



**CITY OF LEON VALLEY  
CITY COUNCIL REGULAR MEETING**

Leon Valley City Council Chambers  
6400 El Verde Road, Leon Valley, TX 78238  
Tuesday, October 17, 2023 at 6:00 PM

**AGENDA**

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**The City of Leon Valley City Council Shall Hold an In-Person Meeting with A Quorum of Members of City Council to Be Physically Present in The Leon Valley City Council Chambers, 6400 El Verde Road, Leon Valley, Texas 78238. Some Members of City Council May Appear and Participate in The Meeting by Videoconference Pursuant to The Requirements Set Forth in The Texas Open Meetings Act.**

**Citizens May E-Mail Public Comments To [citizenstobeheard@leonvalleytexas.gov](mailto:citizenstobeheard@leonvalleytexas.gov). All Other Citizen Participation May Be Provided In-Person at City Council Chambers.**

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- 1. Call to Order; Determine a Quorum is Present, Pledge of Allegiance**
- 2. The City Council Shall Meet in Executive Session to Discuss the Following:**
  1. City Council shall meet in Executive Session pursuant to Texas Government Code Section 551.087 Deliberation Regarding Economic Development Negotiations; Closed Meeting. RE: Review and Discussion of Request for Proposal (RFP) Received for the Kinman House - R. Salinas, Director of Economic Development
- 3. Reconvene into Regular Session**
- 4. Citizens to be Heard**
- 5. Possible Action on Issues Discussed in Executive Session If Necessary**
- 6. Presentations**
  1. Presentation of an Award of Appreciation for Years of Service to Yvonne Acuna, Assistant Finance Director
  2. Presentation of a Proclamation by the City Council of the City of Leon Valley, Texas that the Week of November 6-10, 2023 Is Hereby Recognized as Municipal Court Week in Recognition of the Fair and Impartial Justice Offered to Our Citizens by the Municipal Court of Leon Valley
  3. Presentation, Discussion and Possible Action on Amendments to the Short Term Rental Ordinance (Councilor Philip Campos and Councilor Josh Stevens)

7. **Announcements by the Mayor and Council Members.** At this time, reports about items of community interest, which no action will be taken may be given to the public as per Chapter 551.0415 of the Government Code, such as: expressions of thanks, congratulations or condolence, information regarding holiday schedules, reminders of social, ceremonial, or community events organized or sponsored by the governing body or that was or will be attended by a member of the Leon Valley City Council or a City official.

8. **City Manager's Report**

1. **Upcoming Important Events:**

**Regular City Council Meeting, Tuesday, November 07, 2023, at 6:30 PM, in City Council Chambers.**

**Coffee with the Mayor & City Council, Saturday, October 28, 2023, from 9:00 AM to 11:00 AM, at the Leon Valley Conference Center.**

**Trash & Treasure Event, Saturday, October 28, 2023, from 9:00 AM to 12:00 PM, at the Leon Valley Community Center.**

**City Offices and Municipal Court will be closed Thursday, November 23 - Friday, November 24, 2023, in observance of the Thanksgiving Holiday.**

**Breakfast with Santa, Saturday, December 02, 2023, from 8:00 AM to 10:30 AM, at the Leon Valley Public Library.**

**Lighting of the Christmas Tree and Celebration, Monday, December 04, 2023, at 6:00 PM, in the grassy area outside of the Leon Valley Conference Center.**

**Miscellaneous other events and announcements.**

9. **Consent Agenda**

1. Discussion and Possible Action Approving of the Following City Council Minutes:  
a. September 19, 2023 Regular City Council Meeting Minutes

2. Discussion and Possible Action Accepting of the Following Board/Commission Minutes:  
a. 08-09-2023 Earthwise Living Committee Meeting Minutes  
b. 08-10-2023 Park Commission Meeting Minutes  
c. 08-22-2023 Planning & Zoning Commission Meeting Minutes  
d. 04-19-2023 Citizens Police Advisory Committee Meeting Minutes  
e. 05-11-2023 Library Board of Trustees Meeting Minutes  
f. 08-10-2023 Library Advisory Board Meeting Minutes  
g. 04-24-2023 Economic and Community Development Advisory Committee Meeting Minutes

- [3.](#) Discussion and Possible Action of an Ordinance Amending the Leon Valley Code of Ordinances, Appendix A Fee Schedule to Amend Fees Associated with Building, Health, and Trade Permit and Inspection Fees and to Remove Sections No Longer in Use (1st Read was Held on 09-18-2023) - M. Moritz, Public Works Director
- [4.](#) Discussion and Possible Action on an Ordinance Repealing the City's Juvenile Curfew Ordinance in the City's Code of Ordinances Chapter 8, Specifically Division 2. Chapter 8.02.031 - 8.02.035 (1st Read was Held on 09-19-2023) - M. Tacquard, Asst. Police Chief
- [5.](#) Presentation, Discussion, and Possible Action on a Resolution of the City of Leon Valley City Council Designating the Echo and the San Antonio Express News as the City of Leon Valley's Official Newspapers for Posting of Public and Legal Notices - S. Passailaigue, City Secretary
- [6.](#) Presentation and Discussion on a Resolution of the City of Leon Valley, Tx., City Council Appointing David Perry as Commissioner to the Leon Valley Planning & Zoning Commission - S. Passailaigue, City Secretary
- [7.](#) Presentation and Discussion on Amending Ordinance Chapter 3 Building Regulations; Article 3.02 - Technical and Construction Codes and Standards; Sec. 3.02.054 - Property Maintenance Code and Sec. 3.02.055 - Appeals and Variances to Technical and Construction Codes. (1st Read was Held on 09-18-2023) – Dr. Caldera, City Manager
- [8.](#) Presentation, Discussion and Possible Action on the Annual Review; and Adoption of a Resolution Approving the Investment Policy for the City of Leon Valley with No Changes. - C. Goering, Finance Director
- [9.](#) Presentation, Discussion and Possible Action on a Resolution Accepting an Agreement with ARDURRA Group for City Professional Engineering Services - Dr. Caldera, City Manager
- [10.](#) Presentation and Discussion on Authorizing an Ordinance Amending the City Of Leon Valley Code Of Ordinances, Chapter 1, Article 1.04 City Council, Sec. 1.04.001 Rules Of Meeting Decorum and Conduct, Adding Executive Session Meeting Time of 6:00 p.m. and Prohibiting Outside Presentations (First Read as Required by City Charter) - Dr. Caldera, City Manager

## 10. Regular Agenda

- [1.](#) Discussion and Possible Action of a Resolution Granting a Fence Variance for 6406 Royalty Pt, CB 4429A BLK 1Lot 25, Seneca Estates - M. Teague, Planning and Zoning Director
- [2.](#) Discussion and Action to Consider an Appeal to the 2021 International Fire Code, Appendix D Fire Apparatus Access Roads, Section D107 One or Two-Family Residential Developments, D107.1 One or Two-Family Dwelling Residential

Developments, to Allow Non-Fire Sprinklered Housing Units, at the Poss Landing Subdivision, Located at 7213 Huebner Road - M. Teague, Planning and Zoning Director

3. Presentation, Discussion, and Possible Action on the Leon Valley Public Library Policy Article 7: Meeting Room Policy - R. Reed, Library Director
4. Discussion and Possible Action Adding Topics to the January 27, 2024, Annual Town Hall Meeting - Mayor Chris Riley

## 11. Presentations

1. Presentation and Discussion on becoming a Family Place Library - R. Reed, Library Director
2. Presentation and Discussion of the Monthly Financial Report Ending September 30, 2023 - C. Goering, Finance Director
3. Presentation, Discussion, and Possible Action to Create a New Economic Development Program for Building and/or Facade Improvements - R. Salinas, Director of Economic Development

## 12. Citizens to be Heard

13. **Requests from Members of City Council to Add Items to Future Agendas – Per Section 3.10 (A) of the City of Leon Valley’s Code of Ordinances, at a meeting of City Council, a member of City Council may place an item on an agenda by making a motion to place the item on a future agenda and receiving a second. No discussion shall occur at the meeting regarding the placement of the item on a future agenda.**

## 14. Adjournment

**Executive Session.** The City Council of the City of Leon Valley reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed on the posted agenda, above, as authorized by the Texas Government Code, Sections 551.071 (consultation with attorney), 551.072 (deliberations about real property), 551.073 (deliberations about gifts and donations), 551.074 (personnel matters), 551.076 (deliberations about security devices), and 551.087 (economic development).

**Sec. 551.0411. MEETING NOTICE REQUIREMENTS IN CERTAIN CIRCUMSTANCES:** (a) Section does not require a governmental body that recesses an open meeting to the following regular business day to post notice of the continued meeting if the action is taken in good faith and not to circumvent this chapter. If an open meeting is continued to the following regular business day and, on that following day, the governmental body continues the meeting to another day, the governmental body must give written notice as required by this subchapter of the meeting continued to that other day.

**Attendance by Other Elected or Appointed Officials:** It is anticipated that members of other City boards, commissions and/or committees may attend the open meeting in numbers that may constitute a quorum. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of any other boards, commissions and/or committees of the City, whose members may be in attendance in numbers constituting a quorum. These members of other City boards, commissions, and/or committees may not deliberate or act on items listed on the agenda. [Attorney General Opinion – No. GA-0957 (2012)].

I hereby certify that the above **NOTICE OF PUBLIC MEETING(S) AND AGENDA OF THE LEON VALLEY CITY COUNCIL** was posted at the Leon Valley City Hall, 6400 El Verde Road, Leon Valley, Texas, and remained posted until after the meeting(s) hereby posted concluded. This notice is posted on the City website at <https://www.leonvalleytexas.gov/meetings>. This building is wheelchair accessible. Any request for sign interpretive or other services must be made 48 hours in advance of the meeting. To plan, call (210) 684-1391, Extension 216.





SAUNDRA PASSAILAIGUE, TRMC

City Secretary

October 13, 2023 11:45 AM







## ***Proclamation of Appreciation***

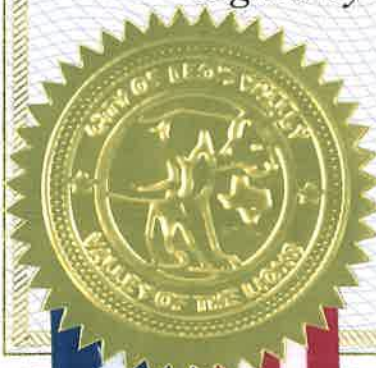
***WHEREAS,** Yvonne Acuna completed 23 years of service with the City of Leon Valley; and*

***WHEREAS,** Yvonne Acuna has distinguished herself with advancements throughout these twenty-three years as a Utility Billing Clerk and Public Works Administrator to Assistant Finance Director;*

***WHEREAS,** the City of Leon Valley appreciates the value of an employee who has provided years of dedicated service to its citizens and feels that her retirement is deserving of public recognition; and*

***NOW THEREFORE,** I, Chris Riley, Mayor of the City of Leon Valley, Texas, together with the entire Leon Valley City Council, do hereby express our heartfelt thanks and sincere appreciation to Yvonne Acuna for her twenty-three years of dedicated and loyal service to our community.*

*Signed by my hand on this the 17<sup>th</sup> day of October 2023.*



*Chris Riley*  
\_\_\_\_\_  
**Mayor Chris Riley**



# **Role of Municipal Courts in Municipalities and in the Judicial System**

This is a sample PowerPoint presentation for municipal judges and court support personnel to use when speaking before city councils and civic and school groups.

# Municipal Courts

- **917 municipal courts**
- **Approximately 1,500 municipal judges.**
- **7,561,659 cases**
- **4,902 jury trials**
- **2.75 million arrest warrants**
- **9,529 search warrants**
- **39% of the entire state's judiciary**
- **Handles more defendants and other participants than all other courts**

# Authority

- **Created by Federal and State Constitutions**
- **Authorized by State Law**
- **Enacted by Local Ordinance or Charter**
- **U.S. Constitution creates Right to Impartial Judge**
- **Separation of Powers requires Judicial Independence**



# Jurisdiction

- **Concurrent with JP for all State Fine-Only Criminal Offenses**
- **Exclusive for all Fine-Only Municipal Ordinances**

# Prosecutors

- **45.201, CCP**
  - **City Attorney**
  - **Deputy City Attorney**
  - **County Attorney may Volunteer**
- **To see that Justice is Done**
- **Role:**
  - **File**
  - **Plea Bargain**
  - **Dismiss**
  - **Trial Presentation**
  - **Advise Police**

# Judges Role

- **Judicial Duties**
- **Administrative Duties**
- **Magistrate Duties**

# Judicial Duties

- **Accepting Pleas**
- **Making and Rendering Judgments**
- **Setting Fines**
- **Decisions of Law**
- **Ruling on Objections**
- **Setting or Forfeiting Bail**
- **Granting or Denying Motions,**
- **Granting and Revoking Deferred Disposition**
- **Fine Collection**

# **Administrative Duties**

- **With Court Clerks**
- **Management of Dockets**
- **Financial Reports**
- **Guiding the Operation of the Court**

# Magistrate Duties

- **Preserve the peace within their jurisdictions by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment.**
- **Fair determination of whether probable cause exists in order to empower police to make searches, arrest, hold persons in custody, or limit defendant's conduct while on bond.**



# Municipal Judges...

- **Represent the Municipality**
- **Represent Judicial System**
- **Provide for Quality of Life**
- **Serve as a Buffer Between Citizens and Police**

**IN RECOGNITION OF MUNICIPAL COURT WEEK****November 6-10, 2023****A PROCLAMATION RECOGNIZING THE IMPORTANCE OF MUNICIPAL COURTS, THE RULE OF LAW, AND THE FAIR AND IMPARTIAL ADMINISTRATION OF JUSTICE**

**WHEREAS**, more people come in contact with municipal courts than all other Texas courts combined, and public impression of the Texas judicial system is dependent upon the public's experience in municipal court;

**WHEREAS**, the City of Leon Valley has hosted the Leon Valley Municipal Court since 1955;

**WHEREAS**, state law authorizes a municipality to either appoint or elect a municipal judge for a term of office, the Leon Valley Municipal Court is a state court, and its judges are members of the state judiciary;

**WHEREAS**, the procedures for the Leon Valley Municipal Court operations are set forth in the Texas Code of Criminal Procedure and other laws of the State of Texas;

**WHEREAS**, the City of Leon Valley is committed to the notion that our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us, and that judges and court personnel should comply with the law and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

**WHEREAS**, Leon Valley Municipal Judges are not policy makers for the City of Leon Valley but are bound by the law and the Canons of Judicial Conduct and are required to make decisions independent of the governing body of the City Council, city officials, and employees;

**WHEREAS**, the City Council recognizes that the Constitution and laws of the State of Texas contain procedural safeguards in criminal cases for all defendants, including indigent defendants, and supports the Leon Valley Municipal Court in complying with such legal requirements.

**NOW, THEREFORE BE IT PROCLAIMED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS THAT THE WEEK OF NOVEMBER 6-10, 2023 IS HEREBY RECOGNIZED AS MUNICIPAL COURT WEEK IN RECOGNITION OF THE FAIR AND IMPARTIAL JUSTICE OFFERED TO OUR CITIZENS BY THE MUNICIPAL COURT OF LEON VALLEY.**

*Signed by my hand on this the 17<sup>th</sup> day of October, 2023.*

\_\_\_\_\_  
Mayor Chris Riley



MAYOR R  
RED-LINE  
9/28/2023

## EXHIBIT A

### ARTICLE 4.13 - SHORT-TERM RENTAL

#### Sec. 4.13.001. Purpose and applicability.

The purpose of this article is to establish regulations for the registration and use of Short-Term Rentals for single-family living units. The requirements of this article apply only to Short-Term Rentals, as defined herein, located in residential zoning districts established under Chapter 15, Zoning of the City of Leon Valley Code of Ordinances. Nothing in this article, however, shall be construed to be a waiver of the requirement to assess and collect hotel occupancy taxes for any residential rental for a period of less than 30 consecutive days of property that is located outside of such residential only zoning districts.

#### Sec. 4.13.002. Definitions.

*Advertise* means the written, audio, oral or other methods of drawing the public's attention whether by brochure, written literature or on-line posting to a Short-Term Rental to promote the availability of the Short-Term Rental.

*Hotel Occupancy Tax* means the hotel occupancy tax as defined in Chapter 11 of the Leon Valley Code of Ordinances and V.T.C.A. Texas Tax Code, Chapter 351.

*Local Emergency Contact* means an individual other than the applicant, who resides within 20 miles of the subject property, and who is designated by the owner/applicant to act as the owner's authorized agent if the owner has traveled outside of the immediate area or is otherwise unavailable. The local emergency contact should be reachable on a 24-hour basis, have access to the Short-Term Rental Property, and be authorized by the owner to act in the owner's absence to address any complaints, disturbances, and emergencies.

*Nuisance party* means an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.

*Owner* means any person, agent, operator, firm, trust, corporation, limited liability company, partnership or business organization having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or code official of the estate of such person if ordered to take possession of real property by a court. The term "owner" does not include the holder of a non-possessory security interest in the property.

*Party* means a social gathering of people or special event, including those who have not rented the residence, for the primary purpose of eating, drinking or entertainment in a manner that is disruptive to the surrounding properties.

*Short-Term Rental (STR)* means a residential dwelling unit, apartment, condominium or accessory dwelling, that may or may not be owner or lessee occupied; where sleeping areas are rented to overnight guests for a period less than 30 consecutive days (but not less than 12 hours). The term does not include:

- (1) A unit that is used for a nonresidential purpose, including an educational, health care, retail, restaurant, banquet space, or event center purpose or another similar use;
- (2) A bed and breakfast; or
- (3) A hotel/residence hotel.

### ✓ Sec. 4.13.003. Short-Term Rental registration requirements.

No person shall hereafter advertise, offer to rent or rent, lease, sublease, license or sublicense a residential property within the City as a Short-Term Rental for which a registration has not been properly made and filed with the Planning and Zoning Department of the City. Registration shall be made upon forms furnished by the City for such purpose and shall specifically require the following minimum information:

- (1) Name, address, phone number and e-mail address of the property owner of the Short-Term Rental property;
- (2) Name, address, phone number and e-mail address of the designated Local Emergency Contact;
- (3) ~~The maximum number of occupants permitted for the dwelling unit or sleeping room in accordance with subsection 4.13.005(b) of the Code of Ordinances;~~
- (4) A submission of a sketch floor plan of the dwelling with dimensional room layout; and
- (5) ~~Site Plan/Survey of the property indicating maximum number of vehicles that can be legally parked on the property, without encroaching onto streets, sidewalks or alleys; other public rights-of-way or public property.~~

### Sec. 4.13.004. Right to inspect premises. ? Limit to Initial Inspection for Approval

The City of Leon Valley reserves the right, with reasonable notice to the Owner, to inspect the residential premises to determine compliance with this section as well as with the current adopted version of the International Property Maintenance Code.

- (a) If only a portion of the premises is offered for rent, then that portion plus shared amenities and points of access may be inspected.
- (b) If, upon completion of an inspection, the premises are found to be in violation of one or more provisions of applicable City Codes and Ordinances, the City shall provide written notice of such violation and shall set a re-inspection date for a violation to be corrected prior to its occupancy.

### Sec. 4.13.005. Restrictions on Short-Term Rentals.

- ✓ (a) *External signage.* There shall be no external on-site or off-site advertising signs or displays indicating the property is a Short-Term Rental.
- ? (b) ~~Limit on occupants allowed. No more than two adult guests per bedroom, plus no more than two additional adults shall be allowed when renting a property as a Short-Term Rental, except that there shall be a maximum occupancy of ten people, adult and children.~~
- ? (c) ~~Limits on the number of vehicles. There shall be a maximum of one car per bedroom, or the maximum number of cars that can be accommodated in the garage and driveway, without extending over the public rights-of-way (alleys and sidewalks) whichever is less.~~
- ? (d) ~~Advertisements and contracts. Any advertisement of the property as a Short-Term Rental and all rental contracts must contain language that specifies the allowed maximum number of occupants and maximum number of vehicles.~~
- ✓ (e) *Other restrictions.* It is unlawful:
  - (1) To operate or allow to be operated a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur;

- (2) To advertise or offer a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur; documented advertisement of the subject property as a Short-Term Rental, online or offline, shall be considered evidence of a violation of this article;
- (3) To operate a Short-Term Rental that does not comply with all applicable city and state laws and codes;
- (4) To operate a Short-Term Rental without paying the required hotel occupancy taxes;
- (5) To offer or allow the use of a Short-Term Rental for the sole or primary purpose of having a party venue;
- (6) To fail to include a written prohibition against the use of a Short-Term Rental for party venue in every advertisement, listing, or other publication offering the premises for rent;
- (7) To operate or allow to be operated a Short-Term Rental wherein a nuisance party occurs; and
- (8) Permit the use of Short-Term Rental for the purpose of housing sex offenders; operating a structured sober, recovery or other purpose living home or similar enterprise; selling illegal drugs; selling alcohol or another activity that requires a permit or license under the Alcoholic Beverage Code or operating as a sexually oriented business.
- (9) It is unlawful to have a short-term rental within 250 feet of another short-term rental.

✓ **Sec. 4.13.006. Brochure and safety features.**

- (a) *Informational brochure.* Each registrant operating a Short-Term Rental shall provide to guests a brochure that includes:
  - (1) The registrant's 24-hour contact information;
  - (2) A local responsible party's 24-hour contract information if the owner is not with in the city limits when guests are renting the premises;
  - (3) Pertinent neighborhood information including, but not limited to, parking restrictions, restrictions on noise and amplified sound, and trash collection schedules; and
  - (4) Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts and updates.
- (b) *Safety features.* Each Short-Term Rental registrant shall provide, in the premises, working smoke detectors in accordance with adopted codes and at least one working carbon monoxide detector and alarm, and one working fire extinguisher. The premises shall, otherwise, comply with applicable Code of Ordinance requirements, including, but not limited to, Building and Fire Codes.

✓ **Sec. 4.13.007. Notification of approval of Short-Term Rental.**

Within ten days of the approval of a Short-Term Rental, the City will send notice to all property owners within 200 feet of the property and shall include the 24-hour complaint line, and pertinent information about this Article.

✓ **Sec. 4.13.008. Registration term, fees, and renewal.**

- (a) All registrations approved under this Chapter shall be valid for a period of one year from the date of its issuance.
- (b) The fee for registration of a Short-Term Rental shall be \$125.00 with a late fee of twice the established fee.



- (c) Upon receipt of an application for renewal of the registration, the Director of Planning and Zoning or their designee may deny the renewal if there is reasonable cause to believe that:
- (1) The registrant has pled no contest to or been convicted of a violation of any ordinance of the city, or any state, or federal law related to operation of a Short-Term Rental on the premises or has permitted such a violation on the premises by any other person. Such violation may include, but is not limited to, parking, noise, littering, nuisance, destruction of property or disorderly conduct; or
  - (2) There are grounds for suspension, revocation or other registration sanction as provided in this Article.

#### **Sec. 4.13.009. Suspension and revocation of Short-Term Rental registration.**

- (a) The Planning and Zoning director, or his/her designee, may suspend and/or revoke a Short-Term Rental registration if it is determined that the activities set forth above in section 4.13.005 are determined to have occurred at the Short-Term Rental; or a Short-Term Rental unit is listed on a hosting platform or advertised elsewhere without being registered as required under section 4.13.003; or is perpetuating conditions interfering with use and enjoyment of properties within its vicinity; or is delinquent in filing or payment with the City of Leon Valley. Conditions interfering with use and enjoyment of properties within the vicinity of a Short-Term Rental include, but are not limited to:
- (1) The occurrence of any of the activities set forth in the Leon Valley of Ordinances including, but not limited to, noise disturbance, nuisance, drug offenses, or disorderly conduct;
  - ~~(2) Occupancy by several Short-Term Rental users exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum occupancy permitted pursuant to this chapter;~~
  - ~~(3) Parking of several motor vehicles exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum number of motor vehicles permitted at any Short-Term Rental pursuant to this chapter;~~
  - (4) Uninvited entry of Short-Term Rental occupants upon private property within 500 feet of the short-term rental;
  - (5) The occurrence of one or more nuisance parties.
- (b) In addition to section 4.13.011, a violation of any of the conditions in section 4.13.009(a) shall result in progressive enforcement:
- (1) Upon the first violation, the owner shall receive a written warning that includes a description of enforcement for future violations.
  - (2) Upon the second violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for six months from the date of termination.
  - (3) Upon the third violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for one year from the date of termination.
  - (4) Upon the fourth violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration at any time in the future.
- (c) During the time period that a Short-Term Rental registration is suspended or revoked, it shall be unlawful to advertise, offer to rent or rent, lease, sublease, license or sublicense the residential property subject to the suspension or revocation the within the City as a Short-Term Rental.



**Sec. 4.13.010. Appeal of denial, suspension or revocation of registration.**

✓ In the event an applicant has been denied registration or if a registration has been suspended or revoked, the party affected may appeal that action to the city manager by submitting a letter within ten business days of the denial, suspension or revocation. The city manager, or his/her designee, shall review the appeal at a staff level and decide within ten business days of receiving the appeal request and shall have the authority to uphold or reject the action complained of and order that the registration be granted or reinstated. However, should the city manager uphold the denial, suspension or revocation, they shall schedule a hearing before the city council at a regular or special meeting within 30 days of the denial, unless the applicant withdraws the appeal in writing. Such a hearing shall be an administrative hearing, and adherence to formal rules of evidence shall not be required. The decision of the city council may be appealed as allowed by law to any court with jurisdiction.

**Sec. 4.13.011. Violations and penalties.**

✓ Violation of this Article upon conviction shall be punished by a fine not to exceed the sum of \$500.00 for each offense and each day such violation shall continue shall be deemed to constitute a separate offense. Warnings, citations, and revocations may be issued to dwelling owners, operators, lessors, agents, occupants, tenants, and/or guests, depending on the nature of the violation. Dwelling owners are ultimately responsible for compliance with the requirements and restrictions imposed upon a Short-Term Rental by this article and for the conduct of their dwelling operators, lessors, agents, occupants, tenants, and guests, regardless of whether the owners are present at the dwelling.

DRAFT

Martinez EXHIBIT A

## ARTICLE 4.13 - SHORT-TERM RENTAL

### Sec. 4.13.001. Purpose and applicability.

The purpose of this article is to establish regulations for the registration and use of Short-Term Rentals for single-family living units. The requirements of this article apply only to Short-Term Rentals, as defined herein, located in residential zoning districts established under Chapter 15, Zoning of the City of Leon Valley Code of Ordinances. Nothing in this article, however, shall be construed to be a waiver of the requirement to assess and collect hotel occupancy taxes for any residential rental for a period of less than 30 consecutive days of property that is located outside of such residential only zoning districts.

### Sec. 4.13.002. Definitions.

*Advertise* means the written, audio, oral or other methods of drawing the public's attention whether by brochure, written literature or on-line posting to a Short-Term Rental to promote the availability of the Short-Term Rental.

*Hotel Occupancy Tax* means the hotel occupancy tax as defined in Chapter 11 of the Leon Valley Code of Ordinances and V.T.C.A. Texas Tax Code, Chapter 351.

*Local Emergency Contact* means an individual other than the applicant, who resides within 20 miles of the subject property, and who is designated by the owner/applicant to act as the owner's authorized agent if the owner has traveled outside of the immediate area or is otherwise unavailable. The local emergency contact should be reachable on a 24-hour basis, have access to the Short-Term Rental Property, and be authorized by the owner to act in the owner's absence to address any complaints, disturbances, and emergencies.

*Nuisance party* means an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.

*Owner* means any person, agent, operator, firm, trust, corporation, limited liability company, partnership or business organization having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or code official of the estate of such person if ordered to take possession of real property by a court. The term "owner" does not include the holder of a non-possessory security interest in the property.

*Party* means a social gathering of people or special event, including those who have not rented the residence, for the primary purpose of eating, drinking or entertainment in a manner that is disruptive to the surrounding properties.

*Short-Term Rental (STR)* means a residential dwelling unit, apartment, condominium or accessory dwelling, that may or may not be owner or lessee occupied; where sleeping areas are rented to overnight guests for a period less than 30 consecutive days (but not less than 12 hours). The term does not include:

- (1) A unit that is used for a nonresidential purpose, including an educational, health care, retail, restaurant, banquet space, or event center purpose or another similar use;
- (2) A bed and breakfast; or
- (3) A hotel/residence hotel.

**Sec. 4.13.003. Short-Term Rental registration requirements.**

No person shall hereafter advertise, offer to rent or rent, lease, sublease, license or sublicense a residential property within the City as a Short-Term Rental for which a registration has not been properly made and filed with the Planning and Zoning Department of the City. Registration shall be made upon forms furnished by the City for such purpose and shall specifically require the following minimum information:

- (1) Name, address, phone number and e-mail address of the property owner of the Short-Term Rental property;
- (2) Name, address, phone number and e-mail address of the designated Local Emergency Contact;
- (3) The maximum number of occupants permitted for the dwelling unit or sleeping room in accordance with subsection 4.13.005(b) of the Code of Ordinances;
- (4) A submission of a sketch floor plan of the dwelling with dimensional room layout; and
- (5) Site Plan/Survey of the property indicating maximum number of vehicles that can be legally parked on the property, without encroaching onto streets, sidewalks or alleys; other public rights-of-way or public property.

**Sec. 4.13.004. Right to inspect premises.**

The City of Leon Valley reserves the right, with reasonable notice to the Owner, to inspect the residential premises to determine compliance with this section as well as with the current adopted version of the International Property Maintenance Code.

- (a) If only a portion of the premises is offered for rent, then that portion plus shared amenities and points of access may be inspected.
- (b) If, upon completion of an inspection, the premises are found to be in violation of one or more provisions of applicable City Codes and Ordinances, the City shall provide written notice of such violation and shall set a re-inspection date for a violation to be corrected prior to its occupancy.

**Sec. 4.13.005. Restrictions on Short-Term Rentals.**

- (a) *External signage.* There shall be no external on-site or off-site advertising signs or displays indicating the property is a Short-Term Rental.
- (b) *Limit on occupants allowed.* No more than two adult guests per bedroom, plus no more than two additional adults shall be allowed when renting a property as a Short-Term Rental, except that there shall be a maximum occupancy of ten people, adult and children.
- (c) *Limits on the number of vehicles.* There shall be a maximum of one car per bedroom, or the maximum number of cars that can be accommodated in the garage and driveway, without extending over the public rights-of-way (alleys and sidewalks) whichever is less.
- (d) *Advertisements and contracts.* Any advertisement of the property as a Short-Term Rental and all rental contracts must contain language that specifies the allowed maximum number of occupants and maximum number of vehicles.
- (e) *Other restrictions.* It is unlawful:
  - (1) To operate or allow to be operated a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur;

- (2) To advertise or offer a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur; documented advertisement of the subject property as a Short-Term Rental, online or offline, shall be considered evidence of a violation of this article;
- (3) To operate a Short-Term Rental that does not comply with all applicable city and state laws and codes;
- (4) To operate a Short-Term Rental without paying the required hotel occupancy taxes;
- (5) To offer or allow the use of a Short-Term Rental for the sole or primary purpose of having a party venue;
- (6) To fail to include a written prohibition against the use of a Short-Term Rental for party venue in every advertisement, listing, or other publication offering the premises for rent;
- (7) To operate or allow to be operated a Short-Term Rental wherein a nuisance party occurs; and
- (8) Permit the use of Short-Term Rental for the purpose of housing sex offenders; operating a structured sober, recovery or other purpose living home or similar enterprise; selling illegal drugs; selling alcohol or another activity that requires a permit or license under the Alcoholic Beverage Code or operating as a sexually oriented business.
- (9) It is unlawful to have a short-term rental within 250 feet of another short-term rental.

#### **Sec. 4.13.006. Brochure and safety features.**

- (a) *Informational brochure.* Each registrant operating a Short-Term Rental shall provide to guests a brochure that includes:
  - (1) The registrant's 24-hour contact information;
  - (2) A local responsible party's 24-hour contract information if the owner is not with in the city limits when guests are renting the premises;
  - (3) Pertinent neighborhood information including, but not limited to, parking restrictions, restrictions on noise and amplified sound, and trash collection schedules; and
  - (4) Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts and updates.
- (b) *Safety features.* Each Short-Term Rental registrant shall provide, in the premises, working smoke detectors in accordance with adopted codes and at least one working carbon monoxide detector and alarm, and one working fire extinguisher. The premises shall, otherwise, comply with applicable Code of Ordinance requirements, including, but not limited to, Building and Fire Codes.

#### **Sec. 4.13.007. Notification of approval of Short-Term Rental.**

Within ten days of the approval of a Short-Term Rental, the City will send notice to all property owners within 200 feet of the property and shall include the 24-hour complaint line, and pertinent information about this Article.

#### **Sec. 4.13.008. Registration term, fees, and renewal.**

- (a) All registrations approved under this Chapter shall be valid for a period of one year from the date of its issuance.
- (b) The fee for registration of a Short-Term Rental shall be \$125.00 with a late fee of twice the established fee.

- (c) Upon receipt of an application for renewal of the registration, the Director of Planning and Zoning or their designee may deny the renewal if there is reasonable cause to believe that:
  - (1) The registrant has pled no contest to or been convicted of a violation of any ordinance of the city, or any state, or federal law related to operation of a Short-Term Rental on the premises or has permitted such a violation on the premises by any other person. Such violation may include, but is not limited to, parking, noise, littering, nuisance, destruction of property or disorderly conduct; or
  - (2) There are grounds for suspension, revocation or other registration sanction as provided in this Article.

**Sec. 4.13.009. Suspension and revocation of Short-Term Rental registration.**

- (a) The Planning and Zoning director, or his/her designee, may suspend and/or revoke a Short-Term Rental registration if it is determined that the activities set forth above in section 4.13.005 are determined to have occurred at the Short-Term Rental; or a Short-Term Rental unit is listed on a hosting platform or advertised elsewhere without being registered as required under section 4.13.003; or is perpetuating conditions interfering with use and enjoyment of properties within its vicinity; or is delinquent in filing or payment with the City of Leon Valley. Conditions interfering with use and enjoyment of properties within the vicinity of a Short-Term Rental include, but are not limited to:
  - (1) The occurrence of any of the activities set forth in the Leon Valley of Ordinances including, but not limited to, noise disturbance, nuisance, drug offenses, or disorderly conduct;
  - (2) Occupancy by several Short-Term Rental users exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum occupancy permitted pursuant to this chapter;
  - (3) Parking of several motor vehicles exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum number of motor vehicles permitted at any Short-Term Rental pursuant to this chapter;
  - (4) Uninvited entry of Short-Term Rental occupants upon private property within 500 feet of the short-term rental;
  - (5) The occurrence of one or more nuisance parties.
- (b) In addition to section 4.13.011, a violation of any of the conditions in section 4.13.009(a) shall result in progressive enforcement:
  - (1) Upon the first violation, the owner shall receive a written warning that includes a description of enforcement for future violations.
  - (2) Upon the second violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for six months from the date of termination.
  - (3) Upon the third violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for one year from the date of termination.
  - (4) Upon the fourth violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration at any time in the future.
- (c) During the time period that a Short-Term Rental registration is suspended or revoked, it shall be unlawful to advertise, offer to rent or rent, lease, sublease, license or sublicense the residential property subject to the suspension or revocation the within the City as a Short-Term Rental.

#### **Sec. 4.13.010. Appeal of denial, suspension or revocation of registration.**

In the event an applicant has been denied registration or if a registration has been suspended or revoked, the party affected may appeal that action to the city manager by submitting a letter within ten business days of the denial, suspension or revocation. The city manager, or his/her designee, shall review the appeal at a staff level and decide within ten business days of receiving the appeal request and shall have the authority to uphold or reject the action complained of and order that the registration be granted or reinstated. However, should the city manager uphold the denial, suspension or revocation, they shall schedule a hearing before the city council at a regular or special meeting within 30 days of the denial, unless the applicant withdraws the appeal in writing. Such a hearing shall be an administrative hearing, and adherence to formal rules of evidence shall not be required. The decision of the city council may be appealed as allowed by law to any court with jurisdiction.

#### **Sec. 4.13.011. Violations and penalties.**

Violation of this Article upon conviction shall be punished by a fine not to exceed the sum of \$500.00 for each offense and each day such violation shall continue shall be deemed to constitute a separate offense. Warnings, citations, and revocations may be issued to dwelling owners, operators, lessors, agents, occupants, tenants, and/or guests, depending on the nature of the violation. Dwelling owners are ultimately responsible for compliance with the requirements and restrictions imposed upon a Short-Term Rental by this article and for the conduct of their dwelling operators, lessors, agents, occupants, tenants, and guests, regardless of whether the owners are present at the dwelling.



**EXHIBIT A****ARTICLE 4.13 - SHORT-TERM RENTAL****Sec. 4.13.001. Purpose and applicability.**

The purpose of this article is to establish regulations for the registration and use of Short-Term Rentals for single-family living units. The requirements of this article apply only to Short-Term Rentals, as defined herein, located in residential zoning districts established under Chapter 15, Zoning of the City of Leon Valley Code of Ordinances. Nothing in this article, however, shall be construed to be a waiver of the requirement to assess and collect hotel occupancy taxes for any residential rental for a period of less than 30 consecutive days of property that is located outside of such residential only zoning districts.

**Sec. 4.13.002. Definitions.**

*Advertise* means the written, audio, oral or other methods of drawing the public's attention whether by brochure, written literature or on-line posting to a Short-Term Rental to promote the availability of the Short-Term Rental.

*Hotel Occupancy Tax* means the hotel occupancy tax as defined in Chapter 11 of the Leon Valley Code of Ordinances and V.T.C.A. Texas Tax Code, Chapter 351.

*Local Emergency Contact* means an individual other than the applicant, who resides within 20 miles of the subject property, and who is designated by the owner/applicant to act as the owner's authorized agent if the owner has traveled outside of the immediate area or is otherwise unavailable. The local emergency contact should be reachable on a 24-hour basis, have access to the Short-Term Rental Property, and be authorized by the owner to act in the owner's absence to address any complaints, disturbances, and emergencies.

*Nuisance party* means an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.

*Owner* means any person, agent, operator, firm, trust, corporation, limited liability company, partnership or business organization having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or code official of the estate of such person if ordered to take possession of real property by a court. The term "owner" does not include the holder of a non-possessory security interest in the property.

*Party* means a social gathering of people or special event, including those who have not rented the residence, for the primary purpose of eating, drinking or entertainment in a manner that is disruptive to the surrounding properties.

*Short-Term Rental (STR)* means a residential dwelling unit, apartment, condominium or accessory dwelling, that ~~are may or may not be~~ owner occupied or lessee occupied; where sleeping areas are rented to overnight guests for a period less than 30 consecutive days (but not less than 12 hours). The term does not include:

- (1) A unit that is used for a nonresidential purpose, including an educational, health care, retail, restaurant, banquet space, or event center purpose or another similar use;
- (2) A bed and breakfast; or
- (3) A hotel/residence hotel.

**Sec. 4.13.003. Short-Term Rental registration requirements.**

No person shall hereafter advertise, offer to rent or rent, lease, sublease, license or sublicense a residential property within the City as a Short-Term Rental for which a registration has not been properly made and filed with the Planning and Zoning Department of the City. Registration shall be made upon forms furnished by the City for such purpose and shall specifically require the following minimum information:

- (1) Name, address, phone number and e-mail address of the property owner of the Short-Term Rental property;
- (2) Name, address, phone number and e-mail address of the designated Local Emergency Contact;
- (3) The maximum number of occupants permitted for the dwelling unit or sleeping room in accordance with subsection 4.13.005(b) of the Code of Ordinances;
- (4) A submission of a sketch floor plan of the dwelling with dimensional room layout; and
- (5) Site Plan/Survey of the property indicating maximum number of vehicles that can be legally parked on the property, without encroaching onto streets, sidewalks or alleys; other public rights-of-way or public property.

**Sec. 4.13.004. Right to inspect premises.**

The City of Leon Valley reserves the right, with reasonable notice to the Owner, to inspect the residential premises to determine compliance with this section as well as with the current adopted version of the International Property Maintenance Code.

- (a) If only a portion of the premises is offered for rent, then that portion plus shared amenities and points of access may be inspected.
- (b) If, upon completion of an inspection, the premises are found to be in violation of one or more provisions of applicable City Codes and Ordinances, the City shall provide written notice of such violation and shall set a re-inspection date for a violation to be corrected prior to its occupancy.

**Sec. 4.13.005. Restrictions on Short-Term Rentals.**

- (a) *External signage.* There shall be no external on-site or off-site advertising signs or displays indicating the property is a Short-Term Rental.
- (b) *Limit on occupants allowed.* No more than two adult guests per bedroom, plus no more than two additional adults shall be allowed when renting a property as a Short-Term Rental, except that there shall be a maximum occupancy of ~~twelveen~~ people, adult and children.
- (c) *Limits on the number of vehicles.* There shall be a maximum of one car per bedroom, or the maximum number of cars that can be accommodated in the garage and driveway, without extending over the public rights-of-way (alleys and sidewalks) whichever is less.
- (d) *Advertisements and contracts.* Any advertisement of the property as a Short-Term Rental and all rental contracts must contain language that specifies the allowed maximum number of occupants and maximum number of vehicles.
- (e) *Other restrictions.* It is unlawful:
  - (1) To operate or allow to be operated a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur;

- (2) To advertise or offer a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur; documented advertisement of the subject property as a Short-Term Rental, online or offline, shall be considered evidence of a violation of this article;
- (3) To operate a Short-Term Rental that does not comply with all applicable city and state laws and codes;
- (4) To operate a Short-Term Rental without paying the required hotel occupancy taxes;
- (5) To offer or allow the use of a Short-Term Rental for the sole or primary purpose of having a party venue;
- (6) To fail to include a written prohibition against the use of a Short-Term Rental for party venue in every advertisement, listing, or other publication offering the premises for rent;
- (7) To operate or allow to be operated a Short-Term Rental wherein a nuisance party occurs; and
- (8) Permit the use of Short-Term Rental for the purpose of housing sex offenders; operating a structured sober, recovery or other purpose living home or similar enterprise; selling illegal drugs; selling alcohol or another activity that requires a permit or license under the Alcoholic Beverage Code or operating as a sexually oriented business.
- ~~(9) It is unlawful to have a short term rental within 250 feet of another short term rental.~~
- (9) An STR will be limited to 15% of the block face and will be awarded on a first come, first served basis.

#### **Sec. 4.13.006. Brochure and safety features.**

- (a) *Informational brochure.* Each registrant operating a Short-Term Rental shall provide to guests a brochure that includes:
  - (1) The registrant's 24-hour contact information;
  - (2) A local responsible party's 24-hour contract information if the owner is not within the city limits when guests are renting the premises;
  - (3) Pertinent neighborhood information including, but not limited to, parking restrictions, restrictions on noise and amplified sound, and trash collection schedules; and
  - (4) Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts and updates.
- (b) *Safety features.* Each Short-Term Rental registrant shall provide, in the premises, working smoke detectors in accordance with adopted codes and at least one working carbon monoxide detector and alarm, and one working fire extinguisher. The premises shall, otherwise, comply with applicable Code of Ordinance requirements, including, but not limited to, Building and Fire Codes.

#### **Sec. 4.13.007. Notification of approval of Short-Term Rental.**

Within ten days of the approval of a Short-Term Rental, the City will send notice to all property owners within 200 feet of the property and shall include the 24-hour complaint line, and pertinent information about this Article.

#### **Sec. 4.13.008. Registration term, fees, and renewal.**

- (a) All registrations approved under this Chapter shall be valid for a period of one year from the date of its issuance.
- (b) The fee for registration of a Short-Term Rental shall be ~~\$75~~\$125.00 with a late fee of twice the established fee.

- (c) Upon receipt of an application for renewal of the registration, the Director of Planning and Zoning or their designee may deny the renewal if there is reasonable cause to believe that:
  - (1) The registrant has pled no contest to or been convicted of a violation of any ordinance of the city, or any state, or federal law related to operation of a Short-Term Rental on the premises or has permitted such a violation on the premises by any other person. Such violation may include, but is not limited to, parking, noise, littering, nuisance, destruction of property or disorderly conduct; or
  - (2) There are grounds for suspension, revocation or other registration sanction as provided in this Article.

#### **Sec. 4.13.009. Suspension and revocation of Short-Term Rental registration.**

- (a) The Planning and Zoning director, or his/her designee, may suspend and/or revoke a Short-Term Rental registration if it is determined that the activities set forth above in section 4.13.005 are determined to have occurred at the Short-Term Rental; or a Short-Term Rental unit is listed on a hosting platform or advertised elsewhere without being registered as required under section 4.13.003; or is perpetuating conditions interfering with use and enjoyment of properties within its vicinity; or is delinquent in filing or payment with the City of Leon Valley. Conditions interfering with use and enjoyment of properties within the vicinity of a Short-Term Rental include, but are not limited to:
  - (1) The occurrence of any of the activities set forth in the Leon Valley of Ordinances including, but not limited to, noise disturbance, nuisance, drug offenses, or disorderly conduct;
  - (2) Occupancy by several Short-Term Rental users exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum occupancy permitted pursuant to this chapter;
  - (3) Parking of several motor vehicles exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum number of motor vehicles permitted at any Short-Term Rental pursuant to this chapter;
  - (4) Uninvited entry of Short-Term Rental occupants upon private property within 500 feet of the short-term rental;
  - (5) The occurrence of one or more nuisance parties.
- (b) In addition to section 4.13.011, a violation of any of the conditions in section 4.13.009(a) shall result in progressive enforcement:
  - (1) Upon the first violation, the owner shall receive a written warning that includes a description of enforcement for future violations.
  - (2) Upon the second violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for six months from the date of termination.
  - (3) Upon the third violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for one year from the date of termination.
  - (4) Upon the fourth violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration at any time in the future.
- (c) During the time period that a Short-Term Rental registration is suspended or revoked, it shall be unlawful to advertise, offer to rent or rent, lease, sublease, license or sublicense the residential property subject to the suspension or revocation the within the City as a Short-Term Rental.



#### **Sec. 4.13.010. Appeal of denial, suspension or revocation of registration.**

In the event an applicant has been denied registration or if a registration has been suspended or revoked, the party affected may appeal that action to the city manager by submitting a letter within ten business days of the denial, suspension or revocation. The city manager, or his/her designee, shall review the appeal at a staff level and decide within ten business days of receiving the appeal request and shall have the authority to uphold or reject the action complained of and order that the registration be granted or reinstated. However, should the city manager uphold the denial, suspension or revocation, they shall schedule a hearing before the city council at a regular or special meeting within 30 days of the denial, unless the applicant withdraws the appeal in writing. Such a hearing shall be an administrative hearing, and adherence to formal rules of evidence shall not be required. The decision of the city council may be appealed as allowed by law to any court with jurisdiction.

#### **Sec. 4.13.011. Violations and penalties.**

Violation of this Article upon conviction shall be punished by a fine not to exceed the sum of \$500.00 for each offense and each day such violation shall continue shall be deemed to constitute a separate offense. Warnings, citations, and revocations may be issued to dwelling owners, operators, lessors, agents, occupants, tenants, and/or guests, depending on the nature of the violation. Dwelling owners are ultimately responsible for compliance with the requirements and restrictions imposed upon a Short-Term Rental by this article and for the conduct of their dwelling operators, lessors, agents, occupants, tenants, and guests, regardless of whether the owners are present at the dwelling.

**Councilor Stevens- EXHIBIT A****ARTICLE 4.13 - SHORT-TERM RENTAL****Sec. 4.13.001. Purpose and applicability.**

The purpose of this article is to establish regulations for the registration and use of Short-Term Rentals for single-family living units. The requirements of this article apply only to Short-Term Rentals, as defined herein, located in residential zoning districts established under Chapter 15, Zoning of the City of Leon Valley Code of Ordinances. Nothing in this article, however, shall be construed to be a waiver of the requirement to assess and collect hotel occupancy taxes for any residential rental for a period of less than 30 consecutive days of property that is located outside of such residential only zoning districts.

**Sec. 4.13.002. Definitions.**

*Advertise* means the written, audio, oral or other methods of drawing the public's attention whether by brochure, written literature or on-line posting to a Short-Term Rental to promote the availability of the Short-Term Rental.

*Hotel Occupancy Tax* means the hotel occupancy tax as defined in Chapter 11 of the Leon Valley Code of Ordinances and V.T.C.A. Texas Tax Code, Chapter 351.

*Local Emergency Contact* means an individual other than the applicant, who resides within 20 miles of the subject property, and who is designated by the owner/applicant to act as the owner's authorized agent if the owner has traveled outside of the immediate area or is otherwise unavailable. The local emergency contact should be reachable on a 24-hour basis, have access to the Short-Term Rental Property, and be authorized by the owner to act in the owner's absence to address any complaints, disturbances, and emergencies.

*Nuisance party* means an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.

*Owner* means any person, agent, operator, firm, trust, corporation, limited liability company, partnership or business organization having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or code official of the estate of such person if ordered to take possession of real property by a court. The term "owner" does not include the holder of a non-possessory security interest in the property.

*Party* means a social gathering of people or special event, including those who have not rented the residence, for the primary purpose of eating, drinking or entertainment in a manner that is disruptive to the surrounding properties.

*Short-Term Rental (STR)* means a residential dwelling unit, apartment, condominium or accessory dwelling, that may or may not be owner or lessee occupied; where sleeping areas are rented to overnight guests for a period less than 30 consecutive days (but not less than 12 hours). The term does not include:

- (1) A unit that is used for a nonresidential purpose, including an educational, health care, retail, restaurant, banquet space, or event center purpose or another similar use;
- (2) A bed and breakfast; or
- (3) A hotel/residence hotel.

Groups of STRs:

Group A: STRs advertising overnight accommodations for eight (8) or less guests.

Group B: STRs advertising overnight accommodations for more than eight (8) guests but less than thirteen (13) guests.

Group C: STRs advertising overnight accommodations for thirteen (13) or more guests OR a property that has reached Level 2 of Escalated Enforcement at any point during the previous five (5) years.

**Sec. 4.13.003. Short-Term Rental registration requirements.**

Registration is recommended for all short-term rentals in Leon Valley. Only properties that have been registered are eligible for site-improvement grants and reimbursement of certain safety equipment through the City of Leon Valley's economic development department.

Registration is mandatory for all properties that allow or advertise overnight accommodations for greater than twelve (12) guests or those that have reached Level 2 of Escalated Enforcement (Sec. 4.13.004).

No person shall hereafter advertise, offer to rent or rent, lease, sublease, license or sublicense a residential property within the City as a Short Term Rental for which a registration has not been properly made and filed with the Planning and Zoning Department of the City. Registration shall be made upon forms furnished by the City for such purpose and shall specifically require the include the following minimum information:

- (1) Name, permanent mailing address, active phone number and e-mail address of the property owner of the Short-Term Rental property;
- (2) Name, address, phone number and e-mail address of the designated Local Emergency Contact; and
- (3) The maximum number of occupants permitted for the dwelling unit or sleeping room in accordance with subsection 4.13.005(b) of the Code of Ordinances;
- (4) A submission of a sketch floor plan of the dwelling with dimensional room layout (not required to be to-scale); and
- (5) Site Plan/Survey of the property indicating maximum number of vehicles that can be legally parked on the property, without encroaching onto streets, sidewalks or alleys; other public rights of way or public property.

**Sec. 4.13.004. Right to inspect premises.**

The City of Leon Valley reserves the right, with reasonable notice to the Owner, to inspect the residential premises to determine compliance with this section as well as with the current adopted version of the International Property Maintenance Code.

- (a) If only a portion of the premises is offered for rent, then that portion plus shared amenities and points of access may be inspected.
- (b) If, upon completion of an inspection, the premises are found to be in violation of one or more provisions of applicable City Codes and Ordinances, the City shall provide written notice of such violation and shall set a re-inspection date for a violation to be corrected prior to its occupancy.

**Sec. 4.13.004. Escalated Enforcement of Nuisances at Short-Term Rentals**

(a) Level 1

(1) Warning mailed via certified mail to registered property owner and any other parties that manage or control property

(2) Warning to contain nature of violations, applicable laws, optional recommendations for preventing violations in the future, and information on registration tiers and escalated enforcement ladder.

(b) Level 2

(1) Prerequisite: Warning mailed via certified mail must have been provided in accordance with Level 1 of Escalated Enforcement.

(2) Citation is provided to owner or agent.

(3) Requirement to register as Type C STR and written plan of action, approved by staff, to eliminate or prevent recurrence of nuisance.

(c) Level 3

(1) Prerequisite: Warning must have been mailed via certified mail in accordance with Level 1 of Escalated Enforcement, Citation must have been provided in accordance with Level 2 of Escalated Enforcement

(2) Citation Given and Cease and Desist Demand Provided to Owner or Agent via certified mail or in-person, or both

(3) Requirement to Obtain Certificate of Occupancy.

(4) Requirement to have a detailed plan of action, approved by staff, addressing past violations and how they will be mitigated in the future

(d) Level 4

(1) Prerequisite: Level 1, Level 2, and Level 3 of Escalated Enforcement

(2) Citation Given for violation.

(2) Revocation of Certificate of Occupancy, Eligible to re-apply for Certificate of Occupancy and Register as Type C STR no sooner than 365 days from the date of Citation.

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**Sec. 4.13.005. Restrictions on Short-Term Rentals.**

- ~~(a) External signage. There shall be no external on-site or off-site advertising signs or displays indicating the property is a Short-Term Rental.~~
- ~~(b) Unconstitutional – Zaatar v. City of Austin, Freedom of Assembly. Limit on occupants allowed. No more than two adult guests per bedroom, plus no more than two additional adults shall be allowed when renting a property as a Short-Term Rental, except that there shall be a maximum occupancy of ten people, adult and children.~~
- ~~(c) Limits on the number of vehicles. There shall be a maximum of one car per bedroom, or the maximum number of cars that can be accommodated in the garage and driveway, without extending over the public rights-of-way (alleys and sidewalks) whichever is less.~~
- ~~(d) Advertisements and contracts. Any advertisement of the property as a Short-Term Rental and all rental contracts must contain language that specifies the allowed maximum number of occupants and maximum number of vehicles.~~
- ~~(e) Other restrictions. It is unlawful:~~

  - ~~(1) To operate or allow to be operated a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur;~~



- ~~(2) To advertise or offer a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur; documented advertisement of the subject property as a Short-Term Rental, online or offline, shall be considered evidence of a violation of this article;~~
- (3) To operate a Short-Term Rental that does not comply with all applicable city and state laws and codes;
- ~~(4) To operate a Short-Term Rental without paying the required hotel occupancy taxes;~~
- (5) To offer or allow the use of a Short-Term Rental for the sole or primary purpose of having a party venue;
- ~~(6) To fail to include a written prohibition against the use of a Short-Term Rental for party venue in every advertisement, listing, or other publication offering the premises for rent;~~
- (7) To operate or allow to be operated a Short-Term Rental wherein a nuisance party occurs; and
- (8) Permit the use of Short-Term Rental for the purpose of housing sex offenders; operating a structured sober, recovery or other purpose living home or similar enterprise; selling illegal drugs; selling alcohol or another activity that requires a permit or license under the Alcoholic Beverage Code or operating as a sexually oriented business.
- ~~(9) It is unlawful to have a short-term rental within 10250 feet of another short-term rental. Short term rentals registered through the city of Leon Valley prior to December 31, 2024 are exempt from this requirement.~~

#### Sec. 4.13.006. Brochure and safety features.

- (a) *Informational brochure.* Each registrant operating a Short-Term Rental ~~shall be recommended to~~ provide to guests a brochure that includes:
  - (1) The registrant's 24-hour contact information;
  - (2) A local responsible party's 24-hour contract information if the owner is not with in the city limits when guests are renting the premises;
  - (3) Pertinent neighborhood information including, but not limited to, ~~parking restrictions,~~ restrictions on noise and amplified sound, and trash collection schedules; and
  - (4) Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts and updates.
- (b) *Safety features.* Each Short-Term Rental registrant shall provide, in the premises, working smoke detectors in accordance with adopted codes, ~~and~~ at least one working carbon monoxide detector and alarm ~~if natural gas is available on property,~~ and one working fire extinguisher. ~~The premises shall, otherwise, comply with applicable Code of Ordinance requirements, including, but not limited to, Building and Fire Codes.~~

#### ~~Sec. 4.13.007. Notification of approval of Short-Term Rental.~~

~~Within ten days of the approval of a Short-Term Rental, the City will send notice to all property owners within 200 feet of the property and shall include the 24-hour complaint line, and pertinent information about this Article.~~

#### Sec. 4.13.008. Registration term, fees, and renewal.

- (a) All registrations approved under this Chapter shall be valid for a period of ~~one~~ three years from the date of its issuance.

