



**CITY OF DENISON
CITY COUNCIL MEETING
AGENDA**

Monday, June 7, 2021

After determining that a quorum is present, the City Council of the City of Denison, Texas will convene in a Regular Meeting on **Monday, June 7, 2021, at 6:00 PM** in the Council Chambers at City Hall, 300 W. Main Street, Denison, Texas at which the following items will be considered:

1. INVOCATION, PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE

2. PROCLAMATIONS AND PRESENTATION

A. Introduction and Badge Presentation for Police K9 Echo.

3. PUBLIC COMMENTS

Citizens may speak on action items listed on the Agenda. A “Request to Speak Card” should be completed and returned to the City Clerk upon arrival, prior to the Council reaching the Public Comment section of the agenda. Citizen comments are limited to three (3) minutes, unless otherwise required by law. Comments related to the Public Hearings listed below, will be heard when the specific hearing starts.

4. CONSENT AGENDA

Each of these items is recommended by the Staff and approval thereof will be strictly on the basis of the Staff recommendations or any prior Board or Council action as the case may be from time to time. Approval of the Consent Agenda authorizes the City Manager to implement each item in accordance with the Staff recommendations.

Listed below are bids, purchase orders, contracts, and other items to be approved under the Consent Agenda. This listing is provided on the Consent Agenda to allow Council Members to discuss or withdraw an item prior to approval of the Consent Agenda. If no items are pulled, the Consent Agenda Items below will be approved with one motion. If items are pulled for separate discussion, they may be considered as the first items following approval of the Consent Agenda.

A. Receive a report, hold a discussion and take action on approving the Minutes from the regular City Council Meeting held on May 17, 2021.

B. Receive a report, hold a discussion, and take action on appointing James Thorne to serve as the City of Denison representative on the Texoma Council of Governments Governing Board.

- C. Receive a report, hold a discussion and take action on authorizing the Interim City Manager to enter into an Agreement for Professional Services with Plummer Associates to complete an electrical evaluation for SCADA and standby power generation of the Water Plant and key water distribution locations.

5. PUBLIC HEARINGS

- A. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance changing the zoning of the subject property from the Commercial Zoning District to the Single Family Five (SF-5) Zoning District, located at 129 East Bond Street. (Case No. 2021-058Z)
- B. Receive a report, hold a discussion, conduct a public hearing and take action on an Ordinance amending Section 28.43.4 of Chapter 28, the Comprehensive Zoning Ordinance. (Case No. 2021-066ZO)

6. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. Receive a report, hold a discussion, and take action on an Ordinance amending Chapter 11 of the City's Code of Ordinances to expand the reach of the child safety zone.

7. EXECUTIVE SESSION

Pursuant to Chapter 551, *Texas Government Code*, the Council reserves the right to convene in Executive Session(s), from time to time as deemed necessary during this meeting to receive legal advice from its attorney on any posted agenda item as permitted by law or to discuss the following:

- A. Consult with attorney on a matter in which the attorney's duty to the governmental body under the Texas Disciplinary Rules of Professional Conduct conflicts with this chapter and/or consult with attorney about pending or contemplated litigation or contemplated settlement of the same. Section 551.071.**
 - 1. Confer with City Attorney regarding A.S. vs. Richard Curtis, et. al., District Court, 15th Judicial District, Grayson County, Texas.
 - 2. Confer with City Attorney regarding City of Denison v. Sherman Pro Auto Glass, LLC, et. al., 397th District court, Grayson County, Texas.
 - 3. Confer with City Attorney regarding administrative complaint styled T.G. and M.G. a/n/f J.G. v. Denison Independent School District.
 - 4. Confer with City Attorney regarding Miramar Development Corporation v. Hal Spradling, et. al., 59th District Court, Grayson County, Texas.
 - 5. Confer with City Attorney regarding contract for EMS services, including, but not limited to, contract with LifeNet.
 - 6. Confer with City Attorney regarding acquisition of property in downtown Denison for municipal purposes.

- B. Discuss the possible purchase, exchange, lease or sell of value of real property and public discussion of such would not be in the best interests of the City's bargaining position. Section 551.072.
- C. Discuss negotiated gifts or donations to the City and public discussion at this stage would have a detrimental effect on the City's bargaining position. Section 551.073.
- D. Discuss the appointment, employment, evaluation, reassignment of duties, discipline, or dismissal of or to hear a complaint against a public officer or employee. Section 551.074.
- E. Discuss the commercial or financial information received from an existing business or business prospect with which the City is negotiating for the location or retention of a facility, or for incentives the City is willing to extend, or financial information submitted by the same. Section 551.087.
- F. Discuss the deployment or specific occasions for implementation of security personnel or devices. Section 551.076.
- G. Deliberations regarding economic development negotiations pursuant to Section 551.087.

Following the closed Executive Session, the Council will reconvene in open and public session and take any such action as may be desirable or necessary as a result of the closed deliberations.

CERTIFICATION

I do hereby certify that a copy of this Notice of Meeting was posted on the front window of City Hall readily accessible to the general public at all times and posted on the City of Denison website on the 4th day of June 2021, before 6:00 PM.

Christine Wallentine, City Clerk

In compliance with the Americans With Disabilities Act, the City of Denison will provide for reasonable accommodations for persons attending City Council meeting. To better serve you, requests should be received 48 hours prior to the meetings. Please contact the City Clerk's Office at 903-465-2720, Ext: 2437.



**MINUTES OF
CITY COUNCIL MEETING
CITY OF DENISON
MONDAY, MAY 17, 2021**

CALL TO ORDER

Announce the presence of a quorum.

Mayor Gott called the meeting to order at 6:00 p.m. City Council present were Mayor Pro Tem, Brian Hander, and Council Members Michael Courtright, James Thorne, JC Doty, Robert Crawley and Kristofor Spiegel. Staff present were Interim City Manager, Bobby Atteberry, Assistant City Attorney, Jon Lawson, and Deputy City Clerk, Fanchon Stearns. City Clerk, Christine Wallentine, was absent. Department Directors were also present.

1. INVOCATION, PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE

Richard Osborne of St. Luke's Episcopal Church gave the Invocation, which was followed by the Pledge of Allegiance and Texas Pledge led by the Chris Sanders, a US Army Veteran who served from 1989-1990 as a Supply Chain Specialist at Fort Jackson, SC and is currently the 2nd Vice Commander at the American Legion Post in Denison.

2. PROCLAMATIONS AND PRESENTATION

A. Water Safety Month Proclamation.

Mayor Gott presented a Proclamation to Dori Smith, Aquatic Program Coordinator for the City of Denison. Citizens of Denison, Texas recognize the vital role that swimming, and aquatic-related activities relate to good physical and mental health and enhance the quality of life for all people. We acknowledge that within Grayson County, and the City of Denison there are multiple residential pools, Waterloo Pool, Lake Texoma, which is one of the largest reservoirs in the United States, and the Red River, not to mention Waterloo Lake, Loy Lake, countless ponds, and spas. The citizens of Denison, TX recognize the ongoing efforts and commitments to educate the public on pool and spa safety issues and initiatives by the pool, spa, waterpark, recreation, and parks industries, and understand the vital importance of communicating Water Safety rules and programs to families and individuals of all ages, whether owners of private pools, users of public swimming facilities, or visitors to our Lake Texoma and Red River. The Mayor then proclaimed the month of May 2021 as National Water Safety Month.

3. PUBLIC COMMENTS

Mayor Gott called for any public comments at this time and reminded those wanting to comment of the guidelines established by the City Council. Mayor Gott then asked Deputy City Clerk, Fanchon Stearns, if any Request to Speak Cards were received with regard to any of the agenda



items. Ms. Stearns confirmed there were no Request to Speak Cards returned to her prior to reaching the public comments section. Therefore, no public comments were received.

4. CONSENT AGENDA

- A. Receive a report, hold a discussion, and take action on approving the Minutes from the Regular City Council Meeting held on May 3, 2021 and the Special Called City Council Meeting held on May 10, 2021.
- B. Receive a report, hold a discussion, and take action authorizing the Interim City Manager to execute a Service Agreement with IRE Crown Rinks, LLC d/b/a Ice Rink Events, for equipment, turnkey installation and removal, including professional support services for Denison on Ice.
- C. Receive a report, hold a discussion, and take action on authorizing the Interim City Manager to execute the Second Amendment to TIF No. 1 Reimbursement and Development Agreement.
- D. Receive a report, hold a discussion, and take action on the appointment of Teresa Adams, as a new member, to the Board of Directors for the Business and Industrial Corporation of Denison, Inc., dba Denison Development Alliance, to fill an unexpired three-year term.
- E. Receive a report, hold a discussion, and take action on authorizing the Interim City Manager to enter into a professional services agreement with Bureau Veritas North America, Inc. to provide Fire Services related to Plan Review and Inspections.
- F. Receive a report, hold a discussion, and take action on authorizing the Mayor to execute an Ad Valorem Tax Assessment and Collection Contract with Grayson County.

Council Action

On motion by Mayor Pro Tem Hander, seconded by Council Member Spiegel, the City Council unanimously approved the Consent Agenda as presented.

5. PUBLIC HEARINGS

- A. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance adopting an amended and updated Project and Financing Plan for Tax Increment Reinvestment Zone No. 1, including adding project costs for Phase III.

Council Action

Jon Lawson, Assistant City Attorney, provided a quick primer for the new Council Members on what a TIRZ is and what this agenda item addresses. The TIRZ No. 1 Board of Directors



has already met and approved this updated Project and Financing Plan, which is what is before the Council for approval this evening. Mr. Lawson then explained what a Tax Increment Reinvestment Zone is. There are cities that will identify where developers perhaps want to come in and target development in certain areas of the city and the City can pass an ordinance where the City can capture the incremental value of that increase in property tax and reinvest it into that specific zone. The percentage is defined, has to be for certain things and in certain areas of the City. It is a really great driver for certain parts of the City to develop and redevelop parts of the City that you would not have those funds anyway and where otherwise it would just be undeveloped. So, what is being done is we are capturing the incremental increase. This particular TIRZ was established back in 2012 when the City identified this particular part of the City to develop, or redevelop, and the developer starts with a plan, and then the City, and sometimes the County, decides how much they want to contribute to that incremental capture. Then through each phase, developers produce a project and financing plan, which is what is being considered tonight, which says what they are going to do in that particular phase. The City and staff then look at the feasibility of the plan and what it is producing, what is coming back, etc. It then goes to the TIRZ Board and they make a recommendation for Council on the plan. This is a really good, unique tool that cities have to invest in certain areas of their cities.

Renee Waggoner, Executive Director of Finance and Administrative Services, added to what Mr. Lawson stated in that the City has several tax increment reinvestment zones, five to be exact. This agenda item is specific to TIRZ No. 1. What is being discussed is what has been taken before the TIRZ No. 1 Board on May 10th, which are the updates to the Phase III Plan. Ms. Waggoner then talked about the updates in Phase III which the TIRZ No. 1 Board approved and what Council will be reviewing this evening. Under Phase III of Gateway Village, there is THF Park, and the park improvements which included mass grading, streets, utilities, walking trails, a pedestrian bridge and the appraised value for the donated land. All of this has been completed and the TIRZ No. 1 Board has approved this. The Hey Day road extension was included in the infrastructure for Phase III and has been completed. With regard to the Reserve, Phases 1 and II, this includes installation of public infrastructure for these subdivisions, which is currently in process and is part of Phase III. This is the project plan portion of it. With regard to the financing plan, the developer pays for this and with verification of all the expenses, reimbursement is made. The developer does have to go before the TIRZ No. 1 Board to request this reimbursement. The information comes to the City, it is reviewed, and a recommendation is then made to the TIRZ No. 1 Board for disbursement. The administrative costs of the City come out first and then the developer's costs. As far as the financing portion for Phase III, we looked at assessed real property value, included anticipated new development and incremental increases that Mr. Lawson discussed, and then we looked at annual increments going into that fund. Staff felt that the Phase III costs could be reimbursed to the developer based on the anticipated revenue increases.



Mayor Gott asked, for the sake of the new Council Members, if the expenses that are reimbursed have to be documented. Ms. Waggoner confirmed they have to be documented and must produce copies of invoices, proof of payments, proof of expenditures, etc. Staff goes through and makes sure the criteria is met for the development agreement as well because there is an agreement the City signs with the developer as to what they can expend in the development that is reimbursable. Not everything in the development is reimbursable. Most has to do with public infrastructure, such as water, sewer, trails, and things of this nature.

Mayor Gott then asked if there was anyone present who wished to speak to this Agenda item, for which there were none. With that, Mayor Gott closed the public hearing.

There was no discussion or questions from Council.

On motion by Council Member Crawley, seconded by Council Member Doty, the City Council unanimously approved Ordinance No. 5136, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS ADOPTING AN AMENDED AND UPDATED PROJECT AND FINANCING PLAN FOR TAX INCREMENT REINVESTMENT ZONE NUMBER ONE, INCLUDING ADDING PROJECT COSTS FOR PHASE III; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW."

- B. Receive a report, hold a discussion, conduct a public hearing relating to the unsafe condition of the posted structure at 630 W. Owings, and take action on an order, authorized by Chapter 214 of the Texas Local Government Code, including but not limited to securing the building from entry, or the repair, vacation, removal or demolition of the structure and assess a civil penalty.

Council Action

Robert Lay, Neighborhood Services Manager, reported that on May 3, 2021, Bragg Crosswhite, Sylvia Bergen, J.L. Bergen and the Grayson County Tax Assessor's Office were given notice of violation and to repair or demolish the structure at 630 W. Owings in Denison. The owners have failed to comply with the notice. The structure is unsafe in accordance with Chapter 13, Article VII, Section 13-154 (h), (m) and (n) of the Denison Code of Ordinances. Staff issued a minimum property standards violation to the owner of the property on two occasions, once in 2019 and again in 2021, early in the year. Staff had no contact from the owner both times and the repairs were not made. The structure was posted as unsafe on March 23, 2021. The appraised value of the improvement in 2020 was \$72,085.00 and taxes currently owed are \$5817.65 and have not been paid since 2018. There has been no water service at the structure since June 2011. Mr. Lay then showed



pictures of the structure, which is not weather tight, has multiple broken windows, windows missing, boarded up windows, and the roof is in poor condition all the way down to the decking in most places. The structure is a nuisance in the neighborhood. The record of violations and unsafe condition of the building are on file in the Neighborhood Services Office. Staff is requesting Council to declare the structure unsafe and order its removal.

