary rights of any third party, (iii) the ClearGov Service does not contain any virus, worm, Trojan horse, time bomb or similar contaminating or destructive feature; and (iv) ClearGov holds

all necessary rights to permit the use of the ClearGov Service and all components thereof provided to Customer under this Agreement.

- 6.2) By Both. ClearGov and Customer both represent and warrant that (i) each has full power and authority to enter into and perform its obligations under this Agreement; (ii) this Agreement is a legal, valid and binding obligation, enforceable against each Party in accordance with its terms; and (iii) entering into this Agreement will not knowingly violate any laws, regulations or third party contracts.
- 6.3) Indemnification by ClearGov. At ClearGov's cost, ClearGov agrees to indemnify, hold harmless and defend Customer against any cost, loss or expense (including attorney's fees) resulting from any claims by third parties for loss, damage or injury arising out of or relating to (i) ClearGov's breach of any term, condition, representation or warranty of this Agreement, (ii) ClearGov's violation of any third party rights in connection with the ClearGov Service or (iii) ClearGov's violations of applicable laws, rules or regulations in connection with the ClearGov Service. In such a case, Customer will provide ClearGov with written notice of such claim, suit or action. Customer shall cooperate as fully as reasonably required in the defense of any claim. Customer reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by ClearGov. Notwithstanding the foregoing, unless the settlement involves no cost, loss or continuing liability to Customer, ClearGov shall not settle any claim, action or demand without the written consent of Customer, such consent not to be unreasonably withheld.
- 6.4) Disclaimer. THE CLEARGOV SERVICE, ITS USE AND THE RESULTS OF SUCH USE ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, CLEARGOV PROVIDES NO WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT), GUARANTEES, REPRESENTATIONS, PROMISES, STATEMENTS, ESTIMATES, CONDITIONS, OR OTHER INDUCEMENTS, EXPRESS, IMPLIED, ORAL, WRITTEN, OR OTHERWISE EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 6.
- 6.5) Limitation of Liability. NEITHER CLEARGOV NOR CUSTOMER WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS), OR INCIDENTAL DAMAGES, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION CONTAINED IN THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FAILURE OF THE EXCLUSIVE REMEDY PROVIDED IN THE FOLLOWING SENTENCE. BOTH PARTIES' TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE CUMULATIVE FEES PAID BY CUSTOMER TO CLEARGOV IN THE PRECEDING TWELVE (12) MONTHS. THE FOREGOING SHALL NOT LIMIT A PARTY'S (A) PAYMENT OBLIGATIONS UNDER THE AGREEMENT; (B) LIABILITY FOR INDEMNIFICATION OBLIGATIONS UNDER SECTION 6.3; (C) LIABILITY FOR ANY BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 7; OR (D) LIABILITY FOR ITS INFRINGEMENT OR MISAPPROPRIATION OF ANY PROPRIETARY RIGHTS OF THE OTHER PARTY. NOTHING IN

THIS AGREEMENT SHALL BE CONSTRUED AS EXCLUDING OR LIMITING A PARTY'S LIABILITY FOR FRAUD OR ITS LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS NEGLIGENCE.

- 6.6) Essential Element. The provisions of this Section 6 are an essential element of the benefit of the consideration reflected in this Agreement.

7) Confidentiality.

- 7.1) Subject to any applicable open public records laws in the Customer State, each Party will keep the specific terms of this Agreement confidential, including the contents of the schedules and exhibits, and not disclose any portion of them to any third party (other than to its attorneys, accountants, advisors and potential investors who are bound to keep such information confidential) without the other Party's prior written consent, except as required by law, including but not limited to open public record laws.
- 7.2) In addition, in connection with the negotiation and performance of this Agreement, a Party (the "**Receiving Party**") may receive information from the other Party (the "**Disclosing Party**") which is confidential or proprietary in nature, including without limitation information about a Party's products, systems and services ("**Confidential Information**"). The Receiving Party agrees that, during the term of this Agreement and for a period of three (3) years thereafter, it will keep the Confidential Information in strictest confidence and protect such Confidential Information by similar security measures as it takes to protect its own Confidential Information of a similar nature, but in no event shall the Receiving Party take less than reasonable care with the Confidential Information of the Disclosing Party. The Receiving Party also agrees that it will not use any Confidential Information for any purpose other than in connection with the performance of its obligations under this Agreement.
- 7.3) The term "**Confidential Information**" shall not include information which A) is or becomes generally available to the public without breach of this Agreement, B) is in the possession of the Receiving Party prior to its disclosure by the Disclosing Party, C) becomes available from a third party not in breach of any obligations of confidentiality, D) is independently developed by the Receiving Party, or E) is required to be disclosed by the Receiving Party pursuant to law, rule, regulation, subpoena or court order, including but not limited to open public record laws.
- 7.4) The Parties recognize that the disclosure or use of a Disclosing Party's Confidential Information by the Receiving Party in violation of the provisions of this Section 7 may cause irreparable injury to the Disclosing Party; therefore, in the event either Party breaches the provisions of this Section 7, the other Party, in addition to any other remedies it may have, shall be entitled to seek preliminary and permanent injunctive relief without the necessity of posting a bond.