- (b) The fee for registration of a Short-Term Rental shall be ~~\$\$\$425.00 prior to December 31, 2023 and \$75.00 after December 31, 2023~~ with a late fee of twice the established fee. ~~Registration fees not applicable to Group A STRs.~~
- (c) Upon receipt of an application for renewal of the registration, the Director of Planning and Zoning or their designee may deny the renewal if there is reasonable cause to believe that ~~there are grounds for suspension, revocation or other registration sanction as provided in this Article.~~

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- ~~(1) The registrant has pled no contest to or been convicted of a violation of any ordinance of the city, or any state, or federal law related to operation of a Short-Term Rental on the premises or has permitted such a violation on the premises by any other person. Such violation may include, but is not limited to, parking, noise, littering, nuisance, destruction of property or disorderly conduct; or~~
- ~~(2) There are grounds for suspension, revocation or other registration sanction as provided in this Article.~~

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#### Sec. 4.13.009. Suspension and revocation of Short-Term Rental registration.

- (a) The Planning and Zoning director, or his/her designee, may suspend and/or revoke a Short-Term Rental registration if it is determined that the activities set forth above in section 4.13.005 are determined to have occurred at the Short-Term Rental; or a Short-Term Rental unit ~~is listed on a hosting platform or advertised elsewhere without being registered as required~~ ~~has reached Escalated Enforcement Level 4 under section 4.13.0013;~~ or is perpetuating conditions interfering with use and enjoyment of properties within its vicinity; or is delinquent in filing or payment with the City of Leon Valley. Conditions interfering with use and enjoyment of properties within the vicinity of a Short-Term Rental include, but are not limited to:
- (1) ~~The occurrence of any of the activities set forth in the Leon Valley of Ordinances including, but not limited to, noise disturbance, nuisance, drug offenses, or disorderly conduct;~~
- (2) ~~Occupancy by several Short-Term Rental users exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum occupancy permitted pursuant to this chapter;~~
- (3) ~~Parking of several motor vehicles exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum number of motor vehicles permitted at any Short-Term Rental pursuant to this chapter;~~
- (4) ~~Uninvited entry of Short-Term Rental occupants upon private property within 500 feet of the short-term rental;~~
- (5) ~~The occurrence of one or more nuisance parties;~~
- (b) ~~In addition to section 4.13.011, a violation of any of the conditions in section 4.13.009(a) shall result in progressive enforcement:~~
- (1) ~~Upon the first violation, the owner shall receive a written warning that includes a description of enforcement for future violations.~~
- (2) ~~Upon the second violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for six months from the date of termination.~~
- (3) ~~Upon the third violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for one year from the date of termination.~~
- (4) ~~Upon the fourth violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration at any time in the future.~~

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- (c) During the time period that a Short-Term Rental registration is suspended or revoked, it shall be unlawful to advertise, offer to rent or rent, lease, sublease, license or sublicense the residential property subject to the suspension or revocation the within the City as a Short-Term Rental.

**Sec. 4.13.010. Appeal of denial, suspension or revocation of registration.**

In the event an applicant has been denied registration or if a registration has been suspended or revoked, the party affected may appeal that action to the city manager by submitting a letter within ten business days of the denial, suspension or revocation. The city manager, or his/her designee, shall review the appeal at a staff level and decide within ten business days of receiving the appeal request and shall have the authority to uphold or reject the action complained of and order that the registration be granted or reinstated. However, should the city manager uphold the denial, suspension or revocation, they shall schedule a hearing before the city council at a regular or special meeting within 30 days of the denial, unless the applicant withdraws the appeal in writing. Such a hearing shall be an administrative hearing, and adherence to formal rules of evidence shall not be required. The decision of the city council may be appealed as allowed by law to any court with jurisdiction.

**Sec. 4.13.011. Violations and penalties.**

Violation of this Article upon conviction shall be punished by a fine not to exceed the sum of \$500.00 for each offense and each day such violation shall continue shall be deemed to constitute a separate offense. Warnings, citations, and revocations may be issued to dwelling owners, operators, lessors, agents, occupants, tenants, and/or guests, depending on the nature of the violation. Dwelling owners are ultimately responsible for compliance with the requirements and restrictions imposed upon a Short-Term Rental by this article and for the conduct of their dwelling operators, lessors, agents, occupants, tenants, and guests, regardless of whether the owners are present at the dwelling.

**Sec. 4.13.012. Collection of Hotel Occupancy Taxes**

(a) The City Manager is responsible for drafting and executing Voluntary Collection Agreements (VCAs) with all short-term rental platforms. Agreements shall contain provisions for the quarterly remittance of hotel occupancy taxes to the City of Leon Valley for active STRs.

(b) The City Manager, or their designee, is responsible for drafting and executing Voluntary Collection Agreements (VCAs) with all short-term rental property owners who rent their properties independently or through platforms are not subject to a Voluntary Collection Agreement (VCA) through the platform, corporation, or marketplace.

(b) The City Manager is responsible for providing a Report to the Council on an annual basis containing the amount of hotel occupancy taxes collected from STRs, the amount of hotel occupancy taxes foregone due to noncompliance of a voluntary collection agreement with STR platforms, marketplaces, or owners, and an estimated amount of foregone hotel occupancy tax revenue due to inability to execute voluntary compliance agreements.

**EXHIBIT A****ARTICLE 4.13 - SHORT-TERM RENTAL****Sec. 4.13.001. Purpose and applicability.**

The purpose of this article is to establish regulations for the registration and use of Short-Term Rentals for single-family living units. The requirements of this article apply only to Short-Term Rentals, as defined herein, located in residential zoning districts established under Chapter 15, Zoning of the City of Leon Valley Code of Ordinances. Nothing in this article, however, shall be construed to be a waiver of the requirement to assess and collect hotel occupancy taxes for any residential rental for a period of less than 30 consecutive days of property that is located outside of such residential only zoning districts.

**Sec. 4.13.002. Definitions.**

*Advertise* means the written, audio, oral or other methods of drawing the public's attention whether by brochure, written literature or on-line posting to a Short-Term Rental to promote the availability of the Short-Term Rental.

*Hotel Occupancy Tax* means the hotel occupancy tax as defined in Chapter 11 of the Leon Valley Code of Ordinances and V.T.C.A. Texas Tax Code, Chapter 351.

*Local Emergency Contact* means an individual other than the applicant, who resides within 20 miles of the subject property, and who is designated by the owner/applicant to act as the owner's authorized agent if the owner has traveled outside of the immediate area or is otherwise unavailable. The local emergency contact should be reachable on a 24-hour basis, have access to the Short-Term Rental Property, and be authorized by the owner to act in the owner's absence to address any complaints, disturbances, and emergencies.

*Nuisance party* means an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.

*Owner* means any person, agent, operator, firm, trust, corporation, limited liability company, partnership or business organization having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or code official of the estate of such person if ordered to take possession of real property by a court. The term "owner" does not include the holder of a non-possessory security interest in the property.

*Party* means a social gathering of people or special event, including those who have not rented the residence, for the primary purpose of eating, drinking or entertainment in a manner that is disruptive to the surrounding properties.

*Short-Term Rental (STR)* means a residential dwelling unit, apartment, condominium or accessory dwelling, that ~~are may or may not be~~ owner occupied or lessee occupied; where sleeping areas are rented to overnight guests for a period less than 30 consecutive days (but not less than 12 hours). The term does not include:

- (1) A unit that is used for a nonresidential purpose, including an educational, health care, retail, restaurant, banquet space, or event center purpose or another similar use;
- (2) A bed and breakfast; or
- (3) A hotel/residence hotel.

**Sec. 4.13.003. Short-Term Rental registration requirements.**

No person shall hereafter advertise, offer to rent or rent, lease, sublease, license or sublicense a residential property within the City as a Short-Term Rental for which a registration has not been properly made and filed with the Planning and Zoning Department of the City. Registration shall be made upon forms furnished by the City for such purpose and shall specifically require the following minimum information:

- (1) Name, address, phone number and e-mail address of the property owner of the Short-Term Rental property;
- (2) Name, address, phone number and e-mail address of the designated Local Emergency Contact;
- (3) The maximum number of occupants permitted for the dwelling unit or sleeping room in accordance with subsection 4.13.005(b) of the Code of Ordinances;
- (4) A submission of a sketch floor plan of the dwelling with dimensional room layout; and
- (5) Site Plan/Survey of the property indicating maximum number of vehicles that can be legally parked on the property, without encroaching onto streets, sidewalks or alleys; other public rights-of-way or public property.

**Sec. 4.13.004. Right to inspect premises.**

The City of Leon Valley reserves the right, with reasonable notice to the Owner, to inspect the residential premises to determine compliance with this section as well as with the current adopted version of the International Property Maintenance Code.

- (a) If only a portion of the premises is offered for rent, then that portion plus shared amenities and points of access may be inspected.
- (b) If, upon completion of an inspection, the premises are found to be in violation of one or more provisions of applicable City Codes and Ordinances, the City shall provide written notice of such violation and shall set a re-inspection date for a violation to be corrected prior to its occupancy.

**Sec. 4.13.005. Restrictions on Short-Term Rentals.**

- (a) *External signage.* There shall be no external on-site or off-site advertising signs or displays indicating the property is a Short-Term Rental.
- (b) *Limit on occupants allowed.* No more than two adult guests per bedroom, plus no more than two additional adults shall be allowed when renting a property as a Short-Term Rental, except that there shall be a maximum occupancy of ~~twelve~~ eleven people, adult and children.
- (c) *Limits on the number of vehicles.* There shall be a maximum of one car per bedroom, or the maximum number of cars that can be accommodated in the garage and driveway, without extending over the public rights-of-way (alleys and sidewalks) whichever is less.
- (d) *Advertisements and contracts.* Any advertisement of the property as a Short-Term Rental and all rental contracts must contain language that specifies the allowed maximum number of occupants and maximum number of vehicles.
- (e) *Other restrictions.* It is unlawful:
  - (1) To operate or allow to be operated a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur;



- (2) To advertise or offer a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur; documented advertisement of the subject property as a Short-Term Rental, online or offline, shall be considered evidence of a violation of this article;
  - (3) To operate a Short-Term Rental that does not comply with all applicable city and state laws and codes;
  - (4) To operate a Short-Term Rental without paying the required hotel occupancy taxes;
  - (5) To offer or allow the use of a Short-Term Rental for the sole or primary purpose of having a party venue;
  - (6) To fail to include a written prohibition against the use of a Short-Term Rental for party venue in every advertisement, listing, or other publication offering the premises for rent;
  - (7) To operate or allow to be operated a Short-Term Rental wherein a nuisance party occurs; and
  - (8) Permit the use of Short-Term Rental for the purpose of housing sex offenders; operating a structured sober, recovery or other purpose living home or similar enterprise; selling illegal drugs; selling alcohol or another activity that requires a permit or license under the Alcoholic Beverage Code or operating as a sexually oriented business.
- ~~(9) It is unlawful to have a short term rental within 250 feet of another short term rental.~~
- (9) An STR will be limited to 15% of the block face and will be awarded on a first come, first served basis.

#### **Sec. 4.13.006. Brochure and safety features.**

- (a) *Informational brochure.* Each registrant operating a Short-Term Rental shall provide to guests a brochure that includes:
  - (1) The registrant's 24-hour contact information;
  - (2) A local responsible party's 24-hour contract information if the owner is not within the city limits when guests are renting the premises;
  - (3) Pertinent neighborhood information including, but not limited to, parking restrictions, restrictions on noise and amplified sound, and trash collection schedules; and
  - (4) Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts and updates.
- (b) *Safety features.* Each Short-Term Rental registrant shall provide, in the premises, working smoke detectors in accordance with adopted codes and at least one working carbon monoxide detector and alarm, and one working fire extinguisher. The premises shall, otherwise, comply with applicable Code of Ordinance requirements, including, but not limited to, Building and Fire Codes.

#### **Sec. 4.13.007. Notification of approval of Short-Term Rental.**

Within ten days of the approval of a Short-Term Rental, the City will send notice to all property owners within 200 feet of the property and shall include the 24-hour complaint line, and pertinent information about this Article.

#### **Sec. 4.13.008. Registration term, fees, and renewal.**

- (a) All registrations approved under this Chapter shall be valid for a period of one year from the date of its issuance.
- (b) The fee for registration of a Short-Term Rental shall be \$~~75~~125.00 with a late fee of twice the established fee.

- (c) Upon receipt of an application for renewal of the registration, the Director of Planning and Zoning or their designee may deny the renewal if there is reasonable cause to believe that:
  - (1) The registrant has pled no contest to or been convicted of a violation of any ordinance of the city, or any state, or federal law related to operation of a Short-Term Rental on the premises or has permitted such a violation on the premises by any other person. Such violation may include, but is not limited to, parking, noise, littering, nuisance, destruction of property or disorderly conduct; or
  - (2) There are grounds for suspension, revocation or other registration sanction as provided in this Article.

#### **Sec. 4.13.009. Suspension and revocation of Short-Term Rental registration.**

- (a) The Planning and Zoning director, or his/her designee, may suspend and/or revoke a Short-Term Rental registration if it is determined that the activities set forth above in section 4.13.005 are determined to have occurred at the Short-Term Rental; or a Short-Term Rental unit is listed on a hosting platform or advertised elsewhere without being registered as required under section 4.13.003; or is perpetuating conditions interfering with use and enjoyment of properties within its vicinity; or is delinquent in filing or payment with the City of Leon Valley. Conditions interfering with use and enjoyment of properties within the vicinity of a Short-Term Rental include, but are not limited to:
  - (1) The occurrence of any of the activities set forth in the Leon Valley of Ordinances including, but not limited to, noise disturbance, nuisance, drug offenses, or disorderly conduct;
  - (2) Occupancy by several Short-Term Rental users exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum occupancy permitted pursuant to this chapter;
  - (3) Parking of several motor vehicles exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum number of motor vehicles permitted at any Short-Term Rental pursuant to this chapter;
  - (4) Uninvited entry of Short-Term Rental occupants upon private property within 500 feet of the short-term rental;
  - (5) The occurrence of one or more nuisance parties.
- (b) In addition to section 4.13.011, a violation of any of the conditions in section 4.13.009(a) shall result in progressive enforcement:
  - (1) Upon the first violation, the owner shall receive a written warning that includes a description of enforcement for future violations.
  - (2) Upon the second violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for six months from the date of termination.
  - (3) Upon the third violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for one year from the date of termination.
  - (4) Upon the fourth violation, the registration for the Short-Term Rental shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration at any time in the future.
- (c) During the time period that a Short-Term Rental registration is suspended or revoked, it shall be unlawful to advertise, offer to rent or rent, lease, sublease, license or sublicense the residential property subject to the suspension or revocation the within the City as a Short-Term Rental.

#### **Sec. 4.13.010. Appeal of denial, suspension or revocation of registration.**

In the event an applicant has been denied registration or if a registration has been suspended or revoked, the party affected may appeal that action to the city manager by submitting a letter within ten business days of the denial, suspension or revocation. The city manager, or his/her designee, shall review the appeal at a staff level and decide within ten business days of receiving the appeal request and shall have the authority to uphold or reject the action complained of and order that the registration be granted or reinstated. However, should the city manager uphold the denial, suspension or revocation, they shall schedule a hearing before the city council at a regular or special meeting within 30 days of the denial, unless the applicant withdraws the appeal in writing. Such a hearing shall be an administrative hearing, and adherence to formal rules of evidence shall not be required. The decision of the city council may be appealed as allowed by law to any court with jurisdiction.

#### **Sec. 4.13.011. Violations and penalties.**

Violation of this Article upon conviction shall be punished by a fine not to exceed the sum of \$500.00 for each offense and each day such violation shall continue shall be deemed to constitute a separate offense. Warnings, citations, and revocations may be issued to dwelling owners, operators, lessors, agents, occupants, tenants, and/or guests, depending on the nature of the violation. Dwelling owners are ultimately responsible for compliance with the requirements and restrictions imposed upon a Short-Term Rental by this article and for the conduct of their dwelling operators, lessors, agents, occupants, tenants, and guests, regardless of whether the owners are present at the dwelling.

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**BRADSHAW-EXHIBIT A****ARTICLE 15.03.3XX4.13- SHORT-TERM RENTAL****Sec. 4.13.001. Purpose and applicability.**

The purpose of this article is to establish regulations for the registration and use of Short-Term Rentals for single-family living units. The requirements of this article apply only to Short-Term Rentals, as defined herein, located in residential zoning districts established under Chapter 15, Zoning of the City of Leon Valley Code of Ordinances. Nothing in this article, however, shall be construed to be a waiver of the requirement to assess and collect hotel occupancy taxes for any residential rental for a period of less than 30 consecutive days of property that is located outside of such residential only zoning districts.

**Sec. 4.13.002. Definitions.**

~~Advertise means the written, audio, oral or other methods of drawing the public's attention whether by brochure, written literature or on-line posting to a Short-Term Rental to promote the availability of the Short-Term Rental.~~

*Hotel Occupancy Tax* means the hotel occupancy tax as defined in Chapter 11 of the Leon Valley Code of Ordinances and V.T.C.A. Texas Tax Code, Chapter 351.

*Local Emergency Contact* means an individual other than the applicant, who resides within 20 miles of the subject property, and who is designated by the owner/applicant to act as the owner's authorized agent if the owner has traveled outside of the immediate area or is otherwise unavailable. ~~The local emergency contact should be reachable on a 24-hour basis, have access to the Short-Term Rental Property, and be authorized by the owner to act in the owner's absence to address any complaints, disturbances, and emergencies.~~

~~Nuisance party means an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.~~

*Owner* means any person, agent, operator, firm, trust, corporation, limited liability company, partnership or business organization having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or code official of the estate of such person if ordered to take possession of real property by a court. The term "owner" does not include the holder of a non-possessory security interest in the property.

~~Party means a social gathering of people or special event, including those who have not rented the residence, for the primary purpose of eating, drinking or entertainment in a manner that is disruptive to the surrounding properties.~~

~~Primary Residence means the usual dwelling place of the applicant's residential dwelling and is documented as such by at least two of the following: Motor vehicle registration, driver's license, Texas State Identification card, voter registration, or property tax documents. For the purposes of this chapter, a person may have only one primary residence.~~

*Short-Term Rental (STR)* means a residential dwelling unit, apartment, condominium or accessory dwelling, that may or may not be owner or lessee occupied; where sleeping areas are rented to overnight guests for a period less than 30 consecutive days (but not less than 12 hours). The term does not include:



- (1) A unit that is used for a nonresidential purpose, including an educational, health care, retail, restaurant, banquet space, or event center purpose or another similar use;
- (2) A bed and breakfast; or
- (3) A hotel/residence hotel.

#### **Sec. 4.13.003. Short-Term Rental registration requirements.**

No person shall hereafter advertise, offer to rent or rent, lease, sublease, license or sublicense a residential property within the City as a Short-Term Rental for which a registration has not been properly made and filed with the Planning and Zoning Department/Development Services Department of the City. Registration may shall be made upon forms furnished by the City for such purpose and shall specifically require may include the following minimum information:

- (1) ~~(1)~~ Name, address, phone number and e-mail address of the property owner of the Short-Term Rental property;
- (2) ~~To operate or allow to be operated a Short-Term Rental it is recommended to first register, in accordance with this article, the property in which the rental is to occur;~~
- (2) ~~Verification of that this Short-Term Rental property is the applicant's Primary Residence;~~
- (3) Name, address, phone number and e-mail address of the designated Local Emergency Contact;
- (4) ~~The maximum number of occupants permitted for the dwelling unit or sleeping room in accordance with subsection 4.13.005(b) of the Code of Ordinances;~~
- (5) ~~A submission of a sketch floor plan of the dwelling with dimensional room layout; and~~
- (6) ~~Site Plan/Survey of the property indicating maximum number of vehicles that can be legally parked on the property, without encroaching onto streets, sidewalks or alleys; other public rights of way or public property.~~

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#### **Sec. 4.13.004. Right to inspect premises.**

The City of Leon Valley reserves the right, with reasonable notice to the Owner, to inspect the residential premises to determine compliance with this section as well as with the current adopted version of the International Property Maintenance Code:

- (a) ~~If only a portion of the premises is offered for rent, then that portion plus shared amenities and points of access may be inspected.~~
- (b) ~~If, upon completion of an inspection, the premises are found to be in violation of one or more provisions of applicable City Codes and Ordinances, the City shall provide written notice of such violation and shall set a re-inspection date for a violation to be corrected prior to its occupancy.~~

#### **Sec. 4.13.005. Restrictions on Short-Term Rentals.**

- (a) ~~External signage.~~ There shall be no external on-site or off-site advertising signs or displays indicating the property is a Short-Term Rental.
- (b) ~~Limit on occupants allowed.~~ No more than two adult guests per bedroom, plus no more than two additional adults shall be allowed when renting a property as a Short-Term Rental, except that there shall be a maximum occupancy of ten people, adult and children.



- ~~(c) —Limits on the number of vehicles. There shall be a maximum of one car per bedroom, or the maximum number of cars that can be accommodated in the garage and driveway, without extending over the public rights-of-way (alleys and sidewalks) whichever is less.~~
- ~~(d) —Advertisements and contracts. Any advertisement of the property as a Short-Term Rental and all rental contracts must contain language that specifies the allowed maximum number of occupants and maximum number of vehicles.~~
- ~~(e) —Other restrictions. It is unlawful:~~
  - ~~(1) —To operate or allow to be operated a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur;~~
  - ~~(2) —To advertise or offer a Short-Term Rental without first registering, in accordance with this article, the property in which the rental is to occur; documented advertisement of the subject property as a Short-Term Rental, online or offline, shall be considered evidence of a violation of this article;~~
  - ~~(3) —To operate a Short-Term Rental in any location that is not the registrant's primary residence;~~
  - ~~(4) —To operate a Short-Term Rental that does not comply with all applicable city and state laws and codes;~~
  - ~~(5) —To operate a Short-Term Rental without paying the required hotel occupancy taxes;~~
  - ~~(6) —To offer or allow the use of a Short-Term Rental for the sole or primary purpose of having a party venue;~~
  - ~~(7) —To fail to include a written prohibition against the use of a Short-Term Rental for party venue in every advertisement, listing, or other publication offering the premises for rent;~~
  - ~~(8) —To operate or allow to be operated a Short-Term Rental wherein a nuisance party occurs; and~~
  - ~~(9) —Permit the use of Short-Term Rental for the purpose of housing sex offenders; operating a structured sober, recovery or other purpose living home or similar enterprise; selling illegal drugs; selling alcohol or another activity that requires a permit or license under the Alcoholic Beverage Code or operating as a sexually-oriented business;~~
  - ~~(10) —It is unlawful to have a short-term rental within 250 feet of another short-term rental.~~

#### **~~Sec. 4.13.006. Brochure and safety features.~~**

- ~~(a) —Informational brochure. Each registrant operating a Short-Term Rental shall provide to guests a brochure that includes:~~
  - ~~(1) —The registrant's 24-hour contact information;~~
  - ~~(2) —A local responsible party's 24-hour contact information if the owner is not with in the city limits when guests are renting the premises;~~
  - ~~(3) —Pertinent neighborhood information including, but not limited to, parking restrictions, restrictions on noise and amplified sound, and trash collection schedules; and~~
  - ~~(4) —Information to assist guests in the case of emergencies posing threats to personal safety or damage to property, including emergency and non-emergency telephone numbers for police, fire and emergency medical services providers and instructions for obtaining severe weather, natural or manmade disaster alerts and updates.~~
- ~~(b) —Safety features. Each Short-Term Rental registrant shall provide, in the premises, working smoke detectors in accordance with adopted codes and at least one working carbon monoxide detector and alarm, and one working fire extinguisher. The premises shall, otherwise, comply with applicable Code of Ordinance requirements, including, but not limited to, Building and Fire Codes.~~

**Sec. 4.13.007. Notification of approval of Short-Term Rental.**

Within ten days of the approval of a Short-Term Rental, the City will send notice to all property owners within 200 feet of the property and shall include the 24-hour complaint line, and pertinent information about this Article.

**Sec. 4.13.008. Registration term, fees, and renewal.**

- (a) All registrations approved under this Chapter shall be valid for a period of one year from the date of its issuance.
- (b) The fee for registration of a Short-Term Rental shall be \$ ~~25.00~~ with a late fee of twice the established fee.
- (c) Upon receipt of an application for renewal of the registration, the ~~Director of Planning and Zoning Development Services~~ or their designee may deny the renewal if there is reasonable cause to believe that:
  - (1) ~~The registrant has pled no contest to or been convicted of a violation of any ordinance of the city, or any state, or federal law related to operation of a Short-Term Rental on the premises or has permitted such a violation on the premises by any other person. Such violation may include, but is not limited to, parking, noise, littering, nuisance, destruction of property or disorderly conduct; or~~
  - (2) ~~There are grounds for suspension, revocation or other registration sanction as provided in this Article.~~

**Sec. 4.13.009. Suspension and revocation of Short-Term Rental registration.**

- (a) ~~The Planning and Zoning development services director~~, or his/her designee, may suspend and/or revoke a Short-Term Rental registration if it is determined that ~~the activities set forth above in section 4.13.005 are determined to have occurred at the Short-Term Rental; or a Short-Term Rental unit is listed on a hosting platform or advertised elsewhere without being registered as required under section 4.13.003; or a Short-Term Rental~~ is perpetuating conditions interfering with use and enjoyment of properties within its vicinity; or is delinquent in filing or payment with the City of Leon Valley. Conditions interfering with use and enjoyment of properties within the vicinity of a Short-Term Rental include, ~~but are not limited to:~~
  - (1) The occurrence of any of the activities set forth in the Leon Valley of Ordinances including, ~~but not limited to:~~
    - a) noise disturbance
    - b) nuisance;
    - c) drug offenses, or
    - d) disorderly conduct;
  - (2) ~~Occupancy by several Short-Term Rental users exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum occupancy permitted pursuant to this chapter;~~
  - (3) ~~Parking of several motor vehicles exceeding either (1) the maximum number included in the application for the Short-Term Rental registration or (2) the maximum number of motor vehicles permitted at any Short-Term Rental pursuant to this chapter;~~
  - (4) ~~Uninvited entry of Short-Term Rental occupants upon private property within 500 feet of the short-term rental;~~
  - (5) ~~The occurrence of one or more nuisance parties.~~

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(b) In addition to section 4.13.011, a ~~conviction violation~~ of any of the conditions in section 4.13.009(a) ~~may~~shall result in progressive enforcement:

- (1) Upon the first ~~conviction violation~~, the owner ~~may~~shall receive a written warning that includes a description of enforcement for future violations.
- (2) Upon the second ~~conviction violation~~, the registration for the Short-Term Rental ~~may~~shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for six months from the date of termination.
- (3) Upon the third ~~conviction violation~~, the registration for the Short-Term Rental ~~may~~shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration for one year from the date of termination.
- (4) Upon the fourth ~~conviction violation~~, the registration for the Short-Term Rental ~~may~~shall be terminated and the Short-Term Rental host prohibited from re-applying for a new registration at any time in the future.

~~(c) During the time period that a Short-Term Rental registration is suspended or revoked, it shall be unlawful to advertise, offer to rent or rent, lease, sublease, license or sublicense the residential property subject to the suspension or revocation the within the City as a Short-Term Rental.~~

#### **Sec. 4.13.010. Appeal of denial, suspension or revocation of registration.**

In the event an applicant has been denied registration or if a registration has been suspended or revoked, the party affected may appeal that action to the city manager by submitting a letter within ten business days of the denial, suspension or revocation. The city manager, or his/her designee, shall review the appeal at a staff level and decide within ten business days of receiving the appeal request and shall have the authority to uphold or reject the action complained of and order that the registration be granted or reinstated. However, should the city manager uphold the denial, suspension or revocation, they shall schedule a hearing before the city council at a regular or special meeting within 30 days of the denial, unless the applicant withdraws the appeal in writing. Such a hearing shall be an administrative hearing, and adherence to formal rules of evidence shall not be required. The decision of the city council may be appealed as allowed by law to any court with jurisdiction.

#### **Sec. 4.13.011. Violations and penalties.**

Violation of this Article upon conviction ~~may~~shall be punished by a fine not to exceed the sum of \$500.00 for each offense and each day such violation ~~may~~shall continue ~~may~~shall be deemed to constitute a separate offense. Warnings, citations, and revocations may be issued to dwelling owners, operators, lessors, agents, occupants, tenants, and/or guests, depending on the nature of the violation. Dwelling owners are ultimately responsible for compliance with the requirements and restrictions imposed upon a Short-Term Rental by this article and for the conduct of their dwelling operators, lessors, agents, occupants, tenants, and guests, regardless of whether the owners are present at the dwelling.

NO. 03-17-00812-CV  
TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

## Zaatari v. City of Austin

615 S.W.3d 172 (Tex. App. 2019)  
Decided Nov 27, 2019

NO. 03-17-00812-CV

11-27-2019

Ahmad ZAATARI, Marwa Zaatari, Jennifer Gibson Hebert, Joseph "Mike" Hebert, Lindsay Redwine, Ras Redwine VI, and Tim Klitch, Appellants, City of Austin, Texas; and Steve Adler, Mayor of The City of Austin, and the State of Texas, Cross-Appellants v. CITY OF AUSTIN, Texas; and Steve Adler, Mayor of The City of Austin, Appellees, Ahmad Zaatari, Marwa Zaatari, Jennifer Gibson Hebert, Joseph "Mike" Hebert, Lindsay Redwine, Ras Redwine VI, and Tim Klitch, Cross-Appellees

Jeff Rose, Chief Justice

### OPINION

These cross-appeals arise from challenges to a municipal ordinance amending the City of Austin's regulation of short-term rental properties. *See* Austin, Tex., Ordinance No. 20160223-A.1 (Feb. 23, 2016) (codified in Austin City Code chapters 25-2 and 25-12). Appellants Ahmad Zaatari, Marwa Zaatari, Jennifer Gibson Hebert, Joseph "Mike" Hebert, Lindsay Redwine, Ras Redwine VI, and Tim Klitch (collectively, "Property Owners") own homes in the Austin area and sued the City and its mayor (collectively, "the City"), asserting that certain provisions in the ordinance are unconstitutional. Specifically, the Property Owners challenged the ordinance provision that bans short-term rentals of non-homestead properties, *see id.* § 25-2-950, and the ordinance provision that controls conduct and

types of assembly at short-term rental properties, *see id.* § 25-2-795. The State intervened in the Property Owners' suit to contend that the ordinance's ban on short-term rentals of non-homestead properties is unconstitutional as a retroactive law and as an uncompensated taking of private property. The Property Owners and the State appeal from the district court's order granting the City's no-evidence motion for summary judgment and denying the Property Owners' and the State's traditional motions for summary judgment. The City and the State also challenge the district court's orders excluding certain evidence from the summary-judgment record. On cross-appeal, the City challenges the district court's order overruling the City's plea to the jurisdiction.

The ordinance provision banning non-homestead short-term rentals significantly affects property owners' substantial interests in well-recognized property rights while, on the record before us, serving a minimal, if any, public interest. Therefore, the provision is unconstitutionally retroactive, and we will reverse the district court's judgment on this issue and render judgment declaring the provision void. The ordinance provision restricting assembly infringes on Texans' fundamental right to assemble because it limits peaceable assembly on private property. Therefore, because the City has not demonstrated that the provision is narrowly tailored to serve a compelling state interest, the provision violates the Texas Constitution's guarantee to due course of law, and we will reverse the district court's judgment on this issue and render judgment

declaring the provision void. We will affirm the remainder of the judgment and remand the case to the district court for further proceedings consistent with this opinion.

## Background

In the last decade, individuals have increasingly turned to short-term rentals—typically, privately owned homes or apartments that are leased for a few days or weeks at a time—for lodging while traveling. *See, e.g.*, Donald J. Kochan, *The Sharing Stick in the Property Rights Bundle*, 86 U. Cin. L. Rev. 893, 894–95 (2018) (collecting sources). As short-term rentals have become more common, local governments have looked for ways to balance the rights of short-term rental property owners and tenants against the concerns of neighboring properties. In 2012, the City adopted an ordinance to regulate Austinites' ability to rent their properties through amendments to the zoning and land-development chapters of its municipal code. *See* Austin, Tex., Ordinance 20120802-122 (Aug. 2, 2012) (codified at Austin, Tex., Code Chs. 25-2 and 25-12). That ordinance defined short-term rental use as "the rental of a residential dwelling unit or accessory building, other than a unit or building associated with a group residential use, on a temporary or transient basis." *Id.* § 25-2-3(10). The 2012 ordinance also required property owners to satisfy eligibility criteria and obtain a license before being allowed to rent their property on a short-term basis. *Id.* §§ 25-2-788(B), 25-2-789(B).

In 2016, after conducting several studies and holding hearings regarding short-term rentals and their role in the community, the City adopted an ordinance amending its regulations of short-term rentals. *See* Austin, Tex., Ordinance 20160223-A.1. As amended by the 2016 ordinance, the City

<sup>181</sup> \*181 Code created three classes of short-term rentals:

- Type 1—single-family residence that is "owner-occupied or is associated with an owner-occupied principal residential unit," Austin, Tex., Code § 25-2-788(A);
- Type 2—single-family residence that "is not owner-occupied and is not associated with an owner-occupied principal residential unit," *id.* § 25-2-789(A); and
- Type 3—residence that is "part of a multi-family residential use," *id.* § 25-2-790(A).<sup>1</sup>

<sup>1</sup> The parties agree that, as a practical matter, type-1 status is determined based on whether the owner claims the property as a homestead for tax purposes. *See* Austin, Tex., Code § 25-2-788.

The ordinance immediately suspended the licensing of any new type-2 short-term rentals and established April 1, 2022, as the termination date for all type-2 rentals. *See id.* § 25-2-950.

The 2016 ordinance also imposed several restrictions on properties operated as short-term rentals, including:

- banning all assemblies, including "a wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity other than sleeping," whether inside or outside, after 10:00 p.m.;
- banning outdoor assemblies of more than six adults at any time;
- prohibiting more than six unrelated adults or ten related adults from using the property at any time; and
- giving City officials authority to "enter, examine, and survey" the short-term rentals to ensure compliance with applicable provisions of Code.



*See id.* §§ 25-2-795(D)–(G), 25-12-213-1301. Failure to comply with these provisions is punishable by a fine of up to \$2,000 and possible revocation of the operating license. *See id.* § 25-1-462.

In response to the ordinance, the Property Owners sued the City for declaratory and injunctive relief, alleging that section 25-2-795's assembly and occupancy restrictions and section 25-2-950's ban on type-2 short-term rentals violate, facially and as applied, constitutional rights to privacy, freedom of assembly and association, due course of law, equal protection, and freedom from unwarranted searches. *See* Tex. Const. art. I, §§ 3 (equal protection), 9 (searches), 19 (due course of law), 27 (assembly); *Texas State Emps. Union v. Texas Dep't of Mental Health & Mental Retardation*, 746 S.W.2d 203, 205 (Tex. 1987) (individual privacy).<sup>2</sup> The Property Owners also sought attorney fees. *See* Tex. Civ. Prac. & Rem. Code § 37.009. The State of Texas intervened in the Property Owners' case, arguing that section 25-2-950's termination of type-2 operating licenses by 2022 is unconstitutional as a retroactive law and an uncompensated taking of private property. *See* Tex. Const. art. I, §§ 16 (retroactive laws), 17 (takings).

<sup>2</sup> The Property Owners bring their privacy, assembly, and association claims within the framework of the due-course-of-law and equal-protection clauses of the Texas Constitution.

The Property Owners and the State moved for summary judgment on their constitutional challenges to the ordinance, providing evidentiary exhibits in support of those motions.<sup>3</sup> The City filed a plea to the jurisdiction and a no-evidence motion for summary judgment. The State and the

State's and the City's respective evidentiary objections. The Property Owners and the State appeal from the district court's order denying their motions for summary judgment and granting the City's motion for summary judgment. The State also appeals from the district court's order sustaining the City's evidentiary objections. The City cross-appeals from the district court's order overruling its plea to the jurisdiction and from the order sustaining the State's evidentiary challenges.

<sup>3</sup> The Property Owners' motion for summary judgment did not include their request for attorney fees.

## Jurisdiction

Because it implicates our authority to reach the merits of this dispute, we begin by addressing the district court's order overruling the City's plea to the jurisdiction. *See Crites v. Collins*, 284 S.W.3d 839, 840 (Tex. 2009) (noting that jurisdictional questions must be addressed before merits). A trial court's jurisdiction is a question of law we review de novo. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). "[I]f a plea to the jurisdiction challenges the existence of jurisdictional facts, we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised, as the trial court is required to do." *Id.* at 227 (citing *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000)). "[I]n a case in which the jurisdictional challenge implicates the merits of the plaintiffs' cause of action"—as is the case here—"and the plea to the jurisdiction includes evidence, the trial court reviews the relevant evidence to determine if a fact issue exists." *Id.* "If the evidence creates a fact question regarding the jurisdictional issue, then the trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the fact finder." *Id.* at 227–28.

The City's plea to the jurisdiction challenges the State's standing to intervene in this dispute, the Property Owners' standing to bring claims on behalf of tenants, and the ripeness of the

<sup>182</sup> City each filed objections to certain aspects \*182 of the evidentiary record. The district court denied the traditional motions for summary judgment, overruled the City's plea to the jurisdiction, granted the City's motion for no-evidence summary judgment, and sustained in part the

underlying claims. The plea also invokes governmental immunity, arguing that the Property Owners and the State have not pleaded any claim for which the City's immunity is waived or otherwise inapplicable. We address these arguments in turn.

## A. Standing

The City contests the State's standing to intervene in this matter and the Property Owners' standing to bring claims on behalf of their tenants. "Standing is implicit in the concept of subject matter jurisdiction," and is therefore properly challenged in a plea to the jurisdiction. *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). In general, to establish standing to seek redress for injury, "a plaintiff must be personally aggrieved." *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304 (Tex. 2008) (citing *Nootsie, Ltd. v. Williamson Cty. Appraisal Dist.*, 925 S.W.2d 659, 661 (Tex. 1996)). In addition, "his alleged injury must be concrete and particularized, actual or imminent, not hypothetical." *Id.* at 304–05 (citing *Raines v. Byrd*, 521 U.S. 811, 819, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997)); see *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992); *Brown v. Todd*, 53 S.W.3d 297, 305 (Tex. 2001); *Texas Ass'n of Bus.*, 852 S.W.2d at 444. "A plaintiff does not lack standing simply because he cannot prevail on the merits of his claim; he lacks standing because his claim of injury is too slight for a court to afford redress." *Inman*, 252 S.W.3d

183 at 305. These \*183 common-law standards, however, are not dispositive if the Legislature has conferred standing by statute. See *In re Sullivan*, 157 S.W.3d 911, 915 (Tex. App.—Houston [14th Dist.] 2005, orig. proceeding) (considering standing under certain provisions of Texas Family Code); but see *Grossman v. Wolfe*, 578 S.W.3d 250, 257 n.4 (Tex. App.—Austin 2019, pet. denied) (noting that U.S. Supreme Court has rejected statutorily created standing).

The State's standing to intervene in this matter is unambiguously conferred by the Uniform Declaratory Judgment Act, which provides:

In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard.

*Tex. Civ. Prac. & Rem. Code* § 37.006(b). The Property Owners filed suit in 2016, raising a constitutional challenge to the amendments enacted by ordinance 20160223-A.1. If they prevail, the unconstitutional provisions will be declared void. The suit therefore "involves the validity of a municipal ordinance" such that the State is "entitled to be heard" in this proceeding. *Id.*; see *Texas Ass'n of Bus. v. City of Austin*, 565 S.W.3d 425, 433–34 (Tex. App.—Austin 2018, pet. filed) (explaining State's right to intervene in constitutional challenge to municipal ordinance).

The City also contests the Property Owners' right to raise constitutional claims on behalf of their tenants. "Generally, courts must analyze the standing of each individual plaintiff to bring each individual claim he or she alleges." *Patel v. Texas Dep't of Licensing & Regulation*, 469 S.W.3d 69, 77 (Tex. 2015) (citing *Heckman v. Williamson County*, 369 S.W.3d 137, 152 (Tex. 2012)). "However, 'where there are multiple plaintiffs in a case who seek injunctive or declaratory relief ... the court need not analyze the standing of more than one plaintiff—so long as [one] plaintiff has standing to pursue as much or more relief than any of the other plaintiffs.' " *Id.* (quoting *Heckman*, 369 S.W.3d at 152 n.64). "The reasoning is fairly simple: if one plaintiff prevails on the merits, the same prospective relief will issue regardless of the standing of the other plaintiffs." *Id.* (citations omitted). Here, at least one of the Property

Owners is both an operating licensee and a tenant of short-term rentals. That property owner asks the court to enjoin enforcement of the ordinance and to declare it void in part due to allegedly unconstitutional provisions restricting short-term tenants' rights to association, assembly, freedom of movement, and privacy. As a tenant, she herself "ha[s] suffered some actual restriction" under the challenged provisions, and she seeks the greatest possible prospective relief the court might afford. *See id.* She therefore has standing to pursue these claims, and "we need not analyze the standing" of the remaining Property Owners with respect to claims brought on behalf of short-term tenants. *See id.*

## B. Ripeness

The City contends that because parts of the ordinance do not take effect until 2022 and because—in the City's view—the Property Owners have not yet suffered any concrete injury, any challenge to the ordinance is not yet ripe. We disagree.

Ripeness is a jurisdictional prerequisite to suit. *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442–43 (Tex. 1998). A claim ripens upon the existence of "a real and substantial controversy involving \*184 genuine conflict of tangible interests and not merely a theoretical dispute." *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995) (quoting *Bexar–Medina–Atascosa Cty. Water Control & Improvement Dist. No. 1 v. Medina Lake Prot. Ass'n*, 640 S.W.2d 778, 779–80 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.)). Ripeness requires "a live, non-abstract question of law that, if decided, would have a binding effect on the parties." *Heckman*, 369 S.W.3d at 147 (citing *Brown*, 53 S.W.3d at 305). Ripeness is "peculiarly a question of timing." *Perry v. Del Rio*, 66 S.W.3d 239, 249–51 (Tex. 2001) (quoting *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 140, 95 S.Ct. 335, 42 L.Ed.2d 320 (1974)). A case is not ripe if it involves "uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all."

*Patterson*, 971 S.W.2d at 442 (quoting 13A Charles A. Wright et al., *Federal Practice & Procedure* § 3532, at 112 (2d ed. 1984)).

This controversy is ripe for adjudication. The Property Owners raise a facial challenge to an ordinance adopted in February of 2016. Some provisions took effect immediately, others were retroactively applied to certain license applications filed in 2015, and others will take effect beginning April 1, 2022. It is undisputed that these provisions limit the Property Owners' rights with respect to their properties, including restricting the number of tenants, the term of tenancy, and the permissible uses of the property during short-term rental tenancy. The ordinance is already in effect, so there is no risk that its impact "may not occur at all." *Id.* at 442. Facial challenges to ordinances are "ripe upon enactment because at that moment the 'permissible uses of the property [were] known to a reasonable degree of certainty.'" *Hallco Tex., Inc. v. McMullen County*, 221 S.W.3d 50, 60 (Tex. 2006) (quoting *Palazzolo v. Rhode Island*, 533 U.S. 606, 620, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001)) (alteration in original).

And while the City argues the Property Owners have not yet "suffered economic harm" from the provision terminating type-2 operation in 2022, that fact would not forestall adjudication of this dispute even assuming, for the sake of argument, it is an accurate characterization of the circumstances. As a general matter, courts have long recognized that an aggrieved plaintiff may seek redress "when a wrongful act causes some legal injury ... even if all resulting damages have not yet occurred." *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996) (citing *Trinity River Auth. v. URS Consultants, Inc.*, 889 S.W.2d 259, 262 (Tex. 1994); *Quinn v. Press*, 135 Tex. 60, 140 S.W.2d 438, 440 (1940)). But more specifically, because the plaintiffs and intervenors allege a facial abridgment of their most fundamental rights under the United States and Texas Constitutions, the City's alleged constitutional overreach itself is an injury from which the Property Owners and the

State seek relief. *See Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 392–93, 108 S.Ct. 636, 98 L.Ed.2d 782 (1988) (finding jurisdiction over facial challenge where statute had not yet been enforced and no injury in fact had yet occurred); *City of Laredo v. Laredo Merchants Assoc.*, 550 S.W.3d 586, 590 (Tex. 2018) (allowing constitutional challenge to ordinance where suit filed before effective date); *Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 626–27 (Tex. 1996) (rejecting State's argument that plaintiffs "must actually be deprived of their property before they can maintain a [facial] challenge to this statute"). The district court did not err in rejecting the City's

185 ripeness arguments.\*185 **C. Jurisdiction over the Subject Matter**

In its final challenge to jurisdiction, the City invokes its immunity from suit. To overcome governmental immunity from suit and thereby establish jurisdiction over this case, the Property Owners must plead a viable claim for which governmental immunity is waived or otherwise inapplicable. *See Hearts Bluff Game Ranch, Inc. v. State*, 381 S.W.3d 468, 475 (Tex. 2012). Governmental immunity does not shield the City from viable claims for relief from unconstitutional acts. *See General Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 598 (Tex. 2001) ("[T]he doctrine does not shield the State from an action for compensation under the takings clause." (citations omitted)); *Board of Trustees v. O'Rourke*, 405 S.W.3d 228, 237 (Tex. App.—Houston [1st Dist.] 2013, no pet.) ("Generally, governmental immunity does not shield a governmental entity from a suit for declaratory relief based on alleged constitutional violations." (citations omitted)). Here, both the Property Owners and the State have raised constitutional challenges to the City's ordinance. As discussed in further detail in our analysis of summary judgment, two of these claims are meritorious—and thus viable—challenges to the constitutionality of the ordinance. Accordingly, the parties have

successfully established the district court's jurisdiction over the controversy, and the court did not err in overruling the City's plea to the jurisdiction.

We overrule the City's jurisdictional issues.

## Evidentiary Rulings

Before turning to the district court's orders granting the City's no-evidence motion for summary judgment and denying the two traditional motions, we must determine which evidence is properly before the court. *See Fort Brown Villas III Condo. Ass'n, Inc. v. Gillenwater*, 285 S.W.3d 879, 882 (Tex. 2009) (explaining importance of evidentiary rulings in context of no-evidence summary judgment). The State and the City filed objections to evidence offered on the cross-motions. The district court sustained these objections in part, and two evidentiary exhibits remain at issue on appeal. The State appeals from the district court's order excluding sworn declarations obtained from several owners of short-term rentals in the Austin area, and the City challenges the exclusion of thousands of pages documenting the legislative history of the ordinance, which the district court excluded as unnecessarily voluminous. A district court's decision to exclude evidence is reviewed for abuse of discretion. *Capital Metro. Transp. Auth v. Central of Tenn. Ry. & Nav. Co.*, 114 S.W.3d 573, 583 (Tex. App.—Austin 2003, pet. denied). "A trial court abuses its discretion if it acts without reference to any guiding rules and principles." *Id.* (quoting *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985)).

### A. Exclusion of State's Affidavits

The district court excluded several sworn declarations the State had obtained from owners of short-term rentals, accepting the City's argument that the declarations are irrelevant and that the names of the declarants were not timely disclosed by the State. We agree with the State that the district court abused its discretion in sustaining the objection.



To begin with, this evidence is relevant. "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." *Tex. R. Evid. 401*. Relevant evidence must be admitted unless admission is otherwise prohibited by state  
 186 \*186 or federal law. *Id.* R. 402. The disputed declarations include, for example, evidence of how long short-term rentals have existed in Austin, what makes them profitable, where they are located, how often they are occupied, and the financial impact the owners anticipate from the ordinance. This information is critical to "determining the action"—that is, determining whether the ordinance violates any constitutional rights—and is therefore relevant.

This relevant evidence was not rendered inadmissible by the State's allegedly untimely disclosure of the names of the declarants. "A party must respond to written discovery in writing within the time provided by court order or these rules." *Tex. R. Civ. P. 193.1*. "When responding to written discovery, a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made." *Id.* "If a party learns that the party's response to written discovery was incomplete or incorrect when made, or, although complete and correct when made, is no longer complete and correct, the party must amend or supplement the response...." *Id.* R. 193.5. "A party who fails to make, amend, or supplement a discovery response in a timely manner may not introduce in evidence the material or information that was not timely disclosed ... unless the court finds that: (1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties." *Id.* R. 193.6.

Under the circumstances of this case, the State timely disclosed its intent to rely on testimony from these owners. In mid-March 2017, before the close of discovery, the State explained in its response to the City's request for disclosure that "individuals who currently hold, or were previously granted, Short-Term Rental (STR) permits by [the City], and the individuals who testified at any public hearing on short-term rental regulations" were persons who had knowledge of facts relevant to its case. *See id.* R. 194.2(e) (authorizing party to request disclosure of names "of persons having knowledge of relevant facts"). When the State made this general disclosure, the City had recently—mid-February—provided discovery responses listing the names of all the short-term rental licensees, but the State had not yet had time to identify from that list the specific witnesses that it intended to rely on and the evidence those witnesses would provide. The State's response to the City's request was therefore complete "based on all information reasonably available to [the State] or its attorney at the time the response [wa]s made." *Id.* R. 193.1.

Once the State identified its witnesses and the evidence those witnesses would provide, it disclosed that information to the City in a supplemental disclosure. *See id.* R. 193.5(a) (requiring responding party to amend or supplement incomplete or incorrect discovery responses "reasonably promptly"). This supplementation occurred in mid-May 2017; three months after the State had received the evidentiary information from the City and approximately six months before the hearing at which the declarations were offered as evidence. As such, the State's supplementation was reasonably prompt. *See id.* ; *see also id.* R. 193.5(b) (amended or supplemental responses made less than 30 days before trial are presumed to not be reasonably prompt). Thus, the district court abused its discretion in sustaining the City's objection and excluding the declarations of Carole Price, Cary Reynolds, Pete Gilcrease, Gregory Cribbs, Rachel



187 Nation, and Travis \*187 Somerville. *See Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (noting that failure to analyze or apply law correctly constitutes abuse of discretion).

We sustain the State's evidentiary issue.

## B. Exclusion of City's Legislative History

The City complains of the district court's exclusion of its proffered legislative history, which the State had argued was "too voluminous" to be useful. We find it unnecessary to decide whether the exclusion was erroneous, as we may take judicial notice of this history. "The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *Tex. R. Evid. 201*. The City offers this history primarily as evidence of its need to address public concerns regarding the presence of short-term rentals in certain parts of Austin. Setting aside the question of whether the hearing testimony and other legislative history accurately characterize the impact of short-term rentals, the fact that these concerns were previously raised by residents and other stakeholders is a matter of municipal record and "is not subject to reasonable dispute." *Id.* We therefore will incorporate the aspects of this history that the City relies on in our analysis of the merits of this dispute.

## Summary Judgment

The district court granted the City's no-evidence motion for summary judgment and denied the traditional motions filed by the Property Owners and the State. "When ... parties move for summary judgment on overlapping issues and the trial court grants one motion and denies the other[s], we consider the summary-judgment evidence presented by both sides and determine all questions presented." *Texas Ass'n of Acupuncture & Oriental Med. v. Texas Bd. of Chiropractic*

*Exam'rs*, 524 S.W.3d 734, 738 (Tex. App.—Austin 2017) (citing *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005)). "If we determine that the trial court erred, we render the judgment the trial court should have rendered." *Id.* We make this determination de novo. *Id.*

The State and the Property Owners filed traditional motions for summary judgment on their claims regarding the constitutionality of the ordinance. The City filed a cross-motion for summary judgment challenging those constitutionality claims on no-evidence grounds. "Summary judgment is proper when the summary-judgment evidence shows that there are no disputed issues of material fact and that the movant is entitled to judgment as a matter of law." *Texas Ass'n of Acupuncture*, 524 S.W.3d at 738 (citing *Tex. R. Civ. P. 166a(c)*). "A movant seeking traditional summary judgment on its own cause of action has the initial burden of establishing its entitlement to judgment as a matter of law by conclusively establishing each element of its cause of action." *Id.* (citing *Trudy's Tex. Star, Inc. v. City of Austin*, 307 S.W.3d 894, 905 (Tex. App.—Austin 2010, no pet.)). "To obtain traditional summary judgment on an opposing party's claims, the movant must conclusively negate at least one element of each of the claims or conclusively establish each element of an affirmative defense." *Id.* (citing *Lakey v. Taylor*, 435 S.W.3d 309, 316 (Tex. App.—Austin 2014, no pet.)).

A party may move for no-evidence summary judgment when, "[a]fter adequate time for discovery[,] ... there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at \*188 trial." *Tex. R. Civ. P. 166a(i)*. "The motion must state the elements as to which there is no evidence." *Id.* "The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact." *Id.* When reviewing a no-evidence summary judgment, we "review the evidence

presented by the motion and response in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009) (citing *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 581–82 (Tex. 2006)).

### A. The State's Retroactivity Claim

The State argues that section 25-2-950 of the Austin City Code, which terminates all type-2 rentals by 2022, is unconstitutionally retroactive. We agree.

The Texas Constitution prohibits the creation of retroactive laws. *See* Tex. Const., art. I, § 16 ("No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made."). The prohibition against retroactive laws has two fundamental objectives: "[I]t protects the people's reasonable, settled expectations"—i.e., "the rules should not change after the game has been played"—and it "protects against abuses of legislative power." *Robinson v. Crown Cork & Seal Co., Inc.*, 335 S.W.3d 126, 139 (Tex. 2010) (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265–266, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994)).

A retroactive law is one that extends to matters that occurred in the past. *Tenet Hosps. Ltd. v. Rivera*, 445 S.W.3d 698, 707 (Tex. 2014) (citing *Robinson*, 335 S.W.3d at 138). "A retroactive statute is one which gives pre-enactment conduct a different legal effect from that which it would have had without the passage of the statute." *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 60 (Tex. 2014) (quoting Charles B. Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692, 692 (1960)). The State contends that the ordinance provision terminating all type-2 operating licenses is retroactive because it "tak[es] away th[e] fundamental and settled property right"

to lease one's real estate under the most desirable terms. The City disagrees with the State's characterization of the ordinance's effect, but it does not dispute that the ordinance is retroactive. We agree that section 25-2-950 operates to eliminate well-established and settled property rights that existed before the ordinance's adoption. *See Robinson*, 335 S.W.3d at 139 (noting that "[m]ost statutes operate to change existing conditions"); Hochman, 73 Harv. L. Rev. at 692.