Mayor Gott then asked if there was anyone present who wished to speak to this Agenda item, to which there were none. With that, the Mayor closed the public hearing.

There was no discussion or questions from Council.

On motion by Council Member Spiegel, seconded by Mayor Pro Tem Hander, the City Council unanimously approved declaring the structure at 630 W. Owings a nuisance and unsafe, ordered demolition and authorized staff to proceed with the demolition process.

- C. Receive a report, hold a discussion, conduct a public hearing, and take action on the Ordinance adopting the annexation of a portion of Preston Road, located south of Fawn Hollow Trail and north of FM 691. (Case No. 2021-043A)

Council Action

Bill Medina, Senior Planner, began by showing an aerial view of the subject property. The applicant is wishing to annex approximately 12 acres just south of Fawn Hollow Trail. The prospective developer would like to annex and develop the NE corner of FM 691. The City and County have been working on the project. In order to annex the property, we need to annex the road. This stretch of Preston Road is the first step of a multistep zoning and annexation process.

Mayor Gott then asked if there was anyone present who wished to speak on this Agenda item, to which there were none. With that, the Mayor closed the public hearing.

There was no discussion or questions from Council.

On motion by Mayor Pro Tem Hander, seconded by Council Member Crawley, the City Council unanimously approved Ordinance No. 5137, "AN ORDINANCE OF THE CITY OF DENISON, TEXAS, ADOPTING THE ANNEXATION OF CERTAIN TERRITORY LOCATED IN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF DENISON, TEXAS, TO WIT: BEING ±11.873 ACRES AND DESCRIBED AS THE RIGHT-OF-WAY FOR PRESTON ROAD FROM FM 691 NORTH TO THE AREA OF THE CITY LIMITS NEAR FAWN HOLLOW TRAIL AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" AND DEPICTED IN EXHIBIT "B"; PROVIDING FOR INCORPORATION OF FINDINGS AND AMENDING OF THE OFFICIAL CITY MAP; REQUIRING THE FILING OF THIS ORDINANCE WITH THE COUNTY CLERK; PRESCRIBING FOR EFFECT ON TERRITORY, GRANTING AS



APPROPRIATE TO ALL THE INHABITANTS OF SAID PROPERTY ALL THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BINDING SAID INHABITANTS BY ALL OF THE ACTS, ORDINANCES, RESOLUTIONS, AND REGULATIONS OF THE CITY OF DENISON TEXAS; PROVIDING SEVERABILITY, REPEALING, AND SAVINGS CLAUSES; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.”

- D. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance establishing the initial zoning classification of Agricultural District on a portion of Preston Road, located south of Fawn Hollow Trail and north of FM 691. (Case No. 2021-043Z).

Council Action

Bill Medina, Senior Planner, stated this is the same piece of property that was just annexed under the previous agenda item and is the second step in the process. Since it is a public right of way, the default Agricultural Zoning District is sufficient. Mr. Medina provided the aerial view of the subject property. Upon request by the City of Denison, Grayson County petitioned the City to annex a section of Preston Road located south of Fawn Hollow Trail and north of FM 691. The Planning and Zoning Commission recommended approval of the request at their April 27, 2021 meeting. Staff also recommends approval.

Mayor Gott then asked if there was anyone present who wished to speak to this Agenda item, to which there were none. With that, the Mayor closed the public hearing.

There was no discussion or questions from Council.

On motion by Council Member Crawley, seconded by Council Member Spiegel, the City Council unanimously approved Ordinance No. 5138, “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF DENISON, THE SAME BEING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF DENISON, AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF AGRICULTURAL (A) DISTRICT ON A CERTAIN ±11.873 ACRE TRACT OF LAND DESCRIBED AS THE RIGHT-OF-WAY FOR PRESTON ROAD FROM FM 691 NORTH TO THE AREA OF THE CITY LIMITS NEAR FAWN HOLLOW TRAIL AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT “A” AND DEPICTED IN EXHIBIT “B”; PROVIDING THAT THE OFFICIAL ZONING MAP OF THE CITY SHALL REFLECT THE AGRICULTURAL (A) DISTRICT FOR THE PROPERTY; PROVIDING THAT THE PROPERTY SHALL BE USED IN ACCORDANCE WITH THE REQUIREMENTS OF THE COMPREHENSIVE ZONING ORDINANCE AND ALL OTHER APPLICABLE ORDINANCES OF THE CITY; PROVIDING REPEALING, SEVERABILITY, AND



SAVINGS CLAUSES; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED SHALL BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.”

- E. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance adopting the annexation of approximately 39 acres of land located at the northeast corner of Preston Road and FM 691. (Case No. 2021-044A)

Council Action

Bill Medina, Senior Planner, showed an aerial map of the subject property, which is approximately 39 acres. The applicant is requesting the annexation of the property located at the NE corner of Preston Road and FM 691. The applicant is seeking City utilities and a Planned Development Zoning District for retail and multifamily uses. The applicant is present for any questions. City staff recommends approval of the requested annexation.

Mayor Gott then asked if there was anyone present who wished to speak to this Agenda item, to which there were none. With that, the Mayor closed the public hearing.

There was no discussion or questions from Council.

On motion by Mayor Pro Tem Hander, seconded by Council Member Spiegel, the City Council unanimously approved Ordinance No. 5139, “AN ORDINANCE OF THE CITY OF DENISON, TEXAS, ADOPTING THE ANNEXATION OF CERTAIN TERRITORY LOCATED IN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF DENISON, TEXAS, TO WIT: BEING ±39.435 ACRES AND DESCRIBED AS G-1043 REYNOLDS W G A-G1043, ACRES 39.435 AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT “A” AND DEPICTED IN EXHIBIT “B”; PROVIDING FOR INCORPORATION OF FINDINGS, AMENDING OF THE OFFICIAL CITY MAP, AND ACKNOWLEDGING A SERVICE PLAN DEPICTED IN EXHIBIT “C”; REQUIRING THE FILING OF THIS ORDINANCE WITH THE COUNTY CLERK; PRESCRIBING FOR EFFECT ON TERRITORY, GRANTING AS APPROPRIATE TO ALL THE INHABITANTS OF SAID PROPERTY ALL THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BINDING SAID INHABITANTS BY ALL OF THE ACTS, ORDINANCES, RESOLUTIONS, AND REGULATIONS OF THE CITY OF DENISON TEXAS; PROVIDING SEVERABILITY, REPEALING, AND SAVINGS CLAUSES; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.”

- F. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance establishing the initial zoning classification of Planned Development Overlay



District on approximately 39 acres of land, located at the northeast corner of FM 691 and Preston Road. (Case No. 2021-045Z)

Council Action

Bill Medina, Senior Planner, as a reminder, showed the aerial view of the subject property at the NE corner of FM 691 and Preston Road. Mr. Medina also showed the proposed concept of the planned development, which illustrated the proposed land use and density. It will allow for a density for 648 units with a potential for an additional 148 units if garages are added. This would be broken up into two tracts. Tract A is along the remaining right-of-way and follows the Local Retail Zoning District. Tract B would be residential or Multifamily 2 type zoning. The maximum height would be 4 stories tall. The applicant is present and available for any questions Council may have. The Planning and Zoning Commission recommended approval at their April 27, 2021 meeting. Staff also recommends approval.

Council Member Spiegel asked if any public comments were received from neighboring properties as far as development. Mr. Medina stated none were received.

Mayor Gott then asked if there was anyone present who wished to speak to this Agenda item. Mr. Kirkman, with Kirkman Engineering, came forward and provided the following information for the record:

Name: Shea Kirkman

Address: Kirkman Engineering

Mr. Kirkman stated he was happy to be part of the project and sees a huge opportunity with this property. Mr. Kirkman went on to say that there is a demand for this type of housing from the college and the growth with Texoma Medical Center. This project was identified five years ago, and the property was secured about three years ago. The land economy is challenging, but his company is trying to set the tone with the land. From here, they will pursue multifamily developers with the zoning requirements and standards in place.

Mayor Gott then asked if there was anyone else present who wished to speak on this Agenda item, to which there were none. With that, the Mayor closed the public hearing.

Council Member Crawley stated the Council appreciates their interest in Denison and looks forward to additional projects. Council Member Spiegel and Mayor Gott concurred.

There was no further discussion or questions from Council.

On motion by Council Member Crawley, seconded by Council Member Spiegel, the City Council unanimously approved Ordinance No. 5140. "AN ORDINANCE OF THE CITY



COUNCIL OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF DENISON, THE SAME BEING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY ESTABLISHING THE INITIAL ZONING CLASSIFICATION OF PLANNED DEVELOPMENT OVERLAY DISTRICT ON A TRACT OF LAND BEING ±39.435 ACRES IN THE W.R. REYNOLDS SURVEY, ABSTRACT NO. 1043, IN THE CITY OF DENISON, GRAYSON COUNTY, TEXAS, GENERALLY LOCATED AT THE NE CORNER OF PRESTON RD. AND FM 691, AND BEING MORE PARTICULARLY DESCRIBED IN AND DEPICTED ON EXHIBIT “A”; PROVIDING DEVELOPMENT STANDARDS, ATTACHED HERETO AS EXHIBIT “B”; PROVIDING A CONCEPT PLAN, ATTACHED HERETO AS EXHIBIT “C”; PROVIDING ROADWAY AND WATER IMPROVEMENTS, ATTACHED HERETO AS “D”; PROVIDING FOR SEVERABILITY, REPEALING, AND SAVINGS CLAUSES; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.”

- G. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance changing the zoning from Local Retail to Planned Development Overlay District on 6.201 acres of land, Property ID 218012 and 266036, along Highpoint Circle and Point Lookout Drive. (Case No. 2021-052Z)

Council Action

Bill Medina, Senior Planner, showed an aerial view of the subject property. The property is located just west of US 75 and Highland Point Drive. The subject property is currently zoned Local Retail with some Commercial to the south. Mr. Medina then showed the current proposed concept plan which allows for density of 124 units. Staff was not able to move forward with the Multifamily 2 Zoning District as it requires a minimum of ten acres. So, the Planned Development was pursued since this is 6.2 acres and accomplishes the same goal. The proposed Planned Development District complies with the Comprehensive Plan. The Planning and Zoning Commission recommended approval of the proposed rezoning on May 11, 2021. Staff also recommends approval.

Mayor Gott then asked if there was anyone present who wished to speak to this Agenda item. Applicant Don D’Amico came forward and provided the following information for the record:

Name: Don D’Amico

Address: Celina, TX



Mr. D’Amico said he was the applicant and was available for questions from Council.

Mayor Gott then asked if there was anyone else present who wished to speak on this Agenda item, to which there were none. With that, the Mayor closed the public hearing.

There was no discussion or questions from Council.

On motion by Mayor Pro Tem Hander, seconded by Council Member Doty, the City Council unanimously approved Ordinance No. 5141, “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF DENISON, THE SAME BEING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY CHANGING THE ZONING CLASSIFICATION FROM LOCAL RETAIL (LR) TO PLANNED DEVELOPMENT OVERLAY DISTRICT (PD) ON TRACTS OF LAND BEING ±6.201 ACRES WITHIN THE REPLAT OF BLOCK 2, POINT LOOKOUT ADDITION SECTION 2, IN THE CITY OF DENISON, GRAYSON COUNTY, TEXAS, GENERALLY LOCATED AT HIGH POINT CIRCLE AND POINT LOOKOUT DRIVE, AND BEING MORE PARTICULARLY DESCRIBED IN AND DEPICTED ON EXHIBIT “A”; PROVIDING DEVELOPMENT STANDARDS, ATTACHED HERETO AS EXHIBIT “B”; PROVIDING A CONCEPT PLAN, ATTACHED HERETO AS EXHIBIT “C”; PROVIDING FOR SEVERABILITY, REPEALING, AND SAVINGS CLAUSES; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; PROVIDING AN EFFECTIVE DATE; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.”

- H. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance amending Section 28.10.4 relating to notice requirements for zoning hearings, of Chapter 28, the Comprehensive Zoning Ordinance. (Case No. 2021-061ZO)

Council Action

John Webb, Executive Director of Planning and Community Development, stated this is a City initiated amendment to the zoning ordinance. This will eliminate unnecessary newspaper notification requirements for Planning and Zoning public hearings. This is an extra step that is not required by state law. The law requires that property owners within 200 feet are mailed a notice and this extra step creates extra time in which the case could be considered. Council meetings must still be published. The Planning and Zoning Commission recommended approval of the text amendment on May 11, 2021.

Mayor Gott then asked if there was anyone present who wished to speak on this Agenda item, to which there were none. With that, the Mayor closed the public hearing.



There was no discussion or questions from Council.

On motion by Council Member Spiegel, seconded by Council Member Crawley, the City Council unanimously approved Ordinance No. 5142, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF DENISON, BEING THE COMPREHENSIVE ZONING ORDINANCE, SPECIFICALLY AMENDING ARTICLE II "ZONING PROCEDURES AND ADMINISTRATION", SECTION 28.10.4, "NOTICE REQUIREMENTS OF ZONING HEARING"; PROVIDING A PENALTY CLAUSE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; PROVIDING SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVING FOR PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE; AND FINDING AND DETERMING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW."

