



**CITY OF DENISON
CITY COUNCIL MEETING
AGENDA**

Monday, October 4, 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, October 4, 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. World Teachers' Day Proclamation
- B. Cybersecurity Awareness Month Proclamation
- C. Employee Years of Service Recognition

3. PUBLIC COMMENTS

Citizens may speak on 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 September 20, 2021.
- B. Receive a report, hold a discussion and take action on the appointment of Vincent Rhodes as a new member to the Parks and Recreation Commission to serve the remainder of an unexpired term ending April 30, 2022.

- C. Receive a report, hold a discussion, and take action on entering into a Master Services Agreement with McManus and Johnson Consulting Engineers for General Engineering Services development process updates, and miscellaneous engineering services for FY2022.
- D. Receive a report, hold a discussion and take action on a Lease Agreement between RadioVision, L.P. and the City of Denison for use of property located at 530 W. Main Street for recreation uses, primarily the construction and operation of a temporary outdoor ice-skating rink and associated structures and authorize the Mayor to execute the same.
- E. Receive a report, hold a discussion, and take action on a resolution appointing Greg Smith to the Technical Advisory Committee of the Grayson County Metropolitan Planning Organization as a voting member.
- F. Receive a report, hold a discussion and take action on an amendment to the Interlocal Agreement with the City of Pottsboro for the sale and delivery of water and authorizing the Mayor to execute the same.
- G. Receive a report, hold a discussion, and take action on a resolution adopting the Investment Policy for Funds for the City of Denison for fiscal year 2022.

5. PUBLIC HEARINGS

- A. Receive a report, hold a discussion, conduct a public hearing, and take action on an ordinance changing the zoning of one (1) lot from the Neighborhood Services District to the Single-Family 5 (SF-5) District located at 528 W. Florence Street. (Case No. 2021-101Z)
- B. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance adopting a Conditional Use Permit amending the hours and days of operation for Red Rock Saloon, located at 123 W. Woodard Street. (Case No. 2021-125CUP)
- C. Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance rezoning approximately 27.64 acres from the Agricultural District and the Single Family-7.5 District to a Planned Development Overlay District for Retail and Multi-Family uses on the east side of US 75, south of Crawford Street. (Case No. 2021-126PD)

6. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. Receive a report, hold a discussion, and take action on an Ordinance amending Section 28.26, Section 28.33, Section 28.46, Section 28.49, and Section 28.63 of Chapter 28, the Comprehensive Zoning Ordinance. (Case No. 2021-064ZO)
- B. Receive a report, hold a discussion, and take action on an ordinance amending Section 2-46, “Residency Requirements for Certain Appointees,” of Chapter 2, “Administration,” and Section 5-205, “Building Appeals Board Created,” of Chapter 5, “Buildings and Building Regulations,” of the Code of Ordinances by amending the requirement for certain members of the Building Appeals Board to be residents of the City of Denison.
- C. Receive a report, hold a discussion and take action on a resolution granting approval for the City Manager or his designee to enter into various loan documents with Truist Bank (previously Branch Banking & Trust Company), for a Vactor Mounted Ramjet Unit on a 4x4 Truck in the amount of \$211,748.

- D. Receive a report, hold a discussion and take action on awarding the bid to 5W Contracting, LLC for the 2021 Fall Overlay Program in the amount of \$441,567 and authorize the City Manager to enter into a contract.
- E. Receive a report, hold a discussion and take action on the purchase of a patch truck in the amount of \$203,036 from Kinloch Equipment & Supply, Inc. for street maintenance and authorize the City Manager to execute any associated documents.

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
- 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 1st day of October 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.



**CITY OF DENISON
CITY COUNCIL MEETING
MINUTES
Monday, September 20, 2021**

CALL TO ORDER

Announce the presence of a quorum.

Mayor Gott called the meeting to order at 6:00 p.m. City Council Members present were Brian Hander, Michael Courtright, James Thorne, Robert Crawley and Kristofor Spiegel. Council Member J.C. Doty was absent. Staff present were City Manager, Greg Smith, Assistant City Attorney, Cameron Saenz, City Clerk Christine Wallentine, and Deputy City Clerk, Fanchon Stearns. Department Directors and members of the media were also present.

1. INVOCATION, PLEDGE OF ALLEGIANCE AND TEXAS PLEDGE

Council Member James Thorne, Pastor of Alpha & Omega Community Baptist Church, gave the Invocation, which was followed by the Pledge of Allegiance and Texas Pledge led by the following kids from the Denison Boys and Girls Club:

Tay-Lynn Kimball – Scott Middle School
Mecca Nugent – Houston Elementary
Amina Nugent – Houston Elementary
Karleigh Cripe – Lamar Elementary
Lillian Jaynes – Lamar Elementary
Danielle Weatherwax – Lamar Elementary
A’jaela Woodson – Scott Middle School
Arryhianaua Woodson – Scott Middle School
Brantley Roberts – Lamar Elementary
Ace Johnson – Lamar Elementary
Samauri Brown – Scott Middle School
Tyrone Hill – Scott Middle School
Kyla Cox – Scott Middle School
Kayla Cox – Scott Middle School

2. PROCLAMATIONS AND PRESENTATION

A. Recognition of Outgoing DDA Board Member.

Mayor Gott recognized outgoing Denison Development Alliance Board Member, Matthew Looney. Mr. Looney has served for six years, with the last two years being the Board Chair. Matt has brought to the Board a love for the community and a commitment to help

create the quality of life that we are all seeking to provide. During his tenure on the Board, he has helped make decisions that have brought many new businesses to our community, has facilitated investments, both internal and external, and has supported our commitment to the heart of our City, our Historic Downtown. To name just a few things that have happened during Matt's leadership, we brought in HeyDay Entertainment, Urban Air Adventure Park, Victron Texas Best Travel Center, Chik-Fil-A, the Rail Yard, and Swagit, to name a few. There have also been some very, very exciting redevelopment, which includes our Hotel Denison and, of course, the iconic Katy Depot. There have also been grants that have happened during Mr. Looney's tenure that encouraged existing and future business investments which include, eCommerce, micro manufacturing, downtown fire suppression, downtown façade reclamation, which has made a huge difference on our Historic Main Street, the redevelopment of the former AT&T Service Center on Morton Street, and finally, but certainly not least, the acquisition of the JM Eagle property. These are just a few of the accomplishments during Mr. Looney's tenure. The Mayor stated that while Mr. Looney will no longer be part of the DDA Board, we certainly hope he quickly gets plugged in so he can continue to make a difference wherever he lands as we continue to work together to make Denison the community of choice.

B. Proclamation Honoring Fallen Service Members

Mayor Gott presented a Proclamation honoring the 13 fallen service members. America has been blessed with an abundance of men and women who proudly and bravely serve their country sacrificing a great deal for the cherished causes of freedom and democracy. The brave men and women of our Armed Forces represent the very best of our great Nation, matched only by the families who walk beside them in their service. The sacrifices that such members of the United States Armed Forces and of the family members that support them, have preserved the liberties that have enriched this nation making it unique in the world community. We owe a debt of gratitude to the men and women who gave their lives in service to this Nation and to their families who remain forever changed. On August 26, 2021, Eleven Marines, one Navy Corpsman and one Army Soldier were killed during an attack outside of the Hamid Karzai International Airport in Kabul, Afghanistan while supporting Operation Freedom's Sentinel. These warriors gave their lives to save thousands of men, women and children. Their courage and selflessness represent the highest ideals of America and to them we pay solemn tribute: Sergeant Johanny Rosario Pichardo, Sergeant Nicole L. Gee, Staff Sergeant Darin T. Hoover, Corporal Hunter Lopez, Corporal Daegan W. Page, Corporal Humberto A. Sanchez, Lance Corporal David L. Espinoza, Lance Corporal Jared M. Schmitz, Lance Corporal Rylee J. McCollum, Lance Corporal Dylan R. Merola, Lance Corporal Kareem Mae'Lee Grant Nikoui, Navy Corpsman Maxton W. Soviak, and Staff Sergeant Ryan C. Knauss. Mayor Gott, on behalf of the City Council and the citizens of Denison, Texas, do honor the memory of every last Soldier, Sailor and Marine, and we humbly grieve with their families who persevere with remarkable courage, strength and grace. Today and every day, we hold in our hearts those who have answered the knock on the door, accepted the flag folded with precision, said their final farewell and borne the absence of their fallen hero.

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 City Clerk, Christine Wallentine, if any Request to Speak Cards were received with regard to any of the agenda items. Ms. Wallentine confirmed there were no Request to Speak Cards returned to her prior to reaching the public comments section. Therefore, no public comments were received.

Prior to announcing the Consent Agenda, Mayor Gott announced that Item 4E below would be pulled and considered individually following the Consent Agenda.

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 September 7, 2021.
- B. Receive a report, hold a discussion and take action on authorizing the City Manager to enter into an interlocal agreement involving City of Denison, City of Sherman, and Grayson County pertaining to the 2021 U.S. Department of Justice Assistance Grant (JAG) Program.
- C. Receive a report, hold a discussion, and take action on an ordinance changing existing classifications for the Police Department.
- D. Receive a report, hold a discussion and take action on a resolution adopting guidelines for an amnesty program in Municipal Court during the month of October.
- E. Receive a report, hold a discussion and take action on the reappointment of Jared Johnson and Mark Kuneman, and the appointment of Tom Akins as a new member, to the Building and Industrial Corporation, Inc., d/b/a Denison Development Alliance, Board of Directors, each to serve a three-year term, commencing on October 1, 2021, and the appointment of Brett Evans to serve as the Board Chair for a period of one-year, effective October 1, 2021.
- F. Receive a report, hold a discussion, and take action on an Ordinance amending Section 30-4 and Section 30-6 of Chapter 30, Historic Preservation, of the Code of Ordinances.
- G. Receive a report, hold a discussion and take action on an Amended Professional Services Agreement between the City of Denison and Bobby Atteberry to provide services as the City's Interim Assistant City Manager, and authorize the City Manager to execute the same.

Council Action

On motion by Mayor Pro Tem Hander, seconded by Council Member Crawley, the City Council unanimously approved **Resolution No. 4064**, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS ADOPTING GUIDELINES FOR AN AMNESTY PROGRAM DURING THE MONTH OF OCTOBER AND OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE"; **Ordinance No. 5162**, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, REPEALING ORDINANCE NOS. 4700 AND 4707 AND ESTABLISHING CLASSIFICATIONS FOR THE POLICE DEPARTMENT; PROVIDING FOR APPOINTMENTS OF POSITIONS CLASSIFIED IMMEDIATELY BELOW DEPARTMENT HEAD; PROVIDING FOR SEVERABILITY; FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND PROVIDING AN EFFECTIVE DATE"; **Ordinance No. 5163**, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS AMENDING SECTION 30-4 (CERTIFICATE OF APPROPRIATENESS) AND SECTION 30-6 (CERTIFICATE OF APPROPRIATENESS PROCEDURES) OF CHAPTER 30 (HISTORIC PRESERVATION) OF THE DENISON CODE OF ORDINANCES TO PROVIDE FOR

CITY COUNCIL APPROVAL TO CHANGE THE EXTERIOR FACADE OF BUILDINGS IN THE CITY'S HISTORIC DISTRICTS; PROVIDING FOR SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVIDING A PENALTY CLAUSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE"; and the rest of the Consent Agenda, with the exception of Item 4E., as presented.

Mayor Gott then called item 4.E.

There was no discussion or questions from Council.

On motion by Council Member Crawley, seconded by Council Member Spiegel, the City Council unanimously approved the reappointment of Jared Johnson and Mark Kuneman, and the appointment of Tom Akins as a new member, to the Building and Industrial Corporation, Inc., d/b/a Denison Development Alliance, Board of Directors, each to serve a three-year term, commencing on October 1, 2021, and the appointment of Brett Evans to serve as the Board Chair for a period of one-year, effective October 1, 2021.

5. EXECUTIVE SESSION

The Council then adjourned into Executive Session at 6:18 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 on Attorney-Client Privilege matters.
2. Confer with City Attorney on economic development methods.

B. Discuss the possible purchase, exchange, lease or sale of value of real property (public discussion of such would not be in the best interests of the City's bargaining position). Section 551.072.

1. Discuss potential real property acquisition.

C. Discuss negotiated gifts or donations to the City (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. Fire Chief/Interim Fire Chief/Executive Director of Planning and Community Development.

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 7:21 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 on Attorney-Client Privilege matters.

Council Action

No action taken.

2. Confer with City Attorney on economic development methods.

Council Action

No action taken.

B. Discuss the possible purchase, exchange, lease or sale value of real property (public discussion of such would not be in the best interests of the City's bargaining position). Section 551.072.

1. Discuss potential real property acquisition.

Council Action

No action taken.

C. Discuss negotiated gifts or donations to the City (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. Fire Chief/Interim Fire Chief/Executive Director of Planning and Community Development.

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.**

Council Action

No action taken.

There being no further business to come before the Council, the meeting adjourned at 7:22 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 the appointment of Vincent Rhodes as a new member to the Parks and Recreation Commission to serve the remainder of an unexpired term ending April 30, 2022.

Staff Contact

Justin Eastwood
jeastwood@cityofdenison.com
903-465-2720

Summary

- The Parks and Recreation Commission was established by Ordinance No. 4632 and consists of five members and serves in an advisory capacity in matters related to parks and recreation.
- Terms of office are two-year terms, with no more than three (3) consecutive full terms of office for a total of six (6) years. Commissioners are required to reside inside the Denison City limits.
- Recently, Commissioner Julia Craze resigned her position on the board due to moving out of state, leaving an open, unexpired term on the Commission.
- Staff has received an application from Denison resident, DISD teacher and coach, Vincent Rhodes, whom staff thinks would be an asset to the Commission as he is an already active community participant.

Staff Recommendation

Staff recommends approval of the appointment of Vincent Rhodes to the Parks and Recreation Commission.

Recommended Motion

“I move to appoint Vincent Rhodes as a new member to the Parks and Recreation Commission to serve an unexpired term ending on April 30, 2022.”

Background Information and Analysis

The Parks and Recreation Commission was established by Ordinance No. 4632. It consists of five members. The Parks and Recreation Commission serves in an advisory capacity in all matters related to parks and recreation. Terms of office are two-year terms, with no more than three (3) consecutive full terms of office for a total of six (6) years. Commission members are required to reside within the Denison City limits in order to be eligible to serve and are appointed by the City Council. Recently, Commissioner Julia Craze resigned her position on the board because she will be moving out of state later this month, leaving an open, unexpired term on the Commission. Staff has received an application from Denison resident, DISD teacher and coach, Vincent Rhodes, whom staff thinks would be an asset to the Commission as he is an already active community participant. Staff would like to present to the City Council members the application that was submitted to fill the vacated seat.

Financial Considerations

Staff has no financial considerations required at this time.

Prior Board or Council Action

Council's most recent Parks Commission appointment was made in April 2021.

Alternatives

City Council may table, deny, or modify the item.

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, and take action on entering into a Master Services Agreement with McManus and Johnson Consulting Engineers for General Engineering Services development process updates, and miscellaneous engineering services for FY2022.

Staff Contact

John Webb, AICP
Executive Director of Planning and Community Development
jwebb@cityofdenison.com
903.465.2720 x2466

Summary

- McManus and Johnson Consulting Engineers (MJCE) supported City staff with General Engineering services in FY2021, including plat and plan review, development process materials development, and miscellaneous engineering services.
- This contract is for \$40,000 for General Engineering services, with additional services being offered at an hourly rate as requested.

Staff Recommendation

Staff recommends approval of the item.

Recommended Motion

“I move to approve entering into a Master Services Agreement with McManus and Johnson Consulting Engineers for General Engineering Services, and the City Manager to execute the same.”

Background Information and Analysis

McManus and Johnson Consulting Engineers (MJCE) were contracted for general engineering services in FY2019. They assist with subdivision plat review, site plan review, refining development processes, pre-application meetings, giving feedback to builders and developers, and creating materials related to the City development process for staff and the public. The FY 2020- 2021 contract was for \$40,000 with additional services billed on an hourly basis. The agreement for FY 2021-2022 will be the same amount and terms.

The form of the Master Services Agreement was previously reviewed and approved by the City Attorney.

Financial Considerations

General Engineering Services for FY2022 have been budgeted for in the General Fund. The agreement is for \$40,000, with additional services being billed hourly if necessary.

Prior Board or Council Action

The Council approved the FY 2020-2021 contract with MJCE at the October 5, 2020, Regular Meeting.

Alternatives

The Council may deny, table, or modify the item.

CITY OF DENISON GENERAL ENGINEERING SERVICES
MASTER SERVICES AGREEMENT

THIS AGREEMENT is made and entered by and between the **CITY OF DENISON, TEXAS**, a Home Rule Municipal Corporation, hereinafter referred to as "City", and **MCMANUS & JOHNSON CONSULTING ENGINEERS**, a TEXAS Limited Liability Company, hereinafter referred to as "Engineer", to be effective from and after the date as provided herein.

WITNESSETH:

WHEREAS, the City desires to engage the services of the Engineer to perform engineering reviews and analysis, prepare construction plans, specifications, details and special provisions and to perform other related engineering services in connection with the "General Engineering Services" for the City of Denison, Grayson County, Texas, hereinafter referred to as the "Services" and more particularly described in Exhibit "A"; and

WHEREAS, the Engineer desires to render such engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

I. Employment of the Engineer

The City hereby agrees to retain the Engineer to perform professional engineering services in connection with this Agreement. Engineer agrees to perform such services in accordance with the terms and conditions of this Agreement.

II. Scope of Services

The parties agree that Engineer shall perform such services as are set forth and described in Exhibit "A", which is attached hereto and thereby made a part of this Agreement. The parties understand and agree that deviations or modifications in the form of written contract modifications may be authorized from time to time by the City and executed by the City Manager. Project Managers, Superintendents, and/or Inspectors of the City are not authorized to issue verbal or written change orders for the City.

III. Schedule of Work

The Engineer agrees to commence work immediately upon execution of this Agreement, and to proceed diligently with said work, except for delays beyond the

reasonable control of Engineer, to completion as described in the Completion Schedule, attached hereto as Exhibit "B" and thereby made a part of this Agreement.

IV. Compensation and Method of Payment

The parties agree that Engineer shall be compensated for all services provided pursuant to this Agreement in the amount and manner described and set forth in the Payment Schedule attached hereto and incorporated herein as Exhibit "C". The contract amount specified in Exhibit "C" shall not be exceeded without the written permission of the City.

Invoices – No payment to Engineer shall be made until the Engineer tenders an invoice to the City. The Engineer shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or an hourly summary of all time accrued upon the completion of each individual task listed in Exhibit "B." On all submitted invoices for services rendered and work completed on a monthly basis, if City so desires, Engineer shall include appropriate background materials to support the submitted charges on said invoice. Such background materials shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to direct expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.

Timing of Payment – City shall make payment to Engineer for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Engineer is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.

Disputed Payment Procedures – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Engineer of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the City receives an invoice. City shall provide Engineer an opportunity to cure the basis of the dispute. If a dispute is resolved in favor of the Engineer, City shall proceed to process said invoice, or the disputed portion of the invoice. If a dispute is resolved in favor of the City, Engineer shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

Failure to Pay – Failure of the City to pay an invoice, for a reason other than upon written notification as stated in the provisions of this Agreement to the Engineer within sixty (60) days from the date of the invoice shall grant the Engineer the right, in addition to any and

all other rights provided, to, upon written notice to the City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Engineer shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" ("Remedy for Nonpayment") of the Texas Government Code. The City shall not be required to pay any invoice submitted by the Engineer if the Engineer breached any provision(s) herein.

Adjusted Compensation – Any additional amounts paid to the Engineer as a result of any material change to the Scope of Services shall be authorized by written change order duly executed by both parties before the services are performed.

Service Suspension – If the Services are suspended or abandoned in whole or in part for more than three (3) months, Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Engineer shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs, and/or any other items prepared by Engineer in connection with this Agreement prior to Engineer receiving final payment. If the Service is resumed after being suspended more than three (3) months, the Engineer's compensation shall be equitably adjusted as approved by the City. Any additional amounts paid to the Engineer after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

V. Information to be Provided by the City

The City agrees to furnish, prior to commencement of work, all that information requested by Engineer and available in City's files.

VI. Insurance

Engineer agrees to meet all insurance requirements, and to require all consultants who perform work for Engineer to meet all insurance requirements, as set forth on Exhibit "D", which is attached hereto and thereby made a part of this Agreement.

Engineer agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Engineer shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Engineer's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement.

VII. INDEMNITY

THE ENGINEER AGREES TO INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE ENGINEER, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE ENGINEER IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE ENGINEERS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

VIII. Independent Contractor

Engineer covenants and agrees that Engineer is an independent contractor and not an officer, agent, servant or employee of City; that Engineer shall have exclusive control of, and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Engineer, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Engineer.

IX. Assignment and Subletting

The Engineer agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Engineer further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Engineer from its full obligations to the City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Engineer, and there shall be no third party billing.

X. Audits and Records/Prohibited Interest

The Engineer agrees that at any time during normal business hours and as often as City may deem necessary, Engineer shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of three (3) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Engineer agrees that it is aware of the vendor conflicts disclosure requirements of state law and will abide by the same.

XI. Agreement Term and Termination

This Agreement shall be effective on the latest date reflected by the signatures of the parties and shall terminate following completion of the Project by Engineer, acceptance of Project by City and receipt of final payment by Engineer from City ("Term").

City may, upon thirty (30) days written notice to Engineer, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If City terminates this Agreement due to a default and/or breach by Engineer and the expense of finishing the Project exceeds the Engineer's Fee at the time of termination, Engineer waives its right to any portion of Engineer's Fee as set forth in Article IV and Exhibit "C" herein and agrees to pay any costs over and above the fee which the City is required to pay in order to finish the Project. On any default and/or breach by Engineer, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the compensation due Engineer as set forth in Article IV and Exhibit "C" herein. If City terminates this Agreement and Engineer is not in default of the Agreement, Engineer shall be entitled to compensation for any and all work completed to the satisfaction of the City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Engineer shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Engineer in connection with this Agreement prior to Engineer receiving final payment. Engineer shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

XII. Engineer's Opinion of Probable Construction Costs

The parties recognize and agree that any and all opinions of probable construction costs prepared by Engineer in connection with the Services represent the best judgment of Engineer as a design professional familiar with the construction industry, but that the Engineer does not guarantee that any bids solicited or received in connection with the Services will not vary from opinions prepared by Engineer.

XIII. Ownership of Documents

Original drawings and specifications are the property of the Engineer; however, the Service documents are the property of the City and Engineer may not use the drawings, specifications, plans, data, documents, maps and any other information as described in Exhibit "A" therefore for any purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, drawings, specifications, plans, data, documents, maps and any other information as described in Exhibit "A". Upon completion of the work or any earlier termination of this Agreement under Article XI, Engineer will revise drawings to reflect changes made while working on the Services through the date of completion of the work, as solely determined by the City, or the effective date of any earlier termination of this Agreement under Article XI, and promptly furnish the same to the City in an acceptable electronic format and one (1) complete set of reproducible record prints. Prints shall also be furnished at any other time requested by City. All such reproductions shall be the property of the City who may use them without Engineer's permission for any proper purpose including, but not limited to, additions to or completion of the Service. However, use of the documents for other than their intended purpose shall be at the sole risk of the City.

XIV. Complete Contract

This Agreement, including the Exhibits lettered "A" through "D", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. Individual Work Authorizations will identify specific work to be performed by the Engineer. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

XV. Mailing of Notices

Unless instructed otherwise in writing, Engineer agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Denison
Attn: City Manager
300 W Main St.
Denison, TX 75020

City agrees that all notices or communications to Engineer permitted or required under this Agreement shall be addressed to Engineer at the following address:

McManus & Johnson
Consulting Engineers, LLC
PO Box 835
Van Alstyne, TX 75495

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party if sent by certified mail return receipt requested. Otherwise they are considered as having been given on the date of receipt by the addressee. Each party may change the address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

XVI. Miscellaneous

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Appropriation of Funds:

Funds are not presently budgeted for City's performance under this Agreement beyond the end of the current City's fiscal year. City shall have no liability for payment of any money for services performed after the end of City's fiscal year unless and until such funds are budgeted.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall exclusively govern this Agreement, and that it is performable solely in Grayson County, Texas. Exclusive venue shall lie in Grayson County, Texas.

D. Successors and Assigns:

City and Engineer, and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after execution by both parties hereto.

G. Authority to Sign:

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

H. Execution/Consideration:

This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.

I. Waiver:

Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce or compel strict compliance.

J. No Third Party Beneficiaries:

Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

K. Multiple Counterparts:

This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

L. Sovereign Immunity:

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

M. Additional Representations:

Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

**MCMANUS & JOHNSON
CONSULTING ENGINEERS,
A Texas Limited Liability Company**

DATE: Sept 17, 2021

BY: 

Len McManus, PE
PRINCIPAL

CITY OF DENISON, TEXAS

DATE: _____

BY: _____
CITY MANAGER

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A

Scope of Services

City of Denison

General Engineering Services

The Scope of Services is associated with General Engineering Services for the City of Denison, TX. The Consultant will perform the scope of services to the degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. The Scope of Service is as follows:

GENERAL SERVICES

The Engineer will provide overall consulting services based on inquiries from the city staff. In particular, the Engineer will provide guidance on mapping, surveying, engineering, capital projects, infrastructure maintenance and operations as requested. Coordination with local, county and regional entities, land owners and private developers on proposed projects and planning efforts can also be included in this scope.

DESIGN SERVICES

The Engineer will provide design services at the request of the city for specific projects identified by city staff. Design services include schematic, preliminary and final design of infrastructure projects such as water, sewer, roadway, drainage or similar type project. Specifications written for construction of these projects, bid coordination, and plan clarification are also included in this scope. Permit acquisition from TXDOT and the railroads may also be included at the request of staff.

SURVEY SERVICES

The Engineer will use sub-consultants to provide survey services to the city. These services include topographic mapping, boundary surveys, route surveys, and right-of-way documents. Right of Entry letters, easements, and facility mapping are available at request. All survey work will be overseen by a Registered Public Land Surveyor licensed by the State of Texas.

CONSTRUCTION PHASE SERVICES

The Engineer can also provide construction management services to the city. This includes construction oversight, coordination with residents, contractor payment processing and project document interpretation. Reviewing contractor submittals for conformance to design documents will also be included.

SPECIALTY SERVICES

Services requested by the city not within the Engineers realm of expertise will be coordinated with city staff. Specifically, geotechnical, structural, sub-surface utility engineering and environmental services can be coordinated through the Engineer and their partner firms or through separate city contract. The city will have approval of all sub-consultants proposed by the Engineer.

EXHIBIT B

Schedule

City of Denison

General Engineering Services

The Schedule for the services associated with General Engineering Services for the City of Denison, TX will be detailed in each Work Authorization. The Engineer will attempt to expedite tasks identified to meet the city's goals. Reviews by other agencies and regulatory authorities will be identified (if necessary). The Engineer will endeavor to meet the city's schedule but does not have control of these review periods by outside agencies. Work will not be performed by the Engineer until written authorization is obtained from the City through the signed Work Authorization.

EXHIBIT "C"

Compensation and Method of Payment

City of Denison

General Engineering Services

The Engineer will perform the work identified by the City of Denison staff through Work Authorizations identifying specific tasks and/or projects to be completed.

TASK DESIGNATION

The City of Denison shall issue written Work Authorizations (WA) identifying specific work to be completed by the Engineer. Each WA will have a specific scope and budget clearly identified. The proposed budget for each WA will not be exceeded without written agreement from both parties.

COMPENSATION

The Engineer will be compensated on an hourly basis with rates shown on the attached "Standard Rate Schedule". A Work Authorization identifying the specific work and proposed budget will be provided by the city. The total compensation for each WA will not exceed the proposed budget without written permission from the city.

The Engineer will prepare monthly invoices based on hourly charges incurred through the billing period closing date. These invoices will be submitted to the city during the first week of the following month. The invoice will clearly identify the WA, proposed budget, and amount remaining.

Any reimbursable costs, including subcontracts, shown will include a 10% mark-up to the monthly invoice.

McManus & Johnson Consulting Engineers, LLC

2021 STANDARD RATE SCHEDULE

The following rates are for work performed on an hourly charge basis. Rates include company overhead and profit for services rendered during regular working hours.

DIRECT LABOR

OFFICE PERSONNEL SERVICES

Principal.....	\$225.00 per hour
Vice President.....	\$200.00 per hour
Project Manager.....	\$175.00 per hour
Project Engineer.....	\$160.00 per hour
Design Engineer.....	\$135.00 per hour
Technical Designer.....	\$110.00 per hour
Associate Engineer.....	\$95.00 per hour
Administration.....	\$80.00 per hour
Construction Observation.....	\$90.00 per hour

DIRECT EXPENSES

Reproduction, Couriers and other Direct Expenses.....	Our cost plus 10%
Sub-consultants and specialized services.....	Their proposal plus 10% as approved by the City

All other services not included above to be negotiated with the City prior to commencement of work.

EXHIBIT "D"

INSURANCE REQUIREMENTS

1. General Insurance Requirements:

- 1.1 The Engineer (hereinafter called "Engineer") shall not start work under this Agreement until the Engineer has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City. Approval of insurance required of the Engineer will be granted only after submission to the City Manager of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, without first providing the City Manager, City of Denison, at least ten (10) days prior written notice."

NOTE: The words "endeavor to" and "but failure to mail such notice shall impose no obligation to liability of any kind upon the company, its agents or representatives" are to be eliminated from the cancellation provision of standard ACORD certificates of insurance.

- 1.3 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Engineer from any liability or obligation imposed by the provisions of this Agreement.
- 1.4 The City of Denison (including its elected and appointed officials, agents, volunteers, and employees) shall be named as an additional insured under Engineer's General Liability Policy, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary with respect to the City, its elected and appointed officials, agents and employees.
- 1.4.1 The following definition of the term "City" applies to all policies issued under the Agreement:
- The City Council of the City of Denison and any affiliated or subsidiary Board, Commission Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board Commission, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Denison, or one in which controlling interest is vested in the City of Denison; and City of Denison Constitutional Officers.
- 1.5 The Engineer shall provide insurance as specified in the "Insurance Checklist" (Checklist) found contained in this Exhibit "D". Full limits of insurance required in the Checklist of this Agreement shall be available for claims arising out of this Agreement with the City of Denison.
- 1.6 Engineer agrees to defend and indemnify the City of Denison, its officers, agents and employees as provided in Article VII. of this Agreement.
- 1.7 Insurance coverage required in these specifications shall be in force throughout the Agreement Term. Should the Engineer fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Agreement Term,

the City shall have the absolute right to terminate the Agreement without any further obligation to the Engineer, and the Engineer shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Agreement at time of termination.

- 1.8 All required insurance coverages must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. All insurers must have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception.
- 1.9 Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Engineer. Engineer may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

2. Engineer's Insurance - "Occurrence" Basis:

- 2.1 The Engineer shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.
- 2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
- i. General aggregate limit is to apply per project;
 - ii. Premises/Operations;
 - iii. Actions of Independent Contractors;
 - iv. Contractual Liability including protection for the Engineer from claims arising out of liability assumed under this Agreement;
 - v. Personal Injury Liability including coverage for offenses related to employment;
 - vi. Explosion, Collapse, or Underground (XCU) hazards; if applicable. This coverage required for any and all work involving drilling, excavation, etc.
- 2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.
- 2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

3.0 Engineer's Insurance – Claims Made

Professional Errors and Omissions

The Engineer shall carry Professional Liability insurance which will pay for injuries arising out of negligent errors or omissions in the rendering, or failure to render professional services under the Agreement, for the term of the Agreement and up to three years after the Agreement is completed in the amount shown in the Checklist.

Professional Errors and Omissions, Limit \$1,000,000
per claim and aggregate of \$2,000,000

ENGINEERING

City of Denison - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

<input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability	Statutory limits of State of Texas \$100,000 accident \$100,000 disease \$500,000 policy limit disease
<input type="checkbox"/> 2. For Future Use	
<input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program	\$150,000 medical, safety program
<input checked="" type="checkbox"/> 4. General Liability	Complete entry No. 26 Minimum \$500,000 each occurrence \$1,000,000 general aggregate
<input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)	
<input checked="" type="checkbox"/> 6. Premises/Operations	(Items No. 3-10 & 12 require)
<input checked="" type="checkbox"/> 7. Independent Contractors	<u>\$500,000</u> combined single limit for bodily injury and property damage
<input type="checkbox"/> 8. Products	damage each occurrence with
<input type="checkbox"/> 9. Completed Operations	\$1,000,000 general aggregate that applies to project under Agreement
<input checked="" type="checkbox"/> 10. Contractual Liability	
<input checked="" type="checkbox"/> 11. Personal Injury Liability	\$500,000 each offense & aggregate
<input type="checkbox"/> 12. XCU Coverages	
<input checked="" type="checkbox"/> 13. Automobile Liability	\$500,000 Bodily Injury & Property
<input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned	Damage each accident
<input type="checkbox"/> 15. Motor Carrier Act Endorsement	
<input checked="" type="checkbox"/> 16. Professional Liability	\$1,000,000 each claim

- \$2,000,000 aggregate
17. Garage Liability \$_____ BI & PD each occurrence
18. Garagekeepers' Legal \$_____ - Comprehensive
\$_____ - Collision
19. Owners Protective Liability \$500,000 Combined single limits
20. City named as additional insured on General Liability policy. This coverage is primary to all other coverages the City may possess.
21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.
22. Ten (10) days notice of cancellation, non-renewal, endorsement required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.
23. The City of Denison requires an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).
24. The Certificate must state project title and project number.
25. Other Insurance Required:

INSURANCE AGENT'S STATEMENT

I have reviewed these requirements with the Engineer named below. Additionally:

26. The above policy(s) carry the following deductibles: _____

Full limits of coverage available for:

General Liability _____ Professional Liability _____
Automobile Liability _____

27. Liability policies are (indicate):

OCCURRENCE []

CLAIMS MADE []

Signature

Date

Insurance Agent (Print)

Name of Insured

Date

Scope of Services
City of Denison
General Engineering Services
WORK AUTHORIZATION 2022-01
General City Services

This Scope of Services is associated with Master Services Agreement outlining General Engineering Services for the City of Denison, TX. The Consultant will perform the scope of services to the degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided. The Scope of Service is as follows:

GENERAL CITY SERVICES

Development Review Services

McManus & Johnson will provide development support as directed by the city. This may include, but not limited to, meeting with landowners and developers to discuss options for their projects, possible capital improvements needed to support their intended plans and review of any plans submitted by the development community. Plan review will include a detailed summary of items that do not comply with existing city ordinances and guidelines. Alternative solutions and recommendations that comply with city requirements may also be provided upon request.

Development Process Set-up

McManus & Johnson will assist the city staff in developing processes to improve coordination with landowners, developers, and their consultants through the city's permitting and approval process in accordance with existing ordinances and policies. It is anticipated that this work will include a development checklist, website improvements and submission policy guidelines.

Miscellaneous Engineering Services

McManus & Johnson will provide engineering services as requested by the city. This includes meetings with staff, city council and other groups as scheduled by the city. Inquiries by city staff and council will be answered and coordinated.

Review and recommendations of city policies, procedures and operations will be addressed and responses provided in a timely matter.

EXCLUDED SERVICES

Services specifically excluded from this work authorization include, but are not limited to:

- ◇ Design/ survey of specific capital projects
- ◇ Geotechnical
- ◇ Environmental
- ◇ Right-of way or Easement descriptions/ acquisitions
- ◇ Materials Testing
- ◇ Structural

These services can be provided through another Work Authorization under the Master Services Agreement at the request of the City.

ANTICIPATED BUDGET

Under the Master Services Agreement with the City of Van Alstyne this Work Authorization will be performed on an hourly basis. Anticipated hourly expenses required to provide these services are:

Development Review Services	80 hrs @ \$225	=	\$18,000
Development Process Services	80 hrs @ \$225	=	\$18,000
Miscellaneous Engineering Services	40 hrs @ \$200	=	<u>\$ 4,000</u>

Anticipated Budget for Fiscal Year 2021-22 \$40,000

Billings will be based on actual hours spent performing these services.

SCHEDULE

McManus & Johnson will commence with this work immediately as authorized by the city to proceed.

WORK AUTHORIZATION

The signature below authorizes McManus & Johnson to proceed the professional services outline in this scope (WA 2022-01):

City Manager
City of Denison, TX.

Date

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on a Lease Agreement between RadioVision, L.P. and the City of Denison for use of property located at 530 W. Main Street for recreation uses, primarily the construction and operation of a temporary outdoor ice-skating rink and associated structures and authorize the Mayor to execute the same.

Staff Contact

Kimberly Bowen, Assistant Director of Parks and Recreation
kabowen@cityofdenison.com
(903) 465-2720

Summary

- This will be the 5th year the city will offer the Denison on Ice event.
- The lease agreement shall commence on October 18, 2021, and shall terminate on February 15, 2022.
- This lease agreement allows for use of a certain tract of land situated at 530 W. Main Street for recreation uses, primarily the construction and operation of a temporary outdoor ice-skating rink and associated structures.
- Timeline:
 - Construction will begin October 25th
 - Soft opening November 13th
 - Open to public November 13st – January 2nd
 - Take down will occur in January 2022.

Staff Recommendation

Staff recommends approving the lease of Radio Vision lot effective October 18, 2021, tract of land situated at 530 W. Main Street for recreation uses.

Recommended Motion

“I move to approve the Lease Agreement between RadioVision, L.P. and the City of Denison for use of property located at 530 W. Main Street for recreation uses, primarily the construction and operation of a temporary outdoor ice-skating rink and associated structures and authorize the Mayor to execute the same.”

Background Information and Analysis

Denison on Ice is entering its 5th season. The outdoor holiday-season ice rink venue attracts visitors across the region. There have been visitors from across the globe from as far away as Kenya and Australia.

Staff have developed creative programming initiatives that will appeal to a diverse population with adaptive skate nights, toddler events, installation of an ADA ramp, and frequent user cards. A tiered

pricing will be offered to encourage seniors (55 and older) and veterans to participate at a 50% discounted rate as well as a 30% price break for children's tickets (12 and under).

Denison on Ice will be covered with a tent structure again this year to provide extended operating hours and improved ice-skating surface. There will be new decorations and exciting new features introduced to enhance the overall experience. Staff believe that with these new price structures and additional programming offered, a renewed excitement and guest participation will be realized.

Financial Considerations

The City of Denison agrees to pay Radio Vision the sum of one dollar (\$1.00) and other good and valuable consideration as rental payment for the property.

Radio Vision has been designated as a "Lot Sponsor" and will receive 10 value passes, 100 individual passes, 100 ice rink concession bucks and 4 complimentary adult punch passes to be used at Radio Vision's sole discretion.

The City of Denison will obtain and maintain in full force and effect throughout the term of the agreement, liability insurance coverage in the amount of \$1,000,000.00 covering all claims and lawsuits for property damage and bodily injury, including death related to the use of the property.

Prior Board or Council Action

This is the 5th season Radio Vision lot has agreed to be "Lot Sponsor".

Alternatives

The City Council may not approve the lease agreement.

**LEASE AGREEMENT BY AND BETWEEN THE
CITY OF DENISON, TEXAS AND RADIOVISION**

THIS LEASE AGREEMENT, ("Agreement") is made effective as of the 18th day of October, 2021 by and between **RADIOVISION, L.P.**, a Domestic Limited Partnership, (the "Lessor") and the **CITY OF DENISON, TEXAS**, a home rule municipal corporation formed and operating under the laws of the State of Texas and its Home Rule Charter (the "Lessee").

**I.
LEASE PROPERTY**

Lessor hereby leases to Lessee a certain tract of land situated at 530 W. Main in the City of Denison, County of Grayson, State of Texas, as described in Exhibit "A" attached hereto and incorporated herein for recreation uses, primarily the construction and operation of a temporary outdoor ice skating rink and associated structures, together with all rights, privileges, easements and appurtenances belonging to or in any way pertaining to such premises (called the "Property").

**II.
TERM / TERMINATION**

The term of this Agreement shall commence on October 18, 2021 and shall terminate on February 15, 2022, and may be renewed upon written agreement of the Parties hereto.

**III.
CONSIDERATION**

Lessee agrees to pay to Lessor the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration as rental payment for the Property, such payment being due upon the execution of this Agreement. Payment shall be mailed or delivered to Lessor at its address and to the attention of the person hereinafter stated in this Agreement. Lessor has been designated as a "Lot Sponsor", and as such, the RadioVision signage currently in place on the Property shall remain and Lessor shall receive 10 value passes, 100 individual passes, 100 ice rink concession bucks, and 4 complimentary adult punch passes, to be used at Lessor's sole discretion, as a concession in lieu of any additional payment in accordance with this Agreement. As additional consideration, Lessee shall obtain and maintain in full force and effect throughout the term of this Agreement, liability insurance coverage in the amount of \$1,000,000.00 covering all claims and lawsuits for property damage and bodily injury, including death related to Lessee's use of the Property.

**IV.
RIGHTS AND DUTIES OF LESSEE**

4.01 Use. Lessee shall have the right to use the Property for recreation purposes, primarily the location and operation of an outdoor skating rink and related structures and uses, including but not limited to a portable removable building, an electric pole, a chiller, and an area designated for concession operations, all of which shall be located upon the Property as determined appropriate by Lessee and Lessor. Five parking spaces on the northwest corner of the Property shall be

exclusively reserved for RadioVision employee parking during standard 8:00 a.m. to 5:00 p.m. business hours Monday through Friday, excluding holidays.

4.02 Maintenance / No Third-Party Beneficiaries. Lessee shall be responsible for maintenance of the Property during the entire term of the Agreement. Lessee shall maintain and keep the property free from hazards to persons or property. For purposes of this Agreement, Lessee and Lessor, specifically agree and covenant that: (1) this Agreement only affects matters, liabilities, and disputes between the parties to this Agreement, and is in no way intended by the parties hereto to benefit, apply to, or otherwise affect any third party, notwithstanding the fact that such third party may be in a contractual relationship with Lessee; (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third party from obligations owing by them to either Lessee or Lessor; and (3) the terms of this Agreement are not intended to impose additional obligations upon Lessor or Lessee in relation to, on behalf of, or with regard to any such third parties.

4.03 Repair. Lessee shall be solely responsible for repairing and/or replacing, any item on or attached to the Property which is abused, damaged, or destroyed as a result of Lessee's use of the Property prior to termination of this Agreement. Should the Lessee, due to inclement weather or other causes outside of Lessee's control, be unable to complete any needed repairs or replacements before the termination of this Agreement, Lessee shall notify Lessor and the parties may extend the term of this Agreement, in writing, for an agreed upon amount of time for the sole purpose of completing necessary repairs or replacements under this Section 4.03.

4.04 General Care of Property. Lessee shall take good care of the Property and its fixtures, suffer no waste, and shall maintain the Property during the term of this Agreement. At the termination of this Agreement, Lessee shall deliver up the Property in the same order and condition as it was before the term of this Agreement, natural deterioration and damage by fire, tornado or other casualty and the elements only excepted. All improvements put in at the expense of Lessee shall be removed at the time of the expiration of the Agreement; provided however, that all electrical infrastructure installed by a public utility to facilitate Lessee's use of the Property shall be entitled to remain upon the Property. Before termination of this Agreement, Lessee shall fill in all potholes on the Property with asphalt pavement and cover with black tar any parking spaces painted at the entrance to the Property, each at the Lessee's cost. Lessee agrees to reasonably notify Lessor of operation activities, including set up and tear down of equipment.

4.05 Utility Service. Lessee shall be solely responsible for providing any and all utility services to the Property it desires during the Lease Agreement, including water, electricity, gas and telephone services.

V. HOLD HARMLESS

Lessor shall not be liable for, and to the extent allowed by law, Lessee shall hold harmless Lessor and its officers and employees from and against any and all demands, losses, damages or claims for injury (including death) or damage to persons or property resulting from any cause whatsoever associated with Lessee's use of the Property. Lessee shall maintain liability insurance coverage in the amount specified in **Section III**, and such insurance coverage shall be primary.

**VI.
RIGHTS AND DUTIES OF LESSOR**

Upon providing notification to the Lessee, Lessor shall have the right to come upon the Property, or any part thereof, during Lessee's normal operating hours or at a time as agreed upon by the Parties for the purpose of inspecting the Property or any portion of it. Lessor shall further have the right-of-way over the Property for the purpose of making such inspections after notifying the Lessee.

**VII.
SUCCESSORS & ASSIGNS**

The terms, conditions and covenants contained in this Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and/or heirs.

**VIII.
NOTICE**

All notices or communications required under this Agreement or desired to be given by the parties hereto shall be sent in writing and shall be deemed sufficiently given when same is sent via facsimile with confirmation of delivery, hand-delivered or deposited in the United States mail, sufficient postage prepaid, registered or certified mail, return receipt requested, addressed to the recipient at the address set forth below:

FOR LESSOR:	Mr. Shelley G. McBride General Partner RadioVision, L.P. 531 W. Main Street Denison, TX 75020 Fax: 903-465-8293
-------------	--

FOR LESSEE:	Bobby Atteberry City Manager's Office City of Denison, Texas 300 W. Main Street Denison, TX 75020 Fax: 903-464-4469
-------------	--

or at such other address as Lessor or Lessee shall specify in a written notice.

**IX.
ASSIGNMENT**

The Lessee shall not assign or otherwise transfer any of its right, title or interest to any portion of the Property during the term of this Agreement without the prior written consent of Lessor.

**X.
VENUE**

The parties to this Agreement agree and covenant that this contract will be enforceable in Denison Texas; and that if legal action is necessary to enforce this contract, exclusive venue shall lie in Grayson County, Texas.

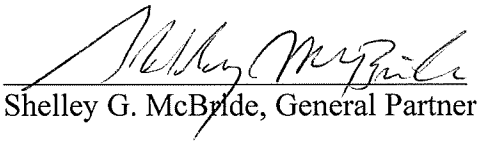
**XI.
SEVERABILITY**

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

EXECUTED this the ____ day of _____, 2021.

LESSOR:

RADIOVISION, L.P.

BY: 
Shelley G. McBride, General Partner

LESSEE:

CITY OF DENISON, TEXAS

BY: _____
Janet Gott, Mayor

ATTEST:

Christine Wallentine, City Secretary

APPROVED AS TO FORM:

Julie Fort, City Attorney

EXHIBIT A

Property Description

All of Lots Nos. Thirteen (13), Fourteen (14), Fifteen (15) and Sixteen (16) in Block No. Sixteen (16) all of the STEVENS ADDITION to the City of Denison, Grayson County, Texas, as shown by plat of record in Volume 28, Page 362 and 363 of the Deed Records of Grayson County, Texas.

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, and take action on a resolution appointing Greg Smith to the Technical Advisory Committee of the Grayson County Metropolitan Planning Organization as a voting member.

Staff Contact

Greg Smith, City Manager
gsmith@cityofdenison.com
903-464-4440

Summary

- The Grayson County Metropolitan Planning Organization, or SDMPO, Technical Advisory Committee, or TAC, reviews and makes recommendations to the SDMPO Policy Board on matters related to the business of the MPO.
- The membership consists of engineers and planners from all the local governments represented by the MPO as well as representatives from the Texoma Area Paratransit System (TAPS), the Regional Mobility Authority (RMA), the North Texas Regional Airport, and the Texas Department of Transportation.
- Staff recommends that Greg Smith be appointed to fill the voting member position previously held by John Webb. Bobby Atteberry, Interim Assistant City Manager, will continue to serve as alternate.

Staff Recommendation

Staff recommends approval of the item.

Recommended Motion

“I move to approve the resolution appointing Greg Smith as a voting member of the Technical Advisory Committee of the Grayson County Metropolitan Planning Organization.”