But not all retroactive laws are unconstitutional. *Robinson*, 335 S.W.3d at 139. ("Mere retroactivity is not sufficient to invalidate a statute."). To determine whether a retroactive law violates the Texas Constitution's prohibition against retroactive laws, we must consider three factors in light of the prohibition's objectives of protecting settled expectations and of preventing legislative abuses: (1) "the nature and strength of the public interest served by the statute as evidenced by the Legislature's factual findings;" (2) "the nature of the prior right impaired by the statute;" and (3) "the extent of the impairment." *Id.* at 145. This three-part test acknowledges the heavy presumption against retroactive laws by requiring a compelling public interest to overcome the presumption. *Tenet*, 445 S.W.3d at 707 (citing *Robinson*, 335 S.W.3d at 145). But it also appropriately encompasses the notion that

189 "statutes are not to be set aside lightly." *Id.* \*189

We begin by considering the first *Robinson* factor, "the nature and strength of the public interest served by the statute as evidenced by the Legislature's factual findings," to determine if there is a compelling public interest. *Robinson*, 335 S.W.3d at 145; *see Tenet*, 445 S.W.3d at 707. Here, as was the case regarding the statute deemed unconstitutionally retroactive in *Robinson*, the City made no findings to justify the ordinance's ban on type-2 rentals. Based on the legislative record before us and the other facts relevant to determining the reasons for the City's actions, *see Robinson*, 335 S.W.3d at 145 (considering entire legislative record and additional related

information in applying its three-prong test), the City's purported public interest for banning type-2 rentals is slight. The City contends that it enacted short-term rental regulations to address the following public-interest issues relating to short-term rentals:

- Public-health concerns about over-occupancy affecting the sewage system and creating fire hazards and about "bad actor" tenants who dump trash in the neighborhood and urinate in public;
- public-safety concerns regarding strangers to neighborhoods, public intoxication, and open drug use;
- general-welfare concerns about noise, loud music, vulgarity, and illegal parking; and
- the negative impact on historic Austin neighborhoods, specifically concerns of residents that that short-term rentals alter a neighborhood's quality of life and affect housing affordability.

The City does not explain which of these public-interest issues supports a ban on type-2 short-term rentals, and notably, there is nothing in the record before us to show that any of these stated concerns is specific or limited to type-2 short-term rentals. Type-2 short-term rentals are simply single-family residences that are not owner-occupied or associated with an owner-occupied principal residential unit—i.e., they are not designated as the owner's homestead for tax purposes. *See* Austin, Tex., Code § 25-2-789(A).

More importantly, nothing in the record supports a conclusion that a ban on type-2 rentals would resolve or prevent the stated concerns. In fact, many of the concerns cited by the City are the types of problems that can be and already are prohibited by state law or by City ordinances banning such practices. *See* [Tex. Penal Code §§](#)

[42.01](#) (disorderly conduct), [49.02](#) (public intoxication); Austin, Tex., Code §§ [9-2-1–9-2-65](#) (noise ordinance), [9-4-15](#) (prohibiting public urination and defecation), [10-5-42–10-5-45](#) (littering ordinance), [12-5-1–12-2-44](#) (parking ordinance). Relatedly, nothing in the record shows that these issues have been problems with or specific to short-term rentals in the past. To the contrary, the record shows that, in the four years preceding the adoption of the ordinance, the City did not issue a single citation to a licensed short-term rental owner or guest for violating the City's noise, trash, or parking ordinances. And during this same four-year period, the City issued notices of violations—not citations—to licensed short-term rentals only ten times: seven for alleged overoccupancy, two for failure to remove trash receptacles from the curb in a timely manner, one for debris in the yard, and none for noise or parking issues. And the City has not initiated a single proceeding to remove a property owner's short-term rental license in response to complaints about parties. Further, the record shows that short-term rentals do not receive a disproportionate number of complaints from neighbors. In fact, as <sup>190</sup> the City acknowledges, "short-term <sup>190</sup> rental properties have significantly fewer 311 calls and significantly fewer 911 calls than other single-family properties."

We also note that a ban on type-2 short-term rentals does not advance a zoning interest because both short-term rentals and owner-occupied homes are residential in nature. *See Tarr v. Timberwood Park Owners Ass'n, Inc.*, [556 S.W.3d 274, 291](#) (Tex. 2018) (declining to interpret "residential" as prohibiting short-term rentals). And, in fact, the City treats short-term rentals as residential for purposes of its own laws. *See* Austin, Tex., Code § [25-2-4\(B\)](#).

In sum, based on the record before us, we conclude that the purported public interest served by the ordinance's ban on type-2 short-term rentals cannot be considered compelling. The City did not make express findings as to the ordinance.

Nothing in the record before us suggests that the City's reasons for banning type-2 rentals address concerns that are particular to type-2 rentals or that the ban itself would actually resolve any purported concerns. *See Tenet*, 445 S.W.3d at 707 (holding that retroactive provision of legislation that "was a comprehensive overhaul of Texas medical malpractice law" served compelling public interest); *Synatzske*, 438 S.W.3d at 58 (holding that retroactive legislation aimed at resolving asbestos-related litigation crisis and supported by legislative fact findings served compelling public interest); *Robinson*, 335 S.W.3d at 143–44 (holding that retroactive legislation ostensibly enacted for sole benefit of one entity and not supported by legislative fact findings did not serve compelling public interest).

But even if we were to determine that the City's ban on type-2 rentals advances a compelling interest, our consideration of the remaining *Robinson* factors, which require that we balance the purpose against the nature of the prior right and the extent to which the statute impairs that right, would still require us to conclude that the ban is unconstitutionally retroactive. *See Robinson*, 335 S.W.3d at 147–48. Regarding the nature of the prior right, we consider not whether the impaired right was "vested," but the extent to which that right was "settled."<sup>4</sup> *Id.* at 142–43, 147, 149. In *Robinson*, for example, the Court held that the plaintiffs had a settled expectation that the Legislature would not extinguish their already filed common-law personal injury suit. *Id.* at 147–49. By contrast, the supreme court held in *Synatzske* that plaintiffs asserting a statutory cause of action after the Legislature altered certain aspects of that statute had no settled expectation in the previous version of the statute because "the Legislature may repeal a statute and immediately eliminate any right or remedy that the statute previously granted."

<sup>4</sup> Ignoring recent precedent from our high court, the City incorrectly engages in a vested-rights analysis to determine whether

the ordinance is unconstitutionally retroactive. *See Robinson*, 335 S.W.3d at 143 ("What constitutes an impairment of vested rights is too much in the eye of the beholder to serve as a test for unconstitutional retroactivity.").

Private property ownership is a fundamental right. *Hearts Bluff*, 381 S.W.3d at 476 (citing *Severance v. Patterson*, 370 S.W.3d 705 (Tex. 2012)). "The right of property is the right to use and enjoy, or dispose of the same, in a lawful manner and for a lawful purpose." *Id.*; see *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435–36, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) (noting that property owners have "rights to possess, use and dispose of" their property). The ability to lease property is a fundamental privilege of property ownership. *See* <sup>191</sup> *Terrace v. Thompson*, 263 U.S. 197, 215, 44 S.Ct. 15, 68 L.Ed. 255 (1923) (noting that "essential attributes of property" include "the right to use, lease and dispose of it for lawful purposes"); *Calcasieu Lumber Co. v. Harris*, 77 Tex. 18, 13 S.W. 453, 454 (1890) ("The ownership of land, when the estate is a fee, carries with it the right to use the land in any manner not hurtful to others; and the right to lease it to others, and therefore derive profit, is an incident of such ownership."); see also Ross, Thomas, *Metaphor and Paradox*, 23 Ga. L. Rev. 1053, 1056 (1989) (noting that "rights to sell, lease, give, and possess" property "are the sticks which together constitute" the metaphorical bundle). Granted, the right to lease property for a profit can be subject to restriction or regulation under certain circumstances, see *Loretto*, 458 U.S. at 436, 102 S.Ct. 3164 (noting in physical-takings case that "deprivation of the right to use and obtain a profit from company is not, in every case, independently sufficient to establish a taking"); *Severance*, 370 S.W.3d at 709–10 (noting few limitations on property rights), but the right to lease is nevertheless plainly an established one, see *Tenet*, 445 S.W.3d at 708 (analyzing whether claim was established).



And as for the specific right at issue here—i.e., to lease one's property on a short-term basis—the City acknowledges that Austinites have long exercised their right to lease their property by housing short-term tenants. In fact, the City admits, and the record establishes, that short-term rentals are an "established practice" and a "historically ... allowable use." The record also shows that property owners, including some of the appellants here, who rented their individual properties as type-2 short-term rentals before the City's adoption of the provision eliminating those types of rentals did so after investing significant time and money into the property for that purpose. The record also shows that the City's ban on type-2 short-term rentals will result in a loss of income for the property owners.

Accordingly, based on the record before us and the nature of real property rights, we conclude that owners of type-2 rental properties have a settled interest in their right to lease their property short term.

The City emphasizes that the ban does not go into effect until 2022, suggesting that the grace period would allow property owners to adjust their investment strategy to prepare for the discontinuance of type-2 short-term rentals. *See Tenet*, 445 S.W.3d at 708–09 (discussing grace period afforded by retroactive legislation); *City of Tyler v. Likes*, 962 S.W.2d 489, 502 (Tex. 1997) (determining that applying immunity provisions of Texas Tort Claims Act was not unconstitutionally retroactive when the plaintiff had two months to sue before it became effective). But the issue here is not about property owners' right to use their property in a certain way—it is about owners of type-2 short-term rentals retaining their well-settled right to lease their property.

We now turn to the third *Robinson* factor, which directs us to consider the extent of the ordinance's impairment to these settled rights. *See Robinson*, 335 S.W.3d at 145. The effect of the ordinance on the property right at issue here is clear—the City's

ordinance eliminates the right to rent property short term if the property owner does not occupy the property. The elimination of a right plainly has a significant impact on that right. *See id.* at 148 (concluding that statute that extinguished plaintiff's claim in Texas had a "significant[ ] impact[ ]").

Because the record before us shows that the ordinance serves a minimal, if any, public interest while having a significant \*192 impact on property owners' substantial interest in a well-recognized property right, we hold that section 25-2-950's elimination of type-2 short-term rentals is unconstitutionally retroactive. *See id.* at 150 ; *see also Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Tex., LLC*, 363 S.W.3d 192, 204 (Tex. 2012) (noting that preservation of property rights is "one of the most important purposes"—in fact, "[t]he great and chief end"—of government). Accordingly, we affirm the State's first issue on appeal. And having determined that section 25-2-950 is unconstitutionally retroactive, we need not address the State's and the Property Owners' remaining constitutional challenges to that same section. *See Tex. R. App. P. 47.1* (requiring appellate court to hand down "opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal").

## B. Property Owner's Assembly Clause Claim

The Property Owners assert that section 25-2-795 of the Austin City Code, which bans types of conduct and assembly at short-term rental properties, violates the Texas Constitution's due-course-of-law provision. *See Tex. Const. art. I, § 19* (due course of law); Austin, Tex., Code § 25-2-795 (forbidding property owner or tenant from using short-term rental for assemblies of any kind between 10pm and 7am and for outside assemblies of more than six adults between 7am and 10pm; and banning more than six unrelated adults (or ten related adults) from being present on the property

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at any time). The Texas Constitution provides: "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19. Similarly, the federal due-process clause provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law...." U.S. Const. amend. XIV, § 1. While the Texas Constitution is textually different in that it refers to "due course" rather than "due process," Texas courts regard these terms as without substantive distinction unless and until a party demonstrates otherwise. *See University of Tex. Med. Sch. at Hous. v. Than*, 901 S.W.2d 926, 929 (Tex. 1995) (citing *Mellinger v. City of Houston*, 68 Tex. 37, 3 S.W. 249, 252–53 (1887)). Under federal and state guarantees of due process, the government may not infringe certain "fundamental" liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. *Reno v. Flores*, 507 U.S. 292, 301–02, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993). The Property Owners contend that section 25-2-795 is subject to this strict-scrutiny review because it infringes on and limits short-term rental tenants' fundamental, constitutionally secured rights to freedom of assembly, association, movement, and privacy. *See id.* We conclude that section 25-2-795 fails to pass muster under strict-scrutiny review for violation of the Property Owners' freedom of assembly.<sup>5</sup>

<sup>5</sup> We therefore do not address the Property Owners' remaining challenges to this provision.

## 1. The "Assembly" Clause

Both the U.S. and Texas constitutions contain assembly clauses as follows, respectively:

Congress shall make no law respecting an establishment of religion, or prohibiting

the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Tex. Const. art. 1, § 27. The Texas assembly clause differs from its federal counterpart in that it includes a "common good" requirement. The First Congress of 1789 considered including a requirement that the assembly be for "the" or "their" "common good"—e.g., James Madison offered "The people shall not be restrained from peaceably assembling and consulting for their common good."—but it ultimately rejected such text. *See* John D. Inazu, *Liberty's Refuge: The Forgotten Freedom of Assembly* 22 (2012) (citing *The Complete Bill of Rights: The Drafts, Debates, Sources, and Origins* 140 (Neil H. Cogan ed., 1997)).

## 2. History of the Federal Assembly Clause

In the nineteenth century, the United States Supreme Court concluded that the First Amendment did not protect the right to assemble unless "the purpose of the assembly was to petition the government for a redress of grievances." *Presser v. Illinois*, 116 U.S. 252, 267, 6 S.Ct. 580, 29 L.Ed. 615 (1886) (relying on dicta in *United States v. Cruikshank*, 92 U.S. 542, 23 L.Ed. 588 (1875)). *Presser* is the only Supreme Court opinion that has limited the right of assembly in this way, and commentators suggest that the limitation was the result of a judicial misreading of the text of the First

Amendment's assembly language. *See* Inazu, at 22. Otherwise, the right to assemble featured prominently in the Supreme Court's First Amendment jurisprudence. For example, in his concurrence in *Whitney v. California*, Justice Brandeis treated free speech and assembly rights as coequal for the purposes of First Amendment analysis:

Those who won our independence ... believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.

274 U.S. 357, 375, 47 S.Ct. 641, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring). Soon thereafter, the Assembly Clause was incorporated against the states via the Due Process Clause of the Fourteenth Amendment. *De Jonge v. Oregon*, 299 U.S. 353, 364, 57 S.Ct. 255, 81 L.Ed. 278 (1937). And in more than one hundred subsequent opinions, the Court continued to recognize the assembly clause as a right related to, but nonetheless independent from, free speech. *See* Inazu, 26, 50 ("The Court had linked these two freedoms [speech and assembly] only once before; after *Whitney*, the nexus occurs in more than one hundred of its opinions."); *see, e.g., Thomas v. Collins*, 323 U.S. 516, 530, 65 S.Ct. 315, 89 L.Ed. 430 (1945) ("It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are

<sup>194</sup> cognate rights, and therefore are united in the First Article's assurance." (citation omitted)).

Commentators have indicated that the federal right to assemble has since fallen to the wayside. In the 1950s, the Supreme Court introduced an atextual right of the First Amendment, the "freedom of association." Nicholas S. Brod, *Rethinking a Reinvigorated Right to Assemble* 63 Duke L. J. 155, 159 (2013) (citing *e.g., American Commc'ns Ass'n v. Douds*, 339 U.S. 382, 409, 70 S.Ct. 674, 94 L.Ed. 925 (1950)). At first, the "freedom of association" only sporadically replaced the right to assemble. *See id.* at 159 (*comparing Douds*, 339 U.S. at 400, 70 S.Ct. 674 ("In essence, the problem is one of weighing the probable effects of the statute upon the free exercise of the right of speech and assembly...."), with *Douds*, 339 U.S. at 409, 70 S.Ct. 674 ("[T]he effect of the statute in proscribing beliefs—like its effect in restraining speech or freedom of association—must be carefully weighed by the courts....")). But eventually the right to association generally displaced the right to assemble. *Id.* (noting that Supreme Court has identified as "indispensable liberties" the rights of "speech, press, [and] association") (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 461, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958)). And, for better or worse, both assembly and association came to be treated by the Supreme Court as secondary rights enabling speech rather than coequal rights independent of speech. *See id.* (citing *NAACP*, 357 U.S. at 460, 78 S.Ct. 1163 ("Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly.")).

Nevertheless, the United States Supreme Court case law continued to affirm the independence and importance of the federal right to assemble. In *Coates v. City of Cincinnati*, the high court considered an ordinance making it a criminal offense for "three or more persons to assemble" on sidewalks "in a manner annoying to persons

passing by." 402 U.S. 611, 91 S.Ct. 1686, 29 L.Ed.2d 214 (1971). The Supreme Court held that the word "annoying" is unconstitutionally vague and that "[t]he ordinance also violates the constitutional right of free assembly and association" because "[o]ur decisions establish that mere public intolerance or animosity cannot be the basis for abridgement of these constitutional freedoms." *Id.* at 615, 91 S.Ct. 1686. In support of its holding, the Supreme Court quoted a municipal court decision striking down a similar ordinance:

"Under the [ordinance provisions], arrests and prosecutions, as in the present instance, would have been effective as against Edmund Pendleton, Peyton Randolph, Richard Henry Lee, George Wythe, Patrick Henry, Thomas Jefferson, George Washington and others for loitering and congregating in front of Raleigh Tavern on Duke of Gloucester Street in Williamsburg, Virginia, at any time during the summer of 1774 to the great annoyance of Governor Dunsmore and his colonial constables."

*Id.* (quoting *City of Toledo v. Sims*, 169 N.E.2d 516, 520 (Toledo Mun. Ct. 1960)).

In *Richmond Newspapers, Inc. v. Virginia*, the Supreme Court noted that "[f]rom the outset, the right of assembly was regarded not only as an independent right but also as a catalyst to augment the free exercise of the other First Amendment Rights with which it was deliberately linked by the draftsmen." 448 U.S. 555, 577, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980). The Court also <sup>195</sup> noted that the First Congress <sup>\*195</sup> debated whether there was a "need separately to assert the right of assembly because it was subsumed in freedom of speech," but that the motion to strike "assembly" was defeated. *Id.* at n.13. The Supreme Court quoted Mr. Page of Virginia as asserting during the debate:

[A]t times "such rights have been opposed," and that "people have ... been prevented from assembling together on their lawful occasions":

"[T]herefore it is well to guard against such stretches of authority, by inserting the privilege in the declaration of rights. If the people could be deprived of the power of assembling under any pretext whatsoever, they might be deprived of every other privilege contained in the clause."

*Id.* (quoting 1 Annals of Cong. 731 (1789)). Thus, notwithstanding some outside commentary, the U.S. Supreme Court's case law supports a vibrant and historically grounded constitutional right to assemble.

### 3. Texas's Right to Assemble

In Texas, so far, the right to assemble has received little attention. The few cases that involve assembly claims under Texas's constitution recognize the existence and importance of the right; however, as far as we have found, none address the scope of the right to assemble. *See, e.g., City of Beaumont v. Bouillion*, 896 S.W.2d 143, 147 (Tex. 1995) (holding that there is no private right of action for damages arising under free speech and assembly sections of Texas Constitution because "anything done in violation of [Texas's bill of rights] is void"); *Bell v. Hill*, 123 Tex. 531, 74 S.W.2d 113, 119–20 (1934) (recognizing that citizens' right to form political associations is protected by the U.S. Constitution's First Amendment and by Texas Constitution's assembly clause); *Faulk v. State*, 608 S.W.2d 625, 630–31 (Tex. Crim. App. 1980) (holding that Texas's riot statute did not violate right to assemble because it prohibited participation in "unlawful" assembly); *Ferguson v. State*, 610 S.W.2d 468, 470 (Tex. Crim. App. 1979) (holding that Texas riot statute did not violate right to assemble because right is limited to "peaceable assembly"); *Young v. State*, 776 S.W.2d 673, 679 (Tex. App.—Amarillo 1989, no pet.) (noting that



state's ability to prohibit assemblies "must be limited in nature, be strictly construed, and must concern only assemblies ... which, beyond cavi, threaten public peace and well being," and holding that Texas's organized-crime statute did not violate right to assemble because that right protects "the right of association for peaceful purpose" and organized-crime statute prohibits conduct that harms or disrupts the common good).

Possibly accounting for the lack of assembly-clause cases in Texas, the Texas Supreme Court has adopted the judicially created "right of association" as a right that is "instrumental to the First Amendment's free speech, assembly, and petition guarantees." *Osterberg v. Peca* , 12 S.W.3d 31, 46 (Tex. 2000). But, in contrast to the U.S. Supreme Court, the Texas Supreme Court has never limited the application of Texas's assembly clause to situations where the purpose of the assembly was to petition the government for a redress of grievances. *See Presser* , 116 U.S. at 267, 6 S.Ct. 580. Nor has the Texas Supreme Court expressly held, or even considered whether, the judicially created "right of association" has subsumed the text of Texas's assembly clause, as some commentators have indicated has occurred with the federal assembly clause. We therefore rely on the plain text of the Texas Constitution to conclude that its assembly clause is not limited to protecting only petition-related assemblies and the judicially created "right of association" does not

<sup>196</sup> subsume <sup>\*196</sup> the Texas Constitution's assembly clause in its entirety.

Our conclusion is also supported by significant textual differences in the two assembly clauses. First, the Texas Constitution grants an affirmative right to its citizens: "The citizens shall have the right...." Tex. Const. art. I, § 27. The federal constitution, on the other hand, is prohibitive: "Congress shall make no law...." U.S. Const. amend. I. Further, unlike the First Amendment's grouping of rights regarding religion, speech, the press, assembly, and petition, *see id.* , the Texas Constitution separates these and other rights

across several sections in its Bill of Rights. *See* Tex. Const. art. I, §§ 1 – 34 ("Bill of Rights"). And while the grammatical structure of the First Amendment arguably tethers the right to assemble to the right to petition, Texas's assembly clause plainly creates two distinct rights by using a semicolon to separate the right to assemble from the right to petition: "The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance." Tex. Const. art. I, § 27 ; *see* U.S. Const. amend. I (prohibiting the abridgment of "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances"); *Cruikshank* , 92 U.S. at 552 (concluding that First Amendment protected " 'the right of the people to assemble and to petition the government for a redress of grievances' " (misquoting U.S. Const. amend. I )); Jason Mazzone, *Freedom's Associations* , 77 Wash. L. Rev. 639, 713 (2002) (arguing that grammatical structure of First Amendment means that assembly right can be exercised only insofar as it is used to petition the government); *cf.* Inazu, at 23 (criticizing Mazzone and arguing "the comma preceding the phrase 'and to petition' is residual from the earlier text that had described the 'right of the people peaceably to assemble and consult for their common good, and to petition the government for a redress of grievances' ").

But what rights does the Texas assembly clause grant? Using the common and ordinary meaning of the text of the clause, it affirmatively grants the right to "meet together" or "to congregate" for "their" "shared or joint" "welfare or benefit." *American Heritage Dictionary of the English Language* 107, 372, 757 (5th ed. 2011) (defining "assemble," "common," and "good" respectively); *Assemble* , *The Compact Edition of the Oxford English Dictionary* (1994) (establishing that since at least the fourteenth century, "assemble" has meant "to come together into one place or

company, to gather together, congregate, meet"); *see Assembly*, *The Compact Edition of the Oxford English Dictionary* (establishing that since at least the sixteenth century, "assembly" has included "gathering of persons for purposes of social entertainment"); *see also Bouillion*, 896 S.W.2d at 148 ("To interpret [the Texas] Constitution, we give effect to its plain language. We presume the language of the Constitution was carefully selected, and we interpret words as they are generally understood."). The use of "their" versus "the" to modify "common good" implies that the assembly must be for the common good of the citizens who assemble rather than the common good of the state. *See American Heritage Dictionary* at 1803–04 (defining "the" and "their" respectively); Inazu, at 22–23.<sup>6</sup> In other words,

197 under the plain \*197 language of the Texas Constitution, citizens have the right to physically congregate, in a peaceable manner, for their shared welfare or benefit.

<sup>6</sup> The dissent argues that the Assembly Clause's use of the word "citizen" limits the right to matters of public discourse. *See post* at 208–09. But the word "citizen," as it is used in this clause and in thirteen other clauses of the Texas Constitution, simply describes the class of persons to whom the right applies; it does not delineate the substantive scope of the right itself. *See* Tex. Const. art. I, §§ 19 (due course of law), 20 (outlawry), 23 (right to bear arms), 25 (quartering of soldiers), 27 (assembly and petition); art. 3, §§ 6–7 (qualifications for senators and representatives), 49-b (veterans' land board); art. 4, § 4 (qualifications for governor); art. 5, §§ 1-a (state commission on judicial conduct), 2, 7 (qualifications for judiciary); art. 5, § 2 (voter qualification); art. 9, § 9 (hospital districts); *American Heritage Dictionary* at 339 (defining "citizen" as "person owing loyalty to and entitled ... to the protection of a state or nation").

We must also determine whether the right granted in the Texas assembly clause is fundamental. *See Washington v. Glucksberg*, 521 U.S. 702, 720, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997) (noting that due-process clause "provides heightened protection against government interference with certain fundamental rights and liberty interests"); *Reno*, 507 U.S. at 301–02, 113 S.Ct. 1439 (noting that U.S. Constitution's substantive due-process guarantee "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"). The Due Process Clause "specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' " *Washington*, 521 U.S. at 720–21, 117 S.Ct. 2258 (citing *Moore v. East Cleveland*, 431 U.S. 494, 503, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977), and *Snyder v. Massachusetts*, 291 U.S. 97, 105, 54 S.Ct. 330, 78 L.Ed. 674 (1934) ), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Palko v. Connecticut*, 302 U.S. 319, 325, 326, 58 S.Ct. 149, 82 L.Ed. 288 (1937) ; *Spring Branch I.S.D. v. Stamos*, 695 S.W.2d 556, 560 (Tex. 1985) ("Fundamental rights have their genesis in the express and implied protections of personal liberty recognized in federal and state constitutions.").

The Texas Constitution's Bill of Rights, as discussed above, expressly recognizes and protects the right of assembly. It also provides, "To guard against transgressions of the high powers herein delegated, we declare that everything in this 'Bill of Rights' is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto ... shall be void." Tex. Const. art. I, § 29. Relying on section 29, the Texas Supreme Court has held:

The privileges guaranteed by the Bill of Rights, however, cannot be destroyed by legislation under the guise of police control. Wherever the Constitution makes a declaration of political privileges or rights or powers to be exercised by the people or the individual, it is placed beyond legislative control or interference, as much so as if the instrument had expressly declared that the individual citizen should not be deprived of those powers, privileges, and rights: and the Legislature is powerless to deprive him of those powers and privileges.

*Bell*, 74 S.W.2d at 120 (holding that First Amendment and Texas's assembly clause protect right to form political associations); cf. *Douds*, 339 U.S. at 399, 70 S.Ct. 674 ("The high place in which the right to speak, think, and assemble as you will was held by the Framers of the Bill of Rights and is held today by those who value liberty \*198 both as a means and an end indicates the solicitude with which we must view any assertion of personal freedoms."). Similarly, the Texas Supreme court has held that other rights found in the Texas Bill of Rights are fundamental rights for purposes of constitutional analysis. See *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 375 (Tex. 1998) (orig. proceeding) ("Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment.") (citing *NAACP*, 357 U.S. at 460, 78 S.Ct. 1163); *Stamos*, 695 S.W.2d at 560 (noting that "right to free speech [and] free exercise of religion ... have long been recognized as fundamental rights under our state and federal constitutions"). And the United States Supreme Court has explicitly described the peaceable right to assemble, along with other First Amendment rights, as a fundamental right:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

*West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943) (emphasis added); see *De Jonge*, 299 U.S. at 364, 57 S.Ct. 255 ("The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental."); *Whitney*, 274 U.S. at 375–76, 47 S.Ct. 641 (J. Brandeis, concurring) ("But, although the rights of free speech and assembly are fundamental, they are not in their nature absolute. Their exercise is subject to restriction, if the particular restriction proposed is required in order to protect the state from destruction or from serious injury, political, economic or moral.").

Based on its prominence in the Texas Bill of Rights, its history in the founding of our country, and its early, and still valid, treatment by the U.S. Supreme Court, we hold that the right to assemble granted by the Texas Constitution is a fundamental right.<sup>7</sup>

<sup>7</sup> The dissent suggests that we have overstepped our role as an intermediate court "by declaring a fundamental right to congregate without fully analyzing peaceableness or the advocacy of a matter of public welfare." See *post* at 211. But the fact that we have rejected the dissent's view that the Texas Assembly Clause is limited to advocacy of a matter of public welfare does not mean that we have not taken that argument into account—to the contrary, we address the matter at length. And we note

that even if Texas' assembly clause is so limited, the City's ordinance bans assemblies without regard to their content or purpose. We likewise acknowledge that non-peaceable assemblies are not protected by the Assembly Clause, but the City's short-term rental ordinance forbids assemblies whether peaceable or not. Finally, the dissent states that we should leave the determination of fundamental rights to Texas's high courts because doing so is "a novel and big step into [a] weighty area." *Post* at 211. But our duty as a court requires us to address those matters that are properly before us, including the identification and protection of fundamental constitutional rights. *See Tex. R. App. P. 47.1* (requiring appellate courts to "hand down a written opinion that ... addresses every issue raised and necessary to final disposition"); *Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584, 2598, 192 L.Ed.2d 609 (2015) ("The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution.").

4. *Texas's Right to Assemble and the City of Austin's Ordinances* \*199 What is at stake, then, is the authority of the City, through its ordinances, to prohibit or restrict the peaceable assembly of citizens on private property with respect to the purpose, time, and number of people. The Property Owners here argue that review of the alleged violation of their fundamental right to assemble by Austin's City Code must be examined under strict scrutiny. We agree.

Section 25-2-795 of Austin's short-term rental regulations provides that:

(B) Unless a stricter limit applies, not more than two adults per bedroom plus two additional adults may be present in a short-term rental between 10:00 p.m. and 7:00 a.m.

(C) A short-term rental is presumed to have two bedrooms, except as otherwise determined through an inspection approved by the director.

(D) A licensee or guest may not use or allow another to use a short-term rental for an **assembly** between 10:00 p.m. and 7:00 a.m.

(E) A licensee or guest may not use or allow another to use a short-term rental for an outside **assembly** of more than six adults between 7:00 a.m. and 10:00 p.m.

(F) For purposes of this section, an **assembly** includes a wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity other than sleeping.<sup>8</sup>

(G) A short-term rental use may not be used by more than:

(1) ten adults at one time, unless a stricter limit applies; or

(2) six unrelated adults.

<sup>8</sup> Because the word "including" is a term of enlargement and not of limitation or exclusive enumeration, the ordinance applies to assemblies other than "wedding, bachelor or bachelorette party, concert, sponsored event, or any similar group activity." *See Republic Ins. Co. v. Silvertown Elevators Inc.*, 493 S.W.2d 748, 752 (Tex. 1973) (reasoning that it is a "well settled rule that the words 'include,' 'including,'



and 'shall include' are generally employed as terms of enlargement rather than limitation or restriction").

Austin, Tex., Code, § 25-2-795 (emphases added). This section plainly restricts the right to assemble and does so without regard to the peaceableness or content of the assembly—as emphasized above, the word "assembly" is used to describe what is being banned or severely restricted temporally, quantitatively, and qualitatively. Even if the ordinance did not expressly use the word "assembly," section 25-2-795 represents a significant abridgment of the fundamental right to peaceably assemble—i.e., to get together or congregate peacefully. It forbids owners (i.e., "licensees" in the ordinance) and tenants from gathering outdoors with more than six persons, at any time of day, even if the property is licensed for occupancy of six or more. And it prohibits use by two or more persons for any activity "other than sleeping" after 10:00 p.m. *Id.*

Moreover, in contrast to traditional cases that invoke the right to assemble on *public* property, here the right concerns the freedom to assemble with the permission of the owner on *private* property, implicating both property and privacy rights.<sup>9</sup> *Cf. 200 Members of City Council of City of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 811, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984) ("So here, the validity of the esthetic interest in the elimination of signs on public property is not compromised by failing to extend the ban to private property. The private citizen's interest in controlling the use of his own property justifies the disparate treatment."); *Stanley v. Georgia*, 394 U.S. 557, 565, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969) ("Whatever may be the justifications for other statutes regulating obscenity, we do not think they reach into the privacy of one's own home. If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch."); *Texas State Emps. Union*, 746 S.W.2d at 205 ("While the Texas

Constitution contains no express guarantee of a right of privacy, it contains several provisions similar to those in the United States Constitution that have been recognized as implicitly creating protected 'zones of privacy.' "); *Koppolow Dev. Inc. v. City of San Antonio*, 399 S.W.3d 532, 535 (Tex. 2013) ("One of the most important purposes of our government is to protect private property rights."); *Spann v. City of Dallas*, 111 Tex. 350, 235 S.W. 513, 515 (1921) ("To secure their property was one of the great ends for which men entered into society. The right to acquire and own property, and to deal with it and use it as the owner chooses, so long as the use harms nobody, is a natural right. It does not owe its origin to constitutions. It existed before them. It is a part of the citizen's natural liberty—an expression of his freedom, guaranteed as inviolate by every American Bill of Rights.").

<sup>9</sup> Because we conclude that section 25-2-795 violates the constitutional right to assemble, we do not reach the challenges based on the constitutional rights of association, movement, and privacy. But here privacy rights are implicated in our right-of-assembly analysis. The Texas Constitution "guarantee[s] the sanctity of the individual's home and person against unreasonable intrusion." *Texas State Emps. Union*, 746 S.W.2d at 205; see Tex. Const., art. I, §§ 9 (prohibiting unreasonable searches and seizures), 25 (prohibiting quartering of soldiers in houses). State and federal courts have consistently held that the right to privacy within the home extends to temporary lodging, including hotels, motels, and boarding houses. See, e.g., *Minnesota v. Olson*, 495 U.S. 91, 96–97, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990) (holding that overnight guest had expectation of privacy); *Stoner v. California*, 376 U.S. 483, 490, 84 S.Ct. 889, 11 L.Ed.2d 856 (1964) (concluding that "a guest in a hotel room is entitled to constitutional protection against unreasonable searches and

seizures"); *State v. Rendon*, 477 S.W.3d 805, 810–11 (Tex. Crim. App. 2015) (noting that Fourth Amendment protections against warrantless searches extend to "other dwelling place, including apartment"); *Luna v. State*, 268 S.W.3d 594, 603 (Tex. Crim. App. 2008) ("An 'overnight guest' has a legitimate expectation of privacy in his host's home."). Included in the right to privacy is the right to be free from "government action that is intrusive or invasive." *City of Sherman v. Henry*, 928 S.W.2d 464, 468 (Tex. 1996). A violation of this privacy interest turns not on the conduct undertaken by the individual, but on whether the "government impermissibly intruded on [his] right to be let alone," as the Property Owners allege here. *Id.* As the city concedes, enforcement of section 25-2-795 requires visual monitoring by the City or its agents of private activities to detect whether the property owners or tenants are violating the restrictions on how many people are in a bedroom or whether there is a prohibited assembly. *See* Austin, Tex., Code § 25-2-792 (requiring City to notify neighbors in writing of short-term rental's operation and to provide contact information to report any violations).

Surely the right to assemble is just as strong, if not stronger, when it is exercised on private property with the permission of the owner, thereby creating a nexus with property and privacy rights. *Cf. Jones v. Parmley*, 465 F.3d 46, 56 (2d Cir. 2006) ("First Amendment protections, furthermore, are especially strong where an individual engages in speech activity from his or her own private property.") (citing *City of Ladue v. Gilleo*, 512 U.S. 43, 58, 114 S.Ct. 2038, 129 L.Ed.2d 36 (1994)). But if Thomas Jefferson, Patrick Henry, and other revolutionary patriots had lived in this modern day and chosen a short-term rental instead of the Raleigh Tavern—as they may well have given the nature of modern society—to assemble and discuss concepts of freedom and liberty, the

201 City of Austin's ordinance would impose burdensome and significant restrictions on their abilities to do so. The City of Austin's restriction of this fundamental right to physically congregate on private property, in a peaceable manner, for the citizens' shared welfare or benefit requires strict scrutiny. *See Washington*, 521 U.S. at 720, 117 S.Ct. 2258 (explaining that due-process clause "provides heightened protection against government interference with certain fundamental rights and liberty interests"); *Reno*, 507 U.S. at 301–02, 113 S.Ct. 1439 (same); *cf. Barnette*, 319 U.S. at 639, 63 S.Ct. 1178 ("The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds."); *De Jonge*, 299 U.S. at 365, 57 S.Ct. 255 ("If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.").

We do not suggest that the City of Austin is powerless to regulate short-term rentals or to address the possible negative effects of short-term rentals—in fact, it already does so with various nuisance ordinances. *See, e.g.*, Austin, Tex., Code §§ 9-2-1-9-2-65 (noise ordinance), 9-4-15 (prohibiting public urination and defecation), 10-5-42-10-5-45 (littering ordinance), 12-5-1-12-2-44 (parking ordinance); *see also* Tex. Penal Code §§ 42.01 (disorderly conduct), 49.02 (public intoxication). But here the City has not identified a compelling interest that might justify section 25-2-795's restrictions on the right to peaceably assemble on private property. *See Schad v.*

*Borough of Mt. Ephraim*, 452 U.S. 61, 71, 101 S.Ct. 2176, 68 L.Ed.2d 671 (1981) ("[W]hen the government intrudes on one of the liberties protected by the Due Process Clause of the Fourteenth Amendment, 'this Court must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation.'" (quoting *Moore*, 431 U.S. at 499, 97 S.Ct. 1932)). The City's stated concerns in enacting this section were to reduce the likelihood that short-term rentals would serve as raucous "party houses" in otherwise quiet neighborhoods and to reduce possible strain on neighborhood infrastructure. These are certainly valid concerns, but compelling interests in the constitutional sense are limited to " 'interests of the highest order.' " *Westchester Day Sch. v. Village of Mamaroneck*, 504 F.3d 338, 353 (2d Cir. 2007) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993)). These interests may include, for example, reduction of crime, protection of the physical and psychological well-being of minors, parental rights, protection of elections, and tax collection. See, e.g., *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 763–64, 114 S.Ct. 2516, 129 L.Ed.2d 593 (1994) (public safety and order); *Burson v. Freeman*, 504 U.S. 191, 198–99, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992) (integrity of elections); *Ginsberg v. New York*, 390 U.S. 629, 639–640, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968) (protecting minors). Further, the City must show a compelling interest in imposing the burden on the right to assemble in the particular case at hand, not

202 a compelling interest in general. See \*202 *Westchester Day Sch.*, 504 F.3d at 353 (citing *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 432, 126 S.Ct. 1211, 163 L.Ed.2d 1017 (2006)).

The regulation of property use is not, in and of itself, a compelling interest. See *Barr v. City of Sinton*, 295 S.W.3d 287, 305 (Tex. 2009). As the Texas Supreme Court has explained, "Although

the government's interest in the public welfare in general, and in preserving a common character of land areas and use in particular, is certainly legitimate when properly motivated and appropriately directed ... courts and litigants must focus on real and serious burdens to neighboring properties" when determining whether a compelling interest is at issue. *Id.* at 305–07; see *Bell*, 74 S.W.2d at 120 (noting that "police or governmental powers may be exerted where the object of legislation is within the police power," but "the privileges guaranteed by the Bill of Rights ... cannot be destroyed by legislation under the guise of police control"). We must "not assume that zoning codes inherently serve a compelling interest, or that every incremental gain to city revenue (in commercial zones), or incremental reduction of traffic (in residential zones), is compelling." *Barr*, 295 S.W.3d at 307. Here, the City has not provided any evidence of a serious burden on neighboring properties sufficient to justify section 25-2-795's encroachment on owners' and their tenants' fundamental right to assemble on private property.

Additionally, the City's restrictions on the right to assemble would still fail strict scrutiny because the ordinance is not narrowly tailored and can be achieved by less intrusive, more reasonable means, such as enforcement of the already-existing ordinances regulating noise, parking, building codes, and disorderly conduct that we discuss above in our analysis of the State's retroactivity claim. See *Reno*, 507 U.S. at 302, 113 S.Ct. 1439 (substantive due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest").

In sum, we hold that section 25-2-795 infringes on short-term rental owners' and their tenants' constitutionally secured right to assembly because it limits assembly on private property without regard to the peacefulness of or reasons for the assembly. And because the infringement of the

fundamental right to assemble is not narrowly tailored to serve a compelling government interest, it violates the Texas Constitution's guarantee to due course of law. *See id.* Accordingly, it was error for the district court to grant the City's no-evidence motion for summary judgment and to deny the Property Owners' motion for summary judgment on the Property Owners' constitutional challenge to this provision.

### C. Unreasonable Search and Seizure

The Property Owners contend that another provision of the short-term rental ordinance place owners and tenants of short-term rentals at risk of unconstitutional search and seizure. Specifically, they challenge the provision that added short-term rentals to the enumerated list of types of property that officials must inspect "to ensure compliance with this chapter and other applicable laws." Austin, Tex., Code § 25-12-213(1301). That provision, however, was modified to allow the licensee or occupant to deny the inspector's entry and to seek pre-search administrative review. *See* Austin, Tex., Ordinance No. 20171012-SPEC001 (Oct. 12, 2017). Thus, although the parties have not briefed this Court on the repeal of the more  
 203 onerous inspection provisions, we \*203 take  
 judicial notice of the ordinance repealing this  
 section and conclude this claim is now moot. *See*  
 Tex. R. Evid. 204 (allowing judicial notice of  
 municipal law); *Trulock v. City of Duncanville*,  
 277 S.W.3d 920, 929 (Tex. App.—Dallas 2009, no  
 pet.) (dismissing case as moot where challenged  
 provisions of ordinance had been repealed).

### Conclusion

Because Austin City Code sections 25-2-795 (restricting assembly) and 25-2-950 (banning type-2 rentals) are unconstitutional, we reverse that part of the district court's judgment granting the City's no-evidence motion for summary judgment and denying the Property Owners' and the State's motions for summary judgment. We render judgment declaring sections 25-2-795 and 25-2-950 of the City Code void. We affirm the

remainder of the judgment and remand the case to the district court for further proceedings consistent with this opinion.

Concurring and Dissenting Opinion by Justice Kelly

### DISSENTING OPINION

Chari L. Kelly, Justice, dissenting.

The majority opinion expands fundamental-rights jurisprudence to strike down policy decisions properly left to Austin's City Council under their zoning power. Its approach leads to a misapplication of Retroactivity Clause precedent, creating tension with opinions of our sister courts of appeals; disregards Texas and U.S. history; and is an atextual expansion of the Assembly Clause. I respectfully dissent.

### I. The Retroactivity Clause

The Texas Constitution provides that "[n]o bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made." Tex. Const. art. I, § 16. The Property Owners' retroactivity challenge to Section 25-2-950—the ban on non-homestead short-term rentals that would go into effect in April 2022—is a facial constitutional challenge instead of an as-applied one. They "cannot ... assert that the [ordinance] is unconstitutional 'as applied' because [it] has never been applied to anyone." *See Barshop v. Medina Cty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 626 (Tex. 1996). Therefore, they "must establish that the [ordinance], by its terms, always operates unconstitutionally." *Id.* at 627. And we must interpret the ordinance "to avoid constitutional infirmities" under the Retroactivity Clause. *See id.* at 629 ; *see also Union Carbide Corp. v. Synatzske*, 386 S.W.3d 278, 313, 317 (Tex. App.—Houston [1st Dist.] 2012) (en banc) (Bland, J., dissenting from retroactivity reasoning) ("A court must not hold a legislative enactment to be unconstitutional unless it is absolutely necessary to so hold. ... If a statutory reading ... springs constitutional doubt, and another



reasonable interpretation exists, then it is not the interpretation that the legislature intended."), *rev'd*, 438 S.W.3d 39 (Tex. 2014).

" 'Mere retroactivity is not sufficient to invalidate a statute.... Most statutes operate to change existing conditions, and it is not every retroactive law that is unconstitutional.' ... [N]ot all retroactive legislation is bad." *Robinson v. Crown Cork & Seal Co.*, 335 S.W.3d 126, 139 (Tex. 2010) (quoting *Texas Water Rights Comm'n v. Wright*, 464 S.W.2d 642, 648 (Tex. 1971)).

In its entire history, the Supreme Court of Texas has held a law unconstitutionally retroactive only four times. *See Tenet Hosps. Ltd. v. Rivera*, 445 S.W.3d 698, 708 (Tex. 2014). Those four instances 204 involved \*204 amendments to statutes of limitations and a new choice-of-law rule that extinguished a mature tort claim. *Id.* at 708 & n.34 (citing *Robinson*, 335 S.W.3d at 148–49; *Baker Hughes, Inc. v. Keco R. & D., Inc.*, 12 S.W.3d 1, 4 (Tex. 1999); *Wilson v. Work*, 122 Tex. 545, 62 S.W.2d 490, 490–91 (1933) (per curiam) (orig. proceeding); *Mellinger v. City of Hous.*, 68 Tex. 37, 3 S.W. 249, 254–55 (1887)).

Since 2014, the Court has addressed only two retroactivity challenges and has upheld the challenged law both times. In one instance, the Court concluded that "a charter school's charter is not a vested property right to which the ... prohibition on retrospective laws appl[ies]." *See Honors Acad., Inc. v. Texas Educ. Agency*, 555 S.W.3d 54, 68 (Tex. 2018). In the other, the Court concluded that "a statute authorizing property owners to petition [the Supreme Court] directly to determine which county is owed the [ad valorem] taxes" imposed on the owners by multiple counties was "not constitutionally retroactive." *See In re Occidental Chem. Corp.*, 561 S.W.3d 146, 150, 162 (Tex. 2018) (orig. proceeding).

Never has the Court struck down a zoning or property-use law as unconstitutionally retroactive, though Texas municipalities have been zoning and regulating property for decades.

## A. Section 25-2-950 (type-2 rentals) is not retroactive.

A statute is not retroactive merely because it is applied in a case arising from conduct that existed before the statute's enactment or if it "upsets expectations based in prior law." *Mbogo v. City of Dall.*, No. 05-17-00879-CV, 2018 WL 3198398, at \*4 (Tex. App.—Dallas June 29, 2018, pet. denied) (mem. op.) (applying and quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994)). This is true particularly in the area of zoning regulations, for, there, "strong policy arguments and a demonstrable public need" support municipalities' "fair and reasonable termination of nonconforming property uses." *Mbogo*, 2018 WL 3198398, at \*4 (quoting *City of Univ. Park v. Benners*, 485 S.W.2d 773, 778 (Tex. 1972)).

The majority opinion asserts that Section 25-2-950 "does not advance a zoning interest because both short-term rentals and owner-occupied homes are residential in nature." *See ante* at 190. However, ordinances differentiating one type of residential property from another are just as much exercises of the zoning power as are ordinances differentiating between residential property and commercial property. *See, e.g., Barr v. City of Sinton*, 295 S.W.3d 287, 289–91, 296–308 (Tex. 2009) (addressing ordinance that differentiated solely within "residential area" category and nevertheless treating it as zoning-related); *Sheffield Dev. Co. v. City of Glenn Heights*, 140 S.W.3d 660, 674–81 (Tex. 2004) (treating ordinance that restricted number of residences that could be built on undeveloped property as zoning ordinance even though it applied only to residential property).

Section 25-2-950 is a zoning ordinance. It is found in the Code of Ordinances chapter titled "Zoning." *See Austin, Tex.*, Code of Ordinances ch. 25-2. The majority opinion's conclusion that Section 25-2-950 is retroactive therefore creates tension with the Fifth Court of Appeals' opinion in *Mbogo*. In

that case, when the City of Dallas rezoned a portion of Ross Avenue to prohibit automobile-related businesses from operating there, the rezoning was not "retroactive" even though an affected business owner, who would have to discontinue his chosen business, had been operating his automobile-related business in the area since before the rezoning. *Mbogo*, 2018 WL 3198398, at \*1, \*4. "The ordinance did not change any use in the property thereby attaching a new legal consequence or upset any expectations based in prior law. Rather, it *prospectively* altered a property owner's future use of the property by setting a date by which to come into compliance." *Id.* at \*4 (emphasis added).

So too here. But the majority opinion holds otherwise, leaping from the fundamental right of property ownership to what it deems within the "fundamental privilege[s] of property ownership"—"leas[ing] one's property on a short-term basis." See *ante* at 190-91. Surely the *Mbogo* business owner's use of his own property is no less important than a tenant's use of a short-term-rental owner's property. But, by expanding the scope of fundamental property rights to include a tenant's use of a non-homestead property for a lease term of less than 30 days, the majority opinion wields fundamental-rights jurisprudence in a way that cannot comport with what the Fifth Court of Appeals held in *Mbogo*. And it finds no support in Texas Supreme Court jurisprudence or that of this Court's 127 year history.

## B. Even if retroactive, Section 25-2-950 (type-2 rentals) is not unconstitutionally retroactive, under Robinson.

Even if Section 25-2-950 is retroactive, it is not unconstitutionally so. Retroactive laws may still be constitutional under the *Robinson* three-factor test. See 335 S.W.3d at 145–50. Under that test, a retroactive law is unconstitutionally retroactive only so long as three factors weigh against the challenged law: (1) "the nature and strength of the

public interest served by the statute as evidenced by the Legislature's factual findings," (2) "the nature of the prior right impaired by the statute," and (3) "the extent of the impairment." *Id.* at 145.

## 1. Section 25-2-950 serves a strong public interest.

Zoning is a sufficiently strong public interest under the Retroactivity Clause: "strong policy arguments and a demonstrable public need" support "the fair and reasonable termination of nonconforming property uses," and "[m]unicipal zoning ordinances requiring the termination of nonconforming uses under reasonable conditions are within the scope of the police power." *Benners*, 485 S.W.2d at 778, cited in *Mbogo*, 2018 WL 3198398, at \*6; accord *Caruthers v. Board of Adjustment of the City of Bunker Hill Vill.*, 290 S.W.2d 340, 350 (Tex. App.—Galveston 1956, no writ). "[T]he supreme court has not overruled *Benners*, and ... we are bound to follow supreme court precedent." *Mbogo*, 2018 WL 3198398, at \*6.

More broadly, efforts to "safeguard the public safety and welfare" are sufficiently strong public interests under the Retroactivity Clause. See *Barshop*, 925 S.W.2d at 634; *Texas State Teachers Ass'n v. State*, 711 S.W.2d 421, 424 (Tex. App.—Austin 1986, writ ref'd n.r.e.). In addition to zoning, public-welfare interests as varied as property-tax relief and testing teacher competence are sufficiently strong public interests under the Clause. See *White Deer Indep. Sch. Dist. v. Martin*, No. 07-18-00193-CV, 596 S.W.3d 855, 865-66 (Tex. App.—Amarillo Nov. 5, 2019, no pet. h.) (op., designated for publication); *Texas State Teachers Ass'n*, 711 S.W.2d at 422, 424–25.

The City of Austin's stated interests in enacting Section 25-2-950 are within the wide zone of strong public interests. The City says that short-term rentals are particularly susceptible to over-occupancy, which affects "fire safety" and "overwhelm[s] existing wastewater systems," and to tenants' "dump[ing] trash in the neighborhood";

206 "engag[ing] in public urination" \*206 and public intoxication; and "open drug use." The City also heard complaints about illegal parking, "noise, loud music, vulgarity, and other negative impacts of having a 'party house' " environment at short-term rentals.

The majority opinion faults the City for issuing notices of violation "to licensed short-term rentals only ten times." *Ante* at 189. Why is ten not enough? The majority opinion questions whether the ordinance is necessary to respond to ten notices of violation, "[b]ut the necessity and appropriateness of legislation are generally not matters the judiciary is able to assess." *Robinson* , 335 S.W.3d at 146. We need not determine whether the law is "the only, the best, or even a good way" to achieve the stated public interest. *See id.* If the public interest is sufficiently strong, we need go no further—the "nature and strength of the public interest" is enough under *Robinson*. *See id.* at 145. Section 25-2-950 rests on strong, public-welfare interests.

## 2. The right that Section 25-2-950 impairs is narrow.

The strength of a municipality's zoning interest is mirrored by the weakness of property owners' rights in zoning-burdened property: "an individual has no protected property interest in the continued use of his property for a particular purpose just because such use has commenced or a zoning classification has been made." *Mbogo* , 2018 WL 3198398, at \*5 (citing *Benners* , 485 S.W.2d at 778 ); *accord City of La Marque v. Braskey* , 216 S.W.3d 861, 863 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (also citing *Benners* ). The majority opinion's distinction between using property and leasing it is, for these purposes, of no material difference. An owner's lease of his or her property is a use of the property, and the tenant is leasing the property so he or she can use it. In fact, the Assembly Clause portion of the majority opinion bears this out when it considers the tenant-affecting ordinance to be "[t]he regulation

of property use." *See ante* at 202 ("The regulation of property use is not, in and of itself, a compelling interest.").

But even if the two uses are distinct, it is possible to interpret Section 25-2-950 as constitutional under this factor. Under Section 25-2-950 property owners may still lease their property. They must simply lease it for 30 days or more or make it their homestead. Therefore, the right that Section 25-2-950 impairs is narrow.

## 3. Section 25-2-950 only lightly impairs the short-term-rental right because of the grace period until 2022.

"[I]mpairment of ... a right may be lessened when a statute affords a plaintiff a grace period," *Tenet Hospitals* , 445 S.W.3d at 708, "or a reasonable time to protect his investment," *Mbogo* , 2018 WL 3198398, at \*7. The Fifth Court of Appeals resolved this third factor against unconstitutionality because, though the business owner "did not believe that he could get a fair price" in selling his business, "despite *never* listing his property on the market," that did not equate to an "abus[e of] legislative power" by the city. *Id.* (emphasis in original).

In contrast here, the majority opinion relies simply on "a loss of income for the property owners." *See ante* at 191. Though no doubt important, loss of income is not enough under *Robinson*. Loss of investment is the touchstone. *See Mbogo* , 2018 WL 3198398, at \*7 ; *Village of Tiki Island v. Ronquille* , 463 S.W.3d 562, 587 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (lack of "avenue for recoupment" of "existing investment" was relevant). There is no showing that the Property

207 Owners cannot \*207 recoup their investments in their rental properties before April 2022. Also, even shorter grace periods than three years have been sufficient elsewhere. *See Tenet Hosps.* , 445 S.W.3d at 708. Time allowed to mitigate investment loss makes any impairment "slight." *See White Deer Indep. Sch. Dist.* , 596 S.W.3d at

866-67. Just because the property owners are not making as much profit as they could with unfettered rights to short-term rentals does not mean their property right has been unconstitutionally impaired.

In sum, under *Robinson*, Section 25-2-950 is not a retroactive law, and, even if it were, it is constitutional under the three-factor test.

## II. The Assembly Clause

I also disagree with the majority opinion's holding that Section 25-2-795—the ordinance establishing certain occupancy limits for short-term rentals—must withstand heightened due-process scrutiny, instead of simply rational-basis review. It purports to reach this holding based on the Assembly Clause in the Texas Bill of Rights, which says: "The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance." Tex. Const. art. I, § 27.

### A. The text-informing history of the Assembly Clause

The majority opinion formulates the rights granted by the Assembly Clause by importing dictionary definitions of "assemble," "common," and "good." It uses those definitions to conclude that the Assembly Clause protects citizens' "right to physically congregate, in a peaceable manner, for their shared welfare or benefit." *Ante* at 197.

"When identifying fundamental rights, ... an exacting *historical and textual* analysis" is required. *In re J.W.T.*, 872 S.W.2d 189, 211 (Tex. 1994) (Cornyn, J., dissenting from denial of reh'g) (emphasis added). And when we seek to understand constitutional history, "it is important to get that history right before engaging in the complex and separate task of judging how such insights might or might not be applied to contemporary legal problems." Saul Cornell, "*To Assemble Together for Their Common Good*":

*History, Ethnography, and the Original Meanings of the Rights of Assembly and Speech*, 84 Fordham L. Rev. 915, 934 (2015).