- I. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance amending Section 28.49, relating to use regulations for drive-thru restaurants and drive-in restaurants of Chapter 28, the Comprehensive Zoning Ordinance. (Case No. 2021-0061ZO)

Council Action

John Webb, Executive Director of Planning and Community Development, explained that there may be some underutilized Light Industrial land in the area, and could be developed as restaurants. This amendment would permit restaurants with or without drive thru service by right and would permit restaurants with drive-in service to be permitted with a Conditional Use Permit in the Light Industrial District. Restaurants with drive-in service would be permitted upon approval of a CUP in lieu of permitted by right in certain nonresidential districts to ensure land use compatibility. The Planning and Zoning Commission recommended approval of the Texas amendment on May 11, 2021. Staff recommends approval of the text amendment.

Mayor Gott then asked if there was anyone present who wished to speak on this Agenda item, to which there were none. With that, the Mayor closed the public hearing.

There was no discussion or questions from Council.

Council Member Spiegel wanted to make a comment about the Planning and Zoning Commission and how much he appreciates the hard work they have been doing for multiple years now. We have got a great group representing us on this and makes it easy for the Council to follow their lead. So, Council Member Spiegel wanted to personally thank the



Planning and Zoning Commission as well as John Webb and Bill Medina for their hard work.

On motion by Council Member Crawley, seconded by Council Member Spiegel, the City Council unanimously approved Ordinance No. 5143, “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF DENISON, BEING THE COMPREHENSIVE ZONING ORDINANCE, SPECIFICALLY AMENDING ARTICLE IV, SECTION 28.49 “USE REGULATIONS (CHARTS)” FOR RESTAURANT (WITHOUT DRIVE-THRU), RESTAURANT (WITH DRIVE-THRU), AND RESTAURANT (DRIVE-IN); PROVIDING A PENALTY CLAUSE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; PROVIDING SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVING FOR PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE; AND FINDING AND DETERMING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.”

6. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. Receive a report, hold a discussion, and take action on an ordinance considering all matters incident and related to the issuance, sale and delivery of “City of Denison, Texas Combination Tax and Limited Surplus Revenue Certificates of Obligation, Series 2021B;” authorizing the issuance of the Certificates; approving and authorizing instruments and procedures relating to said Certificates; and enacting other provisions relating to the subject.

Council Action

Renee Waggoner, Executive Director of Finance and Administrative Services, provided some background on this item. The Capital Improvement Projects and Equipment were discussed by Council during the FY2021 budget process. Each year during the budget process, staff brings before Council the multi-year capital improvement projects plan. Based on this plan, utility projects to be covered under this bond issuance include secondary clarifier troughs, Theresa water line, utilities under Loy Lake Road, system improvements and extensions, Duck Creek interceptor and other water line replacements along FM 691. Staff brought before Council back in March a Resolution for Publication of Notice of Intent. Staff published the required notice, on two separate occasions, in the Herald Democrat and posted notice on the City’s website, as required by law. Ms. Waggoner then introduced Marti Shew from Hilltop Securities to provide the results of the bond sale. Ms. Shew reported that the bonds were sold through a competitive sale. Seven bids were received, and Key Bank Capital Market came in with the lowest proposed true interest cost of 2%. Just to give an idea of where that interest rate falls with respect to current market conditions, we like to compare it to a Bond Buyer’s Index, which is a third-party index that is published and used to track municipal market conditions over time, and they release a weekly rate.



The currently weekly rate is at 2.28%. So, this rate is well below this rate. This is due in part to the City's good credit assessment by S&P (AA- credit rating) and Fitch (AA rating). The full credit assessment published is included in the packet provided to Council. Both reports highlight the strong management, strong liquidity, and very strong budgetary portfolio. These are very favorable rates. The action by Council today would accept the offer and lock the rate into place. This being the final step in the bond process.

There was no discussion or questions from Council.

On motion by Mayor Pro Tem Hander, seconded by Council Member Spiegel, the City Council unanimously approved Ordinance No. 5144, "AN ORDINANCE CONSIDERING ALL MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE AND DELIVERY OF \$10,365,000 IN PRINCIPAL AMOUNT OF "CITY OF DENISON, TEXAS COMBINATION TAX AND LIMITED SURPLUS REVENUE CERTIFICATES OF OBLIGATION, SERIES 2021B;" AUTHORIZING THE ISSUANCE OF THE CERTIFICATES; APPROVING AND AUTHORIZING INSTRUMENTS AND PROCEDURES RELATING TO SAID CERTIFICATES; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT."

7. EXECUTIVE SESSION

The Council then adjourned into Executive Session at 6:45 p.m. pursuant the Chapter 551, Texas Government Code, in accordance with the Authority:

- A. Consult with attorney on a matter in which the attorney's duty to the governmental body under the Texas Disciplinary Rules of Professional Conduct conflicts with this chapter and/or consult with attorney about pending or contemplated litigation or contemplated settlement of the same. Section 551.071**
 - 1. Confer with City Attorney regarding City Manager position.
 - 2. Confer with City Attorney regarding ancillary energy costs.
- B. Discuss the possible purchase, exchange, lease or sell of value of real property and public discussion of such would not be in the best interests of the City's bargaining position. Section 551.072**
- C. Discuss negotiated gifts or donations to the City and public discussion at this stage would have a detrimental effect on the City's bargaining position. Section 551.073.**
- D. Discuss the appointment, employment, evaluation, reassignment of duties, discipline, or dismissal of or to hear a complaint against a public officer or employee. Section 551.074.**



1. Discuss City Manager position.
- E. Discuss the commercial or financial information received from an existing business or business prospect with which the City is negotiating for the location or retention of a facility, or for incentives the City is willing to extend, or financial information submitted by the same. Section 551.087
- F. Discuss the deployment or specific occasions for implementation of security personnel or devices. Section 551.076
- G. Deliberations regarding economic development negotiations pursuant to Section 551.087

RECONVENE INTO REGULAR SESSION

The Council then reconvened into Regular Session at 7:36 p.m. and took the following action:

A. Consult with attorney on a matter in which the attorney's duty to the governmental body under the Texas Disciplinary Rules of Professional Conduct conflicts with this chapter and/or consult with attorney about pending or contemplated litigation or contemplated settlement of the same. Section 551.071

1. Confer with City Attorney regarding City Manager position.

Council Action

No action taken.

2. Confer with City Attorney regarding ancillary energy costs.

Council Action

No action taken.

- B. Discuss the possible purchase, exchange, lease or sell of value of real property and public discussion of such would not be in the best interests of the City's bargaining position. Section 551.072
- C. Discuss negotiated gifts or donations to the City and public discussion at this stage would have a detrimental effect on the City's bargaining position. Section 551.073.
- D. Discuss the appointment, employment, evaluation, reassignment of duties, discipline, or dismissal of or to hear a complaint against a public officer or employee. Section 551.074.**

1. Discuss City Manager position.



Council Action

No action taken.

- E. Discuss the commercial or financial information received from an existing business or business prospect with which the City is negotiating for the location or retention of a facility, or for incentives the City is willing to extend, or financial information submitted by the same. Section 551.087
- F. Discuss the deployment or specific occasions for implementation of security personnel or devices. Section 551.076
- G. Deliberations regarding economic development negotiations pursuant to Section 551.087

There being no further business to come before the Council, the meeting adjourned at 7:37 p.m.

JANET GOTT, Mayor

Attest:

Christine Wallentine, City Clerk

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, and take action on appointing James Thorne to serve as the City of Denison representative on the Texoma Council of Governments Governing Board.

Staff Contact

Chris Wallentine, Assistant to the City Manager/City Clerk

cwallentine@cityofdenison.com

903-465-2720 x 2437

Summary

- The Texoma Council of Governments TCOG is a voluntary association of local governments in Cooke, Fannin, and Grayson Counties that works directly with citizens and local jurisdictions to improve and advance economic vitality and quality of life in Texoma.
- TCOG Governing Board is made up of representatives from the counties, cities, school districts, and colleges served by TCOG who provide direction to the organization.
- TCOG By-Laws stipulate that if the City of Denison representative is a member of Council other than the sitting Mayor, they shall be appointed by the City Council.
- James Thorne is uniquely qualified and interesting in serving in this important role.

Staff Recommendation

Staff recommends approval of the appointment.

Recommended Motion

“I move to appoint James Thorne as the City of Denison representative on the Texoma Council of Governments Governing Board.”

Background Information and Analysis

The Texoma Council of Governments TCOG is a voluntary association of local governments in Cooke, Fannin, and Grayson Counties that works directly with citizens and local jurisdictions to improve and advance economic vitality and quality of life in Texoma. In collaboration with our public and private sector partners, TCOG delivers various programs and services designed to support the health, welfare, and future of our citizens, our communities, and the region as a whole. TCOG Governing Board is made up of representatives from the counties, cities, school districts, and colleges served by TCOG who provide direction to the organization to meet these ends.

TCOG By-Laws stipulate that if the City of Denison representative is a member of Council other than the sitting Mayor, they shall be appointed by the City Council. Teresa Adams was appointed and served as the City of Denison representative on the TCOG Governing Board until departing the Council in May 2021 after serving the maximum number of consecutive terms. James Thorne is uniquely qualified and interesting in serving in this important role.

Financial Considerations

None.

Prior Board or Council Action

Teresa Adams was appointed and served as the City of Denison representative on the TCOG Governing Board until departing the Council in May 2021 after serving the maximum number of consecutive terms.

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on authorizing the Interim City Manager to enter into an Agreement for Professional Services with Plummer Associates to complete an electrical evaluation for SCADA and standby power generation of the Water Plant and key water distribution locations.

Staff Contact

Carrie Jones, Director of Public Works
cjones@cityofdenison.com
903-465-2720 x2441

Summary

- As part of the master plan project for Randell Water Plant, the need for an evaluation of the electrical systems and a SCADA expansion is required.
- Plummer Associates has presented a scope of services that includes three unique projects, grouped together, to provide the best cost options for the City.
- The agreement includes an evaluation of Parkdale, Lake Randell and the Water Treatment Plant/Distribution Control System.
- This project has a total cost of \$340,879, which is budgeted as part of the CIP in Fund 022.

Staff Recommendation

Staff recommends approval of the agreement with Plummer Associates to complete an electrical evaluation for SCADA and standby power generation at the water treatment plant and key water distribution locations.

Recommended Motion

“I authorize the Interim City Manager to enter into an Agreement for Professional Services with Plummer Associates to complete an electrical evaluation for SCADA and standby power generation of the Water Plant and key water distribution locations.”

Background Information and Analysis

As part of the Master Plan to be completed for Randell Water Plant, the electrical system needs to be evaluated. These evaluations and proposed improvements will include backup power options at the Parkdale Ground Storage Tank and Elevated Storage Tank and at the Water Treatment Plant. Throughout this project, Plummer will also be evaluating the existing SCADA system to provide options and recommendations to expand our current service.

The backup power generation was highlighted as an immediate need due to the events during February 2021. With the new water tower being built at Grayson College, Parkdale Elevated and Ground Storage Tanks will become the sole source of water distribution for the College and the Airport areas of town. This makes the Parkdale location even more critical than before to not lose the ability to pump water out to the distribution system. Randell Water Treatment Plant has a dual service feed, which has never failed

prior to February 2021. With the events that occurred, it is imperative as part of the Master Plan to set the plant up for backup power generation that can be relied upon if our power feeds are cut off again.

The agreement with Plummer will cover the design phase, configuration phase, bid phase and construction phases. The water plant master plan has started, and this project will run concurrently with that process. Staff will be provided with an Opinion of Probably Construction Cost for each section of the agreement to assist with proper CIP planning for funding availability.

Financial Considerations

This agreement is a planned project out of Fund 22.

Prior Board or Council Action

The City Council previously authorized an agreement with Plummer Associates for a Water Treatment Plant Master Plan. This will be in conjunction with the master plan completion.

Alternatives

Council may choose to direct staff to find another engineering firm to complete the electrical evaluation.

PLUMMER ASSOCIATES, INC.**AGREEMENT FOR PROFESSIONAL SERVICES**

Project No. 0443-044-O-0312

THIS AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2021, by and between the **CITY OF DENISON**, Texas, (hereinafter called "Owner") and the firm of **PLUMMER ASSOCIATES, INC.**, a Texas Corporation with its corporate office at 1320 South University, Suite 300, Fort Worth, Tarrant County, Texas, (hereinafter called "Engineer").

OWNER INFORMATION

Name: <u>City of Denison</u>	Contact: <u>Carrie Jones</u>
Billing Address: <u>300 W Main St.</u>	Title: <u>Director of Public Works</u>
<u>Denison, TX 75020</u>	Telephone: <u>(903) 465-2720</u>

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, Owner and Engineer agree as follows:

SCOPE OF SERVICE:

Owner requests and authorizes Engineer to perform BASIC ENGINEERING SERVICES as further described in Exhibit A, "**Scope of Services**," and hereinafter called the "Project" as set forth in this Agreement.

GENERAL TERMS AND CONDITIONS:**1. Authorization to Proceed**

Execution of this Agreement by the Owner will be authorization for Engineer to proceed with the Project, unless otherwise provided for in this Agreement.

2. Lump Sum Costs

Engineer's Lump Sum Costs, when the basis of compensation, will be the total amount paid by the Owner to the Engineer as identified in Exhibit B.

3. Hourly Rates

Engineer's Hourly Rates, when the basis of compensation, are those hourly or daily rates charged for work performed on Owner's Project by Engineer's employees of the indicated classifications, as identified in Exhibit B. These rates are subject to annual calendar year adjustments and include all allowances for salary, overheads, and

fee, but do not include allowances for Direct Expenses.

4. Direct Expenses

Engineer's "Direct Expenses", when part of the basis of compensation, are those costs incurred on or directly for the Owner's Project, including, but not limited to, necessary transportation costs, including Engineer's current rates for Engineer's vehicles; meals and lodging; laboratory tests and analyses; computer services; word processing services, telephone, printing, binding, and reproduction charges; all costs associated with outside consultants, subconsultants, subcontractors, and other outside services and facilities; and other similar costs. Reimbursement for Direct Expenses will be on the basis of actual charges when furnished by commercial sources and on the basis of current rates when furnished by Engineer.