Background Information and Analysis

The Grayson County Metropolitan Planning Organization, which is the Metropolitan Planning Organization (MPO) for the Grayson County Metropolitan Area, has the responsibility under the provisions of Fixing America’s Surface Transportation (FAST) Act for developing and conducting a continuing, cooperative and comprehensive transportation planning process for the metropolitan area. The Technical Advisory Committee of the Grayson County Metropolitan Planning Organization is charged with assisting the director in ensuring that plans and programs are developed and conducted in accordance with current legislation, technical tasks associated with the development of the Metropolitan Transportation Plan and the Transportation Improvement Program, and review projects and make recommendations regarding these to the Policy Board.

Voting and alternate members of the Technical Advisory Committee must be appointed by the governing bodies who are members of the Grayson County Metropolitan Planning Organization. Staff recommends

the appointment of Greg Smith to serve as the City of Denison's voting member. Bobby Atteberry will continue to serve as Denison's Alternate Member.

Financial Considerations

None.

Prior Board or Council Action

John Webb was appointed as the City's voting member in December 2020.

Alternatives

Council may deny, table, or modify the item.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, APPOINTING A VOTING MEMBER TO THE TECHNICAL ADVISORY COMMITTEE OF THE GRAYSON COUNTY METROPOLITAN PLANNING ORGANIZATION; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS RESOLUTION IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, the Grayson County Metropolitan Planning Organization, which is the Metropolitan Planning Organization (MPO) for the Sherman-Denison Metropolitan Area, has the responsibility under the provisions of Fixing America’s Surface Transportation (FAST) Act for developing and carrying out a continuing, cooperative and comprehensive transportation planning process for the metropolitan area; and

WHEREAS, the Technical Advisory Committee of the Grayson County Metropolitan Planning Organization is charged with assisting the director in ensuring that plans and programs are developed and conducted in accordance with current legislation, technical tasks associated with the development of the Metropolitan Transportation Plan and the Transportation Improvement Program, and review projects and make recommendations regarding these to the Policy Board; and

WHEREAS, voting and alternate members of the Technical Advisory Committee are appointed by the governing bodies of the Grayson County Metropolitan Planning Organization.

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

Part 1: That the City Council of the City of Denison, Texas, in accordance with the Bylaws of the Grayson County Metropolitan Planning Organization, hereby appoints the following as the voting and alternate members of the Technical Advisory Committee of the Grayson County Metropolitan Planning Organization:

Gregory Smith – Voting Member

Bobby Atteberry – Alternate Member

Part 2: That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public and that public notice of the time, place, location and purpose of said meeting was given as required by law.

On motion by Council Member _____, seconded by Council Member _____, the above and foregoing Resolution was passed and approved at a Regular Meeting of the City Council of the City of Denison, Texas, on this the 4th day of October 2021.

Ayes:

Nays:

Abstentions:
Absent:

CITY OF DENISON, TEXAS

JANET GOTT, Mayor

ATTEST:

Christine M. Wallentine, City Clerk

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on an amendment to the Interlocal Agreement with the City of Pottsboro for the sale and delivery of water and authorizing the Mayor to execute the same.

Staff Contact

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

Summary

- The Cities have had a longstanding relationship dating back to 1974 wherein Denison sold and Pottsboro purchases treated water.
- The current contract with the City of Pottsboro was enacted in 2016 which expires at the end of September 2021.
- City Staff has met with the City Manager of Pottsboro to discuss the amendment and plans to take the agreement to their City Council for their approval.
- This is a one-year extension to give both cities time to discuss growth needs more before entering into a new contract.

Staff Recommendation

Staff recommends approval of the amendment to the interlocal agreement.

Recommended Motion

“I move to approve the amendment to the interlocal agreement with the City of Pottsboro for the sale and delivery of water and authorize the Mayor to execute the same.”

Background Information and Analysis

Denison and Pottsboro are authorized by Section 791.026 of the Texas government Code to contract with one another to provide all or part of water supply. The Cities of Denison and Pottsboro have had a longstanding relationship dating back to 1974 wherein Denison sold and Pottsboro purchased treated water. The most recent agreement was executed in October 2016 for a term of five years.

With the Finance Department planning to undergo a water and sewer rate study during the Fiscal Year 2022, Staff felt it would be best to extend the current Interlocal Agreement by one additional year until the rate study was completed. This will also allow additional planning between the two Cities to determine the best interest of each City's growth in the coming years.

Staff met with the City of Pottsboro and have had several conversations regarding this agreement. The current plan is for the Pottsboro City Council to consider this same agreement at their regularly scheduled meeting in October.

Financial Considerations

This will generate a small amount of revenue for the City.

Prior Board or Council Action

The City Council authorized this Interlocal Agreement in October of 2016.

Alternatives

Not approve the proposed agreement or suggest revisions to the proposed agreement.

**FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT
FOR THE SALE AND DELIVERY OF WATER**

This First Amendment (“First Amendment”) to the Interlocal Agreement is made and entered into on this ____ day of _____, 2021, by and between the City of Denison, Texas (“DENISON”), and the City of Pottsboro, Texas (“POTTSBORO”), collectively the "Parties."

RECITALS

WHEREAS, DENISON and POTTSBORO are authorized by Section 791.026 of the Texas Government Code to contract with one another to provide all or part of water supply; and

WHEREAS, DENISON and POTTSBORO are parties to an Interlocal Agreement for the Sale and Delivery of Water, effective October 1, 2016 (the “Interlocal Agreement”); and

WHEREAS, the Parties have determined it necessary and appropriate to negotiate and execute the First Amendment to the Interlocal Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and considerations set forth herein, the Parties agree as follows:

1. Section 3.01 shall be deleted and replaced in its entirety with the following:

3.01 Quantity – DENISON agrees to tender and to make available treated water at a uniform rate of gallons per minute (gpm) to POTTSBORO, for its own use and for the use of its retail customers. In accordance with state law and the applicable rules from Chapter 290 of the Texas Administrative Code, Title 30, DENISON will provide the following:

DENISON agrees to deliver to POTTSBORO treated water at a flowing pressure of at least thirty-five (35) psi at the Point of Connections, as hereinafter defined. DENISON agrees to provide 0.6 gallons per minute per connection, up to 1,300 connections for a maximum total of 780 gallons per minute with a daily maximum not to exceed 1,000,000 gallons per calendar day.

2. Section 3.02 shall be deleted and replaced in its entirety with the following:

3.02 Pottsboro Usage/Quantity - POTTSBORO has acquired in its name a water rights allocation of 5,000-acre feet from Lake Texoma with a yield of at least one million five hundred thousand (1,500,000) gallons per day ("Pottsboro Texoma Allocation"). All water shall be derived from the Pottsboro allocation from Lake Texoma.

The amounts stated in this Agreement shall be reviewed and adjusted periodically as the POTTSBORO grows and rules change. POTTSBORO shall request, in writing, any needed increases or changes in quantities stated in the Agreement within ninety (90) days of need.

In the event that the amount of water delivered cannot be computed for any reason, the DENISON meter is out of service, or out of repair, then the water delivered through the period the meter is out of service shall be estimated in accordance with the usage under similar conditions for an equal period. Amounts of water not taken by POTTSBORO during any calendar day may not be accumulated, nor reserved for pumping at a later time.

3. Section 3.05 shall be deleted and replaced in its entirety with the following:

3.05 Water Service Connections - POTTSBORO covenants, promises and agrees that it will not provide, offer to provide or enter into any agreement to provide water on a wholesale basis to any person or entity without the prior written consent of the Denison City Council of DENISON. Any such approvals granted by DENISON to POTTSBORO prior to the effective date of this Agreement shall remain in effect unless terminated by DENISON as otherwise allowed by law or this Agreement. POTTSBORO may extend retail water service to areas only within its territorial limits and the area within its Certificate of Convenience and Necessity (CCN) as recognized by the Public Utility Commission, or its successor agency, from its own water mains. With the exception of the Point of Connections as described herein, the service water mains of POTTSBORO shall not connect to the DENISON line at any point. DENISON shall not provide service connections from the DENISON line to any point within POTTSBORO'S city limits or within its area of CCN. Nothing herein shall be construed so as to prohibit the governing bodies of the Parties from mutually agreeing to serve or exchange retail customers in the other city' s corporate limits or area of CCN when location, quality of service issues or convenience warrant. However, DENISON may extend service mains through the city limits and area of CCN of POTTSBORO for the purpose of serving areas within DENISON'S Certificate of Convenience and Necessity as recognized by the Public Utility Commission, or its successor agency, If DENISON chooses to so extend through POTTSBORO'S city limits or area of CCN, then the maintenance costs on the service mains so extended shall be DENISON'S exclusive responsibility. POTTSBORO covenants, promises and agrees to cooperate with DENISON in DENISON's efforts to construct service main extensions through POTTSBORO for the purpose of extending service to other areas within DENISON's CCN.

As part of this Agreement, Pottsboro is required annually to keep Denison informed as to the number of connections Pottsboro has on its water system that will receive water as a result of this Agreement.

4. Section 4.02 shall be deleted and replaced in its entirety with the following:

4.02 Point of Deliver. The Point of Delivery shall be at a point immediately before the point of connections of POTTSBORO'S ground-storage tank, but past the flow meter. The Point of Deliver shall be shown and is so designed within Exhibit "A". All water, once metered, shall be the property of POTTSBORO. Beyond the Point of Delivery, POTTSBORO shall maintain all pipe and equipment.

5. Section 4.03 shall be deleted and replaced in its entirety with the following:

4.03 Point of Connections. The Point of Connections between DENISON'S water system and POTTSBORO'S water system shall be at POTTSBORO'S ground storage tank. An "air gap" shall be required at the Point of Connections in order to prevent a direct connection between the two systems. DENISON shall possess at all times the right of access and the right to inspect POTTSBORO'S ground storage tank and "air gap" for compliance with the separation requirements then prevailing. The Point of Connection shall be shown and so designated with Exhibit "A".

6. Section 5.01 shall be deleted and replaced in its entirety with the following:

5.01 Meter Maintenance - All water furnished under this Agreement shall be measured by a six-inch (6"), meter capable of being affixed with chart-type monitoring. Maintenance of the metering system shall be the responsibility of DENISON. The meter shall be tested for accuracy annually at the expense of POTTSBORO. DENISON will notify POTTSBORO annually of the test date and provide a copy of the results with an invoice for the test. POTTSBORO will be responsible for any repairs or replacements which are found necessary to ensure proper operation of the meter. In addition to the annual test, a test may be ordered at any time the DENISON Utility Billing Division believes that a meter is working improperly. If the test confirms a defective meter, the cost of the test, repair and/or replacement of the meter will be the responsibility of POTTSBORO.

Nothing herein shall be construed to convey to POTTSBORO the right to independently test DENISON meter. POTTSBORO may request additional testing of the meter; however, all testing performed by DENISON at POTTSBORO'S request shall be at POTTSBORO'S expense, regardless of the results of the testing.

If, upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two percent (2%), the meter shall be adjusted or calibrated. Neither party shall gain any right to an adjustment in the amount of water bought or sold as a result of the outcome of a test performed pursuant to this section.

7. Effective Date of Applicability of Amendment: After DENISON and POTTSBORO execute this First Amendment, this First Amendment shall be deemed immediately effective as to the entire Agreement. Unless further amended, this First Amendment shall expire concurrently with the Interlocal Agreement.

8. Severability: If any provision of this First Amendment is illegal, invalid, or unenforceable in whole or in part for any reason, under present or future laws, then and in that event, it is the intention of the parties hereto that the remaining provisions of this First Amendment shall remain in full force and effect and shall not be affected.

9. Binding Obligation: This First Amendment shall bind and inure to the benefit of the Parties, their successors, and their permitted assignees.

10. Authority: The parties represent and warrant that:(1) it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this First Amendment and (2) that the person or persons executing this First Amendment on its behalf has been duly authorized to do so.

11. Agreement in Effect: Except to the extent amended by the First Amendment, the Parties acknowledge and agree the Interlocal Agreement remains in full force and effect without further amendment.

IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this First Amendment to be duly executed as of the day and year indicated below.

CITY OF DENISON, TEXAS

JANET GOTT, MAYOR

ATTEST:

Christine Wallentine, City Clerk

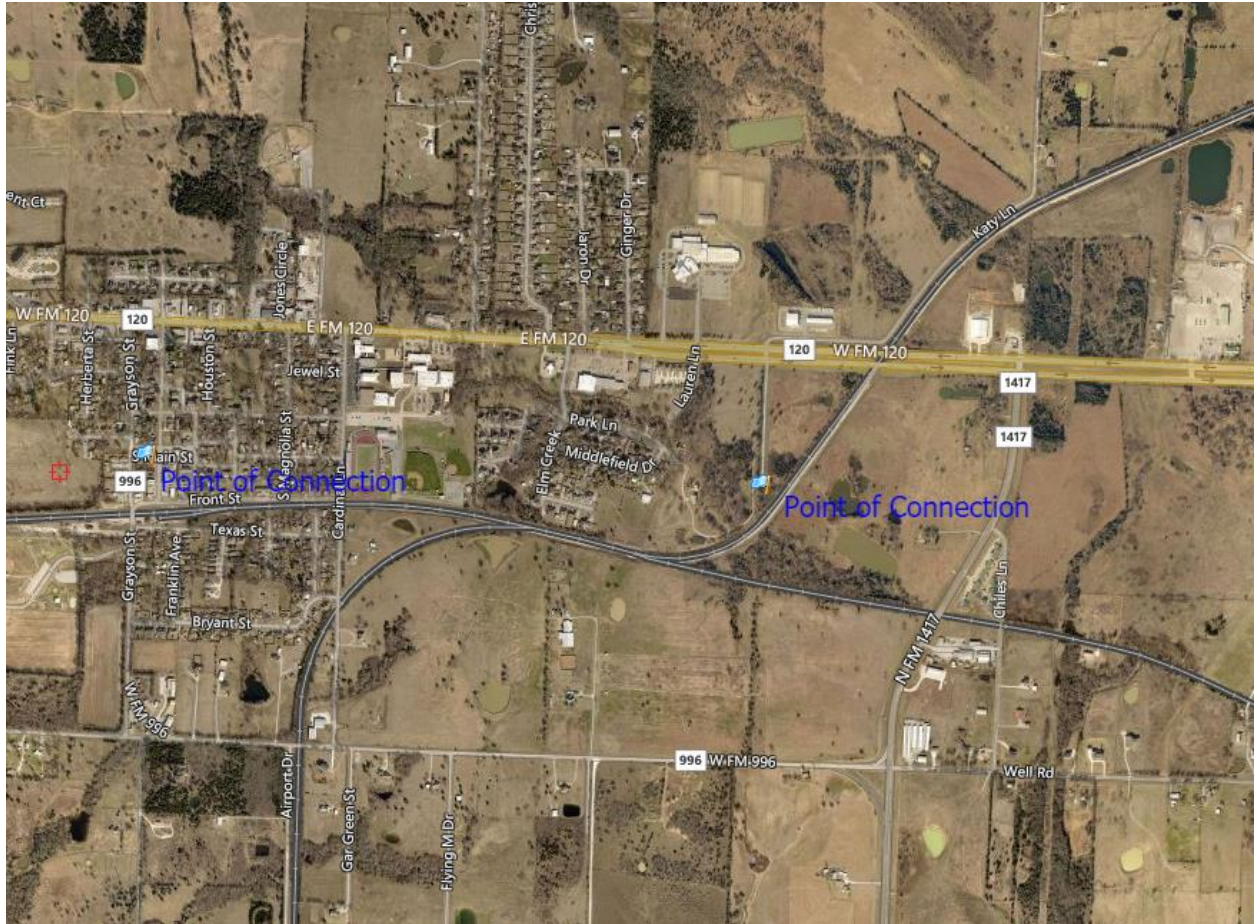
CITY OF POTTSBORO, TEXAS

FRANK BUDRA, MAYOR

ATTEST:

Dana Nixon, City Secretary

EXHIBIT "A"



City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, and take action on a resolution adopting the Investment Policy for Funds for the City of Denison for fiscal year 2022.

Staff Contact

Renee' Waggoner, Executive Director of Finance & Administrative Services
rwaggoner@cityofdenison.com
903-465-2720 EXT 2444

Summary

- The Investment Policy was originally adopted in 2003.
- Council approves the policy and any changes annually. There are no changes for FY2022.
- Requesting Council to approve the policy and act on the resolution this year.

Staff Recommendation

Staff recommends approval of the resolution adopting the Investment Policy for funds for the City of Denison for fiscal year 2022.

Recommended Motion

"I move to approve the resolution adopting the Investment Policy for funds for the City of Denison for fiscal year 2022."

Background Information and Analysis

The Public Funds Investment Act requires the City to have an investment policy and for it to be reviewed by Council annually. The policy has been in place since 2003. Annual reviews by staff, consultants and/or legal counsel have occurred since its inception. Updates are made to the policy as needed or required on an annual basis including updates to verbiage for easier reading and updates based on new legislation. No changes based on verbiage or legislation were made this year.

Financial Considerations

None

Prior Board or Council Action

Council approves the Investment Policy and any changes to the policy each year. The Public Funds Investment Act requires annual review and approval.

Alternatives

None. The Public Funds Investment Act requires approval of the policy.

**CITY OF DENISON, TEXAS
RESOLUTION NO. _____**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DENISON,
TEXAS ADOPTING AN INVESTMENT POLICY FOR FUNDS FOR THE
CITY OF DENISON FOR FISCAL YEAR 2021/2022; DESIGNATING THE
FINANCE DIRECTOR AS THE PRIMARY INVESTMENT OFFICER;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Chapter 2256 of the Texas Government Code, commonly known as the "Public Funds Investment Act," governs local government investment; and

WHEREAS the Public Funds Investment Act requires annual review of the investment policy for the City of Denison, Texas ("City"); and

WHEREAS the annual adoption of the City's investment policy is intended to replace and supersede all previously adopted financial policies; and

WHEREAS, the City Council had previously adopted an investment policy with substantive changes in Fiscal Years 2005, 2009, 2016 and 2018; and

WHEREAS, the City Council has reviewed the Investment Policy for Fiscal Year 2021/2022 attached hereto as **Exhibit "A"** and incorporated herein, for compliance with the Public Funds Investment Act and has determined it appropriate to adopt the investment policy as set forth; and

WHEREAS, upon consideration, the City Council finds and determines it to be in the best interests of the City to adopt **Exhibit "A"** as the City's Investment Policy.

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

Section 1. That the foregoing recitals are hereby adopted and incorporated into this Resolution.

Section 2. That the City Council has reviewed the attached Investment Policy, which contains investment strategies and policies that the Council has determined to be beneficial to the City and hereby adopts the attached Investment Policy set forth in **Exhibit "A."**

Section 3. That the Finance Director is hereby designated as the City's primary investment officer to perform the functions required by the attached policy, and the investment officer is hereby authorized to perform the functions required under the Investment Policy and Chapter 2256 of the Texas Government Code, as amended from time to time.

Section 4. That this Resolution shall take effect immediately upon its passage and approval.

PASSED AND APPROVED this 4th day of October 2021.

JANET GOTT, MAYOR

ATTEST:

Christine Wallentine, City Clerk

EXHIBIT A
CITY OF DENISON INVESTMENT POLICY FOR FY 2021/2022



**CITY OF DENISON, TEXAS
INVESTMENT POLICY**

Fiscal Year 2022*

*(Adopted 2003 with updates made in 2005, 2009, 2016 & 2018)

CITY OF DENISON, TEXAS INVESTMENT POLICY

PREFACE

It is the policy of the City of Denison (the "City") that after allowing for the anticipated cash flow requirements of the City and giving due consideration to the safety and risks of investments, all available funds shall be invested in conformance with these legal and administrative guidelines to obtain a market rate of return.

Effective cash management is recognized as essential to good fiscal management. An active cash management and investment policy will be pursued to take advantage of investment interest as a viable and material source of revenue for City funds. The City's portfolio shall be designed and managed in a manner responsive to the public trust and consistent with state and local law. The City will invest public funds in a manner which will provide the maximum security and a market rate of return while meeting the daily cash flow demands of the City.

The City is required under the Public Funds Investment Act, Chapter 2256 of the Texas Government Code, (the "Act") to adopt a formal written Investment Policy for the investment of public funds. These policies serve to satisfy the statutory requirement of the Act to define, adopt and review a formal investment strategy and policy.

CITY OF DENISON INVESTMENT POLICY

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Authorized Investments	6.
Diversification	7.
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Safekeeping and Collateralization	10.
Internal Control	11.
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Reporting	13.
Investment Policy Adoption and Amendment	14.

Attachments:

- A. Glossary of Terms
- B. Certification of Business Organization Sample Form

INVESTMENT POLICY

1. **PURPOSE.** The purpose of this investment policy (the “Policy”) is to set forth specific investment policy and strategy guidelines for the City of Denison (the “City”) in order to achieve the goals of safety, liquidity, achieving a market rate of return, and maintaining public trust for all investment activities. The City Council of the City (the “City Council”) shall review the investment strategy and policy at least annually, and the City Council shall annually approve the Investment Policy, including any revisions.

2. **INVESTMENT STRATEGY.** The City maintains a comprehensive and proactive cash management program which is designed to monitor and control all City funds to ensure maximum utilization and yield a market rate of return. The basic and underlying strategy of this program is that all of the City’s funds are earning interest. It is the responsibility and obligation of the City to maintain a flexible approach and be prepared to modify the investment strategy as market conditions dictate. The investment strategy described is predicated on conditions as now exist and are subject to change. The investment strategy emphasizes low credit risk, diversification, and management of maturities. The strategy also considers the expertise and time constraints of the investment officers. The allowable investment instruments, as defined in Section 6 of this Policy, reflect the avoidance of credit risk. Diversification refers to dividing investments among a variety of securities offering independent returns. This strategy uses local government investment pools to achieve diversification. The management of maturities refers to structuring the maturity dates of the direct investments so that, while funds are initially invested for a longer period of time, some investments mature as cash needs require.

2.1. **The primary investment strategy and objectives** of the City, as specified in Section 4 of this Policy, are listed below in their order of importance:

- safety and preservation of principal,
- maintenance of sufficient liquidity to meet operating needs,
- achieve a market rate of return on the investment portfolio, and
- seek at all times to maintain public trust by adhering to the above stated objectives.

2.2. **The list of investments authorized** by this Policy intentionally excludes some investments allowed by state law. The restrictions limit possible credit risk and provide the maximum measure of safety. Within the investment objectives, the investment strategy is to utilize authorized investments for maximum advantage to the City. To increase the interest earnings for funds identified as being available for investment over longer periods of time based upon a cash requirements projection, the City will consider the following strategies:

2.2.1. **Strategy No. 1.** Diversifying the City's investment opportunities through the use of local government investment pools and money market mutual funds as authorized by the City Council. An investment pool is an entity created to invest public funds jointly on behalf of its participants in the pool and whose investment objectives in order of priority match those objectives of the City. Funds are usually available from investment pools on a same-day basis, meaning the pools have a high degree of liquidity. Because of the size and expertise of their staff, investment pools are able to prudently invest in a variety of the investment types allowed by state law. In this manner, investment pools achieve diversification. The strategy of the City calls for the use of investment pools as a primary source of diversification and supplemental source of liquidity. Funds that may be needed on a short-term basis but that are in excess of the amount maintained at the depository bank are available for deposit in investment pools.

2.2.2 **Strategy No. 2.** Building a ladder of Investment Policy authorized securities with staggered maturities for all or part of the longer-term investable funds. The benefits of this ladder approach include the following:

- It is straight-forward and easily understood;
- It represents a prudent diversification method;
- All investments remain within the approved maturity horizon;
- It will normally allow the City to capture a reasonable portion of the yield curve; and,
- It provides predictable cash flow with scheduled maturities and reinvestment opportunities.

2.2.3. **Strategy No. 3.** Pursuant to the Public Funds Investment Act (Texas Government Code 2256.001 et seq.), the City may, at its discretion, contract with an investment management firm registered under the Investment Advisors Act of 1940 (15 U.S.C. Section 80b-1 et seq.) and with the State Securities Board to provide for investment and non-discretionary management of its public funds or other funds under its control.

An appointed Investment Advisor shall act solely in an advisory and administrative capacity, within the guidelines of this Investment Policy. At no time shall the advisor take possession of securities or funds or otherwise be granted discretionary authority to transact business on behalf of the City. Any contract awarded by the City Council for investment advisory services may not exceed a term of two (2) years, with an option to extend by mutual consent of both

parties. Such renewal or extension of the contract shall be made by the City Council and approved via the adoption of an ordinance or resolution of the City Council.

Duties of the Investment Advisor contracted by the City shall abide by the Prudent Expert Rule, whereby investment advice shall, at all times, be given with the judgment and care, under circumstances then prevailing, which persons paid for their special prudence, discretion and intelligence in such matters exercise in the management of their client's affairs, not for speculation by the client or production of fee income by the advisor or broker, but for investment by the client with emphasis on the probable safety of the capital while considering the probable income to be derived. The City and/or the designated Investment Officer shall have the authority to utilize other City employees or the services of a City approved contractor to aid the Investment officer in the execution of the Officer's duties under Chapter 2256 of the Texas Government Code.

2.2.4. **Strategy No. 4.** The City will maintain portfolio(s) which utilize four specific investment strategy considerations designed to address the unique characteristics of the fund group(s) represented in the portfolio(s):

2.2.4.1 Investment strategies for operating funds and pooled funds containing operating funds have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity. The secondary objective is to create a portfolio that will experience minimal volatility during economic cycles through diversification by security type, maturity date and issuer. All security types, as authorized by this Policy, are considered suitable investments for the operating and pooled funds.

2.2.4.2 Investment strategies for debt service funds shall have as the primary objective the assurance of investment liquidity adequate to cover the debt service obligation on the required payment date(s). These funds have predictable payment schedules. Therefore, investment maturities shall not exceed the anticipated cash flow requirements.

2.2.4.3 Investment strategies for debt service reserve funds shall have as the primary objective the ability to generate a dependable revenue stream to the appropriate debt service fund. Managing the Debt Service Reserve Fund's portfolio maturities to not exceed the call provisions of the bond issue will reduce the investment's market risk if the City's bonds

are called and the reserve fund liquidated. No investment maturity shall exceed the final maturity of the bond issue.

2.2.4.4 Investment strategies for special projects or capital projects funds will have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity.

2.2.4.5 Market conditions and arbitrage regulations will influence the investment of capital project funds. When market conditions allow, achieving a positive spread to applicable arbitrage yield is the desired objective, although at no time shall the anticipated expenditure schedule be exceeded in an attempt to increase yield.

2.2.5 **Strategy No. 5 - Hold until Maturity.** The strategy of the City is to maintain sufficient liquidity in its portfolio so that it does not need to sell a security prior to maturity. Should it become necessary to sell a security prior to maturity, where the sale proceeds are less than the current book value, the prior written consent of the City Manager must be obtained. Securities may be sold prior to maturity by the Investment Officer at or above their book value at any time.

2.2.6. **Strategy No. 6 - Pooling of Deposits and Investments.** All demand deposits of the City will be concentrated with one central depository. This procedure will maximize the City's ability to pool cash for investment purposes, and provide more manageable banking relationships. In addition, depositories not holding demand deposits of the City may be eligible to bid on City investments.

2.2.7. **Strategy No. 7 - Depository Bank Relationships.** This Policy shall further seek to maintain good depository bank relationships while minimizing the cost of banking services. The City will seek to maintain a depository contract which will be managed to a level that minimizes the cost of the banking relationship to the City, while allowing the City to earn an appropriate return on idle demand deposits.

2.2.8. **Strategy No. 8 - Single Pooled Fund Group.** A single strategy is specified, in accordance with the single pooled fund group as defined in this Policy. However, earnings from investments will be allocated on a pro-rata cash basis to the individual funds and used in a manner that will best service the interests of the City.

2.2.9. **Strategy No. 9 - Maximizing Investable Cash Balances.** Procedures shall be established and implemented in order to maximize investable cash by decreasing the time between the actual

collection and the deposit of receipts, and by the controlling of disbursements.

3. **SCOPE.** The Investment Policy shall govern the investment of all financial assets considered to be part of the City entity and includes the following funds or fund types: the General Fund; enterprise funds, including the Water and Sewer Utility Fund and Drainage Utility Fund; Debt Service Funds; Capital Projects Funds; Internal Service funds; Special Revenue funds; and any other funds which have been contractually delegated to the City for management purposes. The City may add or delete funds as may be required by law, or for proper accounting procedures. This Policy does not include funds governed by approved trust agreements, or assets administered for the benefit of the City by outside agencies under retirement or deferred compensation programs. Additionally, bond funds (including debt service and reserve funds) are governed by bond ordinances and are subject to the provisions of the Internal Revenue Code and applicable federal regulations governing the investment of bond proceeds.

4. **INVESTMENT OBJECTIVES.** Funds of the City shall be invested in accordance with all applicable Texas statutes, this Policy and any other approved, written administrative procedures. The four objectives of the City's investment activities shall be as follows:
 - 4.1. **Preservation and Safety of Principal.** Safety of principal invested is the foremost objective in the investment decisions of the City. Each investment transaction shall seek to ensure the preservation of capital in the overall portfolio. The risk of loss shall be controlled by investing only in authorized securities as defined in this Policy and applicable federal and state laws, by qualifying the financial institutions with which the City will transact, and by portfolio diversification. Safety is defined as the undiminished return of the principal on the City's investments.

 - 4.2. **Liquidity.** The investment portfolio shall be managed to maintain liquidity to ensure that funds will be available to meet the City's cash flow requirements and by investing in securities with active secondary markets. Investments shall be structured in such a manner as will provide the liquidity necessary to pay obligations as they become due. A security may be liquidated prior to its stated maturity to meet unanticipated cash requirements, or to otherwise favorably adjust the City's portfolio, in accordance with Section 2.2.5 above.

 - 4.3. **Market Rate-of-Return (Yield).** The City's investment portfolio shall be designed to optimize a market rate-of-return on investments consistent with risk constraints and cash flow requirements of the portfolio. The investment portfolio shall be managed in a manner which seeks to attain a market rate of return throughout budgetary and economic cycles. The City

will not attempt to consistently attain an unrealistic above market rate-of-return, as this objective will subject the overall portfolio to greater risk. Therefore, the City's rate of return objective is secondary to those of safety and liquidity. Rate of return (yield) is defined as the rate of annual income return on an investment, expressed as a percentage.

4.4. **Public Trust.** All participants in the City's investment program shall seek to act responsibly as custodians of the public trust. Investment officials shall avoid any transaction which might involve a conflict of interest or otherwise impair public confidence in the City's ability to govern effectively. All officials of the City having either a direct or indirect role in the process of investing idle funds shall act responsibly as custodians of the public trust.

5. **INVESTMENT RESPONSIBILITY.** As provided in this policy, the daily operation and management of the City's investments are the responsibility of the following persons.

5.1 **Delegation of Authority.** The Finance Director and the City Manager are authorized to deposit, withdraw, invest, transfer or manage in any other manner the funds of the City. Management responsibility for the investment program is hereby delegated to the Finance Director who shall establish written procedures for the operation of the investment program consistent with this Policy. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. All persons involved in investment activities will be referred to in this Policy as "Investment Officials." No persons may engage in an investment transaction except as provided under the terms of this Policy and the procedures established by the Finance Director. The Finance Director shall be responsible for all transactions undertaken, and shall establish a system of controls to regulate the activities of subordinate Investment Officials. The system of controls shall be designed to provide reasonable assurance that ensures the assets of the City are protected from loss, theft or misuse. The concept of reasonable assurance recognizes that:

- (1) the cost of a control should not exceed the benefits likely to be derived; and,
- (2) the valuation of costs and benefits requires estimates and judgments by management.

The Finance Director shall be designated as the primary Investment Officer for the City and shall be responsible for investment decisions and activities under the direction of the City Manager. Commitment of financial and staffing resources in order to maximize total return through active portfolio management shall be the responsibility of the City Council.

5.2 **Prudence.** The standard of prudence to be applied by the Investment Officer shall be the "prudent investor" rule, which states, "investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived." In determining whether the Investment Officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration the following:

5.2.1 the investment of all funds over which the Investment Officer had responsibility rather than a consideration as to the prudence of a single investment; and,

5.2.2 whether the investment decision was consistent with the written investment Policy and procedures of the City.

5.3 **Due Diligence.** The Investment Officer acting in accordance with written policies and procedures and exercising due diligence, shall not be held personally responsible for a specific security's credit risk or market price changes, provided that these deviations are reported in a timely manner and that appropriate action is taken to control adverse developments. All Investment Officials involved in investment transactions will be bonded.

5.4 **Ethical Standards and Conflicts of Interest.** All City Investment Officials having a direct or indirect role in the investment of City funds shall act as custodians of the public trust avoiding any transaction which might involve a conflict of interest, the appearance of a conflict of interest, or any activity which might otherwise discourage public confidence. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair the ability to make impartial investment decisions. An Investment Officer who has a personal business relationship with the depository bank or with any entity seeking to sell an investment to the City shall file a statement disclosing that personal business interest. An Investment Officer who is related within the second degree of affinity or consanguinity to an individual seeking to sell an investment to the City shall file a statement disclosing that relationship. A statement required under this subsection must be filed with the Texas Ethics Commission and the City Council.

5.5 **Training.** The treasurer, the chief financial officer if the treasurer is not the chief financial officer, and the investment officers shall attend training in compliance with Chapter 2256 of the Texas Government Code.

6. **AUTHORIZED INVESTMENTS.** As stated previously, safety of principal is the primary objective in investing public funds and can be accomplished by limiting two types of risk-credit risk and interest rate risk. Credit risk is the risk associated with the failure of a security issuer or backer. Interest rate risk is the risk that the value of a portfolio will decline due to an increase in the general level of interest rates. In order to provide for safety of principal as the City's primary objective, only certain investments are authorized as acceptable investments for the City. The following list of authorized investments for the City intentionally excludes some investments authorized by law, and is the exclusive of the City's authorized investments until modified by action of the City Council. These restrictions are placed in order to limit possible risk and provide the maximum measure of safety to City funds.

6.1 **Authorized and Acceptable Investments.** The authorized list of investment instruments are as follows:

6.1.1. **Obligations of the United States** or its agencies and instrumentalities, including letters of credit of the Federal Home Loan Banks, but excluding mortgage-backed securities.

6.1.2. **Direct obligations** of the State of Texas, or its agencies and instrumentalities.

6.1.3. **Other Obligations**, the principal of and interest on which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the State of Texas or the United States or their respective agencies and instrumentalities, excluding mortgage-related securities.

6.1.4. **Collateralized Certificates of Deposit.** A certificate of deposit issued by a depository institution that has its main office or a branch office in this state and is:

- guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor;
- secured by obligations that are described by Section 2256.009(a) of the Public Funds Investment Act, including mortgage backed securities directly issued by a federal agency or instrumentality, but excluding those mortgage backed securities of the nature described in Section 2256.009(b) of the Act; or
- secured in accordance with Chapter 2257 or in any other manner and amount provided by law for deposits of the City.

6.1.5. **Eligible Local Government Investment Pools.** Public funds investment pools which invest in instruments and follow practices allowed by the current law as defined in Section 2256.016 of the Texas Government Code, provided that:

- the investment pool has been authorized by the City Council by ordinance or resolution;
- the pool shall have furnished the Investment Officer an offering circular containing the information required by Section 2256.016(b) of the Texas Government Code, as amended from time to time;
- the pool shall furnish the Investment Officer investment transaction confirmations with respect to all investments made with it;
- the pool shall furnish to the Investment Officer monthly reports containing the information required under Section 2256.016(c)(2) of the Texas Government Code;
- the pool is continuously rated no lower than “AAA” or “AAA-m” or an equivalent rating by at least one nationally recognized rating service;
- the pool marks its portfolio to market daily;
- the pool’s investment objectives shall be to maintain a stable net asset value of one dollar (\$1.00), when rounded and expressed to two decimal places;
- the pool ensures that when the ratio of the market value of the portfolio divided by the book value of the portfolio is less than 0.995 or greater than 1.005, the pool takes action to eliminate or reduce to the extent reasonably practicable any dilution or unfair result to existing participants, including a sale of portfolio holdings to attempt to maintain the ratio between 0.995 and 1.005; and
- the pool’s investment philosophy and strategy are consistent with this Policy.

The City will take all prudent measures consistent with this Policy to liquidate an investment that does not maintain the minimum rating required by this Policy.

6.1.6. **Repurchase Agreements, Reverse Security Repurchase Agreements, Bankers’ Acceptances; Commercial Paper.** These investments are authorized for the City to the extent that they are contained in the portfolios of approved public funds investment pools in which the City invests. Only fully collateralized direct repurchase agreements with the City’s Bank Depository are authorized City investments. The repurchase agreement is authorized only if it (1) has a defined termination date; (2) is secured by a combination of cash and obligations as described by Section 2256.009(a)(1) of the

Texas Government Code, as amended; (3) requires the securities being purchased or the cash held to be pledged to the City, held in the City's name, and deposited at the time the investment is made with the City or with a third party selected and approved by the City; and (4) is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in Texas.

Notwithstanding any other law, the term of any Reverse Security Repurchase Agreement shall not exceed ninety (90) days after the date the Reverse Security Repurchase Agreement is delivered. Money received under the terms of a Reverse Security Repurchase Agreement shall be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the Reverse Security Repurchase Agreement.

Section 1371.059(c) of the Texas Government Code applies to the execution of a repurchase agreement by the City.

6.1.7. Regulated No-Load Money Market Mutual Funds. These investments are authorized, under the following conditions:

- the money market mutual fund is registered with and regulated by the Securities and Exchange Commission;
- the fund provides the City with a prospectus and other information required by the Securities Exchange Act of 1934 or the Investment Company Act of 1940;
- complies with Securities and Exchange Commission Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated under the Investment Company Act of 1940; and
- the fund is continuously rated no lower than "AAA" or an equivalent rating by at least one nationally recognized rating service.

The City may not invest funds under its control in an amount that exceeds 10% of the total assets of any individual money market mutual fund.

6.1.8. Interest-Bearing Banking Deposits. These investments are authorized for the City to the extent that they are guaranteed or insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Other interest-bearing banking deposits other than those described above are authorized, under the following conditions:

- the funds invested in the banking deposits are invested through:
 - (i) a broker with a main office or branch office in this state that the City selects from a list the City Council or designated investment committee of the City adopts; or
 - (ii) a depository institution with a main office or branch office in this state that the City selects;
- the broker or depository institution selected above arranges for the deposit of the funds in the banking deposits in one or more federally insured depository institutions, regardless of where located, for the City's account;
- the full amount of the principal and accrued interest of the banking deposits is insured by the United States or an instrumentality of the United States; and
- the City appoints as the City's custodian of the banking deposits issued for the City's account:
 - (i) the depository institution selected by the City Council;
 - (ii) a custodian pursuant to the Public Funds Collateral Act; or
 - (iii) a clearing broker dealer registered with the Securities and Exchange Commission.

6.2 **Investment Instruments NOT Authorized.** State law specifically prohibits investment in the following securities:

- 6.2.1. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal.
- 6.2.2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest.
- 6.2.3. Collateralized mortgage obligations that have a stated final maturity date of greater than ten years.
- 6.2.4. Collateralized mortgage obligations, the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

7. **DIVERSIFICATION.** Diversification of investment instruments shall be utilized to avoid incurring unreasonable risks resulting from over-concentration of investments in a specific maturity, a specific issue, or a specific class of securities. With the exception of fully collateralized Certificates of Deposit, U. S. Government

Securities, and authorized local government investment pools (as authorized in this Policy), no more than fifty percent (50%) of the total investment portfolio will be invested in any one security type or with a single financial institution. Diversification of the portfolio considers diversification by maturity dates and diversification by investment instrument.

7.1 **Diversification by Maturities.** The longer the maturity of investments, the greater their price volatility. Therefore, it is the City’s policy to concentrate its investment portfolio in shorter-term securities in order to limit principal risks caused by change in interest rates. The City will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the City will not directly invest in securities maturing more than three (3) years from the date of purchase. However, the above described obligations, certificates, or agreements may be collateralized using longer date instruments. The City shall diversify the use of investment instruments to avoid incurring unreasonable risks inherent in over-investing in specific instruments, individual financial institutions or maturities. Maturity scheduling shall be managed by the Investment Officer so that maturities of investments shall be timed to coincide with projected cash flow needs.

The entire City portfolio, including funds at the City’s depository bank, shall comprise one pooled fund group, and the maximum average dollar-weighted maturity allowed based on the stated maturity date for the portfolio shall be less than three hundred sixty-five (365) days. Investment maturities for debt service interest and sinking funds and/or other types of reserve funds, whose use is never anticipated, may not exceed three (3) years.

7.2 **Diversification by Investment Instrument.** Diversification by investment instrument shall not exceed the following guidelines for each type of instrument:

	Percentage of Portfolio <u>(Maximum)</u>
U.S. Treasury Obligations	100%
U.S. Government Agency Securities and Instrumentalities of Government-Sponsored Corporations	80%
Authorized Local Government Investment Pools	100%
Fully Collateralized Certificates of Deposit	100%
Fully Collateralized Repurchase Agreements	25%
SEC-Regulated No-Load Money Market Mutual Funds	50%

8. **AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS.** Financial institutions (federally insured banks) with and through whom the City invests shall be state or national banks that have their main office or a branch office in this state. No public deposit shall be made except in a qualified public depository as established by state laws. Broker/dealers authorized to provide investment services to the City may include only those authorized by the City Council. All banking services will be governed by a depository contract awarded by the City Council. In addition, the Finance Director shall maintain a list of authorized security brokers/dealers, and investment pools that are authorized by the City Council.

8.1 All financial institutions with whom the City does business must supply the following as appropriate: (1) audited financial statements; (2) proof of National Association of Securities Dealers (NASD) certification; (3) proof of state registration; (4) completed broker/dealer questionnaire; (5) certification of having read the City's investment policy signed by a qualified representative of the organization, acknowledging that the organization has implemented reasonable procedures and controls in an effort to preclude imprudent investment activities arising out of investment transactions conducted between the City and the organization.

8.2 **Annual Review of Bidders Financial Conditions.** An annual review of the financial condition and registration of qualified bidders will be conducted by the Finance Director. The review may include, but is not limited to, review of rating agency reports, review of call reports, and analyses of management, profitability, capitalization, and asset quality. Financial institutions and brokers/dealers desiring to conduct business with the City shall be required to provide any financial data requested by the Investment Officer. Upon completion of the annual review by the Finance Director, the financial institutions and brokers/dealers desiring to conduct business with the City shall be approved by the City Council.

8.3 **Selection Criteria** for federally insured financial institutions shall include the following: (1) the financial institution must be insured by the FDIC; (2) the financial institution must be incorporated under the laws of the State of Texas or of the United States of America; and (3) the financial institution must be located within the corporate boundaries of the City. Depositories located outside the City limits, but within the county, may be eligible to bid on investments, provided the financial institution maintains a place of business within the State of Texas and offers within the State the services required by the depository services contract; and the City Council, has adopted a written policy expressly permitting the consideration of applications received by the City from a financial institution that is not doing business within the City, after taking into consideration what is in the best interest of the City in establishing a depository.

8.4 **Monitoring Investments.** The Investment Officer of the City is responsible for monitoring the investments made by a financial institution and/or broker/dealer to determine that they are in compliance with the provisions of the Investment Policy.

9. **DELIVERY VERSUS PAYMENT.** It is the policy of the City that all security transactions entered into with the City shall be conducted on a “**DELIVERY VERSUS PAYMENT**” (DVP) basis through the Federal Reserve System. By doing this, City funds are not released until the City has received, through the Federal Reserve wire, the securities purchased. The City shall authorize the release of funds only after receiving notification from the safekeeping bank that a purchased security has been received in the safekeeping account of the City. The notification may be oral, but shall be confirmed in writing.

10. **SAFEKEEPING AND COLLATERALIZATION**

10.1 **Safekeeping.** All securities owned by the City shall be held by its safekeeping agent, except the collateral for bank deposits. The collateral for bank deposits will be held in the City’s name in a Federal Reserve Bank account, a Federal Home Loan Bank account or a third-party bank, at the City’s discretion. Original safekeeping receipts shall be obtained and held by the City. The City shall contract with a bank or banks for the safekeeping of securities either owned by the City as part of its investment portfolio or held as collateral to secure time deposits.

10.2 **Collateralization.** Consistent with the requirements of the Public Funds Collateral Act, it is the policy of the City to require full collateralization of all City funds on deposit with a depository bank. The market value of the investments securing the deposit of funds shall be at least equal to the amount of the deposits of funds reduced to the extent that the deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Securities pledged as collateral shall be held in the City’s name in a segregated account at the Federal Reserve Bank or by an independent third party with whom the City has a current custodial agreement. The agreement is to specify the acceptable investment securities as collateral, including provisions relating to possession of the collateral, the substitution or release of investment securities, ownership of securities, and the method of valuation of securities. The safekeeping agreement must clearly state that the safekeeping bank is instructed to release purchased and collateral securities to the City in the event the City has determined that the depository bank has failed to pay on any matured investments in certificates of deposit, or has determined that the funds of the City are in jeopardy for whatever reason, including involuntary closure or change of ownership. A clearly marked evidence of ownership, e.g., safekeeping receipt, must be supplied to the City and retained by the City. Any collateral with a maturity over five

(5) years must be approved by the Investment Officer before the transaction is initiated. Release of collateral or substitution of securities must be approved in writing by the Investment Officer.

10.2.1 The City may accept the following securities as collateral for bank deposits (V.T.C.A., Government Code, Section 2256.001, et. seq., formerly Article 842a-2, Section 2, V.T.C.S., as amended);

- FDIC coverage;
- U.S. Government securities;
- State of Texas bonds;
- Bonds issued by other Texas governmental entities (City, County, school district, or special districts) with a remaining maturity of twenty (20) years or less. Bonds must be (and must remain) investment quality: that is, with a rating of at least "A" or its equivalent;
- Surety Bond that meets the requirements of the Public Funds Investment Act; or a
- Federal Home Loan Bank Letters of Credit as defined by Chapter 116, Subchapter C of the Local Government Code and by Chapter 726, Acts of the 67th Legislature, Regular Session, 1981 (Article 2529b-1, Vernon's Texas Civil Statutes).

10.2.2 For certificates of deposit and other evidences of deposit, collateral shall be at 102% of market or par, whichever is lower. The market value of collateral will always equal or exceed the principal plus accrued interest of deposits at financial institutions.

10.2.3 Financial institutions with whom the City invests or maintains other deposits, shall provide monthly, and as requested by the Investment Officer, a listing of the collateral pledged to the City, marked to current market prices. The listing shall include total pledged securities itemized by name, type, description, par value, current market value, maturity date, and Moody's or Standard & Poor's rating, if applicable. The City and the financial institution shall jointly assume the responsibility for ensuring that the collateral is sufficient.

10.2.4 **Collateralized Deposits.** Consistent with the requirements of State law, the City requires all bank deposits to be federally insured or collateralized with eligible securities. Financial institutions serving as City depositories will be required to sign a "Depository Agreement" with the City and the City's safekeeping agent. The collateralized deposit portion of the Agreement shall

define the City's rights to the collateral in the event of default, bankruptcy, or closing and shall establish a perfected security interest in compliance with Federal and State regulations, including:

- the Agreement must be in writing;
- the Agreement has to be executed by the Depository and the City contemporaneously with the acquisition of the asset;
- the Agreement must be approved by the Board of Directors of the Loan Committee of the Depository and a copy of the meeting minutes must be delivered to the City; and,
- the Agreement must be part of the Depository's "official record" continuously since its execution.

11. **INTERNAL CONTROL.** The Investment Officer shall establish a system of written internal controls, which shall be reviewed annually by independent auditors. The controls shall be designed to prevent loss of public funds due to fraud, error, misrepresentation, unanticipated market changes, or imprudent actions. The internal controls are to be reviewed annually in conjunction with an external independent audit. This review will provide assurance of compliance with policies and procedures as specified by this Policy. The City, in conjunction with its annual financial audit, shall perform a compliance audit of management controls and adherence to the City's established investment policy.