Historically, Texas is not the only state whose constitution has a bill of rights like that of the U.S. Constitution. And Texas's Assembly Clause is not the only one to limit its state constitutional right of assembly to the purpose of furthering the "common good." Such language was common in many of the early state constitutions. Similar language can be found in the constitutions of Pennsylvania (1776), Vermont (1777), North Carolina (1776), Massachusetts (1780), and New Hampshire (1783). *See id.* at 931–32. Although individuals are the holders of the right to assemble, its exercise is framed as a civic enterprise. *Id.* at 932. Hence, there is a historical difference between the right to gather to "inflare passions" and the right to gather to "promote reasoned discourse." *See id.*

It is also important to note that a limitation of the right to assemble to matters involving "the common good" was initially included in the U.S. Constitution's Bill of Rights. *See* John D. Inazu, *The Forgotten Freedom of Assembly*, 84 Tulane L. Rev. 565, 571–72 (2010). During House debates, there was much discussion over whether the right to assemble should be limited to matters involving "the common good." As one representative told another, if he "supposed that the people had a right to consult for the common good" but "could not consult unless they met for the purpose," he was in fact "contend[ing] for nothing." *Id.* at 572 (quoting 1 *Annals of Cong.* 760–61 (Joseph Gales ed., 1834)). In other words, though there was concern that the state would interpret the "common good" limitation to oppress minority or dissenting political viewpoints, none disputed that the right of assembly was focused on promoting open, civic discourse and deliberations on matters of public welfare. *See* Cornell, "*To Assemble Together for Their Common Good*": *History, Ethnography, and the Original Meanings of the Rights of Assembly and Speech*, *supra* at

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the right to assemble should be limited to \*208



932 & n.154. While the language limiting the right to assemble was initially retained by both the House and the Senate, it ultimately was removed before passage. Inazu, *The Forgotten Freedom of Assembly*, *supra* at 573 (citing S. Journal, 1st Cong., 77 (Sept. 9, 1789)).

The Texas Constitution was established in 1876 with this wealth of history to draw upon. It did not recognize an unfettered right to assemble for whatever purpose and in whatever manner at whatever time of day, as the majority opinion suggests. It instead limited that right to assemble in two important ways: it must be peaceable, and it must be for the citizens' common good. The majority opinion distinguishes "*their* common good" from "*the* common good" but ignores that the assembly right is granted to "citizens" rather than to "people" more broadly. Compare Tex. Const. art. I, § 27 (assembly right for "citizens"), with *id.* §§ 9 (protecting "people" from unreasonable searches and seizures), 34 (granting "[t]he people" certain rights to hunt, fish, and harvest wildlife). The drafters' specific use of "citizens" implies a link to public discourse that using "people" does not.<sup>1</sup>

<sup>1</sup> The majority opinion's response on this point—that only "citizens" are granted the Texas Assembly Clause's rights—introduces another problem. See *ante* at 198 n.7. The majority opinion's position *must* be that the "citizens" protected by the Texas Constitution are unlimited—citizens of Texas; of Oklahoma; of Virginia, like Messrs. Jefferson and Henry in the majority opinion's hypothetical, see *ante* at 200-01; etc. For if only Texans are clothed with the Texas Constitution's assembly rights, then Section 25-2-795 is not unconstitutional in every respect as is required to sustain a facial constitutional challenge. The City of Austin could still constitutionally apply the ordinance to short-term rentals made to non-holders of Texas assembly rights—non-Texans. In this way, the majority opinion's holding

reaches beyond what its reasoning supports: either it invalidates Section 25-2-795 even for people who have not been shown to be holders of Texas assembly rights, or it atextually conflates the constitution's use of the distinct terms "citizens" and "people," despite the drafters' considered choice to use the two different terms.

Historically and textually, the Assembly Clause assures Texans the fundamental right to peaceably gather for purposes of meaningful civic discourse without fear of retribution. The Clause goes hand in hand with freedom of speech; it ensures that those who speak may have an audience. This is why, as the majority opinion recognizes, the Supreme Court of the United States regularly addresses speech and assembly jointly. See Inazu, *The Forgotten Freedom of Assembly*, *supra* at 597.

The City of Austin has passed limitations on certain short-term rentals that on their face have nothing to do with assembling for the common good to participate in civic discourse. The City believes it has evidence to support that short-term rentals give rise to non-peaceable assemblies disconnected from citizens' common good. The City's restrictions, then, are assembly-neutral zoning regulations that have a rational basis. To reach a contrary conclusion could lead to a challenge to every statute or ordinance regulating conduct that involves people "assembling" together, including trespass and anti-camping statutes. Instead, such enactments should be susceptible to assembly challenge only as enactments targeting non-"common good," non-peaceable assemblies.

The majority opinion also does not give due weight to the phrase "in a peaceable manner" in its analysis. As the Court of Criminal Appeals recognized, the Assembly Clause "specifically limits its protection to 'peaceable assembly.'" *Ferguson v. State*, 610 S.W.2d 468, 470 (Tex. Crim. App. 1979).<sup>2</sup> This matters because the City

relies on evidence of (i) short-term rentals' harms to "public health, public safety, the general welfare, and preservation of historic neighborhoods" and (ii) "concerns ... about short-term rental properties that were poorly maintained, that had code violations, and that generated police and fire reports." The City says that it uncovered evidence of over-occupancy in short-term rentals, which affects "fire safety" and "overwhelm[s] existing wastewater systems." It heard complaints about short-term tenants' "dump[ing] trash in the neighborhood"; "engag[ing] in public urination"; public intoxication; and "open drug use, including at one rental next door to a home with a five-year old child." It heard complaints about illegal parking, "noise, loud music, vulgarity, and other negative impacts of having a 'party house' " environment. And even when City code personnel have cited short-term tenants for misconduct, the misconduct often continues because "[s]ome short-term rental operators completely ignore the concerns of neighbors, and do not regulate tenant misconduct."

<sup>2</sup> Inazu, whom the majority opinion relies on, recognizes the peaceableness limitation. He describes the First Amendment "text handed down to us" as "convey[ing] a broad notion of assembly in two ways. First, it does not limit the purposes of assembly to the common good, thereby implicitly allowing assembly for purposes that might be antithetical to that good (although constraining assembly to peaceable means)." See John D. Inazu, *The Forgotten Freedom of Assembly*, 84 Tulane L. Rev. 565, 576 (2010).

All this and more may bear on an inquiry into peaceable assembly for citizens' common good. But the majority opinion never undertakes such an inquiry, despite the plain constitutional text. Instead, it sets up the strawman that the City's concerns are limited to "reduc[ing] the likelihood that short-term rentals would serve as raucous 'party houses' ... and ... reduc[ing] possible strain on neighborhood infrastructure," overlooking the

City's other public-health and public-safety concerns. *See ante* at 201. In doing so, it considers Section 25-2-795 to be mere "regulation of property use." *See ante* at 201-02.

Analyzing peaceableness requires a broader view. The concept's role in Texas jurisprudence suggests why. The Court of Criminal Appeals once struck down as unconstitutional a statute proscribing "any collection of more than two picketers either within fifty feet of any entrance to picketed premises or within fifty feet of each other" in part because the statute failed to consider "the peacefulness of the group, the lack of obstruction to the flow of traffic, or the level of noise, if any, generated by the picketers." *Olvera v. State*, 806 S.W.2d 546, 552 (Tex. Crim. App. 1991); cf. *De Jonge v. Oregon*, 299 U.S. 353, 365, 57 S.Ct. 255, 81 L.Ed. 278 (1937) ("[C]onsistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime."). Relatedly, driving while intoxicated is "a breach of the peace," for purposes of a <sup>210</sup> warrantless arrest. *See Banda v. State*, 317 S.W.3d 903, 912 n.4 (Tex. App.—Houston [14th Dist.] 2010, no pet.). And so is "curs[ing] and creat[ing] a disturbance" when a peace officer is investigating a complaint. *See Johnson v. State*, 481 S.W.2d 864, 865–66 (Tex. Crim. App. 1972).

Loud noise. Obstructing infrastructure. Flouting law enforcement. Public disturbances. Threats to public safety. All these may make an assembly non-peaceable and have nothing to do with civic discourse. And the City believes that it has evidence of short-term rentals causing all these. To determine whether the City is right, we should examine what ties all these examples together as breaches of the peace disconnected from the common good. The majority opinion eschews a full peaceableness or "common good" analysis, however, sidestepping what the plain constitutional text requires.

## B. Texas courts conceive of fundamental rights much more narrowly.

The majority opinion is also out of step with Texas "fundamental right" precedent. When litigants plead constitutional violations of allegedly fundamental rights, Texas courts are typically more circumspect than the majority opinion is in defining the scope of the right at issue. By not giving due weight to the concepts of peaceableness and citizens' common good in its holding that "the right to assemble granted by the Texas Constitution is a fundamental right," thereby requiring strict scrutiny, the majority opinion sweeps too broadly. *See ante* at 198.

It has no limiting principle. The effect of the majority opinion's view is that any regulation affecting any activity, anywhere in Texas, is subject to strict-scrutiny review so long as more than one person is involved. This view will have exactly the kind of far-reaching effects that the Retroactivity Clause would have had if the Supreme Court had not prevented it from being interpreted overly literally. *Cf. Robinson*, 335 S.W.3d at 138–39 (quoting *Texas Water Rights Comm'n*, 464 S.W.2d at 648).

Consider how the majority opinion's sweeping approach might undermine other common-sense results. When a student's parent challenged a statute prohibiting students from participating in extracurricular activities, no matter where they take place, unless the student maintained a 70% grade average, the Supreme Court of Texas considered the right at issue to be "the right to participate in extracurricular activities." *See Spring Branch I.S.D. v. Stamos*, 695 S.W.2d 556, 557–60 (Tex. 1985). But what if the Court, like the majority opinion here, couched the right more generally as the right "to get together or congregate"? That would encompass extracurricular activities on campus or elsewhere. The Supreme Court then would have analyzed the

parent's challenge under heightened scrutiny. Instead, it disposed of the challenge on rational-basis review. *See id.*

Elsewhere, this Court upheld a Travis County park rule restricting access to a park known for nude sunbathing to people over 18 years old. *See Central Tex. Nudists v. County of Travis*, No. 03-00-00024-CV, 2000 WL 1784344, at \*1, \*4, \*8 (Tex. App.—Austin Dec. 7, 2000, pet. denied) (not designated for publication). Nudist parents who wanted to bring their children to the park challenged the rule, but this Court held that the rule did not infringe on any fundamental right and did not "affect the ability of the [parents] or other naturist parents to associate with their children, but regulate[d] only where such associations may occur." *See id.* at \*3–4, \*6. The parents could not congregate with their children anywhere they pleased. But, here, the majority opinion seems to say \*211 that assembly rights are fundamental no matter where they are exercised.<sup>3</sup>

<sup>3</sup> The majority opinion relegates to a footnote the "privacy rights [that] are implicated in [its] right-of-assembly analysis." *See ante* at 199–200 n.9. The majority opinion does not divine a difference between federal and state privacy rights and relies on opinions from the Supreme Court of the United States. *See id.* But the footnote fails to consider the similar ordinance upheld in *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974). There, the ordinance

restricted land use to one-family dwellings excluding lodging houses, boarding houses, fraternity houses, or multiple-dwelling houses. The word "family" as used in the ordinance means, "(o)ne or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons but not exceeding two (2) living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage shall be deemed to constitute a family."

*Id.* at 2, 94 S.Ct. 1536. The Court upheld the ordinance, holding that the suit "involve[d] no 'fundamental' right guaranteed by the Constitution, such as ... the right of association ... or any rights of privacy." *Id.* at 7, 94 S.Ct. 1536 (internal citations omitted). The majority opinion's footnote does not attempt to distinguish *Village of Belle Terre*.

The majority opinion is inconsistent with "fundamental right" precedent because it couches the right at issue far more broadly than Texas courts traditionally would.

### C. Neither of Texas's high courts have taken the novel step that the majority opinion takes today.

Finally, the majority opinion oversteps our Court's role as an intermediate court by declaring a fundamental right to congregate without fully analyzing peaceableness or the advocacy of a matter of public welfare. We should instead leave this function to our state's two high courts.

Declaring rights fundamental, and thus beyond ordinary democratic give-and-take, is a weighty matter. *See, e.g., Obergefell v. Hodges*, 576 U.S.

644, 135 S. Ct. 2584, 2604–06, 192 L.Ed.2d 609 (2015) (holding that federal Due Process and Equal Protection Clauses forbid denying fundamental right to marry to same-sex couples and noting that that holding places right "beyond the reach of majorities and officials"). Declaring fundamental the right to congregate, without any real qualification, is a novel and big step into this weighty area because "[e]conomic regulations, including zoning decisions, have traditionally been afforded only rational relation scrutiny." *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 939 (Tex. 1998).<sup>4</sup>

<sup>4</sup> The majority opinion considers Section 25-2-795 to be a zoning ordinance because, in holding Section 25-2-795 unconstitutional, it relies on authority instructing that "[w]e must 'not assume that zoning codes inherently serve a compelling interest, or that every incremental gain to city revenue (in commercial zones), or incremental reduction of traffic (in residential zones), is compelling.'" *See ante* at 202 (quoting *Barr v. City of Sinton*, 295 S.W.3d 287, 307 (Tex. 2009)). *Barr* involved the fundamental right of free exercise of religion, which is not at issue here. *See* 295 S.W.3d at 305–06. The majority opinion does not explain how Section 25-2-795 can be a zoning ordinance while Section 25-2-950 "does not advance a zoning interest." *Compare ante* at 189-90 (no zoning interest), *with ante* at 201-02 (zoning).

The majority opinion recognizes that neither the Supreme Court of Texas nor the Court of Criminal Appeals of Texas has declared an unbounded right to congregate to be fundamental. As noted above, the Court of Criminal Appeals considers the Assembly Clause to be "specifically limit[ed] ... to 'peaceable assembly.'" *Ferguson*, 610 S.W.2d at 470. And history provides the important context that peaceable assemblies are only protected to the extent they implicate the common good, whether advocating majority or minority viewpoints.\*212 Because the high courts have not yet taken this



step, we should refrain from doing so. *Cf. Ex parte Morales*, 212 S.W.3d 483, 490–93 (Tex. App.—Austin 2006, pet. ref'd) (refusing to declare "adult consensual sexual activity" to be fundamental right); *In re Living Ctrs. of Am., Inc.*, 10 S.W.3d 1, 6 (Tex. App.—Houston [14th Dist.] 1999, orig. proceeding [mand. denied]) (refusing to declare "the fair administration of justice" to be fundamental right). We should refrain even more because the two interpretations of assembly rights advanced by the majority opinion—that "the purposes of assembly" are not limited "to the common good" or to "petitioning the government"—have not "been readily acknowledged in legal and political discourse." See Inazu, *The Forgotten Freedom of Assembly*,

*supra* at 576–77. Indeed, the majority opinion's view is called into question by hundreds of years of historical and legal precedent.

For these reasons, I dissent from the majority opinion regarding due process. I would review Section 25-2-795 under the rational-basis test because it is a zoning law supported by the City of Austin's inherent police powers, is supported by a lengthy record, and does not impinge upon any citizen's right to peaceably assemble to advocate for the common good.

I would affirm the trial court's grant of the City's no-evidence motion for summary judgment.

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STR Regulations	Bradshaw	Stevens	Campos	Orozco	Martinez	Riley
Registration Requirments	(Yes)just the basics	Yes	(Yes) Detailed	(Yes) Detailed	(Yes) Detailed	(Yes) Detailed
Inspections	No	No	Yes	Yes	Yes	(Yes) But only one
Restrictions	None	Yes with Escalated enforcement	Yes	Yes	Yes	(Yes) Minus Occupancy
Suspension requirements	Yes - limited	Yes	Yes	Yes	Yes	(Yes) Minus Occupancy
Registration fee	\$25	\$25 before 12/23, \$75 after 12/23. \$0 for small, \$25 or \$75 for large	\$75	\$75	\$125	\$125
Renewal Fee	\$25 - annual	\$25 before 12/23, \$75 after 12/23. \$0 for small, \$25 or \$75 for large - Triennial	\$75 -annual	\$75- annual	\$125- annual	\$125-annual
Allowed in Residential	Yes	Yes	Yes	Yes	Yes	Yes
Separation Distance	No	(Yes) 100 feet	(Yes) 15% of Block face	(Yes) 15% of Block face	(Yes) 250 feet	(Yes) 250 feet
Occupancy Restrictions	No	No	Yes	Yes	No	No
Events Allowed	Yes	No	No	No	No	No

# STRs

*Narrowly tailoring to solve the problem*

# **DISCLAIMER**

**IN THE SPIRIT OF TRANSPARENCY:**

**AFTER MAKING THE FOLLOWING PRESENTATION,  
I WAS INFORMED BY OUR LEGAL COUNSEL THAT  
SOME OF THE STATEMENTS/ INTREPRETATIONS  
COULD BE CONSTRUED AS A LEGAL OPINION.**

**THE FOLLOWING SHOULD NOT BE UNDERSTOOD  
TO BE A LEGAL OPINION OR ANALYSIS.**



# **DISCLAIMER**

**FEEL FREE TO REQUEST AN EXECUTIVE SESSION  
IF YOU'D LIKE TO HAVE OUR CITY ATTORNEY  
GIVE THEIR OPINION ON THIS TOPIC.**

# SUMMARY

- A. What we cannot regulate, enforce, and restrict regarding STRs
- B. “Narrowly tailored” law
- C. Leon Valley specific concerns and issues regarding STRs
- D. PROPOSAL: Group A, Group B, Group C STRs
- E. PROPOSAL: Enforcement Level 1, Level 2, Level 3 regarding STRs

# What restrictions are unlawful?

- Outright ban on STRs in area where STRs have historically been able to operate, including sunset provisions for current STRs (“unconstitutionally retroactive”, takings claim) *Zaatari v. City of Austin AND Muns et al. v. City of Grapevine*
- Requiring property owner have a homestead exemption in order to operate STR *Zaatari v. City of Austin*
- Requirement that property owner live in Leon Valley if they have an STR in Leon Valley *Hignell-Stark v. City of New Orleans, 46 F.4th 317 (5th Cir. 2022) [Commerce Clause, US Constitution]*
  - Lawsuits filed in Austin after this ruling - Austin still denies non-occupying owners the ability to operate STR
- Prevention of the number of people that can assemble/ gather outside of a residence or the time they may assemble *Zaatari v. City of Austin AND Muns et al. v. City of Grapevine*
- Any type of occupancy limitation – either inside of residence or outside residence
- City-wide ban on STRs \*

# Austin

- Previously prohibited more than 6 people from gathering outside between 7:00 AM and 10:00 PM
- Previously prevented any gathering outside between 10:00 PM and 7:00 AM
- Previously only allowed maximum occupancy as 2 guests per bedroom + 2 extra guests per property
- Previously restricted occupancy to no more than six (6) unrelated adults or ten (10) related adults



# Austin

## “Will Austin Code continue to enforce STR occupancy limits?”

As a result of this ruling, Austin Code can no longer enforce STR occupancy limits (neither internal nor external of a structure)."

# Why?

- The defendant (municipalities) in the lawsuits failed to show the regulations were NARROWLY TAILORED to ADVANCE A PUBLIC PURPOSE
- Narrowly tailored?
  - Law must be written to specifically accomplish a legitimate, specific, compelling state interest
  - The means chosen to accomplish the government's purpose must be specifically and narrowly framed to accomplish that purpose
    - If not, likely violates 5<sup>th</sup> and 14<sup>th</sup> amendment to US Constitution, as well as Article 1, Section 17 of Texas Constitution

# Why?

- Regulations violated Texas laws and protections regarding:
  - Equal protection
  - Due course of law
  - Freedom of movement
  - Right to privacy
  - Freedom of assembly
  - Freedom from unreasonable search and seizure

**What simple, sensible, enforceable,  
narrowly tailored laws can we implement  
to deal with the specific problems and  
concerns?**



# Specific problems, concerns

- Health and safety of guests, especially when larger number of guests are staying at property
- Welfare related – quality of life for residents that live adjacent to or near the STR property
  - Parking concerns
  - Noise concerns
  - Party concerns

# PROPOSAL – Group A

- Voluntary free registration permit for all STRs that advertise or only allow up to 8 guests on their property
  - Voluntary affidavit regarding smoke detectors, carbon monoxide detectors, attestation that there two ways to exit from every sleeping area
  - Voluntarily provide 24-hour contact information to be provided to city in event of emergency
  - Voluntary statement if they live on the premises, off the premises, or a combination thereof

# PROPOSAL – Group B

- Implement mandatory registration permit for all STRs that advertise or allow greater than 8 guests on their property
  - Require affidavit regarding smoke detectors, carbon monoxide detectors, statement that there are two ways to exit from every sleeping area
  - Require statement that they have read and will comply with LV ordinances, including those regarding STRs
  - Require property owner identify if they live on the premises, off the premises, or a combination thereof
  - Require 24-hour contact information to be provided to city in event of emergency

# PROPOSAL – Group C

- Implement mandatory registration permit and Certificate of Occupancy for all STRs that advertise or allow greater than 12 guests on their property or those that reach “Level 2” of enforcement (discussed later)
  - Fee: Whatever our cost is for building, fire, safety inspections
  - Cert. of Occupancy to verify compliance with building codes, safety codes, fire safety in addition to a plan of action if required (if property owner has reached “Level 2” of enforcement)
  - Require statement that they have read and will comply with LV ordinances, including those regarding STRs
  - Require property owner identify if they live on the premises, off the premises, or a combination thereof
  - Require 24-hour contact information to be provided to city in event of emergency



# **What may be a nuisance, and what is a narrowly tailored regulation to combat the nuisance?**

- PARTIES, NOISE – Property owner or guest may not use or allow the use of sound equipment, play any instrument, or make any noise that is audible outside of the property line between 9:00 PM and 9:00 AM
- PARTIES – Property owner or guest may not allow consumption of alcohol or any other mind-altering drugs or substances in public view or by minors

# **What may be a nuisance, and what is a narrowly tailored regulation to combat the nuisance?**

- TRASH – Property owner or guest may not litter or allow littering of any trash, bottles, or belongings in the front yard of the STR property, in any right-of-ways near the property, in street, or on any adjacent properties
- PARKING- Property owner or guest may not park in a manner than limits or blocks ingress or egress to another property, and are limited to parking vehicles on side of street abutting property line in the area directly in front of property

# **What may be a nuisance, and what is a narrowly tailored regulation to combat the nuisance?**

- ANY OTHERS?

# Enforcement – Level 1 of 3

- Warning mailed via certified mail to registered property owner and any other known parties that manage or control property
- Informs of laws, specific nature of violations and recommendations for preventing them in the future, also contains requirements for registration for certain types of properties



## **Enforcement – Level 2 of 3**

- Warning mailed via certified mail must have already been provided to property owner or agent
- Citation either provided to owner or agent, or mailed via certified mail outlining the specific violation
- \$500 fine
- Requirement to register as Type C STR as well as submission of a plan of action that is approved by staff (development?) to obtain certificate of occupancy

## Enforcement – Level 3 of 3

- Warning must have been provided and property owner/ agent must have already been cited under “Level 2 Enforcement”
- Citation and cease and desist provided to owner or agent via certified mail and given in-person, if possible - outlining the specific violation
- \$500 fine
- Revocation of Certificate of Occupancy, may be eligible to re-apply as Type C STR no sooner than in 365 days
- Requirement to submit and have approved (development director?) a detailed plan of action prior to issuance of Type C STR certificate of occupancy outlining the past violations and how they will be mitigated in the future

# **We don't want to be New Braunfels...**

- FEDERAL case
- December 13, 2022 - Texas Public Policy Foundation has taken over the lawsuit, enjoining Plaintiffs that have filed suit against New Braunfels as they appeal
- December 16, 2022 - The Pacific Legal Foundation, Manhattan Institute, and Reason Foundation filed an amicus brief arguing in favor of the homeowners suing the city of New Braunfels
- December 20, 2022 - CATO Institute files amicus brief arguing in favor of the homeowners suing the City of New Braunfels
- December 20, 2022 Institute for Justice (IJ) filed an amicus brief arguing in favor of the homeowners in New Braunfels who have sued the City of New Braunfels regarding the STR ordinance

# We don't want to be New Braunfels...

No. 22-50908

## IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RAFAEL MARFIL, VERGE PRODUCTIONS, L.L.C.; ENRICO  
MARFIL; NAOMI MARFIL; KOREY A. RHOLACK; DANIEL OLVEDA;  
DOUGLAS WAYNE MATHES,

*Plaintiffs-Appellants,*

v.

CITY OF NEW BRAUNFELS, TEXAS,

*Defendant-Appellee*

On Appeal from the United States District Court  
for the Western District of Texas, Waco Division

### APPELLANTS' BRIEF

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CASE No. 22-50908

## IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RAFAEL MARFIL, VERGE PRODUCTIONS, L.L.C.; ENRICO  
NAOMI MARFIL; KOREY A. RHOLACK; DANIEL OLVEDA;  
DOUGLAS WAYNE MATHES,

*Plaintiffs-Appellants,*

v.

CITY OF NEW BRAUNFELS, TEXAS,

*Defendant-Appellee.*

On Appeal from the United States District Court  
for the Western District of Texas, Waco Division

### BRIEF OF THE CATO INSTITUTE AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

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2022

No. 22-50908

## In the United States Court of Appeals for the Fifth Circuit

RAFAEL MARFIL, VERGE PRODUCTIONS,  
ENRICO MARFIL, NAOMI MARFIL, KOREY A. R.  
DANIEL OLVEDA, AND DOUGLAS WAYNE M.

*Plaintiffs-*

v.

CITY OF NEW BRAUNFELS, TEXAS,

*Defendant-*

On Appeal from the United States District Co  
for the Western District of Texas, Waco Divisi  
No. 6:20-cv-002484-ADA-JCM  
Alan D. Albright, Judge Presiding

### BRIEF OF AMICUS CURIAE INSTITUTE FOR JUSTICE IN SUPPORT OF PLAINTIFFS-APPELLANTS

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*Counsel for Amicus Curiae*

No. 22-50908

## UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RAFAEL MARFIL, VERGE PRODUCTIONS, LLC, ENRICO MARFIL,  
NAOMI MARFIL, KOREY A. RHOLACK, DANIEL OLVEDA, and  
DOUGLAS WAYNE MATHES

*Plaintiffs - Appellants,*

v.

CITY OF NEW BRAUNFELS, TEXAS,  
*Defendant - Appellant.*

Appeal from the United States District Court  
for the Western District of Texas, Waco Division  
No. 6:20-CV-248 (Hon. Alan D. Albright)

### AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, MANHATTAN INSTITUTE, AND REASON FOUNDATION IN SUPPORT OF APPELLANTS AND REVERSAL

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**CITY OF LEON VALLEY  
CITY COUNCIL REGULAR MEETING**  
Leon Valley City Council Chambers  
6400 El Verde Road, Leon Valley, TX 78238  
Tuesday, September 19, 2023 at 6:30 PM

**MINUTES**

**The City of Leon Valley City Council Shall Hold an In-Person Meeting with A Quorum of Members of City Council to Be Physically Present in The Leon Valley City Council Chambers, 6400 El Verde Road, Leon Valley, Texas 78238. Some Members of City Council May Appear and Participate in The Meeting by Videoconference Pursuant to The Requirements Set Forth in The Texas Open Meetings Act.**

**Citizens May E-Mail Public Comments To [citizenstobeheard@leonvalleytexas.gov](mailto:citizenstobeheard@leonvalleytexas.gov). All Other Citizen Participation May Be Provided In-Person at City Council Chambers.**

**1. Call to Order; Determine a Quorum is Present, Pledge of Allegiance**

**PRESENT**

Mayor Chris Riley  
Council Place 1 Benny Martinez  
Mayor Pro Tem, Council Place 2 Josh Stevens  
Council Place 3 Philip Campos  
Council Place 4 Rey Orozco  
Council Place 5 Will Bradshaw

Mayor Chris Riley called the meeting to order at 6:30 PM and announced that a quorum of City Council was present in Council Chambers.

Mayor Riley asked Council Will Bradshaw to led the Pledge of Allegiance.

**2. Citizens to be Heard**

Those who spoke at this time were: Maria Gamboa (Leon Valley); Akimsola Muse (San Antonio African Food Festival); Sergio Gonzalez (Senator Menendez' office); Matthew Hodde (Leon Valley); and Erick Matta (Leon Valley)



### 3. Presentations

#### 1. **Presentation, Discussion and Possible Action to Review, Edit, and Approve a Citizen Survey for Solid Waste Services - M. Moritz, Public Works Director**

Melinda Moritz, Public Works Director presented a draft survey for solid waste services. Members of City Council will submit comments prior to this survey being available for community input.

#### 2. **Presentation, Discussion and Possible Direction to the Staff on a Shared Personnel Cost with the County for a Homeless Outreach Coordinator- Dr. Caldera, City Manager**

Crystal Caldera, City Manager presented an item regarding shared personnel cost with the County for a Homeless Outreach Coordinator.

#### 3. **Presentation and Discussion on the City's Investment Report - Councilor Philip Campos and Councilor Josh Stevens**

Crystal Caldera, City Manager and Councilor Philip Campos gave a brief presentation on the City's Investment Report.

#### 4. **Announcements by the Mayor and Council Members.** At this time, reports about items of community interest, which no action will be taken may be given to the public as per Chapter 551.0415 of the Government Code, such as: expressions of thanks, congratulations or condolence, information regarding holiday schedules, reminders of social, ceremonial, or community events organized or sponsored by the governing body or that was or will be attended by a member of the Leon Valley City Council or a City official.

Announcements were made by Mayor Chris Riley and Members of City Council.

### 5. **City Manager's Report**

Crystal Caldera, City Manager reminded everyone that the City Manager's Report was printed and available on the table in the foyer, as well as posted on the website.

#### 1. **Upcoming Important Events:**

**Regular City Council Meeting, Tuesday, October 03, 2023 was cancelled.**

**Regular City Council Meeting, Tuesday, October 17, 2023, at 6:30 PM, in City Council Chambers.**

**National Night Out, Tuesday, October 04, 2023. Deadline to register your event is Thursday, September 28, 2023. More information is available at <https://www.leonvalleytexas.gov/police/page/national-night-out>**

**Texas Municipal League (TML) 111th Annual Conference and Exhibition, Wednesday, October 04 – Friday, October 06, 2023, in Dallas, TX.**

**Coffee with the Mayor & City Council, Saturday, October 28, 2023, from 9:00 AM to 11:00 AM, at the Leon Valley Conference Center.**

**Trash & Treasure Event, Saturday, October 28, 2023, from 9:00 AM to 12:00 PM, at the Leon Valley Community Center.**

**Miscellaneous other events and announcements.**

## **6. Consent Agenda**

Mayor Chris Riley made a quick note of a correction to the resolution renaming the Leon Valley Conference Center after Irene Baldrige.

A motion was made by Councilor Josh Stevens to approve all items in the Consent Agenda with the amendment stated above. The motion was seconded by Councilor Josh Stevens.

Voting Yea: Council Place 1 Martinez, Mayor Pro Tem, Council Place 2 Stevens, Council Place 3 Campos, Council Place 4 Orozco, Council Place 5 Bradshaw

- 1. Discussion and Possible Action Approving of the Following City Council Minutes:  
a. 09-05-2023 Regular City Council Meeting**
- 2. Presentation of a Proclamation in Recognition of World Teacher's Day - October 05, 2023 by Mayor Chris Riley**
- 3. Discussion and Possible Action to Consider Approval of an Ordinance Amending the Leon Valley Code of Ordinances, Chapter 1 General Provisions, Article 1.09 Parks and Recreation, Division 2 Use Regulations, Sec. 1.09.034 - Additional Prohibited Uses and Activities, to Add a Sub-section (h), Prohibiting Smoking in the Huebner-Onion Natural Area Park (HONAP) (1st Read was Held on 09-05-2023) - M. Moritz, Public Works Director**
- 4. Presentation and Discussion of the Monthly Financial Report Ending August 31, 2023 - C. Goering, Finance Director**
- 5. Discussion and Possible Action on an Ordinance Authorizing a Fiscal Year 2022-23 General Fund Budget Adjustment in the Amount of \$25,000 for the Purpose of Increasing the Finance Department Budget. (1st Read was Held on 09-05-2023) - C. Goering, Finance Director**
- 6. Presentation, Discussion and Possible Action on an Ordinance Amending Chapter 15 Zoning, Division 6, Section 15.02.306 R-1 Single-Family Dwelling District, to Allow Accessory Buildings in the Side Yard (1st Read was Held on 09-05-2023) - M. Teague, Planning and Zoning Director**
- 7. Discussion and Possible Action on an Ordinance of the City of Leon Valley, Texas, City Council Amending the City of Leon Valley Code of Ordinances, Chapter 4, Business Regulations, Article 4.03 Alcoholic Beverages, Removing Section 4.03.033 Sales Near Churches, Public Schools, or Private Schools; Amending**

**Section 4.03.035 Late Hours Permit (D)(3) Allowing for a Two-Year Permit; Amending Section 4.03.037 Beverage Fee Due Date; and Appendix A Fee Schedule, A2.000 Administrative Fees (1st Read was Held on 09-05-2023) - S. Passailaigue, City Secretary**

- 8. Discussion and Possible Action on a Resolution Renaming the Leon Valley Community Center to the Leon Valley Irene Baldrige Community Center - Mayor Riley**
- 9. Discussion and Possible Action on an Ordinance Authorizing the Amendment of the General Fund Budget for Earthwise Living Fiscal Year of 2022-2023 (1st Read was Held 09-05-2023) - C. Miranda, Community Relations Director**

## **7. Regular Agenda**

- 1. Conduct a Public Hearing for the City of Leon Valley on the Proposed 2023 Tax Rate - Dr. Caldera, City Manager**

Mayor Chris Riley opened the Public Hearing at 7:40 PM

There being no public comment; Mayor Riley closed the Public Hearing at 7:41 PM

- 2. Discussion and Possible Action on an Ordinance Approving and Adopting the Tax Year 2023; Levying a Tax of \$0.433176 for Maintenance and Operations and \$0.051563 for the Interest and Sinking Fund, for a Total Tax Rate of \$0.484739 . (1st Read Was Held on 09-05-2023) - Dr. Caldera, City Manager**

Councilor Josh Stevens motioned that the property tax rate be increased by the adoption of a tax rate of \$0.484739 which is effectively a 13.1335% (percentage by which the proposed tax rate exceeds the no new revenue tax rate) percent increase tax rate. Maintenance and Operations and Interest Sinking is allocated as follows: \$0.433176 for Maintenance and Operations; \$0.051563 for Interest and Sinking; \$0.484739 Total Tax Rate.

Mayor Chris Riley asked Sandra Passailaigue, City Secretary to take a roll call vote.

City Secretary Passailaigue proceeded with a roll call vote to which the City Council replied: Councilor Benny Martinez - Nay; Councilor Josh Stevens - Yea; Councilor Philip Campos - Yea; Councilor Rey Orozco - Yea; and Councilor Will Bradshaw - Yea.

Mayor Riley announced the motion passed.

- 3. Presentation, Discussion, and Possible Action Granting a Time Extension for Planned Development District (PD) #2021-1, on a 2.85 Acre Parcel of Land, Generally Located at 6758 Poss Road, Being Lot 64, Block 4, CB 5784, Quality Subdivision - M. Teague, Planning and Zoning Director**

Mindy Teague, Planning and Zoning Director presented on behalf of applicant Mr. Chehade, a request for a time extension for Planned Development District (PD) #2021-

1, on a 2.85-acre parcel of land, generally located at 6758 Poss Road, being Lot 64, Block 4, CB 5784, Quality Subdivision.

Councilor Philip Campos motioned to grant the request as presented. Councilor Will Bradshaw seconded the motion.

Voting Yea: Council Place 1 Martinez, Mayor Pro Tem, Council Place 2 Stevens, Council Place 3 Campos, Council Place 4 Orozco, Council Place 5 Bradshaw

4. **Presentation and Discussion on an Ordinance Repealing the City's Juvenile Curfew Ordinance in the City's Code of Ordinances Chapter 8, Specifically Division 2. Chapter 8.02.031 - 8.02.035 (1st Read as Required by City Charter) - M. Tacquard, Asst. Police Chief**

Mike Tacquard, LVPD Assistant Chief presented a proposed ordinance repealing the City's Juvenile Curfew Ordinance.

This item will be added to the October 17, 2023 Consent Agenda for second reading.

5. **Presentation and Discussion on Amending Ordinance Chapter 3 Building Regulations; Article 3.02 - Technical and Construction Codes and Standards; Sec. 3.02.054 - Property Maintenance Code and Sec. 3.02.055 - Appeals and Variances to Technical and Construction Codes. (1st Read as Required by the Charter) – Dr. Caldera, City Manager**

Crystal Caldera, City Manager presented a proposed ordinance amending Chapter 3 Building Regulations; Article 3.02 - Technical and Construction Codes and Standards; Sec. 3.02.054 - Property Maintenance Code and Sec. 3.02.055 - Appeals and Variances to Technical and Construction Codes.

Those who spoke on this item were: Erick Matta (Leon Valley)

This item will be added to the October 17, 2023 Consent Agenda for second reading.

6. **Presentation and Discussion to Consider an Ordinance Amending the Leon Valley Code of Ordinances, Appendix A Fee Schedule to Amend Fees Associated with Building, Health, and Trade Permit and Inspection Fees, and to Remove Sections No Longer in Use (1st Read as Required by City Charter) - M. Moritz, Public Works Director**

Melinda Moritz, Public Works Director presented a proposed ordinance amending the Leon Valley Code of Ordinances, Appendix A Fee Schedule to amend fees associated with Building, Health, and Trade Permit and Inspection Fees, and to remove sections no longer in use.

This item will be added to the October 17, 2023 Consent Agenda for second reading.

## 8. Citizens to be Heard

Those who spoke at this time were: Maria Gamboa (Leon Valley); and Erick Matta (Leon Valley)

## 9. Requests from Members of City Council to Add Items to Future Agendas – Per Section 3.10 (A) of the City of Leon Valley’s Code of Ordinances, at a meeting of City Council, a member of City Council may place an item on an agenda by making a motion to place the item on a future agenda and receiving a second. No discussion shall occur at the meeting regarding the placement of the item on a future agenda.

Mayor Chris Riley asked that the next Town Hall (January 24, 2024) be added to a future agenda to begin discussing topics.

## 10. Adjournment

Mayor Riley announced that the meeting adjourned at 8:22 PM

**These minutes approved by the Leon Valley City Council on the 17th of October, 2023.**

**APPROVED**

\_\_\_\_\_  
**CHRIS RILEY**  
MAYOR

**ATTEST:** \_\_\_\_\_  
**SAUNDRA PASSAILAIGUE, TRMC**  
CITY SECRETARY



**EARTHWISE LIVING COMMITTEE MEETING MINUTES  
CITY OF LEON VALLEY, TEXAS  
August 9, 2023**

The Earthwise Living Committee of the City of Leon Valley, Texas met on the 9th day of August at 5:30 pm in the Large Conference Room at City Hall, located at 6400 El Verde Road, Leon Valley, Texas for the purpose of the following business, to-wit:

---

**REGULAR MEETING OF THE CITY OF LEON VALLEY EARTHWISE LIVING COMMITTEE,  
5:30 PM**

**1. Call the City of Leon Valley Regular Earthwise Living Committee Meeting to Order and Determine a Quorum is Present.**

The meeting was called to order and a quorum was established at 5:35 pm. Members present were Valdez, Castillo, Dillig, Beaumel, Zannaras, and Co-chairs Burnside and Meffert. Also present were Staff liaison Miranda and Council liaison Mayor Riley. Absent was member Bohl and Key.

**2. Review and Consider Approval of the May 10, 2023 Regular Earthwise Living Committee Meeting minutes.**

The meeting minutes from May 10 were reviewed and a motion to approve was made by member Valdez and second by Co-Chair Meffert.

**3. Discussion and Possible Action on Earthwise Living Day Event 2023 Event.**

A general discussion on themes for Earthwise Living Day Event 2024 was had by all members. A consensus to brainstorm and add ideas to the shared file to discuss at the next meeting was made.

**4. Discussion and Possible Action on Purchasing Promotional Items for Earthwise Living Day 2024.**

A discussion was led by Chair Burnside on purchasing seeds from a specific vendor to hand out as an item to visitors. Discussion and ideas to use a local vendor and seek donated seeds was had. Member Beaumel offered to take lead on seeking donations of seeds and/or research vendors/promotional items and ways to use the remaining sponsorship funds and/or next budget year funds. Discussion and agreement by all members was made to purchase thermal bags and update the street banner with the remaining sponsorship funds.

**5. Discussion and Possible Action on Speaker Series.**

A general discussion on the upcoming Tea Time Speaker event was held. Members agreed to have tea, water and snacks similar to the last event held at the Library. Chair and Co-Chair discussed having the Library Director create a flyer and promote the event on social media, enews, and posted at the buildings.

**6. Discussion and Possible Action on Restaurants/Businesses Award Program.**

A general discussion on ideas and how to incorporate an award program in Leon Valley was held. Economic Development Director, Roque Salinas, was present and advised the award should be fair and open to all businesses and set with guidelines. Members agreed to come up with fair guidelines to include and award all businesses. Members agreed to research the San Antonio Por Vida program and come back with thoughts and ideas to implement that will work in Leon Valley.

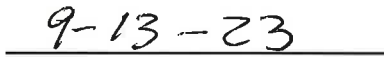
#### 7. Announcements, updates, and Other Business.

The committee scheduled a regular EWL Committee meeting for September 13, 2023 at 5:30 pm.

#### 8. Adjournment

Chair Burnside motioned to adjourn the meeting and the motion was seconded by Co-Chair Meffert. The meeting was adjourned without objection at 7:15 pm.

  
Chair

  
Date



## Leon Valley Park Commission Meeting Minutes

The Park Commission of the City of Leon Valley, Texas met on the 10th day of August 2023, at 6:30 p.m., at the Leon Valley Conference Center, 6421 Evers Road, Leon Valley, Texas, 78238 for the purpose of the following business, to-wit:

---

### 1. Call to Order, Pledge of Allegiance, and Determine if Quorum is Present.

Park Commission Chairman Roger Christensen called the meeting to order at 6:43 p.m., with Commissioners Tom Benavides, Ann Sawyer, Elaine Valdez, and Joyce Trent present. Absent and excused were Vice-Chair Danielle Bolton, and Commissioners Nancy Marrufo, Julie-Carreon-Martinez, and Diane Frazier. Also present at the meeting was Staff Liaison Melinda Moritz.

### 2. Review and Approval of the July 13, 2023, Park Commission Minutes – (Commissioners)

Commissioner Valdez moved to approve the minutes as corrected, which was seconded by Commissioner Benavides, and the motion was carried unanimously.

### 3. Citizens to Be Heard

There were no citizens wishing to speak.

### 4. Old Business

#### A. Discussion – Boy Scout Eagle Project – Gaga Ball at Steurenthaler-Silo Park (T. Bandaru)

Staff member Moritz explained that Mr. Bandaru had decided to construct his Gaga Ball Pit at Carnahan Elementary School instead of the park.

#### B. Discussion and Recommendations – Rescind Recommendation for the Prohibition of Alcoholic Beverages at Swimming Pool Facilities (Commissioners)

Chairman Christensen noted that the Commission had two courses of action, being to rescind the item or to table it indefinitely. He explained that to affirm the action would be redundant as they had already affirmed it. After a general discussion, Commissioner Valdez motioned to rescind the action. The motion was seconded by Commissioner Sawyer, and the motion carried unanimously.

## 5. New Business

### **a. Discussion and Recommendation – Consider Ordinance Amending the Leon Valley Code of Ordinances, Chapter 1 General Provisions, Article 1.09 Parks and Recreation, Division 2 Use Regulations, Section .09.034 – Additional Prohibited Uses and Activities, to Add a Subsection (h) Which Would Prohibit Smoking in the Huebner-Onion Natural Area Park (HONAP) (Mayor Riley/M. Moritz)**

Staff member Moritz explained that, although she had not had a chance to speak with the Mayor, she understood the concern with the HONAP was that it is left in its natural state, which had overgrown grasses and fallen trees, which increased the chances of fire danger. She noted that there was a fire break, but that it only extended along the improved properties to the rear of the park. She then explained that the addition to the Ordinance would prohibit all types of smoking, including smoking devices. After a few questions, Commissioner Trent made a motion to recommend approval of the amendment, which was seconded by Commissioner Sawyer. The motion carried unanimously. Ms. Moritz explained that the item would be brought before the City Council at their September 5, 2023 meeting for their consideration.

## 6. Commissioner and Staff Comments.

Commissioner Trent stated that her son and Grandson used the large playground frequently, but her son would not let her Grandson play on the slide as there was a large open area along the side of the equipment. She asked Ms. Moritz to investigate whether this was safe. Ms. Moritz stated that she would investigate this concern.

Chairman Christensen stated that the Tree Subcommittee had concerns that the new trees along the new Hike & Bike Trail were not being watered regularly and he asked if the Public Works water truck could be used to perform this task. Ms. Moritz stated that they had been watering with the water truck, but that it had broken and was in the process of being repaired. She noted that the City Council was considering adding irrigation for that area to the FY 2023-24 budget.

Commissioner Benavides explained that the Arbor Day event was upcoming and that the Park Commission needed to decide what type of trees should be purchased for the event. He further noted that the event would need to be advertised and had questions about the annual poster contest and what schools would be invited. He stated that the event would be held on October 28<sup>th</sup> in conjunction with the library's Halloween event and the Northwest Senior's annual Trash and Treasure event. Ms. Moritz suggested asking the library Director if she would hold the poster contest at the library instead of asking the schools.

Commissioner Valdez told the Commissioners that the Earthwise Living Day Committee wanted to hold a speaker series and would like to hold the first one in October with Oak Wilt being the first topic.

Chairman Christensen stated that until the weather was cooler, the next Park Commission meetings would be held in the Conference Center. He noted that he hoped they could meet at the Ridge at Leon Valley Park in October. He went on to state that the start time of the meetings would be discussed with Vice-Chair Bolton to see if she was more readily able to come to the

meetings if they were held at 7:00 pm. He then stated that each Commissioner had a copy of the member list and asked them to review it to assure all the information was correct.

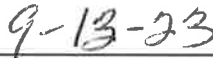
Staff member Moritz stated that Seneca Drive was on this year's street maintenance list and that it would be closed to "through" traffic from Evers to Bandera Road to perform a mill and overlay. She noted that only local residents would be allowed on the street at that time. She stated that the City Council would be approving the contract at their next meeting and that she would then meet with the contractor to ascertain a start date for the work, which would be published on all social media and the website, but to let their neighbors and friends know about the upcoming work.

## 7. Adjourn.

Commissioner Valdez motioned to adjourn the meeting, which was seconded by Commissioner Trent, and the motion carried unanimously. The meeting was adjourned at 7:18 pm.

*These minutes were approved at the September 14, 2023, Park Commission meeting.*

  
\_\_\_\_\_  
Roger Christensen, Chair

  
\_\_\_\_\_  
Date





**City of Leon Valley**  
**PLANNING AND ZONING COMMISSION**  
**MEETING MINUTES**  
**6:30 PM – AUGUST 22, 2023**  
**Leon Valley City Council Chambers**  
**6400 El Verde Road, Leon Valley, TX 78238**

## 1. CALL TO ORDER AND ROLL CALL

Chair Catherine Rowse called the Planning and Zoning Commission meeting to order at 6:39 PM.

### PRESENT

Commissioner	Andrea Roofe	Place 2	
Commissioner	Pat Martinez	Place 4	
Chair	Cassie Rowse	Place 5	
2nd Vice Chair	Erick Matta	Place 6	Tardy 7:06PM
Commissioner	Richard Blackmore	Place 7	
2 <sup>nd</sup> Alternate	Thomas Dillig		Seated to Vote
3 <sup>rd</sup> Alternate	Mary Ruth Fernandez		Seated to Vote
Council Liaison	Benny Martinez		

### ABSENT

1st Vice Chair	Edward Alonzo	Place 1	Excused
Commissioner	Hilda Gomez	Place 3	Excused
1 <sup>st</sup> Alternate	David Perry		Excused

Also in attendance were Public Works Director Melinda Moritz and Permit Technician Elizabeth Aguilar.

## 2. APPROVAL OF ZONING COMMISSION MINUTES

### 1. Planning & Zoning Commission - Regular Meeting - July 25, 2023

Commissioner Roofe made a motion to approve the minutes, which was seconded by Commissioner Blackmore. The motion carried unanimously.

## 3. NEW BUSINESS

### 1. Presentation, Public Hearing, and Discussion to Consider a Recommendation on an Ordinance Revising Chapter 15 Zoning, Division 6, Section 15.02.306 (R-1 Single-Family Dwelling District) to Allow Accessory Buildings in the Side Yard - M. Teague, Planning and Zoning Director

Ms. Moritz presented the case information, and a brief discussion was held between Ms. Moritz and Commissioner Martinez on why a pool is considered an accessory building.

Chair Rowse opened the public hearing at 6:42PM, seeing that nobody wished to speak, closed the public hearing at 6:43PM.

Commissioner Roof made a motion to approve the case as presented, which was seconded by 2<sup>nd</sup> Alternate Dillig. The motion carried unanimously.

Voting Yea: Chair Rowse and Commissioners Roof, Martinez, Blackmore, Dillig and Fernandez.

Voting Nay: None

2. Workshop to Discuss Revisions to the Leon Valley Code of Ordinances, Chapter 15 Zoning to Eliminate the General, Sustainability, and Commercial/Industrial Standards and Districts - M. Teague, Planning and Zoning Director

Ms. Moritz presented the information, and a brief discussion was held between the Commissioners and Ms. Moritz about removing sections of the supplementary architectural regulations. The Commissioners recommended the removal of the supplementary architectural regulations.

#### **4. ANNOUNCEMENTS BY COMMISSIONERS AND CITY STAFF**

Ms. Moritz explained to the Commissioners that the Sustainability Overlay regulations were only mentioned in the Master Plan on two pages and that the language in the Plan can be easily revised to remove the references.

Permit Technician Aguilar explained the PowerPoint printouts for each Commissioner from the Planning and Zoning Workshop.

Chair Rowse welcomed the new members 3<sup>rd</sup> Alternate Fernandez and 2<sup>nd</sup> Alternate Dillig. She also reminded everyone that school would be starting the next week and to be mindful of the school zones and children.

Ms. Moritz mentioned that there will be some street work underway soon at Seneca, Poss and Timco West which might present some difficulties for travelers in those area for a short while.

Chair Rowse reminded everyone that the next meeting will be on September 26, 2023.

## 5. ADJOURNMENT

Chair Rowse announced the meeting adjourned at 7:28 pm.

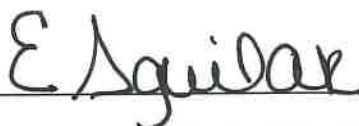
*These minutes were approved by the Leon Valley Planning & Zoning Commission on the 26<sup>th</sup> of September 2023.*

APPROVED



**CATHERINE ROWSE**  
CHAIR

ATTEST:



**ELIZABETH AGUILAR**  
PERMIT TECHNICIAN





**CITY OF LEON VALLEY  
CITIZEN POLICE ADVISORY COMMITTEE**  
Leon Valley Conference Center  
6421 Evers Rd, Leon Valley, Texas 78240  
Wednesday, April 19, 2023, at 6:30 p.m.

**MINUTES**

The Citizen Police Advisory Committee met on the 19th day of April 2023, at the Leon Valley Conference Center located at 6421 Evers Rd, Leon Valley, Texas 78240 for the purpose of the following business:

**Agenda Item #1 Call to Order and Announcement of a Quorum**

Erick Matta called the Police Advisory Committee Meeting to order at 6:30 p.m.

Erick Matta asked that the minutes reflect that the following members of the Citizen Police Advisory Committee were present: Manuel Rubio, Betty Heyl, Erick Matta, Darby Riley, Bill Stannard, Michelle Rawls, Philip Campos, Phyllis Beal and Ryan Brill.

Also present were LT-Lieutenant Burleson, Chief David Gonzalez and CM- City Manager Crystal Caldera.

**Agenda Item #2 Discussion and Possible Action on the Approval of the Following minutes: November 02, 2022, Citizens Police Advisory Committee were received, and the committee voted approved by the committee unanimously.**

**Agenda Item #3 Discussion regarding speed deterrent efforts for Evers and Huebner.**

- 400 tickets over last 3 months on Evers and Huebner.
- Traffic study on Huebner Road.
- Rumble strips too noisy.
- Section by El Chaparral school zone.
- No recommendations received for streetlight/traffic light at Evers and Seneca.
- 80,000 cars going through LV.

**Agenda Item #6 Citizens to be Heard**

- Mark Bird-6218 Forest Bend North- cited for temporary canopy/pop-up tent.
  - Stated he feels he is being targeted, that he takes care of his elder parents but has received several tickets for violations.
  - CM Crystal Caldera provided an explanation of ordinance and violation issues.

- Richard Blackmore-Traffic on Evers
  - Discussed traffic issues relating to new complex and impact for traffic on Evers and Huebner.
  - Changes will increase traffic flow.
  - Consideration of new traffic light.
  - Supports traffic enforcement efforts.
  - Discussed red light camera funding- supports salaries for 6 police officers.
  - Stated the need to think about the future of Leon Valley.

**Agenda Item #4 Discussion regarding the department composition in 2018 versus current staffing levels and their associated duties.**

- Lt. Kasey Burleson, Chief David Gonzalez and City Manager Crystal Caldera presented information.
- Discussed following best practices guidelines from all over the nation.
- RFP on Staffing levels for Fire, Police and Public Works

**Agenda Item #5: Discussion and Possible Action on Future Agenda Items**

Discussed next meeting to be held in July or August, 2023.

**Agenda Item #7 Adjournment at 11/2/2022 at 8:25 pm CT.**

These minutes were approved by the Leon Valley Police Advisory Committee on the 2<sup>nd</sup> of Month and 20<sup>th</sup> Day, 2023.

Sept. 2023

APPROVED

**Erick Matta**  
CHAIR







**CITY OF LEON VALLEY  
LEON VALLEY PUBLIC LIBRARY BOARD OF TRUSTEES**

Leon Valley Public Library  
6425 Evers Road, Leon Valley, TX 78238  
Thursday, May 11, 2023 at 5:30 PM

**MINUTES**

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**1. CALL TO ORDER**

Called to Order at 5:30 by Clare Brown;

- a. Clare Brown – present
- b. Barbara Owens – unexcused absence
- c. Linda Crews – present
- d. Maryanna Christensen – excused absence
- e. Patricia Birkhead – present
- f. Margaret Tovar – present
- g. Hillary Huber – excused absence

**2. CITIZENS TO BE HEARD**

N/A

**3. DISCUSSION AND POSSIBLE ACTION ON THE FOLLOWING MINUTES**

- a. 04-13-2023 Library Advisory Board Meeting approved; motion by Pat Birkhead,  
Second by Clare Brown

**4. DISCUSSION ON THE LIBRARY'S STRATEGIC PLAN**

- Discussion led by Library Director, Regina Reed
- Bring back draft of Texas Library Standards, Edge Assessment, Family Place  
Library Standards by August meeting

**5. LIBRARY DIRECTOR'S REPORT**

- a. Statistics presented by Library Director, Regina Reed

- b. Upcoming Programs presented by Library Director Regina Reed
- c. TLA Review Regina presented by Library Director Regina Reed
- d. TLA Review Theresa presented by Assistant Library Director Theresa Brader
- e. Grants presented by Library Director Regina Reed
- f. Term Expirations Notice presented by Library Director Regina Reed

**6. FRIENDS OF THE LIBRARY REPORT**

Report provided by Margaret Tovar.

**7. TRUSTEE ANNOUNCEMENTS**

N/A

**8. ADJOURNMENT**

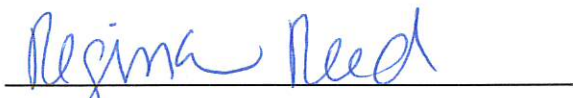
Adjourned at 6:51 pm; motion by Margaret Tovar, second by Linda Crews

APPROVED



CLARE BROWN,  
LIBRARY ADVISORY BOARD CHAIR

ATTEST



REGINA REED, LIBRARY DIRECTOR  
LIBRARY ADVISORY BOARD SECRETARY



**CITY OF LEON VALLEY  
LEON VALLEY PUBLIC LIBRARY ADVISORY BOARD**  
Leon Valley Public Library  
6425 Evers Road, Leon Valley, TX 78238  
Thursday, August 10, 2023 at 5:30 PM

**MINUTES**

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**1. CALL TO ORDER at 5:35 by Clare Brown, Chair**

- a. Clare Brown – present
- b. Barbara Owens – unexcused
- c. Linda Crews – present
- d. Maryanna Christensen – present
- e. Patricia Birkhead – present
- f. Margaret Tovar – present
- g. Hillary Huber – present

**2. CITIZENS TO BE HEARD**

No Citizens to be Heard

**3. DISCUSSION AND POSSIBLE ACTION ON THE FOLLOWING MINUTES**

- a. 06-08-2023 Library Advisory Board Meeting – the Library Advisory Board did not meet in June. The minutes should have been for May 11<sup>th</sup> and will be corrected at the next meeting.