5. Cost Opinions

Any cost opinions or Project economic evaluations provided by Engineer will be on a basis of experience and judgment; but, since it has no control over market conditions or bidding procedures, Engineer cannot warrant that bids, ultimate construction cost, or Project economics will not vary from these opinions.

6. Termination

This Agreement may be terminated for convenience upon 30 days' written notice by either party with or without cause. On termination, Engineer will be paid for all work performed up to the date of notification. If no notice of termination is given and termination is not for cause, relationships and obligations created by this Agreement, except Articles 8 through 15, will be terminated upon completion of all applicable requirements of this Agreement.

7. Compensation

Owner shall pay Engineer for Basic Services and Additional Services rendered in accordance with the provisions of Exhibit B.

Monthly invoices will be issued by Engineer for all work performed under this Agreement. Invoices are due and payable on receipt. Interest at the rate of 1-1/2 percent per month, or that permitted by law if lesser, will be charged on all past-due amounts starting 30 days after date of invoice. Payments will first be credited to interest and then to principal.

In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The Owner will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until mutually resolved.

8. Insurance

Engineer, as a minimum, shall maintain insurance of a form and in amounts as required by state law, approved by Owner, and as set forth in the attachment "Insurance and as set forth in Exhibit C, "Insurance". Engineer shall provide proof of said insurance requirements by attaching a Certificate of Insurance with the executed Agreement.

9. Independent Consultant

Engineer agrees to perform all services as an independent consultant and not as a subcontractor, agent or employee of the Owner.

10. Engineer's Personnel at the Project Site

The presence or duties of the Engineer's personnel at the Project site, whether as on-site representatives or otherwise, do not make the Engineer or its personnel in any way responsible for those duties that belong to Owner and/or to other contractors, subcontractors, or other entities, and do not relieve the other contractors,

subcontractors, or other entities of their obligations, duties, and responsibilities, including, but not limited to, all methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the Project by those parties in accordance with their contract requirements and any health or safety precautions required by such work. The Engineer and its personnel have no authority to exercise any control over any contractor, subcontractor, or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of any contractor, subcontractor, or other entity or any other persons at the Project site except Engineer's own personnel.

Engineer neither guarantees the performance of any contractors, subcontractors or other entities nor assumes responsibility for their failure to perform their work in accordance with their contractual responsibilities.

11. Litigation Assistance

Unless specifically set forth in the Scope of Services, the Scope of Services does not include costs of the Engineer for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation or administrative proceedings taken or defended by the Owner.

12. Venue

In the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in Grayson County, Texas, and shall be governed by the laws of the State of Texas.

13. Severability and Survival

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of this Agreement for any cause.

14. Interpretation

The limitations of liability and indemnities will apply whether Engineer's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause of action, except for willful misconduct or gross negligence for limitations of liability and sole negligence for indemnification, and shall apply to Engineer's officers, affiliated corporation, employees and subcontractors. The law of the state of Texas shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

15. No Third Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than the Owner and Engineer and has no third party beneficiaries. The Owner will include a provision in each agreement which Owner enters into with any other entity or person that such entity or person shall have no third-party beneficiary rights under this Agreement.

Engineer's services are defined solely by this Agreement, and not by any other contract or Agreement that may be associated with the Project.

16. Indemnity and Liability

TO THE FULLEST EXTENT PERMITTED BY LAW, ENGINEER SHALL INDEMNIFY AND HOLD HARMLESS OWNER AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS, CONSULTANTS, AND EMPLOYEES FROM REASONABLE CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF ENGINEER'S NEGLIGENT ACT OR OMISSION OF ENGINEER, ITS CONSULTANTS, OR THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS, OR EMPLOYEES ON SERVICES PERFORMED UNDER THIS AGREEMENT PROVIDED THAT ANY SUCH CLAIM, COST, LOSS, OR DAMAGE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE

PROPERTY (OTHER THAN THE PROJECT ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT IN NO CASE SHALL THE ENGINEER BE REQUIRED TO PAY AN AMOUNT DISPROPORTIONAL TO ENGINEER'S CULPABILITY, OR ANY SHARE OF ANY AMOUNT LEVIED TO RECOGNIZE MORE THAN ACTUAL ECONOMIC DAMAGES.

ENGINEER WILL STRIVE TO PERFORM SERVICES UNDER THIS AGREEMENT IN A MANNER CONSISTENT WITH THAT LEVEL OF CARE AND SKILL ORDINARILY EXERCISED BY MEMBERS OF THE PROFESSION CURRENTLY PRACTICING SIMILAR WORK IN THE SAME LOCALITY UNDER SIMILAR CONDITIONS DURING THE SAME TIME. ENGINEER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE, IN CONNECTION WITH ANY SERVICES PERFORMED OR FURNISHED BY ENGINEER. ENGINEER'S SERVICES SHALL BE GOVERNED BY THE NEGLIGENCE STANDARD FOR PROFESSIONAL SERVICES, MEASURED AS OF THE TIME THOSE SERVICES ARE PERFORMED.

THE OWNER'S REVIEW, APPROVAL, OR ACCEPTANCE OF, OR PAYMENT FOR, ANY OF THESE SERVICES SHALL NOT BE CONSTRUED TO OPERATE AS A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT OR OF ANY CAUSE OF ACTION ARISING OUT OF THE PERFORMANCES OF THIS AGREEMENT, AND THE ENGINEER SHALL BE AND REMAIN LIABLE IN ACCORDANCE WITH APPLICABLE LAW FOR ALL DAMAGES TO THE OWNER CAUSED BY ENGINEER'S OMISSIONS OR NEGLIGENT PERFORMANCE OF ANY OF THE SERVICES FURNISHED UNDER THIS AGREEMENT.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, ENGINEER'S LIABILITY FOR OWNER DAMAGES FOR ANY CAUSE OR COMBINATION OF CAUSES WILL, IN THE AGGREGATE, NOT EXCEED THE LIMITS OF THE ENGINEER'S PROFESSIONAL LIABILITY INSURANCE COVERAGE.

AS USED HEREIN, ENGINEER INCLUDES THE CORPORATION, SUBCONTRACTORS, AND ANY OF ITS OR THEIR OFFICERS, OR EMPLOYEES.

AS BETWEEN THE OWNER AND THE ENGINEER, ANY CONTRACT CLAIM MUST BE BROUGHT WITHIN FOUR YEARS FROM THE DAY FOLLOWING THE ACT OR OMISSION GIVING RISE TO THE BREACH OF CONTRACT CLAIM.

17. Documents and Notices

Contract documents, reports, plans, specifications, memorandums, or other delivered documents (furthermore known as Documents), in printed paper format (also known as hard copies) prepared or furnished by Engineer, pursuant to this Agreement are instruments of service but shall become the property of the Owner subject to Engineer's receipt of full payment for all services relating to preparation of the Documents. Engineer shall have the right to retain copies of Documents for information and reference. Signed and sealed printed form documents and plans shall be deemed superior and shall govern over same electronic format documents.

Contracted notices required by this Agreement shall be made in writing and shall be delivered by:

- a. person;
- b. overnight courier with written verification of receipt;
- c. electronic communication; or
- d. certified mail, return receipt requested.

18. Assignment

Neither Party will assign all or any part of this Agreement without prior written consent of the other party.

Exhibit A – Scope of Services

Exhibit B – Compensation

Exhibit C – Insurance

By execution of this Agreement, Owner authorizes Engineer to provide Basic Services for the Project in accordance with Exhibit A, "Scope of Services." Services covered by this Agreement will be performed in accordance with the Provisions attached to this form and any other attachments or schedules. This Agreement supersedes all prior Agreements and understandings and may only be changed by written amendment executed by both parties.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

Owner:

Plummer Associates, Inc.:

By _____

By _____

Title _____

Title _____

Date _____

Date _____

Exhibit A

Scope of Services

BACKGROUND

The scope of services described below includes three unique projects that have been grouped together to offer economy of scale in providing integrated project management, engineering services and configuration services to reduce overall project costs.

Parkdale Electrical and Instrumentation Improvements

Currently, finished water is pumped from the water treatment plant to the Parkdale ground storage tank, then pumped with an onsite pump station to the onsite 0.5 MGD elevated tank. The City is currently planning for a new 0.5 MGD elevated storage tank in the general location of the college, which will reside on the same pressure plane as the two (2) existing elevated storage tanks, located at other locations, which were designed with the same water surface elevation.

Scope of services includes a 350KW (estimated) diesel generator including an automatic transfer switch, electrical and instrumentation improvements, evaluation of the ground storage tank inlet control valve, and required tank instrumentation. Electrical service from the pump station to the new proposed elevated storage tank will be included in the design services.

Lake Randell Water Treatment Plant Electrical Improvements

The Lake Randell Water Treatment Plant has several incoming power sources fed from a single line from dual sources of power switched outside the plant boundary. The Plant and Raw Water Pump Station have no backup power generation service. The majority of the existing Plant electrical system was installed in 1993 and is quickly becoming obsolete with limited availability of spare parts for repairs. In addition, the High Service Pumping Station, which was installed in 1993, is also limited due to the existing variable frequency drives, (VFDs) which have internal heating issues and aged components.

Scope of Services includes a 1200 KW (estimated) diesel generator, main electrical switchgear to be located in a precast electrical building for the WTP, with new electrical power feeders to existing electrical equipment. Also included in our scope are VFD replacements for the high service pumps, which will need to meet the power company requirements for lower harmonics. For the Raw Water Pump Station, a 300 KW (estimated) diesel generator with automatic transfer switch is included in our scope for standby power generation. The water treatment plant master plan will also include discussions for the replacement of in-plant electrical gear that is served by the proposed electrical equipment.

Water Treatment Plant and Distribution Control System

The Plant staff replaced the outdated control systems, with a "Control by Web" product offering which is currently in use at both the water treatment plant and in the distribution system. The distribution system control system communicates using cellular routers, configured on a private network. The system is secured by network isolation using an "air gap" to outside networks. The system is functional and can continue to be utilized as an important foundation in which to be expanded for future control systems growth. As instruments and sensors have failed, the plant staff has replaced the equipment, often with value priced substitutes or have made numerous repairs. These actions have led to the staff having decreased confidence in the reliability and accuracy of the readings. This has prevented automation of chemical feed and automatic filter backwashing. To continue the progress of monitoring and control in the system, the staff will need to develop more confidence in the instrumentation and equipment, by having a higher quality and more reliable systems. One issue is that remote sites do lack some instrumentation and key monitoring parameters as well as a remote monitoring that can be readily accessible.

Scope of service includes Plummer procuring and assisting in the configuration of a Human Machine Interface (HMI) software package that provides historical data collection, refined trending, and secure remote access. Additionally, Plummer will develop a tag database and a network architecture to support future plant growth and will assist in the configuration and programming of local controllers that will provide visualization of remote instrumentation and will include a pressure monitoring system that is much easier for operations staff to access.

Basic Services provided by the Engineer shall generally be covered under the following tasks:

1. Design Phase Services
2. Configuration Services
3. Bid Phase Services
4. Project Management for Tasks 1, 2, and 3
5. Construction Phase Services

The specific activities for each task are identified in the following sections. The number of prime construction contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, the Engineer shall be entitled to an equitable increase in compensation under this Agreement.

In the event that the Project designed or specified by Engineer is to be performed or furnished under more than one prime construction contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Design Phase, develop a schedule for performance of Engineer's services during the Design, Advertisement and Bid, and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit C whether the services under such contracts is to proceed concurrently.

1. Design Phase Services

- 1.1. Project Initiation: Engineer shall consult with the Owner to gather existing information relative to the Project including on-going or planned construction projects in the work area, location of existing utilities and underground facilities, design criteria, construction plans and drawings, mapping, existing subsurface and geotechnical reports, existing topography map and survey information, etc. Exhibits of existing systems shall be provided in electronic format if available.
- 1.2. The Engineer shall develop drawings and specification as follows:
 - 1.2.1. General Drawings
 - 1.2.1.1. General sheets will provide organization and a general understanding of the project to bidders. General location map showing sites.
 - 1.2.1.2. Standard details.
 - 1.2.2. Parkdale Drawings and Specifications
 - 1.2.2.1. The Engineer shall develop detail drawings and specifications for the installation of a diesel generator capable of operating the two (2) distribution pumps, and the automatic transfer scheme. Drawings and specifications will include the replacement of the existing electrical at the pump station, provide a primary power to the elevated storage tank from the new electrical system, and instrumentation for the ground storage tank. The Engineer shall provide recommendation(s) for rehab or replacement of the ground storage tank, HVAC improvements and pump station door replacement. Engineering services will include recommendation for modifications or upgrades to the current remote terminal unit (RTU).

1.2.3. Lake Randell WTP and Raw Water Pump Station Generator Drawings and Specifications

- 1.2.3.1. The Engineer shall develop detail drawings and specifications for the installation of a diesel generator capable of operating the two (2) high service pumps and the WTP plant equipment. The design shall include a new service feed into the plant, a precast electrical building to house switchgear with automatic breaker features to act as transfer switch. The switchgear will then feed the various motor control centers (MCCs) and panels in the plant, thus eliminating the other sources of power into the plant. The improvements will be designed to allow for monitoring of the generator and switchgear.
- 1.2.3.2. The Engineer shall develop detail drawings and specifications for the installation of a diesel generator capable of operating the two (2) raw water pumps and the air compressor. The design shall include an automatic transfer switch. Engineering services will include recommendations for modifications or upgrades to the current remote terminal unit.
- 1.2.3.3. The Engineer shall develop detailed drawings and specifications for the replacement of the two (2) high service pump station variable frequency drives (VFDs) that will comply with low harmonics per code and power company requirements. VFDs shall be in the existing electrical building.