8) Miscellaneous.

- 8.1) General. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to implement the intent of the Parties, and the remainder of this Agreement shall continue in full force and effect. A waiver of any default is not a waiver of any subsequent default. The relationship between ClearGov and Customer is one of independent contractors, not partnership, joint venture or agency. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties

hereto. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement. The Software is controlled by U.S. Export Regulations, and it may not be exported to or used by embargoed countries or individuals.

- 8.2) Entire Agreement. This Agreement and the accompanying ClearGov Service Order(s), together, constitute a valid and binding agreement between the Parties and are intended to be the Parties' complete, integrated expression of the terms of their agreement with respect to the ClearGov Service, and any prior agreements or understandings with respect to such subject matter are superseded hereby and fully merged herein.
- 8.3) Assignment. Neither Party will assign this Agreement in whole or in part to any third party without the prior written consent of the other Party; provided, however, either Party may assign this Agreement without such consent to any subsidiary or parent company of such Party or to any successor by way of any merger, consolidation or other corporate reorganization of such Party or sale of all or substantially all of the assets of such Party or to an entity that assumes, by sale, license or otherwise, the business activities that are the subject of this Agreement, provided that such subsidiary or parent company or successor assumes or is otherwise fully bound by all of the obligations of the assigning Party under this Agreement.
- 8.4) Marketing Materials. Customer agrees that ClearGov may utilize Customer's name solely to identify it as a ClearGov Customer on the ClearGov Web site, in client lists and other marketing materials. Any other uses of Customer's name and/or logo (other than as included in the content and/or other items furnished to ClearGov by Customer) shall require Customer's prior written consent.
- 8.5) Insurance. ClearGov shall maintain commercial general liability insurance and auto liability insurance in amounts that are consistent with industry standards. ClearGov shall maintain Worker's Compensation insurance as required by law.
- 8.6) No Boycott of Israel. ClearGov hereby certifies that ClearGov is not currently engaged in and shall not, for the duration of the Term of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with the State of Israel or authorized by, licensed by or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.
- 8.7) Jurisdiction. This Agreement shall be governed by the applicable laws in the Customer State, without regard to conflict of laws rules.
- 8.8) Force Majeure. If the performance of this Agreement or any obligations hereunder is prevented or interfered with by reason of fire or other casualty or accident, strikes or labor disputes, war or other violence, any law, proclamation, regulation, or requirement of any government agency, or any other act or condition beyond the reasonable control of a Party hereto, that Party upon giving prompt notice to the other Party shall be excused from such performance during such occurrence.
- 8.9) Notices. All notices, requests, or other communications between the Parties that are required or permitted hereunder will be in writing and will be given by: (a) delivery in person or by prepaid courier service with a nationally recognized courier company, (b) delivery by registered or certified mail, postage prepaid, return receipt requested, (c) by confirmed fax, or (d) email to the address and/or fax number set forth in the applicable ClearGov Service Order. A Party may change the street or email address or fax number to which notice is

to be sent by giving written notice of such change. Notices will be deemed given when received as evidenced by verification from the courier company, the mail or email receipt or fax confirmation.

- 8.10) Titles & Subtitles. The titles and subtitles in this Agreement are used for convenience only and are not to be considered in construing it



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting
Meeting Date: 01/04/2022
Agenda Item: 2022 Board Appointments
Department: City Clerk
Requested By: Gesse Cabrera
Reviewed/Approved by City Attorney? N/A
Cost: N/A
Funding Source if Not in Budget N/A

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

2022 Expired, Mayoral, and Miscellaneous Board Appointments.

Type	Current Member	Incoming Member	Appointment	Term	Expiration	New Expiration
D/W Building Code Appeals	Hogshead, Frank (County's Turn)		Board-Alternating City/County Appt	3 Year	5/3/2018	
Animal Control	Hawkins, Carolyn		Board	4 Year	4/15/2020	
Animal Control	Crane, Kim		Board	4 Year	4/15/2020	
Trade Center	Kinsey, Mike	Kinsey, Mike	Authority	1 Year	2/1/2022	2/1/2023
WC EMS Quality Review	Pangle, Todd	Pangle, Todd	Committee	2 Year	3/1/2021	3/1/2023
Housing	Brock, Courtney		Authority	5 Year	10/14/2021	
Airport	Bates, Randy	Crews, Gary	Authority	5 Year	12/31/2021	12/31/2026
Housing	Land, Barbara		Authority-Resident Member	1 Year	12/31/2021	
Joint Development	Robertson, Frank	Robertson, Frank	Authority	1 Year	12/31/2021	12/31/2022
Joint Development	Kinard, Bob	Maret, Mike	Authority	3 Year	12/31/2021	12/31/2024
Land Bank	Vacant		Authority	1 Year	12/31/2021	
Land Bank	Crews, Gary	Farrow, Steve	Authority	1 Year	12/31/2021	12/31/2022
Miscellaneous	Miller, Terry	Miller, Terry	City Attorney	1 Year	12/31/2021	12/31/2022
Public Safety	Mathis, Terry	Mathis, Terry	Commission	5 Year	12/31/2021	12/31/2026
Recreation	Mendez, Zab	Boggs, Mitchell	Commission	5 Year	12/31/2021	12/31/2026
Tree	Purvis, Pete		Board	3 Year	12/31/2021	
Tree	Poehlman, John		Board	3 Year	12/31/2021	
Tree	Stearns, Chris	Stearns, Chris	Board	3 Year	12/31/2021	12/31/2024
Trade Center	Upton, Jamie		Authority	2 Year	1/31/2022	
Convention Visitors	Kinsey, Mike	Kinsey, Mike	Bureau (Ex officio member)	1 Year	2/1/2022	2/1/2023