12. **PERFORMANCE.** The City's investment portfolio shall be designed to obtain a market rate of return on investments consistent with risk constraints and cash flow requirements of the City. The benchmark for performance that is appropriate for the City's cash flow cycle will be the "asked" rate on the U. S. Treasury Bill closest to the maturity date of the investment purchased.

13. **REPORTING.** The Finance Director shall submit a signed quarterly investment report that summarizes current market conditions, economic developments and anticipated investment conditions. The report shall summarize investment strategies employed in the most recent quarter, and describe the portfolio in terms of investment securities, maturities, risk characteristics, and shall explain the total investment return for the quarter.

13.1 **Annual Report.** Within sixty (60) days of the end of the fiscal year, Finance Director shall present an annual report on the investment program and investment activity. This report may be presented as a component of the fourth quarter report to the City Council. The reports prepared by the Finance Director shall be formally reviewed at least annually by an independent auditor and the result of the review shall be reported to the City Council by that auditor.

13.2 **Methods.** The quarterly investment report shall include a succinct management summary that provides a clear picture of the status of the current investment portfolio and transactions made over the past quarter. The report shall describe in detail the investment position of the City on the date of the report, shall be prepared jointly by all investment officers for the City, and shall be signed by each investment officer of the City. This management summary will be prepared in a manner that will allow the City to ascertain whether investment activities during the reporting period have conformed to the investment policy. The report will be prepared in compliance with generally accepted accounting principles. The report will be provided to the City Council. The report will include the following:

13.2.1 A listing of individual securities held at the end of the reporting period. This list will include the name of the fund or pooled group fund for which each individual investment was acquired;

13.2.2. Unrealized gains or losses resulting from appreciation or depreciation by listing the beginning and ending book and market value of securities for the period. Market values shall be obtained from financial institutions or portfolio reporting services independent from the broker/dealer from which the security was purchased;

13.3.3 Additions and changes to the market value during the period;

13.3.4 Fully accrued interest for the reporting period;

13.3.5 Average weighted yield to maturity of portfolio on entity investments as compared to applicable benchmarks;

13.3.6 Listing of investments by maturity date;

13.3.7 The percentage of the total portfolio which each type of investment represents;

13.3.8 Statement of compliance of the City's investment portfolio with State Law and the investment strategy and policy approved by the City Council;

13.3.9 Contain a summary statement of each pooled group fund that states the (1) beginning market value for the reporting period; (2) ending market value for the reporting period; and (3) fully accrued interest for the reporting period;

13.3.10 State the book value and market value of each separately invested asset at the end of the reporting period by the type of asset and fund type invested;

13.3.11 State the maturity date of each separately invested asset that has a maturity date;

13.3.12 State the account or fund or pooled group fund in the state agency or local government for which each individual investment was acquired; and

13.3.13 State the compliance of the investment portfolio of the City as it relates to (1) the investment strategy expressed in the City's investment policy; and (2) relevant provisions of Chapter 2256 of the Texas Government Code.

14. **INVESTMENT POLICY ADOPTION AND AMENDMENT.** The City's Investment Policy shall be adopted and amended by resolution of the City Council only. The City's written policies and procedures for investments are subject to review not less than annually to stay current with changing laws, regulations and needs of the City. Any changes or modifications to this Investment Policy, if any, shall be approved by the City Council, and shall be adopted by a formal resolution of the City Council.

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Attachment A
INVESTMENT POLICY

GLOSSARY OF TERMS

The Investment Policy contains specialized and technical terminology that is unique to cash management and investment activities. The following glossary of terms is provided to assist in understanding these terms.

Affinity. Related through marriage.

Agencies. See United States Agency Securities.

Bankers' Acceptances. A draft or bill of exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer. When discounted and sold in the secondary market, bankers' acceptances become a short-term investment alternative.

Book Value. The cost of a security as recorded in the accounting records. For purposes of evaluating a sale of a security, it is a function of the original cost, the amortization of premium or discount, and the accrued interest. Specifically, it is the face value of the security, plus the accrued interest, plus any unamortized premium (or minus any unamortized discount). Book value is often compared to market value, which is defined below.

Broker. A person or company that, for a fee or commission, brings buyers and sellers of securities together.

Certificate of Deposit. A time deposit with a specific maturity evidenced by a certificate.

Collateral. In general, assets which one party pledges as a guarantee of performance. Specifically, securities pledged by a bank to secure deposits of public monies. In the event of bank failure, the securities become the property of the public entity.

Collateralized Mortgage Obligations (CMO's). Securities based on a pool of home mortgages.

Commercial Paper. An unsecured promissory note issued primarily by corporations for a specific amount and maturing on a specific day. The maximum maturity for commercial paper is 270 days, but most frequently maturities do not exceed 30 days. Almost all commercial paper is rated by a rating service.

Consanguinity. Related by blood.

Coupon. The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. Also, a certificate attached to a bond indicating interest due on a payment date.

Credit Risk. The uncertainty that the principal amount of an investment will be returned without loss of value to the default of the borrower.

CUSIP. A unique security identification number assigned to securities maintained and transferred on the Federal Reserve book-entry system.

Dealer. A person or company that endeavors to profit from buying and selling investments for its own account.

Delivery Versus Payment (DVP). A method of delivering securities that requires the simultaneous exchange of the security and the payment. It provides a safeguard against paying for securities before they are received.

Demand Deposits. Deposits at a financial institution that are available to the depositor upon the depositor's demand.

Depository Bank. The primary bank. The relationship with the depository bank is governed by state law and by a depository contract.

Discount. The difference between the cost price of a security and its value at maturity when quoted at lower than face value. A security selling below original offering price shortly after sale is also considered to be at a discount.

Discount Securities. Non-interest bearing money market instruments that are issued at a discount and redeemed at maturity for full face value, e.g., U. S. Treasury Bills.

Diversification. The strategy of dividing investments among a variety of securities offering independent risks and yields. Diversification lessens the likelihood of losing the entire portfolio of investments and averages yields among the investment alternatives.

Federal Deposit Insurance Corporation (FDIC). A federal agency that insures bank deposits.

Federal Funds Rate. The rate of interest at which Federal funds are traded. This rate is currently set by the Federal Reserve through open-market operations.

Federal Home Loan Banks (FHLB). Created in 1932, this system consists of 12 regional banks, which are owned by private member institutions and regulated by the Federal Housing Finance Board. Functioning as a credit reserve system, it facilitates extension of credit through its owner members. Federal Home Loan Bank issues are joint and several obligations of the 12 Federal Home Loan Banks.

Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac). A stockholder-owned corporation that provides a continuous flow of funds to mortgage lenders, primarily through developing and maintaining an active nationwide market in conventional mortgages.

Federal National Mortgage Association (FNMA or Fannie Mae). FNMA, a federal corporation, is the largest single provider of residential mortgage funds in the United States. It is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted.

Hold Until Maturity. This investment strategy is intended to avoid interest rate risk by maintaining ownership of an investment until it matures. At maturity, the face value of the security is received, but in some cases where a security is sold before maturity, less than the face value and the book value is received. Please see Interest Rate Risk defined below.

Interest-Bearing Banking Deposits. Interest-bearing deposits at a financial institution that are available to the depositor upon the depositor's demand, includes but is not limited to money market deposit accounts.

Interest Rate Risk. The uncertainty of the return of principal on fixed rate securities that are sold prior to maturity. When interest rates rise, the market value of fixed rate securities decreases.

Internal Control. Policies and procedures that are established to provide reasonable assurance that specific government objectives are achieved and that assets are safeguarded.

Investment. The purchase of securities which, upon analysis, promise safety of principal and a satisfactory return. These factors distinguish investment from speculation.

Investment Objective. The aim, goal or desired end of action of the investment activity.

Investment Pool. An entity created to invest public funds jointly on behalf of the entities that participate in the pool and whose investment objectives in order of priority are safety, liquidity, and yield. (Sometimes called Local Government Investment Pool.)

Investment Strategy. The overall plan or method proscribed to achieve the investment objectives.

Laddered Maturity. An investment strategy whereby investments are purchased to mature at regular intervals.

Liquidity. The measure of an investment's ability to be converted quickly and easily into cash without a substantial loss of value.

Local Government Investment Pool. See **Investment Pool**.

Market Rate of Return. A general term referring to the approximate interest rate that could be earned by an investor in a specific maturity range at any given point in time. For example, an investor seeking to earn a market rate of return while maintaining an investment portfolio with an average maturity of 90 days would hope to earn approximately the same as a three-month agency discount note. If the investor earns a rate much higher than this, it might signal an inappropriate level of risk.

Market Risk. The uncertainty of the value of a financial portfolio arising from changes in the market conditions of investment securities.

Market Value. The current face or par value of an investment multiplied by the net selling price of the security as quoted by a recognized market pricing source quoted on the valuation date.

Maturity. The date upon which the principal or stated value of an investment becomes due and payable.

Money Market Deposit Accounts. An interest-bearing account at an eligible financial institution that typically pays a higher interest rate than a savings account, and which provides the account holder with limited withdrawing ability.

Money Market Mutual Fund. A mutual fund that purchases short-term debt instruments, such as Treasury Bills, commercial paper, and bankers' acceptances, and which strives to maintain a stable net asset value of \$1.00.

Mutual Fund. Investment companies that sell shares to investors, offering investors diversification and professional portfolio management. Prices generally fluctuate with the performance of the fund.

Net Asset Value. The ratio of the market value of the portfolio divided by the book value of the portfolio.

Par. The value of a security as expressed on its face (face value) without consideration of a discount or premium.

Pledge. The grant of a collateral interest in investment securities by the depository bank as assurance of the safety of deposits.

Pooled Fund Group. The combination of various accounts and funds in a single, internally-created investing entity.

Portfolio. The collection of securities held by an investor.

Principal. The capital sum of an investment, as distinguished from interest.

Premium. The difference between the cost price and the face value at maturity in cases where the cost price is higher than the face value.

Rate-of-Return. See **Yield**.

Repurchase Agreement (REPO). An investment arrangement in which the holder of a security sells that security to an investor with an agreement to repurchase the security at a fixed price and on a fixed date, or as used in Section 6 of the policy, “repurchase agreement” means a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations described by Section 2256.009(a)(1) of the Texas Government Code, as amended, at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement.

Reverse Security Repurchase Agreement or Reverse Repurchase Agreement. An investment arrangement by which a security is sold to a third party, such as a bank or broker/dealer, in return for cash with the agreement to repurchase the instrument from the third party at a fixed price and on a fixed date. The cash is then used to purchase additional investments. This type of investment is prohibited in the portfolio, except to the extent used by local government investment pools as authorized in the Policy. See also definition of Repurchase Agreement for the purpose of Section 6 of this Policy.

Safekeeping. An arrangement whereby a bank holds securities and other valuables for protection in exchange for a fee.

Safety. The assurance of the undiminished return of the principal of investments and deposits.

Secondary Market. A market for the purchase and sales of outstanding securities following their initial distribution.

SEC Rule 15C3-1 (Uniform Net Capital Rule). Security and Exchange Commission requirement that member firms and nonmember broker/dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1.

Security. A financial instrument that signifies an ownership interest, the right to an ownership interest, or creditor status.

Security Risks. The uncertainty of the value of a security dependent on its particular qualities.

Time Deposits. Deposits at the depository bank that are not due and payable until a specific date.

United States Agency Securities. Debt instruments issued by an executive department, an independent federal establishment, or a corporation or other entity established by Congress which is owned in whole or in part by the United States of America.

United States Treasury Securities. Debt instruments issued by the Treasury of the United States. **Treasury Bills** are issued for short-term borrowings (less than one year); **Treasury Notes** are issued for mid-term borrowings (two - ten years); **Treasury Bonds** are issued for long-term borrowings (over ten years).

Yield. The rate of annual income return on an investment, expressed as a percentage.

**Attachment B
INVESTMENT POLICY**

[SAMPLE]

**TEXAS PUBLIC FUNDS INVESTMENT ACT
CERTIFICATION BY BUSINESS ORGANIZATION**

This certification is executed on behalf of the City of Denison, Texas (the "City") and _____ (the "Business Organization"), pursuant to the Public Funds Investment Act, Chapter 2256, Texas Government Code (the "Act") in connection with investment transactions conducted between the City and the Business Organization.

The undersigned Qualified Representative of the Business Organization hereby certifies on behalf of the Business Organization that:

1. The undersigned is a Qualified Representative of the Business Organization offering to enter an investment transaction with the Investor as such terms are used in the Act; and
2. The Qualified Representative of the Business Organization has received and reviewed the Investment Policy furnished by the City; and
3. The Qualified Representative of the Business Organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Business Organization and the City that are not authorized by the City's Investment Policy, except to the extent that this authorization is dependent on an analysis of the makeup of the City's entire portfolio or requires an interpretation of subjective investment standards.

Qualified Representative of Business Organization:

Firm: _____

Signature _____

Printed Name: _____

Title: _____

Date: _____

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 one (1) lot from the Neighborhood Services District to the Single-Family 5 (SF-5) District located at 528 W. Florence Street. (Case No. 2021-101Z)

Staff Contact

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

Summary

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

Staff Recommendation

The proposed rezone conforms to the Comprehensive Plan. City staff recommends approval of the zoning change.

Recommended Motion

"I move to approve the ordinance changing the zoning of the subject property from the Neighborhood Services District to the Single-Family 5 (SF-5) District."

Background Information and Analysis

The applicant is requesting to rezone the property from the Neighborhood Services District to the Single-Family 5 (SF-5) District. As shown in the aerial exhibits, the surrounding neighborhood is mostly developed with residential structures. The overall zoning of this area is Single-Family 5 (SF-5). While the property is currently zoned for nonresidential uses, the smaller size of this property may inhibit a nonresidential building with adequate parking from being established. Rezoning the subject property is in conformance with the Comprehensive Plan and would bring the existing residential land use into conforming status with the Zoning Ordinance.

Financial Considerations

N/A

Prior Board or Council Action

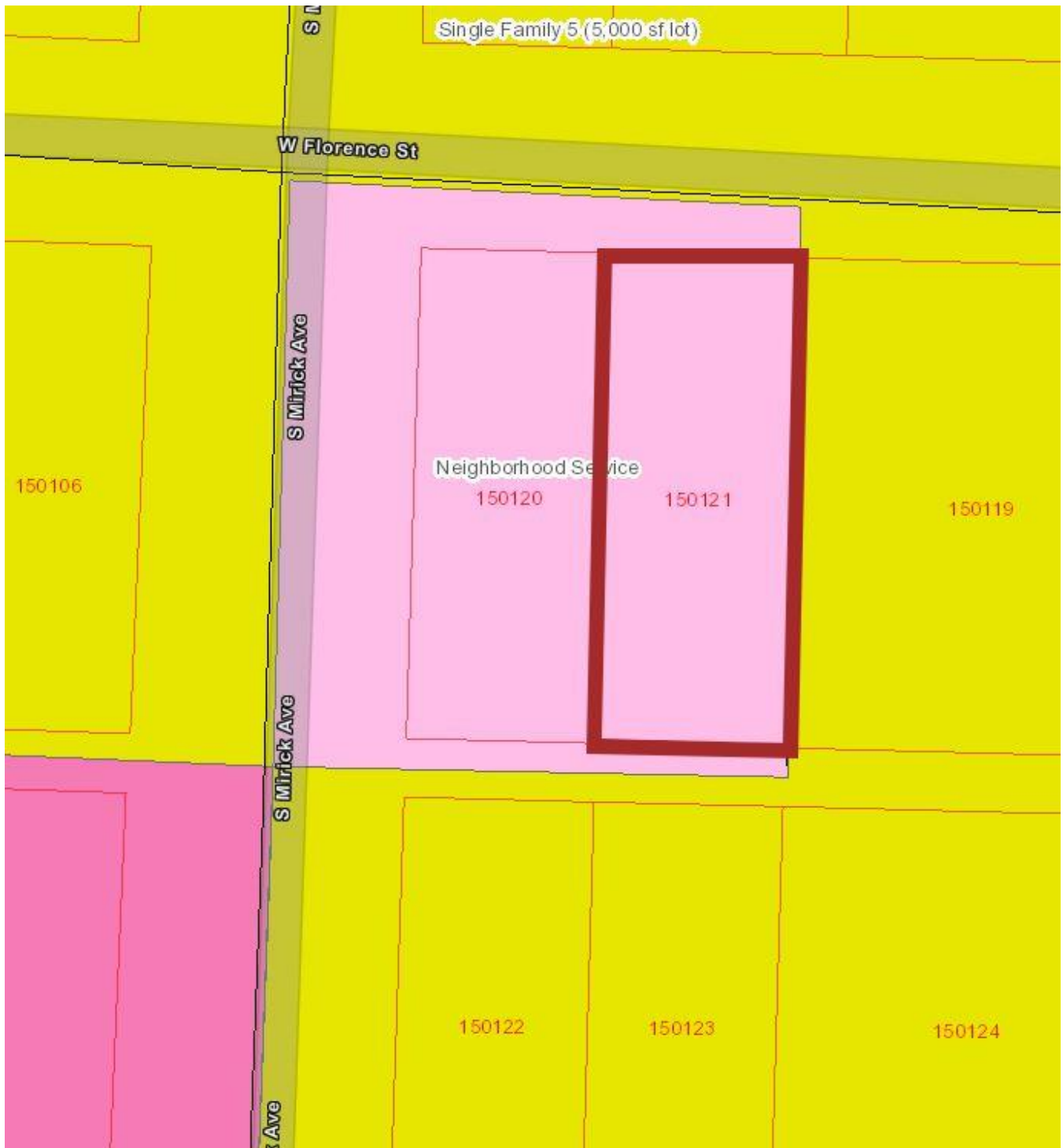
On September 28, 2021, the Planning and Zoning Commission held a Public Hearing and recommended approval of the request.

Alternatives

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



Aerial of Subject Property



Zoning of Subject Property – Neighborhood Services

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 9, BLOCK 10, GRANDVIEW ADDITION TO THE CITY OF DENISON, GRAYSON COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 81, PAGE 274, DEED RECORDS OF GRAYSON COUNTY, TEXAS, COMMONLY REFERRED TO AS 528 W. FLORENCE ST, DENISON, TX, AND MORE PARTICULARLY DESCRIBED AND DEPICTED IN EXHIBIT “A”, FROM ITS ZONING CLASSIFICATION OF NEIGHBORHOOD SERVICES 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; 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, 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 of the City of Denison, Texas (the “City”), is authorized and empowered by law, in accordance with Chapter 211 of the Texas Local Government Code, to adopt zoning regulations governing the use of land within the City; 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, GBOH, INC (the “Owner”) owns Lot 9, Block 10, Grandview Addition to the City of Denison, Grayson County, Texas, according to plat recorded in Volume 81, Page 274, Deed Records of Grayson County, Texas has made an application under the provisions of the Zoning Ordinance for a zoning change from the current zoning district classification of Neighborhood Services District to Single Family-5 District; and

WHEREAS, all legal notices, requirements and conditions having been complied with, the case to rezone the Property came before the Planning and Zoning Commission; and

WHEREAS, after public notices were given in compliance with Texas 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 has recommended approval of the zoning change; and

WHEREAS, after complying with all legal notices, requirements, and conditions, a public hearing was held before the City Council at which it 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 the compatibility of such zoning for the Property with surrounding uses and with the Comprehensive Land Use Plan of the City, with a view of encouraging the most appropriate use of land in the City, and the City Council does hereby find that the requested zoning accomplishes such objectives; and

WHEREAS, 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.

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. Amendment. Chapter 28 of the Code of Ordinances of the City, the same being the City's Comprehensive Zoning Ordinance, is hereby amended to change the zoning district classification on the Property described herein from Neighborhood Services District to Single Family-5 District, being located at 528 W. Florence St., Denison, Texas, and more particularly described in Exhibit "A" (Property Legal Description and Depiction), attached hereto and incorporated herein (the "Property").

SECTION 3. Zoning Map. The Zoning Map is hereby amended to reflect the established zoning classification designation herein made.

SECTION 4. No Vested Interest/Repeal. No developer or property owner shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein.

SECTION 5. Unlawful Use of Property. It shall be unlawful for any person, firm, entity or corporation to make use of the Property in some manner other than as authorized by this Ordinance, and it shall be unlawful for any person, firm, entity or corporation to construct on said premises any building that is not in conformity with the permissible uses and restrictions under this Ordinance.

SECTION 6. Severability Clause. 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 7. 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 8. 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 9. Publication and Effective Date. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

SECTION 10. Open Meeting. 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 October 4, 2021.

JANET GOTT, MAYOR

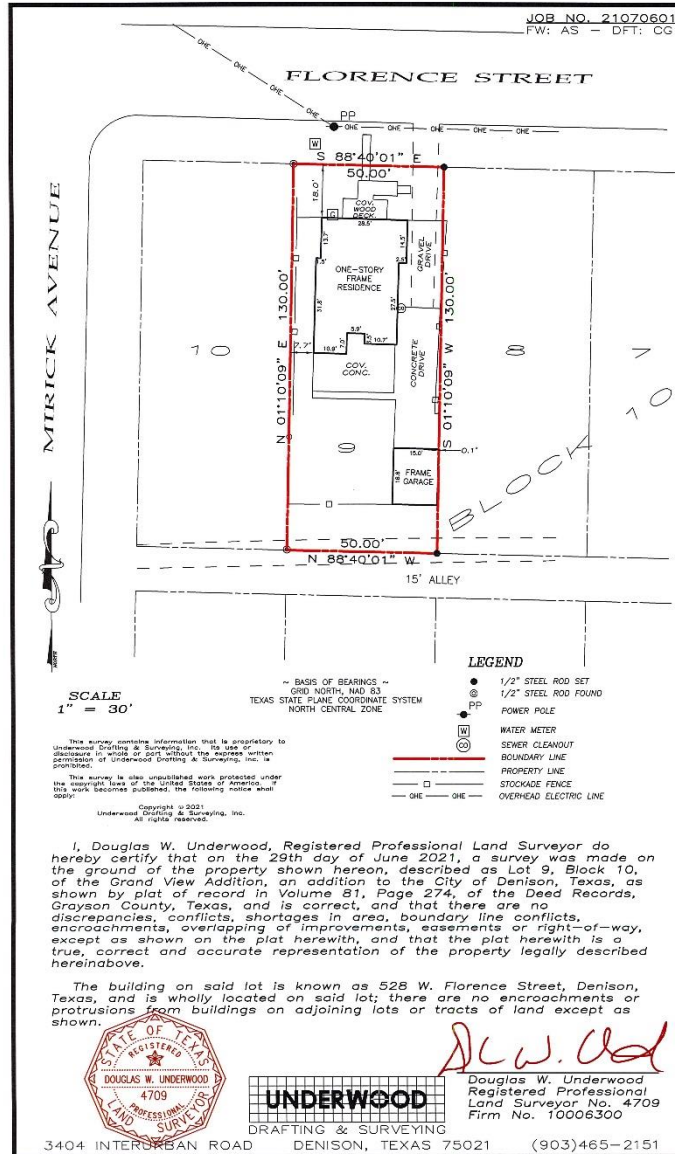
ATTEST:

Christine Wallentine, City Clerk

EXHIBIT "A"

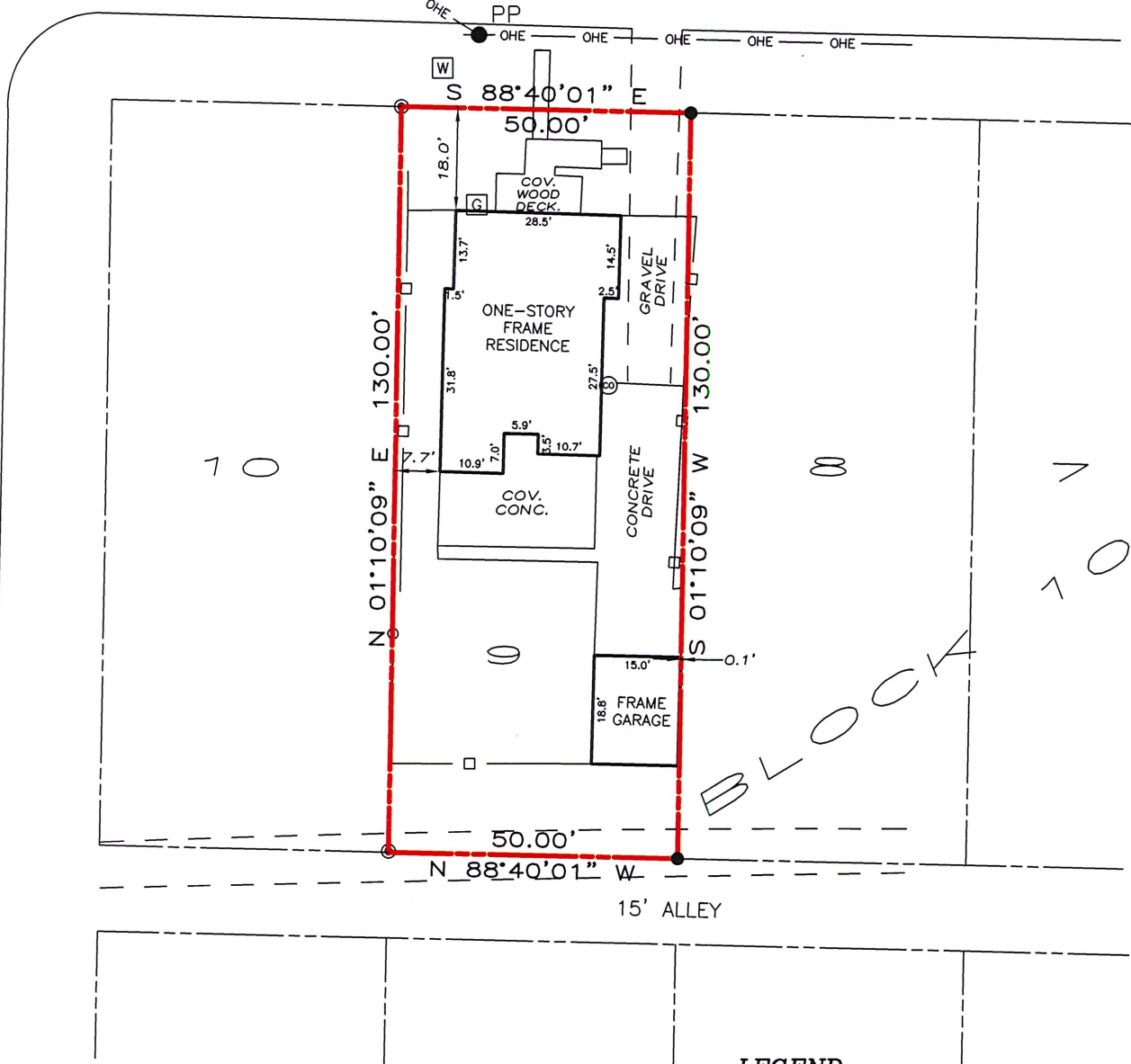
LEGAL DESCRIPTION AND DEPICTION

**LOT 9, BLOCK 10, GRANDVIEW ADDITION TO THE CITY OF DENISON,
GRAYSON COUNTY, TEXAS, ACCORDING TO PLAT RECORDED IN VOLUME 81,
PAGE 274, DEED RECORDS OF GRAYSON COUNTY, TEXAS, COMMONLY
REFERRED TO AS 528 W. FLORENCE ST, DENISON, TX**



MIRICK AVENUE

FLORENCE STREET



SCALE
 1" = 30'

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

LEGEND

- 1/2" STEEL ROD SET
- ⊙ 1/2" STEEL ROD FOUND
- PP POWER POLE
- Ⓜ WATER METER
- Ⓞ SEWER CLEANOUT
- BOUNDARY LINE
- - - PROPERTY LINE
- □ — STOCKADE FENCE
- OHE — OHE — OVERHEAD ELECTRIC LINE

This survey contains information that is proprietary to Underwood Drafting & Surveying, Inc. Its use or disclosure in whole or part without the express written permission of Underwood Drafting & Surveying, Inc. is prohibited.

This survey is also unpublished work protected under the copyright laws of the United States of America. If this work becomes published, the following notice shall apply:

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I, Douglas W. Underwood, Registered Professional Land Surveyor do hereby certify that on the 29th day of June 2021, a survey was made on the ground of the property shown hereon, described as Lot 9, Block 10, of the Grand View Addition, an addition to the City of Denison, Texas, as shown by plat of record in Volume 81, Page 274, of the 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.

The building on said lot is known as 528 W. Florence Street, Denison, Texas, and is wholly located on said lot; there are no encroachments or protrusions from buildings on adjoining lots or tracts of land except as shown.



Douglas W. Underwood
 Douglas W. Underwood
 Registered Professional
 Land Surveyor No. 4709
 Firm No. 10006300

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance adopting a Conditional Use Permit amending the hours and days of operation for Red Rock Saloon, located at 123 W. Woodard Street. (Case No. 2021-125CUP)

Staff Contact

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

Summary

- The applicant is requesting the approval of an amendment to the permitted days and hours of operation for an existing Conditional Use Permit.
- The currently permitted days and hours of operation for Red Rock Saloon are Thursday through Saturday from 8:00 p.m. to 2:00 a.m.
- The applicant is requesting new days and hours of operation to include Sunday through Wednesday 6:00 p.m. to 12:00 a.m. and Thursday through Saturday 6:00 p.m. to 2:00 a.m.

Staff Recommendation

Staff recommends approval of the amended Conditional Use Permit.

Recommended Motion

"I move to approve an ordinance for a Conditional Use Permit amending the hours of operation for Red Rock Saloon to Sunday through Wednesday 6:00 p.m. to 12:00 a.m. and Thursday through Saturday 6:00 p.m. to 2:00 a.m.."

Background Information and Analysis

On April 2, 2018, Red Rock Saloon received a Conditional Use Permit (CUP) to operate a dance hall and/or night club at 123 W. Woodard Street. With the initial CUP approval, the business hours of operation included: Thursday through Saturday from 8:00 p.m. to 2:00 a.m. Since the opening of the business, the owner has seen an increased demand for expanded days and business hours. The applicant is requesting new days and hours of operation to include Sunday through Wednesday 6:00 p.m. to 12:00 a.m. and Thursday through Saturday 6:00 p.m. to 2:00 a.m. To maintain compliance with the Zoning Ordinance Use Regulations, an updated CUP is required in order for Red Rock Saloon to alter their days and hours of operation.

The Comprehensive Plan identifies the area the subject property is located within as the City's Downtown Center. Denison's Downtown Center should be engaged in mixed-use activities with retail, restaurants, entertainment, offices, and some medium-density residential uses. Expanding the hours of operation for a dance hall/night club would conform with the Comprehensive Plan.

The proposed Ordinance will amend the requested days and hours of operation by repealing the current CUP and adoption of a new CUP.

City staff has reviewed each Conditional Use Permit Criteria outlined within the City Ordinance, before reaching its recommendation for approval. No negative traffic impacts are anticipated from this project.

Conditional Use Permit Criteria for Approval:

1. *The proposed use at the specified location is consistent with the policies embodied in the adopted comprehensive plan;*

This location and use are compatible with the Comprehensive Plan. Per the Comprehensive Plan Entertainment services are encouraged within the downtown area.

2. *The proposed use is consistent with the general purpose and intent of the applicable zoning district regulations;*

The proposed Conditional Use Permit for a dance hall is consistent with the Central Area Zoning District.

3. *The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhood and includes improvements either on site or within the public rights-of-way to mitigate development-related adverse impacts, such as traffic, noise, odors, visual nuisances, drainage or other similar adverse effects to adjacent development and neighborhoods;*

The proposed use is compatible with the integrity of nearby existing developments.

4. *The proposed use does not generate pedestrian and vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood.*

N/A

5. *The proposed use incorporates roadway adjustments, traffic control devices or mechanisms, and access restrictions to control traffic flow or divert traffic as may be needed to reduce or eliminate development generated traffic on neighborhood streets;*

No additional traffic mitigation or traffic control for the surrounding area is required.

6. *The proposed use incorporates features to minimize adverse effects, including visual impacts, of the proposed conditional use on adjacent properties; and*

N/A

7. *The proposed use meets the standards for the zoning district, or to the extent variations from such standards have been requested, that such variations are necessary to render the use compatible with adjoining development and the neighborhood.*

No variance is applied or needed.

Financial Considerations

N/A

Prior Board or Council Action

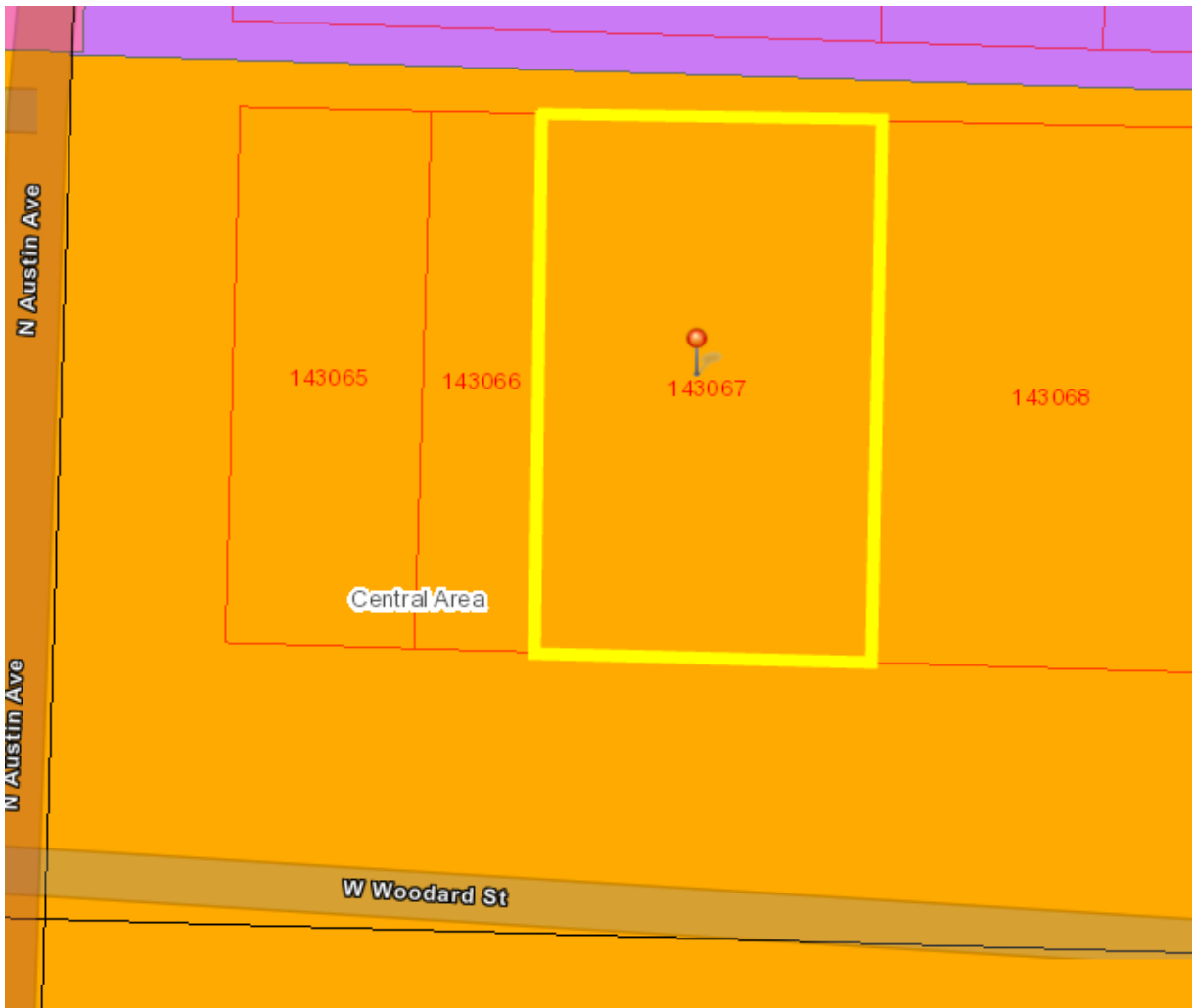
The City Council approved a previous CUP for a dance hall/night club on April 2, 2018. On September 28, 2021, the Planning and Zoning Commission held a Public Hearing and recommended approval of the amended CUP

Alternatives

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



Aerial of Subject Property



Zoning of Subject Property – Central Area

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS, REPEALING ORDINANCE NO. 4940 AND APPROVING A NEW CONDITIONAL USE PERMIT FOR A DANCE HALL OR NIGHT CLUB ON PROPERTY ZONED (CA) CENTRAL AREA DISTRICT, LEGALLY DESCRIBED AS LOTS 12, 13, AND 14, BLOCK 39, ORIGINAL TOWN PLAT, DENISON, PLAT RECORDS OF GRAYSON COUNTY, TEXAS, AND COMMONLY KNOWN AS 123 W. WOODARD STREET, CITY OF DENISON, GRAYSON COUNTY, TEXAS, TO EXPAND THE HOURS OF OPERATION; PROVIDING SEVERABILITY, REPEALER 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.

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;

WHEREAS, the City Council of the City of Denison (the “**City Council**”) adopted Chapter 28 of its Code of Ordinances, the same being the Comprehensive Zoning Ordinance of the City (“**Zoning Ordinance**”); and

WHEREAS, the City Council approved a conditional use permit (“**CUP**”) by ordinance for a dance hall/nightclub with conditions on April 2, 2018 (“**Ordinance No. 4940**”) for property zoned Central Area District, located at 123 W. Woodward Street, and legally described in Exhibit “A,” attached hereto and incorporated herein (hereinafter the “**Property**”); and

WHEREAS, the CUP was approved with conditions, one of which is that the hours of operation be limited to Thursday through Saturday from 8:00 p.m. to 2:00 a.m.; and

WHEREAS, Section 28.11.6 of the Zoning Ordinance states that no conditionally permitted use may be enlarged, extended, increased in intensity, or relocated unless an application for a new conditional use permit is submitted and approved; and

WHEREAS, the City has received a request from the owner of the Property and the operator of the dance hall/nightclub to expand the hours of operation, which requires a new conditional use permit; 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 approval of the new conditional use permit for the dance hall/night club with expanded hours 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 new conditional use permit 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.

SECTION 2. Ordinance No. 4940 Repealed. The City Council hereby repeals Ordinance No. 4940 in its entirety.

SECTION 3. Conditional Use Permit Approved. The Conditional Use Permit for Dance Hall/Night Club on the property legally described in Exhibit A, attached hereto and incorporated herein for all purposes, is hereby approved with the following conditions:

- a. Hours of operation shall be Sunday through Wednesday from 6:00 p.m. to 12:00 a.m. and Thursday through Saturday from 6:00 p.m. to 2:00 a.m.
- b. This Conditional Use Permit shall be subject to all ordinances and regulations of the City applicable to the Property, including without limitation the Comprehensive Zoning Ordinance and those regulations governing the Central Area District (“Applicable Regulations”). The Conditional Use Permit granted by this Ordinance shall control in cases of conflict between this Ordinance and/or the Comprehensive Zoning Ordinance.
- c. If any improvements, the Property, uses or structures regulated by this Conditional Use Permit are enlarged, modified, structurally altered or otherwise significantly changed unless a separate conditional use permit or other required authorization is granted therefor.

SECTION 4. Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance or Denison's Zoning Ordinance Chapter 28, 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 Denison from filing suit to enjoin the violation. Denison retains all legal rights and remedies available to it pursuant to local, state, and federal law.

SECTION 5. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Council of the City of Denison, Texas, in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 6. Repealer and Savings. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of such ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance; whether such ordinances are codified or uncodified, and all other provisions of the Ordinances of the City of Denison, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

SECTION 7. Effective Date. This Ordinance shall become effective from and after its date of passage and approval.

SECTION 8. 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 Section 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:

Nays:

Abstentions:

At regular meeting held on October 4, 2021.

JANET GOTT, MAYOR

ATTEST:

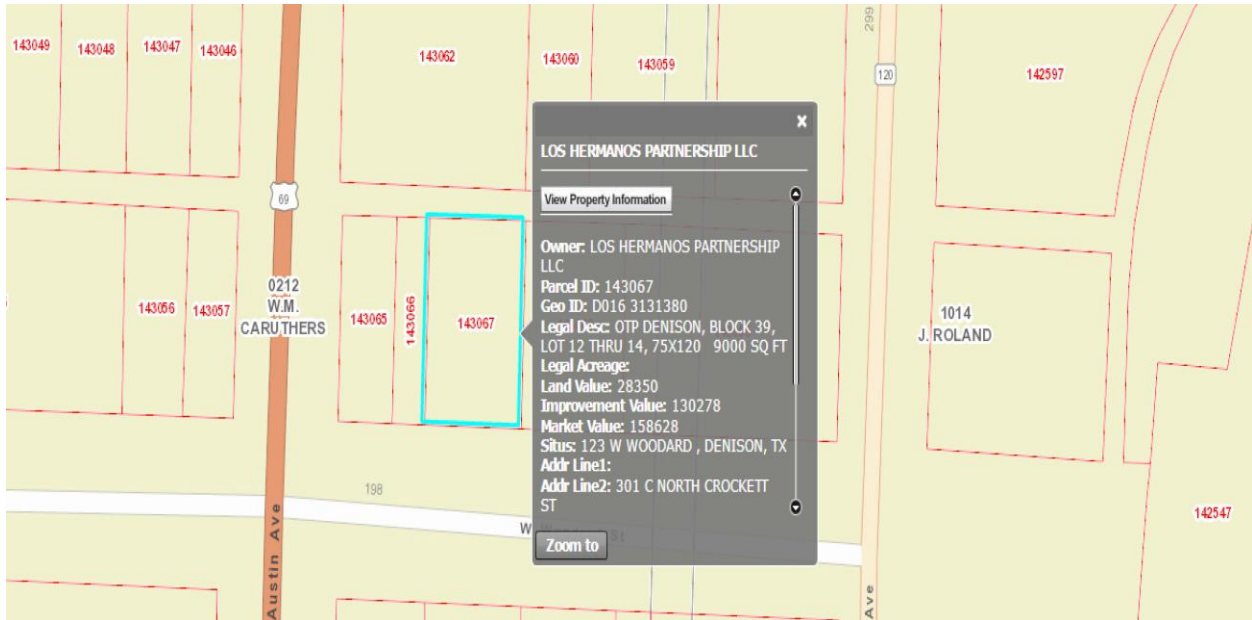
Christine Wallentine, City Clerk

EXHIBIT A

Property Description and Depiction

Grayson CAD property identification # 143067:

Being Lots 12, 13, and 14 in Block 39 of the Original Town Plat of the City of Denison, Texas, as shown by plat of record in Volume 28, Page 362, Deed Records, Grayson County, Texas.



City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, conduct a public hearing, and take action on an Ordinance rezoning approximately 27.64 acres from the Agricultural District and the Single Family-7.5 District to a Planned Development Overlay District for Retail and Multi-Family uses on the east side of US 75, south of Crawford Street. (Case No. 2021-126PD)

Staff Contact

John Webb, AICP, Executive Director of Planning & Community Development
jwebb@cityofdenison.com
903-465-2720

Summary

- The property owner is requesting to rezone approximately 27.64 acres from the Agricultural and Single Family-7.5 Districts to a Planned Development Overlay District for Retail and Multi-Family uses for the Westlake MidTown Development.
- The multi-family development will be the second phase of the development currently under construction at the southwest corner of Crawford Street and Lillis Lane.
- The proposed uses of the Planned Development Overlay District comply with the Comprehensive Plan.

Staff Recommendation

City staff recommends approval of the Planned Development Overlay District.

Recommended Motion

"I move to approve an Ordinance rezoning approximately 27.64 acres from the Agricultural District and the Single Family-7.5 District to a Planned Development Overlay District for Retail and Multi-Family uses on the east side of US 75, south of Crawford Street.

Background Information and Analysis

The property owner is seeking to establish a Planned Development Overlay District (PD) to allow for the following:

1. Retail/Restaurant/Office uses fronting on US 75 and a portion of Crawford Street as depicted on Exhibit C-1. As depicted on Exhibit C-2, the PD would permit the option of expanding the commercial area from 11.34 acres to an additional 1.81 acres to allow for a commercial users which may require a deeper lot. The base zoning district for this area will be the Local Retail (LR) District which permits a variety of retail, restaurant and office uses.

Per the PD, the following uses would also be permitted by right in the commercial area:

- Department Store
- Health Club
- Parking Garage as an accessory use to an office building
- Pet Shop/Grooming

The following uses would be permitted upon approval of a Conditional Use Permit (CUP) to allow the Planning and Zoning Commission and the City Council to determine the appropriateness of the use and to create the appropriate development standards:

- Home Improvement Center
- Hotel, Extended Stay (Residence Hotel)
- Hotel/Motel

As agreed upon by the property owner, automobile dealerships would not be permitted.

The standards of the Highway-Oriented and Overlay District will be applicable. In addition, the property owner agreed to the requirement of a 15-foot landscape buffer with shade trees spaced 30 feet on center adjacent to US 75 and Crawford Street, which exceeds the City's landscaping standards.

2. The balance of the property will be one and two unit residential structures similar to the Phase One development at the southwest corner of Lillis Lane and Crawford Street. The units will not be true townhomes or duplexes, since the units will not be located on individually platted lots. All of the residential development will be on a single lot and offered for rent, similar to a multi-family development. However, the units could be sold as condominiums should the property owner decide to permit the creation of a condominium association. The proposed development is not intended to be a single family detached rental community, and the number of one-unit residential units shall be limited to a maximum of 10% of the total number of units.

The residential area may also contain a storage area for the sole use of the residents.

Should the property owner decide to develop the residential area with traditional single family detached homes on individually platted lots, the development shall be in accordance with the Single Family (SF-5) Residential District with the following additional requirements:

- a. Front Yard Setbacks
 - i. Minimum 20 feet from the main structure to the property line
 - ii. Where a garage faces a street, minimum of 25 feet from the face of the garage door to the property line
 - iii. Minimum of 15 feet from a j-swing garage to the property line
 - b. Parking Requirements: A minimum of two (2) garage spaces attached to each dwelling unit.
3. Key Standards applicable to the entire PD
 - a. One or more property owners' associations (POA) or a homeowners' associations (HOA) shall be established and shall be responsible for the ownership and maintenance of all private common areas and private open spaces.
 - b. Any street dedicated as public right-of-way shall be designed and constructed in accordance with City standards.
 - c. Private streets shall be permitted with the design and construction standards approved by the City.

The complete list of all development standards is attached as Exhibit B. Renderings and Floor Plans of the Residential Units are attached as Exhibit D.