1.2.4. Control System Improvement Drawings and Specifications

- 1.2.4.1. The Engineer shall develop detailed drawings and specifications to continue to add to the base system currently installed. Plummer shall purchase 1000 tag VTSCADA software package. Plummer shall configure the system as outlined in Item 2. The design will include additional hardware, network, and IO points to monitor and control additional functions. Plummer will evaluate existing instrumentation and sensors for replacement. The VTSCADA will allow for control, monitoring, and operation of the plant, the distribution system, and remote access sites.
 - 1.2.4.2. The Engineer shall develop detailed drawings and specifications to continue to add to the base system. Improvement will include additional instrumentation for monitoring and control. The VTSCADA software will allow for secure remote monitoring.
 - 1.2.4.3. The Engineer shall investigate and recommend a remote pressure monitoring device that can be readily installed either temporarily or permanently to monitor pressure points within the City.
- 1.2.5. Prepare supporting specifications to fully describe the intended work, convey the intent of the design, and to serve as the governing conditions for the General Contractor.
- 1.2.5.1. The Engineer shall utilize the Engineer's front-end documents (Division 0, which includes the Notice to Bidders, contractual terms and conditions, etc.). These documents are based on the Engineers Joint Contract Documents Committee (EJCDC).
 - 1.2.5.2. Technical specifications shall be prepared based on the Engineer's standard specifications.
- 1.2.6. Deliverables: The Engineer shall provide the following deliverables at both the 70% and 90% completion milestones.

- 1.2.6.1. Electronic copies of the half-size design drawings and specifications in PDF format.
- 1.2.6.2. Within 14 calendar days of receipt of each of the review documents, Owner shall submit to Engineer any comments regarding on the design drawings and specifications.
- 1.2.6.3. The Engineer shall provide a written response to the Owner's comments and modify design drawings and specifications incorporating required changes.
- 1.2.7. The Engineer will develop contract documents to comply with TCEQ requirements. The Engineer shall submit required notification to the TCEQ. When requested, the Engineer shall provide plans and specifications to the TCEQ for review.
- 1.2.8. The Engineer will develop final design drawings and specifications in accordance with comments and instructions from the Owner and reviewing agencies, as appropriate, and submit electronic copies of the engineer sealed final design documents, bidding documents, and a revised Opinion of Probable Construction Cost in PDF format.
- 1.3. Opinion of Probable Construction Cost (OPCC) Development
 - 1.3.1. The Engineer will prepare an OPCC for review by the Owner in conjunction with the design of improvements. The OPCC will be updated and submitted with both the 60% and 90% QC review of the plans and specifications. The Engineer will update the OPCC for submittal with the final sealed plans and specifications. The Engineer's projection of construction costs will be based on materials and labor prices prevailing at the time of preparation, without consideration of inflationary increases in cost. The Engineer does not warrant the accuracy of the opinion of probable construction cost.

2. SCADA Configuration Services

2.1. VTSCADA Procurement and Configuration

- 2.1.1. The Engineer shall procure a single server VTSCADA Human Machine Interface (HMI) with three (3) view nodes software components. The Engineer will procure an operator workstation with dual monitors to for VTSCADA operations and monitoring.
- 2.1.2. The Engineer shall install VTSCADA and SQL Database and perform the base configuration of the software components.
- 2.1.3. The Engineer will with assistances from plant staff, develop and plant tag (I/O) database that will be the foundation for future development of the plant and water distribution system.
- 2.1.4. The Engineer will develop menu and navigation templates.
- 2.1.5. The Engineer will develop a plant overview and waste distribution system screens. The engineer will develop detail operating screens for Raw Water Pump Station, High Service Pump Station and Parkdale.
- 2.1.6. The Engineer will develop and configure system security and log-in.
- 2.1.7. The Engineer shall provide initial configuration of the historical database with preliminary reports to assist the CITY to produce Monthly Operating Reports (MOR).
- 2.1.8. The Engineer shall furnish and install a remote VPN connection to allow remote access to the system for remote access for the Engineer.

- 2.1.9. The Engineer shall conduct, with support from City Staff, HMI verification of IO and intent operations of the HMI system.

2.2. Programming Code Review and Assistance

- 2.2.1. The Engineer shall review existing controller code written by the City Staff, to verify compliance with industry standards and offer suggestions or recommends on improvements.
- 2.2.2. The Engineer shall provide on-call services to review future code written by the City Staff to help confirm correction operations.

2.3. System Documentation

- 2.3.1. The Engineer shall provide final system documentation of the HMI system, including software listings and databases, software graphics, configuration files on CD-ROMS.

3. Bid Phase Services

Upon acceptance by Owner of the final design and bid documents and the most recent Opinion of Probable Construction Cost as determined in the Design Phase, and upon written authorization by Owner to proceed, Engineer shall

- 3.1. Assist the Owner in the advertisement of the project for competitive bids. Services shall include:
 - 3.1.1. Provide draft and final advertisement language (Notice to Bidders) to the Owner for publication in the local news media, the cost of which shall be paid by the Owner.
 - 3.1.2. Assist Owner in advertising and notifying construction news publications for and securing competitive bids for the Work.
 - 3.1.3. Distribute bid documents, plans, and specifications for the project to prospective bidders via CivCast.
 - 3.1.4. Assist the prospective bidders in interpreting the plans and specifications through the preparation and issuance of addenda to clarify, correct or change the bid documents.
 - 3.1.5. Maintain a record of prospective bidders to whom Bidding Documents have been issued.
- 3.2. Coordinate, attend, and administer one (1) pre-bid conference for the project.
- 3.3. Assist the Owner in the opening, tabulation, analysis of the bids received and furnish recommendations on the award of the contracts or the appropriate actions to be taken by the Owner.
 - 3.3.1. Consult with Owner as to the acceptability of contractor, subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bid documents.
- 3.4. Following the opening of bids, the Engineer shall conform the contract documents including all addendum changes. The following contract document sets shall be provided.
 - 3.4.1. Up to four (4) sets of conformed documents, including up to one (1) full-size drawings, three (3) half-size drawings, and five (5) specification sets (one executed and four conformed) to the Owner.

- 3.4.2. Up to three (3) sets of conformed documents, including up to two (2) full-size drawings, one (1) half-size drawings, and five (5) specification sets (one executed and four conformed) to the Contractor.
- 3.4.3. Electronic set of conformed documents in PDF format.
- 3.5. Assist the Owner in coordinating the execution of the conformed contract documents.
- 3.6. Preparation of additional copies of the documents for the Owner or other parties will be performed by the Engineer as an Additional Service.

4. Construction Phase Services

4.1. Field Activities

- 4.1.1. The Engineer shall represent the Owner in non-resident construction administration of the project. In this capacity, the construction administration duties shall not place any responsibility on the Engineer for the techniques, sequences, and methods of construction or the safety precautions incident thereto, and the Engineer will not be responsible or liable in any degree for the Contractor's failure to perform the construction work in accordance with the Contract Documents.
- 4.1.2. The Engineer will attend and assist the Owner in conducting up to one (1) preconstruction meeting.
- 4.1.3. The Engineer will participate in up to twelve (12) monthly virtual construction coordination meetings. The Engineer shall become familiar with the progress and quality of the work completed and will determine in general if the work when completed will be in accordance with the contract documents. The Engineer will prepare and distribute monthly progress notes following each monthly meeting.
- 4.1.4. In addition to the virtual construction coordination meetings, the Engineer will include up to six (6) additional site visits during construction. On the basis of on-site observations as an Engineer, the Engineer shall exercise reasonable care and due diligence in discovering and promptly reporting to the Owner any defects or deficiencies in the work of the Contractor or any subcontractor. The Owner's approval, acceptance, use of, or payment for all or any part of the Engineer's services hereunder or the Project itself shall in no way alter the Engineer's obligations or the Owner's rights hereunder.
- 4.1.5. The Electrical Engineer will include one (1) site visit during construction. The Structural Engineer will include two (2) site visits during construction.
- 4.1.6. The Engineer will meet and review construction progress with Owner inspectors or 3rd Party Inspection personnel under contract with the Owner, during the site visits.
- 4.1.7. Exhaustive or continuous on-site inspections by the Engineer to check quality or quantity of the work or material shall be considered an Additional Service.
- 4.1.8. Conducting, with the Owner's representative, a final inspection of the Project for conformance with the design concept of the Project and general compliance with the contract documents. The Engineer will prepare and submit to the Owner a preliminary punchlist. Once Owner comments are incorporated, the Engineer will distribute the punchlist to the Contractor.

4.2. General Construction Administration, Submittal Review, and Record Drawing Preparation

- 4.2.1. The Engineer will provide, for use by the City and the selected contractor, an internet-based construction management system, including the following items:
 - 4.2.1.1. Establish and maintain the project construction management system consistent with the requirements of the construction contract documents. Monitor the processing of contractor's submittals and provide for filing and retrieval of project documentation. Produce monthly reports indicating the status of all submittals in the review process.
 - 4.2.1.2. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
- 4.2.2. Review, evaluate and prepare routine change orders or proposed contract modifications typical for the scope and size of the improvements included. Review up to four (4) Contract Modification Requests/Proposed Contract Modifications (CMR/PCM). Prepare up to two (2) Change Orders (CO) and up to two (2) Field Orders (FO) for execution by the OWNER. Additional authorized CMR/PCM review or CO/FO preparation in excess of the specified number will be considered an Additional Service.
- 4.2.3. Review and answer request-for-information (RFI) typical for the scope and size of the improvements included. It is anticipated that the Engineer will review and respond to up to a total of ten (10) RFIs. Review of authorized RFIs in excess of the specified number will be considered an Additional Service.
- 4.2.4. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the Contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents; and assemble written guarantees which are required by the Contract Documents. It is anticipated that the Engineer will review and respond to up to a total of forty (40) shop drawing submittals, including resubmittals. Documents received and filed as record data (not reviewed by the ENGINEER) are not considered shop drawing submittals. Additional authorized shop drawing submittals will be considered an Additional Service.
- 4.2.5. Review operation and maintenance (O&M) manuals which the Contractor is required to submit, only for conformance with the design concept of the project and compliance with the information given by the Contract Documents; and assemble written guarantees which are required by the Contract Documents. It is anticipated that the Engineer will review and respond to up to a total of eight (8) O&M manuals (including preliminary and final versions). Additional authorized O&M manual submittals will be considered an Additional Service.
- 4.2.6. Evaluate and determine the acceptability of up to three (3) "or equals" and substitute materials and equipment. Additional authorized evaluations and determinations will be considered an Additional Service.
- 4.2.7. Review and comment on the certificate of completion and the recommendation for monthly progress payments to the Contractor. Verification of quantities and completion of work shall be the responsibility of assigned Owner or 3rd Party Resident Representative Staff. Such verifications shall take place in advance of the Engineer's review.
- 4.2.8. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor following final inspection of the completed Project.
- 4.2.9. Revise contract drawings with reference to the Contract Document required "red line" notations and the assistance of assigned Owner or 3rd Party Resident Representative Staff. Revised drawings shall reflect available information as to how the work was constructed. The following record drawing sets shall be provided to the Owner.

4.2.9.1. Electronic set of record drawings in PDF format.

5. Project Management and Quality Control

5.1. Provide project management for Design Phase Services, Surveying and Geotechnical Engineering Services, and Advertisement and Bid Phase Services. Project management shall include developing and implementing a project management plan; tracking and managing internal schedules of work; monitoring and addressing issues related to the scope of work, budget and deliverables; preparing and processing monthly billings; providing labor resources necessary to fulfill scoped work; scheduling and participating in quality control reviews; and providing updates to the Owner on a regular basis.

5.1.1. The Engineer shall coordinate efforts on project tasks identified above.

5.1.2. The Engineer shall prepare a common monthly invoice.

5.2. Meetings and Site Visits

5.2.1. The Engineer shall conduct a Project Initiation Meeting with the Owner at the Owner's facility at the beginning of the Project to review and confirm the scope, schedule, resources, and responsibilities. Initiation meeting with the Owner shall clarify and define the Owner's expectations, requirements and responsibilities on the Project and review Engineer's services. The meeting shall discuss design concepts, information and documents, design criteria, outline specifications, and conceptual opinions of probable project costs.

5.2.1.1. Confirm the Project objectives, scope of work, milestone schedule, and Owner expectations.

5.2.1.2. Confirm and Identify information needed from the Owner for the Project and determine the most efficient method for obtaining information.

5.2.1.3. Confirm critical Project success factors and Project deliverables.

5.2.1.4. Identify reporting requirements and other information needed to manage and monitor the progress of this Project.

5.2.1.5. Prepare draft meeting notes and list of action items resulting from meeting. Provide a draft copy of meeting notes in portable document format (PDF) to the Owner's Project Manager for distribution and review to Owner's staff.

5.2.1.6. Prepare final meeting notes and list of action items incorporating comments from the Owner. Provide a final copy of meeting notes in PDF format to the Owner's Project Manager for distribution to the Owner's staff.

5.2.2. The Engineer shall conduct virtual project review meetings at the 50% and 90% completion milestones.

5.2.2.1. The Engineer shall prepare an agenda for and moderate the meetings.

5.2.2.2. Prepare draft meeting notes and list of action items resulting from meeting. Provide a draft copy of meeting notes in PDF format to the Owner's Project Manager for distribution and review to Owner's staff.

5.2.2.3. Prepare final meeting notes and list of action items incorporating comments from the Owner. Provide a final copy of meeting notes in PDF format to the Owner's Project Manager for distribution to the Owner's staff.

5.2.3. The Engineer shall conduct a 0%, 60%, and 90% internal quality control meeting. Senior level staff not associated with the design of the project shall review and provide design recommendations to the design team. Meetings will be held at the Engineer's office in Fort Worth.

5.2.4. The Engineer will make up to two (2) additional site visits during design.

6. Schedule

6.1. The time period for performance of Design and Advertisement and Bid Phase services identified under Basic Services as detailed above shall be completed within 210 days of the execution date of this Agreement plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the final design documents, if such approval is to be obtained during the Design Phase. The Construction Phase services are based on a substantial construction schedule of 12 calendar months. If the construction schedule is extended due to Covid-19 related issues or other issues, the additional meeting time and site visits would be considered an Additional Service.