Mayoral Appointments

Type	Current Member	Incoming Member	Expiration	New Expiration
Airport	Harlan, Annalee	Harlan, Annalee	12/31/2021	12/31/2022
Building	Pennington, David	Pennington, David	12/31/2021	12/31/2022
Building	Harlan, Annalee	Harlan, Annalee	12/31/2021	12/31/2022
Convention Visitors Bureau	Harlan, Annalee	Mock, Dennis	12/31/2021	12/31/2022
Creative Arts Guild	Harlan, Annalee	Farrow, Steve	12/31/2021	12/31/2022
Downtown Development	Harlan, Annalee	Harlan, Annalee	12/31/2021	12/31/2022
DWCDC	Pennington, David	Pennington, David	12/31/2021	12/31/2022
Finance & Administration	All Council Members	All Council Members	12/31/2021	12/31/2022
Finance & Administration	Pennington, David	Pennington, David	12/31/2021	12/31/2022
Housing	Goodlett, Tyree	Goodlett, Tyree	12/31/2021	12/31/2022
Joint Development		Mock, Dennis	12/31/2021	12/31/2022
Library	Harlan, Annalee	Farrow, Steve	12/31/2021	12/31/2022
MPO Policy		Mock, Dennis	12/31/2021	12/31/2022
Municipal Court	Harlan, Annalee	Farrow, Steve	12/31/2021	12/31/2022
Pension	Pennington, David	Pennington, David	12/31/2021	12/31/2022
Pension	Harlan, Annalee	Mock, Dennis	12/31/2021	12/31/2022
Public Safety	Harlan, Annalee	Harlan, Annalee	12/31/2021	12/31/2022
Public Works & Facilities	Goodlett, Tyree	Goodlett, Tyree	12/31/2021	12/31/2022
Public Works & Facilities	Harlan, Annalee	Harlan, Annalee	12/31/2021	12/31/2022
Recreation	Crews, Gary	Mock, Dennis	12/31/2021	12/31/2022
Regional Development	Gowin, Kenny	Gowin, Kenny	12/31/2021	12/31/2022
Service Delivery	Parker, Andrew	Parker, Andrew	2/17/2021	12/31/2022
Service Delivery	Harlan, Annalee	Harlan, Annalee	12/31/2021	12/31/2022
Solid Waste Mgmt	Goodlett, Tyree	Goodlett, Tyree	12/31/2021	12/31/2022
Solid Waste Mgmt	Pennington, David	Pennington, David	12/31/2021	12/31/2022
TAD Policies	Crews, Gary	Mock, Dennis	12/31/2021	12/31/2022
Technology	Goodlett, Tyree	Goodlett, Tyree	12/31/2021	12/31/2022
Trade Center	Harlan, Annalee	Farrow, Steve	12/31/2021	12/31/2022
Tree	Goodlett, Tyree	Farrow, Steve	12/31/2021	12/31/2022
WL&SF	Crews, Gary	Farrow, Steve	12/31/2021	12/31/2022

Miscellaneous Appointments

Type	Appointment	Current Member	Incoming Member	Term	Expiration	New Expiration
Miscellaneous	Municipal Court Judge	Cowan, Robert	Cowan, Robert	1 Year	12/31/2021	12/31/2022
Miscellaneous	Mayor Pro-Tem	Harlan, Annalee	Harlan, Annalee	1 Year	12/31/2021	12/31/2022
Miscellaneous	Fire Marshall	Daniel, Matthew	Daniel, Matthew	1 Year	12/31/2021	12/31/2022
Miscellaneous	City Attorney	Miller, Terry	Miller, Terry	1 Year	12/31/2021	12/31/2022



CITY COUNCIL AGENDA REQUEST

Meeting Type: Mayor & Council Meeting

Meeting Date: January 4, 2022

Agenda Item: Appointment of Caitlin Sharpe to position of Director, Parks and Recreation

Department: Parks and Recreation

Requested By: Greg Batts

Reviewed/Approved by City Attorney? N/A

Cost: N/A

Funding Source if Not in Budget

Please Provide A Summary of Your Request, Including Background Information to Explain the Request:

Unanimous recommendation from the Recreation Commission to appoint Caitlin Sharpe as Director, Parks and Recreation