**4. DISCUSSION ON THE LIBRARY'S STRATEGIC PLAN**

- a. Discussion led by Regina Reed, Library Director

**5. DISCUSSION ON BREAKFAST WITH SANTA**

- a. Discussion led by Regina Reed, Library Director
- b. Maryanna Christensen, Friends of the Library President, commented from the Friends

**6. LIBRARY DIRECTOR'S REPORT presented by Regina Reed, Library Director**

- a. Summer Reading Statistics
- b. Family Place Libraries
- c. Upcoming Events
- d. Grants

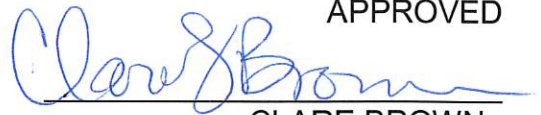
**7. FRIENDS OF THE LIBRARY REPORT presented by Maryanna Christensen**

**8. TRUSTEE ANNOUNCEMENTS**

**9. ADJOURNMENT at 8pm**

- a. Motion by Maryanna Christensen
- b. Second by Linda Crews

APPROVED



CLARE BROWN,  
LIBRARY ADVISORY BOARD CHAIR

ATTEST



REGINA REED, LIBRARY DIRECTOR  
LIBRARY ADVISORY BOARD SECRETARY



**CITY OF LEON VALLEY  
ECONOMIC AND COMMUNITY DEVELOPMENT ADVISORY COMMITTEE**

City Hall – Council Chambers  
6400 El Verde Road, Leon Valley, TX 78238  
Monday, April 24, 2023, at 6:30 PM

**MINUTES**

**1. Call to Order and Announcement of a Quorum, Pledge of Allegiance**

- a. Yvonne Orozco-Chair- Present
- b. Danielle Bolton-Vice Chair- Present
- c. Olen Yarnell-Present
- d. Roger Christensen-Present
- e. Kishore Kamaraju- excused
- f. Chair Called meeting to order at 6:32pm. Quorum is present.

**2. Discussion and Possible Action on the Approval of Meeting Minutes:**

**a. 3/20/2023, Economic & Community Development Advisory Committee Meeting Minutes**

- i. A motion was made by Mr. Christensen to approve the minutes with typo corrections to be changed. The motion was seconded by Mr. Yarnell. Motion passed.

**3. Presentation, Discussion and Possible Action:**

**a. Review of Economic and Community Development Grant Application- SA City Barber Shop.**

- i. Mr. Salinas did a PowerPoint presentation based on the application on behalf of SA City Barber Shop.
- ii. Mr. Christensen moved to approve the application. Mr. Yarnell seconded the motion. Motion passed 4-0

**b. Review of Economic and Community Development Grant Application- Smash Dance.**

- i. Mr. Salinas did a PowerPoint presentation based on the application on behalf of Smash Dance.
- ii. Mr. Christensen moved to approve the application. Mr. Yarnell seconded the motion. Motion passed 4-0.

**c. Review of Economic and Community Development Grant Application- WOT Auto Spa.**

- i. Mr. Salinas did a PowerPoint presentation based on the application on behalf of WOT Auto Spa.
- ii. Mr. Christensen moved to approve the application. Mr. Yarnell seconded the



#### 4. Announcements by Committee Members

- i. Mr. Yarnell and Mr. Christensen wanted clarification on the chain of events that led to the committee losing their responsibility to review grant applications.
- ii. Mr. Salinas explained that the staff took a new policy to the City Council to request more financial information and that it was the council that removed the responsibilities from the committee.
- iii. Committee members then inquired about what their new responsibilities would be.
- iv. Mr. Salinas informed the committee that the staff has not been given that direction by the City Council. Once the Council has given staff direction Mr. Salinas will inform the committee.

#### 5. Citizens to be Heard.

- i. No citizens to be heard.

#### 6. Adjournment

- i. Chair Orozco Motion to adjourn seconded by Mr. Christensen.
- ii. Meeting Adjourned at 8:03pm.

These minutes were approved by the Leon Valley Economic & Community Development Advisory Committee on the 25<sup>th</sup> of September 2023.

  
APPROVED CHAIR

## MAYOR AND COUNCIL COMMUNICATION

**DATE:** October 17, 2023

**TO:** Mayor and City Council

**FROM:** Melinda Moritz, Director of Public Works

**SUBJECT:** Discussion and Action to Consider Approval of an Ordinance Amending the Leon Valley Code of Ordinances, Appendix A Fee Schedule to Amend Fees Associated with Building, Health, and Trade Permit and Inspection Fees and to Remove Sections No Longer in Use

**SPONSOR(S):** None

### **PURPOSE**

The purpose of this item is to consider approval of an Ordinance amending the Leon Valley Code of Ordinances, Appendix A Fee Schedule, to increase fees associated with temporary food licenses, building and trade permit fees and inspections, and to remove sections that no longer have relevance.

The City recently updated contracts with the Building and Health Inspectors and the fees for their services increased. To offset the increased cost of services, the proposed fees would be charged to the customers, which includes a 25% administrative cost for staffing and software. In addition to the trade permit fees, the Newsletter Advertising section and the Rental Registration fees were deleted as they are no longer in use.

### **FISCAL IMPACT**

The increased fees will ensure enough revenue is received to cover the cost of services borne by the City.

### **RECOMMENDATION**

Staff recommends approval of the amendments.

### **S.E.E. IMPACT STATEMENT**

**Social Equity** – Assuring prudent management for cost of services removes the burden of paying for health and safety inspections off of all citizens.

**Economic Development** – The increased permit fees are minimal and shouldn't have a great impact on the business and development community.

**Environmental Stewardship** – Properly permitting new development projects ensures that structures are built according to the new environmental codes.

APPROVE: \_\_\_\_\_ DISAPPROVE: \_\_\_\_\_

APPROVE WITH THE FOLLOWING AMENDMENTS:

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ATTEST:

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**Saundra Passailaigue, TRMC**  
City Secretary

**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF LEON VALLEY, TEXAS, CITY COUNCIL, AMENDING THE LEON VALLEY CODE OF ORDINANCES, APPENDIX A FEE SCHEDULE, TO REMOVE ARTICLE A2.000 ADMINISTRATIVE FEES, SECTION A2.012 NEWSLETTER ADVERTISEMENT FEES AND SECTION A8.015 RESIDENTIAL RENTAL REGISTRATION AND INSPECTION FEES, AND ARTICLE A8.000 BUILDING AND CONSTRUCTION RELATED FEES, SECTION A8.024 ENGINEERING FEES, AND TO AMEND CERTAIN OTHER SECTIONS IN ARTICLE A6.000 FOOD ESTABLISHMENTS AND ARTICLE A8.000 BUILDING AND CONSTRUCTION RELATED FEES, TO REMOVE IRRELEVANT SECTIONS AND TO INCREASE FEES FOR REVIEWS, PERMITS, AND INSPECTION SERVICES; PROVIDING AN EFFECTIVE DATE OF THE REVISION WITH PUBLICATION, AS REQUIRED BY LAW, PROVIDING A SAVINGS CLAUSE; AND PROVIDING A CONFLICTS PROVISION.**

**WHEREAS**, Appendix A Schedule of Fees contains the fees charged by the city for services rendered during the course of business; and

**WHEREAS**, recent contract negotiations with the city's subcontracted Building and Health Inspectors resulted in an increase of charges to the city; and

**WHEREAS**, these fee increases must be offset with an increase in fees collected from city customers using those services in order to meet the city's financial obligations;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS, THAT:**

**Section 1.** That the Leon Valley Code of Ordinances, Appendix A Fee Schedule be amended as stated in Exhibit A attached hereto.

**Section 2.** This ordinance shall become effective on and after its passage, approval and the meeting of all publication requirements as provided by law.

**Section 3.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of the conflict. All provisions, sections and sub-sections set forth in the Leon Valley Code of Ordinances, Appendix A Fee Schedule not revised or amended herein shall remain in effect.

**PASSED, ADOPTED AND APPROVED** by the City Council of the City of Leon Valley this the 17<sup>th</sup> day of October 2023.

**APPROVED**

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**CHRIS RILEY**  
MAYOR

Attest :

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**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary

Approved as to Form:

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**NICOLE WARREN**  
City Attorney



## EXHIBIT A

### LEON VALLEY CODE OF ORDINANCES AMENDMENTS TO APPENDIX A FEE SCHEDULE

**Note:** All sections in Appendix A that are not listed in this exhibit will remain unchanged. Text in ~~red-strikeout~~ are to be removed and text in **blue** are to be added. Texts in **green** are the justifications for the amendments and are not to be included in the approved Ordinance.

#### ARTICLE A2.000 ADMINISTRATIVE FEES

##### Sec. A2.011 Memorial naming/renaming application and consideration fee

- (a) Application and consideration: ~~\$1,000.00~~ **\$200.00**
- (b) Costs associated with the manufacturing and placement of the signs is the responsibility of the requestor.

**The fee should reflect the service and it does not cost \$1,000 to present an item to City Council for their consideration.**

##### ~~Sec. A2.012 Newsletter advertisement fees~~

- ~~(a) 1/8 page: \$100.00.~~
- ~~(b) 1/4 page: \$185.00.~~
- ~~(Ordinance 14-007 adopted 6-9-14)~~

**We no longer accept advertisements in the city newsletter.**

#### ARTICLE A6.000 FOOD ESTABLISHMENTS

##### Sec. A6.001 License fees

- (b) *Temporary food license for special events:* ~~\$30.00~~ **\$40.00** per day per stand for temporary food service establishments with an \$80.00 maximum per stand per event, per person, for not over 14 days. (Not renewable.)
- (c) Mobile food vending license fee: \$120.00 (annually)  
Mobile food truck vending food license: ~~\$30.00~~ **\$35.00** (annually)

**The increase covers the cost of the inspection and adds \$10 for administrative fees.**

#### ARTICLE A8.000 BUILDING AND CONSTRUCTION RELATED FEES

##### Sec. A8.004 Certificate of occupancy

- (a) Permit fee: \$125.00.

(b) Reinspection: ~~\$65.00~~ \$75.00

(c) Duplicate copy fee: \$25.00.

**The increase covers the cost of the inspection and adds 25% administrative fees.**

#### **Sec. A8.006 Curb cut permit**

(a) Permit fee: ~~\$65.00~~ \$75.00

(b) Reinspection: ~~\$65.00~~ \$75.00

**The increase covers the cost for review and inspection, and adds 25% for administrative costs.**

#### **Sec. A8.008 Building permit (electrical)**

Building permit (electrical) fees:

(1) Base fee (includes inspection): \$100.00.

(A) Residential: \$100.00.

(B) Commercial: \$200.00.

(2) Reinspection fee: ~~\$65.00~~ \$75.00

**The increase covers the cost for inspection and adds 25% for administrative costs.**

#### **Sec. A8.009 Fence permit**

(a) Fence permit fee: ~~\$65.00~~ \$75.00

(b) Reinspection: ~~\$65.00~~ \$75.00

**The increase covers the cost for review and inspection, and adds 25% for administrative costs.**

#### **Sec. A8.012 Heating, ventilation and air conditioning permit**

Heating, ventilation, and air conditioning permits:

(1) Base fee and reinspection fees:

(A) Base fee (includes inspection):

(i) Residential: \$100.00.

(ii) Commercial: \$200.00.

(B) Reinspection fee: ~~65.00~~ \$75.00

**The increase covers the cost for inspection plus 25% for administrative costs.**

#### **Sec. A8.014 Plumbing, gas, and sewer and trench fees**

(a) Plumbing fees:

(1) Base fee (includes inspection):

Residential: \$100.00.

Commercial: \$200.00.

(2) Reinspection fee: ~~65.00~~ \$75.00

**The increase covers the cost for inspection plus 25% for administrative costs.**

- (b) Gas permit fees:
  - (1) Base fee (includes inspection):
    - Residential: \$100.00.
    - Commercial: \$200.00.
  - (2) Reinspection fee: ~~65.00.~~ \$75.00

**The increase covers the cost for inspection plus 25% for administrative costs.**

- (c) Sewer and trench permit fees:
  - (1) Base fee (includes inspection):
    - Residential: \$100.00.
    - Commercial: \$200.00.
  - (2) Reinspection fee: ~~65.00.~~ \$75.00

**The increase covers the cost for inspection plus 25% for administrative costs.**

#### ~~Sec. A8.015 Residential rental registration and inspection fees~~ Reserved

- ~~(a) Registration and initial inspection fee: \$65.00.~~
- ~~(b) Follow-up inspection: \$65.00.~~
- ~~(c) Third inspection: \$90.00.~~
- ~~(d) Fourth inspection: \$120.00.~~
- ~~(e) Fifth inspection or subsequent inspections: \$150.00.~~

**The city no longer has a residential rental registration program. The section is reserved for future use.**

#### **Sec. A8.016 Residential temporary portable storage unit permit**

Permit fee: ~~65.00.~~ \$75.00

**The increase covers the cost for review and inspection, and adds 25% for administrative costs.**

#### **Sec. A8.017 Roofing permit**

- (a) Roofing permit fee: ~~\$65.00.~~ \$75.00
- (b) Reinspection: ~~65.00.~~ \$75.00

**The increase covers the cost for review and inspection, and adds 25% for administrative costs.**

#### **Sec. A8.018 Sidewalk permit**

- (a) Base fee: ~~\$65.00.~~ \$75.00
- (b) Reinspection: ~~65.00.~~ \$75.00

**The increase covers the cost for review and inspection, and adds 25% for administrative costs.**

#### **Sec. A8.019 Signs**

- (a) Temporary sign permit: \$25.00 per sign.
- (b) Temporary sign deposit: \$50.00 per sign.
- (c) Permanent sign permit without electric hook-up: \$100.00 per sign.
- (d) Permanent sign permit with electric hook-up: \$150.00 per sign.
- (e) Sign variance request: \$200.00 per request.
- (f) Annual billboard sign permit: \$150.00 per year.
- (g) Temporary weekend signs: \$30.00 per permit and \$1.00 per sign, per calendar year.
- (h) Charge for removal and impoundment of signs in the right-of-way: \$25.00 per sign.
- (i) Master sign plan: \$100.00.
- (j) Sign reinspection fees, not including temporary signs: ~~65.00.~~ \$75.00

**The increase covers the cost for inspection and adds 25% for administrative costs.**

#### **Sec. A8.020 Swimming pool permit**

- (a) Base fee: As per Section A8.002 Building Permit Fees ~~Refer to building permit fee.~~
- (b) Reinspection: ~~65.00.~~ \$75.00

**The increase covers the cost for inspection and adds 25% for administrative costs.**

#### **Sec. A8.021 Tree cutting/pruning contractor fees**

Annual registration fee: ~~\$60.00.~~ \$0.00

**The city no longer charges for contractor registration.**

#### **Sec. A8.023 Water well engineering, permit and reinspection fee**

- (a) Permit fee: ~~\$65.00.~~ \$75.00
- (b) Reinspection: ~~65.00.~~ \$75.00
- (c) Payment for all engineering fees incurred by the city in the review of the permit applications and inspections.

**The increase covers the cost for review and inspection, and adds 25% for administrative costs.**

#### **~~Sec. A8.024 Engineering Fees~~ Reserved**

~~The fee to be paid to the city for the permits required by article 14.03 of the Code of Ordinances shall be as follows (except persons, firms or corporations who are under contract with the city to furnish its inhabitants water). All engineering fees incurred by the city plus the following:~~

- ~~(a) Permit for the drilling, construction, or deepening of a new well: \$60.00.~~
- ~~(b) Permit to repair or correct a defective well: \$60.00.~~
- ~~(c) Permit to abandon and/or plug a well: \$60.00.~~

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**Consolidated fee with A8.023 above. Reserved section for possible future septic permit fees.**

**Sec. A8.025 Wired unmanned telecommunication box installation fees**

- (a) Wired unmanned telecommunication box application fee: ~~\$60.00.~~ \$75.00
- (b) Wired unmanned telecommunication box reinspection fee: ~~\$65.00.~~ \$75.00

**The increase covers the cost for review, inspection, and adds 25% for administrative costs.**

**Sec. A8.013 - Manufactured home park fees**

- (a) Manufactured home park permit fee based on valuation of on-site infrastructure at the rate of the current building code fee table, and not less than \$1,000.00.
- (b) Manufactured home park annual license and transfer of license fee: \$50.00 plus \$2.00 per space.
- (c) Manufactured home park space application fee: ~~\$65.00.~~\$75.00

**The increase covers the cost for review, inspection, and adds 25% for administrative costs.**



# Consider Amending Appendix A Fee Schedule Building, Health, Trades Permit and Inspection Fees

City Council Meeting  
Public Works Director Melinda Moritz  
October 17, 2023



# Purpose

- To Consider an Ordinance Amending the Leon Valley Code of Ordinances, Appendix A Fee Schedule to Amend Fees Associated with Building and Trade Permit and Inspection Fees
- Options
  - Approve
  - Approve with modifications
  - Deny
- Recommendation
  - Recommend approval as presented

# Background

- City recently updated contracts with the Building and Health Inspectors and fees for some services increased
- To offset the increased cost of services, the proposed fee increases would be charged to the customers
  - Includes a 25% administrative cost for staffing and software licensing
- In addition to the trade permit fees, the Newsletter Advertising section and the Rental Registration fees were deleted as they are no longer necessary

# Fiscal Impact

- The increased fees will ensure enough revenue is received to cover the cost of services borne by the City

# Recommendation

- Staff recommends approval of this Ordinance



# S.E.E. Statement

- *Social Equity* – Assuring prudent management for cost of services takes the burden of paying for health and safety inspections away from the citizens
- *Economic Development* – The increased permit fees are minimal and shouldn't have a great impact on the business and development community
- *Environmental Stewardship* – Properly permitting new development projects ensures that structures are built according to the new environmental codes

**AN ORDINANCE OF THE CITY OF LEON VALLEY CITY COUNCIL AMENDING THE LEON VALLEY CODE OF ORDINANCES, CHAPTER 8 OFFENSES AND NUISANCES; REPEALING DIVISION 2. CURFEW SECTIONS 8.02.032 – 8.02.035; PROVIDING FOR REPEALER, SEVERABILITY AND SAVINGS CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, the City of Leon Valley is authorized to adopt ordinances for the purpose of good government, peace, or order of the municipality pursuant to Chapter 51 of the Local Government Code; and has the authority to adopt an ordinance pursuant to Section 341.905 of the Local Government Code; and

**WHEREAS**, it is the overall goal of the City of Leon Valley to provide for safety of our citizens and all who visit our community in an economically expeditious manner; and

**WHEREAS**, to further these goals, the City of Leon Valley with its ordinances intends to remain consistent with Texas law

**WHEREAS**, the City of Leon Valley has found it necessary to repeal the City's Juvenile Curfew Ordinance in the City's Code Of Ordinances

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS:**

**SECTION 1.** Chapter 8 – Offenses and Nuisances, Division 2. – Curfew Sections 8.02.032 – 8.02.035 of the Leon Valley Code of Ordinances is hereby repealed in its entirety.

**SECTION 2.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

**SECTION 3.** The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this Ordinance.

**SECTION 4.** This Ordinance shall become effective immediately upon its passage and publication as required by law.

# Ordinance repealing the City's Juvenile Curfew Ordinance in the City's Code of Ordinances

Mike Tacquard  
Assistant Police Chief  
City Council Meeting  
October 17, 2023

# Summary

City Council is being asked to consider repealing the City's Curfew Ordinance in the City's Code of Ordinances

Options:

- Do nothing – State Law prohibits enforcement
- Repeal the City's Curfew Ordinance

# Repealing the Juvenile Curfew Ordinance

{Section}.94.

- Legislation approved during the 88<sup>th</sup> Texas legislative session and signed by the governor prohibits municipalities from enacting or enforcing juvenile curfew ordinances, effective September 1, 2023
- The City's juvenile curfew ordinance should be considered for repeal to be consistent with state law



# Background

- The City of Leon Valley first adopted a juvenile curfew ordinance in 2008
- The ordinance was reviewed, amended and re-adopted between 2008 and 2022
- The ordinance was last amended and re-adopted in October 2022
- Legislation approved during the 88<sup>th</sup> Texas legislative session and signed by the governor prohibits municipalities from enacting or enforcing juvenile curfew ordinances, effective September 1, 2023

# Fiscal Impact

N/A

# Recommendation

- Repeal the City's juvenile curfew ordinance to be consistent with state law.

# S.E.E. Statement

Social Equity – Provide consistency of ordinances and enforcement with other municipalities

Economic Development- Consistency in laws and their enforcement may allow the City to sustain economic development at levels currently enjoyed by surrounding municipalities

Environmental Stewardship – N/A

## MAYOR AND COUNCIL COMMUNICATION

**DATE:** October 17, 2023

**TO:** Mayor and Council

**FROM:** Sandra Passailaigue, City Secretary

**THROUGH:** Crystal Caldera, City Manager

**SUBJECT:** Consideration of a Resolution Designating the Echo and the San Antonio Express-News as the City of Leon Valley's Official Newspapers for Posting of Public and Legal Notices

**SPONSOR(S):** (N/A)

### **PURPOSE**

The purpose of this item is to formally designate the Echo and the San Antonio Express-News as the official newspapers for the City of Leon Valley. The official newspapers are used to publish required notices for the City of Leon Valley for Fiscal Year 2023-2024 pursuant to the Texas Local Government Code, Chapter 52, § 52.004 which reads:

- a) *As soon as practicable after the beginning of each municipal year, the governing body of the municipality shall contract, as determined by ordinance or resolution, with a public newspaper of the municipality to be the municipality's official newspaper until another newspaper is selected.*
- b) *The governing body shall publish in the municipality's official newspaper each ordinance, notice, or other matter required by law or ordinance to be published.*

The City of Leon Valley has designated the Echo and the San Antonio Express-News as the City's Paper of Record.

The City of Leon Valley currently has the Echo and the San Antonio Express-News for publication of ordinances, public hearings, etc.

### **SEE LEON VALLEY**

Social – The use of recognized publications in the greater San Antonio Area will allow residents, business partners, and other interested parties to become informed of the City's legal publications.



Economic – The City of Leon Valley will ensure it meets its legal publication requirements in a timely and legal manner.

Environmental – N/A

### **FISCAL IMPACT**

Costs for publications are included in the Fiscal Year 2023-2024 Adopted Budget. Staff will strive to keep their advertising and publication costs within allowed budgetary constraints.

### **RECOMMENDATION**

Staff recommends the approval of the attached resolution designating the continuation of “The Echo”, and “The San Antonio Express- News Newspaper” as the official newspapers of the City of Leon Valley for Fiscal Year 2023-2024, retroactive October 01, 2023.

APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_

APPROVED WITH THE FOLLOWING AMENDMENTS:

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ATTEST:

\_\_\_\_\_  
**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary

## PRINTING CONTRACT "Official City Newspaper"

This Contract, made and entered into this 16<sup>th</sup> day of November, 2021 by and between City of Leon Valley, acting by and through its duly elected and qualified City Council hereinafter called "City", and the Echo, a weekly newspaper published in Helotes, Texas in Bexar County, Texas hereinafter called "CONTRACTOR".

### IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The CITY hereby designates the CONTRACTOR as the official CITY newspaper for the period beginning October 31, 2021 and ending October 31, 2022 both dates' inclusive. The parties agree that the CONTRACTOR shall publish in a timely fashion, all CITY notices that are required by law to be published.
2. The CITY shall pay to the CONTRACTOR and the CONTRACTOR shall charge the CITY for such printing publication the sum of **\$9.00 per** column inch for the first insertion and **\$7.92 per** column inch for each subsequent publication of the same matter. The CONTRACTOR agrees to print maps as provided by the CITY (in camera ready form) at the same per column inch rate of **\$9.00 per** column inch for the first insertion and **\$7.92 per** column inch for subsequent insertions.
3. It is further understood and agreed that all such printed matter will be set in not less than eight-point type, unless a specific request for another type size accompanies the request for publication with the width of the column to be either the 2" width or 4.167", as used in standard news articles.
4. The CONTRACTOR further agrees to furnish without charge, (a) two (2) affidavits of publication, for each notice within seven (7) days of its final publication with numbered invoices for bookkeeping control, to the City Office requesting publication, and (b) five (5) copies of each issue of the newspaper.
5. The CONTRACTOR agrees to publish promptly at the time designated all such CITY printing furnished to it, at the rates mentioned. Such publication shall be in a regular issue of the ECHO and in every copy thereof, and shall be set according to the instructions received from the CITY. Each publication shall conform to good newspaper practices.

6. All notices, which either party gives the other, shall be delivered in writing to the address below or to subsequent addresses, as the parties shall designate in writing. Such notices shall be deemed received on the date on which the notice is personally served or on the third day following the date on which the notice was mailed postage prepaid by certified or registered mail to the appropriate party.

**TO: CITY OF LEON VALLEY**  
**ATTN: CITY SECRETARY**  
**6400 EL VERDE ROAD**  
**LEON VALLLEY, TX 78238**

**TO: THE ECHO**  
**P.O. Box 900**  
**HELOTES, TX 78023**

8. If either party breaches any of the provisions herein, the nonbreaching party may terminate this Contract as follows:

1. The nonbreaching party must notify the breaching party in writing of the breach and the steps that need to be taken to remedy the breach.
2. The breaching party shall have twenty (20) days from the date of receiving notice of the breach to remedy the breach.
3. If the breach is not fully remedied within twenty (20) days, the nonbreaching party may terminate the contract immediately by delivering written notice of the termination to the breaching party.
4. This Contract may be modified or amended if the amendment is made in writing and is signed by both parties.
5. If any provision, or any portion thereof, contained in this Contract is held to be unconstitutional, invalid or unenforceable, said provision(s) thereof, shall be deemed severed and the remainder of this Contract shall not be affected and shall remain in full force and effect. Furthermore, if such an event occurs, the parties agree to negotiate a modification to replace the unacceptable provision(s) as soon as possible.
6. The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

7. In the event either party files a lawsuit to enforce the provisions of this Contract, the prevailing party shall be entitled to costs of suit, court costs, and reasonable attorney fees. Any lawsuit pertaining to this Contract shall be filed in the Pacific County Superior Court.
8. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their successors, and assigns.
9. This Contract shall be governed by the laws of the State of TEXAS.

**WITNESS WHEREOF, the parties have caused their names to be signed hereto on the date so stated.**

APPROVED AS TO FORM:



GILBERT PERALES,  
CITY MANAGER

ATTEST:



SAUNDRA PASSAILAIGUE,  
CITY SECRETARY



CONTRACTOR:



By \_\_\_\_\_ (Signature)

Title owner

Date 1/4/2022

**RESOLUTION No. 23-\_\_R**

**A RESOLUTION OF THE CITY OF LEON VALLEY CITY COUNCIL DESIGNATING THE ECHO AND THE SAN ANTONIO EXPRESS NEWS AS THE CITY OF LEON VALLEY'S OFFICIAL NEWSPAPERS FOR POSTING OF PUBLIC AND LEGAL NOTICES.**

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**WHEREAS**, The City Council of the City of Leon Valley, Texas previously designated the Echo and the San Antonio Express News as the City of Leon Valley newspapers for posting of public and legal notices; and

**WHEREAS**, Both the Echo and the San Antonio Express News cover all of Leon Valley including zip codes 78238, 78240 and 78241 within Leon Valley, Texas;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS THAT:**

The Echo and the San Antonio Express News are hereby designated as the official newspapers of the City of Leon Valley for posting of public and legal notices for the City as may be required by law for Fiscal Year 2023-2023 retroactive to October 01, 2023.

**PASSED, ADOPTED AND APPROVED** by the City Council of the City of Leon Valley this the 17<sup>th</sup> day of October 2023.

**APPROVED**

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**CHRIS RILEY**  
MAYOR

Attest :

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**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary

Approved as to Form: City Attorney

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**NICOLE WARREN**  
City Attorney

# City Council's Designation of the Official Newspaper(s) for Fiscal Year 2023-2024

Sandra Passailaigue, TRMC  
City Secretary  
City Council Meeting  
October 17, 2023



# Summary

- Question
  - **City Council is being asked to consider the continuance of the Echo and the San Antonio Express News as the Official Newspapers for the publication of ordinances, public hearings, etc. pursuant to the Texas Local Government Code, Chapter 52, § 52.004.**
- Options
  - ✓ Recommended:
    - 1. No change.
    - Denial
    - Other
- Declaration
  - So that public notices are available to all residents of Leon Valley, staff recommends approval as presented.

# Purpose

- The purpose of this item is to formally designate the Echo and the San Antonio Express News as the official newspapers for the City of Leon Valley. The official newspapers are used to publish required notices for the City of Leon Valley for Fiscal Year 2023-2024 pursuant to the Texas Local Government Code, Chapter 52, § 52.004 which reads:
  - *a)As soon as practicable after the beginning of each municipal year, the governing body of the municipality shall contract, as determined by ordinance or resolution, with a public newspaper of the municipality to be the municipality's official newspaper until another newspaper is selected.*
  - *b)The governing body shall publish in the municipality's official newspaper each ordinance, notice, or other matter required by law or ordinance to be published.*

# Purpose / Background

{Section}.95.

The City of Leon Valley currently has the Echo and the San Antonio Express News for publication of ordinances, public hearings, etc. and has for several years.

# Fiscal Impact

Costs for publications are included in the Fiscal Year 2023-2024 Adopted Budget. Staff will strive to keep its advertising and publication costs within allowed budgetary constraints.

# S.E.E. Statement

Social Equity – The use of recognized publications in the greater San Antonio Area will allow residents, business partners, and other interested parties to become informed of the City’s legal publications.

Economic Development- The City of Leon Valley will ensure it meets its legal publication requirements including many of which involve Economic Development information required to be published and posted in a timely and legal manner.

Environmental Stewardship – N/A

## MAYOR AND COUNCIL COMMUNICATION

**DATE:** October 17, 2023

**TO:** Mayor and Council

**FROM:** Saundra Passailaigue, City Secretary

**THROUGH:** Crystal Caldera, City Manager

**SUBJECT:** Discussion and Possible Action on a Resolution Appointing a David Perry as a Commissioner on the Planning & Zoning Commission

**SPONSOR(S):** (N/A)

### **PURPOSE**

The purpose of this item is to present to City Council the written acceptance letter from Planning & Zoning Commission, David Perry, 1<sup>st</sup> Alternate, accepting the move from 1<sup>st</sup> Alternate to Commissioner 1.

The position of Commissioner 1 was vacated on the evening of September 26, 2023 when Edward Alonzo submitted his resignation from the Commission.

Per City Code, Chair Casey Rowse asked 1<sup>st</sup> Alternate Perry if he would like to step up and if so, to put his acceptance in writing which he did, and has been attached to this agenda item.

### **SEE LEON VALLEY**

Social – The City will encourage collaborative participation by its residents, businesses, and stakeholders. The City's citizens participate by serving on boards, committees, and commissions. This encourages transparency, communication, and accountability.

Economic – Not applicable

Environmental – Not applicable

### **FISCAL IMPACT**

None

### **STRATEGIC GOALS**

Not applicable



**RECOMMENDATION**

City Council Discretion

APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_

APPROVED WITH THE FOLLOWING AMENDMENTS:

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
**SAUNDRA PASSAILAIGUE, TRMC**, City Secretary

Received by  
CITY SECRETARY  
Date: 09-27-2023  
Time: 10AM

9/26/2023

To the Leon Valley Planning & Zoning  
Commission

I have been asked if I would like to  
move from being the 1st Alternate to  
the position vacated by Edward Abanzo,  
and I accept the opportunity.

Thank you,  
Dawn Perry

RESOLUTION NO. 23-0\_\_R

**A RESOLUTION OF THE CITY OF LEON VALLEY, TX., CITY COUNCIL APPOINTING AN ALTERNATE TO THE LEON VALLEY PLANNING & ZONING COMMISSION.**

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**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS, THAT:**

The following individual is hereby appointed to the **Planning & Zoning Commission as 3rd Alternate** with a term expiring June 30, 2025:

Ruth Fernandez – 3rd Alternate

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS:**

That the appointment of the aforementioned individual to the Leon Valley Planning & Zoning Commission and that the term become effective immediately.

**PASSED, ADOPTED, AND APPROVED** by the City Council of the City of Leon Valley on this the 15th day of August, 2023.

**APPROVED**

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**CHRIS RILEY**  
MAYOR

Attest: \_\_\_\_\_  
**SAUNDRA PASSAILAGUE, TRMC**  
City Secretary

Approved as to Form: \_\_\_\_\_  
**NICOLE WARREN**  
City Attorney

## MAYOR AND COUNCIL COMMUNICATION

**DATE:** September 19, 2023

**TO:** Mayor and Council

**FROM:** Dr. Crystal Caldera, City Manager

**SUBJECT:** Presentation, Discussion and Direction to Amend Ordinance Chapter 3 Building Regulations; Article 3.02 - Technical and Construction Codes and Standards; Sec. 3.02.054 - Property Maintenance Code and Sec. 3.02.055 - Appeals and Variances to Technical and Construction Codes.

### **PURPOSE**

To authorize an Ordinance that adds to Sec. 3.02.054 - Property Maintenance Code Any multi-family residential and nonresidential structures, including apartments, hotels, motels, suites, inns, rooming or boarding houses where the Police Department has responded to 60 or more calls in a span of three months will be required to have a licensed Police Officer on duty Sunday through Saturday during the hours of 8 PM and 6 AM for a period of one year.

To add to Sec. 3.02.055 - Appeals and Variances to Technical and Construction Codes- Any appeal denied by the City Manager may be heard and overturned by the governing body.

### **FISCAL IMPACT**

N/A

### **SEE LEON VALLEY**

***Social Equity*** – Requiring multi-family establishments to add security when they utilize city resources will promote a superior quality of life by responding to citizens in a fair and prompt manner, by providing outstanding public safety services.

***Economic Development*** – Providing building standards helps support a healthy economy.

***Environmental Stewardship*** – N/A

### **RECOMMENDATION**

City Council Discretion.

ATTEST :

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**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary

**ORDINANCE NO. 2023-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS AMENDING THE CITY OF LEON VALLEY CODE OF ORDINANCES, AMENDING ORDINANCE CHAPTER 3 BUILDING REGULATIONS; ARTICLE 3.02 - TECHNICAL AND CONSTRUCTION CODES AND STANDARDS; SEC. 3.02.054 - PROPERTY MAINTENANCE CODE AND SEC. 3.02.055 - APPEALS AND VARIANCES TO TECHNICAL AND CONSTRUCTION CODES.; PROVIDING FOR REPEALER, SEVERABILITY; SAVINGS; NOTICE OF PUBLIC MEETING CLAUSES; PROVIDING A PENALTY AND AN EFFECTIVE DATE**

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**WHEREAS**, the City of Leon Valley, as a Home Rule Municipality, derives its powers from its Home Rule Charter and is limited in authority only by express provisions of the Texas Constitution and the State statutes; and

**WHEREAS**, City Council determines it is convenient to codify Article 3.02 - Technical and Construction Codes and Standards; Sec. 3.02.054 - Property Maintenance Code and Sec. 3.02.055 - Appeals and Variances to Technical and Construction Codes; and

**WHEREAS**, City Council determines in order to provide adequate public safety to the entire community substantive changes to Chapter 3 Building Regulations need to be made.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS THAT:**

**Section 1. AMENDMENT.** Code of Ordinances Sec. 3.02.054 - Property Maintenance Code and Sec. 3.02.055 - Appeals and Variances to Technical and Construction Codes is hereby revised by attachment hereto designated as Exhibit "A" and incorporated by reference herein for all purposes.

**Section 2. RECITALS.** The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of the Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

**SECTION 3. REPEALER CLAUSE.** The provisions of the Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent by any other ordinance.

**SECTION 4. SEVERABILITY CLAUSE.** If any provision, section, sentence, clause, or phrase of this ordinance or application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting, and the Mayor in approving this Ordinance, that no portion thereof or provisions



or regulation contained herein shall become inoperative or fall by reason of any unconstitutionally or invalidity of any portion, provision, or regulation.

**SECTION 5. SAVINGS CLAUSE.** The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

**SECTION 7. NOTICE OF MEETING CLAUSE.** It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**SECTION 8. PENALTY.** Any person who violates any provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined as provided in Chapter 1. General Provisions, Article 1.01 Code of Ordinances, Section 1.01.009 General penalty for violations of code: continuing violations of the City of Leon Valley Code, and/or applicable state law.

**SECTION 6. EFFECTIVE DATE.** This ordinance shall become effective on and after its passage, approval and the meeting of all publication requirements as provided by law.

**PASSED, ADOPTED, AND APPROVED** by the City Council of the City of Leon Valley, Texas on the 19<sup>th</sup> day of September, 2023.

**APPROVED**

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**CHRIS RILEY**  
MAYOR

**Attest:**

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**SAUNDRA PASSAILAIGUE**  
City Secretary

**Approved as to Form:**

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**NICOLE WARREN**  
City Attorney

## ARTICLE 3.02 TECHNICAL AND CONSTRUCTION CODES AND STANDARDS

### DIVISION 1. GENERALLY

**Secs. 3.02.001—3.02.050 Reserved**

### DIVISION 2. TECHNICAL AND CONSTRUCTION CODES ADOPTED<sup>1</sup>

#### Sec. 3.02.051 Building code adopted

The International Building Code, 2021 edition, together with appendices, as published by the International Code Council, is hereby adopted, and incorporated by reference as though it was copied herein fully, except as follows:

- a. *Section 101.1 Title* is revised to read "These regulations shall be known as the Building Code of the City of Leon Valley, hereinafter referred to as "this code"."
- b. *Section 103.1 Creation of Enforcement Agency* is revised to read "The City's Building Inspector is the official in charge of enforcing this code and he shall be known as the Building Official. The Planning and Zoning Director, along with the Building Official, shall be the persons responsible for the implementation, administration, and enforcement of the provisions of this code."
- c. *Section 105, Permits, 105.2 Work exempt from permit, Building 1.* is hereby revised to read "One-story detached accessory structures used as tool and storage sheds, playhouses, pergolas, and similar uses,

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<sup>1</sup>Ord. No. 2022-52 , § 1(Exh. A), adopted October 18, 2022, repealed Divisions 2—6 of this article, §§ 3.02.051—3.02.059, 3.02.101, 302.131—3.02.133, 3.02.191, 3.02.192, 3.02.221, 3.02.251, 3.02.281—3.02.283, 3.02.321, 3.02.222, 3.02.361, 3.02.368, 3.02.431—3.02.433, and enacted a new Division 2 as set out herein. The former Divisions pertained to building code, residential code and existing building code; air conditioning and heating; electricity; energy code; plumbing; and derived from 1972 Code, secs. 6.104, 6.200, 3.103, 3.104, 6.104, 6.500, 14.401—14.408, secs. 19.200, 19.300, 19.410; Ordinance 04-004, sec. 2, April 6, 2004; Ordinance 04-005, sec. 3, April 6, 2004; Ordinance 04-006, April 6, 2004; Ordinance 07-003 adopted Feb. 6, 2007; Ordinance 07-005, sec. 1, Feb. 6, 2007; Ordinance 07-006, secs. 1, 2, Feb. 6, 2007; Ordinance 07-008, sec. 1, Feb. 20, 2007; Ordinance 07-042, sec. 1(A)—(F), Sept. 11, 2007; 2008 Code, secs. 3.02.051, 3.02.053—3.02.056, 3.02.101, 3.02.131—3.02.133, 3.02.192, 3.02.221, 3.02.222, 3.02.361—3.02.368, 3.02.281—3.02.283, 3.02.401—3.02.405, 3.02.431—3.02.433; Ordinance 14-029, Dec. 8, 2014; Ordinance 2017-69, secs. 1, 2, Nov. 21, 2017; 2017 Code; Ord. No. 2021-46 , § 1, Sept. 21, 2021; Ord. No. 2022-39 , § 1, Sept. 6, 2022.

State law reference(s)—Building and residential codes, V.T.C.A., Local Government Code, § 214.211 et seq.; adoption of rehabilitation codes or provisions, V.T.C.A., Local Government Code, § 214.215; International Building Code adopted as municipal commercial building code, V.T.C.A., Local Government Code, § 214.216; International Residential Code adopted as a municipal residential building code, V.T.C.A., Local Government Code, § 214.212.

- provided that the floor area is not greater than three-hundred (300) square feet and the height does not exceed twenty (20) feet."
- d. *Section 105, Permits, 105.2 Work exempt from permit, Building 2.* Is deleted in its entirety.
  - e. *Section 108.1 General* is revised to read "The building official is authorized to issue a permit for temporary structures and temporary uses upon satisfactory compliance with Chapter 15 Zoning, Section 15.02.382 (a) Temporary Uses."
  - f. *Section 110.3.1 Footing and Foundation Inspection* is revised to read "Form, footing, and foundation inspection. Form, footing, and foundation inspections are required. A form survey is required and to be present and on-site at the plumbing rough-in inspection. Form inspection will assure all building setbacks have been observed as per Chapter 15 Zoning and footing and foundation inspections shall be made after excavation for footings are complete and any required reinforcing steel is in place. Materials for the foundation shall be at the work site, except where concrete is ready mixed in accordance with ASTM C94, which need not be on the work site. Foundations 600 square feet or larger, or for habitable space, are to be designed by a Professional Engineer, licensed in the State of Texas."
  - g. *Section 110.3.3 Lowest floor elevation* is revised to read "In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to any further vertical construction, the elevation certificate required in Section 1612.4 of this code, the Leon Valley Code of Ordinances Chapter 3, Article 3.03 Flood Damage Prevention, and/or in the International Residential Code, as applicable, shall be submitted to the Building Official."
  - h. *111.1 Change of occupancy* is revised to read "A building or structure shall not be used or occupied in whole or in part, and a change of occupancy of a building or structure or portion thereof shall not be made, until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. A Certificate of Occupancy shall be obtained for any of the following:
    - (1) Occupancy and use of a building hereafter erected or structurally altered.
    - (2) Change in use of an existing building to a different classification.
    - (3) Occupancy and use of vacant land.
    - (4) Change in the use of land to a use of a different classification.
    - (5) Any major or significant modification, alteration, or change in a nonconforming use; and
    - (6) Business ownership name change."
  - i. *Section 113.3 Board of Appeals* is deleted in its entirety along with all references to such in the IBC. An appeal of the decision of the building official will be considered by the planning and zoning director, fire chief, and city engineer and based on the joint recommendation of said individuals; the appeal may be granted or denied with final discretion by the city manager. A variance from the provisions of certain sections of the currently adopted code may be granted administratively by the planning and zoning director on the joint recommendation of the building inspector, fire chief, and public works director, if alternative requirements are made which will give an equivalent amount of protection. The variance shall specify the alternative measures.
  - j. *Appendix B Board of Appeals* is deleted in its entirety.
  - k. *Appendix D Fire Districts, Section D101* is revised to read "All land situated either wholly or partially within the city limits of the City of Leon Valley is considered to be located in one fire district."

- l. *Appendix G, Section G101.5* is revised to read "The Planning and Zoning Director is designated as the floodplain administrator, is authorized, and directed to enforce the provisions of this appendix. The floodplain administrator is authorized to delegate performance of certain duties to other employees of the jurisdiction. Such duties shall not alter any duties and powers of the Building Official."
- m. *Appendix G, Section G103.1 General* is revised to read "Flood hazard areas are established as per the Federal Emergency Management Agency under the National Flood Insurance Program."
- n. *Appendix G, Section 104.7 Alterations in Coastal Areas* is deleted in its entirety.
- o. *Appendix H Signs, Section H101.2 Signs Exempt from permits* is deleted in its entirety.
- p. *Appendix M Tsunami-Generated Flood Hazards* is deleted in its entirety.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.052 Residential code adopted**

The International Residential Code, 2021 edition, as adopted and published by the International Code Council, is hereby adopted, and incorporated by reference as though it was copied herein fully in its entirety except as follows:

- a. *Chapter 1 Scope and Administration, Section R101.1 Title* is revised to state "These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of the City of Leon Valley and shall be cited as such and will be referred to herein as "this code"."
- b. *Section R105 Permits, R105.2 Work exempt from permit, Building 1.* is revised to read "Other than storm shelters, one story detached accessory structures, provided that the floor area does not exceed three hundred square feet.
- c. *Section R105 Permits, R105.2, Work exempt from permit, Building 2.* is deleted in its entirety.
- d. *Section R108.5 Refunds* is revised to read "The City Manager is authorized to establish a refund policy."
- e. *Section R110 Certificate of Occupancy, R110.01 Use and change of occupancy* is deleted in its entirety.
- f. *Section R112 Board of Appeals* is deleted in its entirety.
- g. *Appendix AV Board of Appeals* is deleted in its entirety.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.053 Existing building code adopted**

The International Existing Building Code, 2021 edition, as adopted and published by the International Code Council, is hereby adopted, and incorporated by reference as though it was copied herein fully in its entirety except as follows:

- a. *Section 101.1 Title* is revised to read "These regulations shall be known as the Existing Building Code of the City of Leon Valley, herein referred to as "this code"."
- b. *Section 112 Means of Appeal* is deleted in its entirety.
- c. *Appendix D Board of Appeals* is deleted in its entirety.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### Sec. 3.02.054 Property maintenance code

The International Property Maintenance Code, 2021 edition, as adopted and published by the International Code Council, is hereby adopted, and incorporated by reference as though it was copied herein fully in its entirety, with exceptions as follows:

- a. *Section 101.1 Title.* These regulations shall be known as the International Property Maintenance Code of the City of Leon Valley, hereinafter referred to as "this code."
- b. *Section 101.2 Scope.* The provisions of this code shall apply to all existing multi-family residential and nonresidential structures, to include apartments, hotels, motels, suites, inns, rooming or boarding houses, and vacant single family structures, and all existing apartment, multi-family, hotels, motels, suites, inns, rooming or boarding houses, and vacant single family premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from the elements, a reasonable level of safety from fire and other hazards, and for a reasonable level of sanitary maintenance; the responsibility of owners, an owner's authorized agent, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.
- c. *Section 103.1 Creation of agency.* The Leon Valley Planning and Zoning Department is hereby created and the official in charge thereof shall be known as the code official. The function of the agency shall be the implementation, administration, and enforcement of the provisions of this code.
- d. *Section 104.1 Fees.* The fees for activities and services performed by the department in fulfilling its responsibilities under this code shall be as established in Appendix A of the Leon Valley Code of Ordinances.
- e. *Section 104.2 Refunds.* The City Manager is authorized to establish a refund policy.
- f. *Section 107 Means of Appeal* is deleted.
- g. *Section 108 Board of Appeals* is deleted.
- h. *Section 109.2 Notice of Violation.* The code official, or his designee, shall serve a notice of violation or order in accordance with Section 111.4.
- i. *Section 110.01 Authority.* Where the code official, or his designee, finds any work regulated by this code being performed in a manner contrary to the provisions of this code or in a dangerous or unsafe manner, the code official, or his designee, is authorized to issue a stop work order.
- j. *Section 110.3 Emergencies.* Where an emergency exists, the code official, or his designee, shall not be required to give a written notice prior to stopping the work.
- k. *Section 112.6 Hearing* is deleted.
- l. *Section 302.4 Weeds.* Premises and exterior property shall be maintained free from weeds or plant growth in excess of twelve (12) inches. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants, and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.
- m. *Section 304.14 Insect screens.* Every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with approved tightly fitting screens of minimum 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition.

- n. *Section 602.3 Heat supply.* Every owner and operator of any building who rents, leases, or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from November to April to maintain a minimum temperature of 68°F (20°C) in all habitable rooms, bathrooms, and toilet rooms.
- o. *Section 602.4 Occupiable workspaces.* Indoor occupiable workspaces shall be supplied with heat during the period from November to April to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.
- p. *Appendix B, Board of Appeals* is deleted.
- q. *Section 301, adding section 310 Offenses and Nuisances.* Any multi-family residential and nonresidential complex, to include apartments, hotels, motels, suites, inns, rooming or boarding houses where the Police Department has responded to **60 or more emergency calls** in a span of three months will be required to have a licensed Police Officer on duty seven days of the week, during the hours of 8 PM and 6 AM for a period of one year. The Police Officer must be actively patrolling on foot, bicycle or in a vehicle during this time. If, in the last three months of that one-year period the complex is still illustrating 60 or more emergency calls, the complex must continue to keep a Licensed Police Officer on duty for an additional year. This will continue until the last three months of that one-year period has less than 60 emergency calls.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.055 Appeals and variances to technical and construction codes**

- (a) An appeal of the decision of the building official will be considered by the planning and zoning director, fire chief, and city engineer and based on the joint recommendation of said individuals; the appeal may be granted or denied ~~with final discretion~~ by the city manager. **Any appeal denied by the City Manager may be heard and overturned by the governing body.**
- (b) A variance from the provisions of certain sections of the currently adopted code may be granted administratively by the planning and zoning director on the joint recommendation of the building inspector, fire chief, and public works director, if alternative requirements are made which will give an equivalent amount of protection. The variance shall specify the alternative measures.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.056 Electrical code**

The National Electric Code, edition year 2020, as published by the National Fire Protection Association (NFPA), is hereby adopted, and incorporated by reference as though it was copied herein fully.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.057 Energy conservation code adopted**

The International Energy Conservation Code, edition 2021, as adopted and published by the International Code Council, is hereby adopted, and incorporated by reference as though it was copied herein fully in its entirety, with the following exceptions:



- a. *Section C101.1 Title* is revised to read "This code shall be known as the Energy Conservation Code of the City of Leon Valley and shall be cited as such. It is referred to herein as "this code"."
- b. *Section C110 Board of Appeals* is deleted in its entirety.
- c. *Appendix CA Board of Appeals - Commercial* is deleted in its entirety.
- d. *Appendix CA Board of Appeals - Residential* is deleted in its entirety.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.058 Fire code adopted**

The International Fire Code, edition 2021, as adopted and published by the International Code Council, is hereby adopted as set forth in the Leon Valley Code of Ordinances, Chapter 5 Fire Protection and Prevention, Article 5.04 Fire Code, Section 5.04.001, Adopted, and Section 5.04.002 Amendments.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.059 Fuel gas code adopted**

The International Fuel Gas Code, edition 2021, as adopted and published by the International Code Council, is hereby adopted, and incorporated by reference as though it was copied herein fully in its entirety, with the following exceptions:

- a. *Section 101 (IFGC), 101.1 Title* is revised to read "This code shall be known as the Fuel Gas Code of the City of Leon Valley and shall be cited as such. It is referred to herein as "this code"."
- b. *Section 103.1 Creation of Agency* is revised to read "The Planning and Zoning Department is responsible for the enforcement of this code and the official in charge thereof shall be known as the code official. The function of the agency shall be the implementation, administration, and enforcement of the provisions of this code."
- c. *Section 113 (IFGC) Means of Appeal* is deleted in its entirety.
- d. *Section 114 (IFGC) Board of Appeals* is deleted in its entirety.
- e. *Section 115.4 Violation Penalties* is revised to read "Persons who violate a provision of this code, fail to comply with any of the requirements thereof or erect, install, alter or repair work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code shall be guilty of a Class C misdemeanor, punishable by a fine of not more than \$500.00 dollars. Each day that a violation continues after due notice has been served shall be deemed a separate offense."

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.060 Mechanical code adopted**

The International Mechanical Code, edition 2021, as adopted and published by the International Code Council, is hereby adopted, and incorporated by reference as though it was copied herein fully in its entirety, with the following exceptions:

- a. *Section 101 (IFGC), 101.1 Title* is revised to read "This code shall be known as the Mechanical Code of the City of Leon Valley and shall be cited as such. It is referred to herein as "this code"."

- b. *Section 103.1 Creation of Agency* is revised to read "The Planning and Zoning Department is responsible for the enforcement of this code and the official in charge thereof shall be known as the code official. The function of the agency shall be the implementation, administration, and enforcement of the provisions of this code."
- c. *Section 113 (IMC) Means of Appeal* is deleted in its entirety.
- d. *Section 114 (IMC) Board of Appeals* is deleted in its entirety.
- e. *Section 115.4 Violation penalties* is revised to read "Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair mechanical work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a Class C misdemeanor, punishable by a fine of not more than \$500.00 dollars. Each day that a violation continues after due notice has been served shall be deemed a separate offense."
- f. *Appendix B Recommended Fee Schedule* is deleted in its entirety.
- g. *Appendix C Board of Appeals* is deleted in its entirety.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.061 Plumbing code adopted**

The International Plumbing Code, 2021 edition, together with all appendices, as published by the International Code Council, is hereby adopted, and incorporated by reference as though it was copied herein fully, with the following exceptions:

- a. *Chapter 1 Scope and Administration, Section 101.1 Title* is revised to read "These regulations shall be known as the Plumbing Code of the City of Leon Valley hereinafter referred to as "this code."
- b. *Section 106.6.2 Fee Schedule* is revised to read "The fees for all plumbing work shall be as stated in Appendix A of the Leon Valley Code of Ordinances.
- c. *Section 106.6.3 Fee Refunds* is revised to read "The City Manager sets the policy for any fee refunds. The code official shall authorize the refunding of the full amount of any fee paid herein that was erroneously paid or collected."
- d. *Section 108.4 Violation penalties* is revised to read "Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair plumbing work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be guilty of a Class C misdemeanor, punishable by a fine of not more than \$500.00 dollars. Each day that a violation continues after due notice has been served shall be deemed a separate offense.
- e. *Section [A]108.5 Stop work orders* is revised to read "Upon notice from the code official, work on any plumbing system that is being performed contrary to the provisions of this code or in a dangerous or unsafe manner shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's authorized agent, or to the person performing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a Class C misdemeanor, punishable by a fine of not more than \$500.00 dollars. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

- f. Section 109 Means of Appeal is deleted in its entirety.
- g. *Appendix A Plumbing Permit Fee Schedule* is deleted in its entirety.
- h. *Appendix B Rates of Rainfall for Various Cities* is revised to read "Refer to the Leon Valley Code of Ordinances, Chapter 10 Subdivision Regulations, Rainfall Intensity Chart."
- i. The city encourages all residential and business property owners to install rainwater collection systems for non-potable uses such as landscape irrigation. These systems may include, but are not limited to, rain barrels, roof water collection, cisterns, grey water plumbing fixtures, above-ground storage tanks and related pressure tanks and pumps, and treatment and disinfection equipment.
- j. Rainwater collection and storage containers and equipment must comply with the 2006 edition of the Texas Manual on Rainwater Harvesting, as published by the state commission on environmental quality, in accordance with House Bill 2430, and all subsequent supplements and changes in and to said edition.
- k. All rainwater collection systems and related equipment must be permitted, inspected, and approved by the city plumbing Inspector. Fees for such permits and inspections shall be as stated in the fee schedule.
- l. Rainwater collection systems shall not be connected to any plumbing that connects with the city's water supply system.
- m. Rainwater collection barrels and other water holding tanks or devices must be installed and maintained so as to prevent mosquito infestation and may not be located within any easement.
- n. Above-ground water collection devices, with the exception of roof gutters and rain barrels, shall not be located in the front yard area. Above-ground cisterns and water holding tanks must be located in the rear yard and must be screened from public view. Underground rainwater harvesting systems may be located in the front yard area but may not rise more than two feet (2') above grade. All storage areas shall be secured to promote safety and sanitation. All rainwater harvesting systems and related equipment must be situated at least five feet from any fence line.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.062 Contractor's license**

All contractors performing construction related work in the city limits must hold a current license under V.T.C.A., Occupations Code, Chapter 1302.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.063 Conflicts between adopted codes and other regulations**

To the extent of a conflict between any codes adopted herein and any locally adopted regulations regarding construction requirements, permitting, variances, and appeals from any code requirements and local administrative decisions, the locally adopted regulations shall apply.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.064 Penalty**

Violations of this division are a Class C misdemeanor, punishable by a fine of not more than five hundred (\$500.00) dollars. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Sec. 3.02.065 Federal or state construction projects**

Jobs inspected by federal or state agencies. On those construction jobs within the city where the Federal Housing Administration, the Veterans Administration, or other similar United States or State of Texas government agency is involved, then as to such construction jobs the building inspections provided herein may be waived by the city provided that the building permit reflects that such agency will conduct inspections and further provided that copies of all such inspections made by such federal agency are promptly forwarded to the city.