7. Special Services

7.1. Special Services incidental to the Project, but not included within the scope of Basic Services covered above, which may be performed or arranged for separately by the Owner or may be added to the Engineer's responsibilities by mutual agreement and written authorization. At this time, no Special Services are included in the scope of work.

8. Additional Services

8.1. Additional Services are those services not included in General Services that may be required for the Project but cannot be defined sufficiently at this time to establish a Scope of Work. These include, but are not necessarily limited to the following:

8.1.1. Design of other improvements not identified in Basic or Special Services.

8.1.2. Other services beyond those included in Basic or Special Services that are approved by the Owner.

8.1.3. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

8.1.4. Providing additional hard copies of technical memorandums, reports, plans, specifications, OPCCs, and contract documents beyond those specifically described in Basic and Special Services.

8.1.5. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation, review, or payment of fees for environmental assessments and impact statements, storm water discharge permits, 404 permit applications, or any other type of permit; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

8.1.6. Services to investigate existing conditions of facilities (in addition to those furnished under Basic Services), make measured drawings of, or to verify the accuracy of drawings or other information furnished by Owner or others.

- 8.1.7. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
- 8.1.8. Modifications to the design of improvements previously approved by the Owner by acceptance without comment on conceptual or detailed design progress submittals.
- 8.1.9. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
- 8.1.10. Attending additional meetings or visits to the site during design (if required) that are not identified in Sections 1.3.1 and 1.3.4 above.
- 8.1.11. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof or other services attributable to more than one prime construction contract.
- 8.1.12. Providing renderings or models for Owner's use.
- 8.1.13. Preparation of operation and maintenance manuals if not already in the scope of services.
- 8.1.14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required.
- 8.1.15. Services in making revisions to drawings and specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the construction contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the project; evaluation and determination of proposed "or equals" or substitutions, whether proposed before or after award of the construction contract, above the number specified under Basic Services.
- 8.1.16. Additional visits to the site during construction (if required) that are not identified in Section 5.1 above.
- 8.1.17. Services requiring out-of-town travel of Engineer other than for visits to the Site or Owner's office.
- 8.1.18. Providing construction surveys and staking to enable Contractor to perform its work.
- 8.1.19. Property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.

- 8.1.20. Processing additional shop drawings, operation and maintenance manuals, requests for information, payment requests/applications, or contract modifications above the numbers specified under Basic Services.
- 8.1.21. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
- 8.1.22. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
- 8.1.23. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
- 8.1.24. Easement acquisition assistance or aid in acquiring property in fee, including in-house labor by the Engineer, subconsultant services or property appraisals.
- 8.1.25. Corrosion studies.
- 8.1.26. Archeological investigations.
- 8.1.27. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
- 8.1.28. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
- 8.1.29. GIS processing of geophysical and/or geotechnical data beyond the assumptions provided in Basic or Special Services.
- 8.1.30. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
- 8.1.31. Public relation activities.
- 8.1.32. Services known to be required for completion of the Project that the Owner agrees are to be furnished by the Engineer or by a subconsultant that cannot be defined sufficiently at this time to establish the maximum compensation.
- 8.1.33. Services in connection with work change directives and change orders to reflect changes requested by Owner.

Exhibit B

Compensation

1. Basic Services of Engineer

Owner shall pay Engineer for Basic Services of Engineer rendered for "Scope of Services" as provided in this agreement. Fees shall be paid per Article 7 of the General Terms and Conditions.

Compensation for the following Services actually completed shall be as shown below:

Task Item	Task Name	Budgeted Amount	Payment Terms
1.2.2	Design Phase – Parkdale Site	\$40,298	Lump Sum
1.2.3	Design Phase – Randell WTP/RWPS Electrical	\$42,298	Lump Sum
1.2.4	Design Phase – Randell WTP VFD	\$15,098	Lump Sum
1.2.5	Design Phase – SCADA System	\$46,128	Lump Sum
2	SCADA Configuration Services	\$61,200	Lump Sum
3	Bid Phase Services	9,632	Lump Sum
4	Construction Phase Services	46,090	Lump Sum
5	Project Management/Meetings/QC	44,940	Lump Sum
-	Expenses	35,185	Lump Sum
	TOTAL BASIC ENGINEERING SERVICES	\$340,879	Lump Sum

Cost reimbursable compensation shall be based on Engineer's personnel time at Engineer's hourly labor rates attached hereto as Table B -1 Hourly Fee Schedule for Professional Services. All direct expenses, including mileage, travel and lodging expenses, but excluding subcontract expenses, applied to the Basic Services of Engineer, shall be paid at invoice or internal office cost plus a **fifteen percent (15%)** service charge. Subcontract expenses shall be paid at direct cost plus a **ten percent (10%)** service charge. All sales, use, value added, business transfer, gross receipts, or other similar taxes will be added to Engineer's compensation when invoicing Owner.

Compensation for Basic Engineering Services shall be a lump sum amount of **\$340,879.00**.

2. Special Services of Engineer

For and in consideration of the Special Services set forth in Exhibit A, herein, the City shall pay and the Engineer shall receive compensation for personnel time plus expenses in an amount not to exceed **\$10,000.00** to be paid as follows:

Cost reimbursable compensation shall be based on Engineer's personnel time at Engineer's hourly labor rates attached hereto as Table B -1 Hourly Fee Schedule for Professional Services. All direct expenses, including mileage, travel and lodging expenses, but excluding subcontract expenses, applied to the Additional Services of Engineer, shall be paid at invoice or internal office cost plus a **fifteen percent (15%)** service charge. Subcontract expenses shall be paid at direct cost plus a **ten percent (10%)** service charge. All sales, use, value added, business transfer, gross receipts, or other similar taxes will be added to Engineer's compensation when invoicing Owner.

No Special Services shall be performed without written authorization from the City.

3. Additional Services of Engineer

Additional Services of Engineer, which may be required by the Owner, shall be based on actual hours and costs in accordance with Exhibit B-1. All direct expenses, including mileage, travel and lodging expenses, but excluding subcontract expenses, applied to the Additional Services of Engineer, shall be paid at invoice or internal office cost plus a **fifteen percent (15%)** service charge. Subcontract expenses shall be paid at direct cost plus a **ten percent (10%)** service charge. All sales, use, value added, business transfer, gross receipts, or other similar taxes will be added to Engineer's compensation when invoicing Owner.

4. Definitions

Direct Labor Cost: Salaries and wages paid to Engineer's personnel engaged directly on the Project, but do not include indirect costs, insurance costs, fringe benefits, overhead or profit. Direct Labor Cost is subject to annual calendar year adjustments.

Hourly Labor Rates: Direct Labor Cost plus a percentage applied to all such wages or salaries to cover payroll taxes, insurance premiums, benefits and all other overhead or profit.

Direct Expenses: All expenses incurred directly by the Engineer. These may include transportation costs, travel, meals, lodging, laboratory testing and analyses, telecommunication, computer services, document reproduction and processing, all direct expenses associated with outside consultants, and any other direct expense incurred by the Engineer.

**TABLE B-1
PLUMMER ASSOCIATES, INC.
HOURLY FEE SCHEDULE
2021**

Staff Description	Staff Code	2021 Rate
Admin Staff	A1 – A2	\$ 90.00
Admin Staff III	A3	\$ 95.00
Senior Admin Staff	A4	\$ 120.00
Designer/Technician	C1-C2	\$ 90.00
Designer/Technician III	C3	\$ 115.00
Senior Designer/Technician	C4	\$ 135.00
Field Tech I	LS1	\$ 80.00
Field Tech II	LS2	\$ 95.00
Survey Specialist I	LS3	\$ 105.00
Survey Specialist II	LS4	\$ 115.00
Survey Analyst	LS5	\$ 135.00
Chief of Parties	LS6	\$ 150.00
Engineer/Scientist Intern	ES0	\$ 60.00
Engineer-in-Training/Scientist-in-Training	ES1	\$ 115.00
Engineer-in-Training/Scientist-in-Training II	ES2	\$ 120.00
Engineer-in-Training/Scientist-in-Training III	ES3	\$ 130.00
Project Engineer/Scientist	ES4	\$ 145.00
Senior Project Engineer/Scientist	ES5	\$ 175.00
Project Manager	ES6	\$ 215.00
Senior Project Manager	ES7	\$ 240.00
Principal I	ES8	\$ 305.00
Principal II	ES9	\$ 320.00
Electrical Engineer in Training I	EE1	\$ 95.00
Electrical Engineer in Training II	EE2	\$ 120.00
Electrical Engineer in Training III	EE3	\$ 125.00
Electrical Specialist	EE4	\$ 145.00
Programmer	EE5	\$ 150.00
Programmer II	EE6	\$ 155.00
Senior Electrical Engineer	EE7	\$ 280.00

Billing rates may be adjusted by up to 4 percent annually (at the beginning of each calendar year) during the term of this agreement.

A multiplier of 1.15 will be applied to all direct expenses.

A multiplier of 1.10 will be applied to all sub-consultant expenses.

A technology charge will be billed at \$5 per labor hour.

Exhibit C**Insurance**

Engineer shall maintain the following minimum insurance for the duration of the Project:

I. Workers Compensation and Employer's Liability:

Workers Compensation:	Statutory Limits
Employer's Liability:	
Bodily Injury by Accident	\$ 1,000,000 Each Accident
Bodily Injury by Disease	\$ 1,000,000 Each Employee
Bodily Injury by Disease	\$ 1,000,000 Policy Limit
Required Endorsements:	
Notice of Cancellation – as required by Section 6 below.	
Waiver of Subrogation – as required by Section 7 below.	

II. General Liability; Products - Completed Operations Coverage and Contractual Liability:

General Each Occurrence:	\$ 1,000,000
General Aggregate:	\$ 2,000,000
Personal and Advertising Injury:	\$ 1,000,000
Products – Comp/Op Aggregate:	\$ 2,000,000

Required Endorsements:

Additional Insured: Additional insured status shall be provided in favor of the Owner Parties on ISO forms CG 20 10, CG 2026 or an equivalent approved by the Owner

Primary and Non-Contributing Liability: It is the intent of the parties to this Contract that all insurance coverage required herein shall be primary to and shall seek no contribution from all insurance available to Owner Parties, with Owner Parties' insurance being excess, secondary and non-contributing. This CGL coverage shall be endorsed to provide such primary and non-contributing liability coverage.

Notice of Cancellation – as required by Section 6 below.
Waiver of Subrogation – as required by Section 7 below.

III. Umbrella Liability:

Umbrella Each Occurrence:	\$ 4,000,000
Umbrella Aggregate:	\$ 4,000,000

Required Endorsements:

Notice of Cancellation – as required by Section 6 below.
Waiver of Subrogation – as required by Section 7 below.

IV. Automobile Liability: Owned, Hired, and Non-Owned Vehicles:

Combined Single Limit: \$ 1,000,000 Each Accident

Required Endorsements:

Notice of Cancellation – as required by Section 6 below.

Waiver of Subrogation – as required by Section 7 below.

V. Professional Liability:

Professional Liability Limit: \$ 2,000,000 Per Claim/Annual Aggregate

VI. Notice of Cancellation or Reduction by Endorsement in Coverage:

In the event of cancellation or reduction by endorsement in coverage or a non-renewal affecting the Owner, thirty (30) days prior written notice shall be given to the certificate holder.

VII. Waiver of Subrogation:

Engineer hereby agrees to waive its rights of recovery from Owner with regard to all causes of property and/or liability loss and shall cause a waiver of subrogation endorsement to be provided in favor of the Owner on all insurance coverage carried by the Engineer, whether required or not (except Engineer's professional liability insurance).

VIII. Evidence of Insurance:

Certificates of Insurance shall be attached hereto.

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance changing the zoning of the subject property from the Commercial Zoning District to the Single Family Five (SF-5) Zoning District, located at 129 East Bond Street. (Case No. 2021-058Z)

Staff Contact

Bill Medina, Senior Planner
bmedina@cityofdenison.com
903-465-2720

Summary

- The applicant is requesting to rezone the property from the Commercial Zoning District to the Single Family Five (SF-5) Zoning District
- The proposed Zoning District change complies with the Comprehensive Plan.

Staff Recommendation

The proposed rezone will allow for the residential development of the subject property and conforms with the Comprehensive Plan. City staff recommends approval of the zoning change.

Recommended Motion

"I move to approve the Ordinance amending the zoning of the subject property from the Commercial Zoning District to the Single Family Five (SF-5) Zoning District."

Background Information and Analysis

The applicant is requesting to rezone the property from the Commercial Zoning District to the Single Family Five (SF-5) Zoning District. As shown in the aerial exhibits, the area has largely been residentially developed; future development in this area will also continue to be residential in nature. Rezoning the subject property conforms with the Comprehensive Plan. The proposed zoning change will allow the property owner to construct a new single-family detached residences.

According to Ordinance Section 28.10, City staff and the Planning and Zoning Commission shall consider the following factors when reviewing rezone requests:

1. *Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned, and their relationship to the general area and to the city as a whole;*

Yes, the proposed uses are compatible with the adjacent residential uses in the area. The general area has been developed in a residential manner.

2. *Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area;*

There are no proposed plans to improve existing street, water supply, sanitary sewer systems, or other utilities.

3. *The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the city, and any special circumstances that may make a substantial part of such vacant land unavailable for development;*

While there are other vacant infill lots, pending rezoning, these properties will be ready for residential development.

4. *The recent rate at which land is being developed in the same zoning classification as the request, particularly in the vicinity of the proposed change;*

Over the past year, several infill lots have been rezoned for residential uses. Each rezone request is usually followed with an expedient response from the applicant to move forward with developing residential units.

5. *How other areas designated for similar development will be, or are likely to be, affected if the proposed amendment is approved;*

Other nearby areas should not be negatively affected as this area is engaged in similar residential uses.

6. *Whether the zoning petition is consistent with the current land use plan; and*

Yes, this zoning petition is consistent with the Comprehensive Plan.

7. *Any other factors that will substantially affect the public health, safety, morals, or general welfare.*

Other factors which may substantially affect general welfare have been addressed above.