Financial Considerations

N/A

Prior Board or Council Action

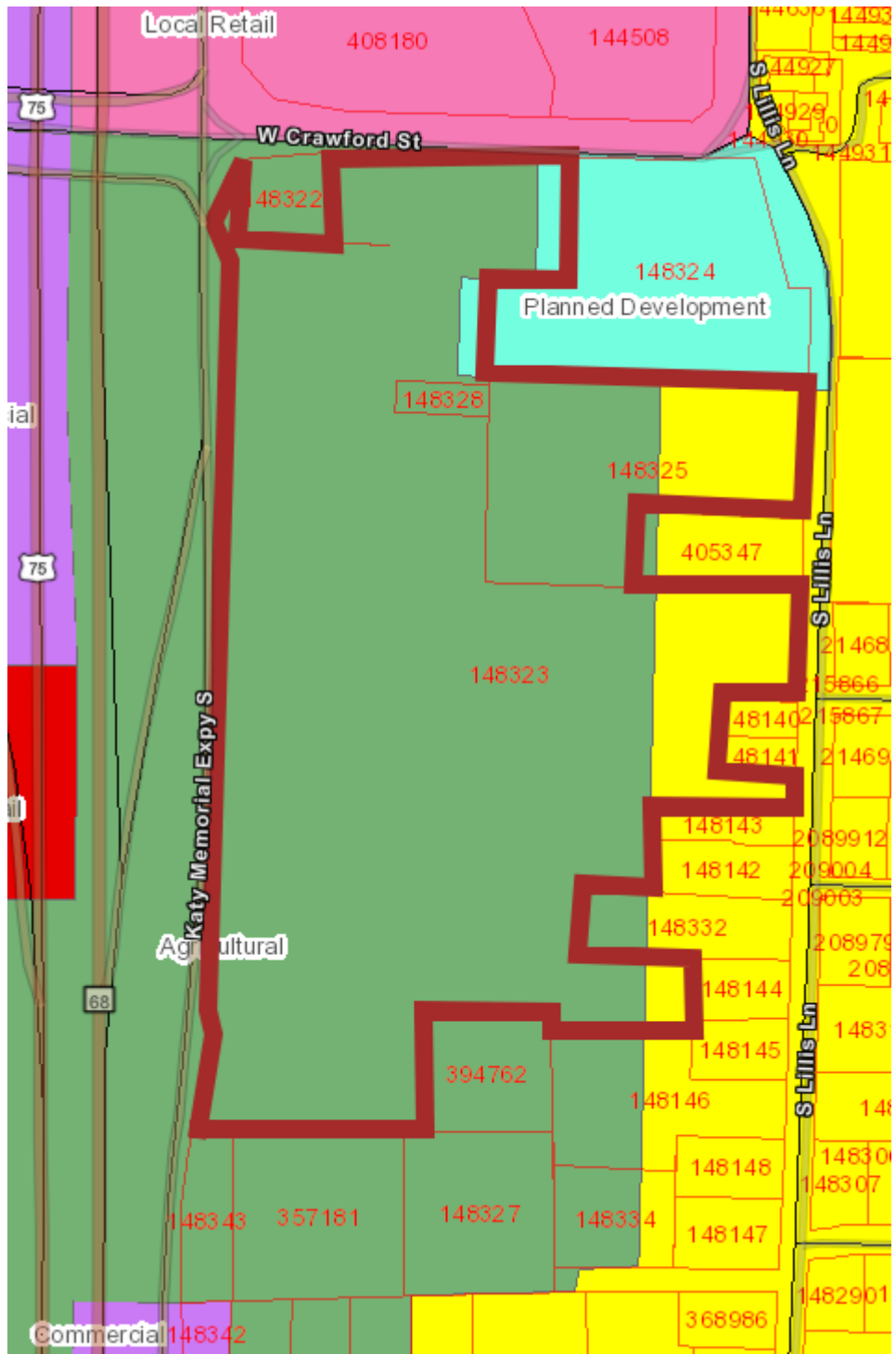
On September 28, 2021, the Planning and Zoning Commission held a Public Hearing and recommended approval of the request.

Alternatives

- The City Council may table, recommend denial, or conditionally approve the request.



Aerial Map of Subject Property



Zoning of Subject Property – Agricultural and Single Family-5

EXHIBIT "B"

Westlake Midtown Planned Development District Standards

The purpose of the Planned Development (PD) district is to allow for the development of a mix of residential and non-residential uses on the subject property of approximately 27.6 acres, as described **Exhibit A**. The subject property is located at the southwest quadrant of Lillis Lane and West Crawford Street, within the City Limits of Denison, Grayson County, Texas.

The subject property shall be divided into three (3) proposed character zones to be developed in accordance with the following regulations.

1.0 Land Use Plan

The Land Use Concept Plan (**Exhibit C-1**) depicts the general location, and area of the following proposed character zones:

Optional Local Retail Zone (Exhibit C-2) depicts a possible expanded area of Local Retail uses.

Residential Zone: Developed with a one units or two-unit (duplex), rental homes or single family homes on individually platted lots.

2.0 Local Retail Zone and Optional Retail Zone

- A. Except as noted below, the Local Retail Zone and the Optional Local Retail Zone as depicted in Exhibit C-2, shall develop in accordance with the Local Retail (LR) and the Highway-Oriented and Corridor (HO) Districts as they exist or may be amended.
- B. Additional Permitted Uses by Right. The following uses shall be permitted by right within the subject property:
 1. Department Store
 2. Health Club (Fitness Center)
 3. Parking Garage as an accessory use to an office building
 4. Pet Shop/Supplies/Grooming
- C. Uses Permitted Upon Approval of a Conditional Use Permit. The following uses shall be permitted by upon approval of a Conditional Use Permit (CUP) within the subject property:
 1. Home Improvement Center
 2. Hotel, Extended Stay (Residence Hotels)
 3. Hotel/Motel
- D. Maximum Height: Eight (8) stories, not greater than 100 feet. Where buildings or structures exceed 40 feet in height, such buildings or structures shall not be located closer to any residential district boundary line than a distance equal to the sum of the required side or rear yard specified plus twice the height of the building above 40 feet.
- E. Setbacks:
 1. Minimum of 40 feet (40') adjacent to US 75
 2. Minimum of 30 feet (30') adjacent to Crawford Street
 3. Unless regulated by Subsection 2.0 (D) above, minimum of 40 feet (40') adjacent to any residential area

- F. Maximum lot coverage: 70%
- G. Maximum Floor Area Ratio (FAR): 2:1
- H. Additional Landscape Requirement: Development abutting US 75 or Crawford Street shall include a minimum 15-foot wide landscape easement, outside of the right-of-way, consisting of turf and/or ground cover and one (1) two-inch (2") caliper large tree planted at 30 feet (30') on center. The large trees shall be selected from the Recommended Plant List as noted in Appendix C of the Zoning Ordinance as it exists or may be amended. The landscape area shall have permanent irrigation and shall not be encumbered by any other easements, unless approved by the City.

3.0 Residential Zone: Except as noted below, the residential zone shall be developed as a one-unit or two-unit (duplex) rental community (Option A), and/or single family homes on individually platted lots (Option B).

A. Option A - One-Unit or Two-Unit Rental Community Development Standards

1. This type of development is intended for the rental of residential units but does not preclude ownership of the units in a condominium style property.
2. This type of development is not intended to be a single family detached rental community, and the number of one-unit residential units shall be limited to a maximum of 10% of the residential units
3. Except as noted below, the Residential Zone, or a portion thereof, as depicted in Exhibit C-2, shall develop in accordance with the Multi-Family (MF-1) Residential District.
 - a. Maximum Height
 - i. Main residential buildings: Two and one-half (2 ½) stories, not to exceed 35 feet.
 - ii. Accessory structures, including structures such as detached garages, carports, garden shed, gazebo, mail kiosks: One (1) story, not to exceed 18 feet.
 - b. Minimum Lot Area, Lot Width, Lot Depth: No requirement
 - c. Minimum Front Yard:
 - i. Fifteen feet (15') for main structure
 - ii. Where a garage faces a street, minimum of 25 feet from the face of the garage door to the edge of the pavement or sidewalk if a sidewalk is present.
 - d. Minimum Side Yard
 - i. No side yard required between attached duplex units
 - ii. Minimum of ten feet (10') between detached structures without openings
 - iii. Minimum of fifteen feet (15') between detached structures with openings
 - iv. Minimum of fifteen feet (15') adjacent to any existing public streets
 - e. Minimum Rear Yard: Ten feet (10')
 - f. Parking Requirements: A minimum of two (2) garage spaces attached to each dwelling unit.
 - g. Exterior Construction Standards: A minimum of 75% of each exterior façade shall be constructed of brick, stone, cementitious board, or stucco. EIFS shall not qualify as an approved masonry material.
 - h. Landscape/Open Space Requirements: A minimum of 30% of the area shall be devoted to a combination of landscaping/pervious surfaces and usable open space.






- i. Refuse Collection: Refuse collection shall occur in the manner provided for single family detached homes.
- j. Unless otherwise required by this PD, the Special Requirements per subsection 28.30.5 of the Zoning Ordinance do not apply.

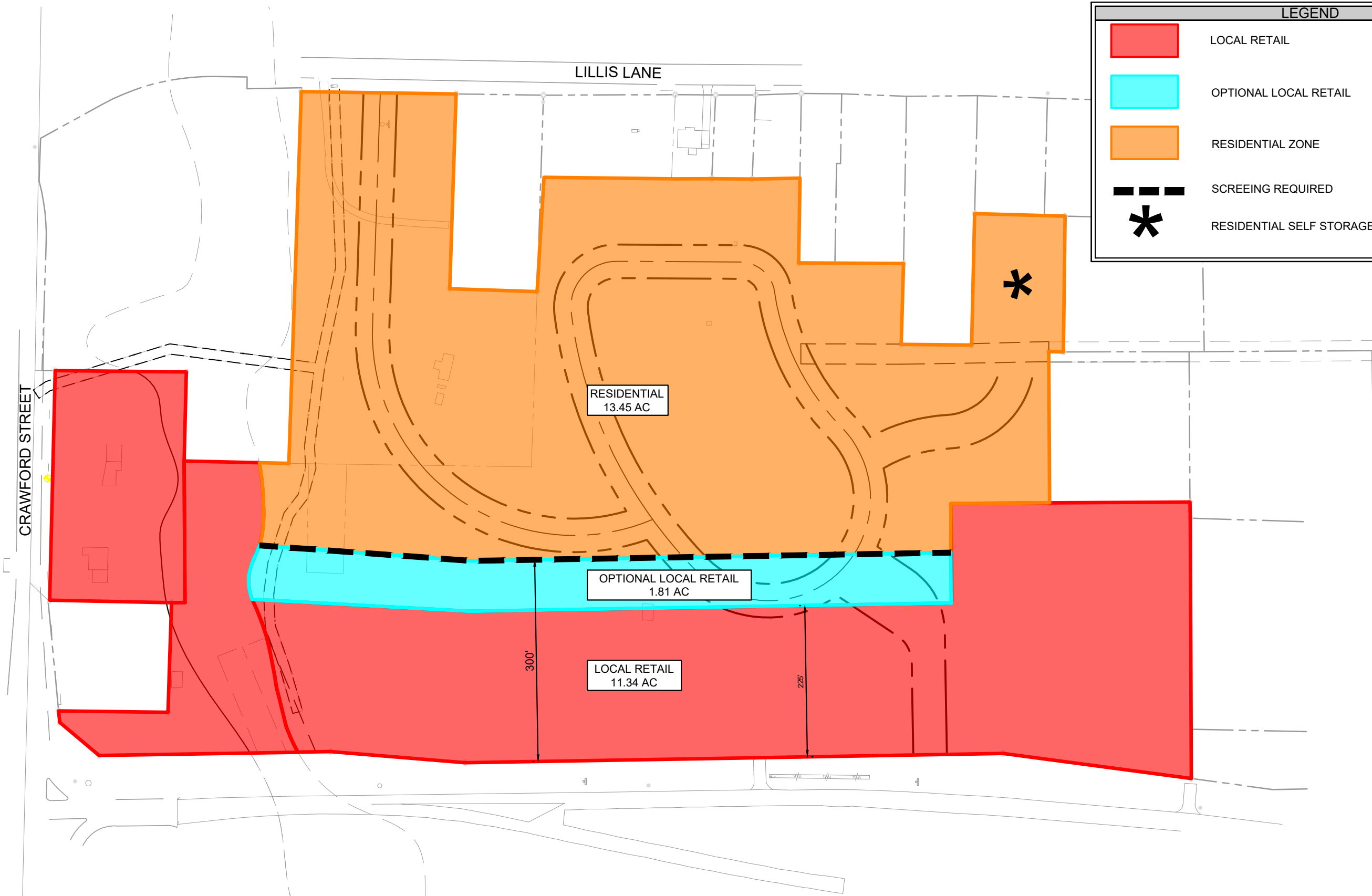
B. Option B – Single Family Homes on Individually Platted Lots

- 1. This type of development is intended to accommodate a traditional single family detached neighborhood where each home is located on a separate lot of record.
- 2. Except as noted below, the Residential Zone, or a portion thereof, as depicted in Exhibit C-2, shall develop in accordance with the Single Family (SF-5) Residential District.
 - a. Front Yard Setbacks
 - i. Minimum 20 feet from the main structure to the property line
 - ii. Where a garage faces a street, minimum of 25 feet from the face of the garage door to the property line
 - iii. Minimum of 15 feet from a j-swing garage to the property line
 - b. Parking Requirements: A minimum of two (2) garage spaces attached to each dwelling unit

4.0 Regulations Applicable to All Properties

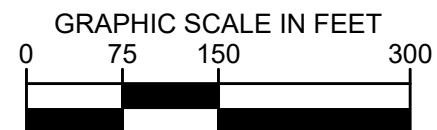
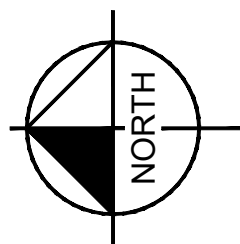
- A. The outside storage of boats, campers, trailers, and other recreational vehicles shall be prohibited in all areas except where indicated.
- B. All uses shall provide signage that clearly identifies the numbers (i.e., addresses and name of business) for each building. Signage shall be visible from entrances into the Site and/or from the street(s) within the Site, such that each individual building is easy to locate by visitors, delivery persons, and/or emergency personnel.
- C. The developer of each Local Retail building and/or the overall developer for the residential development shall submit a lighting plan for review and approval by the City. The lighting plan shall include all fixtures to be used to light parking lots, drives, and streets and a foot-candle count for the Site. All lighting fixtures shall be full cut-off fixtures to prevent any light trespass.
- D. With the exception of single family homes on individually platted lots, Site Plan approval shall be required for any development within the PD.
- E. Screening
 - 1. Residential and Non-residential uses shall be screened along the common property line separating the two uses. It is the responsibility of the non-residential developer to construct and maintain the screening wall or fence.
 - 2. No screening is required between Residential uses and existing Residential uses adjacent to the Site.
 - 3. Screening must be between six feet (6') and eight feet (8') in height and shall consist of masonry, brick, stone, or living screen consisting of a combination of evergreen shrubs and open fencing. The use of a living screen requires planting to achieve a solid living screen, minimum of six feet (6') in height, within one (1) year of planting.
- F. One or more property owners' associations (POA) or a homeowners' associations (HOA) shall be established and shall be responsible for the ownership and maintenance of all private common areas and private open spaces.
- G. Any street dedicated as public right-of-way shall be designed and constructed in accordance with City standards.
- H. Private streets shall be permitted with the design and construction standards approved by the City.

LEGEND	
	LOCAL RETAIL
	OPTIONAL LOCAL RETAIL
	RESIDENTIAL ZONE
	SCREEING REQUIRED
	RESIDENTIAL SELF STORAGE ALLOWED



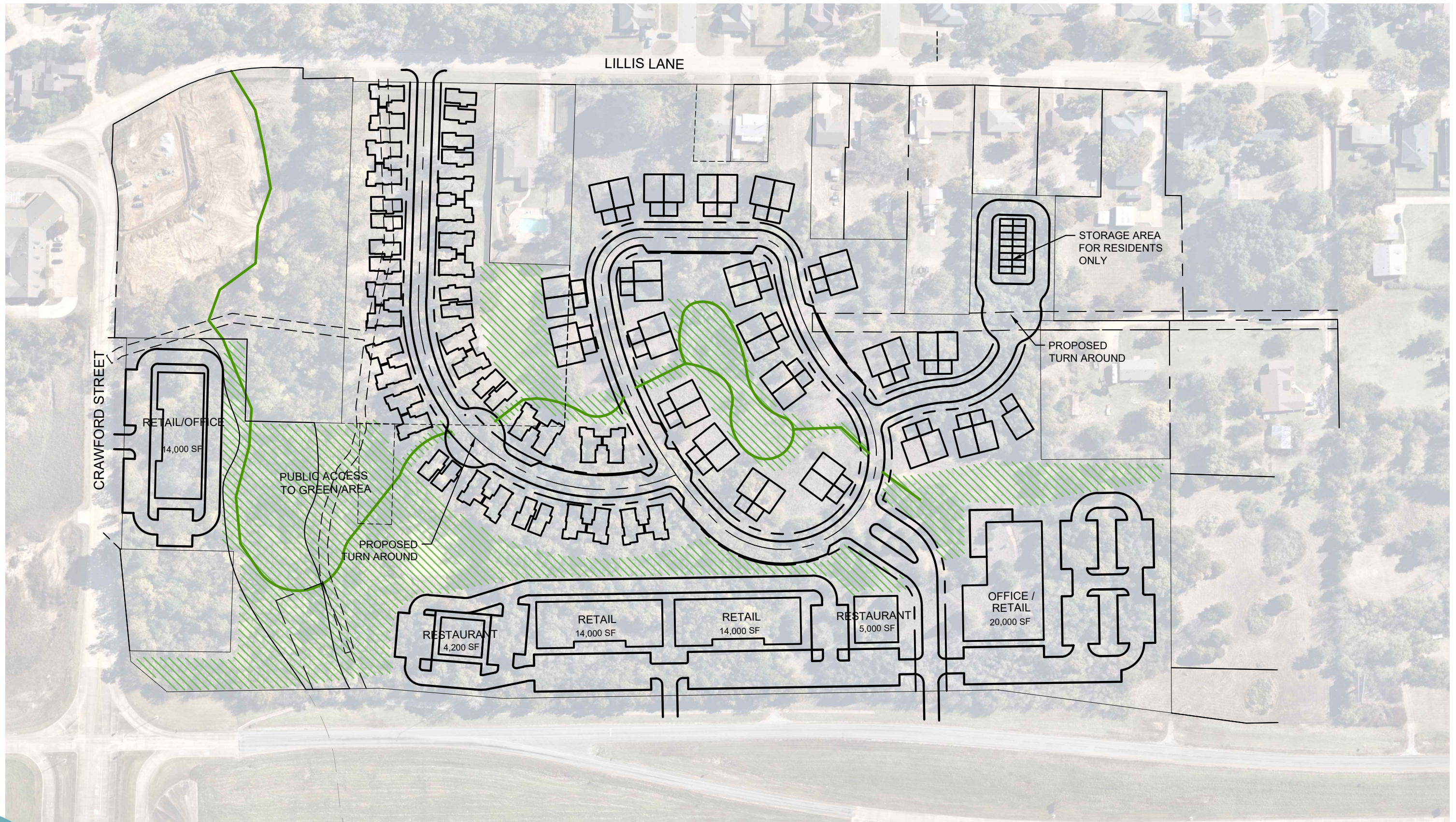
WESTLAKE MIDTOWN

Denison, TX
JULY 2021



SURVEY INFORMATION:
SPENCER RICE SURVEY ABSTRACT NO. 1037
CITY OF DENISON
GRAYSON COUNTY, TEXAS

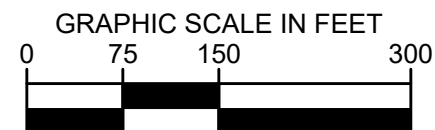
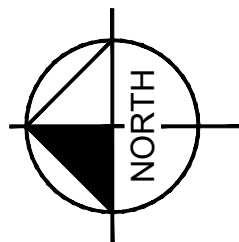
EXHIBIT C-2



WESTLAKE MIDTOWN

Denison, TX
AUGUST 2021

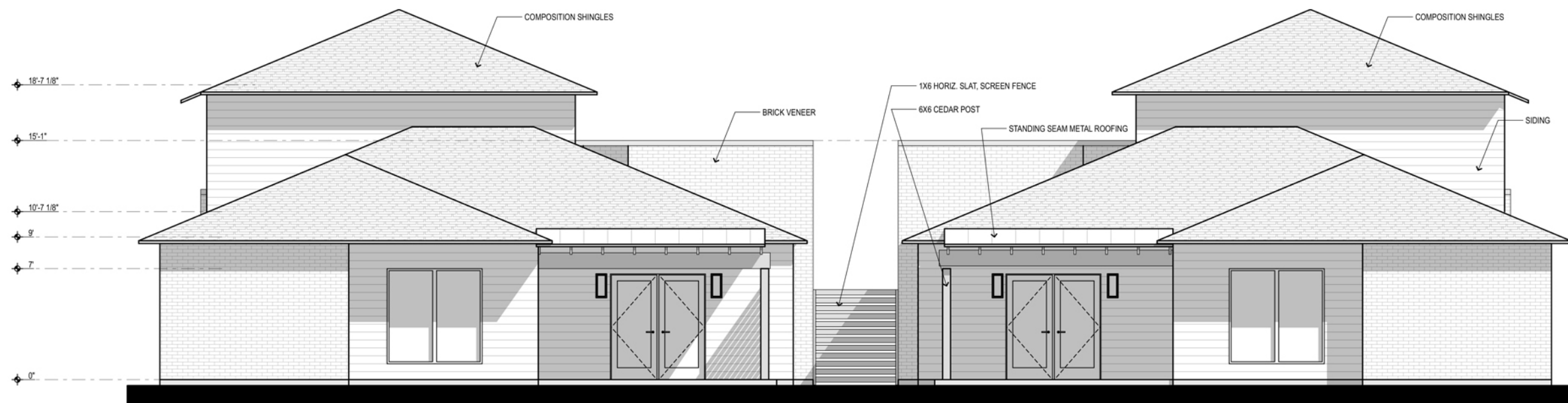
Kimley»Horn



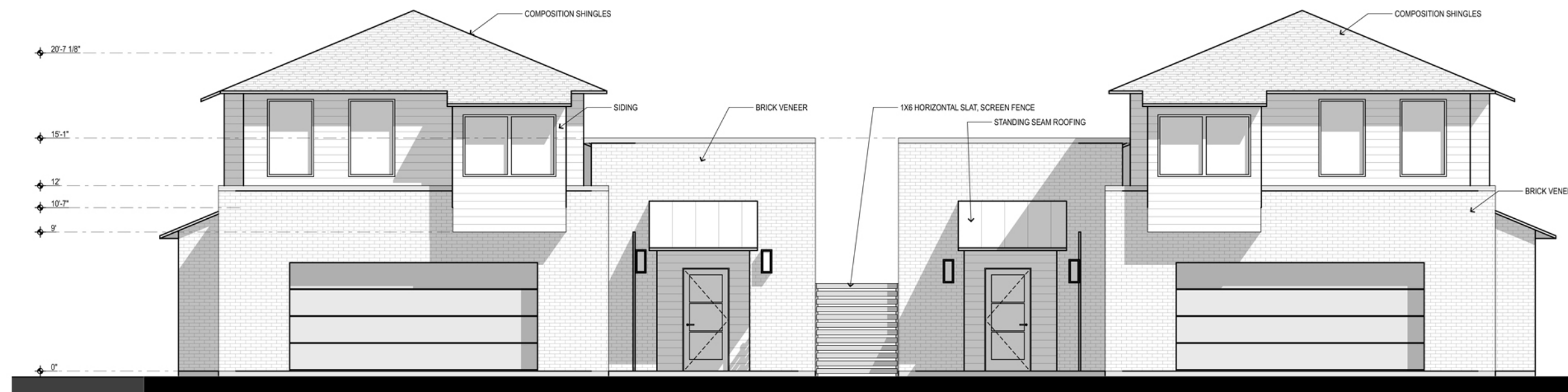
SURVEY INFORMATION:
SPENCER RICE SURVEY ABSTRACT NO. 1037
CITY OF DENISON
GRAYSON COUNTY, TEXAS

EXHIBIT C-1

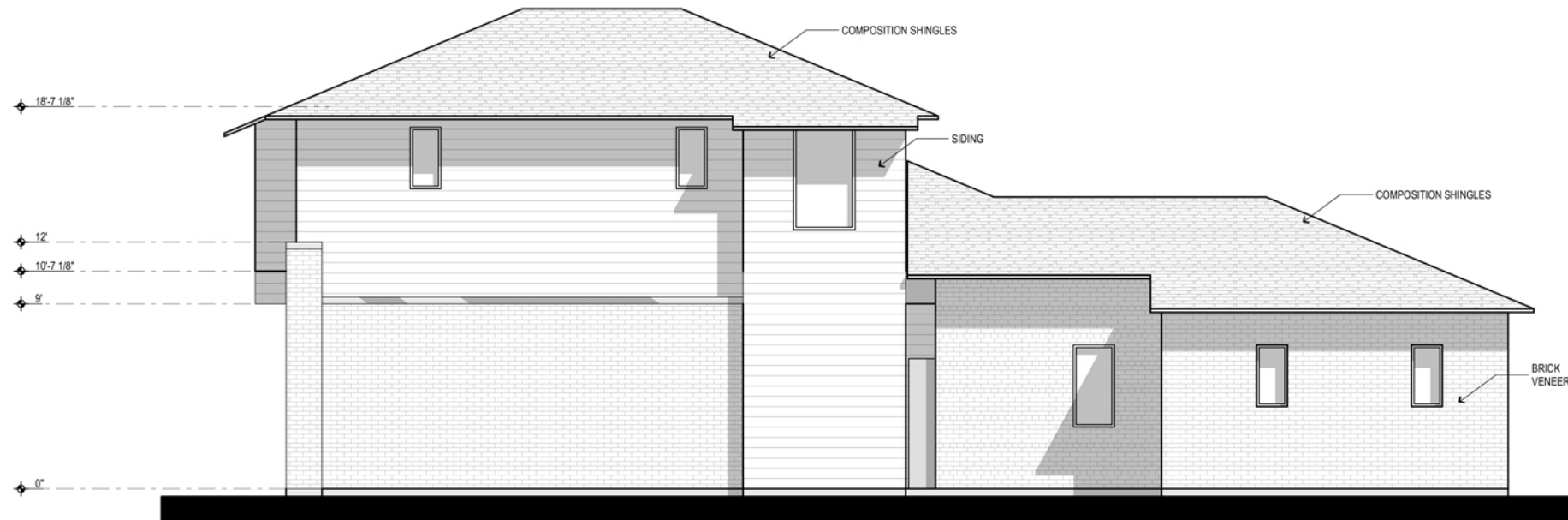




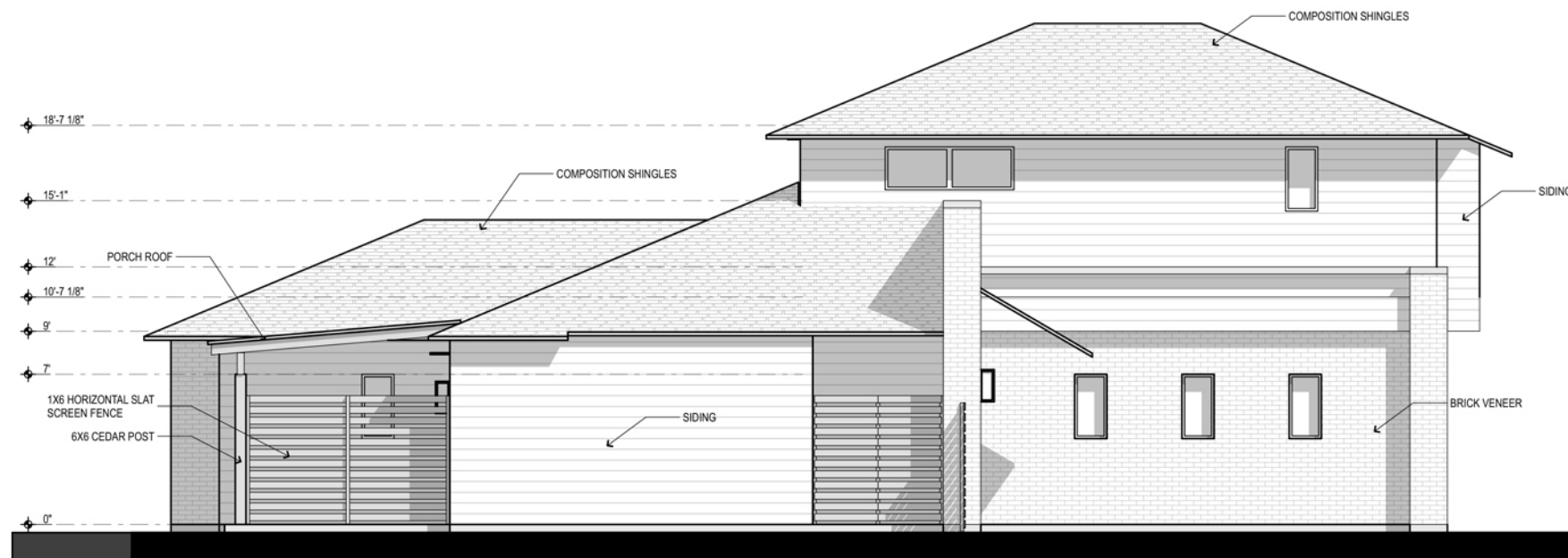
2 BUILDING C1 & C2 : REAR ELEVATION
SCALE: 1/4" = 1'-0"



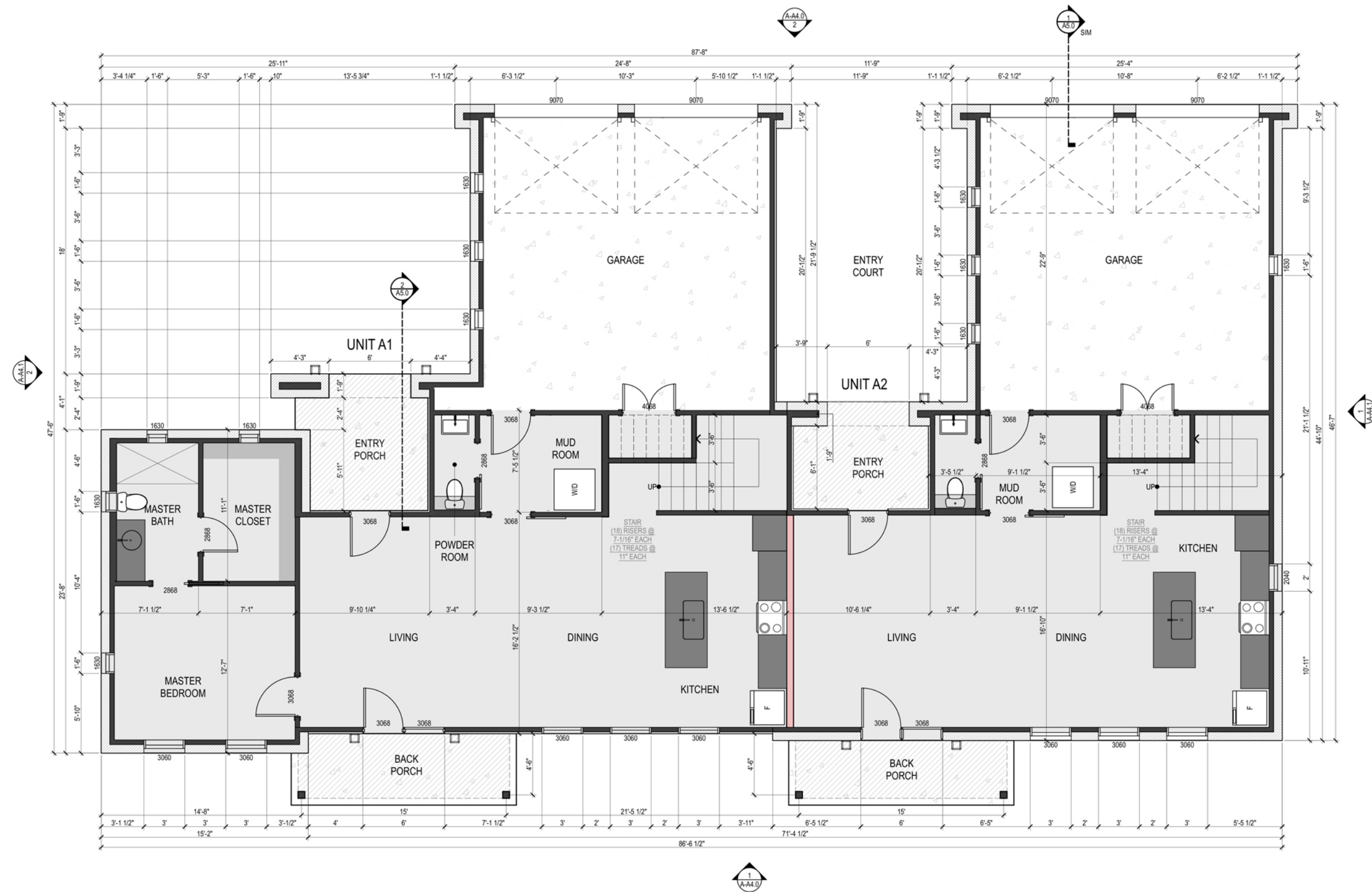
1 BUILDING C1 & C2 : FRONT ELEVATION
SCALE: 1/4" = 1'-0"



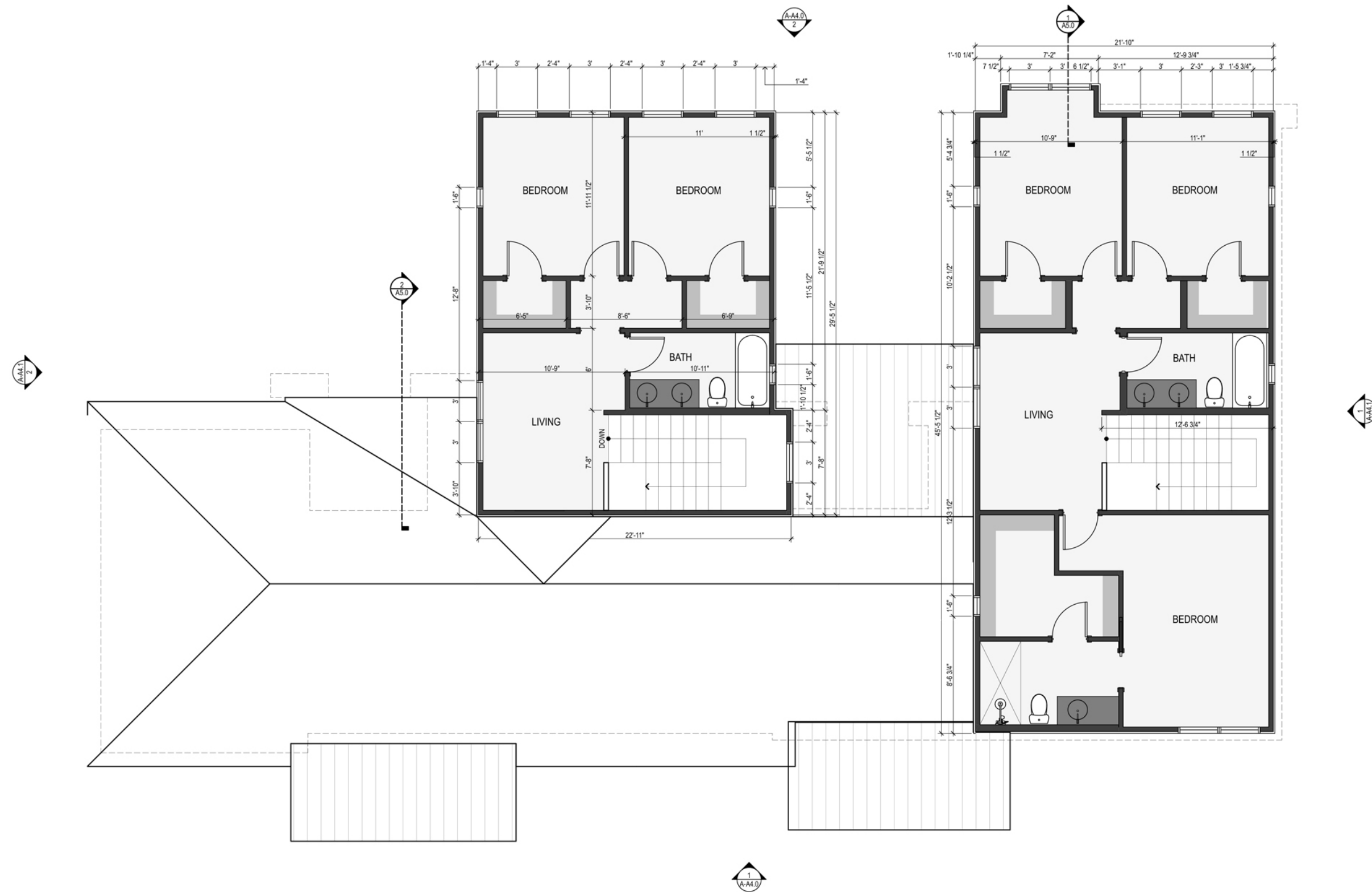
2 BUILDING C1 : RIGHT ELEVATION
SCALE: 1/4" = 1'-0"



1 BUILDING C1 : LEFT ELEVATION
SCALE: 1/4" = 1'-0"



1 FLOOR 1
SCALE: 1/4" = 1'-0"



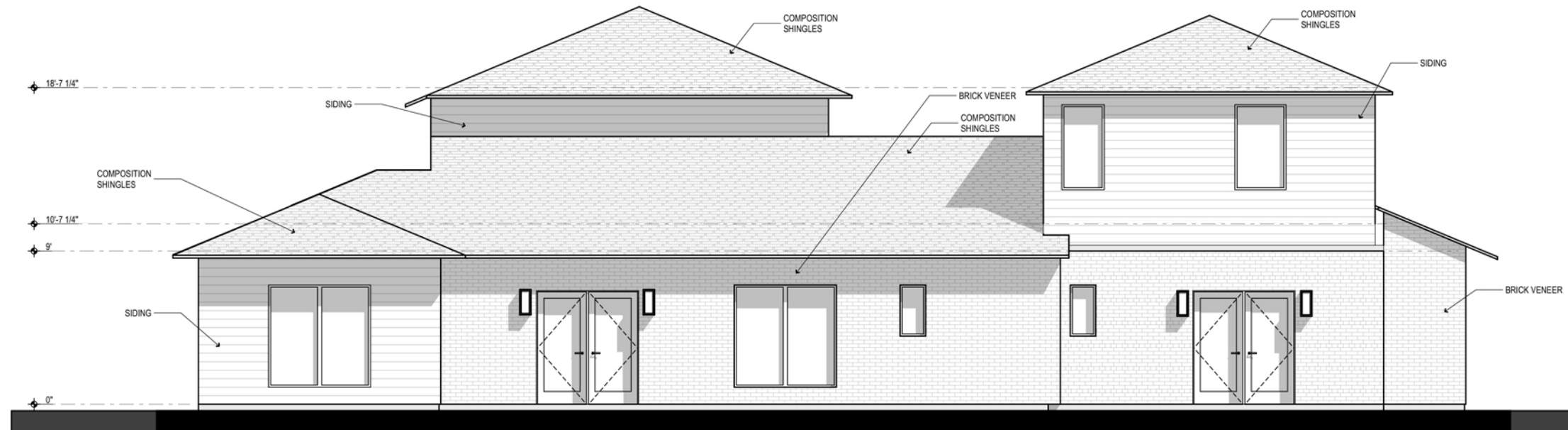
1 FLOOR 2
SCALE: 1/4" = 1'-0"



2 BUILDING C2 : LEFT ELEVATION
SCALE: 1/4" = 1'-0"



1 BUILDING C2 : RIGHT ELEVATION
SCALE: 1/4" = 1'-0"



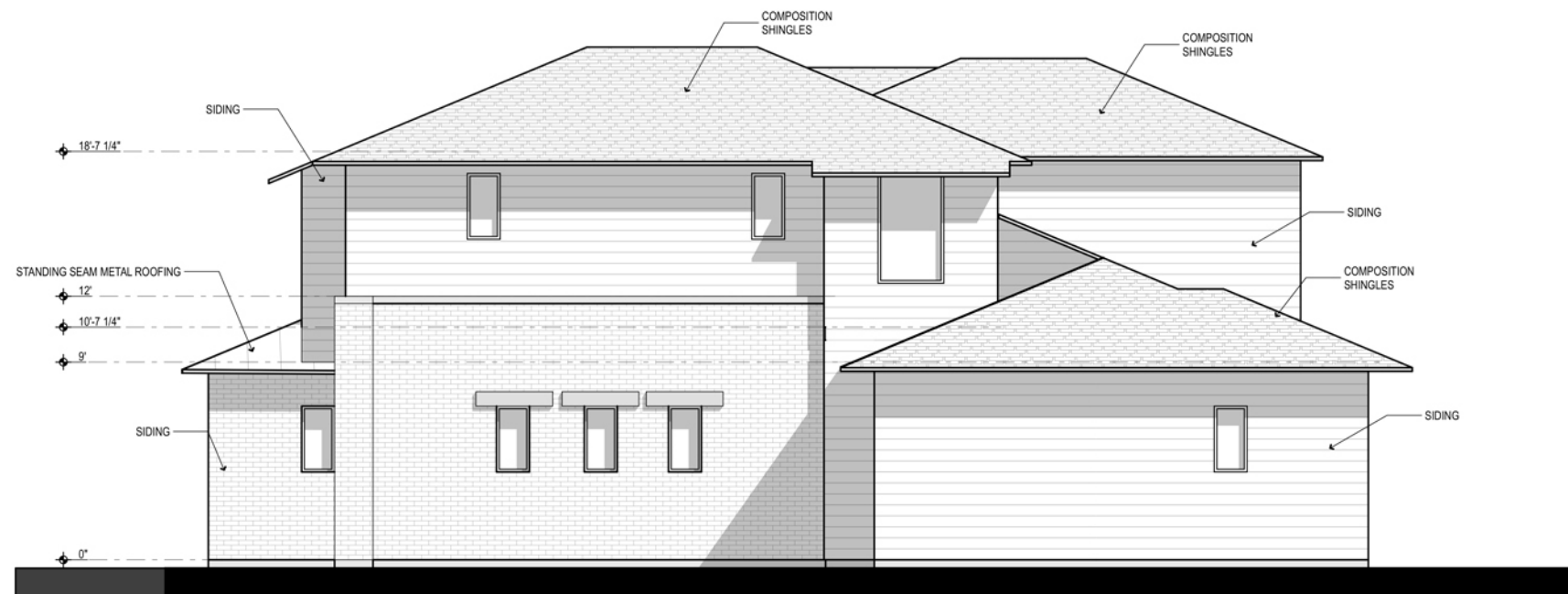
2 BUILDING E : BACK ELEVATION
SCALE: 1/4" = 1'-0"



1 BUILDING E : FRONT ELEVATION
SCALE: 1/4" = 1'-0"



2 BUILDING E : LEFT ELEVATION
SCALE: 1/4" = 1'-0"



1 BUILDING E : RIGHT ELEVATION
SCALE: 1/4" = 1'-0"



1 FLOOR 1
SCALE: 1/4" = 1'-0"





CITY OF DENISON

City Hall
300 W. Main
P.O. Box 347
Denison, TX 75021
903.465.2720 | Phone
903.464.9811 | Fax

I SUPPORT / OPPOSE the proposal.

(Case No. 2021-126PD)

Name DAVE + KRISTI FRAUGHTER Address 2926 GREENWOOD CIR

Remarks

PLEASE DO NOT LET THIS REQUEST FOR
RE-ZONING PASS. PLEASE KEEP THIS
AREA AS CURRENTLY ZONED. AS WE
LOVE OUR FRIENDLY + QUIET NEIGHBORHOOD.

9/13/21

Dave Fraught
Kristi Fraught





CITY OF DENISON

City Hall
300 West Main Street
P.O. Box 347
Denison, TX 75021

903.465.2720 | Phone
www.cityofdenison.com

- Janet Gott Mayor
Michael Courtright Council Place 1
James Thorne Council Place 2
JC Doty Council Place 3
Robert Crawley Council Place 4
Kristofor Spiegel Council Place 5
Brian Hander Council Place 6

Greg Smith
City Manager

September 10, 2021

RED ROCK REALTY LTD
300 CHESTNUT BEND
COLLEYVILLE, TX 76034



Dear RED ROCK REALTY LTD,

RE: Public Hearing
Planned Development

- Conduct a public hearing, make a recommendation, and take action on a request for a Rezone of 27.64 Acres, east of US 75, south of Crawford Street, and west of Lillis Lane from the Commercial Zoning District to the Planned Development Zoning District. (Case No. 2021-126PD)

Property Owner(s): 23 Lillis SPV, LLC

The Planning and Zoning Commission of the City of Denison, Texas will hold a public hearing on Tuesday, September 28, 2021, at 10:00 a.m. and if needed the City Council of the City of Denison, Texas will hold a public hearing on Monday, October 4, 2021, at 6:00 p.m. in Council Chambers at City Hall located at 300 W. Main Street, Denison, Texas to consider testimony, make a recommendation and act upon the items referenced above.

You may return the form below with your remarks. Please indicate support or opposition to the proposal and any additional remarks, as well as your name and address for the record, and return attention to: Planning Department, 300 W. Main St., Denison, TX 75020.

Sincerely,

Felecia Winfrey

Felecia Winfrey, Management Assistant
City of Denison
903.465.2720 x2519
fwinfrey@cityofdenison.com

OPPOSED.

Barbara Fakman

General Partner
Red Rock Realty
300 Chestnut Bend
Colleyville, TX
76034

Moving Forward. Kicking Back.



CITY OF DENISON

City Hall
300 W. Main
P.O. Box 347
Denison, TX 75021

903.465.2720 | Phone
903.464.9811 | Fax

I SUPPORT / OPPOSE the proposal.

(Case No. 2021-126PD)

Name Barbara Eakman Address 300 Chestnut Bend

Colleyville, Tx
76034

Remarks

It would be better for the
City of Denison if this land was left
COMMERCIAL.

DENISON BUILDING INSPECTIONS
RECEIVED
SEP 21 2021



CITY OF DENISON

City Hall
300 W. Main
P.O. Box 347
Denison, TX 75021

903.465.2720 | Phone
903.464.9811 | Fax

I SUPPORT / OPPOSE the proposal.

(Case No. 2021-126PD)

Name William (Bill) Holman Address 2927 Greenwood Circle

Remarks

My main concern with this rezoning is the access to this tract from Lillis Lane and the Hwy 75 access road. Lillis and Crawford already can be congested and dangerous at times.



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, 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 AGRICULTURAL (A) AND SINGLE FAMILY-7.5 (SF-7.5) TO PLANNED DEVELOPMENT OVERLAY DISTRICT (PD) ON 26.716 ACRES OF LAND BEING 0.207 ACRES WITHIN A PART OF THE SPENCER RICE SURFEY, ABSTRACT NO. 1037 CONVEYED TO 23 LILLIS SPV, LLC IN INSTRUMENT NUMBERS 2021-20788, 20789, 20790, AND INSTRUMENT NUMBER 2020-1725, OFFICIAL PUBLIC RECORDS, GRAYSON COUNTY, TEXAS, ALL OF THE 3.709 ACRE TRACT OF LAND CONVEYED TO 23 LILLIS SPV, LLC IN INSTRUMENT NUMBER 2020-18423, SAID OFFICIAL PUBLIC RECORDS AND A PART OF THE 23.556 ACRE TRACT OF LAND CONVEYED TO 23 LILLIS SPV, LLC INSTRUMENT NUMBER 2020-1726, OFFICIAL PUBLIC RECORDS AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT “A”; PROVIDING DEVELOPMENT STANDARDS, ATTACHED HERETO AS EXHIBIT “B”; PROVIDING CONCEPT PLANS, ATTACHED HERETO AS EXHIBITS “C-1” AND “C-2”; 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.