( Ord. No. 2022-52 , § 1(Exh. A), 10-18-2022)

### **Secs. 3.02.066—3.02.070 Reserved**



# Amending Ordinance Chapter 3 Building Regulations

Crystal Caldera, PhD  
City Manager  
City Council Meeting  
September 19, 2023

# Summary

- **Question**
  - Whether or not the council wants to amend Ordinance Chapter 3 Building Regulations; Article 3.02 - Technical and Construction Codes and Standards; Sec. 3.02.054 - Property Maintenance Code and Sec. 3.02.055 - Appeals and Variances to Technical and Construction Codes.
- **Options**
  - Approve the request
  - Approve a variation of the request
  - Deny
- **Declaration**
  - The City Council's Discretion



# Purpose

- To add to Sec. 3.02.054 - Property Maintenance Code
  - *Section 301, adding section 310 Offenses and Nuisances. Any multi-family residential and nonresidential complex, to include apartments, hotels, motels, suites, inns, rooming or boarding houses where the Police Department has responded to 60 or more emergency calls in a span of three months will be required to have a licensed Police Officer on duty seven days of the week, during the hours of 8 PM and 6 AM for a period of one year. The Police Officer must be actively patrolling on foot, bicycle or in a vehicle during this time. If, in the last three months of that one-year period the complex is still illustrating 60 or more emergency calls, the complex must continue to keep a Licensed Police Officer on duty for an additional year. This will continue until the last three months of that one-year period has less than 60 emergency calls.*
- To add to Sec. 3.02.055 - Appeals and Variances to Technical and Construction Codes
  - Any appeal denied by the City Manager may be heard and overturned by the governing body.

# Background

- City Council on October 18, 2022, Adopted the property maintenance code.
- The Council wanted to see accountability with deteriorating structures.
- However the number of police and fire response calls to these multicomplexes has gone up, placing a burden on our resources

# Background

- The property Maintenance code addresses
  - Light, Ventilation and Occupancy Limitations
    - le. Every common hall and stairway in residential occupancies, other than in one- and two-family dwellings, shall be lighted at all times with not less than a 60-watt standard incandescent light bulb for each 200 square feet (19 m<sup>2</sup>) of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet (9144 mm). In other than residential occupancies, interior and exterior means of egress, stairways shall be illuminated at all times the building space served by the means of egress is occupied with not less than 1 footcandle (11 lux) at floors, landings and treads.
  - Plumbing Facilities and Fixture Requirements
    - le. Plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. Plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

# Background

{Section}.97.

- The property Maintenance code addresses
  - Mechanical and Electrical Requirements
    - Ie. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms based on the winter outdoor design temperature for the locality indicated in Appendix D of the International Plumbing Code. Cooking appliances shall not be used, nor shall portable unvented fuel-burning space heaters be used, as a means to provide required heating.
  - Fire Safety Requirements
    - Ie Fire protection and life safety systems shall be maintained in accordance with the International Fire Code in an operative condition at all times, and shall be replaced or repaired where defective
  - Pest infestation
    - Ie. Structures shall be kept free from insect and rodent infestation. Structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to prevent reinfestation.

# Fiscal Impact

- N/A

Number of police response to calls in the last 6 months

Month	Vista	Finley	Barcelona	Valencia
March	99	13	4	5
April	111	17	8	6
May	132	6	10	11
June	123	9	7	10
July	142	20	13	11
Aug	122	17	8	10

# Recommendation

- City Council's Discretion



**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS,  
APPROVING AND ADOPTING THE CITY OF LEON VALLEY INVESTMENT POLICY  
AND INVESTMENT STRATEGIES WITH NO CHANGES**

---

**WHEREAS**, Texas Government Chapter 2256, the Public Funds Investment Act (the “Act”) authorizes a municipality to purchase, sell, and invest its funds and funds under its control in investments authorized under the Act in compliance with investment policies approved by the governing body and according to the standard of care prescribed by the Act; and

**WHEREAS**, the Act requires the City review the City’s investment policy and investment strategies no less than annually; and

**WHEREAS**, the City Council hereby finds and determines that the attached investment policy and investment strategies complies with the Act and authorizes the investment of City funds in safe and prudent investments;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS, THAT:**

**Section 1.** That the City of Leon Valley Investment Policy, attached hereto and incorporated herein as Attachment 1, and the investment strategies provided for therein has been reviewed by the City Council and is hereby adopted as the investment policy of the City of Leon Valley effective October 17, 2023 with no changes.

**Section 2.** This resolution is effective immediately upon passage by four (4) affirmative votes; otherwise it is effective on the tenth day after passage hereof.

# **ATTACHMENT 1**

## **City of Leon Valley Investment Policy**

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## **I. PURPOSE**

### **A. Introduction**

This investment policy documents policies and procedures to be followed by the City of Leon Valley, Texas (City), to ensure the proper investment of public funds. This policy will be reviewed by the City Council annually. At such time, the City Council will adopt by resolution policy that (1) states that the investment policy has been reviewed and (2) enumerates the changes to be made to the policy.

### **B. Statutory Authority**

This policy serves to satisfy the statutory requirements of defining and adopting a formal investment policy in accordance with the Public Funds Investment Act, Article 342a-2 V.T.C.S.

### **C. Scope**

This investment policy applies to all financial assets of the City, held in all funds.

## **II. OBJECTIVES**

The City's investment program will be conducted to accomplish the following objectives, listed in priority order:

### **A. Safety**

The primary objective of the City's investment program is the preservation and safety of principal in the overall portfolio. Each investment transaction shall seek first to ensure that capital losses are avoided, whether they are from security defaults or erosion of market value.

### **B. Liquidity**

The City's investment portfolio will remain sufficiently liquid to enable the City to meet operating requirements that might be reasonably anticipated. Liquidity shall be achieved by matching investment maturities with forecasted cash flow requirements; thereby avoiding the need to liquidate investments under adverse market condition. It is the intent of the City to invest its funds to maturity.

### **C. Diversification**

The investment portfolio will be designed to limit risk by avoiding the concentration of assets with a specific maturity, with a specific issuer, or in a specific class of securities.

### **D. Yield**

A fundamental rule of investing is that risk equals return. The City has deliberately established a low risk threshold to protect its financial resources and ensure that cash is available when needed. The City will invest idle cash at the highest possible rate of return, consistent with the objectives and provisions of this policy, and in compliance with state and federal laws governing the investment of public funds

### III. STANDARDS OF CARE

#### A. Prudence

The standard of care used by the City shall be the "prudent person" standard which shall be applied in the context of managing the overall portfolio within the applicable legal constraints. The Public Funds Investment Act states:

"Investments shall be made with judgment and care, under circumstances then prevailing, that 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."

All participants in the investment process shall seek to act responsibly as custodians of the public trust. Investment Officers shall avoid any transactions that might impair public confidence in the City's ability to govern effectively. The City Council recognizes that in maintaining a diversified portfolio, occasional measured losses due to market volatility are inevitable, and must be considered within the context of the overall portfolio's investment return, provided that adequate diversification has been implemented.

#### B. Ethics and Conflicts of Interest

Investment officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution of the investment program, or that which could impair their ability to make impartial investment decisions. Investment Officers and subordinate employees shall disclose any material interests in financial institutions or broker/dealer firms with which they conduct business. They shall further disclose any personal investment positions that could be related to the performance of the investment portfolio. Investment Officers and subordinate employees shall refrain from undertaking personal investment transactions with the same individual(s) with whom business is conducted on behalf of the City.

#### C. Delegation of Authority

Management responsibility for the investment program is delegated to the City Manager and the Finance Director. As Investment Officers for the City, the City Manager and Finance Director

are responsible for the day-to-day administration of the investment program and shall supervise the activities of subordinate employees. No person may engage in investment transactions except as provided under the terms of this policy.

#### D. Training

Investment Officers shall attend at least one training session related to their duties as Investment Officers within 12 months of assuming office or duties; a training session not less than once in a two-year period that begins on the first day of the City of Leon Valley's fiscal year and consists of the two consecutive years after that date; each training session shall contain not less than 10 hours of training. This training must include education in investment controls, security risks, strategy risks, market risks and compliance with the Public Funds Investment Act.

The training provider must be an independent provider approved by City Council. The City Council hereby authorizes the following entities to serve as qualified training providers for the City:

1. The Texas Municipal League, or any of its affiliate organizations;
2. The Government Treasurers Organization of Texas;
3. The Government Finance Officers Association;
4. The State of Texas, Comptroller's Office, or any other department/division of the State of Texas;
5. The University of Texas at Austin, or any other public University or College of higher education in Texas;
6. Investment pool administrators to include LOGIC, TexPool and Lone Star Investment Pool; and
7. Other training providers as approved by the City Council.

**E. Indemnity**

Investment Officers and subordinate employees, acting in accordance with the provisions of this investment policy, shall not be held personally liable for a specific security's credit risk or market price change, provided that any unexpected deviations are reported in a timely manner and that appropriate action is taken to control adverse developments.

## **IV. AUTHORIZED AND SUITABLE INVESTMENTS**

**A. Investment Types**

The following investments are permitted under this policy, in compliance with the Public Funds Investment Act:

1. **Certificates of Deposit.** Fully insured or collateralized certificates issued by state and national banks, a savings bank, or a state and federal credit union domiciled in the State of Texas.
2. **U.S. Treasuries and Agencies.** Securities issued by the United States Treasury or its Governmental Agencies. U. S. Treasuries and Agencies are guaranteed as to principal and interest by the full faith and credit of the United States of America.
3. **Obligations of the States, agencies thereof, Counties, Cities, and other political subdivisions of any state** having been rated as investment quality by a nationally recognized investment rating firm, and having received a rating of not less than "A" or its equivalent.
4. **Repurchase Agreements.** Repurchase agreements that are fully collateralized by U.S. Treasuries or Agencies guaranteed as to principal and interest by the full faith and credit of the United States of America.



5. **Investment Pools.** Investment pools that meet the following criteria:
  - a. An investment pool must provide an offering circular or other similar disclosure instrument and provide monthly transaction reporting.
  - b. A public funds investment pool created to function as a money market mutual fund must (1) mark its portfolio to market daily, (2) include in its investment objectives the maintenance of a stable net asset value of \$1 for each share and (3) be continuously rated no lower than "AAA" or "AAA-m" or at an equivalent rating by at least one nationally recognized rating service.
  - c. An investment pool must invest solely in (1) obligations of the United States or its agencies and instrumentalities, (2) repurchase agreements involving those same obligations and (3) SEC regulated AAA no-load money market mutual funds with a weighted average of maturity of 60 days or less and an investment objective of a \$1.00 stable net asset value.
6. **Money Market Mutual Funds.** No-load money market mutual funds if the fund:
  - a. Is registered with and regulated by the Securities and Exchange Commission (SEC);
  - b. Provides a prospectus and other information required by federal law.
  - c. Invests exclusively in U.S. Treasuries or Agencies and/or repurchase agreements fully collateralized by such obligations;
  - d. Has a dollar-weighted average stated maturity of 90 days or less; and
  - e. Includes in its investment objectives the maintenance of a stable net asset value of \$1 per share.
7. **Other Investments.** Other as approved by the City Council and not prohibited by law.

#### **B. Prohibited Investments**

City Investment Officers and employees have no authority to invest in any of the following instruments which are strictly prohibited by the Public Funds Investment Act:

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

**C. Length of Investments**

The City intends to match the holding period of investment funds with liquidity needs of the City. In no case will the average maturity of investments of the City's operating funds exceed one year. The maximum final stated maturity of any investment shall not exceed five years.

The Investment Officer will monitor rating changes in Investment acquired with public funds that require a minimum rating and shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not have the minimum rating thereby making that investment an unauthorized investment.

**D. Measuring Market Value**

The City's investment portfolio will be designed with the objective of using the 13-week U.S. Treasury Bill as a basis to determine whether market yields are being achieved.

**V. SELECTION OF BANKS AND DEALERS**

The City will only purchase investments from financial institutions and broker/dealer firms as approved by the City Council. All institutions and brokers/dealers are required to supply a Certification Form signed by a qualified representative of the firm stating that the City's investment policy has been reviewed and that reasonable procedures and controls are in place to preclude unauthorized investment transactions (Appendix A). Transactions are unauthorized unless this certification is on file with the City.

**A. Depository**

1. **Bidding Process.** Depositories shall be selected through the City's banking service procurement process, which shall include a formal request for proposals at least every five years. In selecting depositories, the City shall evaluate the credit worthiness of the institution and shall thoroughly review the institution's financial history and financial statements.
2. **Insurability.** Depositories shall provide evidence that deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

**B. Investment Dealers**

A broker/dealer may be used by the City only if the broker/dealer is:

1. Included on the Federal Reserve Bank of New York's list of primary government securities dealers, or is licensed by the State of Texas and is recommended in writing by at least three Texas cities.
2. Regulated by the Securities and Exchange Commission (SEC).
3. A member in good standing of the National Association of Securities Dealers, Inc. (NASD).
4. Able to provide immediate disclosure to the City whenever the broker/dealer's capital position falls short of the capital adequacy standard.

5. Able to provide independent certification by an outside auditor or similar agency that the broker/dealer complied with the capital adequacy standard on its most recent year-end balance sheet date.

## **VI. SAFEKEEPING AND CUSTODY**

### **A. Insurance or Collateral**

All deposits and investments of City funds other than direct purchases of U.S. Treasuries or U.S. Agencies shall be (1) guaranteed or insured by the FDIC or (2) be fully collateralized as required by the Texas Public Funds Collateral Act. Pledged collateral must maintain a market value equal to at least 102 percent of total deposits and investments, less an amount insured by the FDIC. Repurchase agreements shall be documented by a specific agreement noting the collateral pledged in each agreement.

Securities pledged as collateral must be held by an independent third party in the State of Texas. Evidence of pledged collateral shall be provided to the City and reviewed monthly to ensure the market value of the securities pledged equals or exceeds the value of total deposits and investments.

### **B. Types of Collateral**

The City of Leon Valley shall accept only the following as collateral:

1. FDIC insurance coverage.
2. United States Treasuries and Agencies.
3. Texas State, City, County, School or Road District bonds with an investment grade bond rating of not less than "A" or its equivalent from a nationally recognized investment rating firm.

### **C. Audit**

All collateral shall be subject to inspection and audit by the City.

### **D. Delivery vs. Payment**

With the exception of investment pools and mutual funds, all investment transactions will be executed using the delivery versus payment method. That is, City funds shall not be released until verification has been made that the purchased security or collateral has been received by a third party/safekeeping agent (Trustee). The security or collateral shall be held in the name of or held on behalf of the City. The Trustee's records shall evidence the City's ownership of or explicit claim on the securities. The original copy of all safekeeping receipts shall be delivered to the City.

## **VII. REPORTING REQUIREMENTS**

### **A. Quarterly Reports**

Not less than quarterly, the Investment Officers shall prepare and submit to the City Council, an investment report that describes in detail the investment position of the City as of the date of the report. These reports will be prepared to allow the City Council to ascertain whether investment activities have conformed to the City's investment policy.

Quarterly investment reports will summarize recent market conditions, economic developments and anticipated investment conditions. Reports must be signed and dated by both the City Manager and the Finance Director and must contain the following statement: "This report is in full compliance with the investment strategies as established by the City of Leon Valley Investment Policy and the Public Funds Investment Act."

At a minimum, quarterly reports submitted to the City Council will include the following:

1. A summary statement of investment activity for each pooled fund group prepared in compliance with Generally Accepted Accounting Principles to include fully accrued interest for the reporting period. The summary shall also state the:
  - a. Beginning market value for the reporting period.
  - b. Additions and changes to the market value during the period.
  - c. Ending market value for the period.
2. State the book value and market value of each separately invested asset at the beginning and end of the reporting period by fund type.
3. State the maturity date of each separately invested asset that has a maturity date.

#### **B. Annual Report**

Within sixty (60) days of the end of the fiscal year, the Investment Officers shall prepare an annual report on the investment program and investment activity. This annual report will be presented to the City Council and will include investment activities for the entire fiscal year and shall suggest policy revisions and improvements that might enhance the investment program. At such time, the City Council shall pass a resolution to document its review of the City's investment policies and strategies. This resolution shall also document whether changes or revisions to investment policies and/or strategies are required.

### **VIII. INTERNAL CONTROLS AND ANNUAL REVIEW**

#### **A. Internal Controls**

The City strives to effectively prevent the loss of public funds caused by fraud, misrepresentation by third parties, unanticipated changes in financial markets, employee error or imprudent actions by City employees. Internal controls have been designed to provide reasonable assurance that these objectives are met. 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 require estimates and judgments by management. The following guidelines establish a system of internal controls over investment procedures for the City of Leon Valley.

1. **Separation of Duties.** A separation of custodial, accounting and record keeping systems shall be maintained to the extent possible.
2. **Clear Delegation of Authority.** The City Manager and Finance Director are charged with management responsibility for the investment program.

3. **Adequate Training and Development of Investment Officials.** All Investment Officials are to be educated in the area of investment management in order to make informed decisions.
4. **Control of Collusion.** All investment transactions must be approved by two duly authorized Investment Officers or subordinate employees. Subordinate employees are designated by the City Manager.
5. **Documentation of Investments.** Purchase and sales transactions, including telephone transactions, must be documented in writing and evidenced by the signatures of two duly authorized Investment Officers or subordinate employees. A copy of such documentation shall be placed in an investment transaction file to be maintained in the City's Finance department.
6. **Verification of all Interest Income and Security Purchase and Sell Computations.** All investment interest income, fees, gains and/or losses shall be recalculated monthly by the Finance department.
7. **Reconcilement of Security Receipts with Subsidiary Records.** All security safekeeping receipts shall be reconciled to the general ledger monthly by the Finance department.
8. **Custodial Safekeeping.** Securities purchased from any bank or dealer including appropriate collateral shall be placed with an independent third party for custodial safekeeping.
9. **Avoidance of Bearer-Form Securities.** Negotiable securities are more susceptible to misappropriation than book entry only securities and must be properly safeguarded against loss, destruction or fraud.

#### **B. Annual Review**

The City shall engage an external independent auditor to conduct an annual review of the City's investment policies, investment procedures, and quarterly and annual investment reports to ensure compliance with the Public Funds Investment Act. This audit is to be performed by a Certified Public Accountant in conjunction with the City's annual financial audit and shall be reported to the City Council during the same meeting at which the City's Comprehensive Annual Financial Report is presented.

The Public Funds Investment Act states that if the City's investment portfolio is limited to money market mutual funds, investment pools, or depository bank investments such as certificates of deposit or money market accounts, the City is not subject to this formal annual review.

## APPENDIX A

### CERTIFICATION

I hereby certify that I have personally read and understand the investment policy of the City of Leon Valley and have implemented reasonable procedures and controls designed to fulfill these objectives and conditions. Transactions between this firm and the City of Leon Valley will be directed toward precluding imprudent investment activities and protecting the City from credit and market risk.

This firm pledges due diligence in informing the City of Leon Valley of foreseeable risks associated with financial transactions connected to this firm.

I attest that I am a qualified representative of this firm, authorized to sign on its behalf.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## GLOSSARY

**AGENCIES:** Federal agency securities.

**ASKED:** The price at which securities are offered.

**BANKERS' ACCEPTANCE (BA):** A draft or bill or exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

**BID:** The price offered by a buyer of securities. (When you are selling securities, you ask for a bid.) See Offer.

**BROKER:** A broker brings buyers and sellers together for a commission.

**CERTIFICATE OF DEPOSIT (CD):** A time deposit with a specific maturity evidenced by a certificate. Large-denomination CD's are typically negotiable.

**COLLATERAL:** Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities by a bank to secure deposits of public monies.

**COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR):** The official annual report for the City of Leon Valley.

**COUPON:** (a) The annual rate of interest that bond issuers promises to pay the bondholder on the bond's face value. (B) A certificate attached to a bond evidencing due on a payment date.

**DEALER:** A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling from his own account.

**DEBENTURE:** A bond secured only by the general credit of the issuer.

**DELIVERY VERSUS PAYMENT:** There are two (2) methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

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

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

**DIVERSIFICATION:** Dividing investment funds among a variety of securities offering independent returns.

**FEDERAL CREDIT AGENCIES:** Agencies of the Federal government set up to supply credit to various classes of agencies.



# City of Leon Valley Investment Policy FY 2024

Carol Goering  
Finance Director

City Council Meeting  
October 17, 2023

# Overview

- The Public Funds Investment Act of 1987 (PFIA) established rules and regulations for governmental entities to follow for the proper investment of public monies.
- The following proposed change simply allows the bank to pledge securities for our deposits for a maturity date longer than 10 years.

# Recommendation

- Adopt the Resolution with no changes for FY 2024.

# S.E.E. Statement

Social Equity – Providing amenities similar to other nearby cities assure that our residents are being offered the same advantages and activities as the citizens of the metro area

Economic Development- Allowing mobile food vendors at the park may attract visitors, who might visit other shops and possibly decide to become residents, increasing our sales and property tax revenue

Environmental Stewardship - Land being used as a park reduces the number of structures located in a floodplain which maintains pervious cover, reducing sediment and erosion in our watershed areas

# City of Leon Valley Investment Policy FY 2024

Carol Goering  
Finance Director

City Council Meeting  
October 17, 2023

## **MAYOR AND COUNCIL COMMUNICATION**

**DATE:** October 17, 2023

**TO:** Mayor and Council

**THROUGH:** Crystal Caldera, City Manager

**SUBJECT:** Presentation, Discussion, and Possible Action to Consider Approval of a Resolution Authorizing the City Manager to Enter Into an Agreement with Ardurra Engineering for Professional Consulting Engineering Services.

### **PURPOSE**

The purpose of this item is to consider authorizing the City Manager to enter into a contract with Ardurra engineering firm for professional engineering services.

Professional engineering services are used by the Planning and Zoning Department for plan and plat reviews, and floodplain development, and by the Public Works Department for capital improvements, such a street maintenance, stormwater, flooding, rate studies, surveying, architectural, structural concerns, traffic studies, GIS mapping, and other special projects. A Request for Qualifications (RFQ) was advertised for thirty days, and the city received responses from ten firms. After a review of the RFQ's, three companies were chosen for further interviews:

Ardurra Engineering  
6S Engineering  
Bain Medina Bain Engineering and Surveying

Each company was interviewed, and competency, qualifications, capabilities, and references were considered. After discussion by the Fire Chief, the Planning and Zoning Director, the Public Works Director, and the Assistant Public Works Director, it was recommended that the city select Ardurra Engineering for all services required. Ardurra is the current city engineering consultant.

On September 5, 2023, the City Council selected Ardurra Group for engineering services. The City Manager has negotiated the agreement and requesting approval.

### **S.E.E Statement**

Social - Building public projects requires quality engineering and design, which safeguards the citizens health, safety, and welfare.

Economic - Providing competent engineering services assures the endurance and safety of public projects, reducing the need to rebuild, thus reducing the use of taxpayer dollars.

Environmental - Projects in Leon Valley are engineered and designed to be compatible with our environment.

**FISCAL IMPACT**

	2018	2019	2020	2021	2022	YTD
Annual Cost	\$254,101	\$399,003	\$526,489	\$905,833	\$392,175	\$417,784

**Recommendation**

Staff recommends approval.

APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_

APPROVED WITH THE FOLLOWING AMENDMENTS:

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ATTEST:

\_\_\_\_\_  
**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR THE PURPOSE OF PROVIDING PROFESSIONAL CONSULTING ENGINEERING SERVICES FOR THE CITY OF LEON VALLEY.**

**WHEREAS**, the city is required to utilize the services of a licensed professional engineer and surveyor for larger public works projects; and

**WHEREAS**, licensed professional engineering services are essential for the review of building plans and plats, traffic studies, street, drainage, and stormwater plans, and other related services; and

**WHEREAS**, the city advertised Requests for Qualifications for engineering firms to provide these services, following all applicable local and state laws regarding the review and selection of the highest qualified engineering firm for these services; and

**WHEREAS**, On September 5, 2023, the City Council selected Ardurra Group Engineering as the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and

**WHEREAS**, it is recommended that the City Council authorize the City Manager to execute the negotiated agreement Attached as Exhibit A and allow the city to enter into a contract with this firm for these services.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS, THAT:**

1. The City Manager of the City of Leon Valley, Texas is hereby authorized to enter into an agreement with Ardurra Engineering, for the purpose of providing professional consulting engineering services for the City of Leon Valley.
2. The Mayor and City Council, with the adoption of this Resolution, further authorize the City Manager to act on behalf of the City of Leon Valley in all matters related to the Contract.

**PASSED, ADOPTED, AND APPROVED** by the City Council of the City of Leon Valley on this 17th day of October, 2023.

**APPROVED**

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**CHRIS RILEY**

Mayor

Attest:

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**SAUNDRA PASSAILAIGUE, TRMC**

City Secretary

Approved as to Form:

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City Attorney

**PROFESSIONAL SERVICES AGREEMENT  
ARDURRA GROUP, INC. AND THE CITY OF LEON VALLEY**

THE CITY OF LEON VALLEY, Texas, a Texas municipal corporation (OWNER and CLIENT) engages Ardurra Group, Inc. (ENGINEER) to perform professional services under the following terms and conditions:

- I. **SERVICES:** ENGINEER agrees to provide General/Additional Engineering Services and Services for Public Works Construction Projects with engineer(s) duly licensed and practicing under the law in the State of Texas, in conformance with the following descriptions, terms and conditions:
  - A. **GENERAL/ADDITIONAL SERVICES:** See Attachment "A".
  - B. **PUBLIC WORKS CONSTRUCTION PROJECTS:** See Attachment "B".
- II. **COMPENSATION:** Client agrees to pay ENGINEER an amount not to exceed \$500,000 per fiscal year for the services described above in accordance with the descriptions, definitions, terms and conditions found in Attachment "C" unless otherwise approved by City Council.
- III. **DURATION:** This Agreement shall be effective for a period of three years beginning from the date that the CLIENT's signature is affixed to this agreement.
- IV. **PAYMENT:** ENGINEER will invoice CLIENT monthly in amounts based on ENGINEER's estimate of the amount of Basic Services completed plus charges for Additional Services performed. CLIENT agrees to review the invoices submitted for approval and to pay ENGINEER the approved amounts within 30 days of the date of the invoice.
- V. **INSURANCE AND INDEMNITY:** ENGINEER agrees to maintain Worker's Compensation Insurance to cover all its own personnel engaged in performing services for CLIENT under this Agreement. ENGINEER also agrees to maintain Commercial General Liability insurance that will protect the ENGINEER and CLIENT from claims for damages because of bodily injury, personal injury, sickness, disease or death and insurance that will protect the ENGINEER and CLIENT from claims for damages to or destruction of tangible property of others, including loss of use thereof. The minimum policy limits of liability for this line of insurance coverage should be:
  - \$1,000,000.00 Occurrence Limit
  - \$2,000,000.00 General Aggregate
  - \$2,000,000.00 Products/Completed Operations Aggregate
  - \$1,000,000.00 Contractual Liability

This line of insurance shall be endorsed naming CLIENT as an Additional Insured for both ongoing and completed operations and shall provide a Waiver of Subrogation in favor of CLIENT.

Commercial/Business Automobile Liability insurance that will protect the ENGINEER and CLIENT from claims for damages arising out of the maintenance, operation, or use of any owned, non-owned or hired vehicles. The minimum policy limits of liability for this line of insurance coverage for bodily injury and property damage combined shall not be less than \$1,000,000.00 per each occurrence.

This line of insurance shall be endorsed naming CLIENT as an Additional Insured for both ongoing and completed operations and shall provide a Waiver of Subrogation in favor of CLIENT.

Professional liability (errors and omissions) insurance with minimum coverage limits of \$3,000,000.00 per claim, \$3,000,000.00 in the aggregate.

The insurance policies shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty (30) days prior written notice has been given to OWNER.

**TO THE FULLEST EXTENT PERMITTED BY LAW ENGINEER SHALL FULLY INDEMNIFY AND HOLD HARMLESS THE OWNER, AND AGENTS AND EMPLOYEES OF OWNER FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RELATING TO THE PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTED TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF ENGINEER, A CONSULTANT, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**

**IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION V, BY AN EMPLOYEE OF ENGINEER, A CONSULTANT, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION V SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR ENGINEER OR A CONSULTANT UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.**

- VI. **OPINIONS OF COST:** ENGINEER has no control over the following items that impact project construction costs: labor cost, material cost, equipment cost, services furnished by others, Contractors' methods of determining prices, competitive bidding conditions, and market conditions. Therefore, the Engineer's Opinions of Probable Project Cost and of Probable Construction Cost are understood to be made on the basis of his experience and represent his best judgment as a qualified Professional Engineer familiar with the construction industry and the ENGINEER does not guarantee that estimates, proposals, bids or actual Project and Construction Costs will not vary from the Engineer's Opinion of the Probable Project Cost of Opinion of Probable Project Cost or Opinion of Probable Construction Cost.
- VII. **REUSE OF DOCUMENTS:** All documents prepared by ENGINEER pursuant to this Agreement, including drawings, and specifications are instruments of service with respect to projects. They are not intended or represented to be suitable for reuse by OWNER or others for extending the original project or on any other projects. OWNER may reuse Engineer's documents, but any reuse without written verification or adaptation by ENGINEER for the additional purpose will be at the OWNER'S sole risk and without liability or legal exposure to ENGINEER. Any variation or adaptations requested of ENGINEER by OWNER shall entitle ENGINEER to further compensation.
- VIII. **TERMINATION:**
  - A. Either OWNER OR ENGINEER may terminate this Agreement at any time prior to completion of ENGINEERS's services. Terminations shall be initiated by a letter providing thirty (30) days written notice to the other party at its address of record.
  - B. **COMPENSATION PAYABLE ON TERMINATION:** On termination by either CLIENT or ENGINEER, CLIENT shall pay ENGINEER as follows:
    - 1) Public Works Construction Projects (phase complete): CLIENT shall pay to ENGINEER the entire lump sum amount previously agreed upon for the completed phase in accordance with Attachment "C", Paragraph B.
    - 2) Public Works Construction Projects (phase incomplete): CLIENT shall pay ENGINEER the lesser of the following two amounts:
      - a) The amount required in VIII.B.1, or

- b) The amount determined by applying the hourly and reimbursable rates specified for General/Additional Services in Attachment "C", Paragraph A, to the portions of the phase that have been performed prior to the date of termination.
- 3) General/Additional Services: CLIENT shall pay ENGINEER the amount determined by applying the hourly and reimbursable rates specified in Attachment "C", Paragraph A, to the extent of services that have been performed prior to the date of termination.
- IX. SUCCESSORS AND ASSIGNS: OWNER and ENGINEERS each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither OWNER nor ENGINEER shall assign, sublet or transfer his interests in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than OWNER and ENGINEER.
- X. SPECIAL PROVISION: This instrument, with Attachments "A", "B", and "C", contains the entire Agreement between OWNER and ENGINEER.
- XI. INVALIDATION: This Agreement shall become invalid unless it is executed by OWNER within ninety (90) days of the ENGINEER's signature date or unless the period is extended in writing by the ENGINEER.
- XII. MODIFICATIONS: No one has authority to make alternations or additions to the terms of this Agreement on behalf of OWNER or ENGINEER other than a person duly authorized by the party's appropriate authority with the consent of both parties, and then only in writing signed by the party's appropriate authority.
- XIII. CHANGE OR SUSPENSION OF WORK; Without invalidating this agreement, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the work by written amendment. Upon receipt of any such document, ENGINEER shall promptly proceed with the work involved. At any time, with or without cause, OWNER may suspend the work or any portion thereof. ENGINEER shall be allowed an adjustment in the contract price or an extension of the contract time, or both, directly attributable to any such suspension.
- XIV. ATTORNEY'S FEES: In the event of any controversy, claim, or dispute between the parties that arises out of or relates to this agreement, the prevailing party will be entitled to recover from the other party any attorney's fees, expenses and costs.
- XV. GOVERNING LAWS AND VENUE: This contract shall be governed by the laws of the State of Texas and venue, of all legal proceedings hereunder shall be in Bexar County, Texas.

**Engineer: Ardurra Group, Inc.**

**Owner: The City of LEON VALLEY**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT "A"**  
**GENERAL/ ADDITIONAL SERVICES**  
**SCOPE OF WORK**

1. Provide Project Representative and other personnel as required for on-site construction observation.
2. Property survey and establishment of boundaries and monuments with related computations and drafting.
3. Preparation of property or easement descriptions.
4. Preparation of special reports required for marketing of bonds.
5. Small design assignments with construction costs less than \$150,000.
6. Appearances before regulatory agencies.
7. Assistance as an Expert Witness in litigation with third parties arising from the development or construction of a project or for other reasons. The work may include the preparation of engineering and reports.
8. Special investigations; preparation of rate schedules; earnings and expense statements; feasibility studies; evaluations; and material audits or inventories required for certification of force account construction performed by OWNER.
9. Soil and foundation investigations including field and laboratory tests, borings, related engineering analyses, and recommendation.
10. Detailed inspection of materials or equipment.
11. Travel and subsistence required of the ENGINEER and authorized by OWNER.
12. Preparation of applications and supporting documents for government permits.
13. Preparation of environmental statements.
14. Preparing for and attending public hearings and other meetings.
15. Preparation of operating instructions and manuals for facilities.
16. Training of personnel and assistance in operation of facilities.
17. Surveying related to construction layout.
18. Technical review of subdivision plats and zoning cases.
19. Any other special or miscellaneous assignments specifically authorized.

**ATTACHMENT "B"****PUBLIC WORKS CONSTRUCTION PROJECTS  
SCOPE OF WORK****A. Preliminary Design Phase**

1. Attend preliminary conferences with OWNER and other interested parties, including public meetings when project is presented and discussed.
2. Establish the scope of soil investigation, special surveys and tests. Arrange for such work to be done. OWNER shall contract directly with the party performing the soil investigation, special survey and/or tests.
3. Prepare a preliminary engineering report that indicates the problems and alternate solutions with preliminary layouts, opinion of probable construction costs, and ENGINEER's recommendations.

**B. Detailed Design Phase**

1. Establish the scope of additional soil investigations, special surveys and tests required for design. Arrange for such work to be done. OWNER shall contract directly with the party performing the soil investigation, special survey and/or tests.
2. Furnish engineering data necessary for application for routine permits required by government agencies. Preparation of applications and other participation in the application process are considered Additional Services.
3. Provide field surveys required in the design of the project.
4. Prepare detailed specifications and contract drawings (contract documents) for construction. Prepare additional documents required for bidding.
5. Prepare detailed opinions of probable cause.
6. Furnish OWNER with all necessary copies of approved contract documents, including notices to bidders and proposal forms.

**C. Bidding Phase**

1. Assist OWNER with advertisement of the Project for bids.
2. Assist OWNER with opening and tabulation of the bids as follows:
  - a. Assist with distribution of contract documents.
  - b. Attend and lead the bid opening meeting.
  - c. Tabulate received bids and check extensions for correctness.
  - d. Check financial references and past project references for the two (2) apparent low bidders.
  - e. Make recommendation for the award of the construction contract.
3. Assist in the preparation of formal Contract Documents.



**D. Construction Phase**

1. Make at a minimum, 1 visit to the construction site every week to observe the progress and quality of the work and to determine if the work is generally proceeding in accordance with the plans and specifications. Submit monthly reports relating to such visits. The OWNER may request additional visits and reports as Additional Services. The ENGINEER shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by the Contractor or for the Contractor's failure to construct the project in conformance to the contract documents.
2. Consult with and advise OWNER. Issue instructions to Contractor as requested by OWNER. Prepare and issue routine Change Orders approved by OWNER.
3. Review samples, catalog data, schedules, shop drawings, laboratory tests, shop tests, and mill tests of material and equipment and other data that the Contractor submits for general conformance with the Contract Documents. The review by ENGINEER does not relieve Contractor of any of Contractor's responsibilities including, but not limited to, confirmation of dimensions at the project site, implementation of appropriate safety measure& to protect workers and the public, and construction of a complete and workable facility in accordance with the Contract Documents.
4. Obtain and review Contractor's monthly estimates and requests for payment. Furnish recommendations to OWNER. Assemble written guarantees that are required by the contract documents.
5. Perform a final project review with the OWNER for compliance with the Contract Documents and submit recommendations concerning project status to OWNER.

**ATTACHMENT "C"****ARDURRA GROUP, INC. RATE SCHEDULE****A. GENERAL/ADDITIONAL SERVICES****Engineering, Planning:**

Position	Proposed Hourly Rate
Practice Director	\$250
Sr Project Manager	\$230
Project Manager	\$220
Engineer VI	\$165.00
Engineer IV	\$155.00
Engineer II	\$140.00
GIS Analyst	\$132.00
Designer III	\$140.00
Designer II	\$128.00
CADD Tech	\$120.00
Construction Observer	\$125
Clerical	\$75
RPLS	\$200
SIT	\$155.00
Field Crew (2-Man)	\$190.00

**Review of Subdivision Plats and Plans:**

1. Residential Plats
  - Residential Preliminary Plat (Base).....\$315 per plat
  - Residential Final Plat (Base).....\$315 per plat
  - Lot fee in addition to base
    - 1-20 Lots.....\$22 per lot
    - 21-100 Lots.....\$16 per lot
    - 101 or more.....\$11 per lot
2. Residential Plans
  - Residential Street and Drainage  
Plan Review
    - 1-50 Lots.....\$500
    - 51 or more.....\$750
3. Commercial and Other Plats
  - Commercial Preliminary Plat (Base).....\$315 per plat
  - Commercial Final Plat (Base).....\$315 per plat
  - Plus..... \$200 per plat
4. Commercial Plans
  - Commercial Street, Drainage, TIA, Storm Water  
Management Plan and Site Grading.....Hourly based on Rate Schedule

Charges are due and payable within thirty (30) days after receipt of the invoice. Late payment may be charged an interest rate of 1.5% per month of the unpaid balance.

**B. PUBLIC WORKS CONSTRUCTION PROJECTS****Negotiated Lump Sum Fee**

Major Task Orders will be compensated on the basis of a negotiated lump sum fee that are calculated at the hourly rates agreed upon. Such tasks shall include but not be limited to:

- a. Street and/or Drainage Maintenance Plans, Specifications & Estimates (PS&E)
- b. Water and/or Wastewater infrastructure PS&E's
- c. Capital Project PS&E's
- d. Street Maintenance Master Planning
- e. Drainage Master Planning
- f. Development of other Master Plans (e.g., Major Thoroughfare Plan)
- g. City Code Development or Revision Consulting Services
- h. Grant Writing Support
- i. MS4 Permit Support

\*All above Fees and Rates do not include travel expenses and other direct costs. Auto mileage will be billed at the approved IRS rate (currently \$0.565/mile) plus 10%. All other direct billed service (lodging, printing, postage, etc.) will be billed at actual costs plus 10%.

# Consider Approval of a Resolution Executing an agreement for Consulting Engineering Services

City Council Meeting  
Crystal Caldera, PhD  
City Manager  
October 17, 2023

# Purpose

- To approve a Resolution authorizing the City Manager to enter into an agreement with Ardurra Engineering for Professional Consulting Engineering Services

# Background

- Professional engineering services are used:
- By the Planning and Zoning Department for plan and plat reviews, zoning, impact fees, and floodplain development
- By the Public Works Department for capital improvements, street maintenance, stormwater, flooding, surveying, architectural, structural concerns, traffic studies, rate studies, GIS mapping, and other special projects

# Background

- A Request for Qualifications (RFQ) was advertised for thirty days, and the city received responses from 10 firms
- Each company's capabilities, competence, and qualifications were considered, and references were checked
- After the review, 3 companies were selected for interviews:
  - Ardurra Engineering
  - 6S Engineering
  - Bain Medina Bain Engineering and Surveying



# Background

- After careful consideration by the Fire Chief, the Planning and Zoning Director, the Public Works Director, and the Assistant Public Works Director, it was recommended that the city select Ardurra Engineering for all services required
- Ardurra is the current city engineering consultant
- On September 5, 2023 the City Council reviewed the RFQs and selected Ardurra group as the City's engineer
- Directed the City Manager to negotiate the agreement with Ardurra group for engineering services

# Contract points

- The agreement is for 3 years
- Engineering services can not exceed \$500,000 per fiscal year without council approval
- Insurance requirements
  - \$1,000,000.00 Occurrence Limit
  - \$2,000,000.00 General Aggregate
  - \$2,000,000.00 Products/Completed Operations Aggregate
  - \$1,000,000.00 Contractual Liability
- Review of subdivision plats and plans cost remain the same as the 2017 agreement

# Fiscal Impact

	2018	2019	2020	2021	2022	YTD
Annual Cost	\$254,101	\$399,003	\$526,489	\$905,833	\$392,175	\$417,784

# Recommendation

- Staff recommends: Approval

## MAYOR AND COUNCIL COMMUNICATION

**DATE:** September 5, 2023

**TO:** Mayor and Council

**FROM:** Dr. Crystal Caldera, City Manager

**SUBJECT:** Presentation, Discussion and Direction to Amend an ordinance amending the City of Leon Valley Code of Ordinances, Chapter 1, Article 1.04 City Council, Sec. 1.04.001 Rules of Meeting Decorum and Conduct, adding executive session meeting time of 6:00 p.m. and prohibiting outside presentations.

### **PURPOSE**

At the August 10, 2023, council retreat, the council requested an ordinance amending the City of Leon Valley Code of Ordinances, Chapter 1, Article 1.04 City Council, Sec. 1.04.001 Rules of Meeting Decorum and Conduct, adding executive session meeting time of 6:00 p.m. and prohibiting outside presentations.

### **FISCAL IMPACT**

N/A

### **SEE LEON VALLEY**

***Social Equity*** – N/A

***Economic Development*** – N/A

***Environmental Stewardship*** – N/A

### **RECOMMENDATION**

City Council Discretion.

ATTEST :

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**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary

**ORDINANCE NO. 2023-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS AMENDING THE CITY OF LEON VALLEY CODE OF ORDINANCES, CHAPTER 1 GENERAL PROVISIONS, ARTICLE 1.04 CITY COUNCIL, SECTION 1.04.001 RULES OF MEETING DECORUM AND CONDUCT, ADDING EXECUTIVE SESSION MEETING TIME OF 6:00 PM, ADDING CITIZENS TO BE HEARD CONTACT INFORMATION, ADDING A PROCEDURE FOR OUTSIDE PRESENTATIONS AND PROVIDING FOR REPEALER, SEVERABILITY; SAVINGS; OPEN MEETINGS CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE**

---

**WHEREAS**, the City of Leon Valley, as a Home Rule Municipality, derives its powers from its Home Rule Charter and is limited in authority only by express provisions of the Texas Constitution and the State statutes; and

**WHEREAS**, in accordance with such powers the City Council adopted Code of Ordinances Section 1.04.001 to address meeting days and times and Ordinance No. 2022-34, to provide for rules of conduct and decorum in public meetings; and

**WHEREAS**, City Council determines it is convenient to codify the Rules of Conduct and Decorum in the Code of Ordinances in Section 1.04.001; and

**WHEREAS**, City Council determines in order to run a more effective meeting it is necessary to make substantive changes to the Rules of Conduct and Decorum.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS THAT:**

**Section 1. Amendment.** Code of Ordinances Chapter 1 General Provisions, Article 1.04 City Council, Section 1.04.001 Rules of Meeting and Decorum Conduct is hereby revised in Exhibit "A" attached hereto and incorporated by reference herein for all purposes.

**Section 2. Recitals.** The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of the Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

**SECTION 3. Repealer.** The provisions of the Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent by any other ordinance.

**SECTION 4. Severability.** If any provision, section, sentence, clause, or phrase of this ordinance or application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting, and the Mayor in approving this Ordinance, that no portion thereof or provisions

or regulation contained herein shall become inoperative or fall by reason of any unconstitutionally or invalidity of any portion, provision, or regulation.

**SECTION 5. Savings.** The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

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

**SECTION 7. Effective Date.** This ordinance shall become effective on and after its passage, approval and the meeting of all publication requirements as provided by law.

**PASSED, ADOPTED, AND APPROVED** by the City Council of the City of Leon Valley, Texas on this the 15<sup>th</sup> day of September, 2023.

**APPROVED**

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**CHRIS RILEY**  
MAYOR

**Attest:**

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**SAUNDRA PASSAILAIGUE**  
City Secretary

**Approved as to Form:**

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**NICOLE WARREN**  
City Attorney



## EXHIBIT A

### Section 1.04.001 Rules of Meeting Decorum and Conduct

(a) **Definitions.** In this section the terms set out in italics (*italics*) shall have the meanings prescribed below:

Agenda. The published agenda of each public meeting.

Citizen. Any person, other than a member of staff, who wishes to speak at a public meeting.

Member. An elected or appointed member of City Council.

Presiding Officer. The mayor or the member presiding over the public meeting in the absence of the mayor.

Public Meeting. Any meeting of a quorum of the members where the business of the City is discussed.

Staff. An employee of, or consultant contracted by the City.

(b) **Meeting Times.** A regular City Council meeting shall be held on both the first and third Tuesday of each month beginning at 6:30 PM. Closed Executive Sessions may begin no earlier than 6:00 PM. In the event that the meeting date falls on a holiday, the meeting will be rescheduled. Regular City Council meetings may be cancelled or rescheduled, and the meeting time adjusted upon a majority vote by City Council. Special meetings may be called as provided by law.

(c) **Meetings to be Open to the Public.** Meetings of the City Council shall always be open to the general public except as may be specially provided by stat law, and no vote or action of any kind shall ever be taken by the City Council except at a regular meeting or at a lawfully called special meeting.

(d) **Conducting Meetings.**

(1) Participation by Citizens. Citizens may provide comments, testimony, and evidence the times designated as follows:

- A. During “Citizens to be Heard”.
- B. Prior to City Council’s decision or vote on any posted agenda item.
- C. At any posted public meeting.

(2) Appearance.

- A. Citizens may appear in person.
- B. Citizens may appear by written appearance for items on the agenda.
- C. Written comments must be:
  - I. Email to:

[citizenstobeheard@leonvalleytexas.gov](mailto:citizenstobeheard@leonvalleytexas.gov)

The Mayor and/or a City Council member may forward correspondence to the above e-mail on a citizen's behalf.

- II. Mail to:  
Leon Valley Public Comments  
6400 El Verde Road  
Leon Valley, Texas 78238
- III. Received prior to the start of the meeting to ensure comments are read during the meeting. At the request of any City Council member and/or Mayor, a citizen comment can be read.
- IV. During the Citizens to be Heard section of the agenda, no written comments will be read aloud during the meeting.

V. Fax to: (210) 684-4476

- (3) Recognition by the Presiding Officer. A citizen shall be recognized by the presiding officer before speaking. Citizens may speak only one (1) time at each of the following for up to three (3) minutes at any posted: (a) citizens to be heard; (b) agenda item(s); or (c) public hearing. The presiding officer may extend the time to speak, on the officer's own initiative or at the request of a member; provided in contested matters all views are treated fairly and equally. All City Council members, staff, citizens, and visitors to the Chamber shall be recognized first by the chair to speak by raising their hand.
- (4) Ceremonial and Informational Presentations. All ceremonial items and information presentations shall be placed at the beginning of scheduled meetings.
- (5) Outside Presentations. No outside presentations will be allowed without permission from a staff person, or the Mayor, or vote by the governing body.

(e) **Disruptive Behavior.** Members, staff, and citizens to include any citizen communications, shall not shout, display unruly behavior, distract with side conversations, use profanity, threat of violence, or disrupt the orderly conduct of the meeting. When any person is addressing City Council, staff or citizens, no personal attacks on staff, citizens or City Council shall be allowed. To be determined by the Mayor.

(f) **Enforcement.** These rules shall be administered and enforced by the presiding officer of such City Council, subject to appeal by its members as provided herein.

- (1) The presiding officer shall warn any person displaying behavior that he or she shall be required to leave the meeting room.
- (2) If the person is asked to leave the meeting room and the person does not leave the meeting room, the presiding officer may order any peace officer at the meeting to remove the person from the meeting room.
- (3) The presiding officer may enforce these rules by any means or authority provided to the presiding officer by law.

**(g)     Enforcement as a Member.**

- (1) Any member of City Council may request the presiding officer address a violation of these Rules of Decorum, in the manner prescribed in subsection (f), immediately above, by lodging a point of personal privilege.
- (2) Should the member believe the presiding officer failed to adequately address the allegation of violation, the member may appeal the matter to the members of City Council; and
- (3) Should the majority of the members of City Council present vote to sustain the appeal, the presiding officer shall address the violation, which was the subject of the appeal, in the manner prescribed in subsection (f), immediately above.

**(h)     Robert's Rules of Order** will take precedence for conduct not covered by these City Council meeting rules.

**(i)     Suspension of the Rules.** Subject to appeal by a member, as provided by Robert's Rules of Order, these rules may be suspended, for good cause, by the presiding officer during a meeting as long as the presentation of information remains related to public business only.



# Rules Of Meeting Decorum And Conduct

Crystal Caldera, PhD  
City Manager  
City Council Meeting  
September 5, 2023

# Summary

- Summary

- Amending the City Of Leon Valley Code Of Ordinances, Chapter 1, Article 1.04 City Council, Sec. 1.04.001 Rules Of Meeting Decorum and Conduct
  - Adding Executive Session Meeting Time of 6:00 p.m.
  - Prohibiting Outside Presentations

- Options

- Approve the request
- Approve a variation of the request
- Deny

- Declaration

- The City Council's Discretion

# Background

- At the August 10<sup>th</sup> Council retreat the council suggested the following changes
  - Adding Executive Session Meeting Time of 6:00 p.m.
  - Prohibiting Outside Presentations

# Fiscal Impact

- N/A



# Recommendation

- City Council's Discretion

## MAYOR AND COUNCIL COMMUNICATION

**DATE:** October 17, 2023

**TO:** Mayor and Council

**FROM:** Mindy Teague, Planning and Zoning Director

**THROUGH:** Crystal Caldera, City Manager

**SUBJECT:** Discussion and Action to Consider Approval of a Resolution Granting a Variance for 6406 Royalty Pt, CB 4429A BLK 1 Lot 25, Seneca Estates

**SPONSOR(S):** N/A

### **PURPOSE**

This M & C is to consider approval of a Resolution Granting a Fence Variance

Mr. Mark Ferris, the property owner, is requesting a variance to Chapter 3 building regulations, Article 3.05 fences, Section 3.05.005 Dimensions and Appearance to allow a property owner to construct a 6-foot-tall fence in the front yard. He is requesting the side fence be removed and construct a new fence that would encroach into the front yard.

*Residential fences in the R-1, R-2, R-4, R-6, and R-7 districts:*

*(A) Shall not exceed six (6) feet in the height in the side or rear yards or forty-four inches (44") in height in the required front yard. The finished side shall face toward the public viewpoint or public right-of-way.*

Council has the authority to consider variances where strict enforcement due to special conditions or where literal enforcement would result in unnecessary hardship.

### **FISCAL IMPACT**

The applicant paid the fees for fence variance consideration and if approved, there will be an additional fee for the fence permit prior to construction.

### **STRATEGIC GOALS**

N/A

### **SEE LEON VALLEY**

- **Social Equity** – It is fair and equitable to offer residents processes and alternatives for variances where conditions exist which may require special consideration.

- **Economic Development** – Indirectly nice, well-maintained fences and housing stock add to the attractiveness of a community to a potential resident which supports economic development.
- **Environmental Stewardship** – The variance request is not applicable to environmental stewardship.

### **RECOMMENDATION**

Staff recommends denial of the request.  
No hardship exists and it is self-imposed.  
The owner has a fenced backyard.

APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_

APPROVED WITH THE FOLLOWING AMENDMENTS:

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ATTEST:

\_\_\_\_\_  
**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary

Mark Ferris  
6406 Royalty Pt  
Leon Valley, TX 78238  
Ph: 210-878-8387  
Email: markmferris@gmail.com

Leon Valley City Council  
6400 El Verde Rd  
Leon Valley, TX 78238

Subject: Fence Height Variance Request for 6406 Royalty Pt.

#### Summary:

This document is a Variance Request to the 44" fence height listed in Section 3.05.005 of the Code of Ordinances. After a review of the information provided below, I hope the City Council will conclude that this variance request will be beneficial to the public health and safety. I also hope that the reviewers will conclude that this variance makes no change to the welfare of my neighbors and will not be injurious to other properties in the area. If the City Council finds the above statements to be true, I hope that I will be granted permission to construct the fence.

#### Background:

6406 Royalty Point is located in a Cul-De-Sac. The current split of fenced to non-fenced area is 38% fenced to 62% non-fenced. The total property area is 0.22 acres (9583 sq. ft.). I am currently paying taxes on a land value of \$78,050 (\$355,000 per acre). By increasing the side yard, I will also increase the usefulness of the property that I am having to maintain and pay taxes on.

Current ordinances allow me to request a permit to construct a 44" tall fence. My dogs will be able to look over a 44" tall fence when they stand on their hind legs. Given enough time of observing loose cats, I suspect that my dogs will figure out how to get over a 44" tall fence. I know with certainty that my dogs can't get over a 72" tall fence.

#### Current Construction:

A 6' fence line currently exists from the front of my building line all the way to the 20' setback on Seneca. The fences in-front of my property line are owned by 5900 Seneca and 5902 Seneca. Figures 1 and 2 below are taken from my driveway that display the existing fence line. Figure 3 below shows a survey of the property.