Financial Considerations

N/A



Prior Board or Council Action

The Planning and Zoning Commission recommended approval on May 25, 2021.

Alternatives

- The City Council may table, deny, or approve with conditions.



	<p>Case Number: 2021-058Z Rezone: Commercial to Single Family- 5</p>	
---	--	---

Zoning Map

Zoning District: Commercial to Single Family-5





~ PROPERTY ADDRESS ~
129 E. DAY STREET
DENISON, TEXAS

2

1

1/2" STEEL
ROD SET
(RPLS 6720)

1/2" STEEL
ROD SET
(RPLS 6720)

Block 12

Block 13

14

15

16

VACANT
LOT

6

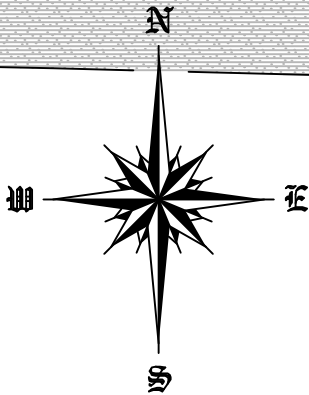
N. LAMAR AVENUE

1/2" STEEL
ROD FOUND

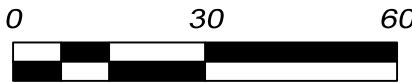
1/2" STEEL
ROD SET
(RPLS 6720)

1/2" STEEL
ROD SET
(RPLS 6720)

E. BOND STREET



~ BASIS OF BEARINGS ~
GRID NORTH, NAD 83
TEXAS STATE PLANE COORDINATE SYSTEM
NORTH CENTRAL ZONE (4202)



SCALE ~ 1" = 30'

Copyright © 2021
Copley Land Surveying, Inc.
All rights reserved.

Legend

- PP POWER POLE
- BOUNDARY LINE
- PROPERTY LINE
- OHE OVERHEAD ELECTRIC
- ASPHALT

I, John C. Copley, Registered Professional Land Surveyor do hereby certify that on the 20th day of April, 2021, a survey was made on the ground of the property shown hereon, described as **Lot 16, Block 12, ORIGINAL TOWN PLAT OF DENISON, TEXAS**, as shown by plat of record in Volume 28, Page 362, Deed Records, Grayson County, Texas and is correct, and that there are no discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or right-of-way, except as shown on the plat herewith, and that the plat herewith is a true, correct and accurate representation of the property legally described hereinabove.

John C. Copley
Registered Professional
Land Surveyor No. 6720
Firm No. 10194429



Copley Land Surveying

1702 Verdi Ln., Sherman, Texas 75090
TX 903-415-0643, OK 580-980-0181
john@copleylandsurveying.com



CLS Job# 21040212



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY, THE SAME BEING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY, AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY BY CHANGING THE ZONING CLASSIFICATION ON A CERTAIN TRACT OF LAND LEGALLY DESCRIBED AS LOT 16, BLOCK 12, ORIGINAL TOWN PLAT OF DENISON, GRAYSON COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 28, PAGE 362, DEED RECORDS OF GRAYSON COUNTY, TEXAS, COMMONLY REFERRED TO AS 129 E BOND ST, DENISON, TX, AND MORE PARTICULARLY DESCRIBED AND DEPICTED IN EXHIBIT “A”, FROM ITS ZONING CLASSIFICATION OF COMMERCIAL DISTRICT TO SINGLE FAMILY-5 DISTRICT; PROVIDING THAT SUCH TRACT OF LAND SHALL BE USED IN ACCORDANCE WITH THE REQUIREMENTS OF THE COMPREHENSIVE ZONING ORDINANCE AND ALL OTHER APPLICABLE ORDINANCES OF THE CITY; PROVIDING THAT THE ZONING MAP SHALL REFLECT THE SINGLE FAMILY-5 DISTRICT FOR THE PROPERTY; PROVIDING A PENALTY; PROVIDING REPEALING, SEVERABILITY, AND SAVINGS CLAUSES; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Denison, Texas (hereinafter referred to as “City”) is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City Council adopted Chapter 28 of its Code of Ordinances, the same being the Comprehensive Zoning Ordinance of the City, which governs the use and development of land in the City (the “Zoning Ordinance”); and

WHEREAS, JJM Enterprises LLC, Series Z1 – 129 E Bond St (the “Owner”) owns Lot 16, Block 12, Original Town Plat of Denison, Grayson County, Texas, according to plat recorded in Volume 28, Page 362, Deed Records of Grayson County, Texas, as described and depicted in **Exhibit “A,”** which is attached and incorporated as if fully set forth herein (the “Property”), has made an application under the provisions of the Zoning Ordinance for a zoning change from the current zoning district classification of Commercial District to Single Family-5 District; and

WHEREAS, having considered the Owner’s requested change to the Property’s zoning district classification of Commercial District to Single Family-5 District, and the compatibility of such zoning for the Property with surrounding uses and with the Comprehensive Land Use Plan of the City; and

WHEREAS, after public notices were given in compliance with State law and public hearings were conducted, and after considering the information submitted at those public hearings and all other relevant information and materials, the Planning and Zoning Commission of the City

has recommended to the City Council the adoption of the amendments to the Zoning Ordinance as set forth in this Ordinance; and

WHEREAS, after complying with all legal notices, requirements, and conditions, a public hearing was held before the City Council at which the City Council considered, the recommendation of the Planning and Zoning Commission, and among other things, the character of the land and its suitability for particular uses, and compatibility with surrounding uses, with a view of encouraging the most appropriate use of land in the City, and the City Council does hereby find that the rezoning approved hereby accomplishes such objectives.

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

SECTION 1. Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein, and found to be true.

SECTION 2. Findings. After due deliberation and consideration of the recommendation of the Planning and Zoning Commission and the information and other materials received at the public hearing, the City Council has concluded that the adoption of this Ordinance is in the best interests of the City, and of the public health, safety, and welfare.

SECTION 3. Zoning Amendments. Chapter 28 of the Code of Ordinances of the City, the same being the City's Comprehensive Zoning Ordinance, is hereby amended in the following particulars, and all other articles, chapters, sections, paragraphs, sentences, phrases, and words not expressly amended hereby are hereby ratified and affirmed.

The zoning district classification on the Property is hereby changed from Commercial District to Single Family-5 District. The Property shall be subject to all applicable City ordinances and regulations governing a Single Family-5 District.

SECTION 4. Zoning Map. The Zoning Map of the City, adopted by Section 28.3 of the Code of Ordinances, and on file in the office of the Planning Director is hereby amended to reflect the foregoing zoning use changes herein made.

SECTION 5. Severability. Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

SECTION 6. Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 7. Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance or the Zoning Ordinance, as they exist or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction therefore, shall be fined in a sum not exceeding Two Thousand and No/100 Dollars (\$2,000.00). Each continuing day's violation shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 8. Publication and Effective Date. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

SECTION 9. Open Meeting. That it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given, all as required by Article 551.041, Texas Government Code.

AND IT IS SO ORDERED.

On motion by Councilmember _____, seconded by Councilmember _____, the above and foregoing Ordinance was passed and approved by the following vote:

Ayes:

Abstentions:

Nays:

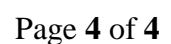
At regular meeting June 7, 2021.

JANET GOTT, MAYOR

ATTEST:

Christine Wallentine, City Clerk

**BEING LOT 16, BLOCK 12, ORIGINAL TOWN PLAT OF DENISON, GRAYSON
COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 28, PAGE 362,
DEED RECORDS OF GRAYSON COUNTY, TEXAS, COMMONLY REFERRED TO AS
129 E BOND ST**



City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, conduct a public hearing and take action on an Ordinance amending Section 28.43.4 of Chapter 28, the Comprehensive Zoning Ordinance. (Case No. 2021-066ZO)

Staff Contact

John Webb, Executive Director of Planning and Community Development

jwebb@cityofdenison.com

903-465-2720 x2466

Summary

- Section 28.43 of the Comprehensive Zoning Ordinance provides requirements and standards for Planned Development (PD) Districts.
- Section 28.43.4 provides minimum acreage requirements for PD's designed to accommodate residential, non-residential, and mixed-use developments but not to permit "spot" zoning of small tracts.
- The minimum acreage requirement for single-family detached, attached, and duplex uses is five (5) acres. In order to accommodate unique in-fill, residential developments on smaller tracts of land, staff recommends the minimum acreage requirement be reduced to three (3) acres.

Staff Recommendation

Staff recommends approval of the proposed amendment to the Comprehensive Zoning Ordinance.

Recommended Motion

"I move to approve the proposed amendment to the Comprehensive Zoning Ordinance."

Background Information and Analysis

As stated in the Zoning Ordinance, the "purpose of a Planned Development Zoning District (PD District) is to provide for the development of land as an integral unit for single or mixed use in accordance with a PD concept plan that may include uses, regulations and other requirements that vary from the provisions of other zoning districts. PD Districts are intended to implement generally the goals and objectives of the City's Comprehensive Plan. PD Districts are also intended to encourage flexible and creative planning, to ensure the compatibility of land uses, to allow for the adjustment of changing demands to meet the current needs of the community, and to result in a higher quality development for the community than would result from the use of conventional zoning districts."

In considering new residential developments, two (2) criteria contained within the PD standards are applicable:

1. The land consists of areas that are proposed for redevelopment or infill development, and special design considerations are deemed desirable; and
2. The land consists of unusually configured parcels that cannot be developed efficiently under the base district standards.

Within the City, there are parcels containing less than five (5) acres which could benefit by the establishment of a PD. For reference, the Zoning Ordinance permits the establishment of a PD for nonresidential developments with a minimum of two (2) acres and mixed-used developments with a minimum of three (3) acres.

Staff believes reducing the minimum acreage requirement for a residential PD from five (5) to three (3) acres is appropriate and does not constitute “spot” zoning.

Financial Considerations

N/A

Prior Board or Council Action

The Planning and Zoning Commission recommended approval of the proposed amendment to the Zoning Ordinance on May 25, 2021

Alternatives

The City Council may table, deny, or approve with amendments to the proposed changes.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF DENISON, BEING THE COMPREHENSIVE ZONING ORDINANCE, SPECIFICALLY AMENDING ARTICLE III “ZONING DISTRICTS”, SECTION 28.43 “PD—PLANNED DEVELOPMENT OVERLAY DISTRICT”, SUBSECTION 28.43.4 “MINIMUM DISTRICT SIZE”; PROVIDING A PENALTY CLAUSE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; PROVIDING SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVING FOR PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Denison (the “City”) is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City Council of the City (the “City Council”) adopted Chapter 28 of its Code of Ordinances, the same being the Comprehensive Zoning Ordinance of the City (the “Zoning Ordinance”), which sets forth various regulations for Planned Development Overlay Districts; and

WHEREAS, after public notices were given in compliance with State law and public hearings were conducted, and after considering the information submitted at those public hearings and all other relevant information and materials, the Planning and Zoning Commission of the City has recommended to the City Council the adoption of the amendment to the Zoning Ordinance as set forth in this Ordinance; and

WHEREAS, after complying with all legal notices, requirements, and conditions, a public hearing was held before the City Council at which the City Council considered the recommendation of the Planning and Zoning Commission, and among other things, the necessity for orderly and appropriate regulations of the use of land and the erection of structures thereon, and having considered the proposed amendment to the Zoning Ordinance and the appropriateness of the amendment, the City Council does hereby find that the amendment to the Zoning Ordinance approved hereby accomplishes such objectives.

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

SECTION 1. INCORPORATION OF PREMISES. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. FINDINGS. After due deliberations and consideration of the recommendation of the Planning and Zoning Commission and the information and other materials received at the public hearing, the City Council has concluded that the adoption of this Ordinance is in the best interests of the City, and of the public health, safety and welfare of its citizens.

SECTION 3. AMENDMENT. Section 28.43.4, “Minimum District Size,” of the Code of Ordinances of the City, the same being the City’s Zoning Ordinance, is hereby amended as follows, with deletions indicated by strikethrough, and insertions indicated by underlines:

28.43.4. Minimum district size:

No PD District shall be established for a gross contiguous area less than the following:

- A. Single-family detached, attached and duplex uses: ~~five (5)~~ three (3) acres;
- B. Multiple family uses: five (5) acres;
- C. Nonresidential uses: two (2) acres;
- D. Mixed residential and nonresidential uses: three (3) acres

SECTION 4: SAVINGS/REPEALING CLAUSE. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5: SEVERABILITY. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 6: PENALTY. Any person, firm, corporation or entity violating this Ordinance or any provision of the City’s Zoning Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not exceeding Two Thousand Dollars (\$2000.00). Each continuing days’ violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 7: PUBLICATION AND EFFECTIVE DATE. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

SECTION 8. OPEN MEETING. That it is hereby found and determined that the meeting at which this ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas

Government Code.

AND IT IS SO ORDERED.

On motion by Council Member _____, seconded by Council Member _____, the above and foregoing ordinance was passed and approved on this the 7th day of June, 2021, by the following vote:

Ayes:
Abstentions:
Nays:

At regular meeting June 7, 2021.

JANET GOTT, MAYOR

ATTEST:

Christine Wallentine, City Clerk

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, and take action on an Ordinance amending Chapter 11 of the City's Code of Ordinances to expand the reach of the child safety zone.

Staff Contact

Greg Mitchell, Library Director
gmitchell@cityofdenison.com
903.465.1797 Office | 903.647.3651 Cell

Summary

- The City Council of the City of Denison, Texas has determined that establishing a policy to restrict the residential property available for residence of sex offenders is in the best interests of public safety of the citizens of the City.
- The Council adopted Ordinance No. 4517 establishing the Child Safety Zone in June of 2009.
- As written, the current ordinance outlines the residential restrictions of sex offenders in the City of Denison but does not prohibit sex offenders from visiting locations where children frequently gather.
- The drafted amendment would expand the current Child Safety Zone to prohibit sex offenders from going to or within 1,000 feet of the real property comprising a school, child care facility, child care institution, library, park or playground, or other places where children frequently gather.