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 of the City of Denison, Texas (the “City Council”), is authorized and empowered by law, in accordance with Chapter 211 of the Texas Local Government Code, to adopt zoning regulations governing the use of land within the City; 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, the City has received a request from 23 Lillis SPV LLC, on behalf of the owner, to change the zoning classification from Agricultural (“A”) and Single Family – 7.5 (“SF-7.5”) to Planned Development Overlay District (“PD”) on tracts of being 0.207 acres within a part of the Spencer Rice Survey, Abstract No. 1037 conveyed to 23 Lillis SPV, LLC in Instruments Numbers 2021-20788, 020789, 20790, and Instrument Number 2020-1725, Official Public Records, Grayson County, Texas, in the City of Denison, County of Grayson, State of Texas, all of the 3.709 acre tract of land conveyed to 23 Lillis SPV, LLC in Instrument Number 2020-18423, Official Public Records, Grayson County, Texas, in the City of Denison, County of Grayson, State of Texas, and a part of the

23.556 acre tract of land conveyed to 23 Lillis SPV, LLC Instrument Number 2020-1726, said Official Public Records , Grayson County, Texas, in the City of Denison, County of Grayson, State of Texas, as described in **Exhibit “A,”** attached hereto and incorporated as if fully set forth herein (the “Property”); and

WHEREAS, the Development Standards and Concept Plans, as set forth in **Exhibit “B,” Exhibit “C-1,” and Exhibit “C-2”** attached hereto and incorporated herein, define the base zoning district Single Family-5 (“SF-5”) and provide for modifications to district regulations for the development of the Property; and

WHEREAS, after public notices were given in compliance with Texas 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 (the “Planning and Zoning Commission”) has recommended to the City Council of the City (the “City Council”) to approve the change in zoning district classification on the Property and to amend the official zoning map of the City (the “Zoning Map”) to reflect the PD zoning classification; and

WHEREAS, after complying with all legal notices, requirements, and conditions, a public hearing was held before the City Council at which it 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 requested zoning accomplishes such objectives; and

WHEREAS, the City’s Zoning Ordinance incorporates design standards and building materials standards that are differentially applicable to residential structures and non-residential buildings; and

WHEREAS, such standards substantially further the preservation of property values and the promotion of economic development within the City; and

WHEREAS, such standards also establish the character of community development and embody architecturally and, in some contexts, culturally significant features of continuing duration; and

WHEREAS, the City’s Zoning Ordinance also provides for planned development overlay districts, which enable departures from traditional zoning district standards in recognition of the unique character of a development project; and

WHEREAS, the City’s policy in creating or amending a planned development overlay district is to incorporate and enhance to the fullest extent feasible the design and building materials standards that are integral to the City’s zoning regulations in all planned development overlay districts; and

WHEREAS, the City Council finds and determines that the incorporation of such standards lends long-term viability to the planned development project; and

WHEREAS, the owner and/or developer who applied for and requested the planned development overlay district established by this Ordinance stated in the application that the development of the Property warrants the architectural and building material standards contained in the Ordinance; and

WHEREAS, the owner and/or developer of the Property has consented in writing to the enforcement of the City’s design and building materials standards within the planned development district and waived the statutory provisions in Chapter 3000, Texas Government Code.

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

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 of Denison, Texas, and of the public health, safety and welfare.

Section 3. Zoning Amendment. The Zoning Ordinance is hereby amended to change the zoning of the Property as a Planned Development Overlay District (“PD”), subject to the following regulations, which exhibits are incorporated as if fully set forth herein, and all applicable City ordinances and regulations governing except as may be modified by this Ordinance.

- | | |
|--------------|---|
| Exhibit B: | Planned Development District Standards |
| Exhibit C-1: | Land Use Concept Plan |
| Exhibit C-2: | Optional Local Retail Zone Concept Plan |

Section 4. Zoning Map. The Zoning Map is hereby amended to reflect the established zoning classification designation herein made.

Section 5. Compliance Required. The Property shall be used only in the manner and for the purposes provided for in this Ordinance and the Comprehensive Zoning Ordinance of the City of Denison, as amended.

Section 6. Severability Clause. 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 7. 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 8. Penalty. Any person, firm, entity or corporation who violates any provision of this Ordinance 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 9. Publication and Effective Date. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

Section 10. Open Meeting. 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 Section 551.041 of the 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:
- Nays:
- Abstentions:

At regular meeting October 4, 2021.

JANET GOTT, MAYOR

ATTEST:

Christine Wallentine, City Secretary

EXHIBIT "A"
PROPERTY LEGAL DESCRIPTION

FIELD NOTES
26.716 Acres

SITUATED in the City of Denison, County of Grayson, State of Texas, being a part of the Spencer Rice Survey, Abstract No. 1037 and being all of the 0.207 acre tract of land conveyed to 23 Lillis SPV, LLC in Instrument Nos. 2021-20788, 20789, 20790, 20791 & 20792 and Instrument No. 2020-1725, Official Public Records, Texas, all of the 3.709 acre tract of land conveyed to 23 Lillis SPV, LLC in Instrument No. 2020-18423, said Official Public Records and a part of the 23.556 acre tract of land conveyed to 23 Lillis SPV, LLC in Instrument No. 2020-1726, said Official Public Records and being more particularly described as one tract by metes and bounds as follows, to-wit:

BEGINNING at a 1/2 inch capped rebar found, stamped "RPLS 3694" in the East right-of-way line of U.S. Highway No. 75, at the Northwest corner of the remainder of the Rucl Beal and Susan R. Beal 0.935 acre tract of land in Volume 2933, Page 497, said Official Public Records (*said Shea 0.47 ac. being conveyed out of said Beal 0.935 ac.*), at the Southwest corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE Northerly, with the East right-of-way line of said U.S. Highway No. 75 and the West lines of said 23 Lillis SPV 23.556 ac., the following calls and distances:

1. North 07 deg. 33 min. 06 sec. East, a distance of 282.65 ft. to a concrete monument found at an angle point;
2. North 00 deg. 58 min. 45 sec. West, passing a 1/2 inch capped rebar found, stamped "RPLS 4488" at the Northwest corner of said Shea 0.47 ac. and the most Western Southwest corner of said Shea 9.162 ac. at 98.14 ft. and continuing for a **TOTAL** distance of 800.00 ft. to a concrete monument found at an angle point;
3. North 04 deg. 43 min. 53 sec. East, a distance of 201.00 ft. to a concrete monument found at an angle point;
4. North 00 deg. 58 min. 45 sec. West, a distance of 344.21 ft. to a concrete brass capped monument found at the most Western Northwest corner of both said Shea 3.7003 ac. and the herein described tract;
5. North 40 deg. 08 min. 27 sec. East, a distance of 76.56 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" in the South line of Crawford Street, a public street, at the most Western Northwest corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE North 84 deg. 30 min. 20 sec. East, with the South line of said Crawford Street and the North line of said 23 Lillis SPV 23.556 ac., a distance of 16.92 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" at the Northwest corner of the Red Rock Realty, LTD 0.8655 acre tract of land in Volume 2987, Page 654, said Official Public Records and the a Northeast corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE South 00 deg. 41 min. 59 sec. West, with the West line of said Red Rock Realty 0.8566 ac., a distance of 162.74 ft. to a 1/2 inch capped rebar found, stamped "RPLS 4488" at the Southwest corner of said Red Rock Realty 0.8566 ac. and an Ell corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE South 88 deg. 09 min. 39 sec. East, with the South line of said Red Rock Realty 0.8566 ac. and a North line of said 23 Lillis SPV 23.556 ac., a distance of 163.21 ft. to a 1/2 inch capped rebar found, stamped "RPLS 4488" at the Southeast corner of said Red Rock Realty 0.8566 ac. and an Ell corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE North 01 deg. 08 min. 12 sec. East, with the East line of said Red Rock Realty 0.8566 ac. and a West line of said 23 Lillis SPV 23.556 ac., a distance of 181.20 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" in the South line of said Crawford Street, at the Southwest corner of The City of Denison 0.227 acre tract of land (*Tract 1*) in Volume 4233, Page 374, said Official Public Records and the most Northern Northwest corner of both said 23 Lillis SPV 23.556 ac. the herein described tract;

THENCE South 88 deg. 38 min. 19 sec. East, with the South line of both said Crawford Street and City of Denison 0.227 ac., a distance of 341.55 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" in the West line of the Preston Forrest Holdings, LLC 4.067 acre tract of land in Document No. 2019-16049, said Official Public Records, at the Southeast corner of said City of Denison 0.227 ac. and the most Northern Northeast corner of said 23 Lillis SPV 23.556 ac. and a Northeast corner of the herein described tract, **SAID** rebar bears South 00 deg. 35 min. 39 sec. West, 19.52 ft. from a 1/2 inch capped rebar found, stamped "RPLS 6578" at the most Northern Northwest corner of said Preston Forrest 4.067 ac.;

THENCE South 00 deg. 35 min. 39 sec. West, with a West line of said Preston Forrest 4.067 ac. and an East line of said 23 Lillis SPV 23.556 ac., a distance of 195.11 ft. to a point at a Southeast corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract and an Ell corner of said Preston Forrest 4.067 ac., **SAID** point bears North 56 deg. West, 0.70 ft. from a 1/2 inch rebar;

THENCE North 88 deg. 33 min. 03 sec. West, with a North line of said Preston Forrest 4.067 ac. and a South line of said 23 Lillis SPV 23.556 ac., a distance of 132.55 ft. to a 1/2 inch capped rebar found, stamped "RPLS 6578" at the most Western Northwest corner of said Preston Forrest 4.067 ac. and an Ell corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE South 01 deg. 15 min. 44 sec. West, with the West line of said Preston Forrest 4.067 ac. and an East line of said 23 Lillis SPV 23.556 ac., a distance of 155.92 ft. to a 1/2 inch rebar found at the Southwest corner of said Preston Forrest 4.067 ac. and the Northwest corner of said 23 Lillis SPV 3.709 ac. and an Ell corner of the herein described tract;

THENCE South 88 deg. 05 min. 51 sec. East, with the North line of said 23 Lillis SPV 3.709 ac., a distance of 553.21 ft. to a 1/2 inch capped rebar found, stamped "RPLS 6578" in the West right-of-way line of said Lillis Lane, at the Northeast corner of said 23 Lillis SPV 3.709 ac. and the most Eastern Northeast corner of the herein described tract;

THENCE South 00 deg. 49 min. 25 sec. West, with the West line of said Lillis Lane and the East line of said 23 Lillis SPV 3.709 ac., a distance of 230.33 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" at the most Eastern Southeast corner of said 23 Lillis SPV 3.709 ac. and a Southeast corner of the herein described tract;

THENCE North 88 deg. 06 min. 46 sec. West, with a South line of said 23 Lillis SPV 3.709 ac., a distance of 289.92 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" at an Ell corner of both said 23 Lillis SPV 3.709 ac. and the herein described tract;

THENCE South 01 deg. 53 min. 14 sec. West, with an East line of said 23 Lillis SPV 3.709 ac., a distance of 130.07 ft. to a 1/2 inch capped rebar set, stamped "RPLS 6578" at the most Southern Southeast corner of said 23 Lillis SPV 3.709 ac., in a North line of said 23 Lillis SPV 23.556 ac. and at an Ell corner of the herein described tract;

THENCE South 88 deg. 09 min. 04 sec. East, with a North line of said 23 Lillis SPV 23.556 ac., a distance of 169.44 ft. to a point at a Northeast corner of the herein described tract;

THENCE South 00 deg. 20 min. 19 sec. West, over and across said 23 Lillis SPV 23.556 ac., passing an Ell corner of said 23.556 ac., continuing with an East line of said 23.556 ac. and passing another Ell corner of said 23.556 ac. and continuing on now over and across said 23.556 ac., a distance of 385.46 ft. to a point in a South line of said 23 Lillis SPV 23.556 ac., at a Southeast corner of the herein described tract;

THENCE North 89 deg. 06 min. 26 sec. West, with a South line of said 23 Lillis SPV 23.556 ac., a distance of 12443 ft. to a 1/2 inch rebar found at the Northeast base of a cross-tie post at an Ell corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE South 00 deg. 19 min. 19 sec. West, with an East line of said 23 Lillis SPV 23.556 ac., passing a 1/2 inch rebar found at 53.99 ft. at the Northwest corner of the Larry Young 0.567 acre tract of land in Instrument No. 2017-25284, said Official Public Records, continuing now with the West line of said Young 0.567 ac. for a **TOTAL** distance of 156.05 ft. to a 2-1/2 inch pipe corner post found in the North line of the Sammy Lindsey and Amy Lindsey 0.884 acre tract of land in Volume 3260, Page 110, said Official Public Records, at the Southwest corner of said Young 0.567 ac. and a Southeast corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE North 88 deg. 15 min. 52 sec. West, with the North line of said Lindsey 0.884 ac. and a South line of said 23 Lillis SPV 23.556 ac., a distance of 120.28 ft. to a cross-tie fence corner post found at the Northwest corner of said Lindsey 0.884 ac. and an Ell corner of both said 23 Lillis SPV 23.556 ac. the herein described tract, **SAID** post being North 83 deg. 01 min. East, 12.27 ft. from a 1/2 inch rebar found;

THENCE South 00 deg. 37 min. 41 sec. West, along with the general course of a wire fence and with the West line of said Lindsey 0.884 ac. and an East of said 23 Lillis SPV 23.556 ac., a distance of 104.90 ft. to the South base of a 7 inch wood corner post found at the Southwest corner of said Lindsey 0.884 ac. and an Ell corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE South 88 deg. 40 min. 12 sec. East, along with the general course of a wire fence and with the South line of said Lindsey 0.884 ac. and a North line of said 23 Lillis SPV 23.556 ac., a distance of 195.64 ft. to the West base of a chain link fence corner post at the Northwest corner of the Samantha L. Kuneman 0.410 acre tract of land in Document No. 2018-27610, said Official Public Records and a Northeast corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE South 01 deg. 37 min. 58 sec. West, with the West line of both said Kuneman 0.410 ac. and the Stella Diane Kolba 0.414 acre tract of land in Volume 3558, Page 765, said Official Public Records and with an East line of said 23 Lillis SPV 23.556 ac., a distance of 134.39 ft. to a 1/2 inch capped rebar found, stamped "RPLS 4488" at the most Northern Northeast corner of the Dean Roach 1.594 acre tract of land in Volume 3302, Page 631, said Official Public Records and the most Southern Southeast corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE North 89 deg. 19 min. 17 sec. West, with a North line of said Roach 1.594 ac. and a South line of said 23 Lillis SPV 23.556 ac., a distance of 201.90 ft. to a 1/2 inch capped rebar found, stamped "RPLS 4488" in the center of a 30 ft. wide access easement mentioned in Volume 4093, Page 918, Official Public Records, at the Northwest corner of said Roach 1.594 ac. and a Southwest corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE North 01 deg. 09 min. 27 sec. East, with a West line of said 23 Lillis SPV 23.556 ac. and with the center of a 30 ft. wide roadway easement mentioned in said Vol. 4792, Pg. 298, a distance of 21.83 ft. to a 1/2 inch capped rebar found, stamped "RPLS 4488" at an Ell corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE South 89 deg. 41 min. 04 sec. West, with a South line of said 23 Lillis SPV 23.556 ac., passing the Northeast corner of Lot 1, St. Amour Addition to the City of Denison, Texas as per plat of record in Document No. 2018-100, Plat Records, Grayson County, Texas and continuing now with the North line of said Lot 1 for a distance of 225.02 ft. to a 4 inch wood corner post at the Northwest corner of said Lot 1 and an Ell corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract, **SAID** post being North 24 deg. 58 min. East, 0.52 ft. from a 3/8 inch rebar found;

THENCE South 00 deg. 21 min. 56 sec. East, with the West line of said Lot 1 and an East line of said 23 Lillis SPV 23.556 ac., a distance of 208.76 ft. to a 2 inch metal corner post in the North line of the Heath Hermosillo and Yvonne Hermosillo 1.63 acre tract of land in Volume 2019-11371, said Official Public Records, at the Southwest corner of said Lot 1 and the most Southern Southeast corner of both said 23 Lillis SPV 23.556 ac. and the herein described tract;

THENCE South 89 deg. 01 min. 55 sec. West, with a South line of said 23 Lillis SPV 23.556 ac. and the North line of said Hermosillo 1.63 ac., a distance of 24.08 ft. to a 1/2 inch rebar found at the Northwest corner of said Hermosillo 1.63 ac. and the Northeast corner of the Ruel Beal and Susan R. Beal 1.97 acre tract of land in Volume 4792, Page 325, said Official Public Records;

THENCE South 89 deg. 44 min. 54 sec. West, with a South line of said 23 Lillis SPV 23.556 ac. and the North line of said Beal 1.97 ac., passing the Northwest corner of said Beal 1.97 ac., the Northeast corner of said remainder of the Beal 0.935 ac., continuing now with the North line of said remainder of the Beal 0.935 ac. for a total distance of 387.12 ft. to the **PLACE OF BEGINNING** and containing **26.716 ACRES** of land.

EXHIBIT “B”

Westlake Midtown

Planned Development District Standards

The purpose of the Planned Development (PD) district is to allow for the development of a mix of residential and non-residential uses on the subject property of approximately 26.7 acres, as described in **Exhibit A**. The subject property is located at the southwest quadrant of Lillis Lane and West Crawford Street, within the City Limits of Denison, Grayson County, Texas.

The subject property shall be divided into three (3) proposed character zones to be developed in accordance with the following regulations.

1.0 Land Use Plan

The **Land Use Concept Plan (Exhibit C-1)** depicts the general location, and area of the following proposed character zones:

Optional Local Retail Zone (Exhibit C-2) depicts a possible expanded area of Local Retail uses.

Residential Zone: Developed with a one units or two-unit (duplex), rental homes or single family homes on individually platted lots.

2.0 Local Retail Zone and Optional Retail Zone

- A. Except as noted below, the Local Retail Zone and the Optional Local Retail Zone as depicted in Exhibit C-2, shall develop in accordance with the Local Retail (LR) and the Highway-Oriented and Corridor (HO) Districts as they exist or may be amended.
- B. Additional Permitted Uses by Right. The following uses shall be permitted by right within the subject property:
 - 1. Department Store
 - 2. Health Club (Fitness Center)
 - 3. Parking Garage as an accessory use to an office building
 - 4. Pet Shop/Supplies/Grooming
- C. Uses Permitted Upon Approval of a Conditional Use Permit. The following uses shall be permitted by upon approval of a Conditional Use Permit (CUP) within the subject property:
 - 1. Home Improvement Center
 - 2. Hotel, Extended Stay (Residence Hotels)
 - 3. Hotel/Motel
- D. **Maximum Height:** Eight (8) stories, not greater than 100 feet. Where buildings or structures exceed 40 feet in height, such buildings or structures shall not be located closer to any residential district boundary line than a distance equal to the sum of the required side or rear yard specified plus twice the height of the building above 40 feet.
- E. **Setbacks:**
 - 1. Minimum of 40 feet (40') adjacent to US 75
 - 2. Minimum of 30 feet (30') adjacent to Crawford Street

3. Unless regulated by Subsection 2.0 (D) above, minimum of 40 feet (40') adjacent to any residential area
- F. Maximum lot coverage: 70%
- G. Maximum Floor Area Ratio (FAR): 2:1
- H. Additional Landscape Requirement: Development abutting US 75 or Crawford Street shall include a minimum 15-foot wide landscape easement, outside of the right-of-way, consisting of turf and/or ground cover and one (1) two-inch (2") caliper large tree planted at 30 feet (30') on center. The large trees shall be selected from the Recommended Plant List as noted in Appendix C of the Zoning Ordinance as it exists or may be amended. The landscape area shall have permanent irrigation and shall not be encumbered by any other easements, unless approved by the City.

3.0 Residential Zone: Except as noted below, the residential zone shall be developed as a one-unit or two-unit (duplex) rental community (Option A), and/or single family homes on individually platted lots (Option B).

A. Option A - One-Unit or Two-Unit Rental Community Development Standards

1. This type of development is intended for the rental of residential units but does not preclude ownership of the units in a condominium style property.
2. This type of development is not intended to be a single family detached rental community, and the number of one-unit residential units shall be limited to a maximum of 10% of the residential units
3. Except as noted below, the Residential Zone, or a portion thereof, as depicted in Exhibit C-2, shall develop in accordance with the Multi-Family (MF-1) Residential District.
 - a. Maximum Height
 - i. Main residential buildings: Two and one-half (2 ½) stories, not to exceed 35 feet.
 - ii. Accessory structures, including structures such as detached garages, carports, garden shed, gazebo, mail kiosks: One (1) story, not to exceed 18 feet.
 - b. Minimum Lot Area, Lot Width, Lot Depth: No requirement
 - c. Minimum Front Yard:
 - i. Fifteen feet (15') for main structure
 - ii. Where a garage faces a street, minimum of 25 feet from the face of the garage door to the edge of the pavement or sidewalk if a sidewalk is present.
 - d. Minimum Side Yard
 - i. No side yard required between attached duplex units
 - ii. Minimum of ten feet (10') between detached structures without openings
 - iii. Minimum of fifteen feet (15') between detached structures with openings
 - iv. Minimum of fifteen feet (15') adjacent to any existing public streets
 - e. Minimum Rear Yard: Ten feet (10')
 - f. Parking Requirements: A minimum of two (2) garage spaces attached to each dwelling unit.
 - g. Exterior Construction Standards: A minimum of 75% of each exterior façade shall be constructed of brick, stone, cementitious board, or stucco. EIFS shall not qualify as an approved masonry material.

- h. Landscape/Open Space Requirements: A minimum of 30% of the area shall be devoted to a combination of landscaping/pervious surfaces and usable open space.
- i. Refuse Collection: Refuse collection shall occur in the manner provided for single family detached homes.
- j. Unless otherwise required by this PD, the Special Requirements per subsection 28.30.5 of the Zoning Ordinance do not apply.

B. Option B – Single Family Homes on Individually Platted Lots

- 1. This type of development is intended to accommodate a traditional single family detached neighborhood where each home is located on a separate lot of record.
- 2. Except as noted below, the Residential Zone, or a portion thereof, as depicted in Exhibit C-2, shall develop in accordance with the Single Family (SF-5) Residential District.
 - a. Front Yard Setbacks
 - i. Minimum 20 feet from the main structure to the property line
 - ii. Where a garage faces a street, minimum of 25 feet from the face of the garage door to the property line
 - iii. Minimum of 15 feet from a j-swing garage to the property line
 - b. Parking Requirements: A minimum of two (2) garage spaces attached to each dwelling unit

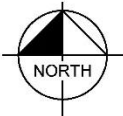
4.0 Regulations Applicable to All Properties

- A. The outside storage of boats, campers, trailers, and other recreational vehicles shall be prohibited in all areas except where indicated.
- B. All uses shall provide signage that clearly identifies the numbers (i.e., addresses and name of business) for each building. Signage shall be visible from entrances into the Site and/or from the street(s) within the Site, such that each individual building is easy to locate by visitors, delivery persons, and/or emergency personnel.
- C. The developer of each Local Retail building and/or the overall developer for the residential development shall submit a lighting plan for review and approval by the City. The lighting plan shall include all fixtures to be used to light parking lots, drives, and streets and a foot-candle count for the Site. All lighting fixtures shall be full cut-off fixtures to prevent any light trespass.
- D. With the exception of single family homes on individually platted lots, Site Plan approval shall be required for any development within the PD.
- E. Screening
 - 1. Residential and Non-residential uses shall be screened along the common property line separating the two uses. It is the responsibility of the non-residential developer to construct and maintain the screening wall or fence.
 - 2. No screening is required between Residential uses and existing Residential uses adjacent to the Site.
 - 3. Screening must be between six feet (6') and eight feet (8') in height and shall consist of masonry, brick, stone, or living screen consisting of a combination of evergreen shrubs and open fencing. The use of a living screen requires planting to achieve a solid living screen, minimum of six feet (6') in height, within one (1) year of planting.


- F. One or more property owners' associations (POA) or a homeowners' associations (HOA) shall be established and shall be responsible for the ownership and maintenance of all private common areas and private open spaces.
- G. Any street dedicated as public right-of-way shall be designed and constructed in accordance with City standards.
- H. Private streets shall be permitted with the design and construction standards approved by the City.

EXHIBIT "C-1"
LAND USE CONCEPT PLAN

WESTLAKE MIDTOWN
 Denison, TX
 AUGUST 2021
 Kimley»Horn



NORTH



GRAPHIC SCALE IN FEET
 0 75 150 300

SURVEY INFORMATION:
 SPENCER RICE SURVEY ABSTRACT NO. 1037
 CITY OF DENISON
 GRAYSON COUNTY, TEXAS
 EXHIBIT C-1

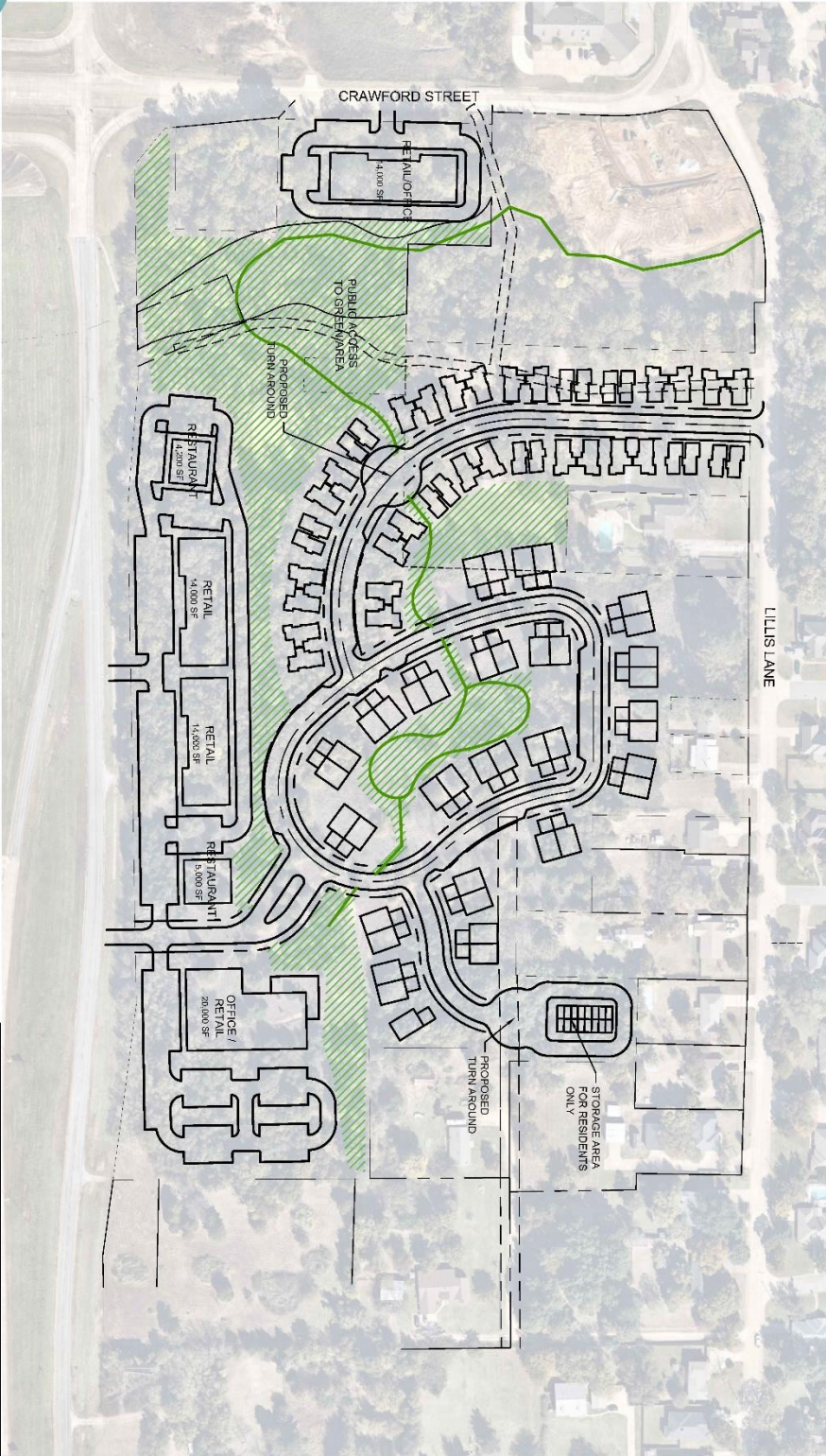
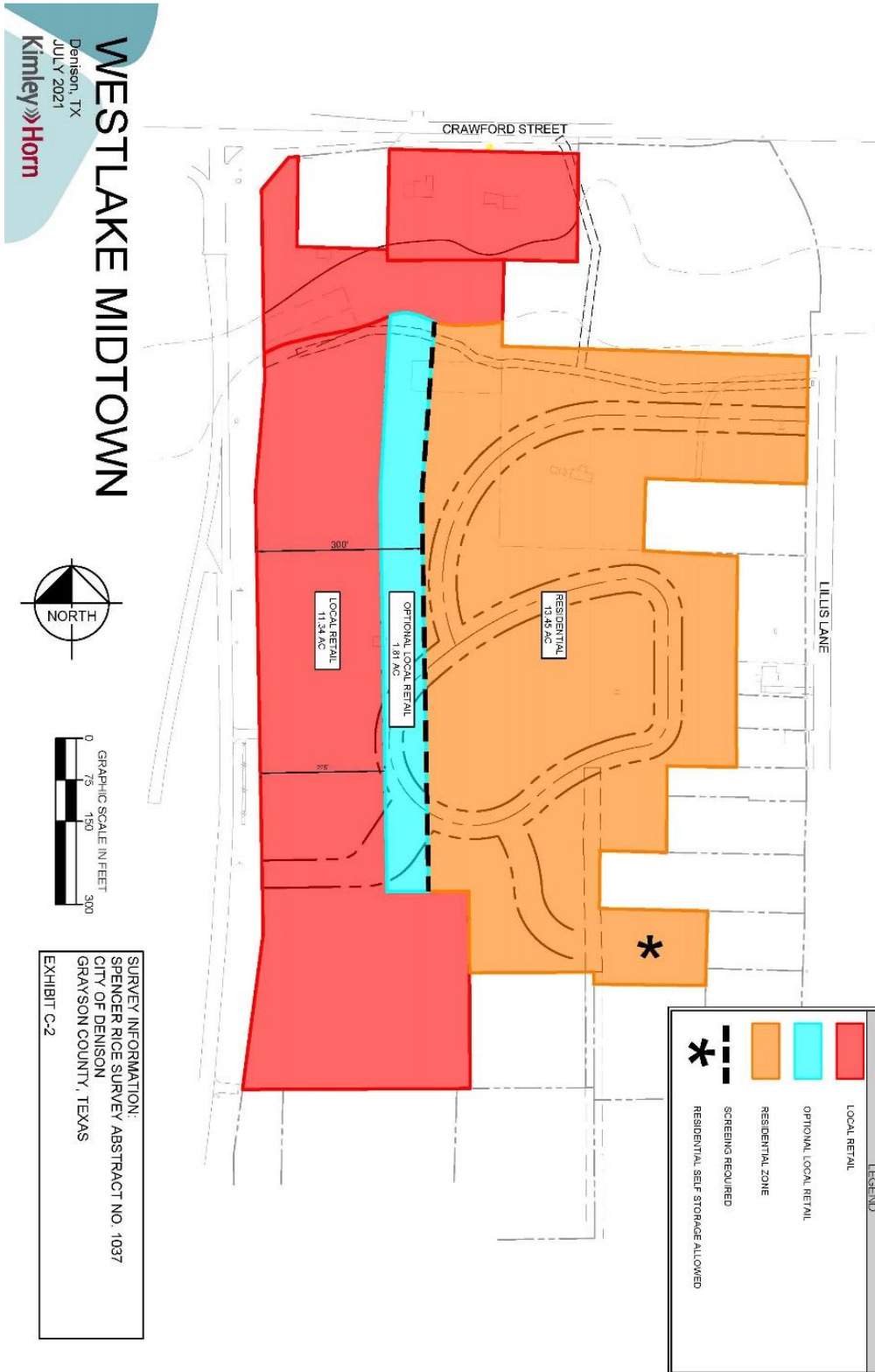


EXHIBIT "C-2"
OPTIONAL LOCAL RETAIL ZONE CONCEPT PLAN



WESTLAKE MIDTOWN
 DENISON, TX
 JULY 2021
Kimley»Horn



SURVEY INFORMATION:
 SPENCER RICE SURVEY ABSTRACT NO. 1037
 CITY OF DENISON
 GRAYSON COUNTY, TEXAS
 EXHIBIT C-2

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion, and take action on an Ordinance amending Section 28.26, Section 28.33, Section 28.46, Section 28.49, and Section 28.63 of Chapter 28, the Comprehensive Zoning Ordinance. (Case No. 2021-064ZO)

Staff Contact

John Webb, Executive Director of Planning and Community Development
jwebb@cityofdenison.com
903-465-2720 x2466

Summary

- This is a City-initiated amendment to the Comprehensive Zoning Ordinance regarding updates to the SF-TH – Single Family Residential District – Attached, the O – Office District, the HO – Highway Oriented and Corridor District, Use Regulations (Use Chart), and Definitions.
- The primary purposes of the amendments include:
 - Updating districts to be consistent with the market and to yield desired development quality
 - Removing incompatible land uses from certain zoning districts
 - Adding compatible land uses to certain zoning districts
 - Deleting obsolete land use terms
 - Amending current definitions or adding new definitions to be consistent with current land use terminology
- The City Council held a Public Hearing on August 16, 2021, and tabled action on the proposed ordinance.
- The proposed ordinance reflects the following uses be permitted upon approval of a Conditional Use Permit (CUP) in the appropriate non-residential zoning districts in the City including the non-residential districts in the Highway Oriented and Overlay areas:
 - Auto Dealer (New)
 - Boat Sales/Rental/Repair
 - Motorcycle ATV Dealer (New)
 - Personal Watercraft Sales (New)

Staff Recommendation

Staff recommends approval of the Ordinance amending the Comprehensive Zoning Ordinance.

Recommended Motion

“I move to approve the Ordinance amending Section 28.26, Section 28.33, Section 28.46, Section 28.49, and Section 28.63 of Chapter 28, the Comprehensive Zoning Ordinance.”

Background Information and Analysis

The current Zoning Ordinance was adopted in 2009, and while there have been several updates, multiple sections of the Ordinance have been identified as requiring amendments and updates. The amendments are intended to 1) update districts to be consistent with the market and to yield the desired quality of development, 2) remove incompatible land uses from certain zoning districts, 3) permit the Planning and

Zoning Commission and the City to determine the appropriateness of mixed-use developments, 4) add compatible land uses to certain zoning districts, 5) delete obsolete land use terms, 6) maximize the economic development potential of the City's highway corridors, and 7) amend current definitions or add new definitions to be consistent with current land use terminology.

It is important to note the Planning and Zoning Commission may recommend and the City Council may approve the adoption of Planned Development Districts on a case-by-case basis to permit a single land use or a mix of land uses where not permitted in certain zoning districts.

Sec. 28.26 – TH – Single-Family Residential – Attached

As depicted in Exhibit A, this district is being amended in its entirety to provide for the appropriate standards for Townhome neighborhoods with attached residential units on platted lots to encourage, but not require, the ownership of the individual units. Recommended changes also include amending development standards for consistency with today's townhome developments such as lot width, lot depth, and lot area. With the townhomes being alley-served, it is common to reduce the rear yard of the garages to maximize the living area of the units. The District will be renamed to the SF-TH – Townhome District.

Section 28.33 – O – Office District

As depicted in Exhibit B, this district is being amended in its entirety to reflect a true Office district. The allowance of single family dwellings, duplexes, four-plexes, and apartments by right is being removed from this District. While the goal was to create a mixed-use development with residential areas integrated into office developments, there is a significant lack of development controls to guarantee a well-designed, mixed-use development. Without any Planning and Zoning Commission and City Council discretion, an unlimited number of apartments could be constructed in properties zoned Office. As noted above, the appropriate method for considering a mixed-use development is through the Planned Development District process.

Section 28.46 – HO – Highway-Oriented and Corridor District

The Zoning Ordinance identifies the intent of the Highway-Oriented and Corridor District (HO) is to exercise greater control over the aesthetic, functional, and safety characteristics of development along US Highway 75, Spur 503, FM 120, and FM 691 where higher standards can effectively enhance the City's image as a desirable place to live, work, and shop. This emphasis on how uses are designed and developed is the focus of the standards in this district. This district is one (1) of seven (7) special overlay districts utilized in the City to achieve the desired development pattern and protect the natural environment.

To achieve land use compatibility and maximize the economic viability of the highway corridors in Denison, the HO District currently prohibits the following uses:

1. Kennels
2. Livestock sales
3. Stables of any kind
4. Used merchandise sales
5. Used vehicle sales (including motorcycles) as a primary use
6. Manufactured home display, storage, or sales
7. Sand, gravel, caliche, stone sales or storage

8. Any use listed under manufacturing and industrial in [section 28.49](#), Use Charts
9. Auto dealer-used primary use
10. Portable building sales (outdoor display)
11. Landscaping business except if not part of a home improvement center

To further protect and promote the economic development potential of the highway corridors, staff recommends the following uses be prohibited:

1. Auto Wrecker Service
2. Machine Shop
3. Maintenance and Repair Service for Buildings
4. Motor Freight Company
5. Motorcycle Dealer (Used)
6. Personal Watercraft Sales (Used)
7. Sign Manufacturing
8. Wrecking or Salvage Yard
9. Tire Re-treading & Capping
10. Trailer Rental or RV Sales
11. Warehouse (Mini)/Self-Storage
12. Warehouse, Storage
13. Welding Shop
14. Window and Door Frame Manufacturing

Should it be determined that any of the above list of prohibited uses would be appropriate with certain conditions, and the property contains at least two (2) acres, an applicant has the right to apply for a Planned Development District.

Section 28.49 – Use Regulations (charts)

The Use Chart identifies a multitude of residential and non-residential land uses and establishes where the uses are permitted by right, require a Conditional Use Permit (CUP), or are prohibited in the various zoning districts. As depicted in Exhibit C, staff has identified numerous changes to accomplish the following:

- Remove obsolete uses or group the use to simplify the Use Chart – example: “Video Rental/Sales” and “Cafeterias”
- Update terminology of uses – example: change “Convenience Store with Gas Sales” to “Convenience Store with Fuel Pumps”
- Amend how the use is permitted or prohibited in certain zoning districts – example: require “Extended Stay Hotels/Motels” to obtain a CUP in the Central Area District; permit retail uses by right in the Light Industrial District
- Identify new land use terms – example: “Data Centers”

Staff also recommends the entire Use Chart be reformatted to organize and alphabetize by residential and non-residential uses in lieu of listing by ten (10) land use types. This will simplify the process of identifying the land uses.

Section 28.63 – Definitions

As depicted in Exhibit D, staff has identified numerous changes to accomplish the following:

- Amend definitions to align with an amended land use term – example: “Convenience Store with Fuel Pumps”
- Create definitions for an existing land use – example: “Theater”
- Create definitions for a new land use – example: “Data Center”

Staff also recommends the list of definitions be reformatted to list in alphabetical order in lieu of numbering to ease the process of future amendments.

Financial Considerations

N/A

Prior Board or Council Action

On July 27, 2021, the Planning and Zoning Commission recommended approval of the proposed amendments with the following exceptions:

1. The following uses shall continue to be permitted by right in the Highway-Oriented and Overlay District.
 - a. Auto Dealer (New)
 - b. Boat Sales/Rental/Repair
 - c. Motorcycle ATV Dealer (New)
 - d. Personal Watercraft Sales (New)

The above-noted uses are proposed to be permitted upon approval of a Conditional Use Permit (CUP) in the appropriate zoning districts in the City.

The City Council held a Public Hearing on August 16, 2021, and tabled action on the proposed ordinance.

Alternatives

The City Council may table, deny, or approve the ordinance with amendments.

Sec. 28.26. - SF-TH—Single-Family Townhome Residential District—~~Attached.~~

28.26.1. General purpose and description:

The Single Family Townhome District is district is intended ~~primarily~~ for attached single-family residential developments in structures built to accommodate three (3) to eight (8) units per structure. ~~The primary uses appropriate to this district would be townhomes and condominiums. Each residential structure shall be located on an individually platted lot. The maximum allowable density would be eight (8.0) dwelling units per acre. Since the development will have alley-served garages, a reduced front setback can be accommodated.~~ Minimum standards ~~would~~ include a minimum area of percent open space as defined below (community space) of at least twenty (20) percent, a maximum development of twenty (20) acres, a minimum development of five (5) acres, and minimum separation requirements between SF-TH developments. Site plans ~~shall~~ would be required with this district.

28.26.2. Permitted uses:

Those uses listed for the SF-TH District in section 28.49 as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively. Conditional uses must be approved utilizing procedures set forth in section 28.11.

28.26.3. Height regulations:

Maximum height.

- A. Two and one-half (2½) stories but not to exceed thirty-five (35) feet for the townhome structure, main building/house; ~~where a structure exceeds twenty-five (25) feet in height, it shall be set back from the front property line one (1) additional foot beyond the required front yard setback for each foot above twenty-five (25) feet in height.~~
- B. One story, but not to exceed eighteen (18) feet for other accessory buildings, including ~~detached garage, carports, garden shed~~, gazebo, clubhouse, and mail kiosks, etc.
- C. Other requirements. Other regulations: In addition to other applicable ordinance regulations, section 28.42 shall apply.

28.26.4. Area regulations:

A. Size of lots:

1. *Minimum lot area*—~~1,980~~ Five thousand (5,000) square feet.
2. *Maximum density*—~~Ten Eight (108)~~ units per gross acre of land area within the development.
3. *Minimum project size*—The minimum areaisize of a townhome single-family attached residential development shall be five (5) acres.
4. *Maximum project size*—~~The maximum size of a single-family attached residential development shall be twenty (20) acres. No SFA zoning district may be located nearer than one thousand five hundred (1,500) feet to another SFA zoning district.~~
5. *Minimum lot width*—~~22'~~ Forty (40) feet.
6. *Minimum lot depth*—~~90 feet~~ One hundred ten (110) feet.

B. Size of yards:

1. *Minimum front yard*—~~Fifteen (15) feet for dwelling units; tTwenty-five (25) feet for any other structure.~~ front yard setback shall be staggered in at least five-foot increments such that no more than two (2) units have the same front setback in a row, and such that at least thirty (30) percent of the lots along any block face are set back at least thirty (30) feet, at least thirty (30) percent of

~~the lots are set back at least thirty-five (35) feet, and no more than forty (40) percent of the lots may use the minimum twenty-five-foot front setback; no front-entry garages shall be permitted.~~

2. *Minimum side yard:*

- a. ~~Single-family Attached townhome~~ dwellings shall not have an interior side yard; however, a minimum twenty-five (25) foot side yard is required for a key corner lot, a minimum fifteen-foot side yard is required on a corner lot adjacent to a residential or collector street, and a minimum twenty-foot side yard is required for a corner lot adjacent to an arterial street.

~~bB. Minimum separation of twenty fifteen (2015) feet between structures without openings or windows. The ends of any two (2) adjacent building complexes or rows of buildings shall be at least twenty (20) feet apart. The required side yards shall be designated upon a plat approved by the city council. One (1) side yard may be reduced to zero feet where the units join; the other side yard shall be a minimum of ten (10) feet required with fifteen (15) feet required on corner lots adjacent to a residential or collector street, twenty (20) feet required on corner lots adjacent to an arterial street; and twenty-five (25) feet required for a key corner lot.~~

- ~~cb.~~ A complex or continuous row of attached single-family dwellings shall have a minimum length of three (3) dwelling units (~~triplex~~), a maximum length of eight (8) dwelling units, and shall not exceed two hundred eighty (280) feet in length.

3. *Minimum rear yard:*

- a. No main residential building shall be located nearer than ten (10) feet to the rear property line.
- b. ~~The face of the garage door may be located a minimum of three (3) feet of the rear property line/alley right-of-way. The main residential building and all accessory buildings shall not cover more than fifty (50) percent of that portion of the lot lying to the rear of a line erected joining the midpoint on one (1) side lot line with the opposite side lot line.~~
- c. Every part of a required rear yard shall be open and unobstructed to the sky from a point thirty (30) inches above the general ground level of the graded lots, except for accessory buildings allowed pursuant to this chapter and the ordinary projections of windowsills, belt courses, cornices, roof overhangs, and other architectural features projecting a maximum of four (4) feet into the required rear yard.

~~C. Each dwelling unit shall be located on a single, platted lot of record which fronts on a dedicated public street or an approved public access easement.~~

~~DC. Maximum lot coverage: Eight (80) percent for each lot containing a residential unit. Fifty (50) percent for all other structures by main and accessory buildings on an each individual lot.~~

~~ED. Parking regulations:~~

1. A minimum of two (2) enclosed parking spaces for each dwelling unit, shall be located behind, beside or incorporated into the dwelling unit, and accessed only from the rear via an alley, and located on the same lot as each dwelling unit (see section 28.50, Off-Street Parking and Loading Requirements).
2. Designated visitor parking spaces shall be provided in off-street, common areas at a ratio of one (1) guest/visitor space per four (4) units.
3. Additional parking shall be required for any recreational uses, clubhouse, office, sales offices and other similar accessory structures and uses.
4. All driveways and parking areas shall be concrete or a similar solid paved surface such as turf pavers, brick pavers or asphalt.

~~FE. Minimum floor area per dwelling unit: One thousand (1,000) square feet.~~

~~GF. Minimum exterior construction standards: See section 28.54 for exterior construction standards.~~

28.26.5. Special requirements:

- A. Usable open space requirements: Except as provided below, any ~~townhome single-family attached~~ subdivision shall provide useable open space which equals or exceeds twenty (20) percent of the gross platted area, excluding rights-of-way for collector and larger-sized streets. Useable open space shall not be required for a SF-TH development if it contains twenty (20) or fewer lots and if the property is contiguous to or abuts a usable open space area adequate to serve the development. Said usable open space shall meet the criteria established in subsection 28.26.5.A. below. Properties that are separated by thoroughfares larger than a collector street and/or by drainage/utility easements in excess of sixty (60) feet in width shall not be considered as contiguous.
1. *Specific criteria for usable open space*—Areas provided as usable open space shall meet the following criteria:
 - a. All residential lots must be located within six hundred (600) feet of a usable open space area as measured along a street. The planning and zoning commission may recommend, and city council may allow, this distance to be increased ~~to up to one thousand two hundred feet (1,200)~~ if the shape of the subdivision is irregular or if existing trees or other natural features on the site can be preserved by increasing the distance.
 - b. Individual usable open space areas shall be at least twenty thousand (20,000) square feet in size. Useable open space ~~shall must~~ be a minimum of fifty (50) feet wide, and ~~shall must~~ have no slope greater than ten (10) percent. At the time of site plan and subdivision plat approval, the planning and zoning commission may recommend, and the city council may allow, full or partial credit for open areas that exceed the ten (10) percent maximum slope if it is determined that such areas are environmentally or aesthetically significant and that their existence enhances the development and the surrounding area.
 - c. Pools, tennis courts, walkways, patios and similar outdoor amenities may be located within areas designated as useable open space. Areas occupied by enclosed buildings (except for gazebos and pavilions), driveways, parking lots, overhead electrical transmission lines, drainage channels, and antennas ~~shall may~~ not be included in calculating useable open space.
 - d. Within useable open space areas, there shall be at least one (1) large shade tree for every one thousand (1,000) square feet of space. New trees planted to meet this requirement shall be a minimum three-inch caliper, and at least twenty-five (25) percent of the trees shall be nondeciduous (for qualifying tree species, see appendix C of this chapter for the city's recommended plant list).
 - e. A useable open space area must have street frontage on at least thirty-three (33) percent of the area's perimeter to ensure that the area is accessible to residents of the subdivision.
 - f. Useable open space areas must be easily viewed from adjacent streets and homes. Side or rear yard fences along common open space areas shall be of open, wrought iron design, and shall not exceed four (4) feet in height adjacent to the open space and for a distance of ten (10) feet perpendicular or radial to the open space area.
 2. *Landscaped areas*—Additional common open space and landscaped areas that do not qualify as usable open space may be provided, but shall not be counted toward the usable open space requirement.
- B. Maintenance requirements for common areas: A property owners association ~~shall be is~~ required for continued maintenance of common land and facilities.
- C. Alleys: Each attached dwelling unit within the SF-TH District shall be rear-entry only from an alley that is constructed ~~in conjunction along~~ with the ~~rest of~~ the subdivision (i.e., at the same time as the streets, utilities, etc.) and that is in conformance with the city's design standards for alleys (see the subdivision ordinance).