*Figure 1: Fence line in proximity to 6406 Royalty Pt*



*Figure 2: Fence Line up to Seneca*

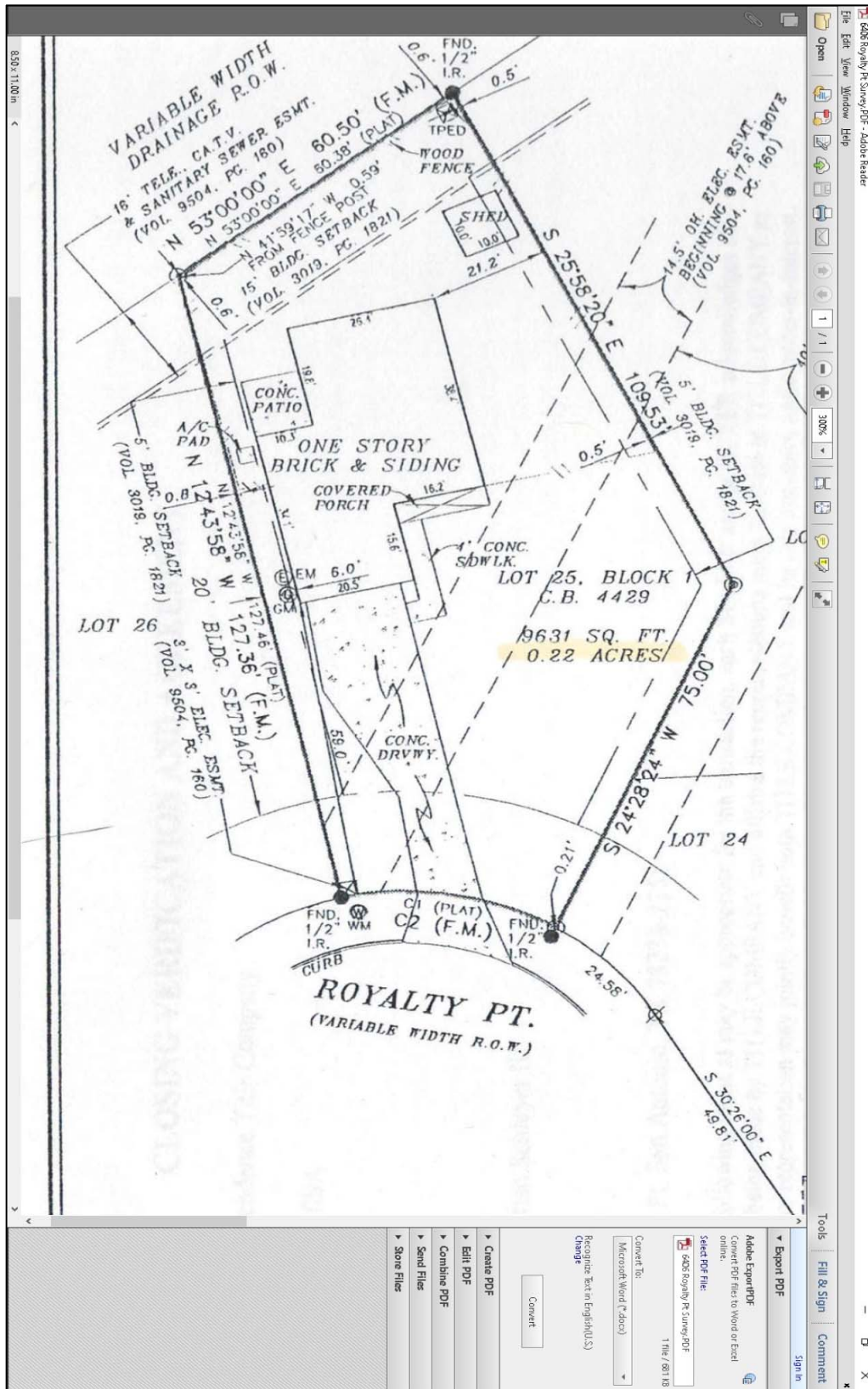


Figure 3: 6406 Royalty Pt Survey

### Requested Variance:

In light of the existing fence line and the background information I am requesting that the City Council allow me to expand my side yard by constructing 6' tall fence. A fence of this height will:

1. Visibly match the existing fence line
2. Insure that my dogs remained contained in the fenced area
3. Make sure that the neighborhood kids don't attempt to stick their hands over the fence to pet the dogs. While I have no problem with my dogs getting attention from my neighbors, I would prefer to be present when this occurs.

If the City Council grants this variance request, it is my belief that a fence of this height will:

1. Benefit the Public Health at Safety by providing non-scalable barrier between my dogs, the neighbors and the neighbors' pets (namely loose cats).
2. Will have no impact on the convenience of my neighbors and the general public.
3. Will not alter the welfare of my neighbors and the general public because a 6' fence line is already visible by any resident or visitor to Royalty Pt.
4. Allow me to make better use of my existing homestead.

Figure 4 below displays the type of fence construction (from the back side. Figure 5 below displays the change that I would like to make to expand the fenced area. Looking at Figure 5, the red line is the fence that I would like to remove. The blue lines are the locations that I would like to construct a new fence.

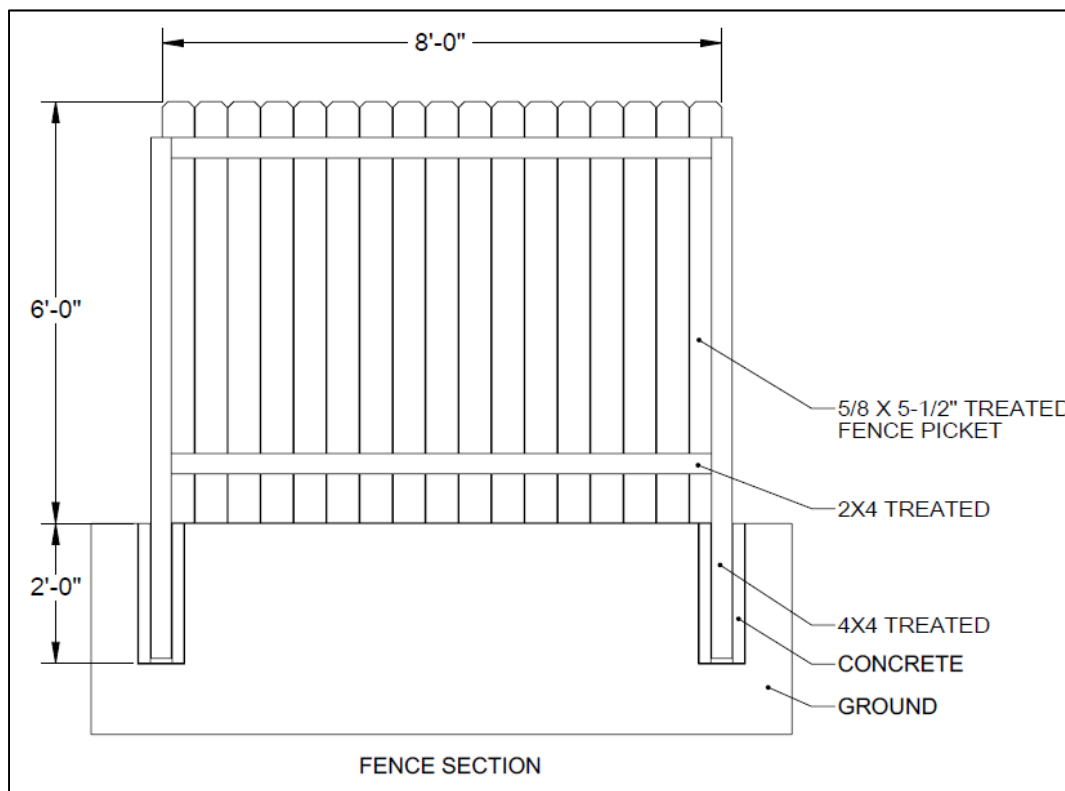


Figure 4: Fence Construction



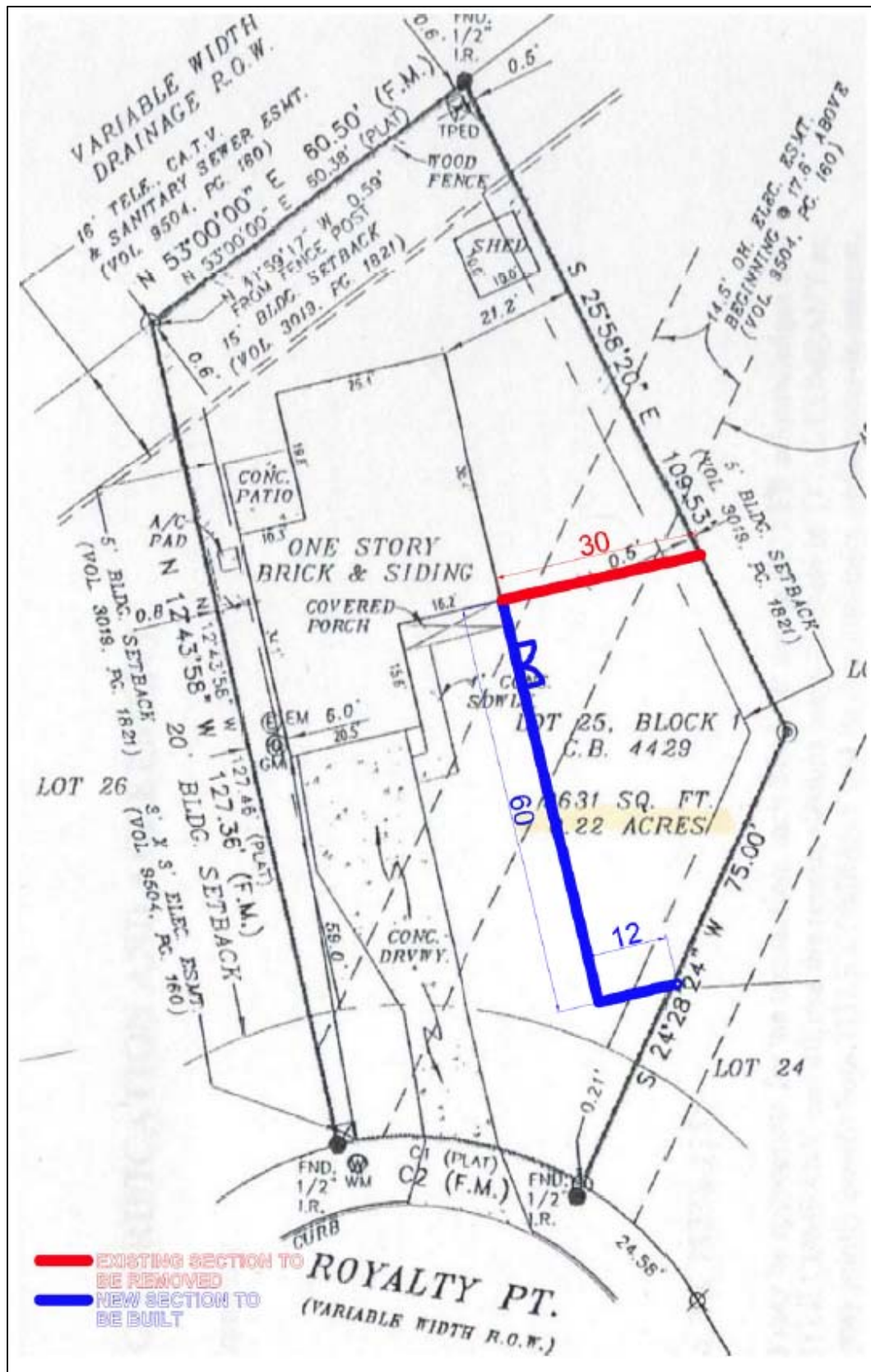


Figure 5: Fence Permit Plan View

**RESOLUTION No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS, GRANTING A VARIANCE TO THE LEON VALLEY CODE OF ORDINANCES, CHAPTER 3 BUILDING REGULATIONS, ARTICLE 3.05 FENCES, SECTION 3.05.005 DIMENSIONS AND APPEARANCES, SUBSECTION (a)(1)(A) TO ALLOW A SIX FOOT HIGH FENCE IN THE REQUIRED FRONT YARD, LOCATED AT 6406 ROYALTY PT STREET; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Leon Valley, as a Home Rule Municipality, derives its powers from its Home Rule Charter and is limited in authority only by express provisions of the Texas Constitution and the State statutes; and

**WHEREAS**, in accordance with such powers, the City Council adopted Chapter 3 Building Regulations, Article 3.05 Fences, to regulate the construction, maintenance, repair, and replacement of fences within the City's corporate limits; and

**WHEREAS**, Section 3.05.004 provides that City Council may authorize variances to the requirements of Article 3.05, when its opinion undue hardship will result from requiring strict compliance; and

**WHEREAS**, in granting a variance, the council shall prescribe only conditions that it deems necessary to or desirable in the public interest; and

**WHEREAS**, the owner of the improved real property located at 6406 Royalty Pt Street legally described as CB 4429A Blk 1 Lot 25 (Seneca Estates), Leon Valley, Bexar County, Texas (hereinafter the "Property") submitted a variance request to construct a six foot fence in the front yard; and

**WHEREAS**, the City Council has found that the request meets the criteria established by Section 3.05.004 of the City Code for granting variances; and

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS THAT:**

**Section 1. Request.** The owner of the property requests a variance from the height regulations found in the Leon Valley Code of Ordinance Chapter 3 Building Regulations, Article 3.05 Fences, Section 3.05.005 Dimensions and Appearances, Subsection (a) (1) (A) and shall be allowed to construct a six foot tall fence in the front yard

**Section 2. Findings.** City Council grants the variance according to the request and makes the following findings as prescribed by Section 3.05.004 of the City Code:

- (1) There are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of this land;

Finding - **Affirmative**

- (2) The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and

Finding - **Affirmative**

- (3) The granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area.

Finding - **Affirmative**

**Section 3. Conditions.** This variance shall be conditioned upon the following:

1. An 6-foot-tall fence shall only be permitted in the front yard as requested by the applicant on the proposed site plan.

**Section 4. Expiration.** This variance shall expire and be of no further lawful effect if the fence authorized by this variance is not lawfully constructed on the Property on, or before, May 17, 2024.

**Section 5. Recitals.** The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Council.

**Section 6. Conflicts.** All Resolutions and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

**Section 7. Savings.** That all rights and privileges of the City are expressly saved as to any and all violations of the provision of any Resolutions repealed by this Resolution which have accrued at the time of the effective date of this Resolutions; and, as to such accrued violation and all pending litigation, both civil and criminal, whether pending in court or not, under such Resolutions, same shall not be affected by this Resolution but may be prosecuted until final disposition by the courts.

**Section 8. Severability.** This Resolution is not severable.

**Section 9. TOMA compliance.** It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, as amended, Texas Government Code.

**Section 10. Effective date.** This Resolution shall be effective upon the date of final adoption hereof and any publication required by law.

**PASSED, ADOPTED AND APPROVED** by the City Council of the City of Leon Valley  
this the 17th day of October 2023.

**APPROVED**

---

**CHRIS RILEY**

Attest:

**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary

Approved as to Form: City Attorney



# Consider Request for Approval of a Resolution Granting a Fence Variance

Mindy Teague

Director of Planning & Zoning

City Council Meeting

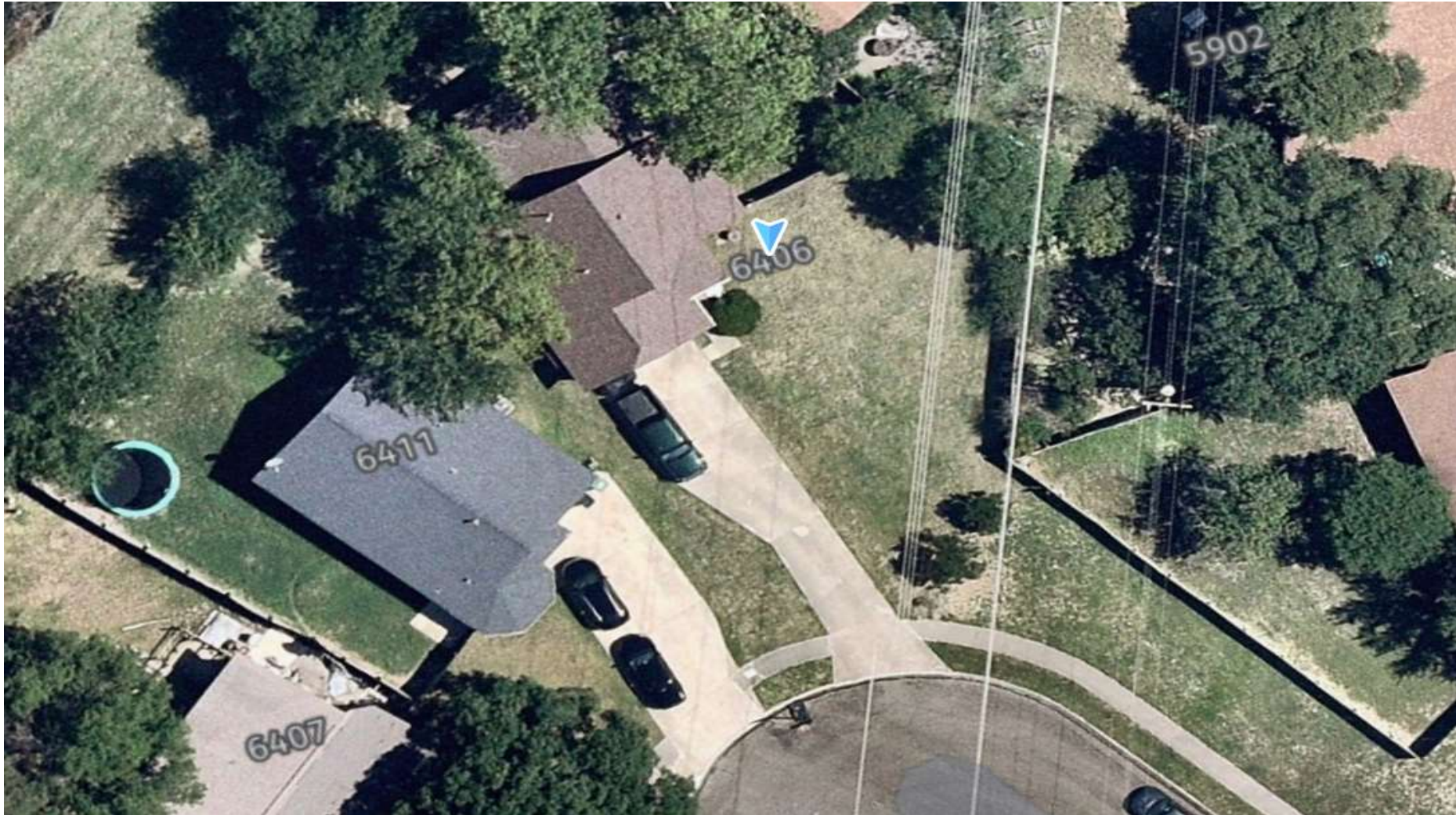
October 17, 2023

# Request

- Owner – Mark Ferris, 6406 Royalty Point
- A Variance to LVCC Chapter 3 Building Regulations, Article 3.05 Fences, Section 3.05.005 Dimensions and Appearance, Subsection (a) (1) (A) to allow a property owner to construct a 6-foot tall fence in the front yard



# Subject Property





# Proposed Fence Location

{Section}.101.

- Removed
- New Fence

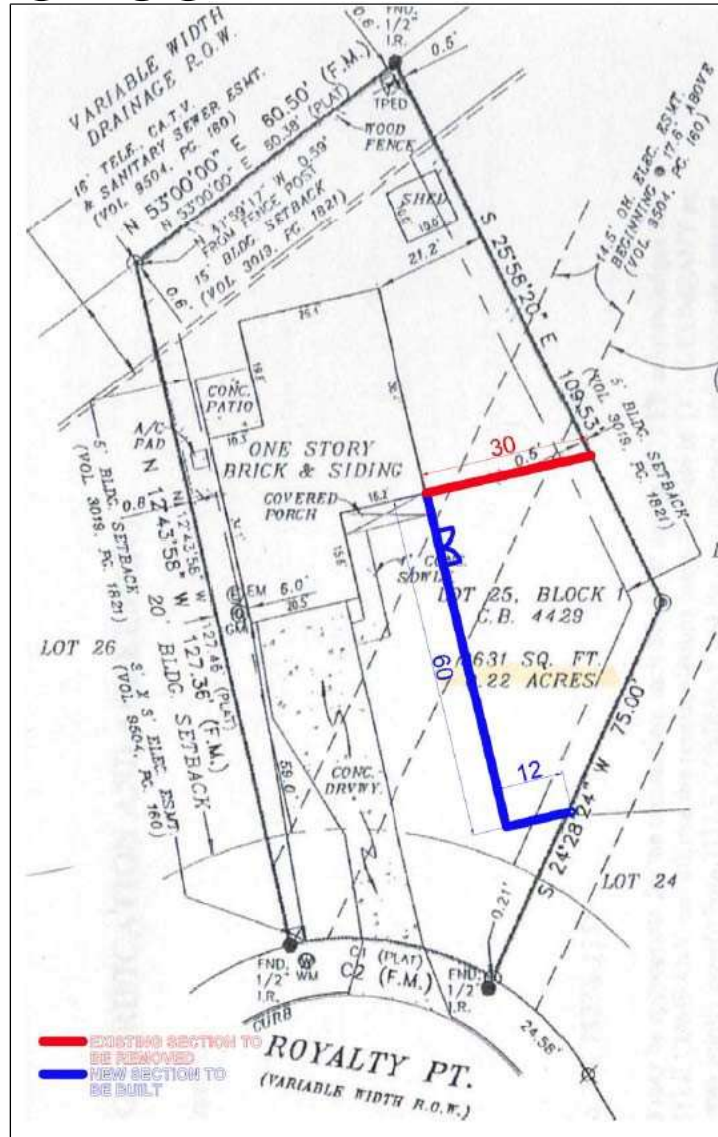


Figure 5: Fence Permit Plan View

# Summary:

- Mr. Ferris's currently has a 6-foot tall fence that is located from the side of the home to the 20' setback on Seneca
- He is requesting to remove the side fence and construct a new fence that would encroach into the front yard
- The proposed fence would be 6 ft high

# Summary:

- LVCC Chapter 3 Buildings, Article 3.05 Fences, Section 3.05.005 Dimensions and Appearances (a) states:
  - (1) *Residential fences in the R-1, R-2, R-4, R-6, and R-7 districts:*
    - (A) *Shall not exceed six (6) feet in the height in the side or rear yards or forty-four inches (44") in height in the required front yard. The finished side shall face toward the public viewpoint or public right-of-way.*

# Purpose

- Council has the authority to consider variances where strict enforcement due to special conditions or where literal enforcement would result in unnecessary hardship.

# Recommendation:

- Staff recommends denial of the request:
  - No hardship exists
  - Self-imposed – owner has a fenced backyard

# Fiscal Impact

- The applicant paid the fees for fence variance consideration
- If approved, there will be an additional fee for the fence permit prior to construction

# S.E.E Statement

- **Social Equity** – It is fair and equitable to offer residents processes and alternatives for variances where conditions exist which may require special consideration
- **Economic Development** – Indirectly nice, well-maintained fences and housing stock add to the attractiveness of a community to a potential resident which supports economic development
- **Environmental Stewardship** – The variance request is not applicable to environmental stewardship



## MAYOR AND COUNCIL COMMUNICATION

**DATE:** October 17, 2023

**TO:** Mayor and City Council

**FROM:** Mindy Teague, Director of Planning and Zoning

**SUBJECT:** Discussion and Action to Consider an Appeal to the 2021 International Fire Code, Appendix D Fire Apparatus Access Roads, Section D107 One or Two-Family Residential Developments, D107.1 One or Two-Family Dwelling Residential Developments and D107.2 Remoteness, to Allow Non-Fire Sprinklered Housing Units, at the Poss Landing Subdivision, Located at 7213 Huebner Road - M. Teague, Planning and Zoning Director

**SPONSOR(S):** None

### **PURPOSE**

The purpose of this item is to consider an appeal by Casey O'Neil, owner of the Poss Landing Subdivision at 7213 Huebner Road, to the 2021 International Fire Code, Appendix D Fire Apparatus Access Roads, Section D107 One or Two-Family Residential Developments, D107.1 One or Two-Family Dwelling Residential Developments and D107.2 Remoteness, to allow non-fire sprinklered housing units.

This is a ten-acre residential housing development located at 7213 Huebner Road, now known as Poss Landing. The developer of the subdivision had previously stated that because he was unable to provide a secondary fire apparatus access road that meets the requirements of Section D107.2 Remoteness, he would fire sprinkler all of the housing units. The property was then platted, and the developer started negotiations with several building contractors for the construction of the homes.

He has now been turned down by three home building companies, and all have stated that the costs of installing and maintaining fire sprinkler systems is too high. Staff made some inquiries of residential fire sprinkler companies and was informed that the cost for installing the systems would be between \$3.50 and \$5.00 per square foot, resulting in an estimated cost of \$896,000 for the 86 units.

The 2021 International Fire Code, Appendix D States:

*“D107.1 One or Two-Family Dwelling Residential Developments*

*Developments of one or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with two separate and approved fire apparatus access roads.*

*Exceptions:*

*1. Where there are more than 30 dwelling units accessed from a single public or private fire apparatus access road and all dwelling units are equipped throughout with an approved automatic sprinkler system in accordance with section 903 3.1.1, 903 3.1.2, 903 3.1.3,*

*access from two directions will not be required.*

*2. The number of dwelling units accessed from a single fire apparatus road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the fire code official.*

#### *D107.2 Remoteness*

*Where two fire apparatus access roads are required, they shall be placed a distance apart equal to not less than one-half the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.”*

To gain as much compliance as possible with the Fire Code, the applicant is proposing to replat the property to provide an additional fire apparatus access road along Huebner Road. The distance between the approved ingress/egress road to the newly proposed access road is approximately \*\*\* linear feet, so they are noncompliant by about \*\* feet. There is a vacant five-acre tract of land adjoining this subdivision and the developer has placed a street stub out for a future connection to that parcel, but the timing of the future development is unknown.

Chapter 5 Fire Prevention, Article 5.04 Fire Code, Section 5.04.005 – Appeals states:

“Whenever the fire marshal shall disapprove an application, or refuse to grant a license or permit applied for, or when it is claimed that the provisions of the code do not apply or that the same has been wrongly interpreted by the fire marshal, the applicant may appeal from the decision of the fire marshal to the council within 30 days from the date of the decision of the fire marshal.”

The applicant is asking for approval of an appeal to the code.

### **FISCAL IMPACT**

The approval of the appeal will result in a reduction of approximately \$896,000 in building costs to the developer. The construction of 86 housing units on this property will increase the City's ad valorem and sales taxes.

### **RECOMMENDATION**

The Fire Chief recommends disapproval of the appeal, as the proposed secondary fire apparatus access road is not to code and the applicant knew the homes would have to be fire sprinkled from the onset of planning for this development. In addition, the appeal is for monetary reasons only and is self-imposed.

### **S.E.E. IMPACT STATEMENT**

**Social Equity** – Building and Fire Codes protect all of our citizen's public's health, safety, and welfare.

**Economic Development** – The construction of 86 new homes will increase ad valorem and sales taxes.

**Environmental Stewardship** – Properly permitting new development projects ensures that structures are built according to the new environmental codes.

APPROVE: \_\_\_\_\_ DISAPPROVE: \_\_\_\_\_

APPROVE WITH THE FOLLOWING AMENDMENTS:

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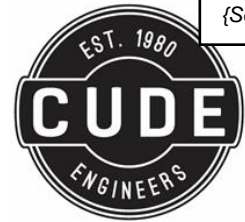
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ATTEST:

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**Saundra Passailaigue, TRMC**  
City Secretary



September 14, 2023

Michael Naughton  
Fire Chief  
City of Leon Valley  
6400 El Verde Road  
Leon Valley, TX. 78238

RE: Poss Landing Secondary Access

Dear Mr. Naughton:

Cude Engineers represents Poss Landing, LLC as engineer for the Poss Landing subdivision plat number 2022-20. Poss Landing consists of 86 single-family residential lots with detached homes as depicted in the subdivision plat and construction plans approved by the City. Prior to commencing construction, we respectfully request the City of Leon Valley confirm that the homes can be built without fire sprinkler systems.

The subdivision is designed with a primary entrance road with a median onto Huebner Road. The median provides an entrance with a split roadway thereby allowing for entrance via the exit lane should the entrance lane be blocked. Furthermore, we provided a roadway stub to the adjoining property in keeping with the International Fire Code Section D107.1 Exception 2 which states:

*D107.1 (2) - "The number of dwelling units accessed from a single fire apparatus access road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the fire code official."*

Neighboring properties on either side of the Poss Landing have engaged the City for certain entitlements in preparation for development. The fire code clearly states that given the future development of the neighboring property, the secondary access requirement for our project may be waived by the fire chief. There is no specificity in the fire code as to whether "future development" is defined as future development of a phase within our project. Furthermore, should our project and each neighboring project comply with the fire code separately, this would cause an excessive number of access roads to be built onto Huebner Road to meet primary and secondary entrance requirements. It would be more efficient for traffic flow if the City required cross-access between the projects with an eye towards all design concerns including traffic safety. As a stop gap measure, we propose adding a fire access only secondary entrance onto Huebner Road to mitigate any short-term concerns with secondary access until the neighboring projects come online. Although our proposed secondary access does not meet the Remoteness test in the Fire Code Section D107.2, the secondary access along with the stub-out to future development and the primary entrance split by a median when considered together achieves the intent of the fire code.

When development is completed for this and surrounding projects, the fire sprinklers will be unnecessary. Bear in mind that fire sprinkler systems, especially in a residential application, can be their own source of problems due to pipe leaks and pipe bursts from freezing temperatures. As you are aware, many homeowners have recently experienced the effects of freezing temperatures on their plumbing. Homeowners would bear all the expense and

risk of a fire sprinkler failure and its impact on their home, belongings and insurance premiums. The City would bear no responsibility except that the City required them to be installed in the first place.

It is not our intention to create a health, safety or welfare concern but to only consider the full scope of development in and around this project as well as other design concerns such as everyday traffic safety and long-term risk born by the homeowners.

We appreciate your consideration in this matter. Please feel free to contact me with any questions you may have.

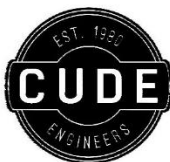
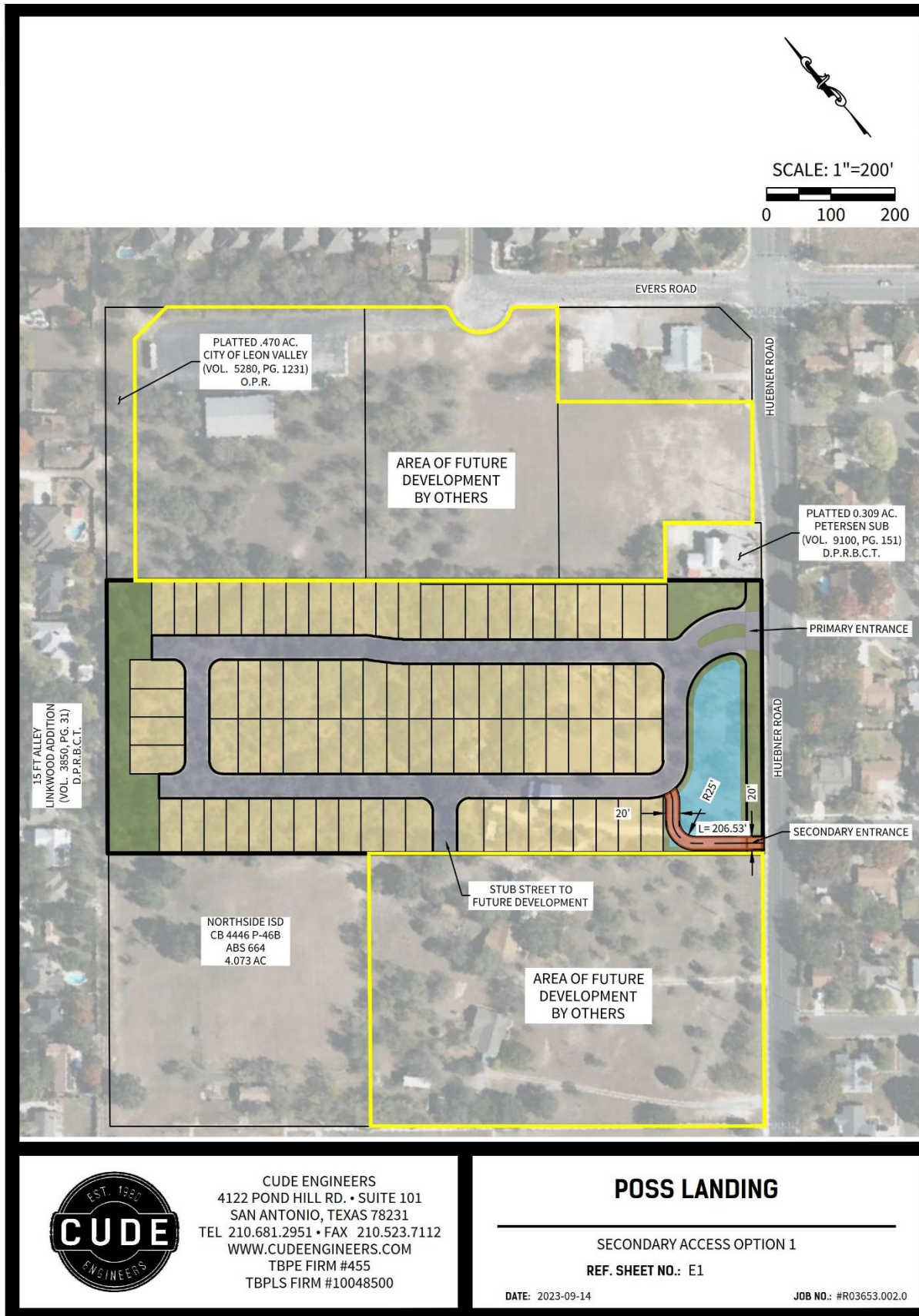
Sincerely,



Joshua M. Cude, PE  
President/CEO

**Attachments:**

Exhibit – Poss Landing Secondary Access Option 1



CUDE ENGINEERS  
 4122 POND HILL RD. • SUITE 101  
 SAN ANTONIO, TEXAS 78231  
 TEL 210.681.2951 • FAX 210.523.7112  
 WWW.CUDEENGINEERS.COM  
 TBPE FIRM #455  
 TBPLS FIRM #10048500

## POSS LANDING

SECONDARY ACCESS OPTION 1

REF. SHEET NO.: E1

DATE: 2023-09-14

JOB NO.: #R03653.002.0



September 18, 2023

Joshua Cude  
Cude Engineers  
4122 Pond Hill Road, #101  
Shavano Park, Texas 78231

RE: Poss Landing Secondary Access

Mr. Cude:

In reviewing your letter dated September 14, 2023, concerning the requirements for residential sprinkler systems. The IFC is clear where it states in Section D107.1 that single access public access road to the development requires automatic sprinkler systems be installed in each dwelling.

My biggest concern is the safety and well-being of the residents of this development. I am concerned with the term "future development". When will that "future development" happen, and will that development provide the needed secondary fire access road? As the plans have been updated, the stub street on the east side of the property has been removed. So, the only viable secondary access will have to come from the west side property and not on either side. From the very start of this project, during a City Council meeting, the developers were told of the sprinkler requirements. The developers acknowledged these requirements in public and during private meetings. Nothing has changed in this project that affects the need for sprinkles unless an approved secondary fire access road is developed. In a private meeting with the developer, I was advised that the sprinkler issue was strictly a profit issue and by installing the sprinkler system, they would not make the required profit margins.

The proposed secondary access road does not currently meet the remoteness minimum spacing as defined in the IFC, D107.2, by a couple hundred feet. This secondary fire access road is half the distance the IFC requires and would be unsafe to use for an extended time.

Your concerns about water damage and cost for repairs are the exact same as any homeowner bears for their water lines in general. Freezing pipes or leaks are no different or more costly than any other water line in a residence. According to the National Fire Protection Association "With proper installation, sprinklers will not freeze. NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, includes guidelines on proper insulation to prevent pipes from freezing."

In closing, I am open to the possibility of a temporary secondary access road if there is an actual plan approved for the future development on an adjacent lot that clearly shows a fire access road. Future development does not provide for the required fire protection of the current development. Because of



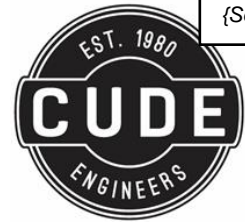


the reasons stated, I remain steadfast in the requirement set out in the IFC and discussed in City Council for the requirements of automatic sprinkler systems.

Regards,

M. NAUGHTON

Michael P. Naughton  
Fire Chief / Fire Marshal  
City of Leon Valley  
6300 El Verde Road  
Leon Valley, Texas 78238  
210-684-3219 Ext. 281 (Office)  
210-521-5612 (Fax)  
210-480-2313 (Mobile)  
210-335-4632 (Dispatch)  
m.naughton@leonvalleytexas.gov



September 19, 2023

Michael Naughton  
Fire Chief  
City of Leon Valley  
6400 El Verde Road  
Leon Valley, TX. 78238

RE: Poss Landing Secondary Access

Dear Mr. Naughton:

In response to your letter dated September 18, 2023, we request an appeal to City Council on your interpretation of the IFC Sections D107.1 and D107.2 regarding the requirement for secondary access. The IFC allows for the fire official to determine the acceptability of streets stubs for future development as the source of secondary access to a project. We respectfully request that the City determine that the street stub-outs provided meet the intent of the fire code and thereby no additional secondary access is necessary and no home fire sprinkler systems are necessary. Concerning your letter and the requirement for a residential sprinkler system, we offer the following response to address your comments:

*Comment 1 – “The IFC is clear where it states in Section D107.1 that single access public access road to the development requires automatic sprinkler systems be installed in each dwelling...The proposed secondary access road does not currently meet the remoteness minimum spacing as defined in the IFC, D107.2, by a couple hundred feet. This secondary fire access road is half the distance the IFC requires and would be unsafe to use for an extended time. I am concerned with the term “future development”. When will that “future development” happen, and will that development provide the needed secondary fire access road? As the plans have been updated, the stub street on the east side of the property has been removed. So, the only viable secondary access will have to come from the west side property and not on either side...I am open to the possibility of a temporary secondary access road if there is an actual plan approved for the future development on an adjacent lot that clearly shows a fire access road. Future development does not provide for the required fire protection of the current development.”*

Response 1a – The IFC Section 107.1, when considered in its entirety, provides for an exception for future development. If future development could not serve as the secondary access for a project with more than 30 units then the exception would not have been written into the code in the first place. The code reads as follows:

*Section 107.1 - Development of one or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with two separate and approved fire apparatus access roads.*

*Exceptions (summarized):*

- 1. If you are over 30 units, a second road is not required if you sprinkle the homes.*

2. *The number of Units may not be increased (assuming no secondary access and no sprinklers are provided) unless fire apparatus access roads will connect with future development, as determined by the fire code official.*

In other words, IFC section 107.1 provides for the option to defer secondary access to future development, but the IFC does not define “future development” as being future development within the subject property nor does it provide a schedule for the future development. Section 107 provides the fire code official with discretion on this exception to secondary access. The City of San Antonio determined that secondary access for single-family residential is only necessary after the 124<sup>th</sup> lot but street stubs to future development are required to facilitate cross connectivity for secondary access amongst different developments in keeping with the future development exception of the IFC. It is prudent to find a reasonable balance between the risk of a rare fire event and the risk of everyday traffic issues caused by excessive access points to major thoroughfares like Huebner Road.

Response 1b – Regarding the secondary access options, there are several options we have explored with a priority placed on options that we can control and do not require an adjacent property owner. First, over a year ago we proposed access to Linklea Drive via the alley way in the rear of the project. However, the City did not want to accommodate a fire lane through the existing alley to Linklea Drive even though the fire lane we proposed met code. We also attempted to secure secondary access from either adjacent property owner, however neither property owner was willing to grant access until their plans are finalized. While we wait for the neighboring properties to develop, we offered the City temporary secondary access to Huebner Road as a short-term solution. The temporary secondary access is not required by code, nor does it strictly meet the remoteness requirement in IFC 107.2, but it is secondary access and it would mitigate the very remote possibility of the primary entrance being blocked during a fire event in the community. The temporary secondary access is a measure provided only to help assuage the City’s concern over secondary access in the short term. Bear in mind that many developments don’t have secondary access that meet the remoteness requirement in the code, including the elementary school next door.

*Comment 2 – “From the very start of this project, during a City Council meeting, the developers were told of the sprinkler requirements. The developers acknowledged these requirements in public and during private meetings. Nothing has changed in this project that affects the need for sprinkles unless an approved secondary fire access road is developed.*

Response 2 – The developer understands the fire code and the City’s position on sprinklers dating back to zoning approval. Even though the developer did not and still does not agree with the fire code interpretation the City has put forth, the developer has worked diligently to accommodate the City’s request to provide either secondary access or fire sprinklers. What has changed since the zoning approval is the cost of development and home construction has increased substantially and therefore all projected costs are under scrutiny. The cost to provide fire sprinklers has doubled to \$10,000 per home since the project began. This cost along with the extra building requirements agreed to during zoning have added substantial costs to the project. The developer is not asking for relief on any requirements previously agreed too but it is reasonable to request the City to look at the necessity of fire sprinkler systems when the IFC allows for exceptions. Again, despite the exception in the IFC, and our disagreement with the City’s interpretation, we still attempted to secure secondary access through both neighbors and the City’s property.

*Comment 3 – “Your concerns about water damage and cost for repairs are the exact same as any homeowner bears for their water lines in general. Freezing pipes or leaks are no different or more costly than any other water line in a residence. According to the National Fire Protection Association “With proper*

*installation, sprinklers will not freeze. NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, includes guidelines on proper insulation to prevent pipes from freezing.”*

Response 3 – Fire sprinklers do present additional risks for leaks. Fire sprinklers are overhead and designed to cover the whole house and all its contents whereas domestic plumbing comes up from the slab and through walls. Of course sprinklers should be installed to not leak or freeze just like sinks, water heaters and roofs but they all have a habit of leaking anyway. We are simply asking that the City consider that with fire sprinklers comes new issues like maintenance and inspection costs that homeowners have to bear. We do not design drainage within the project to a 100-year rain event because it has been determined that a 100-year rain event is statistically rare enough that it would be cost-prohibitive and unnecessary to design drainage structures to that standard. Likewise in the event of a fire, secondary access would be needed only in the rarest of cases, yet we are asked not only to include secondary access, but that access is only acceptable if it's a significant distance from the primary entrance. Why? In the situation that there is fire while both entry and exit lanes at our primary entrance are blocked and Huebner is also blocked.

*Comment 4 – “My biggest concern is the safety and well-being of the residents of this development.”*

Response 4 – This is our concern as well, first and foremost without question. However, we are also concerned with the alternatives that would make this project viable without degrading health, safety, welfare, economics and all the other considerations that make a project work or not. We are concerned with more than just fire safety problems, such as traffic safety problems and drainage problems that often lead to traffic accidents. We are also concerned with trying to do what is best in the short and long term when considering all design elements of the project and neighboring development. What is most important is that we use the spirit and intent of the IFC to achieve the same desired outcome and apply it appropriately in real-world applications.

The code allows for discretion when considering the ultimate build-out of “future development”. It is your prerogative to take the most conservative position possible which is 1. Fire services cannot access the community if a fire should happen if the entrance is blocked because the future development of adjacent properties will never occur and that secondary access that does not meet the letter of the remoteness condition in the IFC code provides no value.

Neighboring properties on either side of the Poss Landing have engaged the City for certain entitlements in preparation for development. All things considered, cross-access between projects and multiple access points spread out over a larger area is better than each site meeting secondary access on its own. As a stop gap measure, we propose adding a fire access only secondary entrance onto Huebner Road to mitigate any short-term concerns with secondary access until the neighboring projects come online. Although our proposed secondary access does not meet the Remoteness test in the Fire Code Section D107.2, the secondary access along with the stub-out to future development and the primary entrance split by a median when considered together achieves the intent of the fire code.

It is not our intention to create a health, safety or welfare concern but to only consider the full scope of development in and around this project as well as other design concerns such as everyday traffic safety and long-term risk born by the homeowners.

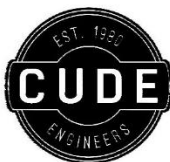
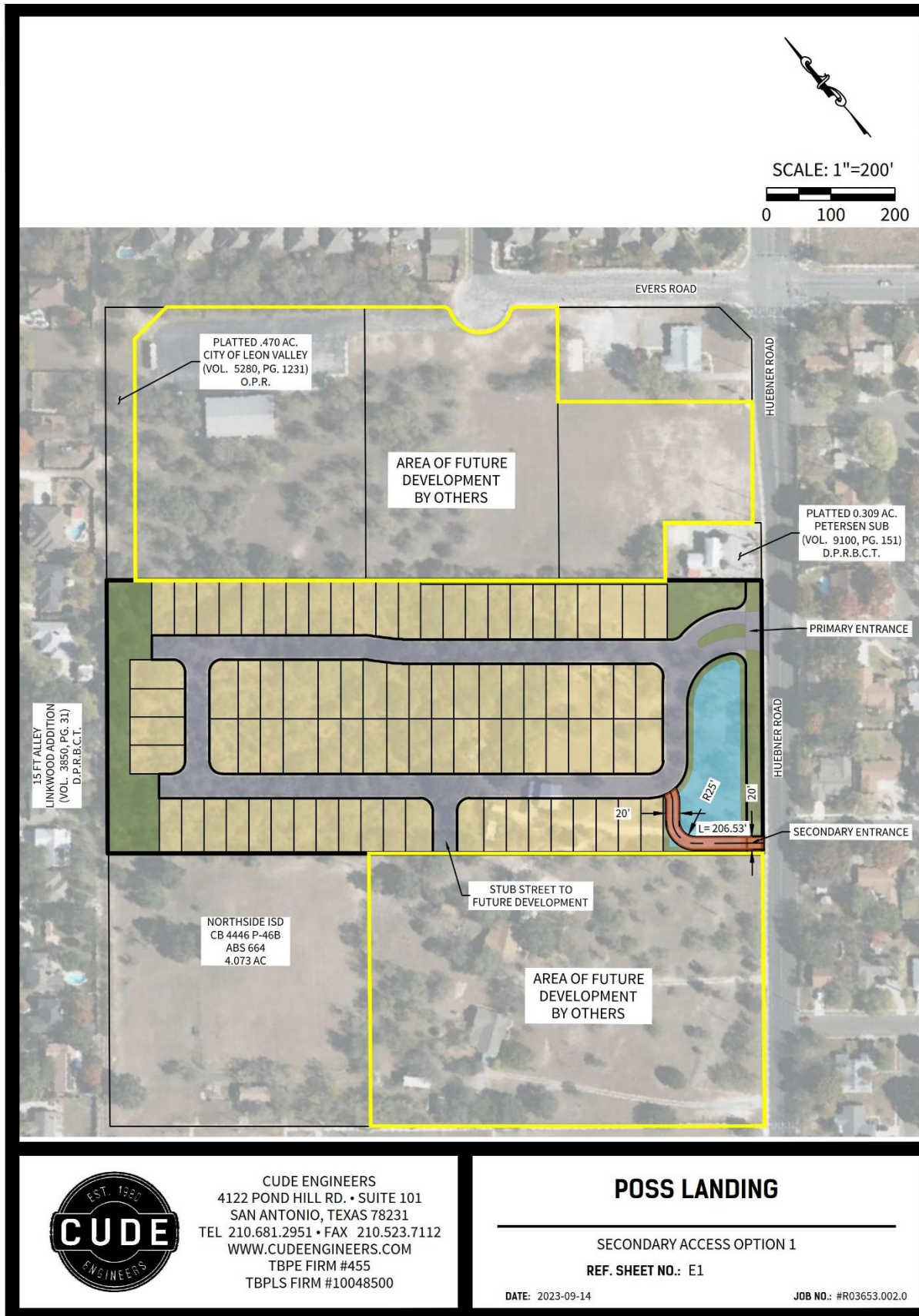
We appreciate your consideration in this matter. Please feel free to contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joshua M. Cude', with a long horizontal flourish extending to the right.

Joshua M. Cude, PE  
President/CEO

**Attachments:** Exhibit – Poss Landing Secondary Access Option 1



CUDE ENGINEERS  
 4122 POND HILL RD. • SUITE 101  
 SAN ANTONIO, TEXAS 78231  
 TEL 210.681.2951 • FAX 210.523.7112  
 WWW.CUDEENGINEERS.COM  
 TBPE FIRM #455  
 TBPLS FIRM #10048500

## POSS LANDING

SECONDARY ACCESS OPTION 1

REF. SHEET NO.: E1

DATE: 2023-09-14

JOB NO.: #R03653.002.0



**Fire Code Appeal**  
**Fire Apparatus Access Road**  
**Determination**  
**7213 Huebner Road**  
**Poss Landing Subdivision**

Regular City Council Meeting

Mindy Teague, Director

October 17, 2023



# Appeal

- By Casey O'Neil, Poss Landing Subdivision, 7213 Huebner Road
- Requesting a variance to the 2021 International Fire Code, Appendix D Fire Apparatus Access Roads, D107 One or Two-Family Dwelling Residential Developments, D107.1 One or Two-Family Dwelling Residential Developments & D107.2 Remoteness
- To allow a non-compliant secondary fire apparatus access road
- To allow the proposed 86-unit single family dwelling subdivision to be constructed without fire sprinkler systems in each home

# Request

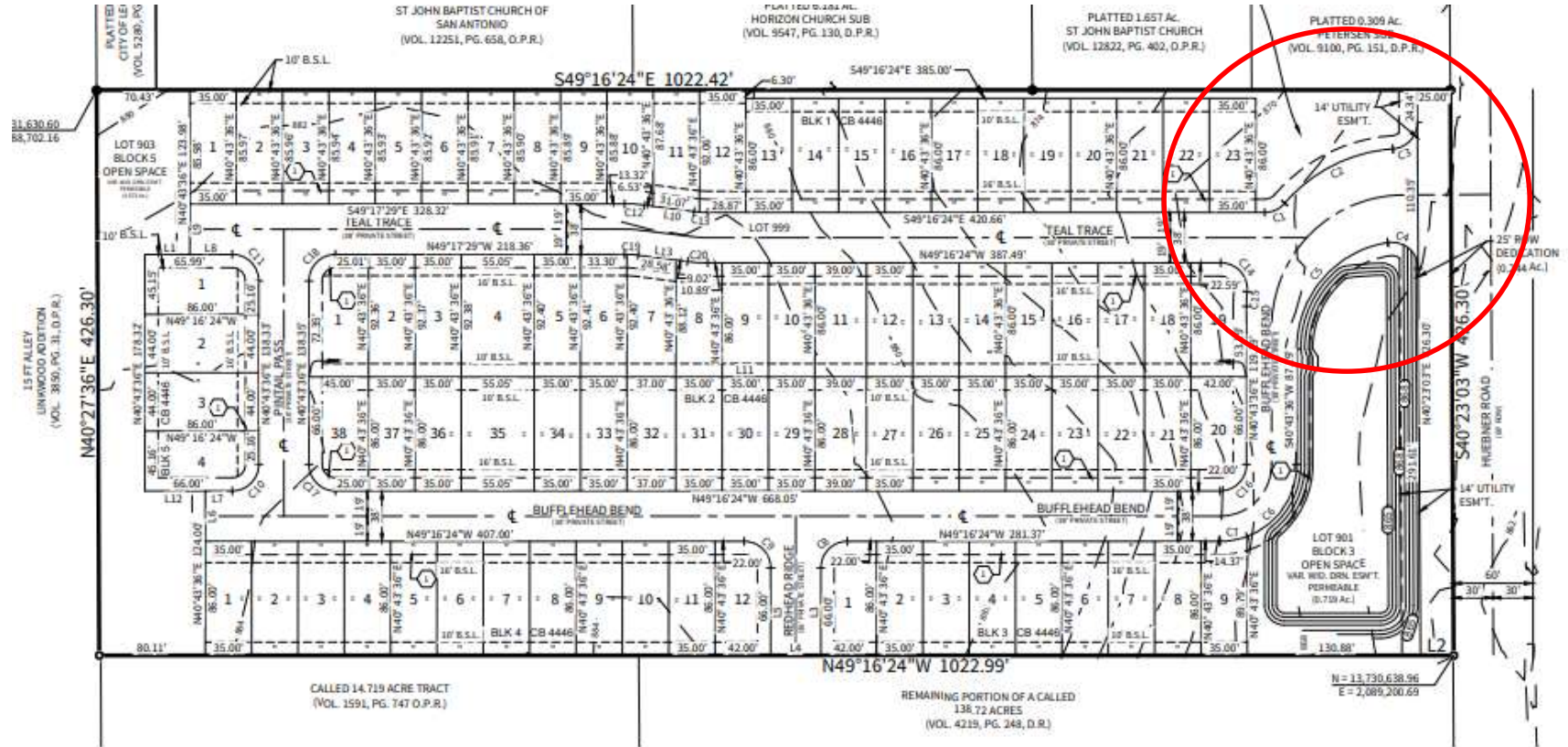
- This is a ten-acre residential housing development located at 7213 Huebner Road, now known as Poss Landing
- Developer previously stated that due to inability to provide a secondary fire apparatus access road that meets the requirements of the Code, he would fire sprinkle all of the housing units
- The property was then platted, and the developer started negotiations with several building contractors for the construction of the homes

# Background

- Developer has now been turned down by 3 home building companies - all stating the cost of installing & maintaining residential fire sprinkler systems is too high
- Staff made some inquiries of residential fire sprinkler companies & was informed that the cost for installing the systems is between \$3.50 & \$5.00 per sq. ft. , resulting in an estimated cost of \$896,000 for the 86 units

# Approved Plat

Current Access Road



**AREA MAINTENANCE NOTE:**

ENHANCE OF ALL PRIVATE STREETS (LOT 999, BLOCK 1), OPEN SPACE, (INCLUDING LOT 902, LOT 901, BLOCK 3, AND LOT 903, BLOCK 5), DRAINAGE EASEMENTS AND EASEMENTS OF ANY NATURE WITHIN THIS SUBDIVISION SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNERS, OPEN SPACE OWNERS' ASSOCIATION, OR ITS SUCCESSORS OR ASSIGNS AND NOT THE CITY OF LEON VALLEY.

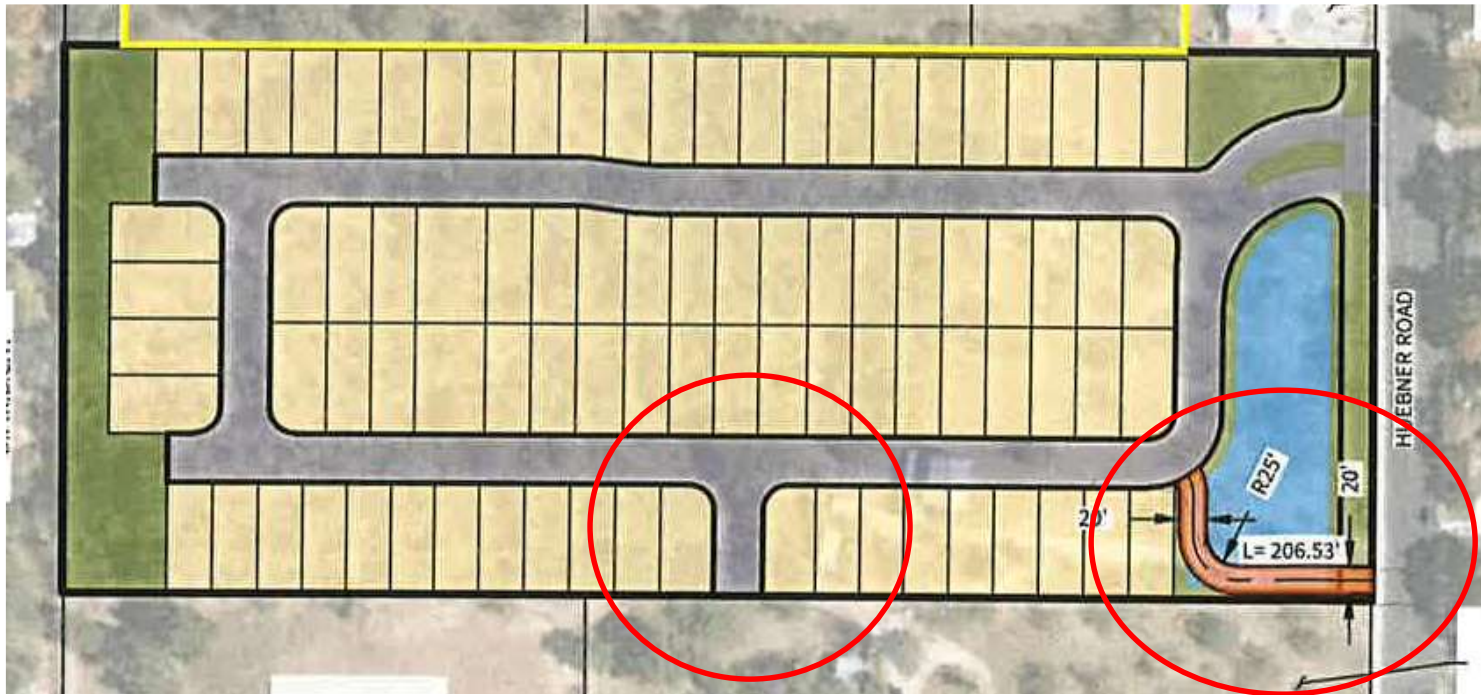
**IN VERIFICATION NOTE:**

IN OF THE FEMA 1% ANNUAL CHANCE (100-YEAR) FLOODPLAIN EXISTS WITHIN THIS PLAT AS SHOWN ON THE FEMA FLOOD MAP.