Staff Recommendation

Staff recommends approval.

Recommended Motion

"I move to approve the Ordinance amending Chapter 11 of the City's Code of Ordinances to expand the reach of the child safety zone."

Background Information and Analysis

Library staff began considering this new provision over the past few months as an effort to ensure the children that visit the library have a safe environment to read, learn, and play. It is recognized that other city divisions, such as Parks, can benefit from these new restrictions. Ultimately the children of our community benefit most. Staff believes adoption of this Ordinance is in the best interest of the City and of the public health, safety and welfare of citizens.

Financial Considerations

None.

Prior Board or Council Action

The Council adopted Ordinance No. 4517 establishing the Child Safety Zone in June of 2009. This ordinance restricts the location of a sex offender's residence.

Alternatives

Council can adopt the amended ordinance as presented, maintain the current ordinance as written, make suggestions for a later adoption date, or table the item.

ORDINANCE NO. 4517

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS AMENDING CHAPTER 11 OF THE CODE OF ORDINANCES BY THE ADDITION OF A NEW ARTICLE NUMBERED IV. AND ENTITLED "RESIDENTIAL RESTRICTIONS OF SEX OFFENDERS", MAKING IT UNLAWFUL FOR CERTAIN SEXUAL OFFENDERS TO RESIDE WITHIN 1500 FEET OF PREMISES HEREIN DEFINED AND ENUMERATED; PROVIDING EXCEPTIONS TO THE ORDINANCE; PROVIDING PENALTIES FOR VIOLATIONS OF THE ORDINANCE, INCLUDING, BUT NOT LIMITED TO A FINE NOT TO EXCEED THE MAXIMUM AMOUNT ALLOWED BY LAW, PER DAY OF CONTINUING VIOLATION; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City Council of the City of Denison, Texas is a home-rule municipality under the Constitution and laws of the State of Texas with the authority to utilize its police powers to promote and provide for the health, safety and welfare of its citizens; and

WHEREAS, the City Council is cognizant of the numerous convictions for sexual offenses involving children; and

WHEREAS, the City Council finds from evidence and statistical reports reveal the recidivism rate for released sex offenders is alarmingly high, especially for those who commit their crimes against children; and

WHEREAS, the City Council wishes to promote the city as an attractive environment for families with young children; and

WHEREAS, the City Council finds that establishing a policy to restrict the residential property available for residence of sex offenders will provide better protection for children in the city; and

WHEREAS, the Charter of the City of Denison, the Constitution of the State of Texas, and the state law, including Chapter 51, Texas Local Government Code, provide ample authority for the City of Denison to adopt ordinances promoting and providing for the public health, safety and good order of the City; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS:

SECTION 1: That the Code of Ordinances of the City of Denison, Texas be, and is hereby, amended by adding a new Article to Chapter 11 of such Code providing for the restricting of residential property occupied by sex offenders, such new Article to be numbered and read as follows:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENISON, TEXAS AMENDING CHAPTER 11, “MISCELLANEOUS OFFENSES”, OF THE CODE OF ORDINANCES OF THE CITY OF DENISON BY AMENDING THE TITLE OF ARTICLE IV, PROVIDING ADDITIONAL REGULATIONS ON SEX OFFENDERS, AND ADDING ARTICLE V “ILLEGAL SMOKING MATERIALS”; PROVIDING A PENALTY; PROVIDING REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the City of Denison, Texas (the “**City**”) is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, pursuant to the City Charter and Chapter 51 of the Texas Local Government Code, the City has the authority to enact rules and regulations to protect the safety of the community; and

WHEREAS, the City Council of the City of Denison, Texas (the “**City Council**”) has determined that restricting registered sex offenders from going to or being within child safety zones is in the best interests of public safety of the citizens of the City; and

WHEREAS, the City has taken notice that the regulations under Chapter 11, Article IV, Sec. 11-27 “Illegal smoking materials” are misplaced, and should be made a separate Article V, Sections 11-27 to 11-29 for purposes of clarity; and

WHEREAS, the City Council has concluded that the adoption of this Ordinance is in the best interests of the City and of the public health, safety and welfare of citizens.

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

Section 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2: Amendments.

- A. Article IV “Residential Restrictions of Sex Offenders” of Chapter 11 “Miscellaneous Offenses” of the City’s Code of Ordinances is hereby amended by changing the title to “Restrictions of Sex Offenders”, adding additional regulations as set out in Exhibit A, with

insertions underlined and deletions indicated by strikethrough, and moving the regulations under Sec. 11-27 to a new Article V, as described in Subsection B.

- B. Chapter 11 “Miscellaneous Offenses” of the City’s Code of Ordinances is hereby amended by adding Article V “Illegal Smoking Materials”, Sections 11-27 to 11-29, which shall replace the former Article IV, Sec. 11-27, as set out in Exhibit A, with insertions underlined and deletions indicated by strikethrough.

Section 4: Penalty. Any person, firm, corporation, or entity violating this Ordinance be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Two Thousand Dollars (\$2000.00). Each occurrence in violation of this Ordinance shall constitute a separate and distinct offense. Each day a violation of this Ordinance continues is a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City of Denison from filing suit to enjoin the violation. The City of Denison retains all legal rights and remedies available to it pursuant to local, state, and federal law.

Section 5: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Denison hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences clauses and phrases be declared unconstitutional or invalid.

Section 6: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

Section 7: Open Meetings. That it is hereby found and determined that the meeting at which this ordinance was passed was open to the public as required by law, and that public notice of the time, place and purpose of said meeting was given, all as required by Section 551.041 of the Texas Government Code.

Section 8: Effective Date. This Ordinance shall become effective upon its passage and publication as required by law.

AND IT IS SO ORDERED.

On Motion by Councilmember _____, seconded by Councilmember _____, the above and foregoing ordinance was passed and approved by the following vote:

Ayes:

Nays:

Abstentions:

At regular meeting _____, 2021.

JANET GOTT, MAYOR

ATTEST:

Christine Wallentine, City Clerk

Exhibit A

ARTICLE IV. - ~~RESIDENTIAL~~ RESTRICTIONS OF SEX OFFENDERS

Sec. 11-21. - Regulation of sex offenders.

The city council of the City of Denison finds that sex offenders who are required to register under state law as lifetime registrants present an extreme threat to the health, safety and welfare of children. It is the intent of this article to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by creating areas around locations where children regularly congregate in concentrated numbers wherein certain registered sex offenders and sexual predators are prohibited from going to, or establishing temporary or permanent residency.

Sec. 11-22. - Definitions.

For the purposes of this article, the following terms, words and the derivations thereof shall have the meaning given herein:

Child means any person under the age of seventeen (17).

Child care facility as defined by the city zoning ordinance.

Child care institution as defined by city zoning ordinance.

Child safety zone means public parks or playgrounds, private and public schools, public library, public swimming pools, child care facility, child care institution, public or private youth soccer or baseball field, crisis center or shelter, skate park, public or private youth center, and offices for child protective services.

Database means the Texas Department of Public Safety's sex offender database or the sex offender registration files maintained by the sex offender registration officer of the city police department.

Park or playground means any land, including improvements to the land that is administered, operated or managed by the city for the use of the general public as a recreational area.

Permanent residence means a place where the person abides, lodges or resides for fourteen (14) or more consecutive days.

School means a private or public pre-school, private or public elementary school or private or public secondary school.

Sex offender means an individual who has been convicted of or placed on deferred adjudication for a sexual offense and is required to register as a sexual offender under chapter 62 of the Texas Code of Criminal Procedure.

Temporary residence means a place where a person abides, lodges or resides for a period of fourteen (14) or more days in the aggregate, during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges or resides for a period of four (4) or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Sec. 11-23. - Sex offender prohibitions.

- (a) It is unlawful and an offense for a sex offender to establish a permanent residence or temporary residence within one thousand five hundred (1,500) feet of the real property comprising a school, child care facility, child care institution, park or playground or other places defined herein as a child safety zone.

- (b) It is unlawful and an offense for a sex offender to go in, or within one thousand (1,000) feet of the real property comprising a school, child care facility, child care institution, park or playground, or other places defined herein as a child safety zone.

Sec. 11-24. - Evidentiary matters.

- (a) It shall be prima facie evidence that this article applies to such a person if that person's record appears in/on the database and the database indicates that the victim was less than seventeen (17) years of age.
- (b) The distance of one thousand five hundred (1,500) feet shall be measured on a straight line from the closest boundary line of the sex offender's residence to the closest boundary line of the school, child care facility, child care institution, park or playground or other places defined herein as a child safety zone. The distance of one thousand (1,000) feet shall be measured on a straight line from the nearest property line of the school, child care facility, child care institution, park or playground or other places defined herein as a child safety zone.
- (c) In the case of multiple residences on one (1) property, measuring from the nearest property line of the residences to the nearest property line of the school, child care facility, child care institution, park or playground or other places defined herein as a child safety zone.
- (d) In cases of a dispute over measured distances, it shall be incumbent upon the person(s) challenging the measurement to prove otherwise. Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined by this section.
- (e) A map depicting the prohibited areas shall be created by the city and maintained by the city police department. The city shall review the map annually for changes. Said map will be available to the public at the city police department or available on the city website or city police department website.

Sec. 11-25. - Exceptions.

The following exceptions shall be a defense to prosecution for a violation of this article:

- (1) The person required to register in/on the database established the permanent residence or temporary residence and residency has been consistently maintained and the person has complied with all of the sex offender registration laws of the State of Texas, prior to the date of the adoption of this article, however this shall not be an exception to Sec. 11-23(b); or
- (2) The place defined herein as a child safety zone and within one thousand five hundred (1,500) feet of the permanent or temporary residence of the person required to register on/in the database was opened after the person established the permanent or temporary residence and complied with all sex offender registration laws of the state, however this shall not be an exception to Sec. 11-23(b); or
- (3) The information on/in the database is incorrect, and, if corrected, this section would not apply to the person who was erroneously listed on/in the database; or
- (4) The person required to register on/in the database was a minor when he or she committed the offense requiring such registration and was not convicted as an adult; or
- (5) The person required to register is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution located within the distances provided by this Article IV of the real property comprising a school, child care facility, child care institution, park or playground or other places defined herein as a child safety zone; or
- (6) The person required to register is under eighteen (18) years of age or a ward under a guardianship, who resides with a parent or guardian; or

- (7) The person required to register has been exempted by a court order from registration as a sex offender under state law; or
- (8) The person required to register has had the offense for which the sex offender registration was required reversed on appeal or pardoned; or
- (9) The person's duty to register on/in the database has expired.
- (10) Nothing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender.
- (11) It is an affirmative defense to prosecution of an offense under Section 11-23(b) of this Article that the person required to register was in, on, or within the specified distances of a child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes.

Article V – ILLEGAL SMOKING MATERIALS

11-27. - Definitions.

- (1) *Illegal smoking material* shall mean any substance, however marketed, which can reasonably be converted for smoking purposes whether it is presented as incense, tobacco, herbs, spices or any blend thereof if it includes any of the following chemicals or a comparable chemical:
 - a. Salvia divinorum or salvinorin A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;
 - b. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues;
 - c. (6aS, 1 OaS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10,10-tetrahydrobenzo[c]bromen-1-ol (also known as HU-211 or Dexamabinol);
 - d. 1-pentyl-3-(1-naphthoyl) indole (also known as JWH-018);
 - e. 1-butyl-3-(1-naphthoyl) indole (also known as JWH-073); or
 - f. 1-pentyl-3-(4-methoxynaphthoyl) indole (also known as JWH-081).

Products containing some or all of the above substances are currently being marketed under the following commercial names:

"K-2", "K-2 SUMMIT", "K-2 SEX", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCK-OUT 2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIREN' ICE", AND "SALVIADIVINORUM".

Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this section, regardless of whether they are marketed under alternative names.

- (2) *Illegal smoking material paraphernalia* shall mean any paraphernalia, equipment or utensil that is used or intended to be used in ingesting or inhaling illegal smoking materials and may include, but is not limited to:
 - a. A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

- b. A water pipe;
 - c. A carburetion tube or device;
 - d. A smoking or carburetion mask;
 - e. A chamber pipe;
 - f. A carburetor pipe;
 - g. An electric pipe;
 - h. An air-driven pipe;
 - i. A chillum;
 - j. A bong; or
 - k. An ice pipe or chiller.
- (3) *Person* shall mean an individual, a group of two (2) or more individuals, proprietorship, corporation, partnership, wholesaler, association or other legal entity, or any licensed or unlicensed business.

11-28. – Purpose and Prohibitions.

The purpose of this subsection is to prohibit the sale or delivery of illegal smoking materials as defined herein within the city limits of Denison and to prohibit the possession of illegal smoking materials within the city limits of Denison. Any form of delivery to include a simple gift constitutes a violation of this section.

- (1) *Sale, delivery, offer, or gift.* It shall be unlawful for any person to sell, offer to sell, deliver to or to give any illegal smoking material to any person.
- (2) *Use or possession of illegal smoking material.* It shall be unlawful for any person to have in their possession or to use illegal smoking materials within the corporate limits of Denison.
- (3) *Use or possession of illegal smoking paraphernalia.* It shall be unlawful for any person to have in their possession any illegal smoking paraphernalia with the intent to use it, to ingest, inhale or otherwise consume illegal smoking material. If a person is found in possession of this type of paraphernalia it will be a violation of this section if appropriate forensic testing is done on the paraphernalia and traces of illegal smoking material are present on the device.

11-29. - Defenses to prosecution.

- (1) It shall be a defense to prosecution for a violation of this section if the use of the illegal smoking material is at the direction or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the State of Texas.
- (2) It shall be a defense to prosecution under the terms of this section if any person charged with a violation can provide proper and complete historic documentation that the use of such materials is a portion of a religious undertaking or activity of a religious denomination in which they have long standing historic membership supported by documentation from clergy or spiritual leader recognized by the State of Texas.