- D. Refuse facilities: Every ~~townhome single-family attached~~ dwelling unit shall be served by either individual residential trash carts or by a bulk dumpster. The bulk dumpster ~~located within one hundred fifty (150) feet of a refuse facility, measured along the designated pedestrian and vehicular travel way.~~ A refuse facility shall be a dumpster or other similar container designed for receiving garbage in bulk for more than one (1) dwelling, and all refuse containers shall be maintained in accordance with local public health and sanitary regulations. Refuse containers shall be located no closer than thirty (30) feet to any adjacent single-family property, shall be located so as to provide safe and convenient pickup by refuse collection agencies, and shall be screened in accordance with section 28.53 of this chapter (see Illustration 1 for refuse container enclosure diagrams).
- E. All utilities shall be provided separately to each lot within an SF-TH District so that each unit is individually metered.
- ~~F. A swimming pool shall be provided in single-family attached developments of fifty (50) or more units. See the city's Code of Ordinances for additional requirements for swimming pools.~~
- FG. Single-family detached dwellings (and their respective lots) constructed within this district shall conform to the standards as set forth in the SF-7.5 District.
- ~~H. Each SF-TH lot shall contain a private yard with not less than four hundred (400) square feet of area (i.e., a back yard or large side yard). Private yards may include a patio cover, gazebo or other similar non-enclosed structure which does not cover more than twenty-five (25) percent of the area of the private yard, and they may also include a swimming pool, swing set, play fort, or other private leisure amenity.~~
- GI. The elimination of a garage space by enclosing or converting any portion of the garage space with a stationary building wall shall be prohibited unless another garage of the same size and same parking capacity is built on the lot within the standards specified for the SF-TH Zoning District.
- HJ. Recreational vehicles, travel trailers or motor homes shall may not be used for on-site dwelling purposes.
- IK. Open storage is prohibited (except for materials for the resident's personal use or consumption such as firewood, garden materials, etc., which cannot be stored in any required setback and which shall be screened from view of public streets and neighboring properties).
- ~~L. Single-family and two-family homes with side-entry garages where lot frontage is only to one (1) street (not a corner lot) shall have a minimum of twenty-four (24) feet from the door face of the garage or carport to the side property line for maneuvering. The minimum setback from any garage door to a street or alley right-of-way line shall also be twenty-four (24) feet.~~
- JM. Site plan approval (see section 28.13) shall be required for any single-family attached or nonresidential use (e.g., school, church, child care center, private recreation facility, etc.) in the SF-TH District. Any nonresidential land use which may be permitted in this district shall conform to the "NS"—Neighborhood Service District standards with respect to building setbacks, landscaping, exterior building construction, screening requirements, lighting, signage, etc. Said site plan approval shall not be required for home occupations uses that conform to the city's standards.
- KN. Other regulations: As established by article V.

~~(Ord. No. 4820, § 2(2.09, 2.10), 7-18-16)~~

Sec. 28.33. - O—Office District.

28.33.1. General purpose and description:

The O—Office District is intended to accommodate a variety of office developments providing for professional, financial, medical, and similar services for local residents; corporate offices for regional and national operations; and for other major employment centers. The district can be used as a transition district between more intense uses and residential uses, provide for a mixture of office and residential uses in close proximity to enable people to live, work and purchase necessities in a single location. Bed- and breakfast establishments could also be located in this district. Additionally, pedestrian walkways and open areas are desired in order to promote a pedestrian-friendly environment. The following are key concepts that should be acknowledged through development practices within [the] Office District:

- ~~A. Residential uses in conjunction with nonresidential activities, possibly located above or next to office establishments;~~
- ~~B. All types of residential uses, including single-family homes, townhouses, and loft-style multiple-family units;~~
- ~~C. Offices are compatible with residential not exceeding three (3) stories in height;~~
- ~~D. Traffic flows that enable people to move freely without the use of an automobile by emphasizing the pedestrian.~~

28.33.2. Permitted uses:

Those uses listed for the O District in section 28.49 as "P" or "C" are authorized uses permitted by right or conditionally permitted uses (i.e., CUP), respectively. Conditional uses must be approved utilizing procedures set forth in section 28.11.

28.33.3. Height regulations:

Maximum height:

- A. Three (3) stories, -but no greater than sixty (60) feet
- ~~B. One (1) story, or twelve (12) feet for other accessory buildings, including detached garages, carports, clubhouse, gazebo, mail kiosks, laundry rooms, etc.~~
- B.C. Other requirements (see article V).

28.33.4. Area regulations:

A. Size of lots:

1. *Minimum lot area*—Six thousand (6,000) square feet.
2. *Minimum lot width*—Sixty (60) feet.
3. *Minimum lot depth*—One hundred (100) feet.

B. Size of yards:

1. *Minimum front yard*—Twenty-five (25) feet. All areas adjacent to a street shall be deemed front yards.
2. *Minimum side yard:*
 - a. Where adjacent to a nonresidential district - use—Twenty-five (205) feet.
 - b. Where adjacent to a residential district:

1. Twenty five (25) feet for a one story building.

2. Forty (40) feet for a two-story building

3. Fifty (50) feet for a three-story building

~~—Multi-family or duplex uses—Ten (10) percent of the lot width not to be less than five (5) feet but need not exceed fifteen (15) feet; twenty (20) feet from a street right-of-way line for a corner lot; unless adjacent to a single-family, duplex, patio home or single-family attached district then side and rear setbacks shall be according to the height of the multi-family building, as follows:~~

~~1. One-story building—twenty-five (25) feet.~~

~~2. Two-story building—fifty feet (50).~~

~~c. Single-family detached uses—Ten (10) percent of the lot width not to be less than five (5) feet but need not exceed fifteen (15) feet; fifteen (15) feet on corner lots adjacent to a street right-of-way line; and twenty (20) feet from a street right-of-way line for a key corner lot.~~

~~d. Single-family attached uses—One side yard reduced to zero feet where the units join; other side yard a minimum of ten (10) feet required with fifteen (15) feet required on corner lots adjacent to a residential or collector street, twenty (20) feet required on corner lots adjacent to an arterial street; and twenty-five (25) feet required for a key corner lot.~~

3. Minimum rear yard:

a. Where adjacent to a nonresidential district – twenty (20) feet

b. Where adjacent to a residential district:

1. Twenty five (25) feet for a one story building.

2. Forty (40) feet for a two-story building

3. Fifty (50) feet for a three-story building

~~No main residential building shall be located nearer than ten (10) feet.~~

~~b. The main residential building and all accessory buildings shall not cover more than fifty (50) percent of that portion of the lot lying to the rear of a line erected joining the midpoint on one (1) side lot line with the opposite side lot line.~~

~~c. Every part of a required rear yard shall be open and unobstructed to the sky from a point thirty (30) inches above the general ground level of the graded lots, except for accessory buildings allowed pursuant to this chapter and the ordinary projections of windowsills, belt courses, cornices, roof overhangs, and other architectural features projecting a maximum of four (4) feet into the required rear yard.~~

~~4. Building separation:~~

~~a. Between residential structures—Ten (10) feet for buildings without openings; fifteen (15) feet for buildings with openings.~~

~~b. Between a main building and an accessory building—ten (10) feet.~~

~~C. Minimum floor area per dwelling unit:~~

~~1. Efficiency unit—Four hundred fifty (450) square feet per unit.~~

~~2. One-bedroom unit—Six hundred fifty (650) square feet per unit.~~

~~3. Two (2) or more bedroom unit—Eight hundred seventy-five (875) square feet for the first two (2) bedrooms, plus an additional one hundred twenty-five (125) square feet for every bedroom over two (2) (e.g., three-bedroom unit must have one thousand (1,000) square feet, etc.).~~

D. Maximum lot coverage: Forty (40) percent total, including main and accessory buildings.

E. *Parking regulations (see section 28.50):*

1. ~~One and one-half (1.5) spaces for each efficiency or one-bedroom unit.~~
2. ~~Two (2) spaces for each two-bedroom unit.~~
3. ~~Two and one-half (2.5) spaces for each three-bedroom unit.~~
4. ~~Three (3) spaces for each four or more bedroom unit.~~
5. ~~The average number of parking spaces for the total development shall be no less than two (2) spaces per dwelling unit.~~
6. ~~No parking space may be located closer than six (6) feet from any building or closer than two (2) feet from any side or rear lot line.~~
7. ~~All parking areas adjacent to public streets shall be screened from view. Screening may be in the form of live plant materials, berms, and low masonry walls that match the exterior finish of main buildings, or any combination of the above.~~

E. *Minimum exterior construction standards: Seventy-five (75) percent standard masonry construction (see article V).*

28.33.5. Special requirements:

A. *Landscaping requirements:* Refer to article V.

B. *Open storage:* Open storage in nonresidential areas is prohibited.

C. ~~*On-site dwellings:* Recreational vehicles, manufactured homes, travel trailers or motor homes may not be used for on-site dwelling or nonresidential purposes.~~

CD. *Temporary facilities:* There shall be no permanent use of temporary facilities or buildings.

DE. *Other regulations:* As established by article V.

Proposed Amendments to Section 28.49 - Use Regulations (Use Chart)

Use	Proposed Amendment
Duplex/Two Family	Remove permitted by right in the Lakeside Development, Office, and Commercial Districts
Four-Family (Quadplex)	Remove permitted by right in the Lakeside Development and Office Districts
Single-Family Attached	Amend term to read “Townhome” and remove permitted by right in the Office District. Amend the designation on top row of Use Chart from “SF-TH” to “TH”
Multi-Family (Apartments)	Remove permitted by right in the Lakeside Development and the Office Districts
Single-Family Industrialized Home	Remove permitted by right in the Office District
Single-Family Detached Home	Remove permitted by right in the Office District
Three-Family (Triplex)	Remove permitted by right in the Office District
Auto Dealer (New)	Amend permitted by right in the Community Retail, Regional Retail, Commercial, and Business Park Districts to permitted by CUP in those districts
Boat Sales/Rental/Repair	Amend permitted by right in the Community Retail, Regional Retail, Commercial, and Light Industrial Districts to permitted by CUP in those districts
Motorcycle/ATV Dealer (New)	Amend permitted by right in the Community Retail, Regional Retail, and Commercial Districts to permitted by CUP in those districts
Personal Watercraft Sales (New)	Amend permitted by right in the Commercial District to permitted by CUP in that district
Office, Administrative, Medical, or Professional	New term and designate as permitted by right in the Office, Neighborhood Services, Local Retail, Community Retail, Regional Retail, Commercial, Central Area, Business Park, Light Industrial and Heavy Industrial Districts
Insurance Agency Offices	Delete term – the use falls within definition of Office, Administrative, Medical, or Professional
Offices (Brokerage Services)	Delete term – the use falls within definition of Office, Administrative, Medical, or Professional
Offices (Health Service)	Delete term – the use falls within definition of Office, Administrative, Medical, or Professional
Offices (Legal Services)	Delete term – the use falls within definition of Office, Administrative, Medical, or Professional
Offices (Medical Office)	Delete term – the use falls within definition of Office, Administrative, Medical, or Professional
Offices (Professional)	Delete term – the use falls within definition of Office, Administrative, Medical, or Professional
Offices (Parole-Probation)	Delete term – the use falls within definition of Office, Administrative, Medical, or Professional
Real Estate Office	Delete term – the use falls within definition of Office, Administrative, Medical, or Professional
Ambulance Service (Private)	Remove permitted by right in the Neighborhood Services District
Cafeteria	Delete the term- defined as a Restaurant

Proposed Amendments to Section 28.49 - Use Regulations (Use Chart)

Use	Proposed Amendment
Extended Stay Hotels/Motels (Residence Hotels)	Amend term to read, "Hotels, Extended Stay (Residence Hotels)" and Amend permitted by right in the Central Area District to permitted by Conditional Use Permit (CUP)
Laundry/Dry Cleaning (Drop off/Pick up)	Add permitted by right in the Light Industrial District
Martial Arts School	Add permitted by right in the Light Industrial District
Antique Shop	Add permitted by right in the Business Park and the Light Industrial Districts
Building Material Sales	Amend permitted by right in the Regional Retail, Commercial, and Central Area District to permitted by CUP in those districts
Bowling Alley	Delete term – classified as Amusement, Commercial (Indoor)
Book Store	Delete term – classified as Retail Shops and Stores
Consignment Shop	Rename to "Consignment Shop (No outdoor storage)"
Custom Personal Service Shop	Amend term to read, "Personal Service"
Convenience Store without gas sales	Amend term to read, "Convenience Store without Fuel Pumps"
Convenience Store with gas sales	Amend term to read, "Convenience Store with Fuel Pumps"
Food or Grocery Store	Amend term to read, "Grocery Store"
Furniture Sales (Outdoor)	Remove permitted by right in the Regional Retail and Commercial Districts and add permitted by right in the Light Industrial District
Gravestone/Tombstone Sales (Outdoor Display)	Remove permitted by right in the Commercial District
Hardware Store	Amend term to read, "Hardware Store (No Outdoor Storage)"
Laundry and Cleaning, Self-Service Automatic	Amend term to read, "Laundry, Self-Service"
Handicraft Shop	Delete term, no longer relevant
Retail Shop (Misc.)	Amend term to read, Retail Shops and Stores and as permitted by right in the Business Park and Light Industrial Districts
Needlework Shop	Delete term, use defined as Personal Service
Vacuum Cleaner Sales and Service	Delete term, considered as retail shop and small appliance repair
Auto Dealer (Classic and Performance)	Amend term to read, "Auto Dealer (Classic and Performance – Indoor Showroom Only)" and add as permitted by right in the Light Industrial District
Auto Rental	Amend permitted by right in the Regional Retail and Commercial Districts to permitted by CUP in those districts
Go Cart Track	Delete term, considered as outdoor commercial amusement
Quick Lube/Oil Amend/Minor Inspection	Remove permitted by right in the Central Area District
Tire Sales (No Outdoor Storage)	Remove permitted by right in the Central Area District

Proposed Amendments to Section 28.49 - Use Regulations (Use Chart)

Use	Proposed Amendment
Billiard/Pool Facility (Three (3) or More Tables)	Amend permitted by right in the Commercial District to permitted by CUP in that district
Bingo Facility	Amend permitted by right in the Community Retail, Regional Retail, and Commercial Districts to permitted by CUP in those districts
Bowling Center	Remove term, defined as Amusement, Commercial (Indoor)
Exhibition Area, Fair Grounds	Amend permitted by right in the Commercial District to permitted by CUP in that district
Health Club (Physical Fitness)	Amend term to read, "Health Club/Fitness Center" and add as permitted by right in the Light Industrial District
Recreation Center	Delete the term – permitted as a permitted as a Governmental Building
Travel Trailers/R.V.'s (Short-Term Stays) R.V. Parks	Remove permitted by CUP in the Commercial District, remove permitted by right in the Heavy Industrial District, and amend permitted by right in the Light Industrial District to permitted by CUP in that district
Membership Sports	Delete term – obsolete
Motion Picture Theater (Indoor)	Amend term to read, "Theater"
Motion Picture Studio, Commercial Film	Amend term to read, "Studio/Video, Media & Audio Recording" and amend the requirement for a CUP in the Commercial District to permitted by right in that District, add permitted by right in the Central Area District, and delete permitted by right in the Heavy Industrial District
Skating Rink	Remove term, defined as Amusement, Commercial (Indoor)
Video Rental/Sales	Delete term – obsolete use
Clinic (Medical)	Delete term – use permitted as Office (Professional)
Assisted Living Facility	Remove permitted by right in the Central Area District
Event Venue/Meeting Hall	Amend term to read, "Hall, Reception/Banquet/Meeting"; amend permitted by right in the Office, Neighborhood Services, Local Retail, Community Retail, Regional Retail, Commercial, Central Area Districts to permitted by CUP in those districts and remove permitted by right in the Light Industrial and Heavy Industrial Districts
Hospice	Remove permitted by right in the Central Area District
Hospital (Acute Care)	Remove permitted by CUP in the Central Area District
Newspaper Printing	Remove permitted by right in the Central Area District
Nursing/Convalescent or Skilled Home	Remove permitted by right in the Central Area District
Utility Shops and Storage Area	Remove permitted by CUP in the Central Area District
Furniture and Major Appliance, Repair/Used	Remove permitted by right in the Central Area District
Landscape Use	Remove term – no longer relevant

Proposed Amendments to Section 28.49 - Use Regulations (Use Chart)

Use	Proposed Amendment
Trailer Rental or RV Sales	Amend permitted by right in the Commercial and Business Park Districts to permitted by CUP in those districts
Data Center	New term and add as a permitted use in the Regional Retail, Commercial, Business Park, Light Industrial and Heavy Industrial Districts

Proposed Amendments to Section 28.63 - Definitions

Term	Current Definition	Proposed Definition
71. Convenience store with (or without) gasoline sales	Retail establishment selling food for off-premises consumption and a limited selection of groceries and sundries (and possibly gasoline, if pumps are provided). Does not include or offer any automobile repair services	Amend term to read, "Convenience store without fuel pumps" and amend definition to read, "A retail establishment that sells food and other consumable and non-consumable products for off-premise use or consumption."
Convenience store with fuel pumps	n/a	New term with definition to read, "A retail establishment that sells food and other consumable and non-consumable products for off-premise use or consumption and includes the dispensing of motor vehicles fuels but does not include any automotive repair services."
77. Custom personal service	Tailor, dressmaker, shoe shop, barber shop, beauty shop or similar shop offering custom service.	Amend term to read, "Personal Service and amend definition to read, Services involving the care of a person, including barbershop, beauty shop, hair salon, tailor, dressmaker, shoe shop, or similar shop offering custom service."
Data Center	n/a	New term to read, "A facility whose primary service is data processing and is used to house computer systems and associated components, such as telecommunications and storage systems, including but not limited to web hosting organizations and internet service organizations. A server farm, telecom hotel, carrier hotel, telco hotel, telehouse co-location center, or any other term applicable to facilities which are used for these specified purposes shall be deemed to be a data center."
84. Drapery, or furniture upholstering shop	An establishment for the production, display and sale of draperies and soft coverings for furniture	Amend term to read, "Drapery, blinds or furniture upholstering shop, and amend definition to read, An establishment for the production, display and sale of draperies, window blinds, and soft coverings for furniture."

Proposed Amendments to Section 28.63 - Definitions

<p>91. Event venue/meeting hall</p>	<p>A building, facility, room, or portion thereof, which is rented, leased or otherwise made available to any person or group for an event, meeting or function such as a wedding or reception. A fee may or may not be charged for use of the space. This definition does not include fraternal organizations, religious facilities, or community center (municipal/civic center).</p>	<p>Amend term to read, “Hall, Reception/Banquet/Meeting and define as A building, facility, room, or portion thereof, which is rented, leased or otherwise made available to any person or group for a private event function, that is not open to the general public, whether or not a fee is charged.”</p>
<p>119. General retail stores</p>	<p>This major group includes retail stores which sell a number of lines of primarily new merchandise including but not limited to dry goods, apparel and accessories, furniture and home furnishings, small wares, small appliances, hardware, and food. The stores included in this group are known as department stores, variety stores, general merchandise stores, general stores, etc. (also see retail shop).</p>	<p>Delete this definition – refer to definition of Retail Stores and Shops</p>
<p>105. Food Store</p>	<p>A retail business establishment that displays and sells consumable goods that are not to be eaten on the premises. Prepared food may be sold only as a secondary or accessory use.</p>	<p>Amend term to read, “Grocery Store” and amend definition to read, “Any building where most of the gross floor area is devoted to the sale of food products for home preparation and consumption but may also offer prepared food for on- or off-site consumption, retail personal and household items, and a pharmacy.”</p>
<p>Health Club (Physical Fitness)</p>	<p>n/a</p>	<p>Amend term to read, “Health Club/Fitness Center and definition to read, A private facility operated to promote physical health and fitness. Activities may include exercise, physical therapy, training, and education pertaining to health and fitness. Uses or combinations of uses or facilities would typically include, but are not limited to, game courts, weightlifting and exercise equipment, aerobics, swimming pools and spas, and running or jogging tracks.”</p>
<p>147. Laundromat (or self-serve washateria)</p>	<p>A facility where patrons wash, dry and/or dry clean clothing and other fabrics in machines that are operated by the patron</p>	<p>Amend term to read, “Laundry, Self-Service” (no change to definition)</p>

Proposed Amendments to Section 28.63 - Definitions

Theater or playhouse (indoor)	n/a	Amend term to read, "Theater" and define as "A building or portion of a building used primarily for showing motion pictures or for dramatic, musical, or live performances having screens, stages, or combination thereof."
Studio/Video & Audio Recording	n/a	New definition to read, "A privately-owned facility where multi-media events are recorded, filmed or produced including film and recording studios and advertising agencies with on-site production facilities."
186. Multiple-family dwelling	Three (3) or more dwelling units on a single lot designed to be occupied by three (3) or more households living independently of one another, exclusive of hotels or motels. This includes three-household units (triplex) and four-household units (quadplex), as well as traditional	Amend term to read, "Multi-Family (Apartments)" and amend definition to read, "Attached dwelling units designed to be occupied by four (4) or more households living independently of one another, exclusive of hotels, motels, or residence hotels."
Office, professional and general business	n/a	Amend term to read, "Office, Administrative, Medical, or Professional" and define as "A building used for the provision of executive, management, or administrative services. Typical uses include, but are not limited to, administrative offices and services including real estate, property management, investment, medical, architect, engineer, travel, secretarial services, accounting organizations and associations."
Office, Temporary Field	n/a	New definition to read, "A temporary or mobile office which is intended for the purpose of construction management."
246. Retail shop (for apparel, gifts, accessories and similar items)	An establishment engaged in the selling of goods and merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods (also see <i>general retail stores</i>).	Amend the term to read, "Retail Stores and Shops and amend definition to read, An establishment engaged in the selling of goods and merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods."

Proposed Amendments to Section 28.63 - Definitions

<p>261. Single-family dwelling, <i>attached (townhouse)</i>:</p>	<p>A dwelling which is joined to another dwelling at one (1) or more sides by a shared wall, which is designed for occupancy by one (1) household, and which is located on a separate lot delineated by a front, side and rear lot lines.</p>	<p>Delete term – replaced by Townhome</p>
<p>Townhome</p>	<p>n/a</p>	<p>New term with definition to read, “A structure containing three (3) to eight (8) dwelling units with each unit designed for occupancy by one household on a platted lot and each unit attached to another by a common wall.”</p>

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 AND RENAMING SECTION 28.26, “TH-SINGLE-FAMILY RESIDENTIAL-ATTACHED DISTRICT”; OF ARTICLE III, “ZONING DISTRICTS”; AMENDING SECTION 28.33, “O-OFFICE DISTRICT”, OF ARTICLE III, “ZONING DISTRICTS”; AMENDING SUBSECTION 28.46.2.B, “AUTHORIZED USES”, OF SECTION 28.46, “HO-HIGHWAY-ORIENTED AND CORRIDOR DISTRICT”, OF ARTICLE III, “ZONING DISTRICTS”; AMENDING SECTION 28.49, “USE REGULATIONS (CHARTS), OF ARTICLE IV, “USE REGULATIONS”; AND AMENDING SECTION 28.63, “DEFINITIONS”, OF ARTICLE VI, “DEFINITIONS”; 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 (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 of the City of Denison, Texas (the “City Council”) adopted Chapter 28 of its Code of Ordinances, the same being the Comprehensive Zoning Ordinance of the City, which sets forth various regulations for promoting the public health, safety, morals and general welfare, and protecting and preserving places and areas of historical, cultural and/or architectural importance and significance within the city and are made with reasonable consideration, among other things, for the character of each zoning district and its peculiar suitability for the particular uses specified; and

WHEREAS, having considered the proposed amendments to the Comprehensive Zoning Ordinance and the appropriateness of the amendments; 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 Comprehensive 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 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 the City Council does hereby find that the amendments to the Comprehensive 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 of Denison, Texas, and of the public health, safety and welfare.

SECTION 3. Amendment to Section 28.26. Section 28.26 of the Code of Ordinances of the City of Denison, Texas, the same being the City's Comprehensive Zoning Ordinance, is hereby renamed and amended in its entirety to read as follows:

Sec. 28.26. - SF-TH—Single-Family Townhome District

28.26.1. General purpose and description:

The Single Family Townhome District is intended for attached single-family residential developments in structures built to accommodate three (3) to eight (8) units per structure. Each residential unit shall be located on an individually platted lot. Since the development will have alley-served garages, a reduced front setback can be accommodated. Minimum standards include a minimum area of percent open space as defined below. Site plans shall be required with this district.

28.26.2. Permitted uses:

Those uses listed for the SF-TH District in section 28.49 as "P" or "C" are authorized uses permitted by right or conditionally permitted uses, respectively. Conditional uses must be approved utilizing procedures set forth in section 28.11.

28.26.3. Height regulations:

Maximum height.

- A. Two and one-half (2½) stories but not to exceed thirty-five (35) feet for the townhome structure.
- B. One story, but not to exceed eighteen (18) feet for other accessory buildings, including, gazebo, clubhouse, and mail kiosks, etc.
- C. Other requirements. Other regulations: In addition to other applicable ordinance regulations, section 28.42 shall apply.

28.26.4. Area regulations:

A. *Size of lots:*

1. *Minimum lot area*—1,980 square feet.
2. *Maximum density*—Ten (10) units per gross acre of land area within the development.
3. *Minimum project size*—The minimum area of a townhome development shall be five (5) acres.
4. *Minimum lot width*—22' feet.
5. *Minimum lot depth*—90 feet.

B. *Size of yards:*

1. *Minimum front yard*—Fifteen (15) feet for dwelling units; twenty-five (25) feet for any other structure.
2. *Minimum side yard:*
 - a. Attached townhome dwellings shall not have an interior side yard; however, a minimum twenty-five (25) foot side yard is required for a key corner lot, a minimum fifteen-foot side yard is required on a corner lot adjacent to a residential or collector street, and a minimum twenty-foot side yard is required for a corner lot adjacent to an arterial street.
 - b. Minimum separation of twenty (20) feet between structures.
 - c. A complex or continuous row of attached single-family dwellings shall have a minimum length of three (3) dwelling units, a maximum length of eight (8) dwelling units and shall not exceed two hundred eighty (280) feet in length.
3. *Minimum rear yard:*
 - a. No main residential building shall be located nearer than ten (10) feet to the rear property line.
 - b. The face of the garage door may be located a minimum of three (3) feet of the rear property line/alley right-of-way.
 - c. Every part of a required rear yard shall be open and unobstructed to the sky from a point thirty (30) inches above the general ground level of the graded lots, except for accessory buildings allowed pursuant to this chapter and the ordinary projections of windowsills, belt courses, cornices, roof overhangs, and other architectural features projecting a maximum of four (4) feet into the required rear yard.

C. Each dwelling unit shall be located on a single, platted lot of record which fronts on a dedicated public street or an approved public access easement.

D. *Maximum lot coverage:* Eight (80) percent for each lot containing a residential unit. Fifty (50) percent for all other structures on an individual lot.

E. *Parking regulations:*

1. A minimum of two (2) enclosed parking spaces for each dwelling unit, shall be located behind, beside or incorporated into the dwelling unit and accessed only from the rear via an alley and located on the same lot as each dwelling unit (see section 28.50, Off-Street Parking and Loading Requirements).
 2. Designated visitor parking spaces shall be provided in off-street, common areas at a ratio of one (1) guest/visitor space per four (4) units.
 3. Additional parking shall be required for any recreational uses, clubhouse, office, sales offices, and other similar accessory structures and uses.
 4. All driveways and parking areas shall be concrete or a similar solid paved surface such as turf pavers, brick pavers or asphalt.
- F. *Minimum floor area per dwelling unit:* One thousand (1,000) square feet.
- G. *Minimum exterior construction standards:* See section 28.54 for exterior construction standards.

28.26.5. Special requirements:

- A. Usable open space requirements: Except as provided below, any townhome subdivision shall provide useable open space which equals or exceeds twenty (20) percent of the gross platted area, excluding rights-of-way for collector and larger-sized streets. Useable open space shall not be required for a SF-TH development if it contains twenty (20) or fewer lots and if the property is contiguous to or abuts a usable open space area adequate to serve the development. Said usable open space shall meet the criteria established in subsection 28.26.5.A. below. Properties that are separated by thoroughfares larger than a collector street and/or by drainage/utility easements in excess of sixty (60) feet in width shall not be considered as contiguous.
1. *Specific criteria for usable open space*—Areas provided as usable open space shall meet the following criteria:
 - a. All residential lots must be located within six hundred (600) feet of a usable open space area as measured along a street. The planning and zoning commission may recommend, and city council may allow this distance to be increased if the shape of the subdivision is irregular or if existing trees or other natural features on the site can be preserved by increasing the distance.
 - b. Individual usable open space areas shall be at least twenty thousand (20,000) square feet in size. Useable open space shall be a minimum of fifty (50) feet wide and shall have no slope greater than ten (10) percent. At the time of site plan and subdivision plat approval, the planning and zoning commission may recommend, and the city council may allow full or partial credit for open areas that exceed the ten (10) percent maximum slope if it is determined that such areas are environmentally or aesthetically significant and that their existence enhances the development and the surrounding area.
 - c. Pools, tennis courts, walkways, patios, and similar outdoor amenities may be located within areas designated as useable open space. Areas occupied by enclosed buildings (except for gazebos and pavilions), driveways, parking lots, overhead electrical

transmission lines, drainage channels, and antennas shall not be included in calculating useable open space.

- d. Within useable open space areas, there shall be at least one (1) large shade tree for every one thousand (1,000) square feet of space. New trees planted to meet this requirement shall be a minimum three-inch caliper, and at least twenty-five (25) percent of the trees shall be non deciduous (for qualifying tree species, see appendix C of this chapter for the city's recommended plant list).
 - e. A useable open space area must have street frontage on at least thirty-three (33) percent of the area's perimeter to ensure that the area is accessible to residents of the subdivision.
 - f. Useable open space areas must be easily viewed from adjacent streets and homes. Side or rear yard fences along common open space areas shall be of open, wrought iron design, and shall not exceed four (4) feet in height adjacent to the open space and for a distance of ten (10) feet perpendicular or radial to the open space area.
2. *Landscaped areas*—Additional common open space and landscaped areas that do not qualify as usable open space may be provided but shall not be counted toward the usable open space requirement.
- B. Maintenance requirements for common areas: A property owners association shall be required for continued maintenance of common land and facilities.
 - C. Alleys: Each attached dwelling unit within the SF-TH District shall be rear-entry only from an alley that is constructed in conjunction with the subdivision (i.e., at the same time as the streets, utilities, etc.) and that is in conformance with the city's design standards for alleys (see the subdivision ordinance).
 - D. Refuse facilities: Every townhome dwelling unit shall be served by either individual residential trash carts or by a bulk dumpster. The bulk dumpster shall be located so as to provide safe and convenient pickup by refuse collection agencies and shall be screened in accordance with section 28.53 of this chapter (see Illustration 1 for refuse container enclosure diagrams).
 - E. All utilities shall be provided separately to each lot within an SF-TH District so that each unit is individually metered.
 - F. Single-family detached dwellings (and their respective lots) constructed within this district shall conform to the standards as set forth in the SF-7.5 District.
 - G. The elimination of a garage space by enclosing or converting any portion of the garage space with a stationary building wall shall be prohibited unless another garage of the same size and same parking capacity is built on the lot within the standards specified for the SF-TH Zoning District.
 - H. Recreational vehicles, travel trailers or motor homes shall not be used for on-site dwelling purposes.
 - I. Open storage is prohibited (except for materials for the residents' personal use or consumption such as firewood, garden materials, etc., which cannot be stored in any required setback, and which shall be screened from view of public streets and neighboring properties).

- J. Site plan approval (see section 28.13) shall be required for any single-family attached or nonresidential use (e.g., school, church, childcare center, private recreation facility, etc.) in the SF-TH District. Any nonresidential land use which may be permitted in this district shall conform to the "NS"—Neighborhood Service District standards with respect to building setbacks, landscaping, exterior building construction, screening requirements, lighting, signage, etc. Said site plan approval shall not be required for home occupations uses that conform to the city's standards.
- K. Other regulations: As established by article V.

SECTION 4. Amendment to Section 28.33. Section 28.33 of the Code of Ordinances of the City of Denison, Texas, the same being the City's Comprehensive Zoning Ordinance, is hereby amended in its entirety to read as follows:

Sec. 28.33. - O—Office District.

28.33.1. General purpose and description:

The O—Office District is intended to accommodate a variety of office developments providing for professional, financial, medical, and similar services for local residents; corporate offices for regional and national operations; and for other major employment centers. The district can be used as a transition district between more intense uses and residential uses.

28.33.2. Permitted uses:

Those uses listed for the O District in section 28.49 as "P" or "C" are authorized uses permitted by right or conditionally permitted uses (i.e., CUP), respectively. Conditional uses must be approved utilizing procedures set forth in section 28.11.

28.33.3. Height regulations:

Maximum height:

- A. Three (3) stories, but no greater than sixty (60) feet
- B. Other requirements (see article V).

28.33.4. Area regulations:

A. *Size of lots:*

1. *Minimum lot area*—Six thousand (6,000) square feet.
2. *Minimum lot width*—Sixty (60) feet.
3. *Minimum lot depth*—One hundred (100) feet.

B. *Size of yards:*

1. *Minimum front yard*—Twenty-five (25) feet. All areas adjacent to a street shall be deemed front yards.

2. *Minimum side yard:*
 - a. Where adjacent to a *nonresidential district* - twenty (20) feet.
 - b. Where adjacent to a residential district:
 1. Twenty five (25) feet for a one story building.
 2. Forty (40) feet for a two-story building
 3. Fifty (50) feet for a three-story building
3. *Minimum rear yard:*
 - a. Where adjacent to a nonresidential district – twenty (20) feet
 - b. Where adjacent to a residential district:
 1. Twenty five (25) feet for a one story building.
 2. Forty (40) feet for a two-story building
 3. Fifty (50) feet for a three-story building

D. *Maximum lot coverage:* Forty (40) percent total, including main and accessory buildings.

E. *Parking regulations (see section 28.50):*

F. *Minimum exterior construction standards:* Seventy-five (75) percent standard masonry construction (see article V).

28.33.5. Special requirements:

- A. *Landscaping requirements:* Refer to article V.
- B. *Open storage:* Open storage in nonresidential areas is prohibited.
- C. *Temporary facilities:* There shall be no permanent use of temporary facilities or buildings.
- D. *Other regulations:* As established by article V.

SECTION 5. Amendment to Section 28.46. Subsection 28.46.2 B, of Section 28.46 of the Code of Ordinances of the City of Denison, Texas, the same being the City’s Comprehensive Zoning Ordinance, is hereby amended in its entirety to read as follows:

- B. The following uses shall be prohibited in the HO Overlay District:
 1. Any use listed under manufacturing and industrial in section 28.49, Use Charts.
 2. Auto Dealer-Used Primary Use.
 3. Auto Wrecker Service
 4. Kennels.
 5. Landscaping business except if not part of a home improvement center.

6. Livestock sales.
7. Machine Shop
8. Maintenance and Repair Service for Buildings
9. Manufactured Home Display, Storage or Sales.
10. Motor Freight Company
11. Motorcycle Dealer (Used)
12. Personal Watercraft Sales (Used)
13. Portable building sales (outdoor display).
14. Sand, gravel, caliche, stone sales or storage.
15. Sign Manufacturing
16. Stables of any kind.
17. Tire Re-treading & Capping
18. Trailer Rental or RV Sales
19. Warehouse (Mini)/Self-Storage
20. Warehouse, Storage
21. Welding Shop
22. Window and Door Frame Manufacturing
23. Wrecking or Salvage Yard
24. Used merchandise sales.
25. Used vehicle sales (including motorcycles) as a primary use.

SECTION 6. Amendment to Section 28.49. Subsection Section 28.49 C., Use Chart Organization of Section 28.49, of the Code of Ordinances of the City of Denison, Texas, the same being the City's Comprehensive Zoning Ordinance, is hereby amended in its entirety to read as follows:

- C. Use chart organization: The following use categories are listed in the use charts:
1. Residential uses.
 2. Non Residential and Institutional uses.

SECTION 7. Amendment to Section 28.49. The Use Chart of Section 28.49. of the Code of Ordinances of the City of Denison, Texas, the same being the City’s Comprehensive Zoning Ordinance, is hereby amended in its entirety to read as follows:

	<i>A</i>	<i>RD</i>	<i>SF-20</i>	<i>SF-10</i>	<i>SF-7.5</i>	<i>SF-5</i>	<i>SF-PH</i>	<i>SF-TH</i>	<i>LD</i>	<i>UD</i>	<i>MH</i>	<i>2F</i>	<i>MF-1</i>	<i>MF-2</i>	<i>O</i>	<i>NS</i>	<i>LR</i>	<i>CR</i>	<i>RR</i>	<i>C</i>	<i>CA</i>	<i>BP</i>	<i>LI</i>	<i>HI</i>	
Residential Uses																									
<i>Accessory Building/Structure (Residential)*</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>								<i>P</i>				
<i>Accessory Dwelling</i>									<i>P</i>			<i>C</i>													
<i>Caretaker's/Guard's Residence</i>	<i>P</i>								<i>P</i>									<i>P</i>	<i>P</i>	<i>P</i>		<i>P</i>	<i>P</i>	<i>P</i>	
<i>Duplex/Two-Family</i>												<i>P</i>	<i>P</i>	<i>P</i>							<i>P</i>				
<i>Family Home Child Care*</i>	<i>C</i>	<i>C</i>	<i>C</i>										<i>C</i>	<i>C</i>											
<i>Four-Family (Quadraplex)</i>													<i>P</i>	<i>P</i>											
<i>Home Occupation</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>							<i>P</i>				
<i>Multi-Family (Apartments)</i>													<i>P</i>	<i>P</i>							<i>P</i>				
<i>Rooming/Boarding House*</i>														<i>P</i>					<i>P</i>	<i>P</i>					
<i>HUD Code-Manufactured Home*</i>											<i>P</i>														
<i>HUD Code-Manufactured Home Park or Subdivision*</i>											<i>P</i>														
<i>Single-Family Industrialized Home*</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>	<i>P</i>											

Governmental Building (Municipal, State or Federal)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Gravestone /Tombstone Sales (no outdoor display/showroom only)																C				P		P	P	P
Gravestone /Tombstone Sales (outdoor display)																						P	P	P
Grocery Store*																P	P	P	P	P	P			
Group Day Care Home*											P	P									C			
Gun Range, Indoor																							C	C
Hall, Reception/Banquet/Meeting														C	C	C	C	C	C	C	C	C		
Hardware Store (No Outdoor Storage)*																P	P	P	P	P	P			
Health Club (Fitness Center)																		C	P	P	C	P	P	
Heating and Air-Conditioning Sales/Services																				P		P	P	P
Home Improvement Center																				P	P			
Hospice																	C	P	P	P		P		
Hospital (Acute Care)*																		C	C	P		P		

<i>Hotels, Extended Stay (Residence Hotels)</i>																				P	P	C	P	P					
<i>Hotel/Motel *</i>																					C	C	P	P	P	P	P		
<i>Household Care Facility*</i>	P	P	P	P	P	P	P	P	P	P	P	P	P	P							P	P	P	P					
<i>Impound Lots</i>																											C	C	
<i>Kiosk (Providing a Service)*</i>															P	P	P	P	P	P	P	P	P	P	P	P	P		
<i>Laboratory Equipment Manufacturing*</i>																										P	P	P	
<i>Laundry, Self-Service*</i>																P	P	P	P	P	P								
<i>Laundry Plant*</i>																										P	P	P	
<i>Laundry/Dry Cleaning (Drop Off/Pick Up)</i>																P	P	P	P	P	P	P	P	P	P				
<i>Lawnmower Sales and/or Repair/Small Engines*</i>																						P	P	P	P				
<i>Library (Public)</i>	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
<i>Limousine/Taxi Service</i>																											P	P	
<i>Livestock—Wholesale</i>	C																									P	P	P	
<i>Locksmith</i>																							P	P	P	P	P	P	
<i>Machine Shop</i>																											P	P	P
<i>Machinery (heavy), sales and storage*</i>																											P	P	P

Alley: A minor right-of-way that is dedicated to public use and which affords a secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which may be used for public utility purposes.

Ambulance service: Provision of private (not operated by the City of Denison) emergency transportation which may include mobile medical care, and which may include storage and maintenance of vehicles.

Amusement arcade (also video arcade): Any building, room, place or establishment of any nature or kind, and by whatever name called, where more than ten (10) percent of the public floor area is devoted to three (3) or more amusement devices that are operated for a profit, whether the same is operated in conjunction with any other business or not, including but not limited to such amusement devices as coin-operated pinball machines, video games, electronic games, shuffle boards, pool tables or other similar amusement devices. However, the term "amusement device," as used herein, shall not include musical devices, billiard tables which are not coin-operated, machines that are designed exclusively for small children, and devices designed to train persons in athletic skills or golf, tennis, baseball, archery or other similar sports.

Amusement, commercial, with or without alcohol sales (indoor): An amusement enterprise that is wholly enclosed within a building which is treated acoustically so that noise generated by the enterprise is not perceptible at the bounding property line, and that provides activities, services and/or instruction for the entertainment of customers or members, but not including amusement arcades. Uses may include, but are not limited to, the following: bowling alley, ice skating rink, martial arts club, racquetball/handball club, indoor tennis courts/club, axe throwing, and other similar types of uses. If the premises is in a district which requires a conditional use permit for this use, the city shall designate the permit as "with" or "without alcohol".

Amusement, commercial, with or without alcohol sales (outdoor): An amusement enterprise offering entertainment and/or games of skill to the general public for a fee wherein any portion of the activity takes place outdoors and including, but not limited to, a golf driving range, archery range, miniature golf course, batting cages, go-cart tracks, amusement parks, and other similar types of uses. If the premises is in a district which requires a conditional use permit for this use, the city shall designate the permit as "with" or "without alcohol".

Antique shop, sales indoors: A retail establishment engaged in the selling of works of art, furniture and/or other artifacts of an earlier period, with all sales and storage occurring inside a building.

Art gallery or museum: An institution for the collection, display and/or distribution of objects of art or science, and which is typically sponsored by a public or quasi-public agency and generally open to the public.

Assisted living facility: A building or buildings, other than a single-family dwelling, designed and staffed to provide housing for residents who require some type of support for daily living, such as assistance for bathing, dressing, medication, meal preparation, or other functions. In addition to housing, this type of facility may also provide convenience services such as meals, housekeeping, transportation and community facilities such as central dining rooms and activity rooms. No long-term or permanent skilled nursing care or related services are provided.

Auto body painting and rebuilding: Auto body painting and rebuilding includes, but is not limited to, priming and painting of the auto body, upholstery work, interior and exterior trim work and all other nonmechanical parts or systems of an automobile.

Auto dealer (classic and performance): Indoor display and sale of vehicles that are a minimum of twenty-five (25) years in age and/or designed and built with powerful engines designed for high performance driving. This use does not include service and repair of vehicles.

Auto dealer (new): Retail sales of new automobiles or light load vehicles, including, as a minor part of the business, the sales of used automobiles or light load vehicles and the service and repair of new or used vehicles.

Auto dealer (used): Retail sales, or offering for sale, used automobiles or light load vehicles and auto repair (minor).

Auto laundry or car wash: Washing, waxing or cleaning of automobiles or light duty trucks.

- a. *Attended or full service auto laundry or car wash*—The owner of the vehicle does not actually wash the vehicle. Instead, he either leaves the vehicle and comes back to retrieve it later, or he waits in a designated area while employees of the car wash facility vacuum, wash, dry, wax and/or detail the vehicle for a fee.
- b. *Unattended auto laundry or car wash*—The owner of the vehicle causes the vehicle to become washed. One type of unattended car wash facility utilizes automated self-service (drive-through/rollover) wash bays and apparatus in which the vehicle owner inserts money or tokens into a machine, drives the vehicle into the wash bay, and waits in the vehicle while it is being washed. The other type of unattended facility is comprised of wand-type self-service (open) wash bays in which the vehicle owner drives the vehicle into the wash bay, gets out of the vehicle, and hand washes the vehicle with a wand-type apparatus by depositing coins or tokens into a machine.

Auto parts supply store and accessory sales (indoors): The use of any building or other premises for the primary inside display and sale of new or used parts for automobiles, panel trucks or vans, trailers, or recreation vehicles.

Auto rental: Storage or renting of automobiles and light trucks.

Auto storage or impound lot: The storage or impoundment, on a lot or tract which is paved in accordance with parking lot paving requirements set forth in this chapter, of operable automobiles for the purpose of holding such vehicles for sale, distribution and/or storage. This definition shall not include the storage of wrecked or inoperable vehicles (see *wrecking yard*).

Automobile accessory installation (minor): Minor installation of minor automobile accessories such as car alarms, radio and stereo equipment, window tinting, pin striping, cellular telephones and similar accessories.

Automobile repair (major): The term "automotive repair" includes any and all activities where parts of a vehicle are removed, repaired or replaced includes body repair and mechanical repair, but does not include wrecking or salvage operations.

Automobile repair (minor): Auto mechanical repair includes, but is not limited to, repair of an auto's engine, brakes, front end and suspension, HVAC system, cooling system, electrical system and the component parts necessary for the effective operation of each.

Automotive gasoline or motor fuel service station: Any building, land area or other premises, or portion thereof, used or intended to be used for the retail dispensing or sales of automotive fuels, lubricants and automobile accessories, including those operations listed under *automobile repair*,

minor. Vehicles that are inoperative or are being repaired may not remain parked outside these facilities for a period greater than forty-eight (48) hours.

Bakery or confectionery (retail): A facility less than fifteen thousand (15,000) square feet for the production and/or sale of baked goods.

Bakery or confectionery (wholesale or commercial): A manufacturing facility over fifteen thousand (15,000) square feet for the production and distribution of baked goods and confectioneries to retail outlets.

Ballroom dancing: An establishment open to the general public for dancing (no sales of alcoholic beverages for on-premises consumption shall be permitted) to live or recorded music.

Bank, savings and loan, or credit union: An establishment for the custody, loan, exchange and/or issue of money, the extension of credit, and/or facilitating the transmission of funds.

Barn: A structure intended for the purpose of storing farming and ranching related equipment and/or housing livestock.

Bar or tavern: An establishment primarily devoted (seventy-five (75) percent) to the serving of alcoholic beverages for on-premises consumption and in which the service of food is only incidental to the consumption of such beverages.

Basement (or cellar): A portion of a building that is partly or wholly underground. For purposes of height measurement, a basement shall be counted as a story when more than one-half (½) of its height is above the average level of the adjoining ground. A cellar shall be located in the rear yard.

Bed and breakfast inn or facility: A dwelling occupied as a permanent residence by an owner or renter which serves breakfast and provides or offers sleeping accommodations in not more than ten (10) rooms for transient guests for compensation.

Block: A piece or parcel of land entirely surrounded by public highways or streets, other than alleys. In cases where the platting is incomplete or disconnected, the planning director (or his/her designee) shall determine the outline of the block.

Boarding or rooming house: A dwelling other than a hotel, where for compensation and by prearrangement for definite periods, lodging and/or meals are provided.

Brew pub or micro-brewery: A restaurant or other facility that manufactures alcoholic beverages including but not limited to beer, wine or liquor for either on-premises or off-premises retail and wholesale and consumption in quantities not considered industrial or large scale production as determined by the director of planning and zoning or designee.

Brewery/distillery: The production of beer, wine and/or liquor at industrial quantities and internal large scale commercial distribution.

Building: Any structure intended for shelter, occupancy, housing or enclosure for persons, animals or chattel. When separated by dividing walls without openings, each portion of such structure so separated shall be deemed a separate building.

Building height: The vertical distance from the average line of the highest and lowest points of that portion of the lot covered by the building to the highest point of coping of a flat roof, or to the deck line of a mansard roof, or to the average height of the highest gable of a pitched or hipped roof.

Building line: A line parallel, or approximately parallel, to any lot line at a specific distance there from, marking the minimum distance from the lot line that a building may be erected (see Illustration 8).

Building, main or primary: A building in which the principal use of the lot on which it is situated is conducted. In a residential district any dwelling shall be deemed to be a main building on the lot on which it is situated.

Building materials and hardware sales (indoor or outdoor): Materials, tools, and/or hardware customarily used in the construction of buildings and other structures, including facilities for storage of materials for retail sales. Sometimes referenced as a "home improvement center." "Outdoor" means the storage of materials and products outside of the main building.

Building official: The inspector or administrative official charged with responsibility for issuing permits and enforcing the zoning chapter and Building Code of the City of Denison.