CURVE TABLE					
CURVE	RADIUS	DELTA	LENGTH	CHORD BEARING	CHORD
C1	100.00'	40°13'36"	17.10'	S49°16'24"E	16.00'

LINE TABLE		
LINE	BEARING	LENGTH
L1	N40°27'36"E	426.30'

# Proposed Second Egress



Future access

Huebner access



# 2021 International Fire Code

{Section}.102.

- D107.1 One or Two-Family Dwelling Residential Developments
  - Developments of one or two-family dwellings where the number of dwelling units exceeds 30 shall be provided with two separate and approved fire apparatus access roads.
- Exceptions:
  - 1. Where there are more than 30 dwelling units accessed from a single public or private fire apparatus access road and all dwelling units are equipped throughout with an approved automatic sprinkler system in accordance with section 903 3.1.1, 903 3.1.2, 903 3.1.3, access from two directions will not be required.

# 2021 International Fire Code

{Section}.102.

- 2. The number of dwelling units accessed from a single fire apparatus road shall not be increased unless fire apparatus access roads will connect with future development, as determined by the fire code official.
- D107.2 Remoteness
  - Where two fire apparatus access roads are required, they shall be placed a distance apart equal to not less than one-half the length of the maximum overall diagonal dimension of the property or area to be served, measured in a straight line between accesses.”



# Purpose

{Section}.102.

- To gain as much compliance as possible with the Fire Code, the applicant is proposing to replat the property to provide an additional fire apparatus access road along Huebner Rd
- The distance between the approved ingress/egress road to the newly proposed access road is approximately \*\*\* linear feet, so they would be noncompliant by about \*\* feet
- There is a vacant 5-acre tract of land adjoining this subdivision and the developer has placed a street stub out for a future connection to that parcel, but the timing of the future development is unknown

# Purpose

{Section}.102.

- LVCC Chapter 5 Fire Prevention, Article 5.04 Fire Code, Section 5.04.005 Appeals states:
  - Whenever the fire marshal shall disapprove an application, or refuse to grant a license or permit applied for, or when it is claimed that the provisions of the code do not apply or that the same has been wrongly interpreted by the fire marshal, the applicant may appeal from the decision of the fire marshal to the council within 30 days from the date of the decision of the fire marshal
- The applicant is asking the City Council for approval of an appeal to the code

# Staff Analysis

- The Fire Chief is opposed to the appeal, as the proposed secondary fire apparatus access road is not to code & the applicant knew the homes would have to be fire sprinkled from the onset of planning for this development
- The appeal is for monetary reasons only and is self-imposed

# Options

- #1 Adhere to the Fire Code - require the developer to fire sprinkle each unit, as mandated
- #2 Approve the appeal request and allow two noncompliant entrances off of Huebner Road, with potential for future connection to Huebner Road via the undeveloped 5-acre parcel
  - If approved, applicant will be required to replat the property to construct the additional entrance onto Huebner Road
  - Additionally, the developer will most likely have to reduce the number of dwelling units to 85, reconfigure the detention pond, and construct additional roadway paving, curbs, etc.

# S.E.E. Statement

- Social Equity - The proposed development will increase the housing stock in Leon Valley and will offer residents alternatives to single family home ownership
- Economic Development - The development will bring in more ad valorem and sales taxes
- Environmental Stewardship – New construction includes modern building standards, which include environmentally friendly options

## MAYOR AND COUNCIL COMMUNICATION

**DATE:** October 17, 2023

**TO:** Mayor and Council

**FROM:** Regina Reed, Library Director

**THROUGH:** Crystal Caldera, City Manager

**SUBJECT:** Presentation, Discussion, and Possible Action on the Leon Valley Public Library Policy Article 7: Meeting Room Policy - R. Reed, Library Director

**SPONSOR(S):** N/A

### **PURPOSE**

The Meeting Room Policy (Article 7 of the Leon Valley Public Library Policy Manual) was updated to identify the meeting room's use as a service the library offers and to clarify the guidelines for public use. A Request for Use of Meeting Room form has been added with updated information for the library staff to make a better-informed decision on whether a request meets the policy guidelines.

### **SEE LEON VALLEY**

Social – Encourage community engagement and the sharing of ideas and experiences.

Economic – Provides a space free of charge for those that meet the guidelines.

Environmental – N/A

### **FISCAL IMPACT**

N/A

### **STRATEGIC GOALS**

Goal #7D: Create, enhance, and improve educational and cultural programs

### **RECOMMENDATION OPTIONS**

Update the policy as provided  
Leave the policy As Is  
Provide additional updates

APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_

APPROVED WITH THE FOLLOWING AMENDMENTS:

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ATTEST:

\_\_\_\_\_  
**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary



## ARTICLE 7: MEETING ROOM POLICY

To encourage community engagement and the sharing of ideas and experiences, the Leon Valley Public Library has a meeting room available for public use. The meeting room is provided as a service to the public and is subject to availability and compliance with the terms of this policy. This policy does not apply to the use of the meeting room by the Leon Valley Public Library or the City of Leon Valley or programs sponsored or co-sponsored by the Library or the City.

### 7.01 GUIDELINES FOR MEETING ROOM USE

- 1) Meetings must be free and open to the public.
- 2) No commercial, sales, or profit-making uses of the meeting room is allowed; nNo products or services may be advertised, solicited, or sold.
- 3) Registration and admission fees are not permitted.
- 4) The room is available on a pre-arranged basis for blocks of time that include set-up, meeting, and clean-up time.
- 5) Reservations are on a first-come, first-served basis. Reservations are generally limited to three months in ~~advance~~advance but may extend out to twelve months if approved by the Library Director.-
- 6) Reservations are only available during the library's operating hours.
- 7) LVPL is unable to provide storage of materials for groups or individuals using the room.
- 8) No group shall use the room as a permanent meeting place or as the headquarters of the group.
- 9) All advertisements related to ~~meetings-events held in the meeting room~~ must clearly designate the sponsoring organization and shall not indicate affiliation ~~with or support~~with the Library, support by the Library, or include the Library's logo-

10) The meeting room may not be used for any political event, partisan or non-partisan, including open forums, town halls, and/or campaigns unless sponsored or co-sponsored by the City of Leon Valley or the Leon Valley Public Library.

11) The meeting room may not be used for any private event including but not limited to weddings, showers, family reunions, birthday parties, banquets, or dances.

~~9)12)~~ Facilities shall be left in a clean and orderly condition. Room arrangement shall be the responsibility of the user group and must be left in the same arrangement as found.

~~10)13)~~ An adult (18 years of age or older) contact person is required for each reservation. This person shall assume responsibility for a group's use of the room.

~~11)14)~~ In extenuating circumstances, LVPL may ask a group to cancel a scheduled meeting to allow for library use of the room. If such an event occurs, the Library will give as much notice as possible.

~~12)15)~~ Users of the meeting room must adhere to all library policies.

~~13)16)~~ Any use of the room that disturbs regular library operations is not permitted.

~~14)17)~~ Food and drink may be consumed in the meeting room. All trash resulting from the serving of refreshments must be removed by the organization using the facility.

## 7.02 EXCEPTIONS

Exceptions to these guidelines may be granted by the Library Director for events sponsored by the Friends of the Library, the Library Board of Trustees, or local government agencies; the guidelines do not apply to City use. Priority for use of the room is given to the Leon Valley Public Library.

## 7.03 DISCRIMINATION

Library facilities are available on a non-discriminatory basis. The Library does not limit use of the meeting room based on the subject matter or content of the meeting or on the beliefs or affiliations

of the meeting's sponsors. Permission to use library facilities does not constitute an endorsement by the Library.

#### 7.04 RIGHT TO DENY USE

Leon Valley Public Library reserves the right to deny use privileges should any abuse of this policy occur. LVPL may not be held liable for any damage, loss or bodily injury occurring to persons or property affiliated with the scheduled meeting. Meeting room users shall be held liable for any damage to or loss of library property in conjunction with their scheduled meeting.

## ATTACHMENT 31 REQUEST FOR USE OF MEETING ROOM

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## Request for Use of Meeting Room

If filling out form online, please download and submit by email to [library@leonvalleytexas.gov](mailto:library@leonvalleytexas.gov)

Date _____
Full Name _____
Phone Number _____ Email _____
Organization Name _____
Organization Information _____ _____
Proposed Use of Room _____ _____

Have you read a copy of the Leon Valley Public Library's Meeting Room Policy?

☐ YES ☐ NO

Do you agree to the terms of the policy?

☐ YES ☐ NO

Do you wish to book more than three months in advance?

☐ YES ☐ NO

<input type="checkbox"/> Single Use	Meeting Date _____
	Start Time* _____ End Time* _____
<input type="checkbox"/> Multiple Use	Meeting Date _____
	Start Time* _____ End Time* _____

*\*Meetings may be scheduled during the library's open hours only. Meetings must adjourn at least 15 minutes before the library's closing time. Use back of form for additional dates.*

**Meeting Room Requests are not final until you receive an approved copy of this form.**

Request Approved _____ Request Denied _____
Library Director or Authorized Signature _____ Date _____

## Additional Meeting Date Requests

*\*Meetings may be scheduled during the library's open hours only. Meetings must adjourn at least 15 minutes before the library's closing time.*

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

Meeting Date \_\_\_\_\_  
Start Time\* \_\_\_\_\_ End Time\* \_\_\_\_\_

# Library Policy Update

## Article 7: Meeting Room Policy

Regina Reed  
Library Director  
City Council Meeting  
October 17, 2023



# Summary

- Question
  - **City Council is being asked to consider an update to Article 7, Meeting Room Policy, Leon Valley Public Library Policy Manual**
- Recommendation
  - Approve update

# Purpose

## Update to Article 7, Meeting Room Policy, Leon Valley Public Library Policy Manual to

1. Identify the meeting room's use as a service the library offers
2. Clarify the guidelines for public use
  1. No commercial, sales, or profit-making uses of the meeting room
  2. Clearly designate the sponsoring organization and shall not indicate affiliation with the library, support by the library, or include the library's logo
  3. May not be used for any political event
  4. May not be used for any private event

# Fiscal Impact

- N/A

## S.E.E. Statement

Social Equity – Encourage community engagement and the sharing of ideas and experiences.

Economic Development- Provides a space free of charge for those that meet the guidelines.

Environmental Stewardship – N/A

# Library Policy Update

## Article 7: Meeting Room Policy

Regina Reed  
Library Director  
City Council Meeting  
October 17, 2023



**CITY OF LEON VALLEY  
ANNUAL TOWN HALL MEETING**  
Conference Center  
Evers Road, Leon Valley, TX 78238  
Saturday, January 27, 2024, at 9:00 AM

**AGENDA**

1. **9:00 AM** Call to Order and Determine a Quorum is Present.
2. **Presentations**
  - A. Welcome to 12<sup>th</sup> Annual Town Hall Meeting! - Mayor Chris Riley
  - B. Introduction of City Council & Staff and Procedures for the meeting – Mayor Chris Riley.
  - C. City Manager Update on 2023 Town Hall Meeting and Annual Report – Dr. Crystal Caldera, City Manager **(9:10 a.m.)**
  - D. Presentation on the Solid Waste Survey – Melinda Moritz, Public Works Director
  - E. Emergency Preparedness: How to get prepared this Winter – (Chief Naughton)
  - F. Discussion on Possible Home Rule Charter Amendments– Mayor Riley
  - G. Presentation on the City’s Mission, Vision Statement and Strategic Plan – Dr. Crystal Caldera, City Manager
  - H. Citizens to be Heard **(11:30 a.m.)**
3. **Adjournment - 12:15 PM**

**Attendance by Other Elected or Appointed Officials:** It is anticipated that members other City boards, commissions and/or committees may attend the open meeting in numbers that may constitute a quorum. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of any other boards, commissions and/or committees of the City, whose members may be in attendance in numbers constituting a quorum. These members of other City boards, commissions, and/or committees may not deliberate or act on items listed on the agenda. [Attorney General Opinion – No. GA-0957 (2012)].

I hereby certify that the above **NOTICE OF PUBLIC MEETING(S) AND AGENDA OF THE LEON VALLEY CITY COUNCIL** was posted at the Leon Valley City Hall, 6400 El Verde Road, Leon Valley, Texas, and remained posted until after the meeting(s) hereby posted concluded. This notice is posted on the City website at <https://www.leonvalleytexas.gov/meetings> . This building is wheelchair accessible. Any request for sign interpretive or other services must be made 48 hours in advance of the meeting. To plan, call (210) 684-1391, Extension 216.

**MAYOR AND COUNCIL COMMUNICATION**

**DATE:** October 17, 2023

**TO:** Mayor and Council

**FROM:** Regina Reed, Library Director

**THROUGH:** Crystal Caldera, City Manager

**SUBJECT:** Presentation and Discussion on becoming a Family Place Library - R. Reed, Library Director

**SPONSOR(S):** N/A

**PURPOSE**

In February 2023, the library received a grant from the Texas State Library and Archives Commission (TSLAC) to become a Family Place Library. The Family Place Libraries™ initiative promotes a national model for transforming public libraries into welcoming, developmentally appropriate early learning environments for young children, their parents, and caregivers. Based on research about the importance of early brain development, the Family Place Library supports the essential role of parents as first teachers and addresses the physical, social, emotional, and cognitive aspects of child development to help build a foundation for learning during the critical first years of life. By partnering and working with other social, health, and educational services providers, the Family Place model aims to ensure that all children enter school ready and able to learn and positions libraries as key early childhood and family support organizations within the local community.

**SEE LEON VALLEY**

Social – Creates a space for family play and networking for parents.

Economic – Introduces parents to resources they may not have access to otherwise.

Environmental – N/A

**FISCAL IMPACT**

Received a grant for \$6000 plus Training.

**STRATEGIC GOALS**

Goal #7D: Create, enhance, and improve educational and cultural programs

**RECOMMENDATION**

N/A

APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_

APPROVED WITH THE FOLLOWING AMENDMENTS:

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ATTEST:

\_\_\_\_\_  
**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary



# Presentation: Become a Family Place Library

Regina Reed  
Library Director  
City Council Meeting  
October 17, 2023



# BUILDING FOUNDATIONS FOR EARLY LEARNING



# Family Place Libraries™

- Provides a developmental framework and comprehensive model for family centered library service
- Creates an institutional environment within the library that supports families and children beginning at birth.

# Rooted in Family-Centered Principles

Respect



Collaborate



Provide



Facilitate



Build



Partner



# Wiring of the Brain!

Birth  
25%



One Year  
75%



Three Years  
90%





# How Young Children Learn

- Relationships are at the core of learning
- Social-Physical-Intellectual-Creative-Emotional learning are inextricably linked
- Play = Learning
- The way adults interact with children makes a difference



# Core Components of a Family Place Library



Trained Staff



Parent Child Workshop



Collections



Specially Designed Spaces



Collaborations And Partnerships



Additional Programs For Babies & Toddlers



Outreach

# Collections for Parents/Caregivers & Children Beginning at Birth





# Public Space for Families & Young Children



# Working with Partners

- Developing cooperative programs
- Outreach
- Marketing
- Sharing resources
- Writing joint grants
- Providing cross training
- Working together to build a strong network of family support





## Parent/Child Workshop



## Play-based & Informal

# Librarian serves as facilitator, early literacy and information specialist







# Community Resource Professionals

- Early Literacy
- Speech, Hearing, Language Child Development
- Nutrition
- Music, Play and Health

## LVPL In Progress



## S.E.E. Statement

Social Equity – Creates a space for family play and networking for caregivers.

Economic Development- Introduces caregivers to resources they may not have access to otherwise

Environmental Stewardship – N/A



# Presentation: Become a Family Place Library

Regina Reed  
Library Director  
City Council Meeting  
October 17, 2023

# City of Leon Valley September 2023 Financial Report

Carol Goering  
Finance Director

City Council Meeting  
October 17, 2023

# City of Leon Valley Monthly Financial September 2023

{Section}. 112.

## General Fund

Target Percentage 100.00

REVENUE	FY 2023 BUDGET	FY 2023 Y-T-D ACTUAL		FY 2022 Y-T-D ACTUAL	
Ad Valorem	\$ 5,476,000	\$ 5,448,986	99.5%	\$ 5,262,211	95.0%
Sales Taxes	3,719,631	3,137,373	84.3%	3,720,287	124.0%
Franchise Taxes	911,798	974,169	106.8%	941,466	104.4%
Licenses, Permits, Fees & Fines	1,576,080	1,308,145	83.0%	3,279,544	-8.5%
Miscellaneous Revenue	650,516	922,003	141.7%	448,724	29.0%
Transfers In	2,080,594	2,267,183	109.0%	134,446	5.2%
<b>Total Revenue</b>	<b>\$ 14,414,619</b>	<b>\$ 14,057,858</b>	<b>97.5%</b>	<b>\$ 13,786,678</b>	<b>104.1%</b>

EXPENDITURES					
Municipal Court	\$ 419,050	\$ 383,638	91.5%	\$ 178,008	42.5%
Finance	432,845	423,667	97.9%	167,984	41.2%
Council & Manager	1,329,819	1,291,983	97.2%	773,105	48.0%
Information Technology	315,183	242,655	77.0%	-	-
Police	3,311,063	3,173,413	95.8%	2,618,923	78.1%
Traffic Safety Program	-	-	-	429,144	155.6%
Red Light Cameras	-	-	-	1,408,239	-97.2%
Impound Lot	113,594	124,221	109.4%	128,144	-111.6%
Fire	3,623,269	3,345,364	92.3%	3,611,291	99.2%
Public Works	2,232,693	1,923,159	86.1%	1,402,615	60.3%
Planning and Zoning	515,533	372,843	72.3%	378,465	73.4%
Economic Development	442,549	287,861	65.0%	294,089	-92.3%
Special Events	140,350	128,921	91.9%	125,493	72.3%
Parks & Recreation	281,400	233,582	83.0%	306,335	18.5%
Library	572,648	440,294	76.9%	500,457	77.9%
Transfers Out	1,200,569	659,000	54.9%	-	-
<b>Total Expenditures</b>	<b>\$ 14,930,565</b>	<b>\$ 13,030,603</b>	<b>87.3%</b>	<b>\$ 12,322,292</b>	<b>87.5%</b>

# City of Leon Valley

## Monthly Financial

### September 2023

#### Water/Sewer/Storm Water Fund

Target Percentage 100.00

REVENUE	FY 2023 BUDGET	FY 2023 Y-T-D ACTUAL		FY 2022 Y-T-D ACTUAL	
Water Sales	\$ 2,007,300	\$ 2,041,253	64.9%	\$ 2,169,040	105.6%
Sewer Sales	2,486,600	2,478,610	99.7%	2,577,726	104.5%
Storm Water	589,288	461,595	78.3%	410,225	97.1%
Connection & Platting	-	-	-	147,789	225.48
Customer Fees	71,983	74,978	104.2%	76,569	135.0%
Tapping Fees	-	-	-	-	-
Interest Income	6,200	145,607	81.61	28,490	424.51
Miscellaneous Revenue	-	83,176	0.0%	546,758	31.6%
<b>Total Revenue</b>	<b>\$ 5,161,371</b>	<b>\$ 5,285,219</b>	<b>102.4%</b>	<b>\$ 5,956,598</b>	<b>87.6%</b>
EXPENDITURES					
Business Office	\$ -	\$ -	-	\$ 765,084	502.8%
Water System	1,002,017	852,140	85.0%	2,053,078	94.3%
Sewer System	2,354,679	1,654,505	70.3%	2,219,658	79.0%
Storm Water	822,246	231,665	28.2%	240,444	13.5%
Other Sources/Uses	2,151,086	2,250,493	104.6%	-	-
<b>Total Expenditures</b>	<b>\$ 6,330,028</b>	<b>\$ 4,988,803</b>	<b>78.8%</b>	<b>\$ 5,278,264</b>	<b>78.0%</b>

# City of Leon Valley Monthly Financial September 2023

## Community Center Fund

Target Percentage 100.00

REVENUE	FY 2023 BUDGET	FY 2023 Y-T-D ACTUAL		FY 2022 Y-T-D ACTUAL	
Hotel/Motel Taxes	\$ 70,000	\$ 51,612	73.7%	\$ 84,186	120.3%
<b>RENTAL FEES</b>					
Community Center	50,000	48,112	96.2%	47,939	95.9%
Conference Center	-	16,304	-	16,354	-
Interest Income	100	10,267	257.9%	1,470	469.8%
Transfers in	24,567	-	-	-	-
<b>Total Revenue</b>	<b>\$ 144,667</b>	<b>\$ 126,295</b>	<b>87.3%</b>	<b>\$ 149,948</b>	<b>83.4%</b>
<b>EXPENDITURES</b>					
Personnel	\$ 73,610	\$ 78,949	107.3%	\$ 58,655	79.7%
Supplies	7,500	997	13.3%	2,079	27.7%
Contractual	51,557	35,403	68.7%	49,477	96.0%
Capital Outlay	12,000	-	-	-	0.0%
<b>Total Expenditures</b>	<b>\$ 144,667</b>	<b>\$ 115,349</b>	<b>79.7%</b>	<b>\$ 110,210</b>	<b>66.8%</b>

# City of Leon Valley Monthly Financial September 2023

## Economic/Community Development

Target Percentage 100.00

REVENUE	FY 2023 Budget	FY 2023 Y-T-D ACTUAL		FY 2022 Y-T-D Actual	
Sales Tax Revenues	\$ 399,000	\$ 345,596	86.6%	\$ 408,025	-127.7%
Interest Income	5,500	19,566	355.7%	-	-
<b>Total Revenues</b>	<b>\$ 404,500</b>	<b>\$ 365,162</b>	<b>90.3%</b>	<b>\$ 408,025</b>	<b>41.6%</b>
<b>EXPENDITURES</b>					
Personnel	\$ 151,392	\$ 117,937	77.9%	\$ 183,856	-87.4%
Supplies	13,275	9,888	74.5%	4,866	-45.5%
Contractual	277,882	160,036	57.6%	105,367	-107.9%
<b>Total Expenditures</b>	<b>\$ 442,549</b>	<b>\$ 287,861</b>	<b>65.0%</b>	<b>\$ 294,089</b>	<b>-92.3%</b>

# City of Leon Valley

## Monthly Financial

### September 2023

#### Impound Lot

Target Percentage 100.00

REVENUE	FY 2023 Budget	FY 2023 Y-T-D ACTUAL		FY 2022 Y-T-D Actual	
Impound Lot Fees	\$ 60,000	\$ 118,700	197.8%	\$ 70,075	-140.2%
Auctions	71,080	106,296	149.5%	64,764	-155.7%
<b>Total Revenues</b>	<b>\$ 131,080</b>	<b>\$ 224,996</b>	<b>171.6%</b>	<b>\$ 134,839</b>	<b>165.0%</b>
EXPENDITURES					
Personnel	\$ 102,194	\$ 113,591	111.2%	\$ 119,776	-114.7%
Supplies	1,900	2,590	136.3%	2,210	-116.3%
Contractual	9,500	8,041	84.6%	6,158	-72.5%
Capital	-	-	-	-	-
<b>Total Expenditures</b>	<b>\$ 113,594</b>	<b>\$ 124,221</b>	<b>109.4%</b>	<b>\$ 128,144</b>	<b>-111.6%</b>

# City of Leon Valley Monthly Financial September 2023

{Section}. 112.

## Red Light Cameras (RLC)

Target Percentage 100.00

REVENUE	FY 2023 Budget	FY 2023 Y-T-D ACTUAL		FY 2022 Y-T-D Actual	
Red Light Camera Fines	\$ 2,234,341	\$ 2,353,390	105.3%	\$ 1,971,249	-104.9%
Late Fees/Court Costs	200,000	184,925	92.5%	191,485	95.7%
Interest Income	3,000	44,695	68.1%	-	-
Transfers in	3,007	-	-	-	-
<b>Total Revenues</b>	<b>\$ 2,440,348</b>	<b>\$ 2,583,010</b>	<b>105.8%</b>	<b>\$ 2,162,733</b>	<b>-9.2%</b>
<b>EXPENDITURES</b>					
<i>Red Light Cameras</i>					
Personnel	\$ 611,108	\$ 598,132	97.9%	\$ 531,510	-96.2%
Supplies	4,000	3,471	86.8%	1,165	(58.27)
Contractual	901,000	809,638	89.9%	875,563	-97.6%
Transfers	326,574.00	326,574	100.0%	-	-
<b>Total Tier One</b>	<b>\$ 1,842,682</b>	<b>\$ 1,737,815</b>	<b>94.3%</b>	<b>\$ 1,408,239</b>	<b>-97.0%</b>
<i>Traffic Safety</i>					
Personnel	\$ 275,892	\$ 213,747	77.5%	\$ 404,990	146.9%
Supplies	-	2,175	-	8,688	-
Contractual	-	1,462	-	15,466	-
Capital Outlay	86,830	3,630	-	-	-
Transfers	126,000	126,000	100.0%	-	-
<b>Total Tier Two</b>	<b>\$ 488,722</b>	<b>\$ 347,015</b>	<b>71.0%</b>	<b>\$ 429,144</b>	<b>155.6%</b>



# City of Leon Valley September 2023 Financial Report

Carol Goering  
Finance Director

City Council Meeting  
October 17, 2023

## MAYOR AND COUNCIL COMMUNICATION

**DATE:** October 17, 2023

**TO:** Mayor and Council

**FROM:** Roque Salinas, Director of Economic Development

**THROUGH:** Dr. Crystal Caldera, City Manager

**SUBJECT:** Presentation, Discussion, and Possible Action to Create a New Economic Development Program for Building and/or Facade Improvements - R. Salinas, Director of Economic Development

**SPONSOR(S):** N/A

### **PURPOSE**

The City of Leon Valley is committed to enhancing the aesthetic appeal and economic vitality of our community. To promote the revitalization of commercial properties and maintain the character of our city.

### **FISCAL IMPACT**

Will be dependent on number of awards

### **SEE LEON VALLEY**

***Social Equity*** – N/A

***Economic Development*** – Economic and Community Development projects encourage collaborative engagement with residents.

***Environmental Stewardship*** – N/A

### **STRATEGIC GOALS**

This partnership is in line with the city's goal of economic development to recruit and retain businesses in the city.

### **RECOMMENDATION**

At council discretion

APPROVED : \_\_\_\_\_ DISAPPROVED : \_\_\_\_\_

APPROVED WITH THE FOLLOWING AMENDMENTS :

\_\_\_\_\_  
\_\_\_\_\_

---

ATTEST :

**SAUNDRA PASSAILAIGUE, TRMC**  
City Secretary

## City of Leon Valley Facade and Building Improvement Grant Program

### Program Overview:

The City of Leon Valley is committed to enhancing the aesthetic appeal and economic vitality of our community. To promote the revitalization of commercial properties and maintain the character of our city, we are pleased to introduce the Facade and Building Improvement Grant Program. This program offers financial assistance to commercial properties within the city limits to make improvements to the exterior of their buildings.

### Program Objectives:

1. **Enhance Aesthetics:** Improve the appearance of commercial properties within Leon Valley to create an inviting and attractive environment for residents and visitors.
2. **Promote Economic Development:** Encourage investment in local businesses and boost economic growth by making commercial properties more appealing and functional.

### Eligibility:

To be eligible for the Facade and Building Improvement Grant Program, applicants must meet the following criteria:

1. The property must not be party in a legal suit or action naming the City of Leon Valley, Bexar County, State of Texas, or any domestic jurisdiction.
2. The property must be free of any lien.
3. The property must not be part of any criminal or regulatory investigation by any agency.
4. The property must not be part of any civil inquiry.
5. The property must not have received a demolition grant in the last ten (10) years or has received any economic development funding in the last three (3) years from the City of Leon Valley for the same property.
6. The property must not be in foreclosure proceedings.
7. The property must not be listed under any protected designation that does not allow for demolition.
8. Grants will not be awarded to property owners whose improvements were approved and covered by insurance.
9. The Applicant shall have not received, nor will receive insurance monies for the revitalization project.
10. Property Location: The property must be located within the city limits of Leon Valley.
11. Ownership: Property owners, tenants with written consent from the property owner, and businesses must be in good standing with the City of Leon Valley.

12. **Building Age:** The building must be at least 20 years old.
13. **Property Size:** This program is intended for complete properties. However, exceptions can be made for large tenants of retail shopping centers, if the suite encompasses over 40% of the entire useable space.
14. **Franchise businesses** will not be applicable for program.
15. **Project Approval:** Proposed improvements must receive approval from the Leon Valley Planning and Zoning Department.

### APPLICATION PROCESS

An application must be submitted in the approved format to the Economic Development Department by the property owner. If the property has multiple owners, all owners must sign the application. Staff will verify ownership information.

1. The Economic Development Director will review the application and provide approval or denial of application.
  - a. A denied application will be given a written response. The applicant can resubmit a modified version of the denied application within 30 days of written notice. All denied letters will be submitted to council.
  - b. If the council wishes to bring the application before the body, two (2) members must sponsor the application to be placed on the agenda.
2. The approved application, the proposed performance measures, and the recommendation of the Director will be placed on the City Council agenda for review. They will provide their recommendation for approval or denial. The City Council will have the final vote to either approve or deny the grant application.
3. The grant incentive will consist of a check(s) payment, based on an agreed reimbursement payment schedule entered between the City and the property owner.

### Eligible Improvement Projects:

The grant program will provide financial assistance for a variety of exterior improvement projects, including but not limited to:

1. **Facade Restoration:** Repair or replacement of damaged or deteriorated building facades.
2. **Exterior Painting:** Fresh coats of paint to improve the overall appearance of the building.
3. **Signage:** Design, fabrication, and installation of retail center business signage.
4. **Awnings and Canopies:** Installation or repair of awnings and canopies to enhance the building's aesthetics and provide shade.
5. **Window and Door Repair/Replacement:** Upgrade or repair windows and doors for energy efficiency and improved aesthetics.

#### **Funding and Grant Amounts:**

The City of Leon Valley will provide funding on a case-by-case basis per project. The City is open to a variety of options to funding this program, including direct financial assistance and/or tax abatements. The funding recommendation will be made by the Economic Development Director and must be approved by the council. Funding is subject to availability of economic development funds.

#### **Application Process:**

1. **Pre-Application Consultation:** Prospective applicants are encouraged to consult with the Economic Development Director to discuss their project and eligibility.
2. **Application Submission:** Complete the Facade and Building Improvement Grant Program application form, including project details and a cost estimate.
3. **Review and Approval:** Applications will be reviewed by the Economic Development Department for eligibility and compliance with program guidelines.
4. **Performance Agreement:** All applicants must enter into a separate performance agreement with the City. The terms will be determined by the applicant and the Director of Economic Development. This performance agreement must be approved by the City Council. Staff will look at different factors, including but not limited to:
  - a. sales tax generation by recipient, be direct or indirect;
  - b. number of potential new jobs generated;
  - c. type of new job generated;
  - d. increase in ad valorem value;
  - e. decrease the vacancy rate within the city limits;
  - f. capital improvements to the property;
  - g. appropriate business for the location;
  - h. zoning requirements;
  - i. increases the quality of life in the community.

5. **Grant Award:** Approved applicants will receive a grant award letter specifying the approved amount and conditions.
6. **Project Completion:** Complete the approved improvement project within the specified timeframe.
7. **Reimbursement:** After successful completion and inspection of the project, the City of Leon Valley will reimburse the grant recipient for eligible project expenses.

**Compliance and Reporting:**

Grant recipients must adhere to all program requirements, including compliance with city codes and standards. Recipients will be required to submit post-project documentation and receipts for reimbursement.

**Contact Information:**

For questions or assistance with the Facade and Building Improvement Grant Program, please contact:

Roque Salinas, MPA  
Director of Economic Development  
City of Leon Valley, Texas  
Office: (210) 684-1391 ext. 232  
Cell: (210) 461-9321  
Email: [r.salinas@leonvalleytexas.gov](mailto:r.salinas@leonvalleytexas.gov)

# **City of Leon Valley Facade and Building Improvement Grant Program**

Roque Salinas, MPA

Director of Economic Development

10/14/2023



# Summary

- The City of Leon Valley is committed to enhancing the aesthetic appeal and economic vitality of our community. To promote the revitalization of commercial properties and maintain the character of our city, we are pleased to introduce the Facade and Building Improvement Grant Program. This program offers financial assistance to commercial properties within the city limits to make improvements to the exterior of their buildings.

## Options:

1. Approve moving forward
2. Denial moving forward

# Program Objectives:

1. **Enhance Aesthetics:** Improve the appearance of commercial properties within Leon Valley to create an inviting and attractive environment for residents and visitors.
2. **Promote Economic Development:** Encourage investment in local businesses and boost economic growth by making commercial properties more appealing and functional.

# ELIGIBILITY CRITERIA

- **Eligibility:**

1. The property must not be party in a legal suit or action naming the City of Leon Valley, Bexar County, State of Texas, or any domestic jurisdiction.
2. The property must be free of any lien.
3. The property must not be part of any criminal or regulatory investigation by any agency.
4. The property must not be part of any civil inquiry.
5. The property must not have received a demolition grant in the last ten (10) years or has received any economic development funding in the last three (3) years from the City of Leon Valley for the same property.
6. The property must not be in foreclosure proceedings.

# ELIGIBILITY CRITERIA

7. The property must not be listed under any protected designation that does not allow for demolition.
8. Grants will not be awarded to property owners whose improvements were approved and covered by insurance.
9. The Applicant shall have not received, nor will receive insurance monies for the revitalization project.
10. Property Location: The property must be located within the city limits of Leon Valley.
11. Ownership: Property owners, tenants with written consent from the property owner, and businesses must be in good standing with the City of Leon Valley.
12. Building Age: The building must be at least 20 years old.
13. Property Size: This program is intended for complete properties. However, exceptions can be made for large tenants of retail shopping centers, if the suite encompasses over 40% of the entire useable space.
14. Franchise businesses will not be applicable for program.
15. Project Approval: Proposed improvements must receive approval from the Leon Valley Planning and Zoning Department.

# Eligible Improvement Projects

- The grant program will provide financial assistance for a variety of exterior improvement projects, including but not limited to:
  1. **Facade Restoration:** Repair or replacement of damaged or deteriorated building facades.
  2. **Exterior Painting:** Fresh coats of paint to improve the overall appearance of the building.
  3. **Signage:** Design, fabrication, and installation of retail center business signage.
  4. **Awnings and Canopies:** Installation or repair of awnings and canopies to enhance the building's aesthetics and provide shade.
  5. **Window and Door Repair/Replacement:** Upgrade or repair windows and doors for energy efficiency and improved aesthetics.

# Funding

## **Funding and Grant Amounts:**

- The City of Leon Valley will provide funding on a case-by-case basis per project. The City is open to a variety of options to funding this program, including direct financial assistance and/or tax abatements. The funding recommendation will be made by the Economic Development Director and must be approved by the council. Funding is subject to availability of economic development funds.

# Performance Agreement

All applicants must enter into a separate performance agreement with the City. The terms will be determined by the applicant and the Director of Economic Development. This performance agreement must be approved by the City Council. Staff will look at different factors, including but not limited to:

- a. sales tax generation by recipient, be direct or indirect;
- b. number of potential new jobs generated;
- c. type of new job generated;
- d. increase in ad valorem value;
- e. decrease the vacancy rate within the city limits;
- f. capital improvements to the property;
- g. appropriate business for the location;
- h. zoning requirements;
- i. increases the quality of life in the community.

# Fiscal impact

- The fiscal impact will be determined by the number of grants awarded.



# S.E.E. Statement

## Social Equity:

- N/A

## Economic Development:

- The City will provide a diverse and versatile business environment that supports a healthy economy. The City will exhibit a distinctive and welcoming identity at its boundaries and throughout the community. The City will attract, expand and retain viable businesses to promote development and redevelopment and including a town-centered design.

## Environmental Stewardship:

- N/A



# Strategic Goals

**Economic Development** is a strategic goal outlined in Leon Valley's Strategic Plan.

- Revitalize declining commercial areas by creating, reviewing, and enforcing codes that impact Economic Development
- Promote Leon Valley

# Recommendation

- At council discretion

## **OUTSTANDING CITY COUNCIL ITEMS**

- **6417 Evers Road**
  - 11/2/20 – Lease approved
  - 8/3/21 – Amending lease to remove a lessee
  - 8/17/21- Executive session
  - 4/2/22 – first read SUP to allow Alcohol
  - 4/19/22 – second read SUP allow Alcohol
  - 12/6/22- Executive Session and EDC Funds
  - 12/20/22 -Executive Session
  - 3/21/23 – Executive Session
  - 5/2/2023- review of the agreement
    - Will go out for RFP once RFP is complete council will select. If MS Bania is not selected then she will have 30 days to vacate.
  - 06/20/2023 – RFP Review by Council
    - Moved by Mayor to overfilled Agenda
  - 7/18/2023 RFP Review by Council
  - RFP is posted and awaiting on responses.
  - 10/17/2023- on for executive session for discussion
- **Silo design per request of the adjacent property owner**
  - 5/2/2023 – Moved by CM due to the number of items on the agenda
  - 5/16/2023 – Scheduled
    - Council Requested outreach to local universities
- **Sustainability Overlay**
  - 6/6/2023 Staff is not ready and has postponed until September
  - 7/25/2023 – zoning commission started to review
- **Stray Animal Ordinance**
  - Currently being reviewed by City Attorney – we can not require private industry to take in and adopt our stray animals
  - Looking at a possible interlocal agreement.
  - Staff has met with the county for a long-term solution
- **Establish Neighborhood boundaries**
  - Council has opted not to Update Master Plan
  - P & Z Director investigating a university conducting the plan
- **Neighborhood/citizen survey**
- **Review of the personnel manual**
- **Review of the Water rates**
  - 6/20/2023 Postpone council requested this be a retreat item for 7/22/23
  - Council will be looking at a 1% increase at a future meeting
- **Legal review of the Sign Code**
  - Councilor Orozco and Bradshaw will work on this item

- **Looking at an amendment to Section 15.02 Appendix C (I), D Structural Nonconformity to add a matching percentage from Economic Community Development funds**
  - After the sustainability review
- **Four-way stop at Forest Meadow and Evers**
  - To be evaluated upon the development of the Evers property
- **Short Term Rental**
  - 3/7/2023
  - Short Term rentals have appeared on the following agendas:
    - 1/12/2021- Tabled
    - 1/19/2021-Discussed
    - 4/6/2021-Discussed
    - 4/20/2021- Discussed
    - 8/3/2021-Tabled
    - 8/17/2021-Discussed
    - 8/16/2022-Tabled
    - 9/6/2022- Discussed
    - 1/17/2023- Discussed
    - 3/7/2023 – Item added by Councilor Stevens and Orozco
      - Council decided to have the city attorney draft an ordinance based on the information provided by Councilor Stevens
    - Attorney has developed an ordinance and will be discussed at the 7/22 retreat.
    - Will place on the 9/5/2023 agenda for discussion
    - Council will review the draft Ord. given by the City Attorney and provided feedback to the City Manager by September 29, 2023
    - On October 17<sup>th</sup> the City Manager will present everyones findings
- **Seneca West R6 Zone change**
  - 3/7/2023
    - Council requested some prices to replat as larger lots, not in favor of R6
    - Staff will be getting prices to plat larger lots and bring them back to the council
    - Staff has received the plans and probable cost and will review them with the council at the retreat
  - 08/10/2023 Discuss at the retreat. The council would just like to plat and sale as is.
- **Regulations regarding front yard fences**
  - Date to be determined
- **Code regulations dealing with blighted multi-family complexes**
  - This is on the 9/19/2023 for a first read
  - Second read 10/17/2023

- After 60 emergency calls in a three month period apartment complexes will be required to have licensed peace office.
- **Tiger brush and bulk issues- Contract ends January 1, 2025 (Item Remaining from Retreat)**
  - Discussed at the following City Council Meetings
    - 02/22/2021
      - Council addressed complaints and Tiger sanitation responded
    - 09/7/2021
      - Considered a resolution on how to handle bulk pick-up. Resolution # 21-031-R, the direction was given to CM to come back with a plan.
      - Considered and Ordinance Amending the Ord 14.02 Solid Waste First reading.
    - 11/2/2021
    - Considered and Ordinance Amending the Ord 14.02 Solid Waste Second Reading Passes Ord. # 21-053.
    - 1/11/2022
    - Council considered two options to handle the overflow of Brush. The Council decided to have PW pick up the overage after Tiger sanitation picked up their 8 CY.
    - There were 11 homes with oversized brush the City had the item picked on 3/4/22-3/8/22
  - 05/17/2022 Council meeting discussing rate increase.
    - Council allowed the 2.5% increase for July and another in January but did not approve the 7.5 % increase
    - Council was willing to renegotiate terms
      - On 8/23/2022, Council decided to leave terms as is
  - On 9/19/2023 the staff took a draft survey to the council. Staff will red do and bring back to council at a later time.
- Speed hump policy changes- **(Item Remaining from Retreat)**
- Discussion of updating the Strategic Plan –
  - Will be placed on the Town hall meeting for discussion
- Presentation on legislative changes that may impact our city - **(Item Remaining from Retreat)**

### **ITEMS ARE STILL IN THE PIPELINE BUT HAVE BEEN ADDRESSED**

- **John Marshall Traffic Plan – CR, JH**
  - Discussed at the following Council meeting
  - 12/14/2022 Next steps
  - NISD engineers are still working on the plan, collecting traffic counts, and coordinating with CoSA Traffic Department

- Once complete, additional meetings will be held with the City to determine the feasibility and appropriateness
- Once plans are final, the proposal will be presented to City Council for approval
- John Marshal Update on 3/15 based on 2/14 meeting
- The City received feedback on possible neighborhood suggestions on 5/09/2022. Joint meeting to be determined.
- Heard by City Council to possible street closures on 8/23/20 Engineers will develop a report and PD and Fire will review
- Taking to Council on 10/3/2022
- 2/7/2023 council will review speed pads and school zone
  - Council decided to move forward with the speed pads and wait on the school zone. The Delinators will also be left alone
- Speed pads have been installed and school zone on Huebner is being addressed.
- Interlocal agreement with San Antonio is complete. A budget adjustment for \$74,000 was approved by council for the mast traffic arms.
- We met with the contractor, The Levy Company, and they informed us that the mast arms will take 16-24 weeks for delivery, so work won't start until December or January.
- **Flooding**
  - Was addressed at the following Council Meetings
    - 08/03/2021 – Flood Damage Prevention Ord. # 21-034
    - 11/2/2021 – To discuss Flood Mitigation Strategies
    - 12/07/2021 – Short Term options to address flooding
  - Budget Adjustment – For Funding floodway Monitoring and Software Upgrades
    - Upcoming Council presentation 1/18/2022
  - Budget Adjustment – for Creek Cleanup
    - Staff is proposing \$150,000 in ARP funds. Upcoming Council meeting TBD
  - Segment one of Huebner creek will be presented to the council on 4/19/2022
    - Council decided to look at the 50 ' wide, protected little league, the study will be brought back to the council before we agree to do it.
  - Budget adjustment for creek cleanup
    - 6/7/2022
  - Budget adjustment for flood gates and notification system
    - 6/7/2022 postponed
- Huebner Creek Channel improvement presentation 9/20/2022
  - Council direction to bring back budget adjustment on \$633,000
    - First Read 10/3/2022
    - Second Read 10/18/2022

- **Presentation and discussion on the status of implementation of TPCA best practices for law enforcement policies, including the mandatory provision of mental health PTO in accordance with Texas legislative changes - JS, RO**
  - Discussed at the following Council meeting
    - 6/1/2021
  - Update in the CM report 10/26/2021:
    - We released the initial 6 policies (6.1 - Use of Force, 6.3 - Non-lethal, Less than lethal weapons, 6.4 - Officer Involved Shooting, 7.15 - Vehicle Pursuits, 7.40 Investigations, 8.6 Active Shooter) in July and August. With the distribution, we included a record of receipt and pertinent training.
    - Since the initial release, we have now distributed 4 more policies (3.2 - Field Training Program, 3.2.1 - Field Training Program Operations Manual, 4.6 - Off-duty Employment, 5.4 - Body Worn Camera) and again, with the distribution, we have included a record of receipt and pertinent training.
    - Currently in the process of the last review before we release 8 other policies.
  - Mental Health quarantine Policies Section 614.015 of the Tx Gov't Code have been updated and can be found here:  
[https://cms3.revize.com/revize/leonvalleynew/departments/human\\_resources/procedural\\_directives.php#revize\\_document\\_center\\_rz4176](https://cms3.revize.com/revize/leonvalleynew/departments/human_resources/procedural_directives.php#revize_document_center_rz4176)
  - Distributed a Property and Evidence packaging manual that is used along with 12.1 Property and Evidence Management. 10.1 Prisoner Processing and 11.1 Municipal Court are in the final draft and edit stage and will be distributed both in the near future.
  - Citizens or Media Recording of Police Incidents 2/1/2022
  - Evidence and Property 2/1/2022
  - Body Worn Cameras 9/3/2022
  - Differential Police Response (CFS Report Program) 9/6/2022
  - Rules of Conduct 9/15/2022
  - Mission, Values, Written Directives 12/27/2022
  - Law Enforcement Role and Authority 12/27/2022
  - Field Interviews, Stop and Frisk 12/27/2022
  - Arrests With and Without Warrants 12/27/2022
  - Eyewitness Identifications 12/27/2022
- **Red-light cameras First Available Contract end term is May 2037**
  - City Council adopted a Resolution declaring the intent to phase out redlight cameras 4/6/2021 – Resolution # 21-009R
  - The RLC Contract would be difficult to terminate without financial obligation from the City



- City Council supports HB 1209 and physically delivers letters in support to Cortez, Biederman, Canales, Menendez
- Funds – Eligible projects – CR
  - Will be discussed at the Town Hall Meeting on January 22, 2022
- Discussed at the retreat council has decided not to spend funds until we know what the legislature is doing
- Resolution supporting SB 446-2/21/2023
- The item was not approved during the legislation process the council will try again in 2025
- **Opioid Litigation**
  - Item Was Addressed in Executives session on:
    - 6/15/2021
    - 09/7/2021
    - 9/21/2021
  - Council Addressed this item at the following Council meeting
    - 11/16/2021
      - Council Passed a resolution # 21-04, agreeing to participate in a settlement agreement with opioid manufacturer Johnson & Johnson. The other is three major pharmaceutical distributors: AmerisourceBergen, Cardinal Health, and McKesson and is estimated to receive \$28,389
  - The City still has an Agreement with Phipps, Ortiz and Talafuse for any remaining ongoing litigation
  - Received our first payment of \$7,000 on 4/20/2023
- **Comprehensive Master Plan**
  - Was addressed at the following Council meetings:
    - 2/2/2021
    - 3/23/2021
    - 06/1/2021
  - This item was discussed during the budget process and ultimately, the Council decided not to expend the funds on this project at this time.
  - Will be discussed under the Townhall meeting update to the council on 4/19/2022
    - Council would like us to use our future land use map
- **Sewer Service Charge Adjustments**
  - Council meeting 2/15/22
  - Impact Fees Removed
  - Sewer Charges will be brought back at a later time.
- **Apartments Finley And Sierra Royale, Forest Oaks, Vista Del Rey- BM**
  - Update on one of the Apartment Complexes at the CC mtg 3/15
    - Presentation was given on Vista Del Rey
    - Next apartment review is on 5/3/2022
      - Staff received legal advice in the executive session

- Executive session 8/2/2022
  - Council decided to file a Chapter 54 lawsuit against Vista del Rey, filed on 8/5/2022
  - TRO was granted on 8/8/2022
  - Administrative warrant executed on 8/17/2022
  - Temporary Injunction was granted on 8/22/2022
    - They have 6 months to comply.
  - 8/31/2022 Vista got new attorneys
  - 9/9/2022 Vista filed a motion to dissolve the temporary injunction
  - C of Os issued Shed, Maintenance Shop, Laundry 1-3, Vista, Gym
  - 9/19/2022 hearing set and canceled
- Executive Session 9/20/2022
- Vistal Del Rey is 50% compliant council agreed to settled on 4/18/2023
- Vista has completed all inspections and received their C of Os
- **Presentation, discussion, and possible action on fluoride survey results – JS**
  - CC Mtg. 3/1/2022 Postponed
  - Moved to 4/5/22
  - Presentation on given to the council and the community on the benefits, no direction was provided to staff
- **AV equipment for the Conference Center -Budget Adjustment from ARP Funds**
  - Council meeting 2/1/22 first read
  - Item amended to get the direction of the scope of work
  - Will bring the item back after the BID process
  - Discuss alternatives 5/3/2022
  - This item could not be purchased out of ARP funds

## **COMPLETED**

- **Presentation and discussion on the hiring process for Directors**
  - 1/17/2022 presented and passed unanimously
- **Substandard Building Regulations**
  - 1/17/2023 First read
  - 2/7/2023 second read passed unanimously
- **City Manager Evaluation**
  - 2/7/2023
- **A scope of duties for the Earthwise living committee**
  - 1/17/2023 -The committee had additional comments moved to the next meeting

- 2/7/2023 – The next Earthwise meeting is on 2/1. It was to close to the agenda preparation process being postponed until 2/21/2023
- 2/23/2023- Placed on the Agenda – Passed on consent unanimously
- **Blood Drive and PTO Policy**
  - 3/7/2023 – Passed unanimously
- **Lyft Program**
  - 2/21/2023 – City Council wished to proceed with the partnership
  - 3/7/2023 – Will be on the agenda with an ordinance for a first read.
  - 3/21/2023 - Will be on the agenda with an ordinance for a second read.
    - Approved unanimously
- **Discussion and possible action on amending BOA variance criterion by Texas Legislative changes**
  - 2/28/2023 – Went to the planning and zoning commission, which recommended approval
  - 3/7/2023 – Will be on for the first read
  - 3/21/2023 – Will be on for the second read
    - Passed unanimously
- **A policy on open meetings act in regards to how it applies to advisory committees**
  - 1/17/2023 – Moved by Mayor
  - 2/7/2023 – Moved by Mayor
  - 2/21/2023 – Moved by Mayor
  - 3/7/2023- The meeting agenda too full moved by City Manager
  - 3/21/2023- The meeting agenda too full moved by City Manager
  - 4/4/2023 – Placed on the agenda
  - 4/18/2023 – Will be placed on consent – Passed Unanimously
- **Presentation on VIA ridership and MTA .005 of sales tax**
  - 2/7/2023 – Mayor would like VIA present moved to 2/21/2023
  - 2/21/2023 – Placed on the agenda – The council requested more information to return to the council by April
  - 4/18/2023 – Item placed on the Agenda -No Action taken
- **Public Private Partnership with local petshops for pet adoption options**
  - 2/21/2023 City Council wished to proceed with the Partnership
  - 3/21/2023 will return with an official MOU – postponed due to being held up with Petland legal
  - 4/18/2023 – Placed on the Agenda as a resolution Passed Unanimously
- **Health Insurance Broker**
  - Gallagher benefits services the contract was awarded for three years  
Passed by council on 4/18/2023
- **Over 65 and Tax Exemption**
  - Council Mtg. 3/1/22
    - Councilor Orozco will get with the Finance Director to see if this item will come back on a later date

- 2/21/2023 The Council looked at a 5% exemption for everyone. This will come back before July
  - 05/2/2023 Brought back by Councilor Stevens and Hefner as a first read
  - 5/16/2023 on for the second read
    - Item Passed
- **RFP for Staff utilization study**
  - Reviewed by council 6/20/23 passed unanimously for October start date
- **Towing Contract**
  - 04/04/2023 – Council Would like additional information
  - 5/2/2023 – will be back with additional information
    - Council selected Banis towing contract will come back for final approval.
  - 6/20/2023 -Scheduled
  - 7/18/2023 Second read approved unanimously
- **New Guidelines for Economic & Community Development Advisory Committee**
  - 5/2/2023 – Moved by CM due to the number of items on the agenda
  - 5/16/2023 – Scheduled-Moved by CM due to the number of items on the agenda
  - 6/6/2023 – Scheduled postpone until 6/20/2023
  - 06/20/2023 – postponed until 7/18/2023
  - 7/18/2023 – Council Review
  - 8/1/2023 – Second read- approved unamiously
- **Health Inspector contract**
  - Reviewed by council 6/20/23 staff will bring back on 7/18/2023
  - 7/18/2023- contract on the agenda for review
  - 08/1/2023 – first read
  - 08/15/2023 – second read
- **Building Official contract**
  - Reviewed by council 6/20/23 staff will bring back on 7/18/2023
  - 7/18/23 contract on the agenda for review
  - 08/01/2023 – first read
  - 08/15/2023 – second read
- **American Rescue Plan funds**
  - 8/17/2021 City Council meeting. Council agreed to budget in FY 2022 for the following
    - 911 Mass text - \$5,900
    - PPE and Decontamination Supplies -\$10,000
    - Disposal Supplies and Medication - \$45,000
    - 2 power stretchers – \$60,000
    - 12 LEAD Cardiac monitor - \$70,000
    - Library Hot Spots – \$5,220

- Huebner Well Generator -\$230,000
- 11/16/2021 Budget Adjustment ord. # 21-060
  - AV equipment – Council Chambers -\$41,000
  - PD AC Repair - \$10,000
  - Website upgrades - \$40,000
  - Premium Pay for Essential Workers -\$150,000
  - Citizen Utility Asst. -\$50,000
  - Library AC repair -\$25,000
- For FY 23 Budget
  - Fire Truck-\$400,000
  - Shadow Mist Skate Park -\$70,000
- This item was heard at the Town Hall Meeting on 3/26/2022
  - Citizen input will be presented at the 4/19/22 CC Mtg
- At the 4/19/2022 council Meeting council decided to use \$400,000 to purchase a fire truck
- Finance Director gave a presentation on 10/18/2022 council meeting
- City Manager updated eligible items and gave a presentation 4/18/2023. Council directed to buy a new Fire truck, ambulance and well generator.
- 8/15/2023 -Remaining funds will be allocated to water.
- LVHS request for ARP funds
  - Reviewing MOU on 11/1/2022, 12/6/2022
    - No funds remaining
- **Demolishion Policy**
  - 5/2/2023 – Moved by CM due to the number of items on the agenda
  - 5/16/2023 – Scheduled Moved by CM due to the number of items on the agenda
  - 6/6/2023 – scheduled received input will return on July 18, 2023
    - Overfilled Agenda Moved by City Manager
  - 7/18/2023
    - Overfilled Agenda Moved by City Manager
  - 08/01/2023
    - Overfilled agenda moved by manager
  - 08/15/2023
    - On the agenda for discussion. Council unanimously approved the policy
- **Capital Plans/FY24 Budget**
  - 5/16/2023 -Scheduled presented to council
    - Request to change out LV ranches park to dog park
  - 06/6/2023 – postponed by Mayor
  - 6/20/2023 – Scheduled
    - Council asked for this item to be looked at on 7/22/2023
    - Council asked this item be reviewed again on 8/1/2023
    - Council reviewed an made some deletions on 8/10/2023

- Council Agreed on the deletions and tax rate will be on the 9/5/2023 agenda for approval.
  - Item approved
- **5616 Bandera road, also known as Comfort Cafe**
  - 3/21/2023 Public Hearing to remedy
    - Council decided to demo the property. Scheduled for May 1, 2023 demo
  - 4/24/2023 Owner paid the liens. Demo is scheduled for June 30<sup>th</sup>.
  - Owner is waiting on CPS energy to pull the gas.
  - Gas pulled and demo permit paid waiting on building review
  - All permits have been approved and paid awaiting new timeline.
  - Demo expected by 8/22/23 Demo completed
- **Fourth of July Presentation**
  - City Council 3/15
  - Council provided direction
  - The next update will be on 6/7/2022
  - Recap August 2, 2022, and August 16, 2022
  - Recap and Direction October 4, 2022
  - Review 11/15/2022
    - Time will remain the same and have a headliner that is well known
  - 6/20/23 a review of the upcoming event
  - 8/15/23 we have wrap up – moved to 9/5/2023- completed with no feedback
- **Renaming the Community Center After Ms. Baldrige**
  - Item discussed at the 9/5/2023 council meeting
  - Item placed on 9/19 for approval