Building permit: A permit as required by the current building code that is issued by the building official authorizing the erection, construction, reconstruction, alteration, repair, conversion, demolition, moving or maintenance of any building, structure or improvement to a given lot or tract of land or portion thereof.

Building site: See *lot* definition.

Bus station or terminal: Any premises for the transient housing and/or parking of motor-driven buses and the loading and unloading of passengers.

Caretakers' or guards' residence: A residence located on a premises with a main residential or nonresidential use and occupied only by a caretaker or guard employed on the premises (e.g., residence for guard in a private street development, residence for a guard/manager/caretaker for a self-storage facility or a restricted access business park, etc.).

Carnival, circus or tent service (temporary): Outdoor or indoor commercial amusement provided on a temporary basis.

Carport: A structure that is open on a minimum of two (2) sides and designed or used to shelter not more than three (3) vehicles and not to exceed twenty-four (24) feet on its longest dimension. Also called "covered parking area."

Cemetery or mausoleum: Land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.

Cemetery, pet or animal: Same as cemetery except only for the burial of dead animals.

Certificate of occupancy: An official certificate issued by the city through the building official which indicates conformance with the zoning regulations and building codes and which authorizes legal use of the premises for which it is issued.

Child day center (or day care center): A commercial institution or place designed for the care or training of twelve (12) or more unrelated children under fourteen (14) years of age for less than twenty-four (24) hours a day.

Church, rectory or temple: A building for regular assembly for religious worship which is used primarily and designed for such purpose and those accessory activities which are customarily

associated therewith, and the place of residence for ministers, priests, nuns or rabbis on the premises (tax exempt as defined by state law). For the purposes of this chapter, Bible study and other similar activities that occur in a person's primary residence shall not apply to this definition.

City council: The governing body of the City of Denison, Texas.

City of Denison: The City of Denison, Texas; sometimes referred to as the "city."

Civic center: A building or complex of buildings that house municipal offices and services, and which may include cultural, recreational, athletic, food service, convention and/or entertainment facilities owned and/or operated by a municipality.

Cleaning plant (commercial/wholesale): An industrial facility where fabrics are cleaned with substantially no aqueous organic solvents on a commercial or wholesale basis.

Cleaning shop or laundry (small shop, pickup and self-service): A custom cleaning shop not exceeding two thousand five hundred (2,500) square feet of floor area and may include customer self-service laundry and cleaning.

College or university: An academic institution of higher learning, accredited or recognized by the state and covering a program or series of programs of academic study.

Commercial amusement (indoor): See *amusement, commercial (indoor)*.

Commercial amusement (outdoor): See *amusement, commercial (outdoor)*.

Community center (private): A central social and recreational building as part of a residential development—example: Apartment complex, senior citizen, HUD housing recreation center, etc. for use by resident of development.

Community center (municipal): A building or complex of buildings that house cultural, recreational, athletic, food service and/or entertainment facilities owned and/or operated by a governmental agency or private nonprofit agency.

Comprehensive plan: Document adopted by the city that consists of graphic and textual policies which govern the future development of the city and which consists of various components governing specific geographic areas and functions and services of the city.

Concrete or asphalt batching plant (permanent): A permanent manufacturing facility for the production of concrete or asphalt.

Continuing care facility: A housing development designed to provide a full range of accommodations and services for older adults (fifty-five (55) years of age or older), including any combination of independent living, assisted living and skilled nursing. Residents may move from one level of care to another as their needs change.

Convenience store with fuel pumps: A retail establishment that sells food and other consumable and non-consumable products for off-premise use or consumption and includes the dispensing of motor vehicles fuels but does not include any automotive repair services.

Convenience store without fuel pumps: A retail establishment that sells food and other consumable and non-consumable products for off-premise use or consumption.

Copy shop or printing: An establishment which reproduces, in printed form, individual orders from a business, profession, service, industry or government organization and occupies less than four thousand (4,000) square feet.

Contractor's shop with outside storage yard: A building, part of a building, or land area for the construction or storage of materials, equipment, tools, products, and vehicles.

Country club (private): A land area and buildings which may include a golf course, clubhouse, dining room, swimming pool, tennis courts and similar recreational or service uses available only to members and their guests.

Court: An open, unobstructed space, bounded on more than two (2) sides by the walls of a building. An inner court is entirely surrounded by the exterior walls of a building. An outer court has one (1) side open to a street, alley, yard, or other permanent open space.

Coverage: The lot area covered by all buildings located thereon, including the area covered by all overhanging roofs.

Custom personal service shop: Personal Service and services involving the care of a person, including barbershop, beauty shop, hair salon, tailor, dressmaker, shoe shop, or similar shop offering custom service.

Data Center: A facility whose primary service is data processing and is used to house computer systems and associated components, such as telecommunications and storage systems, including but not limited to web hosting organizations and internet service organizations. A server farm, telecom hotel, carrier hotel, telco hotel, telehouse co-location center, or any other term applicable to facilities which are used for these specified purposes shall be deemed to be a data center.

Dance hall or nightclub: An establishment dispensing alcoholic beverages for consumption on the premises and where dancing, recorded or live musical entertainment is permitted.

Day camp for children: A facility arranged and conducted for the organized recreation and instruction of children including outdoor activities on a daytime basis.

Density: The total number of residential buildings allowed upon a given tract of land usually expressed in total number of units per gross acres or net acre.

Detached: Having no physical connection above the top of the floor line of the first floor with any other building or structure.

Disabled individual: A person who has a physical or mental impairment that substantially limits one (1) or more major life activities, a person who is regarded as having that type of impairment, or a person who has a record of that type of impairment. The term "disabled" includes persons recovering from addiction, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802).

Distribution center: Building or facility used for the storage and distribution of wholesale items/products.

Drapery, blinds, or furniture upholstery shop: An establishment for the production, display and sale of draperies, window blinds, and soft coverings for furniture.

Dwelling: Any building or portion thereof, which is designed or used as living quarters for one (1) or more households including facilities for food preparation and sleeping.

Dwelling, single-family attached (townhouse): See *single-family dwelling (attached)*.

Easement: A grant of one (1) or more of the property rights by the property owner to and/or for the use by the public, a corporation or another person or entity.

Educational facilities: Public and private primary, secondary and postsecondary educational facilities offering instruction in the branches of learning and study required to be taught by the Texas Education Agency; and such federally funded educational programs for preschool children as the Head Start Program.

Electrical substation (high voltage bulk power): A subsidiary station in which electric current is transformed.

Enclosed building: A structure which is floored, roofed and surrounded by outside walls, which contains no opening larger than one hundred twenty (120) square feet in area normally open to the air and which contains no series of openings forming a divided opening larger than one hundred twenty (120) square feet in area normally open to the air.

Excavation: The removal of earth material by artificial means, also referred to as a cut.

Fairgrounds or exhibition area: An area or space either outside or within a building for the display of topic-specific goods or information.

Family home (child care in place of residence): A facility that regularly provides care in the caretaker's own residence for not more than six (6) children under fourteen (14) years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six (6) additional elementary school siblings of the other children given care. However, the number of children, including the caretaker's own, provided care at such facility shall not exceed twelve (12) at any given time. No outside employment is allowed at the facility. This facility shall conform to V.T.C.A., Human Resources Code ch. 42, as amended, and in accordance with such standards as may be promulgated by the Texas Department of Human Resources.

Farm, ranch, garden, crops or orchard: An area used for growing usual farm products, vegetables, fruits, trees, and grain and for the raising thereon of the usual farm animals such as horses, cattle, and sheep and including the necessary accessory uses for raising, treating, and storing products raised on the premises, but not including the commercial feeding of offal or garbage to swine or other animals and not including any type of agriculture or husbandry specifically prohibited by ordinance or law.

Feed and grain store: An establishment for the selling of corn, grain and other food stuffs for animals and livestock, and including implements and goods related to agricultural processes, but not including farm machinery.

Fill: Deposition of earth materials by artificial means.

Fire, police or municipal building: Any public service building of the municipal government including a library or City Hall, but excluding storage yards, utility shops and equipment centers.

Floodplain: An area of land subject to inundation by a one-hundred-year frequency flood as determined using standard engineering practices and generally as shown on the FIRM Flood Insurance Rate Map of the City of Denison.

Floor area: The total gross square feet of floor space within the outside dimensions of a building including each floor level, but excluding carports, residential garages, and breezeways.

Floor area ratio (F.A.R.): The floor area of a main building or buildings on a lot, divided by the lot area (see Illustration 12).

Florist shop: An establishment for the display and retail sale of flowers, small plants and accessories.

Food catering, take out service, or small food product preparation: An establishment in which the principal use is the preparation of food and/or meals on the premises, and where such food and/or meals are delivered to another location for consumption or distribution, and where such use occupies not more than five thousand (5,000) square feet in gross floor area.

Food processing: A manufacturing or light industrial use that primarily deals with the processing and packaging of food (such as dairy or grain) products that are intended for human consumption, but which are not typically sold in volume to end users on the premises. Incidental retail sales of food products (e.g., bread and baked goods, dairy products such as cheese, etc.) created and packaged on the premises may be allowed as an accessory use.

Food truck park: An area designed to accommodate two (2) or more mobile food units and offering food and/or beverages for sale to the public as the primary use of the property. Food truck parks must provide a paved surface for truck parking and access to refuse collection containers and must provide restroom facilities.

Franchised private utility (not listed): A utility such as one distributing heat, chilled water, closed circuit television or similar service and requiring a franchise to operate in the City of Denison.

Fraternal organization, lodge, civic club, or union: An organized group having a restricted membership and specific purpose related to the welfare of the members such as Elks, Masons, Knights of Columbus, or a labor union.

Front yard: See *yard, front*.

Funeral home or mortuary: A place for the storage of human bodies prior to their burial or cremation, or a building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation.

Furniture, home furnishings or appliance stores: This group includes retail stores selling new goods for furnishing the home including, but not limited to furniture, floor coverings, draperies, glass and chinaware, domestic stoves, refrigerators, and other household electrical and gas appliances.

Furniture store (new and used): Same as above except sales may include used items.

Garage, private: An enclosed (on at least three (3) sides) accessory building, or a part of a main building, used for storage of automobiles and used solely by the occupants and their guests. Also called "enclosed parking space."

Garage/accessory dwelling: A residential dwelling unit attached to or over a garage but not attached to the main residential structure.

Garden shop (inside storage): A facility which is engaged in the selling of flowers, ornamental plants, shrubs, trees, seeds, garden and lawn supplies, and other materials used in planting and landscaping, but not including cultivation and propagation activities outside a building.

Gasoline or diesel service or filling station: See *automotive gasoline or motor fuel service station*.

General commercial plant: Establishments other than personal service shops for the treatment and/or processing of products as a service on a for-profit basis including, but not limited to, newspaper printing, laundry plant, or cleaning and dyeing plants.

General manufacturing: See *industrial, manufacturing*.

Golf course: An area of twenty (20) acres or more improved with trees, greens, fairways, hazards, and which may include clubhouses.

Grading: Any earthwork that involves grubbing, excavating, embanking, or filling.

Grocery store: Any building where most of the gross floor area is devoted to the sale of food products for home preparation and consumption but may also offer prepared food for on- or off-site consumption, retail personal and household items, and a pharmacy.

Group day care home: Means a facility that provides care for seven (7) to twelve (12) children under fourteen (14) years of age less than twenty-four (24) hours a day.

Gymnastic or dance studio: A building or portion of a building used as a place of work for a gymnast or dancer or for instructional classes in gymnastics or dance.

Hall, Reception/Banquet/Meeting: A building, facility, room, or portion thereof, which is rented, leased or otherwise made available to any person or group for a private event function, that is not open to the general public, whether or not a fee is charged.

Hauling or storage company: See *motor freight company*.

Health Club/Fitness Center: A private facility operated to promote physical health and fitness. Activities may include exercise, physical therapy, training, and education pertaining to health and fitness. Uses or combinations of uses or facilities would typically include, but are not limited to, game courts, weightlifting and exercise equipment, aerobics, swimming pools and spas, and running or jogging tracks.

Heavy load vehicle: A self-propelled vehicle having a manufacturer's recommended gross vehicle weight (GVW) of greater than sixteen thousand (16,000) pounds (including trailers), such as large recreational vehicles (originally manufactured as RVs, not converted), tractor-trailers, buses, vans, and other similar vehicles. The term "truck" shall be construed to mean "heavy load vehicle" unless specifically stated otherwise.

Heavy machinery sales and storage: A building or open area used for the display, sale, rental or storage of heavy machinery, tractors or similar machines, or a group of machines which function together as a unit.

Heliport: An area of land or water or a structural surface which is used, or intended for use, for the landing and taking off of helicopters, and any appurtenant areas which are used, or intended for use for heliport buildings and other heliport facilities.

Helistop: The same as a heliport, except that no refueling, maintenance, repairs or storage of helicopters is permitted.

Home occupation: An occupation carried on in a dwelling unit by a resident of the premises, which occupation is clearly incidental and secondary to the use of the premises for residential purposes.

Hospital (acute care): An institution where sick or injured patients are given medical and/or surgical treatment intended to restore them to health and an active life, and which is licensed by the State of Texas.

Household: A domestic unit that resides in and shares in common a single dwelling unit and consists of one (1) or more individuals related by blood, marriage, adoption or recognized legal union or guardianship, and not more than four (4) unrelated individuals, plus any minor children, or persons residing in a household care facility.

Household care facility: A dwelling unit that provides residence and care to not more than six (6) persons, regardless of legal relationship, who are elderly; disabled; orphaned, abandoned or neglected children; victims of domestic violence; or rendered temporarily homeless due to fire, natural disaster or financial setbacks, living together with not more than two (2) caregivers as a single household. Where applicable, a household care facility shall have appropriate licensing and/or registration by the State of Texas. This definition includes, without limitation, Community Homes under Chapter 123 of the Texas Human Resources Code, as amended.

Household small appliance service and repair: The maintenance and rehabilitation of appliances that are customarily used in the home including, but not limited to, washing and drying machines, refrigerators, dishwashers, trash compactors, ovens and ranges, countertop kitchen appliances, vacuum cleaners, etc., but not including appliances/equipment which have internal combustion engines.

Household care facility: A dwelling unit which provides residence and care to persons, regardless of legal relationship, who are elderly; disabled; orphaned, abandoned, abused, or neglected children; victims of domestic violence; or rendered temporarily homeless due to fire, natural disaster or financial setbacks, living together with not more than two (2) supervisory personnel as a single housekeeping unit. This definition is subject to TX CIV ST Art. 4442c-4 (Personal Care Facility Licensing Act) and TX CIV ST Art. 1011n (Community Homes for Disabled Persons Location Act) as they presently exist or may be amended in the future.

Incidental or accessory retail and service uses: Any use different from the primary use but which compliments and/or supplements the primary use (for example, a sundries shop that serves tenants of an office building or hospital). Incidental shall mean an area which constitutes not more than fifteen percent (15) of the main use.

Independent living facility: A development providing individual dwelling units specifically designed for the needs of seniors. A minimum of eighty (80) percent of the total units shall have a household head fifty-five (55) years of age or greater. In addition to housing, the facility may provide convenience services such as meals, housekeeping or transportation and community facilities such as a central dining room and activity rooms.

Industrial, manufacturing: Establishments engaged in the manufacturing or transformation of materials into new products. These establishments are usually described as plants and factories, and characteristically use power driven machines and materials handling equipment. Manufacturing production is usually carried on for the wholesale market, rather than for direct sale to the domestic consumer.

Industrialized home or modular home: Means a structure or building module as defined, under the jurisdiction and control of the Texas Department of Labor and Standards and that is installed and used as a residence by a consumer, transportable in one or more sections on a temporary chassis

or other conveyance device and designed to be used on a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. The term does not include a mobile home as defined in the Texas Manufactured Housing Standards Act (TX CIV ST Art. 5221f , as it presently exists or may be amended in the future); nor does it include building modules incorporating concrete or masonry as the primary structural component.

Kennels (indoor pens): An establishment with indoor pens in which more than four (4) dogs or domesticated animals more than one (1) year old are housed, groomed, bred, boarded, trained and/or sold for commercial purposes.

Kennels (outdoor pens): An establishment with outdoor pens in which more than four (4) dogs or domesticated animals more than one (1) year old are housed, groomed, bred, boarded, trained and/or sold for commercial purposes.

Kindergarten or nursery school (private): An establishment where more than three (3) children are housed for care and/or training during the day or portion thereof.

Kiosk: A small, freestanding, one-story accessory structure having a maximum floor area of one hundred (100) square feet and used for retail purposes, such as automatic teller machines or the posting of temporary information and/or posters, notices and announcements. If a kiosk is to be occupied, it shall have a minimum floor area of fifty (50) square feet.

Kitchen, residential: Generally, that portion of a residential dwelling that is devoted to the preparation and/or cooking of food for the purpose of consumption by residents of the dwelling. A kitchen, as referred to within this chapter, generally indicates the presence of complete cooking facilities (i.e., stove, oven, microwave oven and/or refrigerator) as differentiated from a "kitchenette" which provides very limited cooking facilities (i.e., single-burner hot plate, under-counter refrigerator, microwave oven only, etc.).

Laboratory equipment manufacturing: A facility that makes or produces equipment or products used for research or testing.

Laboratory, scientific or research: An establishment that engages in research, testing or evaluation of materials or products, but not medical-related (see *medical facilities—medical laboratory*).

Landscaping: Material such as, but not limited to, grass, ground covers, shrubs, vines, hedges, trees or palms, and non-living durable materials that are commonly used in landscaping such as, but not limited to, rocks, pebbles, sand, walls or fences, but excluding paving.

Laundromat, self-service: A facility where patrons wash, dry and/or dry clean clothing and other fabrics in machines that are operated by the patron.

Light load vehicle: A self-propelled vehicle having a manufacturer's recommended gross vehicle weight (GVW) not greater than sixteen thousand (16,000) pounds and having no more than two (2) axles, such as pickup trucks, sport utility vehicles, vans and mini-vans, recreational vehicles (less than thirty-two (32) feet in length), campers and other similar vehicles but not including automobiles and motorcycles.

Light manufacturing or industrial use: Manufacturing of finished products or parts, predominantly from previously prepared materials, including fabrication, assembly, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing.

Loading space: An off-street space or berth used for the delivery and loading/unloading of vehicles.

Local utility line: The facilities provided by a municipality or a franchised utility company for distribution or collection of gas, water, surface drainage water, sewage, electric power or telephone service, including pad-and pole-mounted transformers.

Lot: A platted (as specified in V.T.C.A., Local Government Code ch. 212) Parcel of land that is occupied or intended to be occupied by one main building (or a group of main buildings) and any accessory building(s), which includes such parking, landscaping and open space as are required by this chapter or other laws and/or ordinances, and also which has its principal frontage upon a public street.

Lot area: The total area, measured on a horizontal plane, included within lot lines.

Lot, corner: A lot which has at least two (2) adjacent sides abutting for their full lengths upon a street, provided that the interior angle at the intersection of such two (2) sides is less than one hundred thirty-five (135) degrees (see Illustration 13).

Lot depth: The mean horizontal distance between the front and rear lot lines (see Illustration 14).

Lot, double frontage: A lot having frontage upon two (2) nonintersecting streets, as distinguished from a corner lot (see Illustration 9).

Lot, flag: A lot having access to a street by means of a parcel of land generally having a depth greater than its frontage, but not less than thirty-five (35) feet. Flag or panhandle lots are typically discouraged.

Lot, interior: A lot other than a corner lot.

Lot frontage: That dimension of a lot or portion of a lot abutting onto a street, excluding the side dimension of a corner lot.

Lot line, front: The narrower side of the lot abutting a street. Where two (2) lot lines abutting streets are of equal length, the owner shall have a choice in designating which shall be the lot frontage. For a lot which has a boundary line which does not abut the front street line, is not a rear lot line, and lies along the same general directional orientation as the front and rear lot lines, said line shall be considered a front lot line in establishing minimum setback lines (see Illustration 8).

Lot, key: A corner lot whose exterior side is adjacent to the front yard of another lot.

Lot line, rear: The lot line farthest from and most parallel to the front lot line. For triangular lots, the point opposite the front lot line shall be considered the rear lot line and have a value of zero (see Illustration 8).

Lot line, side: Any lot line not the front or rear lot line.

Lot lines or property lines: The lines bounding a lot as defined herein.

Lot of record: A lot, which is part of a subdivision, the plat of which has been recorded in the office of the County Clerk of Grayson County.

Lot width: The horizontal distance measured between side lot lines parallel to the front lot line and measured from the point on the building line that is closest to the front lot line (see Illustration 14).

Main building: The building or buildings on a lot that are occupied by the primary use.

Manufactured home display or sales (new): The offering for sale, storage, or display of new manufactured housing units (e.g., mobile homes/trailers, HUD-Code homes, industrialized homes) on a parcel of land, but excluding the use of such facilities as dwellings either on a temporary or permanent basis.

Manufactured home display or sales (used): The offering for sale, storage, or display of previously owned (i.e., used), movable manufactured housing units (e.g., mobile homes/trailers, HUD-Code homes) on a parcel of land, but excluding the use of such facilities as dwellings either on a temporary or permanent basis.

Manufactured housing: Any one (1) of three (3) types of prefabricated housing products which are typically manufactured/assembled at a location other than the end user's permanent site, and which are regulated by the Texas Manufactured Housing Standards Act (TX CIV ST Arts. 5221f and 5221f-1, as they presently exist or may be amended in the future). For the purpose of this chapter, there are three (3) types of manufactured homes:

- a. *Mobile home*—A movable dwelling designed to be transported on its own chassis on the highway (either intact or in major sections) by a prime mover, which is constructed with a base section so as to be independently self-supporting, and which does not require a permanent foundation for year-round living. A mobile home is also defined as any manufactured home that was constructed prior to June 15, 1976.
- b. *HUD-Code manufactured home*—A movable dwelling designed to be transported on the highway (either intact or in major sections) by a prime mover, which can be used as a residential dwelling either with or without a permanent foundation. A HUD-Code manufactured home is also defined as a movable manufactured home that was constructed after June 15, 1976.
- c. *Industrialized home (also called "modular prefabricated structure or modular home")*—A structure or building module as defined under the jurisdiction and control of the Texas Department of Labor and Standards, that is transportable in one (1) or more sections on a temporary chassis or other conveyance device, and that is designed to be installed and used by a consumer as a fixed residence on a permanent foundation system. The term includes the plumbing, heating, air-conditioning and electrical systems contained in the structure. The term does not include mobile homes or HUD-Code manufactured homes as defined in the Texas Manufactured Housing Standards Act (TX CIV ST Art. 5221f, as it presently exists or may be amended in the future). Industrialized homes must meet all applicable local codes and zoning regulations that pertain to construction of traditional site constructed ("stick built") homes.

Market (farmers): An open air or enclosed marketplace where agricultural goods such as vegetables and plants are sold.

Masonry construction: That form of construction comprised of brick, stone, granite, marble, concrete, hollow clay tile, concrete block or tile, brick veneer, exterior plasters (including stucco), or other similar building units or materials or combination of these materials laid up unit by unit and set in mortar.

Mausoleum: Property used for the interring of the dead and where bodies are interred above ground in staked vaults.

Medical facilities:

- a. *Medical clinic or office*—A facility or group of offices for one (1) or more physicians for the examination and treatment of ill and afflicted human outpatients provided that patients are not kept overnight except under emergency conditions.
- b. *Dental office or doctor's office*—Same as medical clinic.
- c. *Hospital*—An institution providing health services primarily for human inpatient medical or surgical care for the sick or injured and including related facilities such as laboratories, outpatient departments, training facilities, central services facilities, and staff offices which are an integral part of the facilities.
- d. *Massage establishment*—Any place of business in which massage therapy is practiced by a massage therapist, as defined and licensed by state law. "Massage therapy" as a health care service, means the manipulation of soft tissue for therapeutic purposes. The term includes, but is not limited to, effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics, either by hand or with mechanical or electrical apparatus for the purpose of body massage. Massage therapy may include the use of oil, salt glows, heat lamps, hot and cold packs, tub, shower or cabinet baths. Equivalent terms for "massage therapy" are massage [or] therapeutic massage. "Massage" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law.
- e. *Public health center*—A facility primarily utilized by a health unit for providing public health services including related facilities such as laboratories, clinics and administrative offices operated in connection therewith.
- f. *Sanitarium*—An institution providing health facilities for inpatient medical treatment or treatment and recuperation making use of natural therapeutic agents.
- g. *Surgical out-patient facility*—An establishment offering any type of surgical procedures and related care which, in the opinion of the attending physician, can be performed safely without requiring inpatient overnight hospital care and exclusive of such surgical and related care as licensed physicians ordinarily may elect to perform in their private offices.
- h. *Medical laboratory*—An indoor establishment that includes laboratories and/or experimental equipment for medical testing, prototype design and development, and product testing.

Mini-warehouse: Small individual storage units for rent or lease, restricted solely to the storage of items. The conduct of sales, business or any other activity within the individual storage units, other than storage, shall be prohibited.

Minor medical emergency clinic: See *medical clinic or office*.

Mobile food unit: A Mobile food unit shall be defined herein as a unit designed to be readily movable and from which food or beverages are prepared and offered for sale.

Mobile home park (also trailer park or RV park): A parcel of land not less than three (3) acres nor greater than thirty-five (35) acres which is designed, improved, or intended to be used for short- or long-term occupancy by mobile homes/trailers and/or recreational vehicles (including travel trailers) in designated spaces. Facility may include a residence for the owner/manager of the

premises, utility hook-ups, accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities.

Mobile home space: A plot of ground within a mobile home park, trailer park, RV park, or mobile home subdivision which is designed for the accommodation of one (1) mobile home, trailer or RV unit.

Mobile home subdivision: A parcel of land which is designed, platted, improved and intended for the long-term placement of individually owned mobile home units or HUD-Code manufactured homes on platted lots which can be purchased outright by the owners of the mobile home units. Facility may include a residence for the owner/manager of the premises, utility hook-ups, accessory structures, playgrounds and open space areas, fenced yard areas for pets, and other similar amenities.

Model home: A dwelling in a developing subdivision, located on a legal lot of record, that is limited to temporary use as a sales office for the subdivision and to provide an example of the dwellings which have been built or which are proposed to be built within the same subdivision.

Motel or hotel: A facility offering temporary lodging accommodations or guest rooms on a daily rate to the general public and providing additional services, such as restaurants, meeting rooms, housekeeping service and recreational facilities. A guest room shall be defined as a room designed for the overnight lodging of hotel guests for an established rate or fee.

Motorcycle: A usually two-wheeled, self-propelled vehicle having one (1) or two (2) saddles or seats, and which may have a sidecar attached. For purposes of this chapter, motorbikes, all-terrain vehicles (ATVs), motor scooters, mopeds and similar vehicles are classified as motorcycles.

Motorcycle sales and repair: The display, sale and/or servicing, including repair work, of motorcycles.

Motor freight company: A company using trucks or other heavy load vehicles to transport goods, equipment and similar products. Includes companies that move residential or commercial belongings.

Motor vehicle: Any vehicle designed to carry one (1) or more persons which is propelled or drawn by mechanical power, such as automobiles, vans, trucks, motorcycles and buses.

Multiple-family (apartments): Attached dwelling units designed to be occupied by four (4) or more households living independently of one another, exclusive of hotels, motels, or residence hotels.

Municipal facility or use: Any area, land, building, structure and/or facility which is owned, used, leased or operated by the City of Denison, Texas.

Nonconforming use: A building, structure, or use of land lawfully occupied as of the effective date of this chapter or amendments thereto, but which does not conform to the use regulations of the district in which it is situated.

Nursery: An establishment, including a building, part of a building or open space, for the growth, display and/or sale of plants, shrubs, trees and other materials used in indoor or outdoor planting.

Nursing, convalescent or rest home: See *skilled nursing facility*.

Occupancy: The use or intended use of the land or buildings by proprietors or tenants.

Offices, administrative, medical, or professional: A building used for the provision of executive, management, or administrative services. Typical uses include, but are not limited to, administrative offices and services including real estate, property management, investment, medical, architect, engineer, travel, secretarial services, accounting organizations and associations.

Office center: A building or complex of buildings used primarily for conducting the affairs of a business, profession, service, industry, government or similar entity, that may include ancillary services for office workers such as a coffee shop, newspaper stand, sundries shop, hair/nail salon, etc.

Office showroom: An establishment with no more than twenty-five (25) percent of its total floor area devoted to storage and warehousing, but not accessible to the general public. The remaining area may include retail and wholesale sales areas, sales offices, and display areas for products sold and distributed from the storage and warehousing areas.

Office, temporary field: A temporary or mobile office which is intended for the purpose of construction management.

Office warehouse: An establishment with more than twenty-five (25) percent of the total floor area devoted to storage and warehousing, but not generally accessible to the public.

Officially approved place of access: Access to a property, other than from a dedicated street, which is approved by the City of Denison.

Off-street parking incidental to main use: Off-street parking spaces provided in accordance with the requirements of this chapter, located on the lot or tract occupied by the main use or within one hundred fifty (150) feet of such lot or tract, and located within the same zoning district as the main use or in an adjacent parking district.

Outside display: Outside temporary display of finished or other goods that are specifically intended for retail sale but not displayed outside overnight.

Outside storage: The permanent and/or continuous keeping, displaying or storing, outside a building, of any goods, materials, merchandise or equipment on a lot or tract for more than twenty-four (24) hours. Also referred to as "open storage."

Paint shop: A commercial establishment where painting services are performed (but not automotive-related painting services, which would be included under *automobile repair (major)*).

Parcel: Any unplatted tract of land, or any portion of an unplatted tract of land (also see *tract*).

Park or playground (private): See *private recreation facility*.

Park or playground (public): See *public recreation*.

Parking lot: An off-street (i.e., not on a public street or alley), ground level area, paved in accordance with City of Denison parking lot standards, for the short- or long-term storage of motor vehicles.

Parking lot or structure, commercial (auto): An area or structure devoted to the parking or storage of automobiles for a fee which may include, in the case of a parking structure only, a facility for servicing automobiles provided that such facility is an internal function for use only by automobiles occupying the structure and that such facility creates no special problems of ingress or egress.

Parking space: An off-street (i.e., not on a public street or alley) area, paved in accordance with City of Denison parking lot standards, that is used for parking a vehicle, and that is accessed from a paved driveway which connects the parking space with a public street.

Patio home (zero-lot-line dwelling): A single-family dwelling on a separately platted lot which is designed such that one (1) side yard is reduced to zero feet in order to maximize the width and usability of the other side yard, and which permits the construction of a detached single-family dwelling with one (1) side (i.e., wall) of such dwelling placed on the side property line (see section 28.25).

Pawn shop: An establishment where money is loaned on the security of personal property pledged in the keeping of the owners (pawnbroker). Retail sales of primarily used (i.e., pre-owned) items is also allowed, provided that the sale of such items complies with local, state and federal regulations.

Personal service shop or custom personal services establishments: Less than two thousand (2,000) square feet in gross floor area, primarily engaged in providing services generally involving the care of the person or his apparel and including (but not limited to) barber/beauty shops, dressmaking, shoe shining and repair, dry-cleaning and laundry pickup stations, tailor or seamstress services, and other similar types of uses (no outside storage).

Pet and animal grooming shop: A retail establishment offering small animals, fish and/or birds for sale as pets, where such creatures are housed within the building, and which may include the grooming of dogs, cats and similar animals.

Petroleum distribution/storage/wholesale facility: A facility for the long-term storage and distribution of petroleum that may also involve wholesale sales, but not retail sales, of petroleum and petroleum-based products. No manufacturing or refining of petroleum or petroleum-based products occurs on the premises, only storage and/or distribution functions.

Planned development district: Planned associations of uses developed as integral land use units, such as industrial parks or industrial districts, offices, commercial or service centers, shopping centers, residential developments of multiple or mixed housing, including attached single-family dwellings or any appropriate combination of uses which may be planned, developed or operated as integral land use units either by a single owner or by a combination of owners.

Planning and zoning commission: A board which is appointed by the city council as an advisory body, and which is authorized to recommend changes in the zoning of property and other planning functions as delegated by the city council. Also referred to as the "commission."

Plat: A plan showing the subdivision of land, creating building lots or tracts, showing all essential dimensions and other information in compliance with the subdivision standards of the City of Denison, and which is approved by the City of Denison and recorded in the plat records of Grayson county.

Platted lot: See *lot* and *lot of record*.

Playfield or stadium (public): An athletic field or stadium owned and operated by a public agency (e.g., City of Denison, the school district, etc.) for the general public including a baseball field, soccer field, golf course, football field or stadium which may be lighted for nighttime play.

Playfield or stadium (private): An athletic field or stadium owned and operated by an agency other than the City of Denison or the school district.

Portable building sales (outdoor display): An establishment which displays and sells structures capable of being carried and transported to another location, but not including mobile homes.

Premises: Land together with any buildings or structures situated thereon.

Primary use: The principal or predominant use of any lot or building.

Principal building: See *main building*.

Private club: An establishment providing social and/or dining facilities which may provide alcoholic beverage service, to an association of persons, and otherwise falling within the definition of, and permitted under the provisions of, that portion of V.T.C.A., Alcoholic Beverage Code Title 3, ch. 32, as the same may be hereafter amended, and as it pertains to the operation of private clubs.

Private recreation facility or private park: A recreation facility, park or playground which is not owned by a public agency such as the city or school district, and which is operated for the exclusive use of private residents or neighborhood groups and their guests and not for use by the general public.

Produce stand: A seasonal use for which the primary purpose and design is to sell fruit, nuts, vegetables and similar foods. No cooking or on-premises consumption of produce occurs on the site.

Professional service: Work performed which is commonly identified as a profession, and which may be licensed by the State of Texas.

Propane sales: Retail sales of gaseous substances commonly used for household purposes such as propane and/or butane; does not include the storage, sale or distribution of other types of combustible substances or alternative fuels such as containerized natural gas, liquid propane, etc.

Property take line: The property or ownership line of property owned by the Corps of Engineers around Lake Texoma.

Public agency building, shop, yard or facility: Any building, land, area and/or facility (including maintenance/storage yards and shops) which is owned, leased, primarily used and/or occupied by any subdivision or agency of the following: The State of Texas, the United States, or other public utility or agency. Any facility that is owned, leased, used and/or occupied by the City of Denison is defined as "municipal facility or use."

Public recreation: Publicly owned and operated parks, recreation areas, playgrounds, swimming pools and open spaces that are available for use by the general public without membership or affiliation. This land use shall include special event type uses such as rodeos, concerts, festivals and other special events requiring special event permits, as set forth in the City of Denison's Code of Ordinances.

Public view: Public view means areas that can be seen from any public street.

Rear yard: See *yard, rear*.

Recreation center: A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities.

Recreational vehicle (RV): "Recreational vehicle" shall mean a general term for a vehicular unit not exceeding forty (40) feet in overall length, eight (8) feet in width or twelve (12) feet in overall height which applies to the following specific vehicle types:

- a. *Camper trailer*—A folding or collapsible vehicular structure, without its own power, designed as a temporary living quarters for travel, camping, recreation and vacation uses and licensed and registered for highway use.
- b. *Travel trailer*—A rigid structure, without its own motive power, designed as a temporary dwelling for travel, camping recreation and vacation use licensed and registered for vacation use and licensed and registered for highway use and which when equipped for the road has a body width of not more than eight (8) feet.
- c. *Truck camper*—A portable structure, without its own motive power, designed to be transported on a power vehicle as a temporary dwelling for travel, camping, recreation and vacation use and which in combination with the carrying vehicle is licensed and registered for highway use.
- d. *Motor home*—A vehicular unit built on or as a part of a self-propelled motor vehicle chassis, primarily designed to provide temporary living quarters for travel, camping, temporary living quarters for travel, camping, recreation and vacation use and licensed and registered for highway use.

Recreational vehicle/camper sales and leasing: An establishment that sells, leases and/or rents new and/or used recreational vehicles, travel trailers, campers, boats/watercraft, and similar types of vehicles.

Recreational vehicle (RV) park: An area or commercial campground for users of recreational vehicles, travel trailers, and similar vehicles to reside, park, rent or lease on a temporary basis (see also *mobile home park*).

Recycling center: A recycling facility shall be located inside of a building, and shall be used for the collection, storage, and resale of recyclables. Items to be recycled may consist of glass, paper, metal, liquid, or plastics.

Rehabilitation care facility: A facility which provides residence and care to not more than six (6) persons, regardless of legal relationship, who have been convicted of prohibited criminal conduct, and received conditional release, parole or community supervision, living together with not more than two (2) supervisory personnel as a single household. Where applicable, a rehabilitation care facility shall have appropriate licensing and/or registration.

Rehabilitation care institution: A facility which provides residence and care to ten (10) or more persons, regardless of legal relationship, who have been convicted of prohibited criminal conduct and received conditional release, probation or parole with supervision, together with supervisory personnel. Where applicable, a rehabilitation care facility shall have appropriate licensing and/or registration.

Residence: Same as a dwelling; also, when used with district, an area of residential regulations.

Residence hotels: A multi-unit, extended stay lodging facility consisting of efficiency units and/or suites with complete kitchen facilities under one roof and which is suitable for long-term occupancy. Customary hotel services such as linens and housekeeping, telephones, and upkeep of furniture shall be provided. Meeting rooms, club house, and recreational facilities intended for the use of residents and their guests are permitted. This definition shall not include other dwelling units as defined by this chapter.

Residential district: District where the primary purpose is residential use.

Restaurant or cafeteria (with drive-through service): An eating establishment where customers are primarily served at tables or are self-served, where food is consumed on the premises, and which may include a drive-through window(s).

Restaurant or cafeteria (with no drive-through service): An eating establishment where customers are primarily served at tables or are self-served, where food is consumed on the premises and derives at least seventy-five (75) percent of its revenues from the on-premises consumption of food or nonalcoholic beverages, and which do not have a drive-through window.

Restaurant or eating place (drive-in service): An eating establishment where food and/or drinks are primarily served to customers in motor vehicles, or where facilities are provided on the premises which encourage the serving and consumption of food in automobiles on or near the restaurant premises.

Retail or service, incidental: The rendering of incidental retailing or services incidental to the primary use. In the office district, for example, such uses may include a barber/beauty shop, smoke shop, news stand, candy counter, restaurant, pharmacy or other incidental activity secondary to the primary office occupancy. Incidental uses shall mean uses which occupy less than fifteen (15) percent of the main use.

Retail store and shop: An establishment engaged in the selling of goods and merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

Room: A building or portion of a building which is arranged, occupied or intended to be occupied as living or sleeping quarters but not including toilet or cooking facilities.

Rooming house: See *boarding house*.

Salvage or reclamation of products (also see wrecking yard): The reclamation and storage of used products or materials.

Sand, gravel or stone extraction and/or storage: The process of extracting and/or storing sand, gravel, stone, topsoil, compost or other products from the earth.

School, business: A for-profit business that offers instruction and training in a profession, service or art such as a secretarial or court reporting school, barber/beauty college or commercial art school, but not including commercial trade schools.

School, commercial trade: A for-profit business that offers vocational instruction and training in trades such as welding, brick laying, machinery operation/repair, and similar trades.

School, private (primary or secondary): A school under the sponsorship of a private agency or corporation, other than a public or religious agency, which offers a curriculum that is generally equivalent to public elementary and/or secondary schools.

School, public or parochial: A school under the sponsorship of a public or religious agency which provides elementary and/or secondary curricula, but not including private business or commercial trade schools.

Scientific and industrial research laboratories: Facilities for research including laboratories, experimental equipment, and operations involving compounding or testing of materials or equipment.

Screened: Shielded, concealed, and effectively hidden from the view of a person standing at ground level on an abutting site, or outside the area or feature so screened, by a fence, wall, hedge, berm or similar architectural or landscape feature.

Seasonal uses: Seasonal uses include the sales of items such as Christmas trees, pumpkins, snow cones, fresh produce, and other items which are typically only available at certain times of the year.

Sexually oriented business: See chapter 29 of the City Code of Ordinances.

Shopping center: A group of primarily retail and service commercial establishments that is planned, constructed and managed as a total entity, and which provides customer and employee parking on-site, unloading/delivery areas which are separated from customer access, and aesthetically appropriate design and protection from the elements.

Side yard: See *yard, side*.

Single-family dwelling, detached: A dwelling designed and constructed as a freestanding structure for occupancy by one (1) household, and located on a lot or separate building tract having no physical connection to a building located on any other lot or tract.

Skilled nursing facility: A facility providing primarily in-patient health care, personal care, or rehabilitative services over an extended period of time to persons who are chronically ill, aged or disabled and who need ongoing health supervision but not hospitalization for acute care.

Small engine repair shop: Shop for the repair of lawn mowers, chain saws, lawn equipment, and other machines with one-cylinder engines.

Stable, commercial: A stable used for the rental of stall space or for the sale or rental of horses or mules.

Stable, private: An area used solely for the owner's private purposes for the keeping of horses, mules or ponies which are not kept for remuneration, hire or sale.

Storage or wholesale warehouse: A building used primarily for the storage of goods and materials.

Story: That portion of a building (above grade), other than a basement, that is included between the surface of any floor and the surface of the next floor above it or, if there is no floor above it, then the space between the floor and the ceiling above it. The average height for a story shall be defined as twelve (12) feet. The definition of a story does not include parapets, gables and other normal roof structures. In cases where the site has a significant slope, the number of stories (i.e., height) of a building shall be measured from point representing the average slope from front to back (or side to side) of the building.

Story, half: A space under a sloping roof which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two-thirds (2/3) of the floor area is finished off for use. A half-story containing an independent apartment or self-contained living quarters shall be counted as a full story.

Street: Any dedicated public thoroughfare that affords the principal means of access to abutting property. A street is termed a major thoroughfare or arterial when the right-of-way is greater than sixty (60) feet.

Street intersection: Any street that joins another street at an angle, whether or not it crosses the other.

Street yard: The area between the building front line and the front property (i.e., right-of-way) line.

Structure: Anything constructed or erected, the use of which requires location on the ground or which is attached to something having a location on the ground (also see definition of *building*).

Structural alterations: Any change in the supporting members of a building, such as load-bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.

Studio, health/reducing/fitness: Includes, but is not limited to, an establishment which provides facilities and equipment (e.g., gymnasiums, weight rooms, swimming pools/spas, exercise apparatus, instruction/classes, etc.) which are intended to promote health, fitness, weight reduction and/or similar health-related activities. Such facilities may include such accessory uses as food service, sales of sundries and apparel, and child care services, provided that such accessory uses are clearly incidental to the primary use and are for the use of studio patrons only (i.e., not the general public). No outside signage may be used to advertise accessory uses.

Studio, tattoo or body piercing: A building or portion of a building used for selling and/or applying tattoos (by injecting dyes/inks into the skin), and/or for piercing the skin with needles, jewelry or other paraphernalia, primarily for the purpose of ornamentation of the human body.

Studio for radio and television: A building or portion of a building used as a place for radio or television broadcasting.

Studio/Video and audio recording: A privately-owned facility where multi-media events are recorded, filmed or produced including film and recording studios and advertising agencies with on-site production facilities

Swimming instruction as a home occupation: The teaching of swimming in a private swimming pool. Within a residential district, this use is subject to the approval and issuance of a Conditional Use Permit that may specify operating conditions and standards and which may limit the number of students and operating times.

Swimming pool, commercial: A swimming pool with accessory facilities which is not part of the municipal or public recreational system and which is not a private swim club, but where the facilities are available for use by the general public for a fee.

Swimming pool, private: A swimming pool constructed for the exclusive use of the residents of a one-family, two-family or multiple-family dwelling and located, fenced and built in accordance with the City of Denison Code of Ordinances. A private swimming pool shall not be operated as a business nor maintained in a manner to be hazardous or obnoxious to adjacent property owners.

Telemarketing agency or center: An establishment that solicits business or the purchase of goods and/or services by telephone only. No sales of goods or services to the public occurs at or on the premises. No products are stored at or on the premises.

Telephone and exchange, switching/relay or transmitting station: A line for the transmission of telephone signals and a central office in which telephone lines are connected to permit communication but not including a business office, storage (inside or outside) or repair yards.

Temporary: Used or lasting for only a limited period of time; not permanent.

Temporary building: Any nonresidential prefabricated structure that is not originally manufactured or constructed at its use site, required on-site installation of utilities and/or foundation.

Temporary field office or construction yard or office: A structure or shelter used in connection with a development or building project for housing on the site of temporary administrative and supervisory functions and for sheltering employees and equipment. Temporary permits for one (1) year for a specific time and location as determined may be issued by the building official and shall be subject to review and renewal for reasonable cause.

Tennis court, private: A surface designed and constructed for playing the game of tennis along with all fencing, nets and related appurtenances but excluding lighting for nighttime play in residential areas except as may be otherwise provided or restricted by the conditional use permit.

Theater: A building or portion of a building used primarily for showing motion pictures or for dramatic, musical, or live performances having screens, stages, or combination thereof.

Tire dealer, no open storage: A retail establishment engaged in the sale and/or installation of tires for vehicles, but without open storage.

Tire dealer, with open storage: A retail establishment engaged in the sale and/or installation of tires for vehicles, with open storage.

Townhome: A structure containing three (3) to eight (8) dwelling units with each unit designed for occupancy by one household on a platted lot and each unit attached to another by a common wall.

Tool and machinery rental shop: A building or a portion of a building used for the display and rental of tools, machinery and instruments.

Tract: A single individual parcel or lot.

Tractor sales: See *heavy machinery sales and storage*.

Trade and commercial schools: See *school, commercial trade*.

Trade center: A site with space inside or outside a building or an open space which is rented to two (2) or more vendors on a short-term basis for the sale of merchandise. The principal sales shall include new and used household goods, personal effects, tools, artwork, small household appliances and similar merchandise, objects or equipment in small quantities.

Trailer park or court: See *mobile home park*.

Trailer, hauling: A vehicle or device which is pulled behind an automobile or truck and which is designed for hauling animals, produce, goods or commodities, including boats.

Trailer home: See *manufactured housing, mobile home*.

Trailer or mobile home space: See *mobile home space*.

Trailer rental: The display and offering for rent of trailers designed to be towed by automobiles and light load vehicles.

Trailer, travel or camping: A portable or mobile living unit which is used for temporary human occupancy away from the users' permanent place of residence, which does not constitute the users' principal place of residence, and which is designed to be towed behind another vehicle.

Transportation and utility structures/facilities: Permanent facilities and structures operated by companies engaged in providing transportation and utility services including but not limited to railroad track rights-of-way, sewage pumping stations, telephone exchanges, transit station turnarounds, water reservoirs and water pumping stations.

Travel center: A highway-oriented facility that provides services to the travelling public, primarily focused on automobiles, to include fuel pumps, food and beverage services, retail shops, restaurant(s), and other similar convenience facilities. Travel center does not include truck or automotive repair services, sleeping quarters, or vehicle or truck parking for a period greater than 12 hours.

Truck: A light or heavy load vehicle (see definitions for *light load vehicle* and *heavy load vehicle*).

Truck and bus repair: An establishment providing major and minor automotive repair services to heavy load vehicles.

Truck and bus leasing: The rental of new or used panel trucks, vans, trailers, recreational vehicles or motor-driven buses in operable condition and where no repair work or intensive cleaning operations are performed.

Truck stop: A facility for the parking, refueling and/or minor repair of heavy load tractor-trailer trucks. These facilities may also include retail sales of food and/or other items, restaurant(s), restroom/showers facilities, and/or temporary sleeping quarters.

Truck terminal: An area and building where cargo is stored and where trucks, including tractor and trailer units, load and unload cargo on a regular basis. May include facilities for the temporary storage of loads prior to shipment.

Truck sales (heavy trucks): The display, sale or rental of new or used heavy load vehicles in operable condition.

Two-family dwelling (duplex): Two (2) attached dwellings in one (1) structure, each designed to be occupied by one (1) family.

Usable open space: An open area or recreational facility that is designed and intended to be used for outdoor living and/or recreation purposes. An area of usable open space shall have a slope not exceeding ten (10) percent, shall have no dimension of less than ten (10) feet, and may include landscaping, walks, recreational facilities, water features and decorative objects such as art work or fountains.

Use: The purpose for which land or buildings are or may be occupied in a zoning district.

Utility distribution/transmission lines: Facilities which serve to distribute and transmit electrical power, gas and water, including but not limited to electrical transmission lines, gas transmission lines, telephone lines and metering stations, whether operated by the city or private utility company.

Variance: An adjustment in the application of the specific regulations of the zoning chapter to a particular parcel of property which, because of special conditions or circumstances of hardship peculiar to the particular parcel, is necessary to prevent the property from being deprived of rights and privileges enjoyed by other parcels in the same vicinity and zoning district. Only the board of adjustment of the City of Denison can grant a variance.

Veterinarian clinic: An establishment where animals and pets are admitted for examination and medical treatment (also see *kennels*).

Wind energy conversion system (WEC): A wind-driven energy conversion system consisting of a wind turbine/rotor (blades), a tower (freestanding, engineered, monopole structure only upon which the wind turbine/generator is mounted—no lattice-type or guyed tower structures allowed), and associated control or conversion electronics, that has a rated capacity of not more than one hundred (100) kW output at any given time, and that is intended for on-site production of electricity in order to reduce consumption of commercial utility power.

Wind energy conversion system, large (LWEC): A wind energy conversion system that has a rated capacity of more than ten (10) kW, but not more than one hundred (100) kW, output at any given time, and that is intended for on-site production of electricity for a residence, agricultural structure, or business.

Wind energy conversion system, small (SWEC): A wind energy conversion system that has a rated capacity of not more than ten (10) kW output at any given time, and that is intended for on-site production of electricity for a residence, agricultural structure, or small business.

Wind energy system tower height: The height above grade of the fixed portion of the tower (i.e., to the center of the hub), excluding the wind turbine itself.

Wind energy turbine/generator: The blades and associated mechanical and electrical conversion components mounted on top of the tower.

Wrecking yard (junkyard or auto salvage): Any lot upon which two (2) or more motor vehicles of any kind, which are incapable of being operated due to condition or lack of license, have been placed for the purpose of obtaining parts for recycling or resale.

Yard: An open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except where otherwise specifically provided in this chapter that the building or structure may be located in a portion of a yard required for a main building. In measuring a yard for the purpose of determining the width of the side yard, the depth of a front yard or the depth of a rear yard, the shortest horizontal distance between the lot line and the main building shall be used (see Illustration 14).

Yard, front: A yard located in front of the front elevation of a building and extending across a lot between the side yard lines and being the minimum horizontal distance between the front property line and the outside wall of the main building (see Illustration 14).

Yard, rear: The area extending across the rear of a lot measured between the lot lines and being the minimum horizontal distance between the rear lot line and the rear of the outside wall of the main building. On both corner lots and interior lots, the rear yard shall in all cases be at the opposite end of the lot from the front yard (see Illustration 14).

Yard, side: The area between the building and side line of the lot and extending from the front lot line to the rear lot line and being the minimum horizontal distance between a side lot line and the outside wall of the side of the main building (see Illustration 14).

Zero-lot-line dwelling: See *patio home*.

Zoning board of adjustment: A board which is appointed by the city council, and which is authorized to make special exceptions to the zoning chapter (i.e., variances), and to hear and decide

any appeals that allege error in an order, requirement, decision or determination made by an administrative official in the enforcement of the zoning chapter. Also referred to as the "BOA."

Zoning district: A classification applied to any certain land area within the city stipulating the limitations and requirements of land usage and development.

Zoning district map: The official map upon which the boundaries of the various zoning districts are drawn and which is an integral part of the zoning chapter (see section 28.3, "Zoning District Map" and section 28.4, "Zoning District Boundaries").

SECTION 9: 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 10: 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 11: PENALTY. Any person, firm, corporation or entity violating this Ordinance or any provision of Denison's Comprehensive Zoning Ordinance, Chapter 28 of the Denison Code of Ordinances, 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 (\$2,000.00). Each continuing days' violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Denison from filing suit to enjoin the violation. Denison retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 12: PUBLICATION AND EFFECTIVE DATE. This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

SECTION 13. 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 4th day of October, 2021, by the following vote:

Ayes:
Abstentions:
Nays:

At regular meeting October 4, 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 Section 2-46, "Residency Requirements for Certain Appointees," of Chapter 2, "Administration," and Section 5-205, "Building Appeals Board Created," of Chapter 5, "Buildings and Building Regulations," of the Code of Ordinances by amending the requirement for certain members of the Building Appeals Board to be residents of the City of Denison.

Staff Contact

John Webb, AICP
Executive Director of Planning and Community Development
jwebb@cityofdenison.com
903-465-2720 x 2466

Summary

- Section 2-46 of the Code of Ordinances identifies fourteen (14) appointed boards and commissions in which membership requires residency within the City of Denison, including the Buildings Appeals Board.
- Section 5-205 of the Code of Ordinances established the Building Appeals Board and requires that four (4) of the seven (7) members be a licensed realtor; a licensed, master electrician; a licensed, master mechanical contractor; and a licensed, master plumbing contractor.
- From time to time, it is not possible to identify a licensed trades' person who lives in Denison to fill a vacancy on the Board.
- It is recommended that the ordinance be amended to provide flexibility in the appointment of three (3) specific trades (licensed, master electrical contractor, licensed, master mechanical contractor; and licensed, master plumbing contractor) who may not be residents of Denison under certain criteria.

Staff Recommendation

Staff recommends approval of an Ordinance amending Section 2-46, "Residency Requirements for Certain Appointees," of Chapter 2, "Administration," and Section 5-205, "Building Appeals Board Created," of Chapter 5, "Buildings and Building Regulations," of the Code of Ordinances by amending the requirement for certain members of the Building Appeals Board to be residents of the City of Denison.

Recommended Motion

"I move to adopt the Ordinance amending Section 2-46, "Residency Requirements for Certain Appointees," of Chapter 2, "Administration," and Section 5-205, "Building Appeals Board Created," of Chapter 5, "Buildings and Building Regulations," of the Code of Ordinances by amending the requirement for certain members of the Building Appeals Board to be residents of the City of Denison.

Background Information and Analysis

As noted in the summary, the Code of Ordinances requires various board and commission members, including members of the Building Appeals Board be residents of the City. Because of the technical

nature and required knowledge of the members of the Building Appeal Board (Board) in exercising their authority in reviewing and recommending amendments to the various building-related codes and hearing appeals to these codes, it is very important the Board continue to have members who are licensed in particular trades.

Currently, staff cannot identify a licensed, master mechanical contractor, who is a Denison resident to fill a vacancy on the Board. This residency requirement could also be a problem when the licensed plumber and licensed electrician term out on the Board. While staff will continue to look for these licensed trades who are Denison residents, it is recommended the residency requirement be revised to permit these three (3) licensed trades to be appointed in this order of priority,

1. residents of the City;
2. residents of the city's extraterritorial jurisdiction;
3. persons with a business with principal place of business located in the city; or
4. residents of Grayson County

The redline amendments would reflect the following:

Sec. 2-46. - Residency requirements for certain appointees.

~~(a)~~—“No person is eligible to be appointed to or to serve on the following boards and commissions of the city, nor to be appointed to the following boards or commissions over which the city council or one (1) of its members as the power of appointment, unless that person is a resident of the city at the time of appointment; to-wit:

- (1) Business and Industrial Corporation of Denison, Inc.;
- (2) Civil Service Commission;
- (3) Community Development Steering Committee;
- (4) Cemetery Advisory Board;
- (5) Greater Texoma Utility Authority;
- (6) Housing Board of Adjustment and Appeals;
- (7) Planning and Zoning Commission;
- (8) Zoning Board of Adjustments and Appeals;
- (9) Public Library Board of Directors;
- (10) Texoma Council of Governments Board of Directors;
- (11) Buildings Appeals Board (except as otherwise provided in Section 5-205);
- (12) Denison Community Investment Corporation, subject to the requirements of its corporate by-laws;
- (13) Parks and Recreation Advisory Board;
- (14) Convention and Visitors Bureau Advisory Board.”

Section 5-205

- “(a) There is hereby created a seven-member building appeals board consisting of:
- (1) A licensed Realtor in the city;
 - (2) A licensed, master electrical contractor ~~in the city~~;
 - (3) A general contractor in the city;
 - (4) A business/professional resident in the city;
 - (5) A licensed, master mechanical contractor ~~in the city~~;
 - (6) A licensed, master plumbing contractor ~~in the city~~; and

(7) A member at-large.

- (b) The city council shall make all appointments to the board. If qualified persons are not available, the city council may appoint such other person as it deems qualified to serve as a representative of the general public, subject to the conditions described in subsection (c). The chief building official or his authorized representative, the fire marshal, public works director, and a county sanitarian shall be ex officio nonvoting members of the board who shall be entitled to notice of all meetings of the board.
- (c) For the following board positions, applicants that are not residents of the city, but are otherwise qualified, may be considered subject to an order of priority among applicants of (i) residents of the city, (ii) residents of the city's extraterritorial jurisdiction, (iii) persons with a business with principal place of business located in the city, and (iv) residents of Grayson County:
- (1) licensed, master electrical contractor
 - (2) licensed, master mechanical contractor; and
 - (3) licensed, master plumbing contractor."

It is important to note that regardless of residency, the members will be registered with the City to do work in Denison.

Financial Considerations

N/A

Prior Board or Council Action

N/A

Alternatives

The City Council may approve with conditions, deny, or table the proposed ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENISON, TEXAS AMENDING CHAPTER 2 “ADMINISTRATION”, ARTICLE II “AUTHORITIES, BOARDS, COMMITTEES, COMMISSIONS”, DIVISION 1 “GENERALLY”, SECTION 2-46 “RESIDENCY REQUIREMENTS FOR CERTAIN APPOINTEES” AND CHAPTER 5 “BUILDINGS AND BUILDING REGULATIONS”, ARTICLE II “ADMINISTRATION”, SECTION 5-205 “BUILDING APPEALS BOARD CREATED” OF THE DENISON CODE OF ORDINANCES TO AMEND RESIDENCY REQUIREMENTS FOR CERTAIN MEMBERS OF THE BUILDING APPEALS BOARD; PROVIDING FOR SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVIDING A PENALTY CLAUSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW; 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 of the City (the “City Council”) determines that it continues to be important for licensed, master trade professionals to serve on the Building Appeals Board; and

WHEREAS, the City Council determines that due to the requirement for all members of the Building Appeals Board to be residents of the City, a hardship is created in filling vacancies on the Building Appeals Board; and

WHEREAS, the City Council has investigated and determined that is in the best interest of the City to adopt amendments to the City’s Code of Ordinances to change the residency requirements for certain applicants of the Building Appeals Board, as provided below.

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

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: Amendment to Section 2-46. Chapter 2 “Administration”, Article II “Authorities, Boards, Committees, Commissions”, Division 1 “Generally”, Section 2-46, “Residency Requirements for Certain Appointees” of the City’s Code of Ordinances is hereby amended to read as follows, with additions indicated by underline, and deletions indicated by strikethrough:

Sec. 2-46. - Residency requirements for certain appointees.

~~(a)~~ “No person is eligible to be appointed to or to serve on the following boards and commissions of the city, nor to be appointed to the following boards or commissions over which the city council or one (1) of its members as the power of appointment, unless that person is a resident of the city at the time of appointment; to-wit:

- (1) Business and Industrial Corporation of Denison, Inc.;
- (2) Civil service commission;
- (3) Community development steering committee;
- (4) Cemetery advisory board;
- (5) Greater Texoma Utility Authority;
- (6) Housing board of adjustment and appeals;
- (7) Planning and zoning commission;
- (8) Zoning board of adjustments and appeals;
- (9) Public library board of directors;
- (10) Texoma Council of Governments Board of Directors;
- (11) Buildings Appeals Board (except as otherwise provided in Section 5-205);
- (12) Denison Community Investment Corporation, subject to the requirements of its corporate by-laws;
- (13) Parks and recreation advisory board;
- (14) Convention and visitors bureau advisory board.”

SECTION 3: Amendment to Section 5-205. Chapter 5 “Buildings and Building Regulations”, Article II “Administration”, Section 5-205, “Building appeals board created” of the City’s Code of Ordinances is hereby amended to read as follows, with additions indicated by underline, and deletions indicated by strikethrough:

“(a) There is hereby created a seven-member building appeals board consisting of:

- (1) A licensed Realtor in the city;
- (2) A licensed, master electrical contractor ~~in the city~~;
- (3) A general contractor in the city;
- (4) A business/professional resident in the city;
- (5) A licensed, master mechanical contractor ~~in the city~~;
- (6) A licensed, master plumbing contractor ~~in the city~~; and
- (7) A member at-large.

(b) The city council shall make all appointments to the board. If qualified persons are not available, the city council may appoint such other person as it deems qualified to serve as a representative of the general public, subject to the conditions described in subsection (c). The chief building official or his authorized representative, the fire marshal, public works director, and a county sanitarian shall be ex officio

nonvoting members of the board who shall be entitled to notice of all meetings of the board.

- (c) For the following board positions, applicants that are not residents of the city, but are otherwise qualified, may be considered subject to an order of priority among applicants of (i) residents of the city, (ii) residents of the city's extraterritorial jurisdiction, (iii) persons with a business with principal place of business located in the city, and (iv) residents of Grayson County:
- (1) licensed, master electrical contractor
 - (2) licensed, master mechanical contractor; and
 - (3) licensed, master plumbing contractor."

SECTION 4: Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5: 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 6: Penalty. A violation of this Ordinance is an offense punishable in accordance with Section 1-12 (General Penalty; Continuing Violations) of the Denison Code of Ordinances.

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 a public notice of the time, place, and purpose of said meeting was given, all as required by Article 551.041, Texas Government Code.

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

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 4th day of October 2021, by the following vote:

Ayes:
Abstentions:
Nays:

At regular meeting October 4, 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 a resolution granting approval for the City Manager or his designee to enter into various loan documents with Truist Bank (previously Branch Banking & Trust Company), for a Vactor Mounted Ramjet Unit on a 4x4 Truck in the amount of \$211,748.

Staff Contact

Renee' Waggoner, Executive Director of Finance & Administrative Services
rwaggoner@cityofdenison.com
903-465-2720 EXT 2444

Summary

- A Ramjet Unit purchase was approved at the November 16, 2020, Council Meeting.
- Production of the Unit has been delayed due to the manufacture's inability to get needed parts.
- Unit is approaching completion and delivery.
- Presentation to Council requesting approval of resolution to move forward with loan.

Staff Recommendation

Staff recommends approval of the resolution.

Recommended Motion

"I move to adopt the resolution granting approval for the City Manager or his designee to enter into various loan documents from Truist Bank (formerly Branch Banking & Trust Company) for a Vactor Mounted Ramjet Unit for the Utilities Division, in the principal amount of \$211,748, subject to final legal review and approval."

Background Information and Analysis

During the November 16, 2020 Council Meeting, a Vactor USJ 3030 Ramjet Truck Mounted Jetter mounted on a Ford F-550 Chassis from Kinloch Equipment and Supply was approved for purchase. A request for quotes to finance the purchase, was sent out August 5th, 2021 with three responses received from financial institutions. The total principal amount for the funding is \$211,748.

Financial Considerations

Total principal amount is \$211,748 with a 5 year loan at 1.06% interest rate.

Prior Board or Council Action

Council approved the purchase of the equipment on November 16, 2020.

Alternatives

Council could choose not to approve the resolution to move forward with the loan documents as requested. In doing so, the equipment would be purchased directly from Utility Fund reserves.

Quote Tabulation

Municipal Lease Financing

\$211,748



5 Year Loan

Financial Institution	Interest Rate	Annual Payment	Total Interest
Truist Bank (Branch Banking & Trust Company)	1.06%	\$43,341.59	\$ 4,959.95
Clayton Holdings, LLC (Commerce Bank)	1.20%	\$43,429.52	\$ 5,399.60
U.S. Bancorp (US Bank)	1.55%	\$43,663.49	\$ 6,569.44

7 Year Loan

Financial Institution	Interest Rate	Annual Payment	Total Interest
Truist Bank (Branch Banking & Trust Company)	1.35%	\$31,567.47	\$ 9,224.29
Clayton Holdings, LLC (Commerce Bank)	1.36%	\$31,541.61	\$ 9,043.27
U.S. Bancorp (US Bank)	1.81%	\$31,899.92	\$11,551.43

USE OF PROCEEDS CERTIFICATE

The undersigned Assistant Finance Director of City of Denison, Texas (the “Lessee”), is among the Lessee’s officers charged with responsibility for the Lessee’s entering into a Lease Agreement dated as of October 8, 2021 (the “Agreement”), with Truist Bank (“Lender”). This Certificate is delivered as part of the official record of the proceedings for the delivery of the Agreement, as contemplated by Treasury Regulations Section 1.148-2(b)(2). I am executing and delivering this Certificate on behalf of the Lessee to set forth in good faith the Lessee’s reasonable expectations concerning the use and investment of financing proceeds and other related matters, in order to assure that interest on the Obligations (as defined below) will be excluded from gross income for federal income tax purposes. I understand that I have an obligation to make the representations in this Certificate both correct and complete.

All capitalized terms used in this Certificate and not otherwise defined have the meanings assigned to such terms under the Treasury Regulations applicable to tax-exempt bonds.

PURPOSE OF AGREEMENT

1. The Lessee is executing and delivering the Agreement today to provide funds to finance the acquisition of the equipment set forth in the Agreement (the “Equipment”), and to pay certain financing costs. Lender will advance funds for the Equipment to the Lessee pursuant to the Agreement. Lender is entering into the Agreement for its own account with no current intention of reselling its rights under the Agreement or any interest therein, except that Lender may make an assignment of payment rights to an affiliate, in whole, at par and without recourse.

PROCEEDS; PAYMENT OBLIGATIONS

2. (a) In accordance with the Agreement, Lender will advance on behalf of the Lessee the amount of \$211,748.00 (the “Proceeds”) by making a deposit into a Project Fund created pursuant to the Agreement.

(b) Under the Agreement, the Lessee is obligated to pay Base Payments (as defined in the Agreement) on the dates and in the amounts set forth in the Agreement (the Lessee’s obligations to pay Base Payments are referred to in this Certificate as the “Obligations”), subject to prepayment as provided in the Agreement.

(c) The Base Payments reflect the repayment of the Proceeds and include a designated interest component corresponding to an annual interest rate as set forth in the Agreement. The Lessee does not expect to prepay any of the Obligations prior to the scheduled payment dates.

USE OF PROCEEDS; REIMBURSEMENT

3. (a) All of the Proceeds and all investment earnings thereon will be used to pay Project Costs, including costs incurred in connection with the execution and delivery of the Agreement and interest on the Obligations during the construction period.

(b) All of such costs will be incurred and expenditures made subsequent to today, except for reimbursement to the Lessee for (i) amounts (A) paid by the Lessee not more than 60

days prior to the Lessee's declaration of its official intent to reimburse itself for such expenditure, and (B) paid by the Lessee within 18 months of the later of (1) the date the original expenditure was paid, or (2) the date the project to which such expenditure relates was placed into service (but in no event more than three years after the original expenditure was paid); (ii) amounts representing preliminary expenditures such as engineering, design and similar preliminary expenses, as well as any legal, accounting, or other professional fees incurred in connection with the Lessee's entering into the Agreement and related transactions, in an aggregate amount not exceeding 20% of the principal amount of the Obligations, or (iii) an amount not exceeding the lesser of \$100,000 or 5% percent of the Proceeds.

(c) All of the costs to be paid or reimbursed from Proceeds will be Capital Expenditures, and none will be Working Capital Expenditures. No portion of the Gross Proceeds will be used, directly or indirectly, to make or finance loans to two or more ultimate Lessees.

QUALIFICATION FOR TEMPORARY PERIOD

4. Acquisition of the Equipment will begin, or did begin, on or about _____. Acquisition of the Equipment will proceed with due diligence, and the Equipment will be placed in service beginning on or about _____. Within six months of today (if it has not already done so), the Lessee will enter into substantial binding obligations to third parties to spend Proceeds on Project Costs that are Capital Expenditures in an amount exceeding 5% of the amount financed. The Lessee estimates that all the Proceeds and all the investment earnings thereon will be fully expended within _____ months from today.

INVESTMENT PROCEEDS

5. (a) Any earnings or net profit derived from the investment of the Proceeds will be used to pay additional Project Costs or interest on the Obligations not later than the date that is the later of (i) three years from today or (ii) twelve months from the date of the receipt of such earnings.

(b) After the date that is three years from today, the Lessee will not invest any of the Gross Proceeds at a Yield in excess of the Yield on the Obligations.

(c) No investment will be acquired or disposed of at a cost or price that exceeds its Fair Market Value as of the acquisition date, or which is less than its Fair Market Value as of the disposition date. No portion will be invested in any investment as to which the economic return is substantially guaranteed for more than three years.

(d) No portion of the Gross Proceeds will be used, directly or indirectly, to replace funds that the Lessee used (directly or indirectly) to acquire securities or obligations producing (or expected to produce) a Yield higher than the Yield on the Obligations.

NO OVER-ISSUANCE OR EXCESSIVE MATURITY

6. (a) The sum of the Proceeds and the reasonably expected investment earnings thereon does not exceed the amount reasonably expected to be required to pay Project Costs, including interest on the Obligations during construction and financing costs.

(b) The term of the Obligations is not longer than reasonably necessary for the governmental purposes thereof, and is not longer than the expected remaining useful life of the Equipment.

(c) In connection with the issuance of the Obligations, the Lessee has not utilized any device (not described in this Certificate) which attempts to circumvent the restrictions of the Code to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage. The Lessee has not attempted to increase improperly the burden on the market for tax-exempt securities (for example, by selling its obligations in larger amounts or with longer maturities, or selling them sooner, than would otherwise be necessary).

COMPLIANCE WITH REBATE REQUIREMENT

7. In the Agreement, the Lessee has agreed to comply with provisions of the Code which in some circumstances require the Lessee to pay some of its investment earnings to the United States, as provided in Code Section 148.

PRIVATE ACTIVITY TESTS

8. No payment on the Obligations is secured by property to be used in any private business (meaning any trade or business carried on by any person, including the federal government, that is not a state or local government, but excluding uses by any person as a member of the general public). None of the Proceeds are to be used for any such private business use. The Lessee has no leases, management contracts or other agreements with private entities or the federal government for either (a) management or operation of the Equipment, or (b) the use of designated portions of the Equipment.

INVESTED SINKING FUNDS

9. There are no funds (a) to be held under the Agreement or (b) which are pledged as security for the Obligations (including by way of negative pledges), or which will be used to pay the Obligations, or which could be reasonably be expected to be available to pay the Obligations if the Lessee were to encounter financial difficulty, other than the Project Fund referenced above. The Lessee will pay the Obligations from its general funds, with there being no obligation (or expectation) on the part of the Lessee or any other entity to segregate or identify any particular funds or accounts for the payment of or security for the Obligations.

MISCELLANEOUS

10. (a) No substantial part of the Equipment will be sold, no arrangement has been or will be entered into with respect to the Equipment that would be treated as a sale for federal income tax purposes, and the Lessee expects to use the Equipment for their currently-intended purpose at least until the stated date for final payment of the Obligations, in all cases other than such insubstantial portions as may be disposed of in the ordinary course of business due to normal wear or obsolescence.

(b) There are no other tax-exempt bonds, notes or obligations of the Lessee which (1) were or will be sold within 15 days of the date the Agreement was entered into, (2) were or will

be sold pursuant to a plan of financing common with the plan of financing for the Agreement, and (3) are reasonably expected to be paid from substantially the same source of funds as the Agreement.

(c) None of the Proceeds will be used to make any payment on any other Lessee obligation that was contracted in the exercise of the Lessee's borrowing power.

(d) No portion of the Obligations is Federally Guaranteed.

(e) The Lessee will cooperate with Lender in preparing, executing, and filing in a timely manner IRS Form 8038 and such other reports and documents as may be required in order for the interest on the Obligations to be excluded from gross income for federal income tax purposes.

REASONABLENESS; BINDING EFFECT

11. To the best of my knowledge and belief, the expectations set forth above are reasonable and the statements set forth above are correct. The Lessee's covenants made as described in this Certificate are intended as binding covenants of the Lessee.

WITNESS my signature this 8th day of October, 2021.

Assistant Finance Director
[Lessee]

City of Denison, Texas
 Lease Purchase Financing for Vector Mounted Ramjet on 4x4 Truck
 Sample Payment Schedule
 Five (5) Years; Annual Payments

Nominal Annual Rate: 1.060%

TValue Amortization Schedule - Normal, 360 Day Year

	Date	Payment	Interest	Principal	Balance
Loan	09/02/2021				211,748.00
2021 Totals		0.00	0.00	0.00	
1	11/15/2021	43,341.59	461.38	42,880.21	168,867.79
2022 Totals		43,341.59	461.38	42,880.21	
2	11/15/2022	43,341.59	1,790.00	41,551.59	127,316.20
2023 Totals		43,341.59	1,790.00	41,551.59	
3	11/15/2023	43,341.59	1,349.55	41,992.04	85,324.16
2024 Totals		43,341.59	1,349.55	41,992.04	
4	11/15/2024	43,341.59	904.44	42,437.15	42,887.01
2025 Totals		43,341.59	904.44	42,437.15	
5	11/15/2025	43,341.59	454.58	42,887.01	0.00
2026 Totals		43,341.59	454.58	42,887.01	
Grand Totals		216,707.95	4,959.95	211,748.00	

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.
1.060%	\$4,959.95	\$211,748.00	\$216,707.95

RESOLUTION NO. _____

Resolution Approving Financing Terms

WHEREAS: The City of Denison, Texas (“Borrower”) has previously determined to undertake a project for the financing of a vector mounted ramjet unit on a truck (the “Project”), and the finance officer (the “Finance Officer”) has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The Borrower hereby determines to finance the Project through Truist Bank (“Lender”) in accordance with the proposal dated September 2, 2021. The amount financed will not exceed \$211,748.00, the annual interest rate (in the absence of default or change in tax status) will not exceed 1.06 %, and the financing term will not exceed five years from closing.

2. All financing contracts and all related documents for the closing of the financing (the “Financing Documents”) will be consistent with the foregoing terms. All officers and employees of the Borrower are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by Borrower officers or employees, provided that such changes will not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents will be in such final forms as the Finance Officer will approve, with the Finance Officer’s release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document’s final form.

4. The Borrower will not take or omit to take any action the taking or omission of which will cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations.

5. The Borrower intends that the adoption of this resolution will be a declaration of the Borrower’s official intent to reimburse expenditures for the Project that are to be financed from the proceeds of the Lender financing described above. The Borrower intends that funds that have been advanced, or that may be advanced, from the Borrower’s general fund or any other Borrower fund related to the Project, for project costs may be reimbursed from the financing proceeds.

6. All prior actions of Borrower officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution will take effect immediately.

Approved this _____ day of October, 2021.

ATTEST:

By: _____
JANET GOTT, Mayor

By: _____
Christine Wallentine, City Clerk

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on awarding the bid to 5W Contracting, LLC for the 2021 Fall Overlay Program in the amount of \$441,567 and authorize the City Manager to enter into a contract.

Staff Contact

Carrie Jones, Director of Public Works
cjones@cityofdenison.com
903-464-4441

Summary

- Staff opened the bid for the 2021 Overlay Program on September 20, 2021.
- This bid included a full width mill on 25 streets and one parking lot.
- The lowest bid came in from 5W Contracting, LLC out of Sulphur Springs for a total cost of \$158 per ton which is approximately \$532,934.

Staff Recommendation

Staff recommends awarding the bid to 5W Contracting, LLC for a cost of \$158 per ton.

Recommended Motion

“I move to award the bid to 5W Contracting, LLC for a cost of \$158 per ton for the 2021 Fall Overlay Program and authorize the City Manager to execute the same.”

Background Information and Analysis

In continuing the City’s annual street maintenance program, Staff proposed a list of approximately 30 streets to the Street Subcommittee in the spring of 2020. These streets are chosen based on the Pavement Condition Index and known utility repairs. Based on the discussion of the Subcommittee, the final list that was approved for the 2021 Fall Overlay Program included 25 streets and 1 parking lot. The proposed streets have an average PCI score of 45.5, with the lowest being 13.9 and the highest being 67.8. The streets below are what were included in the bid packet. (Continued next page)

100 N 6 th St	Full Width Mill
200 N 6 th St	Full Width Mill
300 N 6 th St	Full Width Mill
400 N 6 th St	Full Width Mill
500 N 6 th St	Full Width Mill
100 N 7 th St	Full Width Mill
400 E Day	Full Width Mill
300 E Munson	Full Width Mill
300 E Hull	Full Width Mill
1400 S 6 th St	Full Width Mill
1400 S 7 th St	Full Width Mill
1500 S 7 th St	Full Width Mill
1100 S Travis	Full Width Mill
1300 S Travis	Full Width Mill
400 E Knob Cr	Full Width Mill
200 E Acheson	Full Width Mill
1200 S Lamar	Full Width Mill
100 W Monterey	Full Width Mill
100 W Texas	Full Width Mill
400 E Washington	Full Width Mill
400 E Washington	Full Width Mill
600 N 8 th St	Full Width Mill
1100 S 5 th St	Full Width Mill
1300 S 5 th St	Full Width Mill
Jerdy Gary	Full Width Mill
130 W Crawford Parking Lot	Full Width Mill

Staff began the advertisement of the 2021 Fall Overlay Program on September 4, 2021. The advertisement ran in the Herald Democrat on September 4, 2021, and September 11, 2021. Bids were opened at 3:00pm on September 20, 2021. Staff received four bids, with the lowest bid being \$158 per ton by 5W Contracting, LLC out of Sulphur Springs. 5W Contracting is the company that completed our last overlay program in 2020.

Financial Considerations

This is a budgeted expense out of Fund 15 for annual street maintenance.

Prior Board or Council Action

The Streets Subcommittee met in September 2021 and approved the list of streets presented for the 2021 Fall Overlay Program.

Alternatives

Council may choose to reject all bids and rebid the project.

2021 Steet Overlay Program – Bid Tabulation
City of Denison, Texas
Bid Opening: 3:00 PM Monday, September 20, 2021

BIDDER	BID BOND	TOTAL BID
Texana Land & Asphalt, Inc. 2412 C.R. 1103 Sulphur Springs, TX 75482	✓	\$648,200.00
5W Contracting, LLC 5425 FM 1567 West Sulphur Springs, TX 75482	✓	\$158 per ton
PaveCon Public Works PO Box 535457 Grand Prairie, TX 75053	✓	\$175 per ton
Elite Asphalt, LLC 5080 Ben Day Murrin Rd. Fort Worth, TX 76126	✓	\$165 per ton

CONSTRUCTION SERVICES AGREEMENT

This **CONSTRUCTION SERVICES AGREEMENT** (the “Agreement”) is by and between the City of Denison (“Owner”) and 5W Contracting, LLC, a Texas limited liability company (the “Contractor”). For convenience, Contractor and Owner may hereinafter be referred to collectively as “Parties”, and individually as a “Party”. For and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I: Work

1.01 Contractor shall complete all Work (as described herein) as specified or indicated in the Contract Documents (as described herein). The Work is generally described as follows:

A. Asphalt milling, approximately 3,373 tons of HMAC overlay, and related miscellaneous construction.

The Parties understand and agree that deviations or modifications in the form of written contract modifications or Change Orders may be authorized from time to time by the City.

ARTICLE II: The Project

2.01 The project is, in whole or in part, the Work under the Contract Documents generally described as **City of Denison 2021 Street Overlay Program** (the “Project”).

ARTICLE III: Contract Terms

3.01 Time is of the Essence: All time limits for Milestones, if any, Substantial Completion (as defined herein), and completion and readiness for final payment as stated in the Contract Documents are of the essence.

3.02 Dates for Substantial Completion and Final Payment:

A. The Work is required to be substantially completed (“Substantial Completion”) within 90 calendar days after the date when the Contract Times commence once a “Notice to Proceed” is sent to the Contractor and completed and ready for final payment within 120 days after the date when the Contract Times commence. For purposes of this Agreement, the term “Substantial Completion” shall mean that the improvements are ready to be used for their intended purpose, save and except for minor items to be addressed by Contractor on the Owner’s “punch list” which shall be addressed prior to Completion by Contractor, final approval and acceptance of the Project by the Owner.

3.03 Liquidated Damages: Contractor and Owner recognize that time is of the essence and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 3.02, plus any extensions of Contract Time as granted at the discretion of the Owner. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500.00 for each day that expires after the time specified in Paragraph 3.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay

Owner \$500.00 for each day that expires after the time specified in Paragraph 3.02 for completion and readiness for final payment until the Work is completed and ready for final payment. The Owner will be the sole judge as to whether the Work has been completed within the allotted time. Assessment of liquidated damages by the Owner shall not constitute a waiver of the Owner's right to sue and collect additional damages which Owner may sustain by the failure of the Contractor to perform in accordance with the terms of its Contract.

ARTICLE IV: Contract Price

- 4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents for unit prices shown on the Bid Form. The Parties acknowledge that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and Final payment for all unit price bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE V: Payment Procedures

- 5.01 Submittal and Processing of Payments: Prior to starting work, the Contractor shall submit a proposed schedule for the Work included herein and shall submit any major revisions to this schedule as the Project progresses. This schedule shall provide for completion of the project within the time provided in Article III.

A. Contractor shall submit applications for payment ("Applications for Payment") to the Owner's designated representative. Applications for Payment will be processed by the Owner in accordance with Section 5.02. No payment shall be due to Contractor unless and until Contractor has provided the Owner with Lien Waivers from Contractor and all its Subcontractors, mechanic and material men, incurred in the furtherance of the performance of the Contract Documents for that portion of the Work to which the payment relates. Submission of an Application for Payment by Contractor shall constitute a warranty by Contractor that all of the bills and claims incurred by Contractor in performance of the Work have been paid or otherwise discharged.

B. Contractor agrees that it will protect, indemnify, hold harmless and defend Owner from any and all claims resulting from, relating to or arising out of or under any demands of subcontractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools and all supplies, including commissary, incurred in the furtherance of the performance of the Contract Documents. Contractor shall at Owner's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged, or waived. Notwithstanding anything in the Contract Documents to the contrary, if Contractor fails to do so, then Owner may, after having served written notice on Contractor, either directly pay unsatisfied claims of which Owner has written notice or withhold from Contractor's compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon full payments to Contractor shall be made in accordance with the terms of the Contract Documents. In no event shall the provisions of the preceding sentence be construed to impose any obligations upon Owner to either Contractor or its surety. The foregoing obligation to protect, indemnify, hold harmless and defend shall survive the termination or expiration of this Agreement.

- 5.02 Progress Payments; Retainage:

A. Owner shall make progress payments on the basis of Contractor's Applications for Payment within two weeks of the Contractor's pay application during performance of the Work. All such payments will be measured as provided in the Contract Documents.

- B. Progress payments will be made in an amount equal to 90 percent of the total earned value to date for completed Work and properly stored materials. The remaining ten (10) percent of the total earned value to date will be held as retainage.
- C. Payment will be less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 3.03 in addition to the amount retained above, the Owner may retain additional amounts as set forth elsewhere in the Contract Documents.
- D. Upon Substantial Completion, Owner may pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Owner shall determine and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the Certificate of Substantial Completion. If Owner has concerns with the ability of the Contractor to complete the remaining Work in accordance with the Contract Documents or within the time frame established by this Agreement, Owner may at its sole discretion, elect to retain retainage if the amounts set forth above for progress payments prior to Substantial Completion. Release or reduction in retainage is contingent upon consent of surety to such reduction in retainage.

5.03 Final Payment: Upon final completion and acceptance of the Work, along with an executed contractor's final release and waiver of lien to be supplied by the Owner, Owner shall pay the remainder of the Contract Price.

ARTICLE VI: Interest

6.01 Interest will be paid on overdue payments as allowed and required by TEXAS GOVERNMENT CODE Chapter 2251.

ARTICLE VII: Contractor's Representations

- 7.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bid Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has obtained and carefully studied all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions including surface, subsurface, and Underground Facilities at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bid Documents, and safety precautions and programs incident thereto or assumes responsibility for doing so.

- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- H. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE VIII: Contract Documents

8.01 Contents:

- A. The “Contract Documents” consist of the following:
 - 1. Notice to Bidders
 - 2. General Conditions
 - 3. Specifications for the 2021 Street Overlay Program
 - 4. Attachment A: List of Streets and Corresponding Maps
 - 5. Exhibits to this Agreement:
 - a. Contractor’s Bid
 - b. Documentation submitted by Contractor prior to Notice of Award
- B. The following are also Contract Documents which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - 1. Notice to Proceed.
 - 2. Written Amendment(s).
 - 3. Change Order(s).
 - 4. Field Order(s).
 - 5. Work Change Directive(s).
 - 6. Engineers Written Interpretation(s).
- C. The Contract Documents may only be amended, modified, or supplemented as provided in Article XII.

- D. There are no Contract Documents other than those listed above in this Article VIII.
- E. In the event of any conflict between this Agreement and any other documents incorporated herein, the terms and conditions of this Agreement shall prevail.

ARTICLE IX: Warranties

- 9.01 Contractor's General Warranty and Guarantee: Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Owner and its elected officials, officers, employees, and agents shall be entitled to rely on representation of Contractor's warranty and guarantee.
- 9.02 Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - A. Abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - B. Normal wear and tear under normal usage.
- 9.03 Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - A. observations by City's designated representative;
 - B. payment by Owner of any progress or final payment;
 - C. the issuance of a certificate of Substantial Completion or any payment related thereto by Owner;
 - D. use or occupancy of the Work or any part thereof by Owner;
 - E. any review and approval of a shop drawing or sample submittal or the issuance of a notice of acceptability;
 - F. any inspection, test, or approval by others; or
 - G. any correction of defective Work by Owner.
- 9.04 In addition to any warranties created by law or provided in the Contract Documents, Contractor shall furnish Performance and Payment Bonds in accordance with this the Contract Documents. Contractor shall also furnish a Maintenance Bond in the amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. The Maintenance Bond shall remain in force for a period of two (2) years after the date of final acceptance of the work by the Owner.

ARTICLE X: Liability and Indemnification

- 10.01 THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY, AND HOLD THE OWNER, ITS REPRESENTATIVES, OFFICERS, AGENTS, AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS, AND**

EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING, BUT NOT LIMITED TO, DEATH, THAT MAY RELATE TO, ARISE OUT OF, OR BE OCCASIONED BY (I) CONTRACTOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (II) ANY ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT.

- 10.02 IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST THE OWNER IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, CONTRACTOR, ON NOTICE FROM OWNER, SHALL DEFEND SUCH ACTION OR PROCEEDING, AT CONTRACTOR'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO OWNER.**
- 10.03 IN THE EVENT THAT ANY OF OWNER'S PROPERTY, SUCH AS UTILITIES, UTILITY INFRASTRUCTURE IMPROVEMENTS, EQUIPMENT, TURF, ETC., ARE DAMAGED OR DESTROYED DURING PERFORMANCE OF THE WORK UNDER THIS AGREEMENT DUE TO NEGLIGENCE OR ACTS OF OMISSIONS OF THE CONTRACTOR, THE CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR ALL REPAIRS OR REPLACEMENTS. IN THE EVENT OF DAMAGE DUE TO ACTS OF THE CONTRACTOR, THE CONTRACTOR SHALL REPLACE OR REPAIR THE DAMAGE AT NO COST TO THE OWNER. THE OWNER SHALL DETERMINE WHETHER ANY DAMAGE HAS BEEN DONE, THE AMOUNT OF THE DAMAGE, THE REASONABLE COSTS OF REPAIRING THE DAMAGE, AND WHETHER THE CONTRACTOR IS RESPONSIBLE. THE OWNER SHALL BE THE SOLE JUDGE OF THE DAMAGE TO OWNER'S PROPERTIES, IN WHICH JUDGMENT SHALL BE EXERCISED REASONABLY. ANY DAMAGE BY THE CONTRACTOR SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR TO THE REASONABLE SATISFACTION OF THE OWNER WITHIN THIRTY (30) DAYS OF RECEIPT OF WRITTEN NOTIFICATION FROM THE CITY.**
- 10.04 IN ANY AND ALL CLAIMS AGAINST OWNER, ITS REPRESENTATIVES, OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST BY ANY EMPLOYEE (OR THE SURVIVOR OR PERSONAL REPRESENTATIVE OF SUCH EMPLOYEE) OF CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY INDIVIDUAL OR ENTITY DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM ANY OF THE WORK, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER PARAGRAPH 10.01 SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR CONTRACTOR OR ANY SUCH SUBCONTRACTOR, SUPPLIER, OR OTHER INDIVIDUAL OR ENTITY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.**

10.05 CONTRACTOR COVENANTS AND AGREES THAT OWNER SHALL IN NO WAY NOR UNDER ANY CIRCUMSTANCES BE RESPONSIBLE FOR ANY PROPERTY BELONGING TO CONTRACTOR, ITS MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES, OR TRESPASSERS, WHICH MAY BE STOLEN, DESTROYED, OR IN ANY WAY DAMAGED, AND CONTRACTOR HEREBY INDEMNIFIES AND HOLDS HARMLESS OWNER FROM AND AGAINST ANY AND ALL SUCH CLAIMS. THE OWNER DOES NOT GUARANTEE POLICE PROTECTION AND WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE SUSTAINED BY CONTRACTOR, ITS MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES, OR TRESPASSERS ON ANY OF THE OWNER'S PROPERTIES.

10.06 THE FOREGOING OBLIGATION TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT AND APPLY REGARDLESS OF THE EXISTENCE OF INSURANCE OR ANY DEDUCTIBLE THERETO.

ARTICLE XI: Insurance

- 11.01 Contractor agrees to and shall maintain insurance for comprehensive general liability, automobile liability insurance, and worker's compensation during the term of this Agreement in the amounts not less than those set forth in the Specifications for the 2021 Street Overlay Program that are incorporated as part of this Agreement.
- 11.02 All such policies shall contain a waiver of subrogation rights against the Owner, and Contractor shall, prior to the commencement of the work, furnish the Owner with a valid Certificate of Insurance covering all workers and subcontractors, and providing the coverage set forth above. All insurance policies shall name the Owner as an additional insured.

ARTICLE XII: Miscellaneous

- 12.01 Immunity: The Parties agree that the City of Denison has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 12.02 Amendments: The Contract Documents may not be amended or altered except by a written document signed by authorized representatives of both Parties.
- 12.03 Assignment/Non-Transferable: The Parties agree that neither this Agreement nor the work to be performed or goods/services provided hereunder will be assigned or transferred without the prior written consent of the City of Denison.
- 12.04 Successors and Assigns: The Parties, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.
- 12.05 Execution and Consideration: This Agreement is executed by the Parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.06 Notices: Any notice provided or permitted to be given under this Agreement must be in writing and

may be served by depositing same in the United States mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such Party via facsimile or a hand-delivery service, federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

To Owner: City of Denison
P.O. Box 347
Denison, Texas 75021

With a Copy to: Messer, Fort & McDonald, PLLC
Attn: Julie fort
6371 Preston Road Suite 200
Frisco, Texas 75034

To Contractor: 5W Contracting, LLC
5425 FM1567 W
Sulphur Spring, TX 75482

- 12.07 Cumulative Remedies: All rights and remedies of the Parties under this Agreement shall be cumulative, and none shall exclude any other right or remedy provided by law, or by any other provisions of the Agreement. All such rights and remedies may be exercised and enforced concurrently and whenever, and as often, as occasion for their exercise arises.
- 12.08 Waiver of Breach: Waiver by either Party of a breach of the Agreement by the other Party does not constitute a continuing waiver or a waiver of any subsequent breach of the Agreement.
- 12.09 Attorney's Fees: If it becomes necessary for any Party to file suit to interpret or enforce the terms of this Agreement, the prevailing Party in such action shall be entitled to recover from the non-prevailing Party, reasonable attorney's fees and costs of court.
- 12.10 Parties Bound: The Agreement shall be binding upon, and inure to the benefit of, the Parties to the Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.
- 12.11 No Third-Party Beneficiaries: Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.
- 12.12 Incorporation of Recitals: The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of the Parties.
- 12.13 Entire Agreement: This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified, amended or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto. The subject matter of

this Agreement is for the 2021 Street Overlay Project only and not any other matters that may exist between the Parties past, present, or future.

- 12.14 Venue: This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Grayson County, Texas.
- 12.15 Consideration: This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- 12.16 Counterparts: This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.
- 12.17 Authority to Execute: The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.18 Force Majeure: Neither the Contractor nor the City of Denison shall be required to perform any term, condition, or covenant in the Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of the Party and which by the exercise of due diligence the Party is unable, wholly or in part, to prevent or overcome.
- 12.19 Miscellaneous Drafting Provisions: This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.
- 12.20 Savings/Severability: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 12.21 Contractor's Certifications:
- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.00:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial noncompetitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

12.22 Representations: Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its legal counsel.

12.23 Other Provisions:

- A. Change orders must be approved by an authorized City Representative.
- B. The City and authorized representatives and agents of the City shall, at all times, have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this contract, provided, however, that all instructions and approval with respect to the work will be given to the Contractor only by the City through authorized representatives or agents.

[Signature Page Follows]

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

OWNER:

CITY OF DENISON

By: _____
Greg Smith, City Manager

ATTEST:

By: _____
Christine Wallentine, City Clerk

CONTRACTOR:

5W CONTRACTING, LLC, a Texas
Limited liability company

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

City Council Meeting Staff Report



Agenda Item

Receive a report, hold a discussion and take action on the purchase of a patch truck in the amount of \$203,036 from Kinloch Equipment & Supply, Inc. for street maintenance and authorize the City Manager to execute any associated documents.

Staff Contact

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

Summary

- The Street Maintenance Division is currently operating a late 1990s model patch truck that is not a reliable piece of equipment.
- Kinloch Equipment has a patch truck that is ready for delivery and can be here for use in the next couple of weeks.
- This truck aids the street maintenance division in patching potholes, fixing utility cuts and transporting hot mix asphalt from the asphalt plant to jobsites.

Staff Recommendation

Staff recommends approval of the patch truck purchase through Kinloch Equipment & Supply, Inc.

Recommended Motion

“I move to approve the purchase of a patch truck from Kinloch Equipment & Supply, Inc. for street maintenance for a total amount of \$203,036 and authorize the City Manager to execute any associated documents.”

Background Information and Analysis

The Street Maintenance Division currently has a patch truck from the late 1990s. It has served the department well over the years; however, it is no longer a reliable piece of equipment. When available, the division purchases asphalt from RK Hall, which is a local asphalt plant. When that plant is not operational for any reason, staff cannot buy asphalt because the patch truck is not in good enough shape to make it to Durant or Celina to purchase asphalt. With the new patch truck, staff will have the ability to purchase asphalt even when RK Hall is not running their asphalt plant.

This will be a 2022 Freightliner Patch Truck from Kinloch Equipment & Supply which will be used to patch potholes and utility cuts throughout town. Kinloch Equipment & Supply includes a Stepp Manufacturing body on the truck. The total price of the truck is \$172,366. There is an additional 5-year bumper to bumper warranty for \$12,895 and a 5-year repair, maintenance and loaner agreement for \$17,775. At the end of 5- years, there is a guaranteed optional buyback of \$59,115. In addition to the warranty, Kinloch has offered to send two City of Denison employees to their manufacturing plant, all expenses paid, to learn more about how their equipment is made. The Street Subcommittee met on September 1, 2021 to discuss the goals and fund utilization during the FY22 budget. One of the items that was requested is the ability to purchase this new patch truck. The Subcommittee was in agreement

that a new patch truck would assist the division in repair streets throughout town and be a good use of funds for the upcoming budget year.

Financial Considerations

This truck will cost a total of \$203,036 through the TIPS Contract. This was a budgeted amount in FY2022 out of Fund 015.

Prior Board or Council Action

None.

Alternatives

Council may choose to direct staff to wait for the H.D. Industries truck to be ready or to find another dealer to purchase a new patch truck.